

# ANYTIME, ANYPLACE, ANYWHERE?



## Addressing physical availability of alcohol in Australia and the UK

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# FOREWORD

Australia and the United Kingdom (UK) have observed an enormous increase in the availability of alcohol since the 1980s. There has been huge growth in the number and types of places at which alcohol can be purchased, and in the times of the day and week transactions can take place. Over this period, there has also been a substantial increase in alcohol purchases for consumption off-premises, a shift partly driven by the increasing cost ratio of on- versus off-premise drinks. The on-premises trade has responded by shifting business models. Some adjustments, such as increased food offerings, are likely to place downward pressure on rates of harm. However, the greater competition can also push up rates of harm, as marginal operators compete with bulk and cheap promotions.

The net result seems to have been relatively stable per capita consumption, but an increased awareness of harms associated with drinking. The political response to increasing public concern has focused predominantly on late-night violence and the broad notion of community amenity. Cracking down on drink driving was an earlier manifestation of this kind of response to visible problems involving a large number of ambulance attendances and emergency department presentations.

Pressure on the political system has produced a variety of policies targeting the temporal availability of alcohol. The high profile of alcohol-related street violence in Australia in particular, has driven restrictions

on the sale of particular products or in certain forms late at night. Both Australia and the UK have initiatives attempting to address the cumulative impact of licensed businesses to maintain community amenity. The UK has also produced schemes such as 'reducing the strength' to encourage voluntary restrictions on particular products.

Political will for meaningful reform has regularly been limited by the enormous power and sophisticated lobby of the alcohol and hospitality industries. Much of the policy debate in Australia has surrounded the late night trade of alcohol. With debate focusing on events at 4am, it has remained peripheral to the great majority of Australians who are in bed at that time. Similarly, progress on cumulative and community impact has been largely ineffective. Policies have focused on whether and where further licences will be issued rather than reducing the number of licences, which has not been an issue which governments have been willing to consider.

The breadth of harm associated with alcohol demands targeted measures and consideration of alcohol policy across a variety of domains. The multifaceted nature of domestic violence and chronic disease, for example, mean policies addressing alcohol's role in these issues are both challenging to develop and sometimes overlooked. A recurrent surprise has been that a relatively strong measure aimed at visible problems on the street – for instance, drink driving – unexpectedly has an effect in reducing rates of domestic violence.

**Given the strong association between alcohol and both the prevalence and magnitude of such issues, it is vital that policymakers consider measures to regulate the availability of alcohol to lessen associated harm.**

In this respect, this report highlights areas requiring further research to better understand measures to address particular harms. For example, although separation of liquor in supermarkets tends to be viewed as an archaic hangover of a temperance past, it may hold promise in reducing harm. At issue is not only the problem of impulse purchasing, but also the symbolism around whether alcohol is an ordinary commodity or a substance susceptible to abuse that contributes significantly to harm and suffering of the population. Such symbolic issues tend to operate in the longer term and are not likely to be measurable within the attention span of governments looking for quick fixes.

Efforts to recalibrate policy to strike an appropriate balance in the availability of alcohol have been hindered by strong ties between the alcohol industry and the political class. Levels of government also differ in their main interests in alcohol issues. Central governments tend to get the revenue from taxes, while the harm may be most apparent at the local level, where local governments often pick up the pieces. Many of the policy approaches discussed in this report started as inventive attempts by those dealing with problems at the local level to find ways of reducing

harm within the limits of laws or regulations imposed by a higher level of government. Industry interests make sure these laws and regulations protect vested interests so that progress is restricted to policies that industry is willing to concede. It comes as no surprise, then, that responding to alcohol's proliferation and clawing back availability has been a challenging task.

This report provides a valuable contribution to the literature on policy measures to regulate the availability of alcohol. Comparison between initiatives applied in Australia and the UK allows insight into their relative strengths and the identification of opportunities for improvement in each country.

The availability of alcohol is a crucial element in what happens with consumption trends and with rates of alcohol-related harm. Public policy needs to prioritise evidence-based controls on the availability of alcohol to reduce rates of harm.

**Professor Robin Room**

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# GLOSSARY

**ACT:** Australian Capital Territory, Australia

**CIA:** Community impact assessment

**CIP:** Cumulative impact policy

**CIS:** Community impact statement

**EMRO:** Early morning restriction order

**FARE:** Foundation for Alcohol Research and Education, Australia

**IAS:** Institute of Alcohol Studies, United Kingdom

**LGA:** Local Government Association

**LNL:** Late night levy

**NSW:** New South Wales, Australia

**NT:** Northern Territory, Australia

**PCC:** Police and Crime Commissioner

**PIA:** Public interest assessment

**RBL:** Risk-based licensing

**RTS:** Reducing the strength schemes

**SLP:** Statement of licensing policy

**SA:** South Australia, Australia

**UK:** United Kingdom

**VCGLR:** Victorian Commission for Gambling and Liquor Regulation

**WA:** Western Australia, Australia

**WHO:** World Health Organization

# SUMMARY

International evidence consistently points towards the physical, economic, social, and psychological availability of alcohol as important mediating variables in the prevalence of alcohol-related harm.<sup>1</sup> Commentators have highlighted that Australia and the United Kingdom (UK) have similar drinking cultures<sup>2</sup> and share commonalities in patterns of alcohol harm, particularly in relation to crime and violence.<sup>3</sup> While both jurisdictions regulate the physical availability of alcohol, to date there has been no comparative analysis of policy approaches to reduce alcohol harm in Australia and the UK.

This discussion paper provides an overview of tangible policy options for Australian and UK governments and makes recommendations about the use of alcohol availability controls to mitigate harm. Alongside case study examples from each jurisdiction, it provides information about the legislative, regulatory, and policy options for introducing a range of availability controls. It also assesses political and community appetites for the introduction of these measures and, where possible, outlines the resource requirements for implementation.

A snapshot 'alcohol availability policy scorecard' provides an overview of the 14 policies analysed in this report. Interventions were scored based on effectiveness in reducing harm and value for money.

The three highest scoring alcohol policies were:

- last drink laws, presently found in New South Wales and Queensland, Australia
- statement of licensing policies (SLPs), found across the UK, and
- cumulative impact policies (CIPs), used in England and Wales.

Low scoring policies include alcohol industry voluntary schemes and alcohol industry schemes found in both Australia and the UK, and the late night levy operating in England and Wales.

Jurisdictions within each country have also attempted to refocus their licensing laws towards minimising the harm alcohol can cause, with Scotland introducing a health objective and 'harm minimisation' found in some Australian states. While these approaches differ, they have faced similar obstacles and issues. There seems to be scope for shared learnings and recommendations on the most effective goals to focus on, evidence to use, and the importance of informing decisions with a very close analysis of the issues found in the particular location.

# RECOMMENDATIONS

Based on the analysis contained within this report, ten recommendations are made. These recommendations apply a standard to which all jurisdictions should aim, with some having been achieved to varying degrees in regions already.

## TEMPORAL POLICIES

### 1. Restrict trading hours for off-licence liquor

Limit off-licence opening hours to between 10am and 10pm, or similar.

### 2. Restrict trading hours of on-licence venues to limit the availability of alcohol after midnight

Place appropriate restrictions on the hours at which alcohol may be sold to reduce harm associated with late night trade and, to the extent possible, restrict the availability of alcohol after midnight and in the early morning hours.

## SPATIAL POLICIES

### 3. Improve regulation of off-licence liquor sales

Confine alcohol to specific areas within supermarkets to discourage impulse purchases and reduce alcohol sales.

### 4. Enhance community involvement

Provide residents with access to legal resources and advice to ensure that the community is able to engage with licensing systems.

### 5. Clearly define licensing policy to minimise the cumulative harm associated with higher densities of liquor outlets

Develop comprehensive policies for how licensing legislation should be implemented, including protecting local communities by applying controls on outlet density.



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## HARM MINIMISATION

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**6. Place the onus on applicants to prove that their venue is in the public interest**

Reverse the burden of proof in licensing decisions to require applicants to demonstrate that granting of a license is in the public interest.

**7. Include and prioritise public health and/or harm minimisation objectives in liquor legislation**

Specify in all liquor legislation public health and the minimisation of harm as objectives in the regulation of alcohol, including licensing decisions, and ensure they have primacy over other objectives, to empower communities and allow governments greater control of outlet density.

**8. Enhance data sharing to facilitate more targeted policy interventions**

Collect and share data from hospital emergency departments and police, in a manner consistent with the 'Cardiff model', to inform policy development and improve strategies to reduce alcohol harm.

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## PRODUCT RESTRICTIONS

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**9. Restrict the sale of high risk products in areas of concern**

Restrict the sale of products susceptible to abuse, on the basis of strength and price, in areas with high levels of alcohol harm.

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## ALCOHOL INDUSTRY PARTNERSHIPS

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**10. Deprioritise alcohol industry voluntary schemes**

Deprioritise assistance to alcohol industry voluntary schemes, such as liquor accords, in favour of evidence-based policies to deliver meaningful reductions in alcohol-related harm.

# INTRODUCTION

International evidence consistently points towards the availability of alcohol as an important mediating variable in the prevalence of alcohol-related harm.<sup>4</sup> Availability theory points to a number of interrelating factors that influence access to alcohol, including:

- how easy it is to physically obtain retail alcohol (physical availability)
- how affordable alcohol is (economic availability)
- social norms and provision of alcohol via informal means such as parties and social gatherings (social availability), and
- the perceived availability of alcohol, including responses to alcohol marketing (psychological availability).<sup>5</sup>

Policy measures targeting the physical availability of alcohol in particular are one of the most effective ways to reduce alcohol-related harm.<sup>6</sup> The World Health Organization (WHO) lists interventions that restrict the availability of retail alcohol among the three 'best buy' policies to reduce alcohol harm, alongside increases in price and bans on alcohol advertising.<sup>7</sup> Specific interventions designed to restrict the availability of retail alcohol include minimum purchase age laws, spatial policies such as controls on the number and density of alcohol outlets, and temporal controls to regulate the days and hours of alcohol sale.

While availability measures can

reduce the harm associated with alcohol purchased from both on-licence and packaged liquor venues, regulation of each channel of supply presents distinct challenges. On-licence trade refers to the consumption of alcohol at public venues, including pubs, bars, restaurants and nightclubs. It has been associated with violence,<sup>8,9</sup> particularly late at night,<sup>10</sup> as well as sexual assault and a variety of other antisocial incidents. Packaged liquor is defined in the *Liquor Licensing Act 1997* (SA) as "liquor in sealed containers for consumption off licensed premises". Alcohol sold in this manner (sometimes referred to as 'takeaway' alcohol) accounts for 80 per cent of all alcohol consumed in Australia.<sup>11</sup> In England, 65 per cent of alcohol is sold in the off-licensed trade.<sup>12</sup> Packaged liquor, which is predominantly consumed in private venues, contributes to similar harms to that supplied on-premises. However, the context means the specific nature of the harm is different. For example, alcohol consumed in a private residence is likely to contribute to a greater proportion of domestic violence incidents<sup>13</sup> and child maltreatment and neglect.<sup>14</sup> For this reason, while similar theoretical frameworks (such as reduced availability) apply, the specific policy measures to reduce harm resulting from packaged/off-licence and on-licence alcohol sales are different.

Commentators have highlighted that Australia and the United Kingdom (UK) have similar drinking cultures<sup>15</sup> and share commonalities in patterns of alcohol harm, particularly in relation to crime

and violence.<sup>16</sup> From a policy perspective, both jurisdictions adopt licensing frameworks that regulate the physical availability of alcohol, but to date, there has been no comparative analysis of policy options to reduce the harms from alcohol in Australia and the UK.

In Australia, recent policy changes targeting the availability of alcohol have largely been temporal. These include the introduction of restrictions on trading hours for on-premise venues in the city of Newcastle to 3.30am, the introduction of last drinks from 3am in Sydney's CBD, and a state-wide 10pm close for takeaway alcohol for all New South Wales. More recently, the Queensland Government passed legislation to introduce state-wide 2am last drinks from 1 July 2016, with venues inside zoned 'Safe Night Precincts' permitted to trade until 3am.

In the UK, policy changes following the introduction of 24-hour licensing in 2005 have largely focused on spatial restrictions and concerns around outlet density. This includes cumulative impact policies designed to restrict the growth of groups of licensed premises in particular areas of saturation. However, questions remain as to whether these spatial restrictions in the UK have worked as intended. Attempts have been made to limit closing times in areas with acute problems, through the late night levy and early morning restriction order, although these policies have also proven largely ineffective.

There are lessons to be learnt from

the respective experiences of Australia and the UK in reforming and imposing alcohol availability controls to reduce and prevent harm. This discussion paper provides an overview of tangible policy options for the Australian and UK Governments and makes recommendations about the use of alcohol availability controls to mitigate harm. Alongside case study examples from each jurisdiction, it provides information about the legislative, regulatory, and policy options for introducing a range of availability controls. It also assesses political and community appetites

for these measures and, where possible, outlines the resource requirements for implementation.

The objective of this report is to explore how countries faced with similar challenges relating to alcohol have approached evidence-based policies to reduce harm. In particular, policy approaches are identified and evaluated based on their effectiveness in reducing harm, value for money, and political support. Consideration of these factors provides a holistic perspective and aims to inform the development of policy that

may deliver reductions in harm and expenditure with the least resistance. The exchange of information and sharing of best practice between the Member States is cited in the WHO global strategy as crucial to the reduction of harmful use worldwide.<sup>17</sup> As non-government organisations, the Foundation for Alcohol Research and Education (FARE) and the Institute of Alcohol Studies (IAS) share the same goal to advocate for evidence-based policies to reduce alcohol harm.

## APPROACH

This report provides a stocktake of policy approaches employed in Australia and the UK that have involved regulation of the availability of alcohol. Policy measures were identified by subject matter experts and include both current and past initiatives. The report sought to present a relatively equal balance of Australian and UK policies. Specific case studies are presented from each country and are followed by a discussion of the relative strengths and weaknesses of each approach. The information presented in case studies and discussion sections then form the basis for development of a scorecard comparing policy measures on several dimensions.

Policy measures were grouped by category areas, which included temporal policies, spatial policies, harm minimisation and use of data, and product restrictions. Temporal policies include those that were designed to regulate the availability of alcohol over time, such as

late night levies and last drink policies. Spatial policies involve the regulation of outlet density by geographic region or the placement of alcohol in stores. Examples of such policies include cumulative impact policies and separation of liquor aisles in supermarkets. Harm minimisation and use of data represented another category, and review the use of particular objects in Liquor Acts, as well as data collection and use of evidence in licensing decisions. Finally, product restriction policies focus on initiatives that have restricted the sale of particular alcoholic beverage classes in specified regions or during defined periods.

The case studies identify evidence of impact of policy measures, their resource requirements, political support (or opposition), and the policy mechanisms through which they take effect. The report draws on the best available evidence on the impact of policy measures. Where possible, this includes

peer-reviewed research. Naturally, there is a considerable degree of variation in the amount and quality of research evaluating different policy approaches. Similarly, attempts were made to obtain accurate indications of the resource requirements for each policy approach. Discussion of resource requirements relied on both demonstrated costs and benefits, as well as the theoretical implications (for example, whether the policy is likely to generate additional revenue or would come at a net cost). Evaluation of political support typically drew heavily on media coverage, including statements from proponents and opponents to the various approaches, as well as statements made by government in policy documents and parliament. Case studies also identified the mechanism through which policies took effect (whether legislative, regulatory or otherwise).

## SCORECARD EXPLAINED

The scorecard was developed based on details presented within each case study, as well as discussions contrasting policy measures. Each policy was rated according to its evidence of impact, partly based on the framework developed by Babor et al. (2010).<sup>18</sup> Scores were awarded across four measures of performance, including evidence of impact, resource implications, political support, and mechanisms available for the introduction of the policy. On each indicator, a score between one and three was awarded (with higher scores reflecting better performance). Policies were awarded aggregated scores out of nine (three domains marked out of three), with higher scores reflecting stronger performance and a score of three as the lowest level. A rubric outlining the scores awarded is provided below.

SCORE	EVIDENCE OF IMPACT	RESOURCE IMPLICATIONS	POLICY MECHANISMS AVAILABLE FOR INTRODUCTION
1	Limited evidence of effectiveness in reducing alcohol harm	Highly resource intensive to implement	No policy mechanisms currently available for introduction
2	Some evidence of effectiveness, though limited with respect to robustness of evidence or scale of reduction in harm	Moderately resource intensive to implement	Policy mechanisms available but current local implementation issues
3	Strong evidence that the measure is effective in reducing alcohol harm	Low resource intensity to implement	Policy mechanisms available with minimal implementation issues

## ALCOHOL AVAILABILITY POLICY SCORECARD

	Region implemented (AUS/UK)	Evidence of impact in reducing harms (3 = stronger evidence)	Resource implications for public sector (3 = less resource intensive)	Policy mechanisms available for introduction (3 = easy introduction)	Total score (3 = lowest to 9 = highest)
<b>Temporal policies</b>					
Last drinks	Australia	3	3	2	8
Late night levies	England and Wales	1	1	2	4
Risk-based licensing	Australia	1	3	3	7
<b>Spatial policies</b>					
Cumulative impact policies	England and Wales	2	2	3	7
Statements of licensing policy	England, Wales and Scotland	2	2	3	7
Separate liquor aisles	Australia	1	3	2	6
Community impact assessment	Australia	1	2	2	5
<b>Harm minimisation and use of data</b>					
Public health licensing objective	Scotland	2	1	2	5
Harm minimisation as primary object	Australia	2	1	3	6
Anonymous data sharing: the Cardiff model	England and Wales	3	1	2	6
<b>Product restriction policies</b>					
Restrictions on purchase of certain products	Australia	2	2	2	6
Reducing the strength schemes	England and Wales	2	1	2	5
<b>Alcohol industry voluntary schemes</b>					
Alcohol industry voluntary schemes	England, Wales and Scotland	1	1	2	4
Liquor accords	Australia	1	1	2	4

# TEMPORAL POLICIES

COMPARING AND DISCUSSING:

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**LAST DRINKS POLICIES**

**LATE NIGHT LEVIES**

**RISK-BASED LICENSING**

## LAST DRINKS POLICIES

<b>LOCATION:</b>	Australia
<b>WHAT IS IT?</b>	The restriction of on-premises alcohol sales after a specified time at night or in the early hours of the morning, without requiring venue closure.
<b>POLICY SCORE:</b>	8 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Strong evidence to support effectiveness in reducing alcohol-related harm.</li> <li>• Low administrative and financial burden.</li> <li>• Easily introduced through licensing systems.</li> </ul>
<b>CONS:</b>	Politically controversial due to significant industry opposition.

Policies that restrict the time when alcohol can be sold at on-premises venues in the evening or early hours of the morning are often referred to as 'last drinks'. Under such schemes, licensed premises are often allowed to remain open after last drinks but are unable to serve alcohol past that time. Last drinks policies have been implemented in New South Wales (NSW) in the Kings Cross and Sydney CBD Entertainment precincts since February 2014, and were implemented in Queensland from 1 July 2016.

Last drinks policies have typically been introduced in conjunction with other measures, including one-way doors. A one-way door, or 'lockout', restricts new patrons from entering a venue after a specified time. Patrons already inside the venue may continue to purchase and consume alcohol until the venue closes. In public debate, the lockout and last drinks measures have often been referred to collectively as 'lockouts' or 'lockout laws'. However, the measures are fundamentally

different and must be evaluated separately. Discussion here focuses exclusively on last drinks, although their individual effects are sometimes difficult to distinguish as they have regularly been introduced simultaneously.

Last drinks have more formally been called the 'liquor sales cessation period' in the *Liquor Regulation 2008 (NSW)*, referring to the period on any day of the week between 3am and the commencement of the standard trading period. The licence condition means that liquor must not be sold or supplied on the premises in that period. This does not prevent the continued provision of other services such as food and non-alcoholic beverages, entertainment and the use of the premises for conferences or meetings, and for gambling activities that are otherwise permitted.

In early 2016, the Queensland Government passed the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016*. From 1 July 2016, the service of alcohol in licensed premises

in Queensland was restricted beyond 2am. Venues can only remain open beyond 2am to serve food, non-alcoholic beverages, and to provide entertainment. Last drinks do not apply to casinos, licensed premises in airports and industrial canteens, services clubs on Anzac Day and certain other venues. With many exemptions applied under the Queensland scheme, it remains to be seen whether the measures will deliver the level of harm reduction that would otherwise be expected.

Late-trading venues located in Safe Night Precincts (SNPs) will be able to sell alcohol until 3am. Under the Queensland Government's *Safe Night Out Strategy (SNOS)*, these precincts have been established to ensure effective local management of key entertainment areas. Safe Night Precincts are managed by local boards operating as incorporated associations. Licensees within an SNP are required to become a member of the local board. As of 1 October 2014, 15 Safe Night Precincts had been prescribed.

## Evidence of impact

It has been claimed that last drinks policies have been associated with venues tending to close at the time after which alcohol could not be served.

This suggests that assessment of its impact cannot be separated from the assessment of the impact of early closing hours. An assessment of the Newcastle model showed that the majority of reductions in assaults came after 3am, with little impact evident between 1am and 3am, suggesting that the trading hour restrictions was the key policy.

Despite this, more recent evidence from lockout and last drinks in NSW suggest that a reduction in harm was observed during both the lockout period and following last drinks.

Another NSW evaluation concluded that, “the January 2014 reforms appear to have reduced the incidence of assault in the Kings Cross and CBD entertainment precincts. The extent to which this is due to a change in alcohol consumption or a change in the number of people visiting the Kings Cross and Sydney Entertainment Precincts remains unknown”.

Despite this, the decline in foot-traffic following the introduction of lockout and last drinks was only 19.4 per cent.

This is considerably less than the 45.1 per cent reduction observed in the number of non-domestic assaults, suggesting that the safety of the Kings Cross region had increased after the introduction of the measures.

Additionally, a marked 20.3 per cent reduction was observed in the Sydney CBD Precinct, which was also subject to the measures.

Evidence of reduced alcohol-related violence has been complemented by research that has identified significant reductions in associated harm. In particular, alcohol-related serious injury presentations to the local St Vincent’s Hospital during high alcohol times reduced by a quarter (24.8 per cent) in the 12 months following the introduction of the new liquor regulations.

Similarly, it was reported that serious facial injuries requiring surgery reduced by 60 per cent in the two years after last drinks and lockouts were imposed.

In addition to the significant reduction in alcohol-related harm following last drinks, positive transformation of the local economy was also observed. Industry sources reported that CBD Entertainment Precinct businesses had successfully moved away from reliance on late-night alcohol sales to more diverse business models, including food offerings.

In addition to the transformation of existing businesses, a variety of new businesses entered the market also seeking to profit from diversification of the region. This was supported by local residents’ observations of 70 new businesses in the region, including hairdressers, restaurants, ice creameries, and small bars.

Similar observations were made in the Newcastle region following introduction of trading hour restrictions there. Together, it appears that last drinks (as part of a package of reform measures) have been successful in moving night time economies away from reliance on harmful business models to a healthy, more diversified range of entertainment options.

## Resource requirements/implications

Implementation of this policy requires the deployment of compliance officers during late trading periods to monitor and assess compliance with legislation and take enforcement action where necessary.

## Political support for policy

Controversy surrounded the introduction of lockout and last drinks policies in Kings Cross and Sydney CBD in 2014, and more recently in Queensland (where policies were introduced state-wide in July 2016). Following the review of the 2014 liquor law reforms, it was recommended that both lockouts and last drinks measures be relaxed slightly. The NSW Government adopted the recommendations, and relaxed last drinks from 3am to 3:30am in early 2017.

Initially there had been little political will to restrict trading hours, as the alcohol industry strongly opposed any such restriction.

A 2013 review of the *Liquor Act 2007 (NSW)* concluded that,



despite many submissions calling for a blanket closing time of 3am to be introduced, there was “insufficient research to inform the review that this is the optimal closure hour that would result in an acceleration of the rates of decline in alcohol-related violence evidenced since 2008”.

Furthermore, the review concluded that the current legislative framework was sufficient to deal with risk areas through a variety of enforcement initiatives.

However, when a young man died in Kings Cross on New Year’s Eve in 2013 as a result of alcohol-related violence, following a similar death in July 2012, the spate of headlines and sense of crisis pushed the conservative NSW Government to take a different stance and push through the raft of reforms in early 2014. While the opposition Labor party supported the measure, the Greens claimed that the response failed to go to the heart of the problem: “dangerous promotions and deep discounting, failure to enforce Responsible Service of Alcohol, excessive liquor outlet densities and the inevitable consequences of a limited zone of application of last drinks”. Following their introduction, opponents to the measures coordinated a social media campaign and a large protest march to ‘Keep Sydney Open’. At the same time, supporters of the reforms rallied around a ‘Last Drinks Coalition’, comprised of health professionals and frontline services. This coalition argued that reversing the laws

would be a “travesty and would put innocent lives at risk”.

The death of a teenager in a one-punch attack moved the Queensland Government to review legislation to address alcohol-fuelled violence. In 2016, the Queensland Government passed a bill to phase in a variety of measures including last drinks under some controversy. It was not supported by the opposition conservative party and required the support of crossbench MPs that were able to negotiate several concessions.

While violent incidents that resulted in the death of young men catalysed introduction of trading hour restrictions in each state, public health campaigners have long advocated for such policies. It would appear that high-profile examples of the harm caused by late-night alcohol trade provided the public support necessary to instigate reforms.

### **Policy mechanisms**

The conditions imposed on the late trading hotels in Newcastle in 2008 were based on a provision in the *Liquor Act 2007 (NSW)* enabling regulatory action to be taken when two or more licensed premises were the subject of a disturbance complaint as happened in Newcastle.

Prescribing a precinct under the liquor laws enabled licence conditions to be imposed on all venues, or a subset of venues, located within that region – as was the case for the Kings Cross and Sydney CBD

Entertainment precincts. The actual policy measures for these precincts were spelt out in the *Liquor Regulation 2008 (NSW)*. In Queensland, the measures were defined by amendment to the *Liquor Act 2007 (Queensland)* through an Amendment Act (which had a wider scope than just the Liquor Act).

## LATE NIGHT LEVIES

<b>LOCATION:</b>	England and Wales
<b>WHAT IS IT?</b>	Additional fees charged to licensed premises remaining open after midnight. A portion of funds are assigned to public resources associated with the night time economy, and are split between the council and local police.
<b>POLICY SCORE:</b>	4 on a scale of 3 to 9
<b>PROS:</b>	Addresses market failures by holding licensed venues more accountable for the cost associated with the late night trade of alcohol.
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Currently geographically inflexible.</li> <li>• Base fees on trading hours alone rather than including other risk factors, such as compliance history.</li> <li>• Administratively burdensome, often with poor returns.</li> </ul>

Late night levies (LNLs) were introduced through the *Police Reform and Social Responsibility Act* (2011). They enable licensing authorities to:

*Charge a levy to persons who are licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the costs of policing the late-night economy... beginning at or after midnight and ending at or before 6am.*

The levy applies to all premises with a licence to operate past the designated time (usually midnight) regardless of whether the venue uses this time in practice. Councils are required to give at least 70 per cent of the net revenue raised to the local Police and Crime Commissioner (PCC). There are no restrictions on what the PCC's portion of the levy revenue can be spent on, although in practice many areas have committed to spend the revenue on the local night time economy. Within the LNL guidance, there are limitations

on the way the Council can use its remaining share. The money spent by the Council must relate to initiatives that aim to reduce crime and disorder, promote public safety, reduce or prevent public nuisance, or clean infrastructure in the local area.

At present, the LNL has only been adopted in a handful of areas including Newcastle, Cheltenham, Islington, City of London, Nottingham, Chelmsford, Southampton, and Camden. A number of other areas have consulted on one and decided not to proceed, while others are currently preparing to run a consultation. However, Cheltenham will be removing their LNL and replacing this with a Business Improvement District (BID), which is seen as more business friendly and could supposedly raise more revenue.

Local government is responsible for liquor licensing decisions in the UK. Currently, legislative restrictions mean that an LNL can only be applied to an entire

local government area, and this inflexibility has limited its use. In many areas, it is viewed as unfair to charge the levy to rural pubs and premises when the vast majority of the policing demand comes from the town centre. Those local governments that have introduced an LNL have tended to be more compact and urban in nature, where this concern is less apparent. However, in early 2016 the Home Office announced plans to make the LNL more flexible to implement, which should encourage its uptake.

Another factor that has limited uptake is a concern that LNLs may not always be financially viable, with the cost of administering and enforcing the LNL outweighing its benefits. Premises involved with voluntary schemes such as BIDs and Best Bar None (BBN) can receive a 30 per cent reduction in the levy if they are seen to reduce crime and disorder. This can make a significant difference to the amount of revenue raised.

However, while these voluntary schemes can have benefits in terms of increased cooperation between the licensing team, the police, and the licensed trade, the evidence for a link between these schemes and a reduction in crime and disorder is very limited (see the voluntary industry case study for more).

While administrative burden and financial benefits are key considerations, LNLs also appear to have the effect of reducing the availability of alcohol after midnight by encouraging some venues to close earlier. While it is difficult to quantify this impact, it is likely to have a positive effect on alcohol-related problems in areas with high concentrations of premises. However, while premises can stop serving alcohol at midnight to avoid paying the levy, they are not required to shut and patrons may potentially stockpile beverages and continue drinking after midnight.

### **Evidence of impact**

No formal evaluations have yet investigated the impact of LNLs. However, legal firm Poppleston Allen submitted freedom of information requests to a number of areas in order to identify the impact of their respective LNLs one year after implementation.

Previous research has also examined their impact using Cheltenham and Newcastle as case studies. Overall Cheltenham raised £616.86 per premises affected by the LNL, while Newcastle raised almost double this at £1,168.50 per premises.

This may be due to relative size of the venues in Newcastle, as large venues pay higher fees.

However, in Cheltenham the scheme only brought in 39 per cent of the amount predicted in part due to a smaller number of premises affected by the LNL, but also the fact that 49 of the 123 premises were eligible for a discount as they were members of best practice schemes. Newcastle just hit its overall revenue target, with 130 venues receiving a 30 per cent discount. The council estimated that these exceptions were worth £18,000. Both Cheltenham and Newcastle have decided to split the revenue 70:30, and come to agreements with their PCC that funds from the LNL will be spent within the city.<sup>44,45</sup>

These examples suggest that in certain circumstances the LNL can work to secure additional funding for use within the night time economy. There are significant differences in the extent to which this has been achieved, with Cheltenham only raising 39 per cent of its target. The examples also illustrate the potential for levy exemptions to erode the additional revenue base.

In addition to securing additional revenue, levies may also provide a price signal to ensure that businesses account for the full cost associated with their operation. Late night alcohol trade presents elevated risk of harm, which places additional burden on public resources. When businesses are held accountable for these additional costs, an economic

distortion is addressed to improve the operation of the market. In this manner, the levies both secure additional revenue and influence business decisions to lessen harm.

Key issues relating to the impact of LNLs include how revenue is spent, whether this is beneficial for the night time economy, and whether crime and disorder is reduced. Cheltenham took a creative approach, seeking “to promote greater diversity in the night-time economy that is less focused on alcohol”.<sup>46</sup> This has involved opening an alcohol-free venue, purchasing a multi-use community van, and paying for a coordinator for the Purple Flag voluntary scheme.

Some within the licensed trade have called for the LNL to be scrapped. Critics have suggested the way money has been spent was “against the spirit of the regulations” and that it has been used to fund activity that would normally be covered by regular local authority budgets.<sup>47</sup> Some have also stated there has been no visible change in policing levels as a result of the levy, with suggestions this might be a bigger priority for the licensed trade. At present, there has been no evaluation of the impact these schemes have had on law and order or cleanliness in the night time economy within Cheltenham.

Newcastle has spent its LNL funds on a range of initiatives such as street pastors, taxi marshals, bar and nightclub scanners, additional CCTV, street cleaning, and a ‘Safe Haven’ scheme for anyone who is in

difficulty. It was not possible to find details of how much these initiatives have cost or how they have been split between the police and council sections of the LNL revenue.

As mentioned, there has not yet been a formal evaluation of the LNL. It does seem that the scheme can successfully raise funds, although there is perhaps a need to focus more on how these funds can be spent effectively and in line with the regulations. As legal firm John Gaunt and Partners have summarised, "Initial findings would suggest the LNL schemes have been effective in raising additional revenue but their impact on crime and disorder is yet to be established".<sup>48</sup>

It is interesting that in these cases, no money was used to provide additional police officers on Friday or Saturday nights, which was ostensibly one of the LNL's aims. In Nottingham, it was specifically stated that revenue would be used to fund two night time Community Protection Officer posts.<sup>49</sup> Similarly, Islington paid for private security patrols out of LNL funds in order to assist the local police.

### **Resource requirements/implications**

Experience suggests that the LNL is quite an administrative burden. While in Cheltenham it cost £1,015.15 to administer in the first year,<sup>50</sup> in Newcastle this figure was £22,500.<sup>51</sup> These figures are small compared with the net revenue raised, but they do point towards significant time and resourcing implications. In

addition, many areas where the LNL has been introduced have allowed premises to vary their licence free of charge if they wished to bring forward their terminal hour to midnight in order to avoid paying the levy. This created considerable work in some areas.

### **Political support for policy**

As mentioned, the current geographic inflexibility of the levy has created political problems and prevented this measure from being introduced in many areas. Moves to make the policy more flexible so the levy can be applied only to town centres and particular areas with high concentrations of problems should help to address these barriers to implementation. However, the fact that Cheltenham has removed its LNL in favour of a BID, which is business run and therefore more acceptable to business, suggests that other areas may take this approach. This is particularly because LNLs are greatly disliked by the licensed trade in many areas. Typical trade arguments include stating that LNLs undermine local working, and that they amount to an unfair tax on the industry.

Opponents to the LNLs in Cheltenham have suggested there has been no visible change in policing levels as a result of the levy. However, there has been no systematic evaluation of the impact of these schemes on law and order or cleanliness to date.

### **Policy mechanisms**

LNLs are available as a policy options to councils in England and Wales through the *Police Reform and Social Responsibility Act* (2011).

## RISK-BASED LICENSING

<b>LOCATION:</b>	Australia
<b>WHAT IS IT?</b>	Weighting licence fees based on factors contributing to the risk associated with venues' operation. Such factors typically include a combination of licence type, venue capacity, compliance history, and liquor volume or gross purchase value.
<b>POLICY SCORE:</b>	7 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Very low resource burden, as such schemes typically generate additional revenue.</li> <li>• Readily justified on the basis that businesses must meet the social and economic costs associated with their operation.</li> <li>• Economically efficient in addressing market externalities, whereby business profit may otherwise be generated an expense to the public.</li> </ul>
<b>CONS:</b>	Limited evidence of effectiveness in reducing alcohol-related harm. May be viewed as downstream approach.

Risk-based licensing (RBL) is not in itself a temporal policy but a licensing fee system. However, it does have temporal implications, with additional fees charged based on trading hour (similar to the late night levy). RBL fees have been introduced in four Australian states and one territory – Queensland in 2008, Victoria in 2009, the Australian Capital Territory (ACT) in 2010, South Australia in 2012, and New South Wales (NSW) in 2014. The basic principle is that higher liquor licence fees should be paid by licensees of premises associated with higher levels of harm. They have been justified as a means of contributing annually to, or even recovering, the cost of maintaining a strong regulatory and compliance system. RBL is described as “a motivational tool whereby licensees are induced by lower fees to select less risky business models, comply with their legislative obligations, and take proactive measures to reduce alcohol-related violence

and disorder in and around their venues”.<sup>52</sup> Most commonly, the policy is outlined in broad terms in the relevant Liquor Act with the details of its implementation provided in the relevant regulations.

No two jurisdictions have introduced RBL in the same way. The calculation of the RBL fee is based on factors such as trading hours (in all five jurisdictions), licence type (four), venue capacity (four), compliance history (three), and liquor volume or gross purchase value (two). Where adopted, these factors are defined differently across jurisdictions. NSW in particular has a complex set of elements including, for packaged liquor, consideration of how many licences a licensee holds in determining the fees. NSW also has a ‘location risk loading’ for all relevant licence types, which is a patron capacity loading that is only payable if the compliance history risk loading element is payable.

Despite Section 128 of the *Liquor Control Act 1998* (Western Australia) stating that regulations may prescribe licence fees based on the licence type, the type of premises, location of premises, capacity of premises, trading hours, convictions and disciplinary action, only the licence type attracts different fees in the *Liquor Control Regulations (1989)* (Schedule 3) (Western Australia). A modest recommendation by the 2013 Independent Review Committee<sup>53</sup> to base the licence fee on the floor area of the licensed premises, taken to be a de facto measure of liquor volume and easier to define than volume, has not been adopted.

### Evidence of impact

The impact of risk-based licensing has been assessed in the ACT, where it was concluded that it was difficult to demonstrate that its implementation was responsible for the observed declines in

alcohol-related offences.<sup>54</sup> For example, other factors such as a concurrent increase in police resources may have played a role. However, the authors make a case for its continuation based on stakeholder belief in its benefits, its role in recovering costs of alcohol prevention policing, its equity in ensuring venues presenting greater risk pay a larger share of the costs and, lastly, as there has been no evidence of any detriment to the liquor licensing market following its introduction.

The breadth of licence classes covered and scale of risk weighting applied to fees are both likely to influence the extent to which risk-based licensing is effective in recovering costs and shaping more responsible business practices. For this reason, the South Australian implementation of risk-based licensing has been criticised for not including off-premise licences and because “their meagre fees do not correspond with the volume of liquor and risk of associated harms they introduce to homes and communities”.<sup>55</sup>

### **Resource requirements/implications**

The collection of licence fees is legislated; therefore, no new resources are required to collect fees according to a different schedule. However, use of the risk criteria is often limited by availability of data. For instance, when the Victorian risk criteria were adopted, differentiation by type of establishment was limited by

the fact that licence types are relatively undifferentiated in the state. Also, information on the ‘maximum patron number’ was missing for about 30 per cent of licences in Victorian licensing agency data, thus limiting the accuracy of weighting applied to licence fees on the basis of venue capacity. Further, including the amount of alcohol sold as a risk criterion may amount to a state tax on alcoholic beverages, which by High Court decision is reserved to the Australian Government.

It is not known if some audit process is required to make sure licensees are paying the correct amount. However, enforcing compliance to risk-based licensing schedules is not likely to result in any marked increase to existing administrative costs. In addition, data collected through the implementation of this policy may contribute to better planning and evaluation.

### **Political support for policy**

The widespread adoption of this measure indicates a strong level of support for the measure on the attractive ‘higher risk user pays’ principle.

### **Policy mechanisms**

As outlined, almost all Australian jurisdictions introduced risk-based licensing through a high-level statement of the potential for fee setting in the relevant Liquor Act. They then give details of the fees based on risk assessments of, for example, licence type, trading hours, capacity, size,

location, availability of meals, and compliance history in the associated regulations. The ACT does not use regulations but instead uses a ‘disallowable instrument’, an instrument that must be tabled and is open to Parliamentary veto or disallowance for a set period, usually fifteen sitting days. However, since regulations are classified as legislative instruments, and they are therefore subject to disallowance, the effect appears to be the same.

## DISCUSSION OF TEMPORAL POLICIES

Research has consistently demonstrated that increased trading hours is associated with higher rates of alcohol-related harm.<sup>56,57,58</sup> The temporal relationship also supports the use of policies that reduce consumption of alcohol at times when the consequent harms are likely to be greatest. A variety of approaches has been used in Australia and the UK, including increased fees for businesses trading after a designated time, and restriction on sale of certain products or on all sales during a nominated period. This section examines several approaches to the temporal restriction of alcohol sales, including risk-based licence fees and cessation of sales (last drinks) measures, with the view to assessing the factors contributing to success and limitations of each.

### **Increased licence fees for high risk and late night trading**

There are obvious parallels between the late night levy (LNL) scheme available to local councils in England and Wales, and the risk-based licensing (RBL) employed in a number of jurisdictions in Australia. Both schemes aim to partially recoup the significant public costs associated with late night trade of alcohol by charging businesses larger fees for later trade. These measures may send price signals to ensure alcohol industry profits are not generated at the expense of individual patrons and society more broadly. Such policies thereby address negative

externalities by encouraging businesses to more accurately incorporate the true costs of their operation into business decisions.

Despite similarities, the fundamental differences between policy approaches provide opportunities for lessons in licensing policy. These include lessons in relation to temporal differentiation and incorporation of compliance history into licence fees. The legislative provisions for fee systems are discussed, as well as differences in the scale of fees charged in the UK and Australia.

### **Premises specific vs one size fits all**

While both RBL and LNL are applied consistently across a licensing area, fees charged under RBL are, by definition, specific to individual premises and are reflective of fee levels reflecting their risk profile. In NSW, for example, businesses seeking to extend trading hours to 1:30am are charged less than those licensed to trade to 3am.<sup>59</sup> Similarly, licensed venues in the ACT are charged differentiated fees based on licensed time of last drinks.<sup>60</sup> Venue type and capacity is also taken into account, allowing for fees to more accurately reflect the risk profile of premises.

This is different from the LNL, which incorporates risk profiles more loosely. Premises pay fees within a certain band depending on their rateable value, with

all premises trading after the designated time (usually midnight) paying, regardless of their closing hour. The type of premise (for instance, nightclub, restaurant) is not taken into account, and the levy must be applied across a whole local authority area, rather than to key night time economy locations that generate the bulk of the costs the LNL is intended to cover.

Plans to make the LNL more flexible have recently been announced by the UK Home Office, which should improve the situation. If local governments were given the ability to set their own licensing fees in England and Wales, a number have indicated a preference for an approach similar to RBL for determining fee levels using characteristics such as venue type and closing hour. The ability to set these fees is something that the Local Government Association, the representative body for local government in the UK, has continually pushed for.

### **Motivations to reduce risk**

These two policies incentivise businesses to reduce risk associated with their operation, but they do so in different manners. Once in place, the LNL rewards businesses for demonstrating a commitment to harm reduction, an assumption based on their membership of best-practice schemes. However, as detailed in the case study, many of these voluntary schemes have limited or poorly evidenced effectiveness in

reducing alcohol-related harm. In contrast, RBL recognises effective management practices based on an individual venue's compliance history. In principle, this holds businesses accountable for specific problems associated with their recent operation and penalises businesses for bad behaviour, although slack enforcement of compliance standards often means that this penalty is not often applied.

### Recouping costs

Since RBL and LNLs aim to recoup a proportion of the full cost of alcohol sales, and provide greater incentive for venues to reduce

harm associated with their operation, the efficacy of these policies may be evaluated with respect to reductions in alcohol-related harm and increases in generated revenue. It is worth noting that the variety of policies employed across local councils in the UK and jurisdictions in Australia limits the extent to which comparisons can be made.

In addition, the lack of robust evaluation of LNLs in the UK means there is limited information relating to the impact these have had on alcohol-related harm. However, the efficacy of such risk-based licensing schemes may be compared on typical revenue

generated per venue.

The extent to which such policies reduce alcohol-related harm may also be considered on the basis of evidence from their use in Australia.

Figures 1 and 2 outline the charges imposed under LNLs in the UK and the RBL systems in the ACT and NSW. Although rates vary across licence classes and jurisdictions, it is clear that the risk-based licence fees charged for late night trading in Australia are considerably higher than LNLs introduced in the UK. In addition, the LNL has only been introduced in a handful of local governments

**FIGURE 1: COMPARISON OF THE COSTS ASSOCIATED WITH LNL AND RBL**

JURISDICTION	PREMISES TYPE	ANNUAL COST FOR OPENING POST-MIDNIGHT
LNL (handful of local authorities in England)	Bar: Band B rateable value (54% of all licensed premises)	£768/A\$1,295
	Nightclub: Band E rateable value (8% of all licensed premises)	£1,493/A\$2,517 (if the fee multiplier was used this would rise to £4,479/A\$7,548 but the multiplier is applied only 6% of the time)
Australian Capital Territory (ACT)	Nightclub licence (capacity 60)	£1,600/\$2,697 to open after midnight, but no difference for closing hours thereafter
	Nightclub licence (capacity 100+)	Approximately £6,404/A\$10,792 for trading hours from 1am to 5am
New South Wales (NSW)	Small bar licence (capacity 60)	A\$0 – small bars are exempt from trading hour risk calculations (and are granted automatic extensions to 2am close)
	Nightclub licence (capacity 100)	Trading past midnight: £1,483/A\$2,500 Trading after 1:30am: £2,967/A\$5,000



**FIGURE 2: COMPARISON OF THE COSTS OF OPENING POST-MIDNIGHT, BETWEEN THE LNL IN THE UK AND RBL IN THE AUSTRALIAN CAPITAL TERRITORY AND NEW SOUTH WALES**



across England, so its impact as a vehicle for addressing costs in the night time economy has so far been minimal across the country.

Investigation of RBL's impact on alcohol-related harm has been limited by inconsistent implementation and the simultaneous introduction of complementary measures. Consequently, results have so far been inconclusive. This warrants further research to determine the extent to which greater differentiation of risk-based fees

may result in more effective harm reduction. Such differentiation should, in any case, improve alignment between fees charged to licensed venues and the cost such business imposes on the public. Deakin University is currently undertaking a study on risk-based licensing that evaluates changes in Emergency Department presentations, assault offences, foot traffic, enforcement, and patron intoxication inside licensed venues following the implementation of risk-based licensing. The study also

evaluates the effectiveness and ease of implementation of RBL from the perspective of key stakeholders (police, licensing officials, council personnel, and venue operators).

While questions remain in relation to the effectiveness of both policies at reducing alcohol-related harm, it is clear that RBL recovers a larger proportion of public expense associated with the licensed trade than the LNL. In addition, RBL more accurately reflects the risk profile of licensed premises by including a broader

range of risk factors in fee calculations.

Plans have already been announced to make the LNL more targeted so it can be applied only to venues in areas that are most likely to result in additional costs. This will be a big improvement but does not go as far as RBL, which allocates costs depending on the risk of the operating hours and venue type no matter the location. As the example of Cheltenham suggests, this change does not mean that LNLs will necessarily become all that more commonplace.

The LNL could be further altered to better reflect the closing hour, including incremental costs that reflect longer trading, rather than a single cost for all venues remaining open after midnight. Comparison of the costs levels between the LNL and RBL also suggests that rates charged under the LNL are relatively low. While the licensed trade in England and Wales would strongly resist any cost increase, it is worth noting that low licensing fees mean many already fail to pay enough to cover the cost of running the licensing system. This has cost local government £180 million over the last ten years,<sup>61</sup> so it could be argued an increase in licensing fees, alongside the better application of a more effective LNL, are needed for the licensed trade to properly pay their way.

The insufficiency of risk loading to cover the costs imposed by the alcohol trade was also noted in the independent review of the 2014 NSW liquor law reforms. The Hon Ian Callinan AC noted, “no

matter how the calculations are done, to the extent that they can accurately be done, it is unlikely that the financial benefits of the manufacture, sale and consumption of alcohol and any associated or subsidized activities such as entertainment, outweigh the financial costs (leaving aside incalculable social costs) of alcohol” (p.31, para 1.41).<sup>62</sup>

### **Venue closure and cessation of alcohol sales**

Examination of UK and Australian policies that restrict the sale of alcohol in the early hours of the morning provides an opportunity for insight into the effectiveness of the various approaches. In particular, key lessons may be observed from the level to which measures have been legislated and the flawed arguments employed by alcohol industry interests in opposition to their use.

As shown in the case study, evidence suggests that temporal restrictions on alcohol sales in the early morning are effective in reducing alcohol-related harm. In Australia, such ‘last drinks’ policies have been introduced in the Kings Cross and Sydney CBD Precincts in NSW, and across the state of Queensland. In the UK, national legislative mechanisms have provided for introduction of Early Morning Restriction Order (EMRO)s at the discretion of local councils. The *Police Reform and Social Responsibility Act* (2011), which amended the *Licensing Act* (2003), allows councils to enforce a restriction on sales past a designated time between midnight and 6am. However, opposition

from the licensed trade and difficulties using the legislation experienced by the police and local government mean that no council has yet introduced an EMRO.<sup>63</sup>

While councils in the UK are theoretically able to adopt an EMRO at the council level, Australian states and territories must independently legislate for state-wide ‘last drinks’ policies. Some jurisdictions have introduced last drinks policies while others have not. Several states allow the sale of alcohol until 5am or 6am (including Victoria, Western Australia, and South Australia), while some regions have moved to prevent sales after 3am (including the Kings Cross, Sydney CBD, and Newcastle regions of NSW and Queensland).

The introduction of temporal restrictions in one region is likely to displace some patronage and associated harm to alternative entertainment precincts. Research suggests there was a minor increase in assaults in an area adjacent to Kings Cross and Sydney CBD following the introduction of temporal restrictions in these regions in 2014.<sup>64</sup> The increase was very small, however, and outweighed by reductions within the precinct.<sup>65</sup> The rate of assaults was found to be stable across adjacent and distal precincts more generally.

This suggests that, even where alternative entertainment precincts are in close proximity, adoption of EMROs by one council will achieve a reduction in harm overall. However, these

findings were based on only two years of data and cannot rule out the possibility that patronage (with associated economic activity and alcohol-related harm) will shift from regions imposing last drinks to those without such policies over the longer term. In that event, the harm reduction achieved by last drinks policies would be undermined by the economic incentive for regions not to participate. The relative geographic isolation of population centres means Australia is less susceptible to such displacement, especially between jurisdictions when measures are introduced in state and territory legislation. In contrast, relative ease of travel between alternative night time precincts in the UK is likely to increase issues associated with displacement of economic activity and alcohol-related harm.

As a result, consistent application of temporal restriction across entertainment precincts may be of particular importance in the UK, where travel between locations is more practical. While state-level policies in Australia are effective in this respect (and have recently been installed in Queensland, for example), EMROs are likely to be more beneficial when applied to a broader region than currently provided for under the *Police Reform and Social Responsibility Act* (2011). This would reduce the economic disincentive for regions to introduce such policies, and would negate any potential for displacement of antisocial behaviour.

The NSW experience in Australia has demonstrated that containment of the harm associated with night time activity may assist regions to diversify and strengthen the local economy. Not only have the measures been effective in reducing alcohol-related assaults in Newcastle, there has actually been a considerable increase in the number of licensed venues in the region since the introduction of last drinks (and lockouts) in 2008.<sup>66</sup> While the closure of several clubs in Kings Cross was attributed to measures introduced in 2014, a variety of other businesses have been seen to enter the market, including antique dealers, ice cream vendors, chemists, restaurants, hairdressers, and yoga studios, as well as a number of new bars.<sup>67</sup> There is also evidence that, while there has been a reduction in land value of some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.<sup>68,69</sup>

### Summary

Research has identified trading hour restrictions as among the most effective policies in reducing the harm associated with alcohol.<sup>70</sup> Several Australian jurisdictions have moved to restrict the trading hours of on-premises and packaged liquor venues, supported by increased public support for these measures following a number of high-profile alcohol-fuelled violent incidents and the deaths of several young men. The policies have expanded

from Newcastle to Kings Cross and the Sydney CBD in NSW, and more recently to Queensland. Despite majority public support,<sup>71</sup> opponents to the lockout and last drink measures have propagated considerable political opposition. However, the measures have been highly successful in their objective to reduce alcohol harm. Research suggests that introduction of the measures in Sydney NSW have resulted in a 45.1 per cent reduction in non-domestic assault in Kings Cross and a reduction of 20.3 per cent in Sydney CBD.<sup>72</sup>

In England and Wales, EMROs have also received strong opposition from the licensed trade. However, it is perhaps incorrect to assume that the failure to introduce an EMRO is only a result of this factor. Failings regarding procedures and evidence gathering by the police and local authority in Blackpool had a significant impact on the negative outcome, in what has become something of a test case.<sup>73</sup> Regardless, the fact that local government in England and Wales are not able to bring in restrictions on closing hour, despite the clear evidence this has a significant impact in reducing alcohol-related harm, is a clear gap in the effectiveness of the *Licensing Act* (2003).

## CONCLUSIONS

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### **Lessons for the UK:**

There are clear lessons for the UK policymakers from the positive impact that restrictions on very late closing hours can have on rates of alcohol-related harm. In theory, EMROs may be used to this end under the Licensing Act (2003), but this is yet to be implemented anywhere. If introduced in particular metropolitan areas, their efficacy is also likely to be undermined by the proximity of alternative precincts, with individuals likely to move from one area to another.

With respect to basing fees on the risk presented by venues, risk loading applied under LNLs is considerably lower than in Australia. The effectiveness of these measures, in reducing the public burden of the late-night trade of alcohol by holding venues accountable for expenses, may be improved by increasing the amount charged and incorporating more factors into risk calculations to target the riskiest premises. The UK may learn from Australia's example in incorporating venue capacity and a differentiated scale for closing time into the fees charged to particular businesses. If local government were able to set their own fees, some have already indicated they would want to move towards a similar approach.

### **Lessons for Australia:**

Temporal alcohol policy appears to be more developed in Australia than in the UK. The wider use of last drinks policies would be beneficial.

## RECOMMENDATIONS

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### **1. Restrict trading hours for off-licence liquor**

Limit off-licence opening hours to between 10am and 10pm, or similar.

### **2. Restrict trading hours of on-licence venues to limit the availability of alcohol after midnight**

Place appropriate restrictions on the hours at which alcohol may be sold to reduce harm associated with late night trade and, to the extent possible, restrict the availability of alcohol after midnight and in the early morning hours.

# SPATIAL POLICIES

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## COMPARING AND DISCUSSING:

**CUMULATIVE IMPACT POLICIES**

**STATEMENTS OF LICENSING POLICIES**

**SEPARATE LIQUOR AISLES IN SHOPS AND SUPERMARKETS**

**COMMUNITY IMPACT ASSESSMENTS**

## CUMULATIVE IMPACT POLICIES

<b>LOCATION:</b>	England and Wales
<b>WHAT IS IT?</b>	Designated areas where the combined impact of licensed premises presents particular concern. Under cumulative impact policies, local government has additional powers to influence, and possibly reject, licence applications.
<b>POLICY SCORE:</b>	7 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Can be used as a 'place shaping' device to direct the development of the licensed trade in ways likely to be less problematic.</li> <li>• Can be applied consistently across an area for an extended period.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Can be resource intensive and time-consuming.</li> <li>• Not necessarily effective at limiting the number of licensed premises.</li> <li>• Often applied retrospectively following the emergence of problems in a region.</li> </ul>

Cumulative impact policies (CIPs) were introduced in the UK as a tool to limit the growth of licensed premises in locations where a significant number of premises concentrated in one area could undermine the licensing and regulatory objectives. CIPs were not included within the 2003 *Licensing Act* (LA03) itself but set out in the section 182 Guidance as a concession to campaigners who argued that the Act gave local government no powers to regulate areas with a very high number of premises. The fact that there are now 208 CIPs in place across England and Wales demonstrates their necessity within the licensing regime,<sup>74</sup> and in early 2016 the Home Office indicated that they would transfer CIPs into primary legislation, a move likely to give them greater weight.

CIPs should not be seen as a blanket ban or quota; applications are still considered individually. In addition,

prospective licence applications deemed unlikely to add to the cumulative impact in the area can still be granted on their merits. However, CIPs create a 'rebuttable presumption' that applications deemed likely to add to the existing cumulative impact will normally be refused, or subject to certain limitations.

Local governments are required to set out CIPs within their Statement of Licensing Policy (SLP), along with evidence that premises in an area are collectively generating a negative cumulative impact. A local consultation is carried out as part of this process.

CIPs vary in size and can cover areas ranging from the size of a town centre to a specific street or in some cases a specific street corner. CIPs can be introduced for both the on and off-trades, and for late night refreshment establishments such as kebab or fast food shops. The guidance points towards the impact of

large numbers of people in the local area as a key consideration, including people leaving venues or queuing for transportation or food. In such a situation, the licensing objectives are more likely to be undermined. However, large numbers of people are not a prerequisite for CIP, particularly when they are focused on the off-trade.

Previous research has found that many licensing professionals question the effectiveness and flexibility of CIPs. Many such professionals reported they were inherently reactive and that in most instances councils feel the need to wait for problems to arise before they have enough evidence to implement a CIP. The process of compiling the evidence and consulting on a CIP is also considerable, and many questioned the extent of their impact.<sup>75</sup>

In Scotland, the closest equivalent to a CIP is an "overprovision policy".

Licensing boards are required to assess whether there is an overprovision of premises within any part of their area and, in some ways, overprovision policies can operate in a similar manner to CIPs in England and Wales. In deciding upon their overprovision policy, licensing boards are required to consider the number, type and capacity of licensed premises in a locality. From the end of September 2016, they are also able to consider opening hours within the assessment.

Like CIPs, an overprovision policy creates a rebuttable presumption against the grant of an application. Overprovision on its own can be used as grounds for refusal, but each application is still taken on its own merit and applicants are still able to put forward evidence to demonstrate that the granting of the licence would not undermine the licensing objectives in that area. This means that, as with CIPs, overprovision policies cannot be seen as absolute or unchallengeable.

### **Evidence of impact**

While their stated aim was to limit the growth of licensed premises, CIPs seem to be only partially successful at this. Even though CIPs create a presumption not to grant a license, the latest figures show that 86 per cent of applications or variations in CIP areas were still granted.<sup>76</sup> While this does not account for those who were put off applying because of the CIP, it still seems to be a very high number (within non-CIP areas the figure is 91 per cent).

The accuracy of these figures has been called into question, and the effectiveness of CIPs in limiting the further saturation of premises is unclear. Areas such as Newcastle, in northeast England, have reported success in using CIPs to prevent the further growth of the off-trade.

In practice, however, CIPs appear to be used for a slightly different purpose, and it is perhaps a misconception that CIPs can be used to actively address high concentrations of premises. Instead, these policies seem to primarily be used as a method of shaping and influencing the future development of the licensed trade within the CIP area -- for example, by encouraging restaurants or theatres that may add welcome diversity to areas otherwise packed with bars, potentially bringing a different clientele to the area and reducing problems.

Research in Westminster, London, provides an interesting example of this. Between 2003 and 2013 the concentration of premises within the West End Stress Area CIP increased by more than 35 per cent. While part of this time period predates the Act, it demonstrates clearly that the CIP has not capped the total number of premises. Interestingly, 93 per cent of these additional businesses were food-led, something encouraged within Westminster's Statement of Licensing Policy. Food-led venues do not necessarily mean that there will be a reduction in the volume of alcohol sold, but arguably altering the environment in this way could reduce alcohol-related problems.

The shift also suggests that Westminster has been successful in using their West End Stress Area CIP, and their SLP, as a 'place shaping' device.<sup>77</sup>

While this is not what CIPs were originally intended for, it does seem to be a key function in practice, along with encouraging a higher standard of application, with many local governments using CIPs to impose tighter operating conditions on venues to reduce the risk of problems. CIPs can also be used to reduce or control opening hours as well as targeting premises assumed to be selling particularly cheap alcohol. Research has also found that they increase engagement between applicants and the local authority.<sup>78</sup>

### **Resource requirements / implications**

Establishing the evidence necessary for implementing a CIP can be quite resource intensive. Local governments are also required to seek evidence on whether existing CIPs have been effective when they review their Statement of Licensing Policy.

However, while it is necessary to provide some evidence on the need for a CIP, local government quite often takes an overly evidential view of the Act in general. Pressure from the licensed trade means many feel the need to use large amounts of quite factual evidence, and to prove very clearly that problems are linked to certain venues. However, the Act itself does not ask for certainty or definitive evidence. Rather, it asks licensing committees to come

to transparent but discretionary judgments that something is, or is not, likely to undermine the licensing objectives.<sup>79</sup>

Within this approach as required by the Act, the evidence is still important, as is clearly setting out a logical and open argument. Such an approach does though have the potential to make the task of implementing a CIP a little easier for local government while remaining in keeping with the written detail of the Act and Section 182 Guidance.

### Political support for policy

CIPs are well established and a common feature of licensing within England and Wales. While not all local governments have a CIP, those without them tend to be in rural areas less likely to have urban areas with a high concentration of licensed premises.

### Policy mechanisms

Within England and Wales, CIPs can be introduced under the existing licensing framework. At present, their footing comes

from secondary legislation rather than primary legislation, as they were not originally included in the 2003 Licensing Act. This has caused problems, with local government apparently less confident in using them. Helpfully, in early 2016 the Home Office indicated that they would transfer CIPs into primary legislation. This would be useful and potentially encourage their more widespread use, although it may not make a significant difference to their application in many cases.

## STATEMENTS OF LICENSING POLICY

<b>LOCATION:</b>	England, Wales, and Scotland
<b>WHAT IS IT?</b>	A document outlining the manner in which a local authority intends to implement the national licensing Act at a local level, taking into account their local circumstances and priorities.
<b>POLICY SCORE:</b>	7 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Can be used in a strategic manner to highlight what licensing outcomes are in the public interest.</li> <li>• Can be used to frame and influence individual licence applications.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Some lack sufficient detail and may not adequately be taken into account in licensing decisions.</li> </ul>

In England and Wales, local governments are required to publish a Statement of Licensing Policy (SLP), updated at least every five years, which sets out their general approach to upholding the licensing objectives in their area. There are requirements that local residents and local businesses are consulted before SLPs are introduced.

In Scotland, licensing boards are also required to produce SLPs. Changes in legislation mean they will move from being updated every three years to every five years. This will bring them into line with local government election cycles. In Scotland, the Health Board and the Local Licensing Forum also have to be consulted on the board's policy, and Licensing Boards are required to undertake

specific consultation on their overprovision policy with the police, Health Board, premises, and personal licence holders and residents.

Scottish Licensing Forums, which are comprised of a range of licensing stakeholders (including local residents), offer advice and recommendations to the licensing board. While they cannot comment on individual



premises, licensing forums may highlight community issues or concerns, such as the number of premises in an area. The Board has a duty to have regard for the Forum's views and must offer reasons for decisions that are contrary to advice provided by the Forum.<sup>80</sup> In this way, they operate similarly to SLPs.

In England and Wales, SLPs should include any local special policies that are in operation, such as cumulative impact policies or measures such as "fixed closing times, staggered closing times and zoning", which can be introduced under para 13.41 of the s 182 Guidance. In Scotland, licensing boards are required to include a statement on overprovision within their SLP, as well as a policy on licensed hours.

Within their SLP, local governments may justify why certain hours or certain premises may or may not be likely to be deemed suitable in a certain area. This can make a significant difference to the context licensing applications are made in, as SLPs should be taken into consideration within every decision.

However, SLPs cannot be used to introduce rigid, uniform policies. Each application must be treated on its merits, on a case-by-case basis. As such, SLPs cannot be absolute, and applicants can put forward a case as to why they would not have a negative impact on the licensing objectives in their particular location.

### Evidence of impact

In many cases, it is difficult to identify the impact SLPs have on individual licensing decisions, and while evaluations have investigated the content of SLPs, none has yet looked at their impact on decisions over time. Not only are there many different variables that could affect decision making, but SLPs differ greatly in their scope and detail, and in whether they are taken into account in each decision.

Some local governments place little significance on their SLP, leaving them without much detail. As such, they do not set out a vision of what licensing outcomes are in the public interest, but rather provide an administrative account of the licensing process. In contrast, other local governments regard the SLP as a key strategic document, clearly outlining what the wider public interest might require from licensing, and including a great deal of local information and evidence to substantiate this. Local governments that have taken this approach report having a greater ability to shape the development of the licensed trade in their local area.<sup>81</sup>

Because licensing policies are not absolute and can be departed from, the extent to which they are taken into account in each licensing decision varies. Changing committee membership means new members, or changing legal advice, can affect the level of deviation from SLPs.

Bearing in mind these

differences, some local governments have successfully used SLPs in a deliberate and useful manner. Newcastle, in the northeast of England, has taken a wellbeing-orientated approach within their SLP, mapping wellbeing-related issues such as deprivation, crime data, and the overall availability of alcohol, and introducing CIPs in certain areas to ensure new premises do not impact negatively on these issues. Within their SLP, Newcastle justifies their use of CIPs:

*There is evidence of a clear positive relationship between increased outlet density and alcohol consumption in adults and young people. The evidence shows that increases in alcohol outlet density tend to be associated not only with an increase in alcohol consumption, but also increased alcohol-related crime and violence and under-18 alcohol-specific hospital admissions. Also, where licensed premises are clustered together within an area they are more likely to compete on price and promotions which can lead to increased consumption and alcohol related injury and violence.<sup>82</sup>*

The Newcastle SLP included the development of the Framework of Hours and Cumulative Impact Special Policy Decision matrix (7.9), which clearly articulates their position on opening hours and details the special policies that are applied in each case. By clearly stating what the suggested opening and closing hours are, and by using this as a focus for all licensing applications, responsible authorities ask the applicant to demonstrate that they will not add to the negative

cumulative impact in the area. In this way, Newcastle has been very successful in supporting and enforcing elements of their CIP. For example, very few off-premise licences have been granted since the policy was adopted.

Other strategic examples might include taking a holistic approach to the dispersal of crowds, with some areas ensuring that late night food services close at the same time as local nightclubs so that there is nowhere for crowds of people to gather. Late night takeaway or kebab shops can often act as a catalyst to violence and public disorder, but if late night food services are not open, people are more likely to go straight home. Some local governments have also used road closures or changed the position of taxi ranks to achieve similar ends, using their SLP as a method of explaining these actions and the way in which they can benefit a local area. Interlinked with their CIP, as mentioned above, Westminster City Council's SLP sets out a clear and positive direction for how they want the local night time economy to grow, stating that:

*The council wishes to discourage drunkenness and to encourage the provision of more seating in premises which serve alcohol for people to sit and enjoy a drink and order food by table service, in place of open bar space which caters for high volume vertical drinking. (Westminster City Council, SLP, para 1.3)*

This has had a positive impact in shaping the licensed trade away from drink-led venues and helped set a clear direction for the licensing committee. As mentioned, recent research has found that 93 per cent of the growth within Westminster's West End Stress Area CIP over the last ten years was made up of food-led venues.<sup>83</sup>

### **Resource requirements / implications**

Development of SLPs can be resource intensive, particularly when effort is applied to ensure they are detailed and well evidenced. Licensing teams should engage with all the other Responsible Authorities (such as Police, Trading Standards), but engagement with public health teams is often particularly important as they have access to key data sources.

Local governments have a statutory list of bodies who need to be consulted on their SLP, which includes the local licensed trade, but there is considerable discretion as to how wide the public consultation has to be. Some have gone to great lengths in order to do this and public consultations do not have to be onerous to be effective. Some areas have run specific focus groups in order to get local views but, in many cases, there already exist local networks that can be used. In addition to a general public consultation, council officers could take a set of short questions to local groups and organisations in order to get their views on general licensing issues, encouraging anyone with more

detailed ideas to fill in the full consultation.

An SLP that can be proved to be based on the views of local residents could be seen as carrying greater legal weight than one without this. While this requires additional time and political capital, some councils have also taken their SLP to a vote at full council in order to give it greater legitimacy and legal weight.

### **Political support for policy**

SLPs are already legal requirements in England, Wales, and Scotland.

### **Policy mechanisms**

The 2003 *Licensing Act* in England and Wales includes Statements of Licensing Policies as a requirement, as does the 2005 *Licensing Act* in Scotland.

## SEPARATE LIQUOR AISLES IN SHOPS AND SUPERMARKETS

<b>LOCATION:</b>	Australia
<b>WHAT IS IT?</b>	Requires separation of alcohol from other items in supermarkets, while not requiring separate checkouts for the sale of alcohol.
<b>POLICY SCORE:</b>	6 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Relatively low burden on regulators and businesses.</li> <li>• Distinguishes alcohol from other products to reduce the extent to which shoppers consider alcohol as part of their normal shop.</li> <li>• Likely to reduce impulse purchasing by reducing the availability of alcohol, both physical and psychological.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Politically controversial.</li> <li>• Limited evidence to support effectiveness in reducing alcohol-related harm.</li> </ul>

In Australia, there are two main approaches to the regulation of the physical placement of alcohol within supermarkets. First, some jurisdictions do not allow alcohol to be sold in supermarkets at all. Second, some jurisdictions allow alcohol to be sold in supermarkets but with a range of conditions, such as requirements that alcohol is displayed in separate sections or aisles.

Tasmania, Queensland, and South Australia prohibit the sale of alcohol within supermarkets. In the 2016 review of South Australia's liquor law, the continued separation of alcohol from other products was recommended on the basis that "it is inconsistent with principles of harm minimisation to have liquor displayed in the same shelves as ordinary food stuffs".<sup>84</sup> Conversely, the 2015 Harper Competition Review<sup>85</sup> recommended the restrictions preventing supermarkets from

selling liquor be reviewed. At the same time, the review recommended continuation of the public interest test, that policy should not restrict competition unless the benefits of the restriction to the community as a whole outweigh the costs.<sup>86</sup>

Alcohol can be sold in supermarkets in the ACT, Victoria, and NSW, with varying requirements stipulated in the Liquor Acts (NSW and Victoria) or regulations (ACT). Supermarkets are not mentioned in Western Australia or Northern Territory legislation.

All three jurisdictions specify that liquor sold under a packaged liquor licence in premises where the primary business is not the sale of liquor (such as a supermarket, as specified in the ACT and Victoria), must be contained in a separate liquor sales area. Victoria further specifies that liquor can be sold at any

checkout provided the person receiving payment is 18 years of age or more, subject to licence-specific conditions. Despite these legislative requirements, instances have been observed where alcohol that was once restricted to particular aisles or areas becomes available across the store.<sup>87</sup> This development continues to attract attention:<sup>88</sup>

*German behemoth Aldi, as well as some IGA stores, have gone furthest in blurring the line between the aisle and alcohol. Aldi sells liquor not from attached bottle shops, but from dedicated zones within the main part of the store. Purchases can be made through a standard register so you can buy your beer and broccoli in one transaction. A spokesman for the NSW Independent Liquor and Gaming Authority said there was nothing to stop any grocery store from selling liquor in the main portion of the store so*

*long as there was some form of separation from the rest of the store, that sales staff were over 18 and had proper training. Dedicated cash registers were usual but not demanded. Coles and Woolworths — whose Liquorland, BWS and Dan Murphy's brands dominate Australia's takeaway liquor market — still insist on banishing booze to a separate shop.*

### **Evidence of impact**

While no apparent research has demonstrated alcohol-related harm reduction associated with separations of liquor aisles in Australia, similar restrictions in Scotland have been found to be effective. In Scotland, the 2010 *Alcohol Act (Scotland)* forced off-licences to limit alcohol and alcohol-related products to one part of the store, introduced bans on multi-buy discounts, and extended 'happy-hour' restrictions to off-licences.<sup>89</sup> Researchers have examined the contrasting situations in England and Scotland. In England, researchers found that alcohol promotions were routinely placed in the supermarket entrance – often in the form of stacks of boxed beers, lagers and cider.<sup>90</sup> In this way, the importance of dispersing alcohol displays in order to increase sales has been recognised by the drinks industry. By contrast, in Scotland, licensing legislation requires displays of alcohol to be confined to a single area of the store. This is in response to a growing concern that alcohol displays on the ends of aisles, directly inside the

shop doorway and next to everyday groceries, encourage consumers to think of alcohol as an ordinary commodity, rather than a potentially harmful drug.<sup>91</sup>

### **Resource requirements/ implications**

In Victoria, the seller of liquor products must be "of or over the age of 18 years" but not all states have the same requirements. For example, in Tasmania, there is a minimum age requirement of 16 years to serve alcohol as part of employment.

All states and territories in Australia require Responsible Service of Alcohol (RSA) training for employees who supply or sell alcohol. One can speculate that this training requirement might lead stores to want to concentrate alcohol sales into one area.

It is not known what resources are dedicated to ensuring RSA training is undertaken in the supermarket context.

### **Political support for policy**

As outlined in the discussion above, this policy, even where implemented, is being challenged by the supermarket industry – especially those other than the big two in Australia (Coles and Woolworths), which do not have access to dedicated 'liquor barns'.

### **Policy mechanisms**

This requirement is currently being met through a combination of the relevant acts and regulations.

## COMMUNITY IMPACT ASSESSMENT

<b>LOCATION:</b>	Australia
<b>WHAT IS IT?</b>	All liquor licensing decisions need to consider interests of the community
<b>POLICY SCORE:</b>	5 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Provides opportunity for community input to licensing decisions.</li> <li>• Allows merits of each proposed venue to be considered on an individual basis.</li> <li>• Agreeable to stakeholders and community.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Opposition to new licensed venues needs to be reiterated for each new application, rather than establishing long-term policies in a region.</li> <li>• Considerable resource burden to both applicants and opponents.</li> <li>• Limited requirements for community consultation, with failure to object considered as passive endorsement.</li> <li>• Local government considered to represent residents' interests, with parties increasingly excluded for deliberations unless specifically invited by the licensing authority.</li> </ul>

Licensing decisions in Australia traditionally took into account – whether formally or de facto – a dimension of ‘community need’ in deciding on new licences. However, the drift towards deregulation and a liberal economic policy, manifesting itself in the National Competition Policy, has negated the consideration of existing levels of alcohol availability in licensing decisions. More recently, moves toward legislating consideration of community impact in licensing decisions, and the embeddedness of ‘harm minimisation’ as an aim in the laws governing the licensing regime,<sup>92</sup> represents a step back from the previous trends.

The need for liquor licensing decisions to consider the interests of the community, or some variation of that terminology, is specified in the Liquor Acts of all Australian states and territories. Two states, New South Wales

and Queensland, have gone further by requiring a community impact statement (CIS) be considered when assessing licence applications. In Western Australia, a public interest assessment (PIA) is required. A similar approach is under consideration in South Australia.<sup>93</sup> These statements share the function of canvassing views of the local community and making the deciding authority aware of the results of discussions between the applicant and local community.<sup>94</sup>

Uniquely, the Western Australian process asks applicants to demonstrate the positive aspects (including the social, economic, and health impacts), noting, “it is not sufficient for applicants to merely demonstrate that the grant of the application will not have any negative impact”.<sup>95</sup> Typically, this process has two levels with a more stringent requirement for hotels, clubs, and packaged liquor stores or licences deemed higher risk,

and a lesser requirement for select lower risk licence types.

Criticisms of the CIS in NSW have related to its use of templates,<sup>96</sup> including that they encourage the presentation of irrelevant material and the omission of other relevant material. One commentator noted, “there is no such thing as a definitive list of impact issues that will cover every eventuality and local circumstance”.<sup>97</sup> Despite this, the need for a comprehensive guide to facilitate greater community engagement has been highlighted.

### Evidence of impact

There are two levels of potential impact that can be researched. First, whether the use of a CIS process increases community engagement in the liquor licensing application process, and second, whether the use of a CIS process achieves the aim of harm minimisation.

The CIS system in NSW has been criticised on the basis that it involves only limited public notification and community consultation.<sup>98</sup> Formal requirements are limited and any suggestion of wider discretionary consultation would not be in the interests of the applicant. This may affect community stakeholders' awareness of a licence application and their opportunities to provide input to the process.<sup>99</sup> Failure to comment or object to an application is taken as a passive endorsement, which is also a weakness of the system. The information included in a CIS is also narrow in scope.<sup>100</sup> For example, a CIS does not include information on the impact of the proposed licence on outlet density, socio-demographic characteristics of the community, or the incidence of alcohol-related harm in the local area.

In relation to the second level of evidence, Livingston et al. found there is "no evaluation research on what difference these arrangements [such as a CIS] might make in terms of licence refusal rates, condition setting or whether these processes can make a strong and discernible contribution to reducing alcohol-related harm".<sup>101</sup> Despite this, the usefulness of public interest tests as a regulatory instrument in the liquor licensing system was recognised in the South Australian Liquor Act review, which recommended their implementation.<sup>102</sup>

### Resource requirements/implications

Jurisdictions must commit a considerable amount of resources to impact assessment policies.

Resources are required to develop guides for community members to participate in the CIS/PIA process, and the process of assessing submissions presents an ongoing administrative burden. It is not known how much of each jurisdiction's resources are dedicated to these tasks.

The CIS process is also subject to resource limitations from the perspective of the community participants, between "heavy research requirements to meet the onus of proof; a need to quickly develop a community network that shares the concern; the costs of participation; and the lack of access to independent advice".<sup>103</sup>

In Western Australia, the 2013 Review of the *Liquor Control Act 1988* noted the potential for confusion and frustration when preparing a PIA was high (5:77). Even better resourced businesses wishing to apply for a liquor licence often find that the preparation of the CIS or PIA is onerous and choose to engage consulting companies to undertake this task. For example, in the 2013 Review of the *WA Liquor Control Act 1988* (p.77) it was noted that:

*The Director has a policy titled Public Interest Assessment which assists applicants in the preparation of a public interest assessment submission. While detailed and comprehensive the policy is not designed to guide an applicant through the process. The potential for confusion and frustration is therefore high. A more user friendly and comprehensive guide would reduce frustration, enable more efficient use of resources and would be more likely to satisfy community and industry expectations.*

*In this regard the Committee considers the licensing authority should develop a comprehensive Code of Practice to assist applicants in preparing a public interest assessment to replace the existing public interest assessment policy and should undertake a review of all other policies, guidelines, fact sheets and other material, in conjunction with industry, to ensure they are accurate, relevant and are meeting the needs of users.*

### Political support for policy

The need to consider community perspectives in liquor licensing decisions is widely recognised. However, frustrations associated with aspects of how impact assessment policies have been implemented in some jurisdictions may increase resistance to their introduction elsewhere. These include, for example, the use of restrictive templates and limited public consultation.

### Policy mechanisms

Community impact statements are specifically mentioned in the *Liquor Act 2007 (NSW)* and the *Liquor Act 1992 (Queensland)*. The Government of Western Australia's Department of Racing, Gaming and Liquor has issued a Policy Guideline concerning public interest assessment, which they state is "Pursuant to section 38 of the *Liquor Control Act 1988*".<sup>104</sup> However, the need for more resources to support community members through the process has been noted.

## DISCUSSION OF SPATIAL POLICIES

### Background

There is strong evidence that alcohol outlet density is associated with increased alcohol-related harm.<sup>150,106</sup> However, the precise relationship is often very context-specific and mediated by other key factors such as the affordability of alcohol and the socioeconomic composition of the neighbourhood.

The UK appears to have greater

alcohol outlet density than similar other countries, such as Australia and the United States (see Figure 3). As a result, there may need to be a reduction in outlet density of as much as ten per cent before there would be any noticeable impact on alcohol-related harm.<sup>107</sup> Such high outlet density presents a serious concern in light of the positive relationship between outlet density and alcohol-related harm, and examples of the

positive impact of reducing outlet density in Scotland suggest that addressing outlet density has the potential to deliver substantial harm reduction in other areas.<sup>108</sup>

**FIGURE 3: INTERNATIONAL ALCOHOL OUTLET DENSITY COMPARISON**

REGION	YEAR	OUTLET COUNT	ADULT POPULATION	OUTLETS PER 1,000 ADULTS
<b>United Kingdom</b>				
England and Wales	2010	199,449	43,799,893	4.6
Scotland	2011-12	16,157	4,257,900	3.8
United States of America	2005	-	-	2.7
<b>Australia</b>				
Victoria	2011	11,312	4,316,224	2.6
Western Australia	2011	2,147	1,809,421	1.2
New South Wales	2011	13,347	5,576,862	2.4
Northern Territory	2011	474	169,198	2.8
Queensland	2011	6,624	3,405,462	1.9

Foster, J., Charalambides, L., (2016). *The Licensing Act (2003): its uses and abuses 10 years on*. Institute of Alcohol Studies. Retrieved from: <http://www.ias.org.uk/uploads/pdf/IAS%20reports/rp22032016.pdf>

White, V., Coomber, D., Azar, D., Balint, A., Chikritzhs, T., Gilmore, W., Livingston, M., Room, R., Durkin, S. & Wakefield, M. (n.p.). *The number and density of four main types of alcohol licences in Victoria, New South Wales, Queensland, Northern Territory and Western Australia*. Technical Report Number 1. Cancer Council Victoria.

Australian Bureau of Statistics. (2017). *Catalogue Number 3101.0 - Australian Demographic Statistics, Sep 2016*. Retrieved from: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>

Limits on the spatial availability of alcohol are not new. The *Licensing Act (2003)* abolished the concept of 'need', which had operated under the former licensing regime in England and Wales, where magistrates were able to limit the number of premises based on local 'need'. While applied in

a patchy manner, the ability of magistrates to limit density on this basis was seen by sections of the licensed trade as anti-business and incompatible with an entirely free market.<sup>109</sup>

The principle of need was phased out in the early 1990s, before being officially

ended with the introduction of the *Licensing Act (2003)*. Market forces have now made the licensing process less discretionary and more administrative, something accentuated by the impact of competition law and the European Union (EU). The situation in Australia is similar,

with the concept of 'community need' having apparently been placed to one side in favour of a free market approach.

Such frameworks limit the use of policy mechanisms to regulate outlet density. It is notable that cumulative impact policies (CIPs) and statement of licensing policies (SLPs) in England and Wales, and the principle of overprovision in Scotland, cannot be regarded as absolute policies. Rather, all must be applied in a way that allows individual cases to be judged on their own merits in keeping with this free market approach. While some advocate a free market approach to liquor trade on economic grounds, this fails to consider externalities that arise through the harm caused by alcohol. That is, the current free market approach fails to hold businesses liable for the true cost of liquor sales, including the costs imposed on the public by short and long-term harm to both drinkers and third parties. From an economic perspective, this presents a market failure through negative externalities.

Spatial policies may be used to regulate the availability of alcohol, primarily through influencing the prevalence of licensed trade outlets. Factors influencing the effectiveness of such policies include the extent to which they empower licensing and the community to oppose applications and their ability to impose restrictions to minimise risk where applications are deemed appropriate. The longevity of policies also plays an important role. Policies that impose consistent standards

on licensing considerations reduce administrative burden by removing the need to reiterate opposition for each new application.

### **Effectiveness at refusing unsuitable applications**

The use of spatial policy tools in the UK varies between regions. However, the fact that only around three per cent of licence applications are rejected in England and Wales suggests neither SLPs nor CIPs are particularly effective in strengthening the ability to refuse unsuitable applications. This is primarily to do with the market-based assumptions within the *Licensing Act (2003)* and the fact that many local governments do not use the Act in a proactive manner.

Licensing decisions are taken on a case-by-case basis, and are determined on their own facts and circumstances. However, a key concern relating to the 2003 Licensing Act is that it often does not adequately serve the wider public interest. This public interest purpose can, and should, be highlighted in the SLP and make its way into each licensing decision through this document. If properly evidenced and used in this way, SLPs can be used to shape licensed trade in ways beneficial for the local community as a whole.

Despite this, SLPs are often operationally weak, and evidence from the case studies suggests other licensing tools such as licensing forums in Scotland and the community impact statement (CIS) in

Australia also fall into this category. While these policies aim to better involve local communities in licensing processes, they do not appear to have achieved this. Analysis of the CIS in NSW show the system involves weak consultation and investigation requirements for applicants, which raises doubts as to the quality of information on which regulators base their decisions. Problems are different for licensing forums, but result in similarly poor outcomes. Forums often have an unclear role and remit, and many have strong representation from the licensed trade, which has been identified as a barrier to effective and coherent action.<sup>110</sup>

Similarly, CIPs are also operationally weak, as they do not allow local governments to control the number of premises in an area. This is despite the fact that density of premises is recognised as a potential problem in formal guidance relating to the CIPs (at para 13.21 of the Section 182 Guidance).<sup>111</sup> However, CIPs do have advantages and can give local governments greater discretion to turn down unsuitable applications. They can also act as a deterrent to less socially responsible retailers by making a clear statement that the negative impact of alcohol is taken particularly seriously within the CIP area.

Another weakness in the application of spatial policies, and the CIS in particular, are the exemptions provided to certain venue types. For example, small bars are not required to prepare a CIS in NSW if the



venue required development approval. While this exemption may be intended to reduce the regulatory burden on small businesses, it restricts the scope for community consultation in licensing decisions. This fails to acknowledge the fact that alcohol is not an ordinary commodity, and its supply must be regulated above and beyond other products. In addition, while this exemption is applied on the assumption that small bars inherently pose less risk, it does not recognise that density may present risks irrespective of outlet sizes.

With increasing pressure to reduce regulatory burden, such as under the Australian Government's *Cutting Red Tape* agenda,<sup>112</sup> regulatory exemptions to liquor licensing may become more widespread in future. Broadening the definition of categories receiving exemptions, such as recent proposals to increase the venue capacity for small bars in NSW,<sup>113</sup> also presents risks through providing regulatory exemptions to a larger number of venues.

Newcastle, in the north of England, cites both CIPs and the Framework of Hours contained in the city's SLP as having contributed to success in restricting the growth of the off-trade in certain areas. Of particular interest is the way Newcastle has taken an innovative wellbeing-orientated approach within their SLP, mapping wellbeing-related issues such as deprivation, crime data, and the overall availability of alcohol, and introducing CIPs in certain areas to ensure

new premises do not impact negatively on these issues.

CIP policies in Newcastle also place emphasis on the views of local residents. For example, within the SLP one of the CIP area details mentioned that:

*Outside of the City Centre, Elswick area has the highest off licence outlet density in Newcastle and residents have told us that there are too many shops selling alcohol in the area. Local data and concerns raised by residents show that there are issues related to alcohol related crime, underage drinking, youth related anti-social behaviour and street drinking by adult drinkers who visit or live in the hostels in the area. The area also has a high prevalence of other alcohol related issues such as alcohol related attendances at the emergency department and domestic violence.<sup>114</sup>*

While this approach is relatively common, Newcastle has strengthened such policies by taking a broader view of the negative social impacts of alcohol while clearly evidencing their link to the licensing objectives. Reportedly, the Framework of Hours and Cumulative Impact Special Policy Decision matrix have also been successful in ensuring the applicant demonstrates that they will not add to the negative cumulative impact in the area. There could be overlap between this resident-focused approach and the CIS, if CISs involved more significant consultation with local communities and provided greater detail on the potential local impacts of an application.

### **Ability to mitigate risks where deemed appropriate**

While CIPs may be used to limit outlet growth, their primary benefit seems to be as a 'place shaping' device. The successes some local governments have had demonstrate that reducing the availability of alcohol does not necessarily involve closing venues or preventing them from opening. Influencing temporal availability and the terminal hour is often a key factor, particularly for the emergency services,<sup>115</sup> and CIPs can be effective at this. As Westminster has shown, steering an area away from high volume vertical drinking establishments towards food-led venues can help to limit problems while supporting the continued viability of the licensed trade. The case study on temporal availability also highlights how restrictions in terminal hour in parts of Australia have diversified local markets, supporting growth within the licensed trade and among other businesses.

If strengthened, CISs in Australia could be used in a similar manner, given that they place a responsibility on the applicant to communicate with the local community and consider the impact their venue may have upon the local area. There are regrettably no evaluations of the impact that CISs have on licensing decisions. It seems reasonable to assume that if conducted in a more thorough manner, with a genuine dialogue with the local community, CISs would probably have the potential to promote local interests over business interests

where these are conflicting. In a similar way to CIPs or SLPs, they may be used either to block unsuitable applications or shape them in a beneficial manner.

As with SLPs and CIPs, a key factor is likely to be not just the CIS and the way in which it is conducted, but the way it is factored into the decision-making process. If CISs are given significant weight and seen as a key factor in the decision, they would be far more likely to have a significant impact. However, this may vary from region to region.

### **Whether they last over time or need to be generated for each application**

Another advantage of the SLP and CIP approach when compared to CISs is that once established, they have an ongoing influence on licensing decisions within their geographical remit. In contrast, CISs are one-off and application specific, even where community members would want to raise the same concerns with all similar applications within that particular area. This may lead to considerable time and financial burdens, and the duplication of work.

For this reason, ongoing policies similar to the spatial tools in the UK may provide councils with the opportunity to regulate new developments based on prevailing conditions in the region over a period of time. Such an approach provides greater power to communities to determine whether licence applications are appropriate for their region, and mitigate the time and cost associated

with opposing individual applications. Depending on its design, such a policy may also improve the consistency of approach across regions, although this has not been the case in the UK.

### **Improving community voice**

In the UK, licensing forums, SLPs, and CIPs each provide opportunities for local residents to provide input to licensing decisions. The situation is slightly different in Australia, where CISs are the primary vehicle through which residents may influence decisions. Even then, CIS policies (such as those in NSW) require consultation with only a select list of stakeholders, and local government councils are expected to accurately represent the interests of the residents.

While there are notable exceptions, in general, it seems local residents struggle to have a significant impact on licensing, even where granting an application may reasonably be seen to lead to potential problems. Many of the potential barriers to community involvement appear to be common across the UK and Australia. These include being unaware of the application, a lack of accessible information and advice, small consultation time periods, difficulties navigating the licensing process, access to experts in licensing and planning policies, a lack of independent legal advice, and the influence of the licensed trade.

In Scotland, licensing standards officers (LSO) have a role to play

in helping the public, providing guidance (but not legal advice) on the alcohol licensing process to them and licensed trade. This includes how to object to a licence. They mediate in low-level disputes between the public and the licensed trade and check that licensed premises are complying with the law. Similar to changes in this area made within England and Wales, LSOs seem to have improved community voice in some areas, but not to have made a very significant difference.

One possible change that could help to increase the effectiveness of public participation in licensing is for councils to provide legal advice for local residents. In London, Westminster Council has had great success with this approach. It funds a 'Licensing Advice Project' for local residents in conjunction with the Citizens Advice Westminster, and legal and practical help from this ensures that local residents make effective contributions. Replication of this elsewhere seems likely to be very beneficial and, under the Licensing Act (2003), could be legitimately factored into a licensing authority's costs under locally set fees. Similarly, in Australia this could be factored into RBL fee systems.

### **Physical separation of alcohol in supermarkets**

While it appears that no research has directly examined the impact on alcohol harm of separate aisles or checkouts for the sale of alcohol, evidence of a reduction in sales (and,

therefore, consumption) is likely to reflect a reduction in harm.<sup>116</sup> There is evidence that placing alcohol throughout a supermarket drives additional sales, and it is known that placing alcohol at store entrances and on the end of aisles increases sales.<sup>117</sup> Alcohol is also often found in the food section, with white wine strategically placed by the fish or beer next to crisps. Brewing company Carlsberg suggest that retailers should “create stacks of your promotional beers... site stacks away from the beer fixture to drive impulse purchase.”<sup>118</sup>

That the industry actively seeks to promote impulsive purchases of alcohol presents risks of harm. Regulation to separate alcohol from other grocery products may mitigate the risk that alcohol becomes normalised as part of a regular shop and help to ensure customers’ decisions to purchase alcohol are not influenced by its prominence in the store. In this way, separation of alcohol products in supermarkets presents a relatively simple way to reduce its psychological and physical availability without causing onerous burdens on businesses or affecting the ability for consumers to purchase alcohol conveniently.

## Summary

When used effectively, spatial policies may be used to influence the way in which the licensed trade develops in a given area, shaping growth towards business models that present less risk of alcohol-

related harm. However, with some exceptions, existing policies have rarely enabled opponents to prevent new venues opening. In addition, policies that require an objection to each separate application (such as CIPs) are onerous to both business owners and those opposing new venues. Policies that provide a consistent framework based on the needs of the community, such as CIPs and SLPs, allow licensing authorities to regulate alcohol availability while presenting less burden to businesses and the public.

Given the impact and potential harm presented by new licensed venues, it is important that the views and concerns of local residents are considered in licensing decisions. Effectively harnessing the views and concerns of local residents is important in facilitating effective spatial policies, and can be encouraged by better informing the public about appeal processes and their rights. With respect to the physical separation of alcohol products, the available evidence suggests restrictions on alcohol location within stores would have some impact on overall consumption and, therefore, result in a reduction of alcohol-related harm.

## CONCLUSIONS

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### **Lessons for the UK:**

If used strategically and with good local detail, SLPs offer opportunities to influence the spatial availability of alcohol. In practice, the application of SLPs is often quite weak however. Better equipping communities with knowledge and resources to effectively oppose unsuitable licences is likely to improve community involvement.

England and Wales may learn from the separation of alcohol products in supermarkets in a number of Australian jurisdictions. Evidence regarding the efficacy of such measures is more established in Scotland, however, where research has identified a reduction in consumption associated with supermarket policies.

### **Lessons for Australia:**

Australian policy may benefit from spatial policies more aligned with SLPs, which can work in a similar manner to CISs but remain in place over time rather than being reproduced for each new application. CIPs also offer greater discretion for local governments in problem areas. As for England and Wales, greater restrictions on off-trade marketing is also likely to have a positive impact.

## RECOMMENDATIONS

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### **3. Improve regulation of off-licence liquor sales**

Confine alcohol to specific areas within supermarkets to discourage impulse purchases and reduce alcohol sales.

### **4. Enhance community involvement**

Provide residents with access to legal resources and advice to ensure that the community is able to engage with licensing systems.

### **5. Clearly define licensing policy to minimise the cumulative harm associated with higher densities of liquor outlets**

Develop comprehensive policies for how licensing legislation should be implemented, including protecting local communities by applying controls on outlet density.

HARM MINIMISATION

AND USE OF DATA

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COMPARING AND DISCUSSING:

**PUBLIC HEALTH AS A LICENSING OBJECTIVE**

**HARM MINIMISATION AS A PRIMARY OBJECT**

**ANONYMOUS DATA SHARING: THE CARDIFF MODEL**

## PUBLIC HEALTH AS A LICENSING OBJECTIVE

<b>LOCATION:</b>	Scotland
<b>WHAT IS IT?</b>	A specific objective within the Licensing Act (2005) Scotland which makes 'Protecting and improving public health' a consideration within licensing decisions.
<b>POLICY SCORE:</b>	5 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• It expands the issues which can be taken into account within licensing to better reflect the impact of alcohol consumption.</li> <li>• It has successfully changed the context within which licensing operates.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• It has proven difficult to operationalize this objective.</li> <li>• Its impact at a local level has so far been difficult to quantify.</li> </ul>

Despite being separate pieces of legislation, the *Licensing Act (2003)* and the *Licensing Act (Scotland) 2005* share four licensing objectives:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm.

The *Licensing Act (Scotland) 2005* also includes a fifth objective: to protect and improve public health.

The use of an overprovision policy is probably the most obvious method for licensing boards to uphold this fifth objective, but there are other wider factors, such as influencing licensing hours for example. As with the other objectives, decisions based on the fifth objective need to be made on a sound evidential

basis and in keeping with the provisions of the Act.<sup>119</sup>

There can be tension and misunderstanding about the promotion of the public health objective, as it can be difficult to evidence health-related problems as originating from any one premises. However, evidence about alcohol-related harm is generally available at a wider population level. This can be incorporated into a licensing board's SLP, with applications potentially refused if they are shown to be contrary to the SLP<sup>120</sup> (see the SLP case study for more).

This change to a policy-led process, involving a wider consideration of evidence and the impact alcohol may have in an area over time, has not been without its problems. Many report conflicts between a more administrative and proximal view of licensing, as taken by many licensing officers, and the population level concerns of public health that tend to occur

across far larger periods of time and geography.

These differing perspectives tend to rely on different types of evidence. More traditional licensing officers focus on issues and evidence closer to the sale and consumption of alcohol, while public health uses longer-term evidence from epidemiological studies that describe the impact of continued alcohol consumption over time. Given the way in which the *Licensing Act (Scotland) 2005* works, with the need to establish (although not always to definitively prove as commonly believed) a link between a premise and a problem, proximal evidence tends to be applied more effectively whereas epidemiological evidence is often more difficult, particularly if not backed up with more locally specific data.

Some public health practitioners have been overly keen to use international academic data

within licensing hearings, such as peer-reviewed studies indicating a link between the density of premises and a range of negative outcomes. While these can be both informative and interesting, they do not necessarily count as 'evidence' within a licensing hearing, where material fact directly linked to the particular case in question is likely to be far more persuasive.

This is not to say that such academic research is inadmissible as evidence. However, those who use it well tend to use research to provide a broader context to licensing policy or individual applications, while providing more detailed and localised evidence of alcohol harm. Local data is far more effective at influencing licensing decisions. This is a point of real frustration for many of those in public health, who see academic research as both useful and at times compelling but are not necessarily able to use it as 'evidence' before a licensing committee. This is reflected in the wider literature on this issue,<sup>121</sup> with Martineau et al. (2013) commenting that:

*Broadening the scope of alcohol control frameworks to explicitly address health concerns does not change the underlying legal principles governing individual licensing decision. Health evidence needs to be legally relevant as well as scientifically valid.<sup>122</sup>*

This limitation has resulted in difficulties, with some public health communities in Scotland becoming frustrated at the working of the licensing system

itself. One contributing factor here may be that some from public health started with overly optimistic expectations as to the impact they would have on longer-term health issues via licensing, when in fact, other interventions, such as pricing policy, are probably more effective for these issues.

Despite the fact that there is no specific health objective within licensing legislation in England and Wales, health is a responsible authority under the Act and is becoming increasingly engaged in licensing. Health concerns must relate to the existing four objectives, and many of the same frustrations around evidence mentioned similarly apply. The biggest difference here is that in the absence of a health objective, representatives from public health have been less optimistic about their ability to influence licensing decisions. In hindsight, this more cautious approach has perhaps been useful, with some areas successfully taking health concerns into account in licensing decisions.

### **Evidence of impact**

Relevant local data and its accessible presentation within licensing decisions are fundamental to effectively incorporating public health objectives into legislation and licensing decisions. A recent report from NHS Scotland found the public health objective, and requirement to produce overprovision statements, have influenced licensing practice but been difficult to operationalise. It reported that it was not

possible to determine if these changes were impacting upon licensing decisions or the general availability of alcohol, and pointed towards data as a particular limitation.<sup>123</sup>

Research into the views of public health practitioners about the Scottish public health objective has suggested the law, from a public health perspective, is:

*Operationally weak because it is insufficient for a council simply to say that it believes the interests of public health are best served by denying a licence. If public health is to be used as a reason for declining a licence application, a council must have good evidence that issuing a licence poses a risk to public health. That's not easy to do.<sup>124</sup>*

The actual impact of the changes in Scotland on their licensed premises may be similar to the way CIPs in England and Wales can be used to prevent, or at least slow, the propagation of licensed premises in certain areas. While this can have some impact in specific locations, the result is far from transformational when looked at overall. It is likely that, just as with CIP, the public health licensing objective is more often used, and more often effective, in areas where there is more significant alcohol-related harm. This means that its effect will be localised, and not necessarily universal.

Recent research into the *Licensing Act* (2003) concluded the existing framework means that more proximal health issues seem likely to be the

most actively addressed via licensing.<sup>125</sup> By employing a bottom-up approach, examining shorter time periods and smaller regions, health concerns may be linked to local social, rather than physical, health issues in an area.

As a result, it may be useful to shift from focusing on traditional public health issues and physical health to social health issues, such as street drinking, excess noise and lack of sleep, domestic violence, and issues linked to deprivation. While these issues could arguably be included under other licensing objectives, the additional flexibility provided by the health objective creates greater scope for addressing them. Given the licensing objectives and the legal framework of both the *Licensing Act (2003)* and the *Licensing (Scotland) Act 2005*, these social concerns can be better applied and possibly provide an alternative route to addressing longer-term harms. This is very much the approach taken by local government in England and Wales who have been more innovative with public health and represents more of an evolution than a revolution in licensing.<sup>126</sup>

This does not mean however that a focus on more proximal issues could not be a proxy route to addressing longer-term harms. Research has indicated local government in England and Wales with a more intensive licensing regime (for instance, those with more CIPs) experienced an additional five per cent reduction in alcohol-related hospital admissions rates in 2015 compared with what

would have been expected had these local areas had no active licensing policy in place.<sup>127</sup>

### **Resource requirements/ implications**

Significant resources have been put towards better operationalising public health concerns within licensing in both Scotland and south of the border. At a local level, the collection and analysis of relevant local data is highly resource intensive. However, this is becoming easier as better technologies and processes are developed. Another key issue, which may relate more to time resources than physical expense, is better integration of licensing authorities and the public health field. While improvement has been seen in some areas, a considerable amount of work is still required.

### **Political support for policy**

While there has been some political opposition to the greater involvement of health within licensing in Scotland, this has not been a particular problem. Of more significance are the general misunderstandings about the way in which health issues might work within the licensing system, and the impact that a health objective may have on health outcomes. In England and Wales, health concerns have gained more traction within licensing systems in recent years. It is not unrealistic to expect that a health objective may be added to the *Licensing Act (2003)* at some point in the

future, although there is a lack of political support for this at present.

### **Policy mechanisms**

In Scotland, public health is already an objective in licensing legislation. However, primary legislation would be required in England and Wales to include a public health objective in the *Licensing Act (2003)*.



## HARM MINIMISATION AS A PRIMARY OBJECT

<b>LOCATION:</b>	Australia
<b>WHAT IS IT?</b>	Elevation of harm minimisation to the primary object of liquor licensing legislation, whereby it is considered as a higher priority than other objectives.
<b>POLICY SCORE:</b>	6 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Supports licensing decisions in the interest of reducing alcohol-related harm.</li> <li>• Clearly articulates priorities where a conflict exists between business interests, and public health and wellbeing.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Even with harm minimisation as the primary object, licensing authorities may still allow increases to the availability of alcohol.</li> <li>• Resource burden presented by the need for a review of liquor acts to elevate harm minimisation as the primary object, and in interpretation of harm minimisation in licensing decisions.</li> </ul>

When Craze and Norberry<sup>128</sup> studied liquor licensing legislation across different Australian jurisdictions in 1995, harm minimisation was only mentioned in their Queensland summary of objectives. By 2012, harm minimisation had been included in the formal objects of Liquor Acts in all states and territories except Tasmania ('objects' is a formal legislative term distinct from 'objectives').<sup>129</sup> This situation remains unchanged in 2016. The term 'harm minimisation' in Australian liquor licensing legislation had its origins in the drug policy discourse, especially at the time of the rise in HIV in the early 1980s which saw governments moving away from the traditional criminalisation of illicit drug use and towards more pragmatic harm reduction solutions such as needle exchanges.

Harm minimisation has not been given equal standing in all the Acts. For harm minimisation to be most

effective it needs to be not just one statutory purpose but to be the primary purpose of the Act.<sup>130</sup> Harm minimisation is clearly stated as the primary object of the Act in Queensland and Victoria. Davoren and O'Brien (2014) note that for the ACT and Northern Territory, although harm minimisation is not expressly given primary status over the other objects, there is a basis in the text for making such an implication (that is, it is mentioned first). In the South Australian Act, harm minimisation is mentioned in the first section, but as one of several objects of equal standing. In the amendment bill developed following the review of *Liquor Licensing Act 1997 (SA)*, alcohol harms are specifically defined and include domestic violence among other factors. Between 2012 and 2016, a new subsection 3(1)(f) was inserted in the South Australian Act that gives extra standing to harm minimisation as it seeks to "ensure that the sale and supply of liquor occurs in such a manner as to minimise the

risk of intoxication and associated violent or anti-social behaviour including property damage and causing personal injury". However, this is not sufficient to make harm minimisation the primary object. In Western Australia, harm minimisation is mentioned as one of the primary objects of the Act, but it is mentioned second after the need to "regulate the sale, supply and consumption of liquor" (s. 5(1)(a)).

In Victoria alone, the primacy of harm minimisation as an object of the Act is bolstered by an additional clause, Section 4(2), inserted in 2009 which reads:

*It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.*

A further discussion about the impact of having this extra clause is included below.

The only Australian jurisdiction where harm minimisation does not receive primary object status or primary status with other objects of equal standing is NSW (other than Tasmania, which does not have any objects in its Act). NSW prioritises liquor industry needs but notes that securing the objects of the Act is required to have due regard to harm minimisation.

### Evidence of impact

Evidence of the impact of including harm minimisation, in terms of actual reductions in alcohol-related harm experienced, is difficult to measure given the complexity and multi-faceted nature of the alcohol policy landscape. What is more accessible is evidence of whether the inclusion of harm minimisation as an object in the Acts has had an impact on outcomes of challenges to liquor licensing applications. This section will concentrate on that assessment.

Manton<sup>131</sup> analysed the outcomes of 50 cases relating to objections to liquor licensing applications or complaints about licensees, selecting the ten most recent review cases available for examination in late 2012 in South Australia, Queensland, Western Australia, NSW, and Victoria. She found that public interest, including harm minimisation, arguments did not appear to alter the outcome of challenges to liquor licensing decisions, although sometimes extra conditions for

amenity-related issues such as noise and disturbance might be included. The most likely jurisdiction to refuse liquor licence applications (and with decisions upheld at subsequent reviews) was Western Australia. Harm minimisation was commonly advanced as an argument, along with amenity-related arguments, but overwhelmingly the liquor licence applications were rejected on the basis that they failed to demonstrate their application was in the public interest. She concluded that “to achieve the public interest objective of harm minimisation, other states and territories should consider adopting Western Australia’s reversal of the burden of proof”.<sup>132</sup>

There is one outstanding example to the contrary in Victoria as documented by Davoren and O’Brien.<sup>133</sup> They examined how the object of harm minimisation was judicially considered in the Kordister case:

*In the course of its decision, the Court of Appeal confirmed that the Victorian Parliament intended that harm minimisation should be the primary object of the Victorian Act (1: paras 19, 188). [...] the harm minimisation object in s. 4(1)(a) is augmented by s. 4(2), making harm minimisation the primary purpose. Where harm minimisation is not just one statutory purpose but is the primary purpose, minimising harm from alcohol becomes the ‘fundamental principle’ on which the liquor licensing legislation rests—it is the ‘primary consideration’ in making decisions under the legislation and ‘a value which informs and guides the whole Act’ (1: paras 19, 188).*

However, in trying to apply this, the courts have noted the complexity of the concept of harm minimisation.<sup>134</sup> Much of the basis of the appeals and subsequent initial overturning of the original ruling was based on understanding the interpretation of the harm minimisation concept, including the scope of admissible evidence. The appeals judgment clarified that three types of evidence could be submitted relating to the risks of alcohol-related harm – general population evidence, locality evidence, as well as specific incident evidence. These warrant a more detailed investigation.

The first category relates to “general evidence about the use and misuse of alcohol”, which may include academic studies on how licensed premises impact on their local area or local strategic plans. The Court of Appeal made it clear it is unlikely general evidence would be enough on its own to reject an application on harm minimisation grounds.<sup>135</sup>

The second category deals with locality evidence, which is by definition linked to the “particular local, social, demographic or geographical circumstances of the relevant premises”. Possible examples might include evidence of alcohol-related violence or antisocial behaviour in the locality in question. The Court of Appeal was clear that there does not need to be an obvious causal link between the problems evidenced and the licensed premises.

The third category of evidence involves specific incidents of the wrongful operation of a licensed

premise. This, by definition, does have to establish a causal link between a harm and the premises in question.

It is not necessary for all three types of evidence to be presented for a decision to be made. In fact, the Court of Appeal stated that in some circumstances “the locality evidence may have such probative value that there is no need for reliance upon specific incidents”.<sup>136</sup> This approach to evidence makes a lot of sense and would allow both those with a focus on short-term problems and long-term harm to place their preferred evidence within the framework. The relevance of licensing to the particular problem or harm in question would then be up to those committee members making the decision, guided by the principles of the licensing regime they operate under.

The *Kordister* case is something of a landmark but it is not clear that, even in the same state, it offers a precedent that sets an unambiguous direction for future cases. A 104-page 2016 decision by the Victorian Commission for Gambling and Liquor Regulation took the *Kordister* judgements into consideration, but still approved Woolworths’ application for a big-box liquor store in a suburb that was a known hotspot for alcohol-related domestic violence (5:paras 210,242), concluding that “overall this application would not be conducive to or encourage the misuse or abuse of alcohol” (5:para 305).

### **Resource requirements/ implications**

The ongoing resource requirements relate mainly to resource-intensive periodic reviews of liquor licensing Acts, for example, as seen in the ACT, Western Australia, New South Wales, Tasmania and South Australia in the past few years. This does not mean the objects of the Acts are changed. In the case of the Tasmanian review, recommendations include having objects in line with other jurisdictions, although they have not recommended harm minimisation is the primary object (6:10). The effort required to interpret harm minimisation in court appears to be another resource implication. The resource implications associated with elevating harm minimisation to the primary object are nevertheless minimal.

### **Political support for policy**

Having harm minimisation enshrined in the objects of liquor licensing Acts is commonplace in Australia and had been introduced in most jurisdictions by 2012. It is much less clear that harm minimisation has been awarded the primary object status, where minimising harm from alcohol becomes the ‘fundamental principle’ on which the liquor licensing legislation rests. And, as the 2016 Victorian decision illustrates, having harm minimisation as the fundamental principle does not mean licensing authorities will decide against the greater availability of alcohol on harm minimisation grounds.

### **Policy mechanisms**

Liquor licensing legislation lies at the heart of having harm minimisation as a guiding principle. However, as is seen from the Tasmanian example, it has been possible to have a Liquor Act without objects, although this is being rectified.

## THE CARDIFF MODEL OF ANONYMOUS DATA SHARING

<b>LOCATION:</b>	England and Wales
<b>WHAT IS IT?</b>	A method of collating data relating to alcohol-related violence for use within licensing decisions and enforcement activity.
<b>POLICY SCORE:</b>	6 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• It has been shown to dramatically reduce rates of alcohol-related violence.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• It can be difficult to coordinate and implement, particularly in busy urban areas with multiple night time economy areas and hospitals.</li> </ul>

Many services that respond to alcohol-related harm rely on local data to plan their activities effectively. This includes health services, police, and local licensing teams, among others. However, these different services often work independently, which limits data sharing and effective collaboration. Some areas have addressed this problem by more effectively sharing data between services. This may assist in reducing alcohol-related harm by facilitating evidence-based policy development and better responses to local issues.

In the UK, the 'Cardiff model' is seen as the leading approach to data sharing because of the pioneering collaboration and processes introduced in the region. Prior to its introduction, two-thirds of assaults treated in local emergency departments went unreported to the police.<sup>137</sup> The Cardiff model established common standards for data reporting and encouraged the local emergency department to make this anonymised data

available to police and local government to help inform prevention strategy and tactics.

Based on the experiences in Cardiff and other areas that have introduced the model, the National Health Service (NHS) has developed a set of national guidelines on how data should be collected and shared.<sup>138</sup> The national guidelines recommend that ED receptionists collect data at registration. Three critical pieces of information include:

- date and time of the assault
- means of assault (weapon or body part used)
- assault location.

This anonymised data should be shared on a monthly basis with the local Community Safety Partnership<sup>a</sup> (CSP). There is no need for a formal information sharing agreement, as the data is anonymised. The information may then be used by police and

local government to develop a more detailed picture of violence patterns in the region. This may assist the development of a more targeted response to issues, and support a number of measures for reducing crime in specific areas. For example, police can focus their patrols on high-risk areas, conduct overt or covert interventions in particular licensed premises, or can close risky areas to traffic. Local government can use the data to inform their licensing decisions, both in terms of specifically addressing problem outlets and controlling the supply of alcohol in assault 'hotspots'. The data collected is also an invaluable resource for monitoring performance and the success of specific interventions.

### Evidence of impact

A number of evaluations have demonstrated that information sharing between services can be effective at reducing violent incidents and crime and therefore, reducing pressure on the wider

<sup>a</sup> Community safety partnerships are statutory bodies comprised of councilors and independent members of the community who act as a liaison between community and police.

emergency services. In Cardiff itself, implementing the model reduced the number of assault patients seeking Accident and Emergency (A&E) treatment by 35 per cent within five years (compared with an overall 18 per cent rise in England and Wales). Assaults in licensed premises in Cardiff fell by a third.

As a result, Cardiff improved its ranking for safety provided by the Home Office, and by 2005 had the fifth lowest level of violence in all towns with populations greater than 100,000 in England and Wales. Within its Home Office 'family' of fifteen comparable cities (based on socioeconomic and demographic statistics), Cardiff rose from bottom to top by 2006.<sup>139</sup> An economic cost-benefit analysis estimated the intervention reduced the economic and social costs of violence in Cardiff by £7 million in 2007, including £1.62 million of savings to the criminal justice system, and £1.25m of savings to the health service. This represents £82 of benefit for every £1 invested in the programme.<sup>140</sup>

This success has led the Home Office to reference the Cardiff model in its Modern Crime Prevention Strategy and encourage its use nationally. However, the logistical arrangements required to collect and share accurate information presents some challenges. While all hospitals, particularly A&Es, have been required to share relevant information with the police for some time,<sup>141</sup> implementation of these guidelines has been patchy and inconsistent. Compliance by A&E Departments has risen from 36 per cent in 2012 to 61 per cent in 2014. Yet of these, 25 per cent

were only reporting low-quality data with limited usefulness. In addition, in 2014 more than half of all CSPs responding to the survey reported not receiving violence assault data from any A&E, showing there is significant room for improvement.<sup>142</sup>

### **Resource requirements / implications**

To some extent, the slow national implementation of the Cardiff model has resulted from a lack of investment of resources, as well as difficulties in changing entrenched work practices within hospitals. It is however now mandatory for hospitals to collect Cardiff model data under the terms of the standard NHS contract.<sup>143</sup> The willingness of A&E staff, in particular receptionists, is key to ensuring a complete uptake of the model. This highlights the importance of staff training; ensuring staff understand the usefulness of data being collected. Given the financial and time pressures within A&E departments, gaining support from A&E staff has proven difficult at times.

The availability of data analysts, to sort and anonymise the data before sharing and to later analyse it, is a key resource implication. Previous research identified one instance where a data-sharing project collapsed after a key analyst was removed from the local NHS and not replaced.<sup>144</sup>

Geographic and structural issues are another important consideration and may result in significant resource implications in some regions. The Cardiff region was, in many ways, an ideal location for such an information-

sharing network to be developed – with one key night time economy location, served by one hospital, and covered by one police force, and one local government licensing team. Large metropolitan areas, such as London, face significantly more geographic and logistical barriers to successful implementation of the Cardiff model. In some areas, it has been difficult to collate the necessary information over such a wide area. In parts of London, assault victims became spread among a wide number of hospitals, who at times record information in different ways and with varying degrees of accuracy. Despite considerable effort, overcoming these barriers and bringing all the necessary partners together has only been partially successful.

### **Political support for policy**

The significant improvement in public safety brought about by the Cardiff model in some areas has bought the scheme a strong degree of political support, both within government and among local police forces and councils.

### **Policy mechanisms**

In the UK, the spread of the Cardiff model was aided by changes to the NHS contract, which made relevant data sharing with the police mandatory and encouraged better joint working. This has supported the introduction of the scheme by prioritising its adoption through government contracts. However, the development of local frameworks and ways of working which overcome local barriers to data sharing remains important.

## DISCUSSION OF HARM MINIMISATION AND USE OF DATA

The principle of harm minimisation in Australia and the public health objective in Scottish licensing both highlight the differences between legislative theory and licensing practice; having these issues firmly within licensing law does not mean that they have the impact that might be initially assumed, due to other legal issues within the legislation. Both of these cases point towards the type of evidence needed and the burden of proof used as important factors, as well as the influence of the licensed trade.

### The burden of proof

As demonstrated in Western Australia, the way in which the burden of proof operates has significant implications. Requiring licence applications in Western Australia to demonstrate they are in the public interest provides licensing authorities with greater ability to reject unsuitable applications. The operation of CIPs in England and Wales and the principle of overprovision in Scotland seem to provide similar outcomes. While neither CIPs nor overprovisions necessarily stop new licences being granted, the reversal of the burden of proof provides councils with greater discretion regarding which licences they approve and the conditions under which they operate, assuming a representation is received against the application.

Across England, Wales, and Scotland many local government use their Statement of Licensing Policies (SLPs) in a similar manner. By outlining and evidencing local problems and concerns, they attempt to place a greater onus on the applicant to prove they will not add to these. This appears to be relatively successful, although such policies may be constrained by the licensing regime. Under the *Licensing Act (2003)*, paragraph 8.33 of the s 182 Guidance also instructs applicants to “undertake their own enquiries about the area in which the premises are situated to inform the content of the application” and to detail how they will address local risks.

Regardless of the existence of a health or harm minimisation approach, requiring the applicant to prove their application is in the public interest and would not add to existing problems seems likely to increase the discretion of the licensing authority to reject licences it views as unsuitable. However, the reverse is also true – it is more difficult for licensing authorities to prove that individual premises are likely to cause or add to problems. This makes the decision about the way in which the burden of proof operates within licensing law a fundamentally political one. Does the legislation inherently support the licensing authority, which should be operating in the wider public interest? Or, does it support a business first approach?

The debate about this issue is not new. The predecessor to the *Licensing Act (2003)* in England and Wales gave magistrates discretion as to whether there was a ‘need’ for new licensed premises in an area, and previous Australian legislation took ‘community need’ into account. The current Western Australian need for applications to be proved in the public interest is not quite the same, as decisions cannot be arbitrary, but the reversal of the burden of proof arguably works in a very similar way.

This makes Western Australia an interesting counter-example to a more free market driven approach, where the emphasis is on the local government to prove a licence would cause a problem has constrained councils and communities and significantly helped the licensed trade. In many jurisdictions, such as the UK, a return to ‘need’ would be extremely unlikely. However, requiring applicants to demonstrate that their venue would be in the public good is a feasible change, due in large part to its successful application in regions such as Western Australia and similarities to CIPs.

### Dealing with evidence

In addition to the way in which this burden of proof operates, issues around the interpretation of the harm minimisation concept are also highlighted in the risk-based licensing case study. This reflects many of the key obstacles identified

by those trying to implement the public health objective in Scotland, with disagreements about what constitutes appropriate evidence and the scope of health-related issues that may be addressed through licensing.

As reflected in the case study, the Victorian Court of Appeal (VCA) outlined three categories of evidence (general, local, and specific evidence). The VCA also sought to identify circumstances requiring a causal link between the problem and the premises. This approach to evidence is effective in allowing both those with a focus on shorter-term problems and longer-term harm to present evidence within the framework. As such, adoption of a similar approach may be beneficial in the UK as a way of clarifying things.

### Evidence and causality

For a British audience, the way the VCA outlined when causality should or should not be required is of great interest. The same approach is facilitated by legislation in both *the Licensing Act (2003)* in England and Wales, and the *Licensing (Scotland) Act 2005*. Both these regimes operate with a 'balance of probabilities', which means decisions can be made on the grounds that something is more likely than not to be the case. It is, therefore, necessary to evidence and judge that there is a relationship between premises and a problem, but not the need to definitively prove a link,<sup>145</sup> which is very similar to 'locality evidence' in Victoria.

The Court of Appeal in London has described this as involving 'an evaluative judgment'. The situation is similar to that found in Scotland. For example, an appeal against a licence refused on the grounds of overprovision stated, "the pursuer demands a standard appropriate to a court not a licensing board. Unlike a court judgment, it is sufficient for a board to make a value judgement".<sup>146</sup>

The fact that many local governments across the UK do not take this approach, choosing instead to apply definitive causality in a way similar to a court of law, can at times be a result of their reluctance to make controversial decisions. This reduces governments' discretion to use licensing systems in the public interest and affects all issues related to licensed premises. However, some authorities do carefully train their licensing committees to make decisions on the balance of probabilities and find it very effective.<sup>147</sup>

The fact that the *Kordister* case in Victoria is something of a landmark, but it is not clear that it offers a concrete precedent for future cases, represents another parallel between these different licensing systems.

In theory, there exists a way for these systems to be used and interpreted that would make it easier for local government to use a wider and potentially more effective range of evidence and to make decisions on the balance of probabilities. Yet in practice this often does

not happen, frequently to the detriment of local communities. For those with an interest in reducing alcohol-related harm, improving the day-to-day application of licensing at a local level should be as important a concern as efforts to improve licensing regulations themselves.

### Evidence and locality

Another interesting parallel is the way in which the Victorian Court of Appeal stressed the importance of 'locality evidence', which is by definition linked to the "particular local, social, demographic or geographical circumstances of the relevant premises". There is a very common misconception under the *Licensing Act (2003)* that a licensed venue cannot be considered within the wider location in which it sits (the so-called 'premises by premises' approach). Yet, there is nothing in the Act, Guidance, or case law to directly support this.<sup>148</sup> In fact, the Court of Appeal in London has made comments remarkably similar to the Court of Appeal in Victoria. In the *Hope and Glory* case, for example, it talks at length about licensing being "an evaluation of what is to be regarded as reasonably acceptable in the particular location... [this] is essentially a matter of judgment rather than a matter of pure fact" (*Hope and Glory*, 2011, para 42).

Addressing misconceptions may allow both the *Licensing Act (2003)* and the *Licensing Act (Scotland) 2005* to be used in a far more holistic manner,

better taking into account how licensed venues interact with their locality. It would allow consideration of the wider evidence, which may not have a direct causal link to the premises, as highlighted by the VCA. As a result, a wider range of health and social impacts can be considered, although clearly, this is easier with the *Licensing Act (Scotland) 2005* because of its specific health objective. Across both jurisdictions, the key obstacle appears to be financial pressures and local governments' concerns about expensive legal action from the licensed trade.

Local governments have demonstrated a willingness to engage in legal action to uphold local interest, but this, of course, is no guarantee of success. In Australia, despite the precedent set for recognising harm minimisation as the primary object of the *Liquor Control Reform Act (1998)* by the *Kordister*<sup>149</sup> case, elements of the ruling left interpretation open to arguments favouring industry interests on the basis of perceived community expectations. For example, in the Victorian City of Casey, city planners were unsuccessful in their objection to the development of a big-box packaged liquor outlet. The council was concerned about the impact of the large new establishment in a region already affected by high levels of domestic violence and other alcohol-related harm. The Victorian Commission for Gambling and Liquor Regulation (VCGLR) ruled against the council, citing

components of the *Kordister* case ruling, including that a decision must seek to “balance each of the objects and arrive at an appropriate synthesis in the particular circumstances of the case by way of a discretionary judgement”.<sup>150</sup> The decision also cited a need to strike “an appropriate balance between the need to minimise harm arising from the misuse and abuse of alcohol and the interests in developing a diversity of licensed facilities reflecting the community expectations”.<sup>151</sup>

In this way, the primacy of harm minimisation has been undermined by legal precedent promoting the need to provide licensed facilities in accordance with community expectations. Surprisingly, opposition by the City of Casey and local police to the big-box liquor development appears to have not been considered representative of community expectations in the VCGLR ruling in favour of another off-premise alcohol outlet.

### **Data and the Cardiff model**

So far this discussion has dealt with the general approach of licensing regimes to the harm caused by alcohol (harm minimisation and public health), as well as the more detailed workings of the decision-making process. Against this, the Cardiff model case study provides a framework for how information can be collected and shared to facilitate effective strategies to reduce harm. The accurate collection of data may help to

improve licensing decisions by better demonstrating the impact of alcohol-related harm in local regions. In many ways, the results from Cardiff speak for themselves, with improved data leading to better police and enforcement work, which corresponded with a 35 per cent reduction in A&E assault patients within five years.

However, it is clear that the Cardiff model is not necessarily easy to implement, particularly in highly urbanised areas with multiple night-time economy hotspots and more than one hospital or emergency department. Issues relating to the accuracy and timeliness of data are not only found in the UK but in many areas of Australia as well. The inconsistent collection and publication of data on alcohol-related harm across Australian jurisdictions presents limitations with respect to evidence-based policy formulation and evaluation. This includes data relating to both crime and health services. The Bureau of Crime Statistics and Research in NSW, for example, provides access to comprehensive stores of crime data and analysis. However, other jurisdictions either restrict access or charge fees to complete specific data requests. Similarly, while some health data are published in a nationally-consistent manner, inconsistencies limit the capacity of both researchers and government for efficient and robust analysis. Harm minimisation and health issues would be more effectively supported by improved



access to comprehensive and consistent data on alcohol-related harm.

While the Cardiff model for data collection is not currently in use in Australia, the National Health and Medical Research Council (NHMRC) recently awarded a grant for a five-year trial across eight emergency departments in Victoria, NSW, and the ACT.<sup>152</sup> Consistent with the Cardiff model, the trial will mandate collection of information relating to the location of victims' last drinks as part of hospital triage services and follow-ups. The trial is likely to improve service planning and delivery, as well as regulatory measures aimed to reduce alcohol-related harm in the most affected areas. To receive the full benefit of such collection practices, a nationally consistent Cardiff model approach should be adopted.

The importance of empowering communities with information to evaluate the risk of new alcohol outlets to the community, and oppose these at the application stage where appropriate, was highlighted in a recent case involving a residents' group in the Sydney (NSW) suburb of Casula. The Casula Community Group for Responsible Planning (CCGRP) were able to join the local council in opposing a development application in the NSW Land & Environment Court (LEC) on the basis that they were able to bring new evidence to the case.<sup>153</sup> The LEC's decision considered the nature and extent of independent evidence related

to alcohol harm prevention presented by the CCGRP were sufficiently distinct from that of the council's.<sup>154</sup> In this way, the ability of community members to deliver an informed and new perspective on the matter is crucial where the council does not adequately represent their interests. This must be underpinned by appropriate data, which demonstrates the need to collect and publish these in a comprehensive and consistent manner.

### Summary

These three issues show how licensing in the UK and Australia share similar concerns, with many similar physical and social risks as well as obstacles. The need for clear and reliable data is crucial to overcoming such limitations, but so too is better understanding the conflict between focusing on specific local issues and problems across regions more broadly.

All of the licensing regimes discussed here do allow for a wider area focus, even if this does not always happen in practice. With this wider focus comes a wider view of the acceptable evidence, which does not always have to be strictly causal. This aids the harm minimisation and health impact approach, although it is interesting that the way in which the burden of proof operates is just as, if not more, significant. These details can at times be lost in the contested legal process and overcoming this is perhaps the biggest hurdle of all.

## CONCLUSIONS

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### Lessons for the UK:

It is important that the Cardiff model is rolled out further across the UK. Lessons may also be learnt from the way levels of evidence are recognised under the framework provided by the Victorian Court of Appeal in Australia. This clarification would assist in identifying appropriate evidence for use in licensing decisions. An additional licensing objective to promote health and wellbeing would facilitate the use of such evidence to ensure the availability of alcohol does not unduly undermine society and lead to health and social hazards. While evidence from Scotland suggests a public health objective can be made to work, a 'harm minimisation' objective could provide an alternative or complementary approach.

Placing the onus on applicants to prove that their venue would be in the public interest, and not add to existing local harm, appears to have benefits for protecting the interest of local communities. Adoption of this approach should be considered within the Licensing Act (2003) and the Licensing (Scotland) Act 2005.

This objective would clarify that locally based impacts on health and wellbeing are a consideration in licensing. With this objective, licensing decisions over time would be more likely to create an environment in which alcohol does not unduly undermine society and lead to health and social hazards. The key legal principles within the Act would limit this objective in exactly the same way as they do for the other objectives, meaning that health and wellbeing impacts more proximal to licensed venues are more likely to fall within its remit.

### Lessons for Australia:

While trials of the Cardiff model are underway in Australia, expansion of its use would be beneficial. As with the UK, reversing the burden of proof within licensing decisions (as found in Western Australia) may better ensure that public health is prioritised in licensing decisions.

Similarly, more widespread adoption of licensing objectives that prioritise public health and harm minimisation would allow government better control over outlet density and more adequate levels of protection for communities.

## RECOMMENDATIONS

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### 6. Place the onus on applicants to prove that their venue is in the public interest

Reverse the burden of proof in licensing decisions to require applicants to demonstrate that granting of a license is in the public interest.

### 7. Include and prioritise public health and/or harm minimisation objectives in liquor legislation

Specify in all liquor legislation public health and the minimisation of harm as objectives in the regulation of alcohol, including licensing decisions, and ensure they have primacy over other objectives, to empower communities and allow governments greater control of outlet density.

### 8. Enhance data sharing to facilitate more targeted policy interventions

Collect and share data from hospital emergency departments and police, in a manner consistent with the 'Cardiff model', to inform policy development and improve strategies to reduce alcohol harm.

# PRODUCT RESTRICTION POLICIES

COMPARING AND DISCUSSING:

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**RESTRICTIONS ON PURCHASE OF CERTAIN PRODUCTS**

**REDUCING THE STRENGTH SCHEMES**

## RESTRICTIONS ON PURCHASE OF CERTAIN PRODUCTS

<b>LOCATION:</b>	Australia
<b>WHAT IS IT?</b>	Restriction on the sale of particular alcohol products.
<b>POLICY SCORE:</b>	6 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Some evidence for effectiveness in reducing alcohol-related harm in indigenous communities.</li> <li>• May be targeted toward products identified as causing a disproportionate level of harm.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Evidence suggests that restricted products are substituted for alternatives.</li> <li>• May be considered discriminatory when applied to individual regions.</li> </ul>

There are two major approaches to restricting the purchase of certain alcohol products. Firstly, those that limit the sale or purchase of products designed to be consumed rapidly or to facilitate intoxication after a certain time. Secondly, those that target mainly packaged liquor sales in remote communities with a high degree of alcohol harm in Indigenous communities. While there are clear distinctions between the motivations for each, these approaches share the common feature of seeking to restrict the sale of particular products that contribute disproportionately to the level of alcohol harm. The harm that stems from binge drinking in nightclub districts may be addressed by restricting the sale of alcohol products conducive to rapid intoxication. Similarly, the burden of alcohol in remote Indigenous communities may be addressed by identifying and regulating the sale of products seen to contribute most to such problems.

In NSW, restrictions were applied to pubs trading in the CBD of the city of Newcastle in 2008, including a restriction on the sale of shots after 10pm. Since 24 February 2014, there have also been restrictions on certain drinks in the Kings Cross and Sydney CBD Entertainment Precincts in the general late trading period from midnight until ceasing of trading or 7am, as outlined in the *Liquor Regulation 2008 (NSW)*. In Queensland, the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016* banned the sale or supply of rapid intoxication drinks between midnight and 5am. Rapid intoxication drinks are those that facilitate or encourage rapid intoxication as they are designed to be consumed rapidly or contain a high percentage of alcohol. In NSW legislation, this is called a shot. However, NSW also identifies drinks containing spirits or liqueur with more than 50 per cent alcohol, more than 30 ml of spirits or liqueur, or ready-to-

drink spirits in its definition of rapid intoxication drinks. NSW also restricts the quantity of liquor sold or supplied to one person, both in the general late trading period and after 2am in specified precincts. Queensland identifies various conditions by which premises can apply for an exemption from this requirement. These conditions include venue size and the way in which liquor is served.

Policies that limit the sale or supply of particular products to certain days and times, and in certain restricted quantities or container size, are popular in remote Australian communities with large Aboriginal and Torres Strait Islander populations. There are many different location-specific restrictions. This report presents only a few such examples, rather than a complete list of all restrictions. For example, in the Kimberley region of Western Australia, there have been limits on the size of packaged liquor containers for sale since 2009. In Kununurra in Western Australia,

limits have been in place since 2015 on the sale of packaged liquor per person per day relating to the strength of alcohol and restrictions between 12pm to 8pm, Monday to Saturday. In Katherine in the Northern Territory, there have been restrictions on the times packaged liquor can be purchased, on the size of the container and times of purchase for cask wine and fortified wine, and the strength of beer that can be consumed on licensed premises before midday.

Implementation of the restrictions for takeaway alcohol has resulted in a trial of a Takeaway Alcohol Management System (TAMS) in the Shire of Wyndham East Kimberley in Western Australia. TAMS is a simple scanning technology system that implements a daily alcohol purchase limit. The scanners use legal personal identification to allow licensees to register how much an individual has purchased on any one particular day, across all takeaway liquor outlets. The 12-month TAMS trial commenced within the Shire of Wyndham East Kimberley on 14 December 2015. A formal evaluation of the system will be conducted as part of the Wyndham trial.<sup>155</sup>

### Evidence of impact

The difficulty assessing the impact of restrictions on the purchase of products such as shots is that in the cases available for study it is only one of a range of policy measures introduced simultaneously. For example, as noted above, in 2008 a range of restrictions were introduced on pubs trading in the CBD of the city of Newcastle. This included a restriction on the sale of shots after 10pm, the introduction of dedicated

responsible service officers within venues, and mandated closing at 3:30am with a lockout from 1:30am (initially 3am and 1am respectively). The study found a 37 per cent reduction in assaults between 10pm and 6am.<sup>156</sup> Follow-up research demonstrated these reductions had been sustained over the five years following the intervention.<sup>157</sup> The authors also showed that the majority of this reduction came after 3am with little impact evident between 1am and 3am. This suggests the trading hour restrictions, not the lockout or other measures such as restriction on the sale of shots, were the key policy.

A number of evaluations have found restrictions on alcohol's availability in Indigenous communities are associated with sustained impacts on violence and health.<sup>158</sup> An evaluation of one restriction prohibiting the sale of takeaway liquor with more than 2.7 per cent alcohol in Halls Creek found a substantial reduction in a range of police and hospitalisation indicators. Similarly, two studies on Alcohol Management Plans (AMPs) in four communities in Cape York (predominantly restricting takeaway sales of stronger beer and spirits) found a reduction in serious injury.<sup>159,160</sup> At the same time, results from evaluations of AMPs in Queensland have been more mixed.<sup>161,162</sup> Evaluations have also been conducted for AMPs on Groote Eylandt and Bickerton Island that required all residents to use a permit in order to purchase takeaway alcohol.<sup>163</sup> While finding positive effects on violence and community harmony, it is not possible to translate policy implications to the mainland and non-geographically isolated communities. In Alice Springs,

a 14-month trial ban on four and five-litre casks of wine, in combination with reductions in off-premise trading hours, resulted in a reduction in harm and a shift in purchasing to the next cheapest form of alcohol.<sup>164</sup> Commentators have noted policies relying on police enforcement and punitive measures often target Indigenous Australians and that interventions require the support of the local community to be effective.<sup>165</sup>

### Resource requirements/ implications

Overall, the administrative burden associated with product restriction is relatively small. Costs are predominantly associated with compliance inspectors to monitor licensed premises to ensure licensees are compliant with their liquor licence conditions. At the same time, savings that may result from harm reduction are likely to go some way toward balancing these additional costs.

### Political support for policy

In its 2016 annual alcohol poll, FARE identified that just over half the population (58 per cent of Australians) support stopping the sale of shots after 10pm. However, this was the least supported alcohol policy measure of 11 canvassed with, for example, increasing the penalties for people involved in alcohol-related violence attracting 86 per cent support.<sup>166</sup> Furthermore, 76 per cent of adults aged over 50 and 58 per cent of adults aged 35-49 supported stopping the sale of shots, compared to 43 per cent of adults aged 23-35 and 50 per cent of those between the

age of 18 and 24. Stopping the sale of alcohol and energy drinks after midnight was supported by 61 per cent overall, and placing a limit of four on the number of drinks a person can purchase at one time after 10pm was supported by 65 per cent overall.

### Policy mechanisms

Policy mechanisms for the restriction of particular products have been through legislation, covered either in jurisdictional Liquor Acts or in regulation. In some cases, the power of the

licensing authority to impose conditions at its discretion is provided within the legislation. This is the case in Western Australia, for example.

## REDUCING THE STRENGTH SCHEMES

<b>LOCATION:</b>	England and Wales
<b>WHAT IS IT?</b>	Local governments coordinating voluntary action among the off-trade to remove products known to be favoured by the street drinking community.
<b>POLICY SCORE:</b>	5 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Has been found to work well to reduce local alcohol-related problems.</li> <li>• Can generate opportunities to engage with and help the street drinking community.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Is relatively resource intensive.</li> <li>• The voluntary nature of the scheme creates difficulties, prompting resistance from licensing authorities and undermining effectiveness.</li> </ul>

Reducing the strength (RTS) schemes, also known as super strength schemes, involve encouraging newsagents, off-licences, and sometimes supermarkets, not to sell certain high strength beer, lager, and cider. Restrictions are typically applied to beverages with 6.5 per cent alcohol or more. Because these products tend to be favoured by street drinkers, RTS schemes aim to reduce street drinking and associated problems by addressing their physical and economic availability. There are around 100 of these schemes estimated to be in the UK at present.

To meet obligations under competition law in the UK, these schemes must be entirely voluntary. Regulating bodies are

not permitted to coerce retailers to withdraw particular items from sale. While this can greatly limit their application, the Local Government Association (LGA) has produced guidance on how to implement this type of scheme legally.<sup>167</sup> Although parts of the licensed trade have questioned the legality of even voluntary schemes, the Competition and Markets Authority has stated that RTS schemes are not a priority and that it would only consider enforcement action where it suspected retailers were using the schemes as 'cover for price-fixing'.<sup>168</sup>

As with other licensing interventions, RTS schemes should be based on evidence and a clear understanding of local problems and their likely impacts. This should include consideration

of the street drinking community, their preferred products and places of purchase, where they are likely to congregate and sleep, and any violent incidents or other associated problems. This information can be used to define the specific geographic region covered, as well as the specific products most likely to be associated with problems. It is also important to engage with services working alongside the homeless community, so that RTS schemes can be used to offer help to this vulnerable group rather than moving street drinking and its associated problems to another area.

In some areas, local businesses appear to have been reluctant to participate. In other areas, especially

those where problems with street drinking have been particularly prominent, businesses have been more supportive of RTS schemes. Retailers have reported feeling intimidated when refusing alcohol sales to people who are intoxicated, which may be reduced under RTS schemes if beverages favoured by street drinkers are not stocked. Additional policing support to help retailers refuse such sales can also play a role to reduce incidents involving street drinkers.<sup>169</sup>

### Evidence of impact

The original RTS scheme launched in Ipswich in September 2012, with two-thirds of the town's 147 off-licensed stores involved. In the year following its introduction, reports of street drinking dropped by 23 per cent across Ipswich. One region, where street drinking had caused substantial problems previously, observed a 73 per cent reduction in reports of street drinking to police

in the year following the scheme's introduction, and a 31 per cent reduction in crime.<sup>170</sup> A similar scheme in the city of Portsmouth achieved an 80 per cent reduction in street drinking in some parts of the city after 12 months.<sup>171</sup>

### Resource requirements/implications

RTS schemes are relatively resource intensive. To be most effective, they require collaboration across licensing teams, the police, alcohol treatment and outreach services, as well as the local licensed trade.

### Political support for policy

The political feasibility of RTS schemes is increasing, with a larger number of local schemes providing evidence of their effectiveness. The strongest opposition appears to come from the licensed trade. There have been reports of hectoring and inaccurate legal letters sent to

local governments as an attempt to prevent the introduction of these schemes.

### Policy mechanisms

RTS schemes exist without any policy or statutory footing. Detailed guidance is provided by the LGA, which provides important information to ensure that participating businesses do not encounter problems associated with competition law.

In theory, local government may introduce mandatory bans on certain products if harm could be specifically attributed to them. Competition law may not apply where public health concerns are present if measures are proportionate and there is appropriate evidence to justify their use. However, this remains challenging as it would likely involve a lengthy legal challenge from the licensed trade.

## DISCUSSION OF PRODUCT RESTRICTION POLICIES

### Restrictions on certain products

Policies that restrict the sale of certain alcohol products have been introduced in Australia and the UK to address a broad range of alcohol-related harms. In Australia, product restrictions have been used to address alcohol-related harm in remote Aboriginal and Torres Strait Islander communities. Such policies have predominantly been used in the Northern Territory, including in the town centres and surrounding regions of Tennant Creek, Elliot, Curtain Springs and Katherine.<sup>172</sup> While similar in nature, the RTS scheme

in the UK has sought to reduce the availability of certain products in more urban settings, and these are not widespread across the country. Although both approaches seek to address public/street drinking, the associated burden of disease and criminal activity, they differ in several fundamental ways.

In the UK, RTS involves voluntary agreements between local councils and liquor retailers to tackle alcohol problems. Due to competition law, liquor retailers cannot be forced to enter into such agreements, which reduces

the licensing authorities' ability to introduce measures that reduce the harm caused by alcohol. In contrast to the voluntary RTS, licensing authorities have typically mandated product restrictions in Australia. For example, in its power under the *Liquor Act 1978 (NT)*, the Northern Territory Licensing Commission has imposed restrictions on particular licence types in various locations where alcohol misuse become a serious concern to the community.<sup>173</sup> Such mandatory restrictions are important in addressing externalities, where businesses have a conflict of interest between

potential profits and the harm inflicted on individuals and communities.

The voluntary nature of RTS schemes presents challenges. For example, RTS in Ipswich (UK) saw approximately two-thirds of the 147 off-licence stores sign up to the agreement. The remaining third are likely to have benefited financially from the policy, by encouraging people seeking to purchase restricted products to their store. One study identified concern among participants in the scheme that patrons shopping elsewhere might impact their businesses financially.<sup>174</sup>

However, business owners may be motivated to continue their participation for several other reasons. The study identified that in addition to alcohol-related harm reduction, retailers participated in RTS to deter disruptive customers from the store, reduce neighbourhood disruption, and to maintain a good relationship with the local government.<sup>175</sup>

Participants in the UK RTS also reported concerns the scheme's effectiveness would be reduced due to customers circumventing the measure by shopping at non-participating stores, and that a large-scale compulsory approach would be more effective. Such a mandatory approach has been used in Australia to restrict the sale of cask wine in some remote Aboriginal and Torres Strait Islander communities for example.<sup>176,177</sup> While the benefits of mandatory product restriction policies have not been assessed specifically, research has demonstrated the superiority of mandatory temporal restriction policies relative to voluntary

schemes. Similar benefits are likely to translate to off-premise alcohol sales restrictions, with mandatory schemes delivering greater harm reduction and outcomes that are more equitable by preventing businesses from benefiting from the responsible practice of others.

Although RTS aims to restrict the sale of low price and high strength alcohol products,<sup>178</sup> Australian policies have typically sought to restrict the sale of particular products perceived as being more susceptible to abuse for a variety of reasons. Restrictions appear to be directed at products deemed susceptible to abuse through a combination of alcohol concentration, price, and consumption trends. For example, restrictions introduced to Tennant Creek (NT) in 1995 banned the sale of four and five-litre casks of wine (among a raft of other measures). Restrictions were also placed on quantity, such as limitation of a single two-litre cask of wine purchase per person per day.

By targeting these products, the Tennant Creek measures (and other similar initiatives) may be better placed to address the availability of alcohol products favoured by problem drinkers. However, they have been manifestly inadequate in many circumstances. A limit of two litres of cask wine per day still allows the sale of alcohol well in excess of the recommended intake under guidelines, such as those provided by Australia's National Health and Medical Research Council<sup>179</sup> and the UK Chief Medical Officers.<sup>180</sup> Additionally, restricted products might be substituted with alternatives or circumvented by purchasing alcohol in surrounding regions.<sup>181</sup> Price mechanisms, which

would be particularly effective in reducing the consumption of products prone to abuse (such as cheap cask wine)<sup>182</sup> are more likely to be effective in regions with high rates of alcohol-related harm. In particular, price changes would have the greatest effect among lower socioeconomic demographics,<sup>183</sup> which are highly represented in the regions where product restrictions have been introduced.

In addition to product restrictions by region, some jurisdictions within Australia have also restricted the late night trade of high alcohol content and rapid consumption drinks (such as shots).<sup>184,185</sup> In each instance, these measures have formed part of a raft of measures designed to address harm associated with late night alcohol trade, particularly violence and personal injury. While the reduced availability of such drinks is likely to limit alcohol harm, the effectiveness of these measures has not yet been assessed and is limited by their introduction with a range of other initiatives.

Restriction of particular products in late night trade has received considerable opposition due to the onus placed on businesses to understand and abide by rules regarding the sale of different alcohol products throughout the night.<sup>186</sup> Consistency in the rules applied to the sale of products (for instance, determined on the basis of strength like those applied under RTS) is likely to be an important component in reducing regulatory burden and subsequent opposition.



## CONCLUSIONS

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### **Lessons for the UK:**

The ability of Australian licensing authorities to introduce mandatory bans on certain products is in clear contrast to the situation in the UK, where similar efforts to reduce alcohol-related harm among particularly affected subgroups are hampered by the voluntary nature of schemes. The effectiveness of schemes such as RTS is also undermined by their voluntary nature and the disincentive for businesses to participate that results from the non-participation of others. For this reason, mandatory restrictions in high-risk areas are likely to provide greater harm reduction. Evidence suggests pricing interventions, such as minimum unit pricing, would be more effective at reducing harm associated with cheap alcohol among high-risk groups.

### **Lessons for Australia:**

While parts of Australia have the advantage of mandatory action, most attempts to address high-risk groups have focused on very rural communities. As found in the UK, there may be opportunities to look at other issues within urban areas. In general, the harm reduction achieved through restrictions on the sale of particular alcohol products is undermined by the availability of alternative products. This substitution is reflected in increased sales of alternative products following the introduction of the restriction policy. Potentially, a scheme that restricts products on the basis of their concentration or price per unit of alcohol may reduce the extent to which restricted products are substituted for alternatives.

## RECOMMENDATIONS

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### **9. Restrict the sale of high risk products in areas of concern**

Restrict the sale of products susceptible to abuse, on the basis of strength and price, in areas with high levels of alcohol harm.

ALCOHOL

INDUSTRY

VOLUNTARY

SCHEMES

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COMPARING AND DISCUSSING:

ALCOHOL INDUSTRY VOLUNTARY SCHEMES

LIQUOR ACCORDS

## ALCOHOL INDUSTRY VOLUNTARY SCHEMES

<b>LOCATION:</b>	England, Wales, and Scotland
<b>WHAT IS IT?</b>	Industry-run initiative aiming to raise standards and improve business reputation.
<b>POLICY SCORE:</b>	4 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• They do appear to have had a positive impact in some areas.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Their impact is difficult to identify.</li> <li>• There is an inherent conflict of interest in business self-regulating, which means business objectives are likely to be prioritised over the public interest.</li> <li>• Many schemes are relatively resource intensive for the police and local government.</li> </ul>

Voluntary best-practice schemes within the licensed trade have existed since 2003, with a wide range now in use. They typically aim to increase patronage to licensed premises, raise standards and compliance with the law. Schemes also aim to increase cooperation between the licensed trade and local regulators, such as the police and licensing officials. Award ceremonies are often a key feature, with the prospect of an award often used to motivate venues to participate.

Voluntary, business-led initiatives include:

- The Best Bar None (BBN) scheme is sponsored by drinks producer Diageo and focuses on “promoting responsible management and operation of alcohol licensed premises”.
- Purple Flag is run by the Association of Town Centre Managers, which states the scheme is for “town centres that meet or surpass the standards of excellence in managing

the evening and night-time economy”.

- Community Alcohol Partnerships are run by the Retail of Alcohol Standards Group, primarily a collection of supermarkets and convenience store chains, and aim to address underage alcohol use.
- Business Improvement Districts (BIDs) differ slightly in that they mostly focus on daytime activities in town centres. However, some areas have introduced a specific night element, using them in a similar manner to the LNL but without official input from the local government or the police.

Some of these initiatives are resourced by both government and industry. For example, BBN receives backing from the Home Office, which has encouraged its expansion in areas covered by its Tackling Violent Crime Programme. BBN also features within the Home Office’s Local Alcohol Action Areas (LAAAs) and “effective local partnerships” is a

core element of the alcohol chapter in the Home Office’s new Modern Crime Prevention Strategy. As part of the Public Health Responsibility Deal, Bacardi, Diageo, Heineken, and Molson Coors have been working with the British Institute of Innkeeping and the Home Office to further develop the Best Bar None scheme.<sup>187</sup> This has included a combined investment of at least £500,000 over three years.<sup>188</sup>

### Evidence of impact

Industry claims relating to the effectiveness of alcohol industry voluntary schemes (voluntary schemes) are not supported by robust evidence. Literature produced by the Portman Group, which is funded by the drinks industry and widely regarded as an industry lobbyist,<sup>189</sup> makes quite striking claims about the effectiveness of voluntary schemes. It states, for example, that “since Doncaster introduced the [BBN] scheme in 2006, violent crime has fallen in the town centre during the evening by over 40 per cent.

Durham has also implemented the BBN scheme and has seen crimes of violence go down by nearly 60 per cent.<sup>190</sup> Supporting publications also contain strong quotes of support from key politicians and police officers. However, there is limited evidence these voluntary schemes were the key factor in producing the positive outcomes, particularly in light of significant national reductions in crime. A document produced by Leeds Metropolitan University for Best Bar None makes similarly unfounded assertions, including that BBN was a major contributing factor to a 26 per cent reduction in alcohol-related incidents.<sup>191</sup> The suggested link was particularly tenuous given the overall reduction in crime rates, and other related issues, was not formally investigated.

Some more formal investigations have attempted to evaluate voluntary schemes. A 2007 report by the Government Office for London into the effectiveness of BBN in Croydon concluded that there was “a lack of credible evidence” to suggest the scheme had an impact on the reduction of crime and disorder in the town centre. It found “an absence of evidence to confirm that good practice has been shared with other licensed premises in Croydon – BBN accredited or not”.<sup>192</sup> The report did highlight some benefits of the scheme, such as improved partnership working between different agencies, and acknowledged the effectiveness of the combination of encouragement, good practice, and regulatory enforcement associated with BBN. However, reflecting wider concerns about the lack of evaluation of alcohol policy the report also stated, “if BBN is to continue both within

London and nationally, there is a real need to agree a suitable ‘measuring tool’, which will assess the impact of it and provide credible evidence for those considering introducing it”.<sup>193</sup>

Recent research identified no action to address the issues highlighted by the Croydon evaluation in 2007, and no other formal evaluations, either independent or industry funded.<sup>194</sup> Another recent study found that neither BBN nor Purple Flag provide more than anecdotal support for their actual impact and that while they may help stimulate partnership working, this is “surely a distraction from the development of the types of evaluated Multi-Component Programmes”.<sup>195</sup> Such programs have been shown to be more effective.

The Leeds Metropolitan University document also cautions against being too bold in claiming impact, a warning that subsequent industry literature seems to have ignored.

*Small towns and cities with the majority of licensed premises with Best Bar None Accreditation could “make a difference” in a collective sense. However, it may not be prudent to set over-arching targets and objectives, attributable to Best Bar None, for towns and cities that have 200 to 300 pubs, clubs and bars with only a small proportion with Best Bar None Accreditation; a small percentage of pubs/clubs & bars may not be able to make a significant/quantifiable impact on the overarching targets for the town/city.<sup>196</sup>*

Despite apparent exaggeration of benefits resulting from voluntary industry schemes, BBN does appear

in some cases to have helped local coordination of licensed venues and licensing authorities. This has contributed to their popularity among some licensing and police officers. Individual case studies have also provided some evidence that voluntary schemes may assist to address problems to the benefit of local communities.<sup>197</sup> Despite this, there are many examples where this has not been the case.<sup>198</sup>

Another voluntary scheme found in the UK supports establishment of Community Alcohol Partnerships (CAPs). These partnerships aim to address alcohol misuse and anti-social behaviour among young people. While few of these have been evaluated, those that have found little impact on levels of anti-social behaviour despite some impact on public perceptions of the problem. Research into CAPs concluded that “their main role may be as an alcohol industry corporate social responsibility measure which is intended to limit the reputational damage associated with alcohol-related ASB.”<sup>199</sup>

Lack of evidence relating to the effectiveness of voluntary industry schemes is of particular concern given that the Home Office has placed significant focus on industry schemes while not taking forward far better-evidenced policies. This is not to say that such schemes do not have a potentially useful role to play, but that they appear to be far less effective at reducing harm than other options within the wider policy toolkit. The extent to which such schemes are established is remarkable given this lack of supporting evidence for their effectiveness.

### Resource requirements/ implications

The resource requirements are high for most voluntary schemes, involving substantial commitments of time and money. For schemes such as BBN, the biggest financial outlay is often an annual awards ceremony for premises who participate in the scheme. Licensing authorities primarily carry the burden but this often involves police resources as well. Industry groups do seem keen to put their own money towards them.

### Political support for policy

Voluntary schemes are politically attractive, due to their inclusion

within the Modern Crime Prevention Strategy. This is despite the lack of robust evidence these measures are effective at preventing crime. Proponents suggest that both the regulator and the regulated can be seen to benefit from voluntary schemes. The awards received by venues may be used as tools for bargaining with enforcement agencies, and public agencies are able to present the impression that action is being taken to reduce alcohol-related harm.<sup>200</sup>

The licensed trade has put significant emphasis on voluntary schemes in recent years, with the Portman Group assisting to integrate various schemes and

produce additional literature and promotional materials.

### Policy mechanisms

As these schemes operate on a voluntary basis, there is no need for a formal policy mechanism. In fact, it is likely licensed trade would oppose moves to mandate participation, even though this would likely improve effectiveness. At present, references to such schemes within legislation and government documents provide them with policy foundations without imposing any particular obligations.

## LIQUOR ACCORDS

<b>LOCATION:</b>	Australia
<b>WHAT IS IT?</b>	Voluntary agreements between businesses and licensing and compliance authorities to collaborate on initiatives to reduce alcohol-related harm.
<b>POLICY SCORE:</b>	4 on a scale of 3 to 9
<b>PROS:</b>	<ul style="list-style-type: none"> <li>• Politically feasible with support from industry stakeholders and government.</li> </ul>
<b>CONS:</b>	<ul style="list-style-type: none"> <li>• Limited evidence of effectiveness in reducing alcohol-related harm.</li> <li>• Relatively resource-intensive.</li> <li>• Effectiveness is undermined by voluntary nature of agreements, especially in light of a conflict of interest between profits and social responsibility.</li> <li>• Detracts from support for more effective measures.</li> </ul>

Liquor accords, or their equivalent, were introduced in Australia in the early 1990s. Similar schemes operated in the UK under the name of PubWatch.<sup>201</sup> In the Australian context, liquor accords are voluntary agreements between interested

stakeholders who cooperate to develop safe and well-managed environments in and around licensed premises. Liquor accords may include representatives from licensed premises, local businesses, local councils, police, government

departments, especially the liquor licensing body, and other community organisations such as residents' groups. While some of the earliest liquor accords were community-driven initiatives, more recently police or local government

typically play an active role. The liquor licensing body often plays a role in providing informational resources, guidance, and support to liquor accords. Each liquor accord focuses on resolving local issues within a local area and although individual accords may have similar elements, there are no two the same. Liquor accords are distinct from Alcohol Management Plan (AMPs), which sometimes share features such as product restrictions or other measures to reduce alcohol harm but are typically enforced by government and local communities rather than business networks.<sup>202</sup>

A liquor accord might include measures such as:

- authorising or requiring a licensee to stop serving liquor on the licensed premises (responsible service of alcohol and/or banning orders)
- restricting the public's access to the licensed premises (for example, by allowing or requiring the licensee to close earlier than their licence prescribes)
- prohibiting or restricting the use of glass containers; maintaining an incident register
- installing and operating closed circuit television or other security devices and/or providing security staff
- or charging a particular price for alcohol.

However, this list does not prescribe the detailed ways individual liquor accords identify and introduce location-specific programs.<sup>203</sup> It has been noted that while the

essential aim of a liquor accord is to reduce alcohol harm, the focus is often on dealing with individual 'troublemakers' (for example, by banning them from all local pubs), rather than on steps that might reduce licensees' profits.<sup>204</sup>

By 2016, liquor accords were specifically mentioned in New South Wales, Northern Territory, Queensland, Victorian, and Western Australian liquor licensing legislation. At that time, there were more than 150 liquor accords in place in New South Wales,<sup>205</sup> 99 in Queensland,<sup>206</sup> 89 liquor forums in Victoria (not all of which had an associated liquor accord document),<sup>207</sup> 13 in South Australia,<sup>208</sup> at least two in the Northern Territory.<sup>209</sup> New South Wales also has several precinct liquor accords (PLAs) in designated late-night entertainment precincts and membership of, and active participation in, these accords is mandatory for venues within the PLA boundary. Beyond PLAs, New South Wales has taken the further step of terminating the Kings Cross Precinct Liquor Accord and replacing it with special legislative provisions that apply only to the Kings Cross precinct.

### Evidence of impact

Evaluation of three early liquor accords found that two had ceased functioning when the funding for project officers was not renewed. However, the third Geelong accord was still functioning at the end of 1996 after four years and had successfully contributed to a reduction in violent assaults.<sup>210</sup> Factors reported as contributing to its success included police enforcement, the level of commitment by the police officer

charged with liquor licensing, the ongoing engagement by the licensees, and the lack of external commercial pressures from nearby licensees who had not signed up. However, a more robust follow-up evaluation of the Geelong accord (and other interventions in the region) concluded the accord was not associated with the reductions in alcohol-related assault or intoxication.<sup>211</sup>

Evaluations of other liquor accords show a similar inability either to achieve a significant reduction in alcohol-related harm or to ascribe causality of such a reduction to a liquor accord.<sup>212</sup> While specific projects introduced under the auspices of a liquor accord have resulted in claims of harm reduction, no evidence is easily available to check the claim. Failure to conduct comprehensive evaluations of the effectiveness of liquor accords has been a common feature since their introduction, even as the importance of such evaluation has been widely accepted. It has been suggested that liquor accords have been judged successful because objective measures of their success have been expanded to factors other than harm reduction.<sup>213</sup> These have included the promotion of self-regulation, the improved perception of safety and amenity (even while actual crime or assault indicators have not shifted), the improved relationships between members of the liquor accord, and improved liquor licensee management practices.<sup>214</sup>

## Resource requirements/ implications

Until recently, the NSW Government had a Liquor Accord Delivery Unit that was committed to having an effective and sustainable network of liquor accords across the state and actively worked with licensees and local communities to achieve this. However, following a reorganisation of administrative responsibilities for the liquor and gaming sectors, the Unit ceased to exist (personal communication). A team still exists that is no longer dedicated to liquor accords but provides education and support to priority areas, providing services such as information exchange events and web-based resources. Some liquor accord groups in NSW operate without funding. However, many generate their own income through membership subscriptions, or fundraising activities to pay for special initiatives, such as a transport strategy for patrons in the holiday season, or a responsible drinking campaign. Other sources of funding include grants, sponsorship, and

working with others to combine resources and funds.<sup>215</sup>

In Victoria, the Victorian Commission of Gambling and Liquor Regulation (VCGLR) supports liquor forums by providing resources, educational material, and regular email updates containing important information about legislation changes and new initiatives. This includes a bulletin sent to all forum chairpersons at the beginning of each month, containing news items and updates. The chairperson is encouraged to circulate the bulletin to all forum members and include it in discussions at the meetings.<sup>216</sup> Representatives of the VCGLR attend forum meetings from time to time, based on availability and priority.

In other states and territories, as for NSW and Victoria, the liquor licensing administrative authority provides support and facilitates the formation and maintenance of liquor accords. Members of the administrative authority may attend liquor accord meetings, and may

even be a standing member of an accord, but this varies widely.

## Political support for policy

Liquor accords are very popular. They meet a need arising from inadequate legal enforcement of the provisions of the liquor licensing legislation, and they are popular because they provide a focus for community development and bring communities together. Liquor accords are also supported by business because they give the appearance of industry engagement in alcohol harm reduction (despite being relatively ineffective in achieving this objective).

## Policy mechanisms

As mentioned, by 2016 liquor accords were specifically mentioned in New South Wales, Northern Territory, Queensland, Victorian, and Western Australian liquor licensing legislation. However, legislation is not necessary for to establish liquor accords.

## DISCUSSION OF ALCOHOL INDUSTRY VOLUNTARY SCHEMES

Governments in Australia and the UK encourage voluntary industry schemes to promote collaboration between the licensed trade and agencies that regulate and enforce laws relating to the sale of alcohol. The 'Best Bar None' scheme in the UK and 'liquor accords' in Australia share similar objectives and face similar challenges. There are also subtle differences in their design, which may provide lessons to inform policy development and achieve greater reductions in harm.

Due to the highly competitive

nature of the retail liquor industry, it has been argued that voluntary participation in liquor accords will always limit their likely effectiveness in reducing alcohol-related harm.<sup>217</sup> For this reason, voluntary programs that encourage members to participate in measures to reduce harm are likely less effective than initiatives that enforce such measures. One study demonstrated that mandatory restrictions on trading hours achieved greater reductions in the number of injuries presenting to hospital during high-alcohol hours than similar measures

under a voluntary liquor accord.<sup>218</sup>

Industry partnerships in the UK and Australia have both been characterised by unsubstantiated claims for their effectiveness. For example, industry groups in the UK have attributed reductions in violent crime in Doncaster and Durham to the Best Bar None scheme. Evidence that participation in the scheme itself was a primary factor in the observed harm reduction remains tenuous. Of several liquor accords established in the 1990s, only one was believed

to have contributed to a reduction in assaults. Despite this, a more robust evaluation of Australian liquor accords found no evidence to support their effectiveness in reducing alcohol-related assaults or intoxication.<sup>219</sup>

Voluntary industry schemes may, therefore, give the appearance of action to reduce alcohol harm, and at times have some impact, but are considerably less effective than mandatory measures. They have the potential to detract from support for more effective measures and may represent a conflict of interest between business profits and public interest. Businesses with scheme membership may give the appearance of action to address alcohol harm, while simultaneously undermining support for more effective reform.

There is presently little reliable evidence that industry schemes are effective in reducing alcohol-related harm.<sup>220</sup> While they appear to be more effective in developing

local communication networks, facilitating local input and a sense of control, they are considerably less effective in achieving genuine harm reduction.<sup>221</sup> Industry accords may be successful only so far as assessments of success are extended beyond the objective of harm reduction.<sup>222</sup> Since evaluations have been poorly designed and reported, a lack of evidence exists to support their extension to other regions. It could, therefore, be argued that the expansion of liquor accords should not be encouraged, particularly not ahead of better-evidenced policy options.

Compared with other policies, which either have minimal resourcing requirements (such as the cessation of sales) or would generate net revenue (such as risk-based licensing), industry partnerships are resource intensive. Although industry groups and members sometimes gain funding through members and fundraising activities, governments often provide support as well, in the

form of funding or sponsorship for educational programs and awards. This money could be better spent.

With respect to differences between schemes, a key feature of industry voluntary schemes in the UK that does not feature as prominently in Australian liquor accords is the distinctive branding used to identify members and promote responsible practices. Member businesses of the Best Bar None scheme, for example, display visible plaques with distinctive elements to create a 'kite mark' representing responsible business management. While it is not currently the case in the UK, such branding could contribute a degree of accountability to Australian businesses, where membership status is highly visible. Although some jurisdictions provide signage that includes small logos identifying membership of a liquor accord, the branding of such signage and size of the logo is unlikely to replicate the same 'kite mark' effect.<sup>223</sup>

## CONCLUSIONS

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### Lessons for the UK:

Given that industry schemes are relatively resource intensive and lack evidence of specific harm reduction, they should be deprioritised by governments in favour of evidence-based policies more likely to deliver meaningful reductions in alcohol-related harm.

### Lessons for Australia:

Similarly, a greater focus should be placed on policies with proven effectiveness in Australia.

## RECOMMENDATIONS

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### 10. Deprioritise alcohol industry voluntary schemes

Deprioritise assistance to alcohol industry voluntary schemes, such as liquor accords, in favour of evidence-based policies to deliver meaningful reductions in alcohol-related harm.



# CONCLUSION

## CONCLUSION

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This report has reviewed, compared, and contrasted a range of policies with the common objective of reducing alcohol-related harm through measures targeting the availability of alcohol. While some are more applicable to one country or another, there are many common themes between policy approaches in Australia and the UK. Similar challenges present in relation to off-licenced (packaged) liquor and on-licence venues, which require markedly different policy measures. There are also important lessons to be gleaned from the outcomes of policy approaches in each country, which should be used to improve future alcohol policies to reduce alcohol harm.

In England and Wales, Cumulative Impact Policies (CIPs) have been used effectively to shape the development of the licensed trade, allowing for growth in ways less likely to have a detrimental local impact. Statements of licensing policy (SLPs) can also be used to the same end. Similarly, restrictions on trading hours in regions of Australia demonstrate that enforcing earlier closing times can deliver significant reductions in alcohol-related violence and injury. Such policies reduce the burden on public resources and facilitate the transformation of local economies to include a greater variety of businesses and safer environments for revellers, tourists, and locals.

The UK and Australia face similar challenges with displacement effects. Policies introduced in one location may lead to consumers moving to adjacent precincts, where regulation of trading hours

or certain products (for example) is more lenient. This is a particular consideration in densely populated urban regions. Australia is likely to be less affected by such displacement, as the licensing authority typically has jurisdiction over a larger geographic area. The issue highlights the importance of broader state-level or regional policies that minimise this risk, as all venues and businesses are covered by the same restrictions and compete on equal terms.

Through selective placement of products, supermarkets are easily able to encourage consumers to make unintended purchases, or to purchase in larger quantities than desired. This is clearly to the benefit of retailers, increasing their profits, and the practice may not adversely impact consumers of some products other than by increasing the cost of their shop. However, alcohol is not an ordinary commodity like bread and milk. Encouraging customers to consume a greater amount of alcohol is clearly associated with negative health and social outcomes, in both the short and long-term.

Despite different legislative mechanisms, striking similarities are observed between the challenges faced in Australia and Scotland in incorporating health issues in licensing processes. Both harm minimisation and the public health objective are operationally weak, despite legislative provisions, and face similar problems defining and demonstrating evidence of what best supports public health. Extension of the Cardiff model in the UK and its proper introduction in Australia would aid this, although

good data is only half the story. While other regions could benefit from the Victorian approach to evidence, the Western Australian practice of placing the onus on applicants to prove their venue is in the public interest has the greatest potential to strengthen the application of licensing across Australia and the UK. As Western Australian public interest assessments (PIA) state, "it is not sufficient for applicants to merely demonstrate that the grant of the application will not have any negative impact"<sup>224</sup> Instead, applicants must demonstrate that the benefits resulting from a licence will outweigh the negative impact of the heightened availability of alcohol in that particular location.

Each of the licensing regimes covered here attempts to help residents take part in liquor licensing, to protect local communities from problems caused by licensed venues. Again, there are similar shared barriers and problems faced, including small consultation time periods, difficulties navigating the licensing process, a lack of independent legal advice and the legal influence of the licensed trade. The closest any area seems to have come to overcoming these is in Westminster City Council, where specialist legal and practical advice is provided for residents to help them make effective contributions. Similar schemes would be beneficial to the rest of the UK and Australia.

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