

Online liquor gets audited: a review of regulatory controls and supply practices of online liquor retailers in NSW, Australia

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Key points

- The study assessed restrictions on the online purchase and supply of alcohol to minors and intoxicated people in New South Wales (NSW), Australia
- Three gaps in legal safeguards were identified: inconsistent application of the *NSW Liquor Act 2007*; inability to complete compliance auditing; and an absence of consistent mandatory signage by retailers
- The study's findings have informed advocacy that has influenced regulatory reform in NSW

Abstract

Objectives: In New South Wales (NSW), Australia, the number of 'online liquor licences' – packaged liquor licences with conditions restricting the sale of alcohol to online, phone or fax orders – increased from 101 in 2010 to 500 by May 2018. International and national evidence is emerging that this growth in online liquor licences has been accompanied by increased risk of supply to young and intoxicated people. This study aimed to determine the extent to which online liquor retailers in NSW have adopted safeguards to prevent people younger than 18 years purchasing alcohol online; and the supply of alcohol to intoxicated people. It also aimed to assess the regulatory framework in NSW for these licences.

Methods: We undertook an audit between May and November 2018 of regulatory controls for 213 online liquor retailers in NSW with publicly available websites at the time of auditing. A comparative analysis of the *NSW Liquor Act 2007* and the *NSW Liquor Regulation 2018* was conducted.

Results: Three gaps in the existing legal safeguards for online liquor retailers were identified: inconsistent application of the *NSW Liquor Act 2007*; the inability of the regulator to complete compliance auditing; and an absence of consistent mandatory signage. The study also identified inconsistencies between the regulation of physical and online liquor retailers.

Conclusions: Study findings led to the formulation of recommendations for regulatory change, which were presented to the government oversight agency, Liquor & Gaming NSW, in April 2019 and followed up by written submissions from the research group on behalf of Northern Sydney Local Health District Health Promotion. Several key reforms were subsequently incorporated into the *NSW Liquor Amendment (24-hour Economy) Bill 2020*. Findings have informed an advocacy approach which has led to improved regulatory reform within NSW.

Introduction

There are 3 million deaths worldwide annually from harmful alcohol use; approximately six deaths every minute.¹ Alcohol is the most widely used recreational drug in Australia, with the Australian Institute of Health and Welfare analysis of the 2017–18 National Health Survey indicating 79% of adults consumed alcohol in the year before the survey was conducted.² Risky drinking creates significant social costs such as increased alcohol-related illness, street and family violence, sexual assault, suicidal behaviour and road accidents.^{3–5} Alcohol is one of Australia's leading causes of drug-related death and was a contributing factor to 4186 deaths in 2017.⁶ Since 2015, the proportion of people in New South Wales (NSW), Australia, aged 16 years or older drinking at levels posing long-term health risks has been increasing.⁷ This has coincided with a spike in alcohol-attributable hospitalisations in NSW.⁷

Regulatory controls on the availability, promotion and pricing of alcohol, together with consistent monitoring and enforcement, are recognised as effective harm-reduction measures.^{8,9} However, improved digital technology and a shift to online retail markets has fostered the emergence of fast and convenient online alcohol-delivery services, which are proving challenging for regulators.

Evidence is emerging, internationally and nationally, that growth in online liquor licences has been accompanied by increased risk of supply to young people. Early studies into alcohol home-delivery services in the US found that 10% of 12th graders had purchased delivered alcohol and 45% of online liquor purchases made by minors (18–20 years) were successfully received.^{10,11} A mystery shopper study of 21 alcohol home-delivery services in the Netherlands found 100% of orders from underage customers were approved and executed.¹² An Australian study found more than one-third

of respondents aged 25 years or younger did not have their identification checked when receiving their most recent online liquor order.¹³

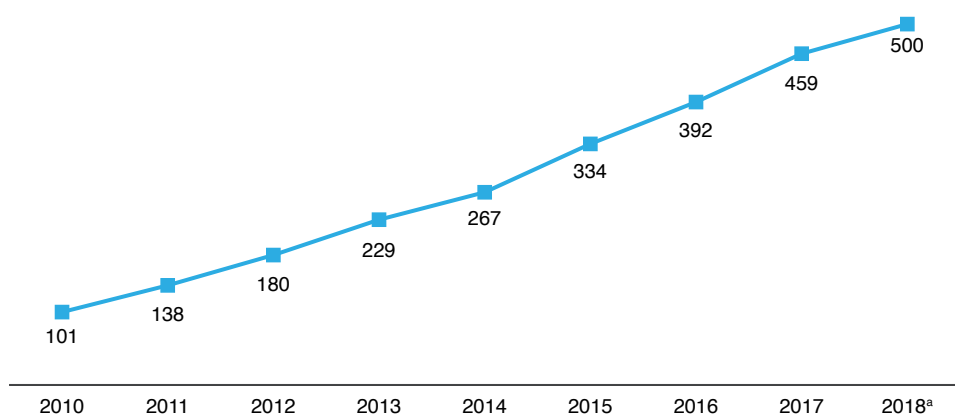
Supply to intoxicated people is another potential problem with online liquor delivery services. The same Australian study found 69% of respondents who received an on-demand order (an online liquor delivery within 2 hours) reported consuming five or more standard drinks on that occasion.¹³ Twenty-two per cent of respondents indicated they used the on-demand service because they would be over the legal blood alcohol limit to drive.¹³ Of particular concern is that this online retail method appeals to those most susceptible to harm, with high-risk drinkers more likely to use delivery services to purchase liquor.^{14,15}

In NSW, packaged liquor licences (PLLs) enable businesses to sell liquor to the public, to be consumed away from the physical liquor retailer (i.e. bottle shop).¹⁶ A 'no walk-up' condition in the licence restricts the retailer to only selling liquor online or by phone, facsimile or mail order. The liquor must be delivered to the home or another nominated address.¹⁶ Business models focusing on delivery have rapidly expanded in the past decade, with online liquor licences increasing from 101 in 2010 to 500 by May 2018 (see Figure 1).

Although research is emerging about the impact of the expanding international and domestic online liquor markets, little is known about the purchasing and supply practices of online liquor retailers, or how existing legislation protects against supply of alcohol to young or intoxicated people. Our study aimed to address this knowledge gap to support development of a set of recommendations to advocate for regulatory change.

The aims of the research were to: 1) identify safeguards adopted by online PLLs in NSW to prevent both underage and intoxicated people from purchasing alcohol online; 2) assess the regulatory framework in NSW applying to these online liquor licences.

Figure 1. Cumulative total of online liquor licences in NSW, Australia, by year



^a 2018 data up to May

Source: Data provided by Liquor & Gaming NSW

Methods

Audit tool

An audit tool with 23 items was developed in response to the increasing number of online PLL applications being reviewed by the research team, as part of regulatory monitoring by NSW Health. The tool aimed to identify the extent to which online liquor retailers implemented safeguards against underage and intoxicated supply (the tool is available here: figshare.com/articles/figure/OLGA_Audit_Tool_Final_pdf/16746481). Questions were designed to determine:

- Whether liquor could be purchased directly through the website
- The inclusion and location of mandatory signage on the website
- Adherence to existing legal age verification obligations
- Purchasing and supply safeguards.

Assessment of regulatory safeguards

Following the audit, in November 2018 the research team reviewed the *NSW Liquor Act 2007* (the *Act*) and the *NSW Liquor Regulation 2018* (the *Regulation*) to more broadly assess the regulatory framework protecting against supply of alcohol to underage or intoxicated people.

Ethics approval

The North Sydney Local Health District Human Research Ethics Committee reviewed and determined this audit as not requiring formal ethics approval (May 2018).

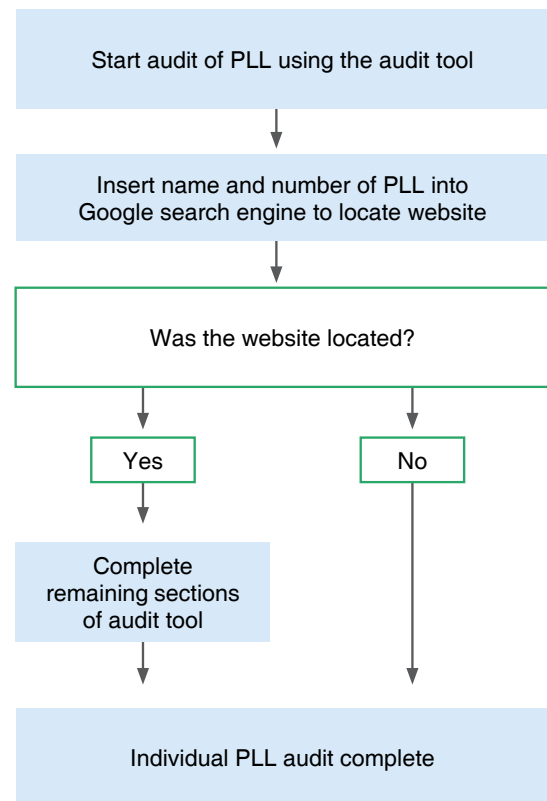
Data collection

The audit tool was piloted by three auditors (MP, JN, RB) with amendments made following auditor feedback. To promote consistency across auditors, an audit protocol was developed (Figure 2) and the first 15 audits were completed as a group.

By May 2018 there were 500 PLLs in NSW with a no walk-up condition. A list of the licences was provided by Liquor & Gaming NSW (L&GNSW) for the study. The three auditors were each allocated a randomised list of 166 or 167 licences. On completion of the audit process, two auditors cross-checked 12 audits that had been completed by fellow auditors to assess consistency of the audit method; this indicated an interrater reliability of 82%.

The websites of 159 licences (32%) were unable to be located via a Google search of the licence name and number. A further 125 licences (25%) did not sell liquor directly through their website, instead selling via phone, fax, email or mail order methods, or holding the licence without trading. Three retailers were excluded from the audit because of researcher error, resulting in 213 retailers undergoing the full audit between May and November 2018.

Figure 2. Audit protocol



PLL = packaged liquor licence

Data analysis

Retailer usage of mechanisms to safeguard against intoxicated or underage supply were calculated as the simple proportion of retailers who used the mechanism compared with the total retailers assessed for that question. For example, of the 213 online businesses audited, 40% ($n = 86$) required purchasers to supply their date of birth to confirm they were older than 18 years. Findings obtained from the review of regulatory safeguards within the *Act* and the *Regulation* were then inductively analysed by the research team to identify discrepancies between safeguards that apply to online retailers and those imposed on physical liquor retailers.

Results

Audit results

The audit obtained complete data for 213 online businesses.

Products sold

Most of the online liquor retailers sold wine (85%); a smaller proportion sold spirits (36%), beer (22%), cider (14%) and premixed drinks (5%). Discounted or

competitive pricing was advertised on 72% of audited websites.

Age verification and signage requirements

A minority of online liquor retailers (22%) specified that delivery could only be completed if someone older than 18 years could accept the goods. Only 40% of retailers required purchasers to supply their date of birth to confirm they were older than 18 years, a legislative requirement under section 114 of the *Act*. Most retailers (85%) complied with section 51 of the *Regulation*, displaying on their website a notice stating it is illegal to sell, supply or obtain alcohol on behalf of a person under 18 years – although 14% of these did not display this notice on their website homepage.

Safeguards against supply to underage or intoxicated people

Only 5% of retailers included a policy on their website about delivery of goods to an intoxicated person. Only 25% of retailers listed delivery options in the event that nobody was present to accept the goods, and of those 70% allowed a location nominated by the customer.

Results of legislative review

Analysis of the *Act* and the *Regulation* identified six key differences between physical and online liquor retailers in the existing legal safeguards protecting against supply to underage or intoxicated people (see Table 1).^{17,18}

Table 1. Differences in regulation of physical and online liquor retailers in NSW, November 2018

	Physical liquor retailers	Online liquor retailers
Supply responsibility	It is an offence to sell or supply alcohol to a minor under Section 117 of the <i>Act</i> .	Section 114 (5 & 6) of the <i>Act</i> provides a legal defence for underage supply for both the licensee and delivery person if the customer's delivery instructions are complied with and neither were aware the offence had been committed. Section 114 (7) could be interpreted as legally permitting a minor to take delivery of liquor if they have been requested to do so by a parent or guardian.
Responsible service of alcohol requirements	Section 99 (2) (c) of the <i>Act</i> requires all parties engaged in the sale, supply, service and promotion of liquor to undergo training that will promote responsible practices.	Delivery drivers supplying alcohol on behalf of online liquor retailers are not required to undertake training in responsible supply practices.
Assessment of social impact	Section 48 (5) of the <i>Act</i> states that a licence will not be granted unless the authority is satisfied that the overall social impact of the licence will not be detrimental to the wellbeing of the local or broader community (the suburb and local government area respectively).	A geographically defined local and broader community does not exist for online purchases.
Compliance auditing	The street address of the physical liquor retailer is collected and stored by the regulator during the liquor licence application process to allow compliance auditing to occur.	The recorded licence address relates to where administrative duties take place (where sales orders are processed).
Age-verification requirements	The onus is on the person selling the liquor to ensure the purchaser is at least 18 years of age through the verification of an evidence of age document.	Section 144 (3) of the <i>Act</i> only requires the purchaser to declare their date of birth at the point of purchase. Items can also be delivered in accordance with the customer's instructions (i.e. items left unattended) for non-same-day deliveries, without a requirement to provide an evidence of age document.
Signage requirements	The retailer's name, licence and licensee must be displayed at the front of the venue. Coloured pictogram-based signage must also be displayed at every entrance and counter from which alcohol is sold, alerting customers that underage supply is against the law.	The liquor licence number and a notice about underage supply must be displayed somewhere on the website.

Discussion

The findings of the audit of existing safeguards and the legislative review identified three key implications and recommendations for change to prevent the supply of alcohol to underage and intoxicated people via online alcohol businesses.

Inconsistent application of the *Act*

Findings from our legislative review and audit revealed that regulatory requirements for online liquor retailers are inconsistent with those for physical licensed retailers such as bottle shops. Supply responsibility for online liquor retailers is complex and contains legal defences for underage supply, which don't exist for retailers selling over the counter. The legislation allows alcohol deliveries to be left unattended at the customer's request, negating the requirement for age verification at the point of supply, which is mandatory for physical liquor retailers. This lack of age-verification responsibility for online liquor retailers increases the potential for underage customers to obtain liquor. It is not possible to assess the likely social impact of an online liquor store on a local community during the application process as required by Section 48 (5) of the *Act*, in contrast to physical retailers, which have geographically defined customer bases. In addition, there is no mandated training requirement for PPL couriers, whereas all staff responsible for the sale of liquor in physical retailers are required to hold a current NSW Responsible Service of Alcohol competency card.

To enable consistent application of the *Act* we recommended:

- Extending the requirement to complete a responsible delivery of alcohol course by an independent provider for all alcohol delivery drivers
- Requiring packages containing alcohol to display "Contains alcohol: age verification required upon delivery" label, to ensure couriers are aware of their supply responsibilities
- Prohibiting the 'authority to leave' delivery option, and mandating age verification at the point of purchase and delivery
- Establishing an alternative approach to assessing social impact for licences without a geographically defined local and broader community.

Inability to complete compliance auditing

A key finding of this research was the regulator's inability to effectively monitor licensees' compliance with their responsibilities under the *Act* and the *Regulation*. During the application approval process, L&GNSW only records the physical location where orders are received (often a nominal office space or residential address used solely for administrative purposes), rather than the virtual address where the alcohol is actually purchased (the website). Without the additional requirement to provide the licensee's website, the regulator's ability to adequately

and routinely audit these businesses to ensure their point-of-sale practices comply with licensing conditions is constrained.

To increase compliance of online liquor retailers, we recommended:

- Requiring licensees to supply their URLs/websites/app name to the Regulator within 30 days of commencement of trading
- Requiring licensees to update the Regulator of the URL of their approved online PLL changes
- The Regulator to implement ongoing random compliance audits of online liquor retailers.

Absence of consistent mandatory signage

Research findings indicated inconsistencies with signage requirements. There is a clear difference between the prominent signage required by physical liquor retailers, alerting customers of the illegality of underage supply, and the text-based notice mandated to be displayed somewhere on websites by online liquor retailers. Even with these diminished signage requirements, the audit identified that 15% of online retailers were noncompliant with these signage obligations. In addition, for online orders, the 'supply' of alcohol occurs after the purchase, necessitating additional signage requirements to alert customers of delivery policies.

To align signage requirements for physical and online liquor retailers, and to reduce potential supply to underage or intoxicated people, we recommended the following legislative amendments:

- Mandating that the same underage supply pictogram required of physical liquor retailers be prominently displayed (with specified minimum dimensions) on PPL website landing pages, as well as all subsequent accessible pages on the site
- Requiring users to declare their date of birth to permit access to the site, as well as at the point of purchase on the site
- Requiring a point of purchase declaration that delivery will only be made if a person aged 18 years or older can accept and sign for the goods
- Mandating a point-of-sale declaration that delivery of goods will not be made to intoxicated people.

Implications for other jurisdictions

The need for improved regulation of online liquor supply extends beyond NSW, with many recommendations from this study being applicable to other domestic and international jurisdictions. A recent study investigating the advertised sales and delivery practices of the 65 most visited alcohol-delivery websites in Australia found most (75.4%) were willing to leave alcohol unattended at a specified address.¹⁹

A nationwide annual alcohol poll undertaken by the Foundation for Alcohol Research and Education in 2020 found that one-third of respondents who had alcohol delivered in the past month did not have their

identification checked and one-quarter had their order left unattended at their home.²⁰ It also found that 38% of people who received an alcohol delivery within 2 hours of ordering drank 11 or more standard drinks that day.²⁰ A VicHealth (Department of Health, Victoria, Australia) survey undertaken in 2020 found that on-demand alcohol delivery services enabled people to keep drinking when they would otherwise have stopped, and encouraged people to drink more than they would have if the service was unavailable.¹⁴ These studies raise concerns about the supply practices of home-delivery liquor retailers throughout Australia and the impact this emerging business model is having on consumption.

Limitations of study

Approximately one-third of active online PLLs in NSW were unable to be located at the time of the audit. However, this was due in large part to the lack of a requirement for business owners to provide an associated URL. A further limitation of this study was that the protocol used a desktop audit of business websites and was therefore confined to publicly available information and policies. This may not represent all safeguards implemented by individual retailers. Future research could explore the extent to which the recent *NSW Liquor Amendment (24-hour Economy) Bill 2020* has improved practical safeguards used by online liquor retailers to restrict supply to underage and intoxicated people. A 'mystery shopper' audit of alcohol-delivery processes could also reveal the effectiveness of end-to-end safeguards employed by online liquor retailers.

Conclusions

Our research aimed to identify existing safeguards in NSW to prevent supply to underage or intoxicated people via online purchasing, and to assess the extent to which online liquor retailers in NSW have adopted them. Using a legislative review and audit of all online liquor retailers in NSW (as of May 2018), this research identified three key areas for improvement, and provided a series of practical recommendations.

Our recommendations were presented directly to L&GNSW in April 2019 and were reinforced through written submissions for a discussion paper – 'Enhanced regulatory measures for same day alcohol delivery' – and the Draft Liquor Amendment (24-hour Economy) Bill 2020.^{21,22} Eight new regulatory controls, including prohibition of same-day deliveries being left unattended; mandating age verification at the point of purchase and delivery; requiring all same-day delivery drivers to undertake responsible delivery of alcohol training; and introducing an offence for any person making a same-day delivery to an intoxicated person, were subsequently incorporated into the *NSW Liquor Amendment (24-hour Economy) Bill 2020*.²³

Although these same-day delivery reforms are a positive step towards effective regulation of online PLLs in NSW, they do not apply to non-same-day deliveries. A considerable risk of underage supply remains for any liquor order placed where delivery occurs on subsequent days. This represents a significant gap in legal safeguards to prevent minors from accessing alcohol.

Addressing the shortfalls that exist within the current regulatory framework for online liquor retailers minimises the risk of harm to young people and intoxicated people. In summary, this study has informed an advocacy approach which has influenced regulatory reform within NSW.

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Peer review and provenance

Externally peer reviewed, not commissioned.

Competing interests

None declared.

Author contributions

JN and MP were involved in planning and conducting the research, as well as drafting the paper. AW was involved in drafting the paper. JH and RB were involved in planning and undertaking the research, as well as reviewing the paper. PK provided oversight of the research and reviewed the paper.

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