



20 January 2023

Commissioner, Consumer and Business Services  
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Adelaide SA 5000

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**RE: Late Night Trading Code of Practice (Late Night Code) Review**

Dear Commissioner

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia and seeks to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

We thank you for the opportunity to comment on the Late Night Trading Code (Late Night Code) of Practice. As per PHAA's [Preventing Harm Caused by Alcohol Products Policy Position Statement](#), PHAA supports a comprehensive approach to preventing and reducing harm from alcohol, informed by the best available evidence. Harms caused or exacerbated by alcohol affect not only drinkers themselves but also children, families, and the broader community. PHAA believes it is appropriate to use all available policy levers to reduce the availability of alcohol and prioritise the health and safety of communities, including through restrictions on licensed venues that trade past 2am.

*Evidence regarding the impact of the Late Night Code on alcohol-related harm*

Evidence regarding the Late Night Code

To our knowledge, the only publicly available review of the South Australian Late Night Code was conducted as part of the Review of the South Australian Liquor Licencing Act 1997 undertaken by Mr Tim Anderson QC in 2016<sup>1</sup>. Chapter 5 specifically addresses the Late Night Code and its impact. In that report, Mr Anderson notes that submissions from various medical, health and victim support bodies refer to evidence from Australia and overseas which in their view consistently demonstrate that there is a correlation between increased liquor trading hours and an increase in harms and alcohol related assaults<sup>1</sup>.

Anderson noted that in 2008-09 alcohol was responsible for 58% of victim reported crime and 65% of serious assaults within the Adelaide CBD alone<sup>1</sup>. There appears to be no more up-to-date data on the causes of victim reported crime or serious assaults published in the public domain since this time, and we are not aware of any other evidence regarding the impact of the Late Night Code on

alcohol-related harm. This makes evaluation of the Late Night Code difficult, and suggests a need for further research and analysis of existing datasets before conclusions can be drawn regarding the impact of the code (see Recommendations 1 and 2 below).

#### Other evidence regarding trading hours and late night codes

More generally, restrictions on trading hours and outlet density are considered to be the second most effective policy lever to reduce alcohol related harm after pricing<sup>2</sup>. Increased liquor trading hours are associated with increased alcohol-related harms, while earlier closing times have been associated with reduced alcohol-related harm<sup>3,4</sup>. A systematic review of 21 studies published between 2005-15 noted a large body of Australian and international research which has established a strong relationship between trading hours of on-premises venues and rates of violence<sup>3</sup>. This review concluded that “evidence of effectiveness is strong enough to consider restrictions on late trading hours for bars and hotels as a key approach to reducing late-night violence in Australia”<sup>3</sup>. A further systematic review of literature published between January 2000 and October 2016 studied the impact of policies regulating alcohol trading times on other alcohol-related harms<sup>4</sup>. The results suggested that policies regulating times of alcohol trading and consumption can contribute to reduced injuries, alcohol-related hospitalisations/emergency department visits, homicides, and crime. Evidence from both reviews demonstrated that a change in time of alcohol sales is associated with changes in alcohol-related harms in both directions, and a reduction of just one or two hours in late-night trading time could be enough to demonstrate a reduction in harms<sup>3,4</sup>.

While there have been consistent findings regarding the relationship between trading hours and alcohol-related harms, evidence regarding late night codes specifically is more limited, as the quality of evaluation of the implementation of such codes has often been low<sup>2</sup>. In some cases, data have been indicative of possible changes in the behaviour of patrons and enforcement personnel<sup>2</sup>. However, data have typically not been monitored or controlled to the level necessary to draw firm conclusions about the impact of the code<sup>2</sup>.

Babor and colleagues suggest that strategies such as the collection of ‘last drinks’ data at emergency departments can provide useful insights as to where risky drinking is being facilitated, and where the best return on investment in terms of staff training and compliance activities can be achieved<sup>2</sup>. Collecting ‘last drinks’ data involves asking people who present to an emergency department with an injury about their consumption of alcohol in the 12 hours before injury, including the specific location or premises where they consumed their last drink. The collection of this data as part of the triage process has also been piloted in Australia, where the method was found to be feasible to implement and effective at mapping the source of alcohol-related emergency department attendances<sup>5</sup>. Similar data is also collected and used in the UK to target police and other regulatory community level interventions<sup>6</sup>. A broader Australian trial, including nine emergency departments across Victoria, New South Wales and the ACT, is currently underway<sup>7</sup>. We recommend trialling a similar approach in Adelaide (see Recommendation 1 below).

## *Recommendations for amendments to the Late Night Code*

### 3. Purpose of the Code

The Purpose of the Code is clearly and appropriately articulated. However, some minor changes may be of value in clarifying the meanings of harm and the intent of the Code.

The harms listed are general in nature and it may be of value to add a clause to (1a) which states:

- The risk of harm to the individual and other patrons and staff in the venue and to others in the vicinity of the venue

The section on the intention of the code could be strengthened by adding a statement to (2) that commits the licensee and responsible persons to actively intervene where patrons are intoxicated and/or behaving in an unacceptable manner.

### 7. Drink marshal

The duties of a drink marshal should be clarified so that is clear that marshals have the authority to intervene and, where necessary, remove or have a person removed from a licenced premises. Their role should also include directing other staff to not serve a patron exhibiting signs of intoxication or problematic behaviour or who has already consumed a considerable amount of alcohol. This should be considered in light of the Anderson Review' recommendation 56 to amend the definition of 'controlling crowds' in section 3(1) of the Security and Investigation Industry Act 1995 to exclude the functions of responsible persons and licensees (Anderson, 2016, p. 133). This would ensure that a drinks marshal could remove a person without having to be an approved crowd controller.

A reworded section on Drink Marshals could read:

#### 7. Drink marshal

(1) Between 2.01 am and 7.00 am at all times while open for trade, the licensee must ensure that at ~~any given~~ all times, at least one person who is approved as a Responsible Person under the Liquor Licensing Act 1997 is performing the duties of a drink marshal. They should be identifiable to staff and patrons as performing this role.

(2) The duties of a drink marshal are to monitor compliance with section 108 of the Liquor Licensing Act 1997 and the Liquor Licensing General Code of Practice and, in particular, to monitor the behaviour and alcohol consumption of patrons to reduce the likelihood of incidents of intoxication and/or disorderly, offensive, abusive, or violent behaviour on licensed premises.

(3) The drink marshal must patrol the whole of the licensed premises accessible to and occupied by patrons and must alert bar and serving staff to any concerning behaviour that is taking place by patrons on the licensed premises.

(4) If the drink marshal suspects that a person is intoxicated or observes someone behaving in a disorderly, offensive, abusive or violent manner, the drink marshal may exercise the powers that they have under the Liquor Licensing Act 1997 as a Responsible Person ~~or they must immediately report this to the licensee or manager/supervisor on duty for appropriate action to be taken.~~ The drink marshal has the authority under the Act to ensure that an intoxicated person is not served alcohol and to so direct other staff, and where deemed necessary remove and bar from a premises a person they consider

[intoxicated or likely to exhibit risky behaviour. They must also immediately report this to the licensee or manager/supervisor on duty to ensure appropriate action is taken. Where necessary the drink marshal will liaise with SA Police in relation to the removal of an individual or group from a licenced premises or its vicinity.](#)

#### 9. Restrictions on the sale and supply of beverages promoting rapid or excessive consumption

Change b) to state 'any other beverage that contains more than 45ml of spirits or the equivalent of 1.5 standard drinks'.

#### Part 4

Given recent issues in relation to legal breaches in the operation of Sky City Casino it is questionable as to why a licensee who has been found to have breached other laws relevant to their liquor and gaming licence should be held exempt from liquor licencing laws which impact all other licenced premises trading to members of the general public. This exemption should be removed or significantly curtailed.

There would be a value to considering an additional clause in this Part which requires premises with an authorisation to sell liquor for consumption on premises be closed for a minimum of three continuous hours between 3.00am and 9.00am, consistent with harm minimisation principles. This was a recommendation of the Anderson Review (Anderson, 2016, p. 67)

#### Part 5

#### 14. Digital closed circuit television

This clause could be strengthened by specifying the penalties for a breach of this clause, given that such footage may constitute significant evidence in the event that harm occurs.

#### Schedule 1

This section would benefit from a brief explanation of what is meant by the different categories of offences and expiations as many staff may not have access to this code.

As per S45 of the Act—Failure to comply with licence conditions including this code

It is a condition of a licence covered by this code that it is complied with. If is not complied with the licensee is guilty of an offence; and if the breach of the condition involves conduct of another person that the other person knows might render the licensee liable to a penalty—the other person is also guilty of an offence.

Maximum penalty for an offence against a code of practice—

- (i) for a category A offence—\$20 000;
- (ii) for a category B offence—\$10 000;
- (iii) for a category C offence—\$5 000;
- (iv) for a category D offence—\$2 500;
- (b) in any other case—\$2 500.

for an offence against a code of practice which is expiable —

- (i) for a category A expiable offence—\$1 200;
- (ii) for a category B expiable offence—\$315;
- (iii) for a category C expiable offence—\$210;
- (iv) for a category D expiable offence—\$160.

This section is subject to S45 of the Act.

#### *Other recommendations related to the Late Night Code*

- Recommendation 1: That the Late Night Code as currently in force (and subject to the adoption of the changes suggested) be retained for a further two years at a minimum. During this period Consumer and Business Services fund independent research into its effectiveness in South Australia including the implementation of a 'last drinks study in emergency departments'.
- Recommendation 2: Consumer and Business Services undertake an analysis of existing currently unpublished data that is available as to the effect of Code since its inception in South Australia and publish a report that gives a comprehensive indication of what have been the benefits and challenges of having a lockout.
- Recommendation 3: That the State Government provide sufficient funding to Consumer and Business Services (and where relevant the Licensing Enforcement Branch ('LEB') of SA Police) to ensure that compliance monitoring of the Late Night Code can be effected in a sufficient and timely manner with:
  - onsite inspections between the hours of 2.00am and 7.00am in relevant venues
  - collection, evaluation, and publication of data relating to the implementation of the code including quarterly data on compliance activities, number of incidents (e.g., assaults, ambulance call outs, arrests, code violations, emergency department presentations related to the late night precinct and comparative data from other locations). The scope of such data should be developed through consultation with key stakeholders.
  - Public education campaigns relating to responsible service and consumption of alcohol
  - Promotion of the code to new and existing workers in the late night economy and appropriate training for licensees and drink marshals. This may involve a revision of or an extension to Responsible Service of Alcohol training for South Australia.
- Recommendation 4: That recommendations arising from Mr Tim Anderson's Review of the SA Liquor Licencing Act 1997<sup>1</sup> be adopted including but not limited to:
  - 15.3.6 Licensees not complying with the 'Lockout' provisions of the Late Night Code could also face an extended lockout imposition from 1.00am for example.
  - 15.3.7 At the present time, licensed premises are regularly serving intoxicated persons. Quite simply, these persons are either intoxicated when entering the premises or become intoxicated by being sold liquor. This must be policed either by SA Police or Consumer and Business Services, with more resources made available for this purpose.

- 15.3.8 There should also be more rigorous regulatory competency testing of persons to attain and maintain responsible service of alcohol accreditation. Clearly, on-line training has made it too easy, especially by persons seeking to be approved as responsible persons, to attain this level of accreditation. Essentially, once a person has registered with an on-line provider, anyone can fill in the on-line information on their behalf.
- 15.3.9 Further, unlike the provisions of the Gambling Code of Practice Notice 2013 issued by the IGA in respect to the State's gambling sector, there is no ongoing competency or refresher training requirement.
- Recommendation 99: Make it a strict liability offence for a licensee, employee of the licensee or other person engaged by the licensee to grant entry, sell or supply or allow an intoxicated person to be on licensed premises.

The PHAA appreciates the opportunity to make this submission. Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

Yours sincerely,



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PHAA Branch Vice President (SA)  
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## References

1. Anderson, T. R. (2016). Review of the South Australian Liquor Licensing Act 1997. Prepared for the Government of South Australia. Accessed 17 January 2023 from: <https://www.aph.gov.au/DocumentStore.ashx?id=f3b6ce82-0cec-4580-9985-dc6d2b86b98d&subId=463299>.
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3. Wilkinson, C., Livingston, M., & Room, R. (2016). Impacts of changes to trading hours of liquor licences on alcohol-related harm: a systematic review 2005–2015. *Public Health Research & Practice*, 26(4), e2641644.
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5. Miller, P., Droste, N., Baker, T., & Gervis, C. (2015). Last drinks: A study of rural emergency department data collection to identify and target community alcohol-related violence. *Emergency Medicine Australasia*, 27(3), 225-231.
6. Warburton, A. L., & Shepherd, J. P. (2004). Development, utilisation, and importance of accident and emergency department derived assault data in violence management. *Emergency Medicine Journal*, 21(4), 473-477.
7. Miller, P., Droste, N., Egerton-Warburton, D., Caldicott, D., Fulde, G., Ezard, N., Preisz, P., Walby, A., Lloyd-Jones, M., Stella, J., Sheridan, M., Baker, T., Hall, M., Shakeshaft, A., Havard, A., Bowe, S., Staiger, P.K., D'Este, C., Doran, C., Coomber, K., Hyder, S., Barker, D. and Shepherd, J. (2019), Driving change: A partnership study protocol using shared emergency department data to reduce alcohol-related harm. *Emergency Medicine Australasia*, 31: 942-947.