



Key Features of

LIQUOR LICENSING LEGISLATION IN AUSTRALIA



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Liquor licensing legislation in Australia is developed independently in each state and territory. Different approaches to managing the night time economy and minimising harms from alcohol misuse are employed by liquor licensing authorities throughout Australia in response to localised problems. These approaches can be:

1. Educational (i.e., aimed at increasing awareness of alcohol-related harms)
2. Facilitory (i.e., seek to improve working relationships between government, law enforcement, and industry)
3. Motivational (i.e., provide incentives for licensees to develop responsible practices and share a greater proportion of the social burden), and/or
4. Regulatory (i.e., increase statutory powers and the enforcement measures available to ensure that breaches in appropriate standards of behaviour are adequately addressed).¹

Many of these approaches are prescribed by state and territory liquor licensing legislation. Others are routinely imposed by licensing authorities as a condition of license, and some (e.g., lockouts) have also been voluntarily adopted by licensees in an effort to reduce alcohol-related violence on their premises.

Key features of the liquor licensing legislation in all Australian states and territories are summarised here (see Table 1).

Liquor Licensing Objectives & Harm Minimisation

Minimising the harms associated with alcohol is one objective of liquor licensing legislation. Harm minimisation aims to reduce alcohol-related health, social and economic harms by managing the associated risks. Its focus is risk management. It places an emphasis on decreasing problems, rather than decreasing use per se.²

Liquor licensing legislation creates obligations and allocates responsibility to individuals, businesses, and communities for the supply, consumption, and promotion of alcohol. It regulates:

- who may sell and supply alcohol
- the commercial practices of licensed premises
- who may consume and access alcohol
- where alcohol may or may not be consumed
- who is responsible for ensuring compliance with the regulations
- the offences, disciplinary procedures, and penalties applicable to those who fail to adequately comply with their statutory obligations.

In 2010, the National Centre for Education and Training (NCETA) undertook a literature review about alcohol-related harms, examined the liquor licensing legislation in all Australian states and territories and interviewed key law enforcement personnel about their perspectives of this legislation. Findings were reported in:

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., & Roche, A.M. (2011). *Liquor Licensing in Australia: An Overview*. Adelaide, SA: National Centre for Education and Training on Addiction (NCETA), Flinders University.

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., & Roche, A.M. (2011). *Liquor Licensing in Australia: A Jurisdictional Breakdown*. Adelaide, SA: National Centre for Education and Training on Addiction (NCETA), Flinders University.

Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., & Roche, A.M. (2011). *Liquor Licensing in Australia: Police Expectations and Experiences*. Adelaide, SA: National Centre for Education and Training on Addiction (NCETA), Flinders University.

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Table 1 Examples of harm minimisation features of liquor licensing legislation (as at February 2013)

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Legislated harm minimisation objectives	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Liquor accords	No	Yes	Yes	Yes	Yes	No	Yes	Yes
Mandatory RSA	Yes	Yes	Yes ⁱ	Yes	Yes	Yes	Yes	Yes
Venue Management Training	No	No	Must successfully complete a Liquor Act test	Yes	Yes	No	Yes (new licensee's only)	Yes
Lockouts	Yes	Yes	Yes ⁱⁱ	Yes	Yes ⁱⁱⁱ	No ^{iv}	Yes	Yes
Barring orders	No	No	Yes ^v	No	Yes	Yes	No	Yes
Banning notices	No	Yes	Prohibition Order	Civil Banning Orders ^{vi}	No	No	Yes	Prohibition Orders
Risk-based fee structure	Yes	No	No	Yes	No	No	Yes	No ^{vii}

ⁱ Responsible Service of Alcohol training was not a statutory provision. However, the Licensing Commission had adopted a policy mandating that all staff must have responsible service of alcohol training within one month of commencing employment. This was part of the licence conditions.

ⁱⁱ Lockouts were not a statutory provision in the Northern Territory; however, the Licensing Commission had adopted a policy of imposing lockouts on licensed premises as part of its power to determine the conditions of a licence.

ⁱⁱⁱ Although there were no lockout provisions contained within the legislation, lockouts could be imposed on individual premises under Section 43 of the *Liquor Licensing Act 1997* (SA).

^{iv} While there were no provisions for lockouts in the *Liquor Licensing Act 1990* (TAS), lockout conditions could be imposed on an out-of-hours permit.

^v These were called banning notices in the Northern Territory.

^{vi} Only applicable in declared Drink Safe Precincts.

^{vii} Western Australia has statutory provisions to enable additional fees to be charged for acts of non-compliance; however, it has not implemented these provisions in its fee schedule.

Reducing the harms associated with alcohol misuse may not be the sole objective of liquor licensing legislation. In many jurisdictions, decision-makers must also consider economic and social imperatives when determining licence applications. Such determinations are based upon what the liquor licensing authority considers to be in the best interests of the community or in the public interest. This requires a case by case assessment of each licence application, rather than a general judgement of alcohol-related harms overall.

Examples of Harm Minimisation Features of Liquor Licensing Legislation

Trading Hours

Increased trading hours are associated with a rise in a range of

alcohol-related harms.³⁻⁵ Venues with extended trading hours attract younger patrons,⁶⁻⁸ who tend to go out later at night, and often after 'pre-loading' at home on cheaper alcohol.^{7, 9-11}

Extended trading hours can contribute to increases in:

- violent incidents with the most frequent time for assaults to occur is between midnight and 3 am^{8, 12-16}
- alcohol consumption^{7, 17-18}
- blood alcohol levels of drivers in road crashes^{7, 18-19}
- alcohol-related hospital admissions.^{11-12, 21}

Drinking to intoxication on weekend evenings in licensed premises is associated with criminal incidents and alcohol-related hospitalisations.²²⁻²⁵

Lockouts

Lockouts have been adopted in some Australian jurisdictions to reduce alcohol-related problems in entertainment precincts and improve community perceptions of safety. Lockouts aim to alter the migration of patrons between licensed premises and give police and security staff greater control over patron behaviour by refusing entry to patrons after a designated time.

While lockouts implemented in Queensland, Newcastle, and New South Wales have been effective in reducing alcohol-related harms,²⁶⁻²⁸ these lockouts were implemented with a range of other strategies (e.g., changes in access to transport, restrictions on alcohol service). There is limited evidence regarding the effectiveness of lockouts implemented as an isolated measure.

Freeze periods

Due to an increase in violence and anti-social behaviours in some entertainment precincts, Queensland, New South Wales, and Victoria implemented freeze or moratorium periods on the issuing of extended trading hour authorisations in these areas. The aim of such freezes was to contain growth in extended trading licences so that long term strategies to improve the safety and amenity of the designated precincts could take effect. A mandatory six hour closure period was also introduced into New South Wales' liquor licensing legislation to address the 24 hour trading licences which some venues had previously procured under the legislation.

Liquor Accords

Liquor accords are local community-based initiatives. They can offer a small but useful contribution to the management of alcohol-related problems by encouraging collaboration among different stakeholders about the strategies available to reduce violence and disorder in and around licensed venues. While the effectiveness of voluntary accords in reducing harm is questionable, there is potential for well organised accords to reduce alcohol-related harms in localised areas.²⁹⁻³⁰ Well organised accords have shared targets and defined strategies, monitor performance and compliance, and provide a complementary strategy to liquor licensing legislation enforcement.

Responsible Service of Alcohol (RSA) & Venue Management Training

The practices of management and staff of licensed premises have a profound influence on the subsequent behaviours of patrons and the culture of licensed premises.³⁰⁻³¹ Mandatory RSA training for bar staff is a prerequisite for working in licensed premises in all states and territories. RSA programs aim to increase compliance with statutory requirements, reduce the consequences of alcohol intoxication by changing serving practices, and foster safer drinking in licensed premises.

Studies examining the effectiveness of RSA programs in changing server behaviour, preventing injuries, or improving the ability of bar staff to identify signs of intoxication have demonstrated little positive impact.³² RSA may be ineffective in reducing alcohol-related harms for the following reasons:

- lack of enforcement by licensees, police or other regulatory bodies
- absence of available objective standards and measurements
- service staff are unable to adequately assess intoxication levels due to their age and lack of experience, as well as their own alcohol use and expectancies
- server interventions are inconsistent with the profit-making aims of the establishment
- service staff are uncertain of their role in preventing 'determined drunkenness'²⁹ which may conflict with management and customers service expectations.

Licensees and managers of licensed premises are also required to undertake further training and testing in some states and territories. These courses go beyond the fundamentals of RSA training and inform participants about the objectives of and their responsibilities under liquor legislation, management and risk strategies, and self-auditing processes.

Barring Orders and Banning Notices

Anti-social behaviour and alcohol-related aggression also often reflects characteristics of the consumer. Those most likely to be involved in alcohol-related violence in and around licensed premises tend to be male, young, and heavy drinkers.³¹ Many states and territories have adopted and/or strengthened the range of measures available to prevent problem patrons from attending licensed premises and reinforce community messages about individual responsibility. Orders have also been implemented through various liquor accords.

Barring and banning orders prohibit patrons who have engaged in a

range of anti-social and/or violent behaviours from attending specific premises or districts for a defined period of time. Orders may be imposed by senior police, licensing authorities, or courts.

Although there are a number of limitations inherent in enforcing the orders (e.g., in large metropolitan areas, it is difficult for hospitality venues and police to identify people who have been subjected to a barring order), these orders are considered to have merit in deterring alcohol-related violence and anti-social behaviour by sending a strong message to the community that such behaviours are not acceptable and will not be tolerated.

Risk-based Licensing Fee Structures

Risk-based licensing fees have been adopted in many jurisdictions in response to the harms which have resulted from the increased availability of alcohol. They are distinct from graduated and set licensing fee structures as they act as a motivational tool where by 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.

The adoption of risk based licensing structures reflects a continuing evolution from reactive prescriptive regulatory approaches to more proactive, preventative, performance based approaches. However, risk-based licensing structures also reflect a readiness to accept certain levels of risk, and may potentially increase resistance amongst licensees to accept some regulatory demands and penalties. Police have noted that due to the acceptance of certain levels of risk, the implementation of risk-based licensing structures can impact their ability to successfully prosecute licensees for some liquor licensing breaches (e.g., serving intoxicated patrons). Licensees may contend that they complied with an approved risk management plan, and thus the alleged breach was within an acceptable level of failure.

References

1. Balch, G.I. (1980). The stick, the carrot, and other strategies: A theoretical analysis of governmental intervention. *Law & Policy*, 2(1), 35-60.
2. Lenton, S., & Single, E. (1998). The definition of harm reduction. *Drug and Alcohol Review*, 17(2), 213-220.
3. Babor, T.F., Caetano, R., Casswell, S., Edwards, G., Giesbrecht, N., Graham, K., Grube, J.W., Hill, L., Holder, H., & Homel, R. (2010). *Alcohol: No ordinary commodity. Research and public policy*. Oxford University Press: Oxford.
4. Stockwell, T. (2006). Alcohol supply, demand, and harm reduction: What is the strongest cocktail? *International Journal of Drug Policy*, 17, 269-77.
5. Popova, S., Giesbrecht, N., Bekmuradov, D., & Patra, J. (2009). Hours and days of sale and density of alcohol outlets: Impacts on alcohol consumption and damage: A systematic review. *Alcohol and Alcoholism*, 44(5), 500-516.
6. Gruenewald, P. (2011). Regulating availability: How access to alcohol affects drinking and problems in youth and adults. *Alcohol Research & Health*, 34(2), 248.
7. Wells, S., Graham, K., & Purcell, J. (2009). Policy implications of the widespread practice of 'pre-drinking' or 'pre-gaming' before going to public drinking establishments. Are current prevention strategies backfiring? *Addiction*, 104(1), 4-9.
8. Stockwell, T., & Chikritzhs, T. (2009). Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking. *Crime Prevention & Community Safety*, 11(3), 153-170.
9. Hough, M., & Hunter, G. (2008). The 2003 Licensing Act's impact on crime and disorder: An evaluation. *Criminology and Criminal Justice*, 8(3), 239-260.
10. Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R., & Roche, A.M. (2011). *Liquor licensing in Australia: Police expectations and experiences*. Adelaide, SA: National Centre for Education and Training on Addiction (NCETA), Flinders University.
11. Graham, K. (2012). Commentary on Rossow and Norström (2012): When should bars close? *Addiction*, 107(3), 538-539.
12. Newton, A., Sarker, S.J., Pahal, G.S., van den Bergh, E., & Young, C. (2007). Impact of the new UK licensing law on emergency hospital attendances: A cohort study. *Emergency Medicine Journal*, 24(8), 532-534.
13. Briscoe, S., & Donnell, N. (2003). Problematic licensed premises for assault in inner Sydney, Newcastle and Wollongong. *Australian & New Zealand Journal of Criminology*, 36(1), 18-33.
14. Kypri, K., Jones, C., McElduff, P., & Barker, D. (2011). Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction*, 106(2), 303-310.
15. Livingston, M. (2008). A longitudinal analysis of alcohol outlet density and assault. *Alcoholism: Clinical and Experimental Research*, 32(6), 1074-1079.
16. Schofield, T.P., & Denson, T.F. (2013). Alcohol outlet business hours and violent crime in New York State. *Alcohol and Alcoholism*, doi: 10.1093/alcalc/agt003.
17. Hughes, K., Anderson, Z., Morleo, M., & Bellis, M.A. (2008). Alcohol, nightlife and violence: The relative contributions of drinking before and during nights out to negative health and criminal justice outcomes. *Addiction*, 103, 60-5.
18. Reed, M.B., Clapp, J.D., Weber, M., Trim, R., Lange, J., & Shillington A.M. Predictors of partying prior to bar attendance and subsequent BrAC. (2011). *Addictive Behaviors*, 36, 1341-3.
19. Chikritzhs, T., & Stockwell, T. (2006). The impact of later trading hours for hotels on levels of impaired driver road crashes and driver breath alcohol levels. *Addiction*, 101(9), 1254-1264.
20. Hahn, R.A., Kuzara, J.L., Elder, R., Brewer, R., Chattopadhyay, S., Fielding, J., Naimi, T.S., Toomey, T., Middleton, J.C., & Lawrence, B. (2010). Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms. *American Journal of Preventive Medicine*, 39(6), 590-604.
21. Rossow, I., & Norström, T. (2012). The impact of small changes in bar closing hours on violence. The Norwegian experience from 18 cities. *Addiction*, 107(3), 530-537.
22. Collins, D.J., & Lapsley, H.M. (2008). *The costs of tobacco, alcohol and illicit drug abuse to Australian Society in 2004/05*. Canberra: Australian Government.
23. Rowe, S., Wiggers, J., Wolfenden, L., & Francis, J.L. (2010). Establishments licensed to serve alcohol and their contribution to police-recorded crime in Australia: Further opportunities for harm reduction. *Journal of Studies on Alcohol and Drugs*, 71, 909-916.
24. Rowe, S., Wiggers, J., Nicholas, C., & Wolfenden, L. (2012). Alcohol consumption and intoxication among young people involved in police-recorded incidents of violence and disorder in non-metropolitan New South Wales. *Australian and New Zealand Journal of Public Health*, 36(1), 33-40.
25. Miller, P.G., Sønderlund, A.L., Coomber, K., Palmer, D., Tindall, J., Gilham, K., & Wiggers, J. (2012). The effect of community interventions on alcohol-related assault in Geelong, Australia. *The Open Criminology Journal*, 5, 8-15.
26. Palk, G.R.M, Davey, J.D. & Freeman, J.E. (2010). The impact of a lockout policy on levels of alcohol-related incidents in and around licensed premises. *Police Practice and Research*, 11(1), 5-15.
27. Jones, C., Kypri, K., Moffatt, S., Borzycki, C., & Price, B. (2009). *The impact of restricted alcohol availability on alcohol-related violence in Newcastle, NSW. Crime and Justice Bulletin No. 137*. Sydney: Bureau of Crime Statistics and Research.
28. Moffatt, S., Mason, A., Borzycki, C., & Weatherburn, D. (2009). *Liquor licensing enforcement and assaults on licensed premises. Crime and Justice Statistics Issue Paper No. 40*. Sydney: Bureau of Crime Statistics and Research.
29. Roche, A.M., Bywood, P., Freeman, T., Pidd, K., Borlagdan, J., & Trifonoff, A. (2009). *The social context of alcohol use in Australia*. Adelaide: National Centre for Education and Training on Addiction (NCETA), Flinders University.
30. National Drug Research Institute (NDRI). (2007). Trends in alcohol-attributable deaths among Indigenous Australians, 1998-2004. *National Alcohol Indicators*, 11.
31. Graham, K. (2009). They fight because we let them! Applying a situational crime prevention model to barroom violence. *Drug and Alcohol Review*, 28, 103-109.
32. Ker K, Chinnock P. (2008). Interventions in the alcohol server setting for preventing injuries. *Cochrane Database of Systematic Reviews*, Issue 3. Art. No.: CD005244. DOI: 10.1002/14651858.CD005244.pub3.

