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Chapter 3
Public interest objectives and the adoption of harm minimisation

Elizabeth Marton and Graeme Zajdow

Although the primary purpose of liquor licensing legislation is the regulation of the sale and supply of liquor, including administration of licences to sell or supply alcohol, in recent years various provisions have been included in the Acts to reduce harm associated with the sale and supply of alcohol. Only some of these provisions are explicitly linked to licensing (that is, they carry the threat of penalties to the licensee or loss of licence if the licensee does not comply). Only objectives associated with these provisions are included in Table 3.1.

Public interest objectives—changes from 1995 to 2012

In 2012 the two main themes in the public interest objectives in liquor licensing legislation were community amenity and harm minimisation. These are discussed separately below.

Community amenity

In 1995 almost all states and territories were concerned with preventing, reducing or controlling annoyance or disturbance in or around premises, or, conversely, with maintaining quiet and the good order of the neighbourhood. In 2012 all states and territories made reference to this in their provisions. According to the summaries provided by Craze and Norberry (1), the language of “amenity” was raised in parliamentary debate in Western Australia and the Australian Capital Territory in 1995, but it was not mentioned in the legislation. By 2012 this had changed. The need to consider the impact of alcohol use and abuse on the amenity of the community was embezzled in the objects of liquor Acts in the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia and Victoria, and in other provisions of the legislation in Western Australia.

Amenity was usually not defined, although Queensland and Victoria were exceptions. In Victoria the definition of amenity was inserted into s. 3A of the Liquor Control Reform Act 1998 in 2002: “The amenity of an area is the quality that the area has of being pleasant and agreeable.” In 2011 this was further clarified by s. 3AA, which listed behaviours that constituted evidence of a detract from amenity, including violent behaviour; drunkenness; vandalism; using profane, indecent or obscene language; using threatening, abusive or insulting language; behaving in a riotous, indecent, offensive or insulting manner; disorderly behaviour; causing nuisance; noise disturbance to occupiers of other premises; obstructing a footpath, street or road; and littering.

In Queensland the definition of amenity was inserted into s. 4 of the Liquor Act 1992 in 2010:

The amenity of a community or locality means:

a) The atmosphere, ambience, character and pleasantness of the community or locality; and
b) The comfort or enjoyment derived from the community or locality by persons who live in, work in or visit the community or locality.

The need to consider the impact on the community had been introduced in all states and territories by 2012. Although there were references to the impact on the neighbourhood in 1995, by 2012 the concept of community was entrenched, even though it was not defined anywhere. Two states, New South Wales and Queensland, had gone further and allowed for community impact statements to be considered when considering a licence application. In Western Australia a Public Interest Assessment was required. These statements canvassed the views of the local community and made the deciding authority aware of the results of discussions between the applicant and the local community. Queensland went even further, classifying some applications as having a significant community impact, which warranted a more stringent process.

The previous chapter provided an overview of liquor licensing legislation in Australian states and territories. The emphasis in the current chapter is on changes in the recent historical period; that is, in the past two decades.

In 1995, Craze and Norberry (1) studied liquor licensing legislation in Australia and traced historical trends in its provisions. They analysed the relative priority given to the objective of reducing alcohol-related harm associated with the sale and consumption of alcohol compared to economic or regulatory objectives. Since the 1950s there had been a shift towards deregulation (in favour of industry economic interests) and away from earlier concerns in the 20th century with the restriction of liquor sales. At the time of the 1995 review, Craze and Norberry noted that objectives reflecting public interest concerns were restricted to ‘control of under-age drinking’, ‘public order’ and ‘local amenity’.

This chapter identifies changes to the objectives of liquor licensing legislation over the past 17 years (between 1995 and 2012) in all states and territories. The ‘objects’ of the Acts are defined in all liquor licensing legislation (except in Tasmania), but this chapter adopts a broader usage than these formal objects, and considers ‘objectives’ of the legislation. The use of the term ‘objective’ implies purpose or intention and has been determined by a close examination of the provisions of each Act. The term does not have a legal meaning (unlike ‘objects’), and this chapter must be viewed as a contribution by social scientists to understanding changes in liquor licensing legislation.

After finding that harm minimisation had been adopted in almost all liquor licensing legislation by 2012, we look at how and why it was adopted. We then look at the impacts that the National Competition Policy and the business interests related to the alcohol industry had on limiting its practical implementation.

Craze and Norberry thematically analysed their source documents, and their findings were summarised in Appendix 2 of Stockwell (2) under the four themes of public order, revenue raising/profitability, public health and regulating the industry. Although Craze and Norberry organised public order and public health objectives separately, in practice there is a very large overlap between them. For example, when drinkers are intoxicated and behaving in a loud and disorderly fashion, their behaviour is disruptive to the public order, but their abuse of alcohol also affects their own health; that is, there are also public health implications. The term ‘public interest’ as used in this chapter combines these public order and public health considerations.

In the current study a thematic analysis (3), assisted by NVivo data management software, of the 2012 liquor licensing legislation (at the end of September 2012) was undertaken. The thematic analysis was restricted to public interest objectives. The 1995 public interest objectives were not obtained directly from the legislation at that time, but from analysing Appendix 2 in Stockwell (2). Table 3.1 in this chapter compares the 1995 and 2012 public interest objectives in liquor licensing legislation in all states and territories.

Stemming the tide of alcohol: liquor licensing and the public interest

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<td>Encourage responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor</td>
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<td>Ban licenses, banning, prohibition or exclusion orders (with licence obligation)</td>
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Harm minimisation

In 1995 harm minimisation was mentioned only in the Craze and Norberry (1) summaries of liquor licensing legislation objectives for Queensland. By 2012, harm minimisation had been included in the objects of the Liquor Acts of all states and territories, except Tasmania. The crossover between public health and public order is clear in s.10 of the Australian Capital Territory Liquor Act 2010, where the principles require the liquor industry to be regulated in a way that minimises harm caused by alcohol abuse, including adverse effects on health, personal injury, property damage, and violent or anti-social behaviour. In Victoria, s. 4(2) was inserted in the Liquor Control Reform Act 1998 in 2009, demonstrating the centrality of harm minimisation: 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.

Not serving or supplying liquor to minors was universal in provisions in the 1995 liquor licensing legislation, but by 2012 the provisions also included restrictions on the access of minors to the licensed premises, or to specified parts of the premises.

By 2012 the need to ‘encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor’, as in s.3(2)(b) of the New South Wales Liquor Act 2007, was formally included in the objects in five states, but the same meaning could be found elsewhere in the provisions in the other states and territories. There were also two new initiatives in 2012 that were widespread in the legislation: provisions that prohibited promotion of harmful drinking practices and provisions that sought to prohibit the sale or promotion of harmful liquor products.

Not permitting the entry of, or having the power to remove, drunken or disorderly persons was not a new provision in 2012. It was present in six states and territories in 1995, and by 2012 it was present in seven of the eight states and territories. Typically, the person who had been asked to leave was not allowed back on the premises within 24 hours, or sometimes within the vicinity for six hours. Specific legislative power to serve a formal banning order on individuals had become more common by 2012. The licensee did not always have responsibilities to enforce these provisions.

A range of other new provisions to manage the increased level of alcohol use and abuse, and associated violence, has been adopted since 1995, fulfilling many of the recommendations identified by Craze and Norberry (1:53). In some cases, all the state and territories have adopted the new provisions, whereas, in others, adoption of the provisions is either still in progress or, perhaps, has been judged not to be necessary in the specific jurisdiction. These provisions include:

- training requirements for accredited training providers for licensees or anyone involved in the sale, supply, service or promotion of liquor on the licensed premises, including crowd controllers, as appropriate to their role, as a condition of the licence (all states and territories);
- liquor accords as a way of managing alcohol-related violence (see also Long and Rumford (4), which reviews the effectiveness of early liquor accords);
- the power to ban the use of glass;
- maintenance of incident registers;
- the use of crowd controllers and/or security staff and/or CCTV or security cameras;
- the right to close premises down for a specified period if a threat is perceived.

Although not imposing obligations on the licensees, restricting alcohol access in specified areas as a way of managing and minimising the associated harms had also become increasingly popular by 2012.

The origins of harm minimisation and limits on its application

The previous section noted the ubiquity of the term ‘harm minimisation’ in almost all liquor licensing legislation in Australia. Having harm minimisation as the objective of regulatory policy legislation in line with the National Alcohol Strategy 2006–2011, which states that its goal is ‘to prevent and minimise alcohol-related harm to individuals, families and communities in the context of developing safer and healthy drinking cultures in Australia’ (5:2). This section looks at how and why this term has become the centrepiece of Australian alcohol policy and legislation.

The term harm minimisation became part of the policy landscape in Australia with the National Campaign against Drug Abuse (NACADA) in 1985. Many public health advocates had argued that the advent of HIV (human immunodeficiency virus) in the early 1980s demanded a response from governments that moved away from the traditional criminalisation of illicit drug use and, by including harm reduction measures such as needle exchanges and opiate substitution therapy, constituted a more pragmatic answer to the problem. The first document published by NACADA stated that its aim was ‘to minimise the harmful effects of drugs... on Australian society’ (10:1). Along with harm reduction, demand reduction was also promoted, as well as control of supply, which was emphasised as principles of the campaign (11:10).

By 2006 the policy in relation to illicit drugs included supply and demand reduction, along with harm reduction, and used a wider definition of harm minimisation to achieve this (12:331, 13).

From the very beginning, alcohol and tobacco were part of the NACADA remit, and a subcommittee on alcohol was introduced to report to the Ministerial Council on Drug Strategy (14). In 1986, a draft National Alcohol Policy was presented, which included recommendations related to policies such as the regulation of advertising and marketing, pricing and taxation, and availability of alcohol. These control (supply and demand reduction) policies were backed up by strong evidence that showed that problems with alcohol were related to consumption of alcohol across a population (15, 16). Thus, lowering the overall consumption of alcohol would lower the prevalence of problems related to alcohol, that is, it would minimise or reduce alcohol-related harm. However, the draft recommendations were eventually watered down in the final version under pressure from various state governments, specifically South Australia, which sought to represent the interests of its wine industry. Opposition to the draft document also came from other alcohol industry groups (14).

Rather than incorporating supply or demand reduction programs across a whole population, alcohol policy concentrated on particular at-risk populations, such as minors, drink-drivers and Indigenous populations.

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1 Section 64(01) of the Western Australian Liquor Control Act 1998 defines ‘liquor accord’.

2 'Harm minimisation' or 'harm reduction' have both been prominent terms in relation to alcohol since the mid-1980s. Although there has been considerable academic debate about the difference in meanings of the two terms, they have been used interchangeably in the literature. When Squires and Saunders (5:9) argued that there was a difference in meaning between 'harm minimisation' and 'harm reduction', they were referring to those specific measures which prevent the harmful consequences of drug use without engaging with drug consumption. Other authors have also used the terms to mean a policy of reducing the harm resulting from the use of alcohol, without necessarily retaining the same strictures on use per se. Examples include programmes that offer free ‘educational’ materials to those who are intoxicated to drive their own cars. Both these definitions mean that the terms are meant to mean a policy of program that does not necessarily mean a reduction in a less harmful way of using. In Australia, 'harm minimisation' was eventually used in a broader sense to include supply and demand reduction, as well as involving programs that were interested societally in less harmful ways of using.
communities, although the final document did acknowledge that strategies targeting only problem drinkers would be insufficient to be effective. It noted that ‘the possibility of decreasing problems by reducing availability should...be given serious consideration’ (10:6). This watering down of the effective means of harm minimisation in alcohol policy contrasted with the wider meaning adopted in illicit drug policy, as discussed above.

The inclusion of supply reduction within the harm minimisation goal potentially conflicts with a worldwide move towards a more liberal mode of governance in most western nations, including Australia, which means the state is directed to not interfere with the free market in consumer commodities, including alcohol. In 1995, all Australian state and territory governments, in conjunction with the federal government, agreed to the National Competition Policy (NCP). The agreements meant that each state reviewed and deregulated all legislation that impeded economic activity to ensure that it did not restrict competition unless the costs of competition were shown to outweigh the benefits. Most states and territories undertook reviews of their liquor licensing legislation to comply with the NCP.

The public health objective of reducing alcohol consumption across a whole population would mean many limitations on business and industry and this was clearly not the approach favoured by the NCP or the subsequent state reviews of the legislation. The NCP allowed for public interest tests, but the emphases were on particular at-risk population groups such as minors or drink drivers.

The Queensland and Victorian reviews looked at trends in alcohol consumption historically and in contemporary times, as well as the associated problems. Interestingly, the same academic was employed for both reviews, and he argued that patterns of consumption were more important than overall population consumption. The Victorian review noted that ‘alcohol policies have traditionally been predicated on the view that increased availability equals increased consumption... In more recent years, an alternative and perhaps complementary view has developed. That is, the harms associated with consumption should be the focus of attention not consumption per se’ (17:58–9). The Queensland review noted that ‘Patterns of use, and not availability per se, are increasingly seen as the key areas which warrant attention to reduce social harms from alcohol’ (18:27). However, these views have been challenged by Stockwell (15:2/71), who argued that ‘the idea that a focus on “drinking patterns” somehow frees up alcohol policy from the need to measure and control per capita alcohol consumption is unfounded, however convenient such a view might be for commercial alcohol producers’.

In regards to supply and demand reduction, state governments have few taxation measures available to them, apart from licensing fees. The New South Wales review of its Acts noted that ‘open competition should not be considered more important than other public policies objectives’, but then also states that ‘government regulation can sometimes create unwarranted restrictions that can limit consumer choice, result in higher prices to consumers, stifle innovation or reduce incentives for firms to improve efficiency’ (19:1). Since price is one of the main demand reduction policy tools, the NCP rules demanding greater competition might result in reduced prices, thus undermining one of the main drivers to lower alcohol-related harms (8).

State government policy options relate to controlling numbers of licensed premises and advertising of products. One strategy of the NCP in relation to alcohol has been to remove measures that it considers to be monopolies, which makes it difficult for new entrants to enter the market, such as measures that require prospective entrants to prove that there is a need for their particular product (Queensland, New South Wales, Western Australia) or the requirement that off-premises licences must be attached to existing hotels (Queensland). There is no uniformity in legislation, however, particularly in relation to the needs test. The South Australian legislation has a specific clause requiring an applicant for a new licence to prove there is a need for a new venue in a particular locality (Liquor Licensing Act 1997, s. 58A), while the Victorian Act specifically excludes need as a reason for objecting to a new licence application (Liquor Control Reform Act 1998, s. 38B(1c)). Prior to 1998, Victoria also had regulations that meant that an individual owner could hold no more than 8 per cent of the off-premises licences in the state. This effectively limited the ability of the supermarket duopoly to move into the market. Although public health advocates argued that the removal of the 8 per cent rule and the supermarkets’ move into the market would mean lower prices, this was seen as a good thing from the point of view of competition policy, so the review of the legislation argued that the requirement should be rescinded. When this requirement was lifted, supermarkets quickly moved in to the market and now control a substantial portion of it.3

Conclusions

The language in which public interest objectives are couched has changed since 1995, with a new preference for referring to the impact on community and amenity. Although the objectives still refer to preventing or reducing annoyance or disturbance, the scope has widened to allow a broader interpretation of community and the potential to shift the focus away from disturbance to more positive concepts of character, pleasantness and comfort. The need to allow for impact on the amenity of the community has seen the introduction of such innovations as community impact statements in New South Wales and Queensland and, more broadly, public interest assessments in Western Australia. There is scope for community impact statements and/or public interest assessments to be adopted across all jurisdictions (refer also to Chapter 8 on social impact assessment).

Since 1995 there have been many changes to liquor licensing legislation that purport to strengthen the law’s capacity to accommodate harm minimisation as a driving objective. There is scope for all jurisdictions to study the harm reduction management provisions in place in some states and territories and to adopt those that would meet specific needs. However, it should be noted that while these may be worthwhile programs within a larger suite of harm minimisation policies, on their own they have little effect (8, 20).

It is important that harm minimisation is part of liquor licensing legislation, but its practical effects in really reducing harm for individuals, communities and the society at large has been very limited. Even as the meaning of harm minimisation was expanded for illicit drugs to include supply and demand reduction, for alcohol, it has been applied in its most narrow form, meaning there have been few efforts in demand or supply reduction, except in relation to particular at-risk populations. Effectively, demand and supply reduction options have been rendered impotent in the face of the requirements of the NCP and the business interests related to the alcohol industry. What has been left in licensing legislation is the possibility of objections to decisions in licensing cases, which is examined in the next chapter.

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3 Figures for 2008 show that three supermarket outlets (Coles, Woolworths and Aldi) hold almost 39 per cent of the packaged alcohol sales. This underscores the volume of alcohol sold because Coles and Woolworths also own many of the mass retail outlets such as Bunnings, Kmart and Target.

Chapter 3: Public interest objectives and the adoption of harm minimisation


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