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Response to Regulation of Same Day Liquor Delivery Providers Discussion Paper

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Introduction

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) represents the alcohol, tobacco and other drug (ATOD) sector in the ACT. Members include specialist alcohol and other drug treatment organisations; distinguished drug experts with deep knowledge of the criminal justice system and population health; the group representing families and friends who have lost loved ones to drugs; and the peer-based organisation for people with lived experience of drug use in the ACT.

ATODA welcomes this Regulation of Same Day Liquor Delivery Providers Discussion Paper (discussion paper) and the ACT Government's commitment to preventing and reducing alcohol related harms through improved regulation of same day liquor delivery. As per the Health Canberra: ACT Preventive Health Plan 2020-2025 "the harmful use of alcohol is a major contributor to death, disease, crime and violence, social problems, health and emergency service utilisation, and use of police resources."¹ Where harmful use is facilitated by weak regulation, it is incumbent upon government to intervene. The use of alcohol delivery services have been associated with increased risks of drinking at harmful levels.^{2, 3} ATODA notes that a proposed action under the draft ACT Preventive Health Action Plan 2023-2025 (currently in the process of being finalised) is "Investigate options to address impacts of online alcohol orders and home delivery on health and wellbeing of Canberrans". ATODA welcomes the proactive action being taken in relation to this issue, and the commitment to prioritise the health and wellbeing of the ACT community.

ATODA notes the leadership of the Foundation for Alcohol Research and Education (FARE) in this space and commends their detailed submission. ATODA's submission is informed by engagement with relevant stakeholders, ATODA's ongoing engagement with the ACT Specialist ATOD Executives Group and ACT ATOD Workers Group, and insights from a members' forum on the proposed reforms co-hosted by ATODA and the ACT Council of Social Service (ACTCOSS) on 23 August 2023.

Response to Proposed Legislative Provisions

ATODA's input is provided below against the 17 proposed legislative provisions in relation to point of sale and delivery as outlined in the discussion paper.

Point of Sale

1. Customers will be required to submit proof of age/identification details when creating a customer profile (e.g., registering ID and delivery address details) at the initial point of purchase.

ATODA supports this proposed provision, and that the person who provided the proof of age/identification must be the person to collect the delivery from the delivery driver.

This provision should apply to all online sales of alcohol.

2. Retailers will be required to use card pre-authorisation when an order is made online.

ATODA supports this proposed provision, to ensure that delivery can be withheld as required (in instances of underage customer, intoxication, etc.).

3. Explicitly place restrictions on deliveries to places such as schools and/or to alcohol free places such as Belconnen Skate Park and other alcohol-free places as defined in ACT liquor legislation.

ATODA supports this proposed provision and notes the importance of regular review of whether additional alcohol-free designations are appropriate.

This provision should apply to all online sales of alcohol.

4. The liquor licence number of the licensee will be required to be displayed on all media promoting same day delivery services.

ATODA supports this proposed provision.

5. Providers must put in place facilities/safeguards to ensure customers can self-exclude from liquor delivery services and promotions without further contact from the provider.

ATODA supports this proposed provision. Clear communication about self-exclusion should be provided at every point of sale, with information about how to make a complaint should providers breach self-exclusion agreement by advertising to excluded individuals.

This provision should apply to all online sales of alcohol.

Delivery of the Order

1. Customers will be required to show proof of age/identification details upon delivery at the request of the delivery driver.

ATODA supports this proposed provision. Requirements of the customer must be made clear to them at the time of online purchase.

This provision should apply to all deliveries of alcohol, not just same day delivery.

2. Require that a delivery cannot be left unattended and must be handed to the recipient who placed the order (and, if applicable, whose identification details were associated with the order when it was made online).

ATODA supports this proposed provision. Requirements of the customer to be physically present at the time of delivery must be made clear to them at the time of online purchase.

This provision should apply to all deliveries of alcohol, not just same day delivery.

3. Provide for a maximum volume of liquor that can be delivered to the same customer in a 24-hour period.

ATODA supports this proposed provision.

4. Mandate times which delivery can take place. Currently off licensees can trade from 7am to 11pm from Monday to Saturday; and 9am and 11pm on

Sunday. A shorter window for rapid delivery will be considered to minimise alcohol related harm.

ATODA supports this proposed provision to mandate times during which delivery can take place. ATODA would support a restriction of delivery of alcohol from between 10am and 10pm on any day.

This provision should apply to all deliveries of alcohol, not just same day delivery.

5. Delivery staff or agents must undergo Responsible Service of Alcohol training specifically tailored to the rapid alcohol delivery market, including information about how to determine if a person is in a state of intoxication. This will require either: a. a specific training program to be created for the ACT; or b. the Commissioner for Fair Trading to issue a guideline created regarding online and/or rapid delivery sales.

ATODA supports this proposed provision. Development of tailored training should be informed by appropriate evidence and best practice in this emerging field. The delivery of this training should be specifically evaluated twelve months after implementation, separate to the broader review of the new regulatory framework.

6. It is anticipated that the cost of the training will be paid for by the applicant the same as is currently in place for Responsible Service of Alcohol training. Employers may choose to cover the cost for their employees.

ATODA does not support that the cost of training be borne by the applicant. Employers should be mandated to cover the cost of this training as it relates to the responsible service and delivery of a harmful substance for which the employer profits. This should apply to any role that requires Responsible Service of Alcohol (RSA) training. Many industries cover the cost of mandatory training for their employees, and the exclusion of the liquor and hospitality industry from that is simply a money-saving exercise at the expense of their employees. ATODA endorses the Alcohol and Drug Foundation's comments regarding the power imbalance between subcontracted delivery drivers and the corporations involved, and the fact that drivers are already required to navigate complex and potentially risky situations upon delivery. Given this, companies selling alcohol online should be required to pay for RSA training for delivery drivers.

7. It will be an offence to deliver alcohol to excluded persons such as evidently intoxicated persons, minors or to excluded areas such as alcohol-free zones. Delivery staff or agents must only complete a delivery where there is evidence that the person was over 18 years, and that the person was not intoxicated, or they risk being subject to prosecution. ID checks must be made for anyone that looks under 25 years old.

ATODA supports this proposed provision. There is concerning evidence that in other jurisdictions alcohol has been delivered to individuals who appear to be minors with no age verification process.⁴

It is important that delivery drivers are supported to know when they should ask for proof of age and identification details, when they should refuse delivery, and clear advice on information for the intended recipient of the alcohol around the online sale not being completed (making clear a refund is not required) and why delivery is being refused. There should be no penalty for non-delivery of alcohol in instances where proof of age and identification details cannot be verified.

ATODA notes that careful review of implementation and compliance of this provision in particular is required, given the onus that is placed on one individual to manage intoxication and verbal or physical aggression without the support of other staff (i.e. managers, security guards etc. who may be present at a physical point of sale).

This provision should apply to all deliveries of alcohol, not just same day delivery.

8. Same day delivery providers will be liable for acts of employees and agents with appropriate exceptions.

ATODA supports this proposed provision.

This provision should apply to all deliveries of alcohol, not just same day delivery.

9. Same day liquor delivery services will be obliged to record incidents where they have refused delivery and the reason why for a 12-month period and provide a summary of this data to Access Canberra every 12 months. Service providers shall provide access to these records to ACT Police and Access Canberra when requested.

ATODA supports this proposed provision.

This provision should apply to all deliveries of alcohol, not just same day delivery.

10. Safeguards will be put in place to ensure delivery drivers are not penalised by the licensee for non-deliveries due to responsible service of alcohol requirements.

ATODA supports this proposed provision. It is concerning that the NSW Stage 1 Review of Alcohol Delivery Reforms found that nearly 1 in 10 drivers who refused a delivery had been penalised by their employer.⁵ There should be zero tolerance for delivery drivers being penalised for non-deliveries due to responsible service of alcohol requirements.

This provision should apply to all deliveries of alcohol, not just same day delivery.

11. Same day delivery providers online ordering platforms through which customers register their payment details must allow for completion of the digital transaction onsite only after the delivery driver has electronically registered a completed sale.

ATODA supports this proposed provision to ensure drivers are not disincentivised to refuse delivery where required to do so.

This provision should apply to all deliveries of alcohol, not just same day delivery.

12. Same day delivery providers will be required to capture delivery data to report to Access Canberra every 12 months, showing the volume of packaged alcohol they delivered in ACT as part of same day deliveries by each postcode. This data will inform future policy work including informing public health messaging and programs.

ATODA supports this proposed provision.

This provision should apply to all deliveries of alcohol, not just same day delivery.

Opportunities for further enhancement of regulation of same day liquor delivery providers

ATODA endorses FARE's recommendations regarding further measures to prevent and reduce alcohol-related harms through further enhancement of the relevant regulations.

These measures include:

- Introducing a separate licence type with risk ratings for online sale and delivery;
- Introducing measures to address predatory, data-driven push marketing;
- Introducing a 2-hour safety pause, to prevent rapid delivery;
- Limiting deliveries to between 10am and 10pm, to reduce the risks of alcohol-related family violence and suicide, which increase later at night in the home;
- Extending compliance testing to ensure that regulators are able to enforce the measures that are put in place;
- Establishing a risk factor for online sales and delivery, and calculating supply density; and
- Adopting a community-centric approach to liquor licensing public consultation, that prioritises the voices and expectations of the community.

Further detail on these measures is available in FARE's response to the discussion paper.

Relationship with NSW legislation

Given the geographical proximity to NSW there needs to be close harmonisation between NSW and ACT legislation. The discussion paper does not indicate which aspects of the NSW legislation have not been included in the proposed legislation provisions and why. The differences between NSW and ACT legislation will need to be clearly communicated to consumers and delivery drivers.

The implementation of the proposed reforms should also be informed by the findings of the NSW Stage 1 Review of Alcohol Delivery Reforms which indicated post implementation of the reforms that 1 in 10 drivers were unaware of age and ID checks, there was a need for more support for de-escalating and communication techniques for drivers, and nearly 1 in 10 drivers who refused a delivery had been penalised by their employer.⁵ These findings should proactively inform more robust compliance measures in the ACT.

Review of the new regulatory framework

In line with the ACT Government's commitment to evidence-based policy, ATODA welcomes the proposed review of the new regulatory framework within two years of coming into effect. This review should involve all relevant stakeholders, including ATOD treatment and harm reduction services in the ACT.

Other Matters

While not within the specific scope of this consultation, the reforms proposed relate to an ongoing challenge in the ACT – the limited provision of public health advice through the Liquor Advisory Board. To ensure that proactive advice is provided to government in relation to these and other reforms, ATODA recommends that the ACT Government reviews and amends the make-up of the Liquor Advisory Board. The Liquor Advisory Board currently has ten members appointed by the Minister, five of which are specifically to represent different facets of the alcohol industry or the late-night economy. Only one of the ten members is selected on the basis of their knowledge or expertise in the area of health and the effects of alcohol. In 2020, the National Health and Medical Research Council updated its guidelines on alcohol consumption to reflect the fact that any alcohol consumption is associated with some level of health risk.⁶ This makes alcohol analogous to tobacco, rather than junk food, where moderate consumption may not have any effect on health. Additionally, both substances can be dependence-forming. In Australia, it is well accepted that it is inappropriate for the tobacco industry to be involved in tobacco policy development and monitoring, given its inherent conflict of interest which harms the health of Australians. The position of the alcohol industry on alcohol policy is similar, yet it retains a dominant presence on the Liquor Advisory Board. This is concerning given that one of two functions of the Liquor Advisory Board, as per the Liquor Act 2010, is to provide advice to the Minister about “measures, including legislative measures, that support the harm minimisation and community safety principles”. This Advisory Board should be making a significant contribution to preventive health, by ensuring that the availability of alcohol in the ACT is managed in such a way to reduce alcohol-related harms. ATODA notes that specifying relevant public health organisations with an appropriate mandate may be a means of embedding ongoing representation on the Advisory Board. As the peak body for ATOD treatment and harm reduction services in the ACT, ATODA would be eager to contribute to a reviewed Advisory Board.

Recommendations

ATODA recommends that the ACT Government:

- Incorporates ATODA’s advice in relation to the 17 proposed legislative provisions as detailed above into the new regulatory framework;
- Considers relevant provisions be extended to the delivery of all alcohol purchases, regardless of whether it is delivered on the same day as the purchase;
- Explores as a priority the opportunities to further enhance the regulations to prevent and reduce alcohol-related harms, as proposed by FARE;
- Harmonises as far as possible NSW and ACT regulations, and learns from the NSW and other jurisdictions’ experience in implementation;
- Includes ATOD treatment and harm reduction services in the review of the new regulatory framework; and
- Amends the membership of the Liquor Advisory Board to ensure proactive public health advice to the ACT Government on these and other relevant reforms.

ATODA endorses the recommendations made by FARE, the Alcohol and Drug Foundation, and the Cancer Council ACT.

ATODA appreciates the opportunity to provide this submission, and is available to provide any additional detail that may be required.

About ATODA

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body for the alcohol, tobacco and other drug sector in the Australian Capital Territory (ACT). ATODA's vision is a healthy, well and safe ACT community with the lowest possible levels of alcohol, tobacco and other drug related harms. Underpinning ATODA's work is a commitment to health equity, the social and cultural determinants of health, and the values of collaboration, participation, diversity, human rights, social justice and reconciliation between Aboriginal and Torres Strait Islander people and other Australians.

ATODA's purpose is to lead and influence positive outcomes in policy, practice and research, as the peak body for the alcohol, tobacco and other drug sector in the ACT. These outcomes flow from initiatives in prevention, early intervention, harm reduction, treatment, peer services, and continuing care.

ATODA provides collaborative leadership for intersectoral action on the social determinants of harmful drug use, and on societal responses to drug use and to people who use drugs. ATODA works to provide alcohol, tobacco and other drug related expertise in the areas of policy; sector workforce development and capacity building; research, data and evaluation; health services planning; coordination and partnerships; training and education; communication; information and resources.

Note: While the term AOD (alcohol and other drug) is commonly used to refer to the alcohol, tobacco and other drug sector, ATODA's preference is to use the term ATOD. This acknowledges the role that specialist service providers in this sector play in providing tobacco cessation support, and because tobacco use is the leading preventable cause of the burden of disease in Australia, contributing far more than alcohol or all illicit drugs combined.

References

1. ACT Health. *Healthy Canberra: ACT Preventive Health Plan 2020-2025*. 2020. Canberra: ACT Government.
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5. NSW Government. *Review of Alcohol Delivery Reforms - Stage 1 Supplementary Report*. 2023.
6. National Health and Medical Research Council (NHMRC). *Australian Guidelines to Reduce Health Risks from Drinking Alcohol*. 2020. Canberra: Commonwealth of Australia.