



Department of
**Local Government,
Sport and Cultural
Industries**

Amendments to the *Liquor Control Regulations 1989* to restrict the grant or removal of licences authorising sale of packaged liquor

Summary Decision Regulatory Impact Statement

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Context

This summary Decision Regulatory Impact Statement (DRIS) has been developed to highlight the implications of the proposed regulations to support the new provisions of the *Liquor Control Act 1988* relating to the grant or removal of licences authorising sale of packaged liquor, and to summarise the consultations undertaken.

The Problem

The vast majority of liquor sold in Western Australia is sold as packaged liquor for consumption off licensed premises.

There are over 1,300 licensed premises that are permitted to sell packaged liquor in a retail setting in Western Australia. This includes 629 liquor stores, 272 hotels and 413 taverns. 40 of these licences have been identified as having retail sales areas exceeding 500m².

Large packaged liquor outlets can have adverse impacts on the community, particularly where there is a concentration of packaged liquor outlets in a locality. High alcohol outlet density is associated with many social harms in the neighborhoods in and around the alcohol outlets, such as disorderly conduct, noise, neighborhood disruption, public nuisance, and property damage.¹ On the basis of strong scientific evidence of intervention effectiveness, the Community Preventive Services Task Force recommended “limiting alcohol outlet density through the use of regulatory authority (e.g., licensing and zoning)”.²

At-risk groups are more sensitive to features such as the price of alcohol which can influence the amount of alcohol consumed, and related harm. Therefore, the increased availability of, and access to, low-priced liquor can disproportionately increase the risk of harm to vulnerable members of the community.

In this context, the harm is not confined to consumers of alcohol and extends to harm caused to the health and well-being of individuals, families and communities, as well as social, cultural and economic harm. This includes harm which may occur through an increase in anti-social or injurious behaviour due to the use of liquor and is not limited to physical harm (see Box 1).

Box 1: West Australians’ alcohol use is high by national and world standards

- Alcohol sales data from 2011/12 (the latest available) show the per capita consumption of alcohol in WA was higher than the national average. In 2011/12, per capita consumption of alcohol in WA (for people aged 15+) was 11.94 litres, compared to 10.04 litres for Australia.³
- Compared to the national average, WA has a lower proportion of people who don’t drink (18% in WA compared to 22% in Australia).⁴
- People in WA were more likely to drink alcohol in quantities that placed them at risk of harm on a single occasion (at least monthly) than the national average in 2013 (31% in WA compared to 26% in Australia).⁴
- West Australians were more likely to drink at risk of long-term harm from alcohol than the Australian average in 2013 (22% in WA compared to 18% nationally).⁴

The availability of packaged liquor is of particular concern from a public health perspective and the current provisions of the *Liquor Control Act 1988* do not provide enough scope for the size and location of a venue to be taken into account from an outlet density perspective.

Whilst the evidence to support the link between the size of a packaged liquor outlet and the harm caused to the community is not comprehensive or definitive the approach proposed is precautionary in nature and designed to minimise potential harm from access to large quantities and ranges of lower priced packaged liquor.

In general, there is a concern that larger outlets offer cheaper alcohol and that in turn stimulates greater consumption and possible related harm. Therefore, along with other measures that can be taken to address alcohol related harm, the proposal provides another mechanism to tackle a serious concern.

¹ Campbell CA, Hahn RA, Elder R, et al. The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms. *Am J Prev Med.* 2009;37(6):556–569.

² Task Force on Community Preventive Services. Recommendations for reducing excessive alcohol consumption and alcohol-related harms by limiting alcohol outlet density. *Am J Prev Med.* 2009;37(6):570–571.

³ Loxley W, Gilmore W, Catalano P, et al. National Alcohol Sales Data Project (NASDP) Stage 5 Report. Perth, Western Australia: National Drug Research Institute, Curtin University; 2016.

⁴ Australian Institute of Health and Welfare. National Drug Strategy Household Survey detailed report 2013. Drug statistics series no. 28. Cat. no. PHE 183. Canberra: AIHW; 2014.

The final report of the Independent Review Committee published in December 2013 considered measures to reduce the availability of alcohol, including outlet density. The Committee's report noted that the risk of alcohol-related harm could be reduced by controlling alcohol sales and supply through location, density and type of licensed outlet and made the following recommendations:

Recommendation 41

Amend section 38(4) of the Act to include the number, type and nature of any existing and proposed licensed premises in the relevant locality as a matter the licensing authority may have regard to in assessing the public interest.

Recommendation 42

The Minister should monitor and assess the outcomes of the New South Wales trial of an Environmental and Venue Assessment Tool (EVAT).

Recommendation 43

The Minister should monitor the progress of and assess the Outlet Density Tool currently being developed by the WA Drug and Alcohol Office.

Objectives of the Proposal

The overall objective of the proposal is to minimise the adverse impact that packaged liquor outlets can have on the community by limiting the ability for applicants to obtain a liquor licence for a large packaged liquor outlet where an existing large packaged liquor outlet already exists.

This will be achieved by providing the licensing authority with more scope to limit the establishment of large packaged liquor outlets where another large packaged liquor outlet already operates.

This approach is intended to reduce the level of harm caused to vulnerable members of the community, consequential harm to families and communities and social, cultural and economic harm. This includes harm which may occur through an increase in anti-social or injurious behaviour due to the use of liquor and is not limited to physical harm. Whilst the evidence to support the link between the size of a packaged liquor outlet and the harm caused to the community is not comprehensive or definitive the approach proposed is precautionary in nature, and a review will be undertaken after three years.

Options Considered

The options considered included:

- Floor size of retail space: 400² and 600²
- Distance between large package liquor premise in metro and regional areas

During debate of the *Liquor Control Amendment Act 2018* in the Legislative Assembly, the Minister for Racing and Gaming gave an undertaking that a different distance would be proposed for metropolitan areas of the state and regional areas of the state (Mr P. PAPALIA, Minister for Racing and Gaming: *I place on Hansard for the purposes of anyone deliberating over this sort of detail in the future that the intent is that this clause will enable different distances to be defined for the regions, not the metropolitan area. The intent is that there is one distance and one prescribed scale within the metropolitan area. I reiterate that the scale of the floor space is to be uniform across the state.* 20 March 2018).

During debate in the Legislative Council, the Minister representing the Minister for Racing and Gaming provided an indication of the range of the criteria. (Hon ALANNAH MacTIERNAN: *Another point that has garnered much attention is the floor size and distance criteria for large packaged-liquor outlets. Although the exact criteria is yet to be determined—again, this will be done in consultation with key stakeholders—the Minister has asked that I provide members with an indication of his current thinking. In this regard, it is likely that the floor size will be anywhere from 400 to 600 square metres and the distance is likely to be around five kilometres.* 26 June 2018).

Following the passage of the amendments, consultation was undertaken with industry bodies and key stakeholders in relation to determining the size and distances to be prescribed in the regulations. It is the government's firm view that, following consultation with industry bodies and key stakeholders, the proposed regulated retail floor area and distance from an existing premises best meet the needs of the community and the expectation of industry bodies and key stakeholders.

Strategies such as regulating the minimum floor price of liquor may be a consideration for government as part of other initiatives, however this does not fall within the regulatory scope of the Liquor Control Act 1988.

After considering the feedback of stakeholders, the methodology used to determine the parameters to be prescribed in the regulations included a number of factors being taken into consideration:-

- *Floor size* – based on responses from the respondents to the discussions paper, the average floor size was calculated at 442 square metres. The proposal to prescribe 400 square metres is based on the closeness of the size to the average and information from within the Department that an outlet of this size is considered to be on the larger size for packaged liquor outlets. This measure also complies with indications provided by the Minister for Racing and Gaming during parliamentary debate during the passage of the amendment act.
- *Distance* – the recommended distances of 5 kilometres for the metropolitan area and 12 kilometres for regional areas reflect the nominated average by respondents, with adjustments made for ease of application and clarity.
- *Measure* – while the recommended measures, size and distance, does not reflect the majority of respondents' views, other factors were taken into consideration including: inequity in particular areas due to large waterways such as the Swan River; ease of mapping distance for proponents; and practicality of measurement ie. ability to measure travelling distance by road.

The regulations are proposed to be drafted as follows:

Floor size of retail section:	400 square metres
Metropolitan distance:	5 kilometres
Regional distance:	12 kilometres
Measure:	Shortest distance by road

The criteria is consistent with undertakings given by the Minister for Racing and Gaming during the debate of the *Liquor Control Amendment Act 2018* and is the Government's preferred and precautionary option to reduce alcohol related harm related to packaged liquor sales.

The option to maintain the status quo and rely on existing provisions of the *Liquor Control Act 1988* does not meet the government's mandate to reduce harm as there is not sufficient scope to effectively limit the ability for applicants to obtain a liquor licence where an existing large packaged liquor outlet already exist within a locality.

If the new provisions are not introduced, there will be no impact on existing or new packaged liquor outlets however there will be ongoing costs to government and the community in dealing with alcohol related harm. There is strong evidence to suggest that there is a link between the rate of alcohol related harm and the availability of packaged liquor, and whilst the evidence to support the link between the size of a packaged liquor outlet and the harm caused to the community is not comprehensive or definitive the approach proposed is precautionary in nature. Harm indicators include rates of hospitalisation, assault, domestic violence, chronic disease and heavy episodic drinking.

Impact Analysis/Benefits

The overall benefit of the government's proposal would be to reduce levels of alcohol related harm in individuals and the community.

The principle of competition is not contemplated in the *Liquor Control Act 1988*, however the objects are very clear:

- to regulate the sale, supply and consumption of liquor; and
- to minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
- to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act; and
- to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor that are consistent with the interests of the community.

Currently there is limited evidence linking the size of an outlet with alcohol-related harm. However, the link between price and harm is well documented^{5,6,7,8,9,10,11}. In addition, larger outlets are typically associated with lower prices^{12,13,14}. As noted earlier, a precautionary approach is being taken to reduce harm, which as outlined earlier can be significant for affected individuals and communities.

The main cost of the proposal to business is to limit the ability for more than one large outlet to be established in a defined area (5km metro; 12km regional). However, existing large outlets can continue to operate as the proposal only applies to new liquor licences. In addition, in recent years there has been a noted decline in the number of applications lodged for large format liquor stores by the two major supermarket chains. In this regard, the most recent larger outlet licence was granted in 2016. Most applications for liquor store licences in the last 5 years have been for small to medium sized stores. As such, the costs of the proposals may not be as high as they could otherwise be.

It should also be noted that local governments have a role in planning approval and in some cases, a premise that is over 300m² in size is considered a large liquor store and relevant local government planning restrictions may already apply.

Finally, while the proposed provisions will have some impact on the ability for two large format stores to be established in a locality, the overriding object of the Act relating to harm should take precedence over competition in these circumstances.

⁵ World Health Organization. Tackling NCDs: 'Best buys' and other recommended interventions for the prevention and control of noncommunicable diseases. WHO. 2017.

⁶ National Preventative Health Taskforce 2009, *Australia: the healthiest country by 2020: Technical Paper 3: Preventing Alcohol-related harm in Australia: a window of opportunity* Including addendum for October 2008 to June 2009, Commonwealth of Australia, Canberra, p.23

⁷ Roche A, Bywood P, Borlagdan J, Lunnay B, Freeman T, Lawton L, Tovell A & Nicholas R 2007, *Young People and Alcohol: The Role of Cultural Influences*, National Centre for Education and Training on Addiction, Flinders University Adelaide, p.169

⁸ O'Connell R. Cheap grog is key reason for violence, says top cop. *The West Australian*. 2011 Jun 2; 10

⁹ Stockwell T, Gruenewald P. 2004. Controls on the physical availability of alcohol, in Heather N & Stockwell T (eds), *The Essential Handbook of Treatment and Prevention of Alcohol Problems*. Chichester: Wiley & Sons: 213-234.

¹⁰ Livingston, M., Chikritzhs, T. & Room, R. (2007). Changing the density of alcohol outlets to reduce alcohol-related problems. *Drug and Alcohol Review*, 26(5). P.563

¹¹ Gardiner, R. & Coase, P. (2011) *Cheap Drinks*. Perth: Western Australia

¹² Liang W, Chikritzhs T. Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability. *Drug and Alcohol Review*. 2011; 30(5):524-535

¹³ Johnston R, Stafford J, Pierce H, Daube M. Alcohol promotions in Australian supermarket catalogues. *Drug and Alcohol Review*. 2016; 36(4):456-463.

¹⁴ Jones SC, Barrie L, Robinson L, et al. Point-of-sale alcohol promotion in the Perth and Sydney metropolitan areas. *Drug and Alcohol Review*. 2012; 31:803-805.

Consultation

A summary of responses relating to outlet density to the 2013 review of the *Liquor Control Act 1988* is provided below:

WA Police

There is a substantial body of evidence linking gradual changes in outlet density to alcohol-related problems, particularly violence. These studies have found higher rates of alcohol-related problems in areas with higher liquor outlet densities.

A Victorian study¹⁵ found that alcohol outlet density was significantly associated with rates of domestic violence and the density of packaged liquor outlets had the strongest association compared to on-premise licences. This led the authors to suggest “a need for licensing policies that pay more attention to off-premises alcohol availability”.

A Perth study found that participants with more liquor outlets in their neighbourhood were more likely to have higher levels of harmful drinking and worse mental health than those who live further away from such outlets.

Recommendation:

- *Liquor licensing decisions to approve new licences take greater account of the increasing body of evidence linking increasing density of liquor outlets, and increasing volume of alcohol sold, with higher levels of alcohol-related harm both on-premises and in private homes. This is particularly relevant in the context of an increasing number of applications from large off-premise retailers such as supermarket chains (liquor barns).*

Mental Health Commission (WA Department of Health)

The availability of packaged liquor has been positively associated with a number of harm indicators, including rates of assault, domestic violence, chronic disease and heavy episodic drinking.

Research shows that outlet density is linked to increases in harm, disorder, violence, child abuse and ill-health and alcohol-related cumulative impact is not limited to problems associated with the night-time economy. Packaged liquor outlets and multiple smaller venues can also contribute to cumulative impact in a community.

Recommendations:

- *Recognise the cumulative impact of licensed premises as a proper matter for the Licensing Authority to consider regarding alcohol-related harm and ill-health, community safety and amenity.*
- *Include provisions in the Public Interest Criteria (Section 38 and related policy) which support consideration by decision makers of current and future outlet density and cumulative impact of liquor licences on alcohol-related harm, ill-health, safety and amenity, both at the locality and state level.*

McCusker Centre for Action on Alcohol and Youth

Increased outlet density leads to an increasingly competitive alcohol market-place, which may result in lower prices. In this situation, alcohol consumption would be expected to increase. Research has identified strong effects of outlet density, in particular the ‘bunching’ of licensed premises, on the short-term harms related to concentrated drinking on a single occasion (binge drinking), such as alcohol-related injuries and violence.

Recommendation:

- *Amend the Act to empower liquor licensing decision makers to consider outlet density, the cumulative impact of licensed premises and the clustering of premises.*

¹⁵ Livingston M (2011). *A longitudinal analysis of alcohol outlet density and domestic violence*. *Addiction*, Vol 106, p 919-925.

Foundation for Alcohol Research and Education (FARE)

International studies have shown that increased outlet density has also been linked to higher rates of road traffic accidents, drink driving or being a passenger of a drink driver, robbery, homicide, suicide (both attempted and completed), child maltreatment, deviant adolescent behaviours, sexual offences and sexually transmitted infections.

Recommendations:

- *That the WA Government establishes and enforces saturation zones in areas that are identified as already having large numbers of liquor licences, including small bar licences.*
- *That the WA Government introduces cumulative impact and cluster control policies for the determination of new liquor licenses.*

The Commissioner for Children & Young People

A World Health Organisation international review of alcohol-related research found that regulating the physical availability of alcohol (such as the trading hours and density of liquor outlets) and taxation and pricing were the two most effective types of intervention for reducing alcohol-related harm.

Research has demonstrated that increased trading hours and higher outlet density both significantly increase harmful alcohol consumption and related harm.

Recommendation:

- *That the Act is amended to require the licensing authority to consider outlet density and the cumulative impact of licensed premises when deciding licensing applications in the public interest.*

The Cancer Council

The link between outlet density and alcohol-related harm is a clear one and Australian data shows that on-premises liquor licence density is linked to an increase in violence, whereas off-premises liquor licence density is linked to an increase in chronic alcohol-related harm. In each case, higher outlet density leads to a geographically localised increase in alcohol consumption, but manifests in different types of harm. Recent evidence from Western Australia also links higher outlet density with an increase in alcohol consumption and to greater mental health morbidity.

Outlet density is of sufficient concern to other jurisdictions to warrant restrictions on new licence applications. Victoria and New South Wales have both moved to restrict new licences in specific local government areas in an attempt to ameliorate alcohol-related harm.

The 15 stakeholders who were consulted during the drafting of the Amendment Act and the development of the regulations fall into four categories:

- Industry associations – Liquor Stores Association, Australian Hotels Association and WALGA
- Retail outlets and chain stores – Coles, Woolworths, Aldi, Liquor Barons, ALH Group, Liquor Marketing Group, Master Grocers Association and Costco
- Government agencies – Chief Health Officer, WA Police and SBDC
- Community health advocate – McCusker Centre for Action on Alcohol and Youth

Officers from the Department and the Minister's office have met in person with representatives from Endeavour Drinks Group/Woolworths Ltd and via teleconference with Coles Liquor Group.

Feedback on the proposed regulations has been mixed. Those stakeholders with an interest in harm minimisation are supportive of the regulations. The Liquor Stores Association of WA that represents a large percentage of the liquor stores in Western Australia is fully supportive of the proposal. Those stakeholders that operate large format packaged liquor outlets are not fully supportive of the proposal.

A discussion paper was distributed to the following stakeholders:

- ALDI
- Australian Liquor Marketers
- Australian Hotels Association (WA)
- Chief Health Officer – Mental Health Commission (WA)
- Coles Liquor Group
- Costco
- Endeavour Drinks Group/Woolworths Ltd
- Liquor Barons
- Liquor Marketing Group
- Liquor Stores Association
- McCusker Centre – Curtin University Public Policy Institute
- MGA Independent Retailers
- Small Business Development Corporation
- Western Australian Local Government Association
- Western Australian Police

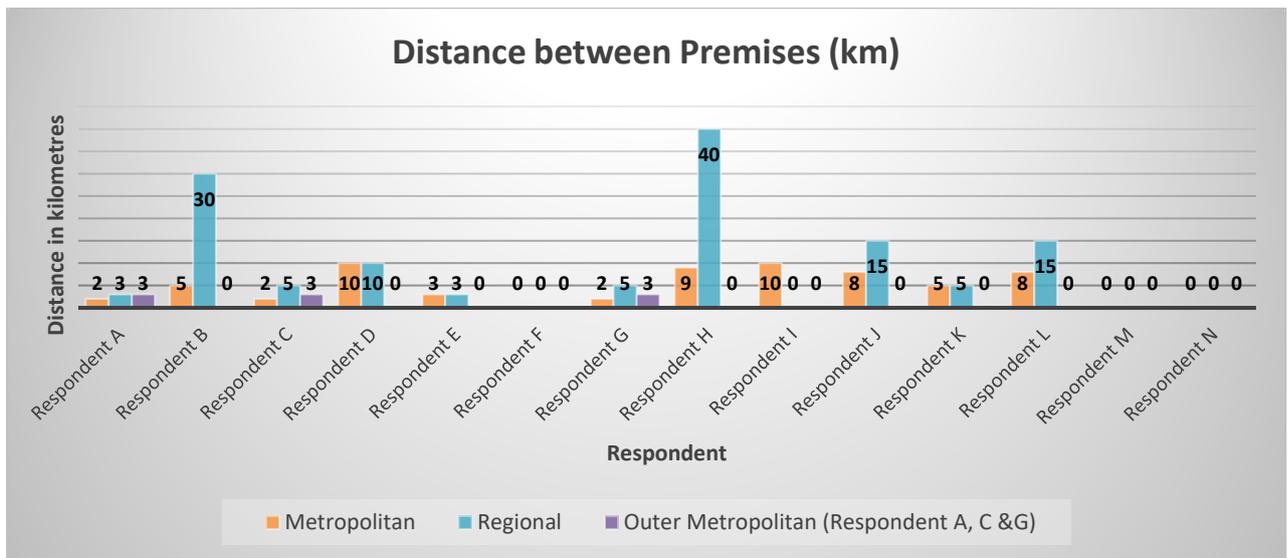
A data analysis of the submissions received was sent to the following stakeholders:

- ALDI Australia
- Australian Hotels Association (WA)
- Australian Leisure and Hospitality (ALH) Group
- Chief Health Officer - Mental Health Commission
- Coles Liquor Group
- Costco
- Endeavour Drinks Group/Woolworths Ltd
- Liquor Barons
- Liquor Marketing Group
- Liquor Stores Association
- McCusker Centre for Action on Alcohol and Youth
- MGA Independent Retailers
- Small Business Development Corporation
- WA Local Government Association

A summary of submissions received in response to the discussion paper distributed to stakeholders is provided below:



NOTE – Respondent C and M did not nominate a floor size.



- ❖ 0 symbol = represents a nominated distance of 0km.
- ❖ A blank column = represents where either no suggestion or an alternative measure was nominated but no specific distance was indicated.
- ❖ Respondent A, C & G – Defined different distance between the inner and outer metropolitan.
- ❖ Respondent E – first preference for no distance to be prescribed but nominated a 3km maximum distance.
- ❖ Respondent F – nominated no prescribed distance (0km in submission).
- ❖ Respondent I – suggested only one large packed liquor premises allowed in each regional area, therefore regional distance has been left blank.
- ❖ Respondent N – outlined the need for consistency with the town planning schemes and the different needs of different areas and did not nominate a specific distance.

Implementation

The provisions of section 36B and 77A mean that once these provisions have been proclaimed and the regulations have been implemented, the licensing authority will not be able to hear or determine an application if the proposed premises is larger than a prescribed size and an existing packaged liquor outlet that also exceeds the prescribed size is located within a prescribed distance.

The new provisions will only apply to applications for new licence applications and applications to alter or redefine a licensed premise to make it larger.

There is no provision for the new provisions to apply retrospectively to existing large packaged liquor outlets.

It is expected the regulations would be introduced as soon as possible after approval is granted by Executive Council.

The Department will ensure relevant industry stakeholders are kept informed of the progress of the regulations.

Evaluation and Post-implementation Review of the Proposal

As noted earlier, currently there is limited evidence linking the size of an outlet with alcohol related harm. This makes measuring the benefits difficult. In recognising this difficulty, it is proposed that a post-implementation review be undertaken after three years to assess the net benefits (or otherwise) delivered by the proposal. This review would inform decisions about updates and improvements that could be made over time.

To inform a post-implementation review the licensing authority will monitor:

- the number of packaged liquor outlet applications lodged, granted and refused
- the size of the retail area of each application
- the number of applications approved where the retail area is bigger than the prescribed size and the distance from other large packaged liquor outlets

The impact of the regulations will also be assessed using information and data sourced from agencies such as the Health Department and WA Police.

In addition, health and harm outcomes in areas where two or more large packaged liquor outlets already exist will be compared to areas where only one large packaged liquor outlet exists.

The advantage of prescribing the relevant criteria in the regulations means that they can be adjusted if needed in the future.