



# Enhanced regulatory measures for same day alcohol delivery

Discussion Paper - October 2019

# 1. Have your say

Liquor & Gaming NSW (L&GNSW) is inviting stakeholder views about the potential to enhance the regulation of online alcohol sales and same day deliveries.

This Discussion Paper identifies a range of potential regulatory measures aimed at enhancing protections for minors and responsible service of alcohol (RSA) standards for businesses operating in this space – including licensed businesses, agents and individuals that provide rapid, same day delivery of alcohol.

Your feedback will help to inform the further development of the measures and any policy recommendations for the enhanced regulation of the sector moving forward.

## 1.1 Preparing a written submission

You can email a submission to [policy@liquorandgaming.nsw.gov.au](mailto:policy@liquorandgaming.nsw.gov.au).

Alternatively, you can send a written submission to:

Liquor, Gaming and Racing  
GPO Box 7060  
Sydney NSW 2001

If you wish your submission or a part of it to be treated as confidential, that should be made clear at the time it is lodged, along with reasons why.

## 1.2 Other ways to have your say

Tell us about how the key liquor law reforms identified in this Discussion Paper affect you. Share your views by submitting your feedback on the Have Your Say website [www.haveyoursay.nsw.gov.au](http://www.haveyoursay.nsw.gov.au)

L&GNSW may directly consult peak industry and community bodies, policy advocates and government sector stakeholders to collect their feedback and views.

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## 3. Introduction

Improvements in technology and increasing consumer demand for fast and convenient online delivery services have seen the emergence, and continued growth, of the online alcohol sales and same day delivery markets around Australia.

Given the potential risks associated with this emerging business model Liquor & Gaming NSW (L&GNSW) has identified the enhancement of the same day alcohol delivery regulatory framework as one of its strategic and regulatory priorities. In support of this, L&GNSW compliance operations for 2018/19 and 2019/20 have included targeted covert and overt inspections of same day delivery operators.

To further inform the development of a robust regulatory framework L&GNSW has also undertaken an analysis of related aspects of the liquor legislation, and is engaging with other jurisdictions and key stakeholders. This Discussion Paper has been released to enable L&GNSW to also capture the broader views of industry and community stakeholders, as well as health advocates.

It is critical that regulatory controls around the sale and supply of liquor keep pace with emerging market trends.

### 3.1 About this paper

This Discussion Paper is aimed at furthering understanding of key stakeholder views on the risks relating to the same day deliveries in NSW, as well as obtaining feedback on potential new and enhanced regulatory and administrative measures to help manage risks.

It identifies a mix of potential regulatory and administrative measures that seek to enhance related responsible service of alcohol (RSA) standards and strengthen related protections for vulnerable groups - particularly minors.

Stakeholders are invited to provide comment on potential measures, as well as offer broader views on other key issues or concerns for the future regulation of same day deliveries.

### 3.2 Next steps

L&GNSW will consider all submissions and feedback from stakeholders provided in response to this Paper. This will inform the development of future policy recommendations for consideration by the NSW Government.

Any final changes to the liquor regulatory framework are expected to require the passage of legislation through the NSW Parliament.

## 4. The case for enhanced regulation

### 4.1 The context

The Australian online liquor sales market had an estimated worth of \$446 million in 2017-18 or approximately 4% of total liquor sales – with annual growth from 2018-23 projected at 8.6%.<sup>1</sup>

Over the past ten years from 2008 to 2018, the number of packaged liquor licences in NSW increased from 1,660 to 2,578. A larger proportion of these now offer online sales with alcohol delivery only – rising from 44 (or 2.65%) in 2008 to 512 (or 19.8%) in 2018.

L&GNSW expects continued growth in same day alcohol delivery services in NSW given this upward trend and increasing consumer demand for convenient and fast online retail services.

According to an IBISWorld report from 2017, the online beer, wine and liquor sales industry has operated under a “low level of regulation and policy, though this is increasing.” While L&GNSW recognises this is not an uncommon theme across a broad range of emerging online markets, it is important that regulators recognise any new risks and look for ways to respond to these risks through agile and commercially aware approaches.

In NSW, L&GNSW aims to foster responsible and sustainable industry development that is balanced with risk based oversight of the industry to minimise the potential for harm.

### 4.2 The potential for harm associated with same day alcohol delivery

Currently the online market has two main businesses models, the traditional slow delivery model which enables the purchase of cartons of wine delivered several days after the order is placed, and the same day delivery services that often deliver alcohol cold and ready to drink alcohol in as little as 30 minutes after the order.

L&GNSW has intensified its focus on online alcohol sales, and specifically same day deliveries, as part of its regulatory priorities. Specific emphasis has been placed on same day alcohol deliveries given their unique characteristics and risks, where:

- customers place orders to rapidly access alcohol on unlicensed premises, with services being advertised as “express” or “same day” or “within 30 minutes”;
- exact dates and times of delivery are far more predictable;
- online ordering systems and delivery processes may be open to manipulation or misuse by intoxicated person, minors or other vulnerable groups (e.g. self-excluded problem drinkers) who want to quickly access alcohol;
- business growth is driving increased availability of ready to be consumed alcohol, with potential for increased alcohol-related harm (noting evidence to date shows a link between density of packaged liquor outlets, alcohol availability and harms).<sup>2</sup>

These factors emphasise the importance of lawmakers, regulators and industry leaders collectively working to minimise risks of alcohol-related violence and other harms, while supporting responsible development of the industry in line with community expectations.

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<sup>1</sup> IBISWorld Industry Report – Online Beer, Wine and Liquor Sales in Australia – January 2018. Available [here](#).

<sup>2</sup> M Livingston, ‘Alcohol outlet density and harm: comparing the impacts on violence and chronic harms’ (2011) 30(5) *Drug Alcohol Review* 515.

Any changes to the current regulatory model should complement the steps industry has already taken to raise standards, including the self-regulatory Online Alcohol Sales and Delivery Code of Conduct launched by Retail Drinks Australia on 2 July 2019.

Combining effective self-regulation with a strengthened regulatory framework will provide a key means to ensure risks from same day deliveries are comprehensively addressed; all operators conducting these deliveries are required to comply with enhanced standards; and appropriate ongoing compliance monitoring and enforcement practices are in place.

#### **4.3 Potential regulatory and administrative measures for same day deliveries**

As part of an ongoing commitment to risk-based regulatory intervention, the proposed measures set out in this paper have been informed by ongoing dialogue with all our stakeholders, and consideration of practices some parts of the industry are self-adopting to support RSA and minimise risks in the same day home delivery context.

Potential regulatory measures provided for stakeholder comment (see Section 5) include:

- 1 Same day delivery to be defined and regulated under the *Liquor Act 2007*.
- 2 Prohibit all same day deliveries from being left unattended.
- 3 Introduce an offence for any person that makes a same day delivery to an intoxicated person.
- 4 Require all persons making same day deliveries to complete a responsible delivery online course and knowledge test.
- 5 For all same day deliveries, licensees to keep a record of any non-delivery and the reason.
- 6 Introduce an offence for any licensee that causes or permits an arrangement that financially penalises a delivery agent for refusing to make a same day delivery on the basis that it would contravene liquor legislation – e.g. financially penalising them for refusing to drop off liquor to a minor.
- 7 Wherever alcohol is being advertised for sale online for same day delivery, an avenue for self-exclusion – either temporarily or permanently – must be provided on the online site.
- 8 Restrict same day deliveries to residential and business addresses only.

These could be complemented by administrative changes that enhance guidance and related licensing processes (see Section 6), including:

- 9 L&GNSW to develop and release industry guidance for same day delivery business models.
- 10 Licensing processes to be enhanced to seek more information in applications about the nature of any proposed same day alcohol delivery model.

Potential measures in this paper are not proposed to apply to online orders that are delivered using traditional, slower delivery methods – such as wine of the month clubs and non-same day deliveries from online marketplaces or other online platforms made using regular or express post or courier services that offer next day or later delivery.

Slow deliveries are considered lower risk because of the reduced likelihood of manipulation by minors or intoxicated individuals seeking to access alcohol. In addition to the lower risk,

L&GNSW also recognises that regulating slow alcohol deliveries could create an excessive regulatory burden for postal and courier services, and would necessitate a major change to the way parcels are handled across Australia.

The proposed approach recognises the different risk profiles of these business models, and seeks to ensure consistency with better regulation principles to minimise red tape regulatory burden. If implemented, it is proposed that any enhanced measures for same day deliveries would be subject to an evaluation after two years in consultation with community, industry and government stakeholders.

#### **4.4 Interstate delivery issues also need consideration**

Under the current regulatory framework interstate licensed businesses can sell alcohol to consumers in NSW and have it delivered on the same day as the order. The absence of a requirement for same day delivery operators to be licensed in NSW, creates a number of issues for NSW, including:

- 1 The probity and suitability of operators (to meet NSW licensing requirements) is not assessed, nor is simple business information obtained, as part of the NSW licensing process;
- 2 L&GNSW has limited regulatory reach over interstate operators:
  - a. when seeking access to records;
  - b. imposing conditions;
  - c. enforcing penalties; and
  - d. avenues of review.
- 3 NSW Liquor laws have a limited application to interstate operators especially when it comes to hours of trade and other standard regulatory requirements; and
- 4 Interstate operators compete with local package liquor businesses without paying NSW licence fees or providing the same economic contribution to the NSW economy
- 5 Interstate operators may not be able to access low cost dispute resolution options through NSW tribunals.

Allowing the status quo to be retained may cause difficulty ensuring future amendments (introduced to implement the framework) apply equally to NSW and interstate licensed businesses.

Areas of the liquor laws and licence conditions that often differ between jurisdictions, include: the RSA training content and requirements for staff, hours of operation, signage requirements and licence fees.

For example, there are operators currently licensed and based interstate that sell alcohol in NSW offering delivery in as little as 30 minutes. These operators typically offer their services to Sydney Metro areas including Kings Cross and the CBD, by obtaining alcohol from independent bottle shops they partner with in NSW.

These operators often indicate that the sale of alcohol via their website is occurring in their home jurisdiction. This reduces clarity on how NSW laws apply when the liquor is delivered on the same day in NSW under authority of an interstate licence – for example, what time can the interstate licensed business deliver to, given existing NSW laws for take-away liquor and home deliveries to cease by 11pm only apply to licences in NSW?

Additional problems may be experienced where local liquor accords impose measures around packaged liquor sales. Allowing interstate operators to deliver into such areas without any control would stand to undermine the hard work of the accord and its members to impose controls in the area covered by the accord.

At this stage there are two key options that could address the risks with this business model:

- 1 *Remove the current provisions in the legislation that require the licensee to be responsible for the personal supervision and management of the licensed premises.*

Doing this will allow interstate businesses to become licensed in NSW, and to implement processes and procedures that ensure they can maintain appropriate supervision and management of the licensed premises, noting the technological advances that have occurred since the requirements under the *Liquor Act 2007* were introduced (e.g. section 91).

- 2 *Require interstate businesses to register in NSW.*

This would require amendment to the Act and could follow a similar approach to that being adopted by South Australia and the Northern Territory.

The registration process would recognise that the business is already licensed interstate and therefore full probity assessment is not required.

Supporting amendments maybe required to ensure an interstate business that registers in NSW has access to the same access to justice pathways that are available to NSW based licensees.

## 5. Eight potential new regulatory controls for same day delivery services in NSW – for stakeholder comment

	Proposed Measure	Rationale	Analysis
1	<p><b>Same day delivery to be defined under the <i>Liquor Act 2007</i>.</b> The definition is proposed to capture circumstances where any person:</p> <ul style="list-style-type: none"> <li>delivers liquor ordered by another person, or obtained by the person as an agent for another person, in NSW from any licensed premises (whether in NSW or another State/Territory);</li> <li>accepts payment or enters a commercial arrangement in return for delivery; and</li> <li>completes delivery the same day as the order is placed.</li> </ul> <p>Some limited exceptions are proposed to apply – e.g. packaged liquor that forms part of a sale of food designed to be delivered with a hamper.</p>	<p>This definition will provide the primary means to apply enhanced regulatory controls to address risks specific to the same day alcohol delivery market.</p>	<ul style="list-style-type: none"> <li>Using the proposed definition to apply enhanced controls recognises the increased risks and potential for harm associated with the same day delivery business model as compared to more traditional, slower delivery models.</li> <li>It will apply to orders online, over the telephone, by fax or mail order that are made the same day.</li> <li>The proposed approach ensures controls are targeted based on level of risk and will not impose undue burden on more traditional online business models or delivery agents (such as Australia Post) for wine of the month clubs and other postal services that have traded for many years with minimal impact.</li> <li>The proposed approach captures all same day alcohol delivery services – whether licensed or unlicensed – to ensure risks associated with same day deliveries are treated consistently. For example: <ul style="list-style-type: none"> <li>Licensed businesses that hire their own delivery staff;</li> <li>Unlicensed delivery agents or providers that pick up and deliver alcohol purchased from licensed premises;</li> <li>Individuals that accept same day deliveries via task-matching platforms and pick them up from licensed premises.</li> </ul> </li> </ul>
2	<p><b>Prohibit all <i>same day deliveries</i> from being left unattended.</b></p> <p>This will amend section 114(3)(b)(iii) of the <i>Liquor Act 2007</i> so that alcohol purchased online and delivered the same day can no longer be dropped off unattended at a delivery address.</p>	<p>Additional protection to prevent persons under the age of 18 and intoxicated persons from obtaining alcohol left unattended at a delivery address.</p>	<ul style="list-style-type: none"> <li>With the advent and growth in same day alcohol delivery services, there is increased potential some minors may seek to circumvent online ordering system controls and provide instructions for alcohol to be left unattended, to attempt to quickly gain access to alcohol. Some parts of the industry have recognised this risk and have already adopted measures to not permit any same day delivered alcohol to be left unattended.</li> <li>Anyone conducting a same day delivery would need to ensure they only provide the liquor to a person, and therefore will need to check age if the person appears 25 or younger to ensure they are not committing an offence of supplying liquor to a minor.</li> <li>Longstanding arrangements for other types of deliveries – where the exact delivery date and time are less certain – would continue (e.g. deliveries by regular couriers or postal services that may be next day or much later).</li> </ul>

3

**Require all persons making same day deliveries to have an understanding of responsible supply principles, by:**

*Two options have been identified for providing delivery drivers with knowledge and understanding of responsible supply principles, with both options involving the development of a non-accredited course and knowledge test.*

**Option 1:** places responsibility on operators to take all reasonable steps to ensure that deliverers have knowledge of, and understand basic responsible supply principles as they apply to same day alcohol delivery services.

To ensure all delivery drivers attain a minimum standard of knowledge about relevant NSW laws; responsible supply practices; and safety considerations that apply in the same day alcohol delivery context.

**Option 1:**

- Provides flexibility to Industry to create and maintain its own training material and knowledge test around responsible supply principles.
- This option would likely result in very different training materials across operators, especially where those operators are not licensed or do not have an otherwise established understanding of RSA requirements.
- Variation in RSA training may result in different operators applying different standards to deliveries, exposing services more open to manipulation by intoxicated persons or minors.
- This option may be costly for smaller operators that do not have access to existing or industry training materials, and it is arguably these operators where the greatest need for comprehension of RSA principles exists, due to the potential for manipulation.
- Proposed content any responsible supply principles would need to cover includes:
  - obligations for responsibly delivering alcohol under NSW liquor laws (including new controls being introduced);
  - how to undertake an RSA assessment in the home delivery context – considering factors like how to recognise intoxication and factor in the presence of minors; and
  - how to look after personal safety.
- The required elements to be included in the training material could be specified in legislation, and give reference to the potential offence provisions identified below; or  
The training could alternatively be subject to approval by L&GNSW, however this may carry additional administrative costs for Government.
- A need to audit the training provided by operators to ensure quality and integrity of training content and assessment process would also be required from time to time.
- This option may include the introduction of offences for:
  - operators that fail to ensure delivery staff have the required knowledge and understanding of RSA principles; and
  - a person who delivers alcohol without having the required knowledge or understanding of RSA principles.

**Option 2:** is for L&GNSW to develop online resource similar to the Easy to do work health and safety website ( <https://www.safework.nsw.gov.au/safety-starts-here/easywhs>).

The website would provide training materials, an assessment process, and the ability to register completion of the training.

**Option 2:**

- L&GNSW will develop training material about responsible supply principles for delivery drivers that includes a knowledge test, and that can be used by operators and delivery drivers alike to ensure all persons attain the required understanding of responsible supply principles affecting the same day delivery of alcohol.
- The website and completion of the registration process will be made available to delivery drivers (on the L&GNSW website) at no cost.
- Centralising the training process could help to ensure all people undertaking same day delivery of alcohol in NSW are able to access a consistent set of educational resources, and are equally equipped to manage risks of harm likely to be encountered.
- As above, the proposed content that should be covered includes:
  - obligations for responsibly delivering alcohol under NSW liquor laws (including new controls being introduced);
  - how to undertake an RSA assessment in the home delivery context – considering factors like how to recognise intoxication and factor in the presence of minors; and
  - how to look after personal safety.
- In developing training materials, L&GNSW would look to consider any opportunity to integrate any existing educational and training materials being offered as part of the industry self-regulatory Code of Conduct.
- L&GNSW anticipates such a unit would be concise, easy to access and lower cost than a full RSA course.
- A simple registration process at the end of the course would ensure there is a record of completion, and by having a centralised point of registration, delivery persons that obtain a registration will be able to have that registration recognised by any business involved with the same day delivery of alcohol.
- This option may include the introduction of offences for:
  - operators that use delivery staff that have not completed the registration process; and
  - a person who delivers alcohol without having registered completion of the training material.

4	<p><b>Introduce an offence for any person that makes a <i>same day delivery</i> to an intoxicated person</b></p>	<p>To ensure RSA standards are observed wherever alcohol is rapidly provided to consumers, to minimise potential for alcohol-related harm.</p>	<ul style="list-style-type: none"> <li>• This is consistent with the practice to not allow alcohol to be served to an intoxicated person on licensed premises. It will help to remove any incentive a person may have to rapidly deliver alcohol to a person where they know (or ought to have known) that the person is in an intoxicated state, and ensure appropriate penalties apply.</li> <li>• Proposed enhanced training will support the introduction of this new offence by covering how to recognise signs of intoxication.</li> </ul>
5	<p><b>For all <i>same day deliveries</i>, licensees to keep a record of any non-delivery and the reason.</b></p> <p>Records are to:</p> <ul style="list-style-type: none"> <li>• be made available to NSW Police officer or a compliance inspector on request</li> <li>• be maintained for three years before disposal</li> </ul>	<p>To support licensees in meeting legal obligations to be responsible for the personal supervision and conduct of the licensed business; and enable enhanced monitoring and investigation of same day deliveries.</p>	<ul style="list-style-type: none"> <li>• Consistent with contemporary practices many businesses have in place, licensees would be able to use existing systems (including electronic methods) to record any instance where liquor purchased from them is not delivered, and include details of why it is not delivered.</li> <li>• Introduction of a record of non-delivery will support licensees to meet their legal obligation to be responsible for the personal supervision and management of the conduct of the licensed business.</li> <li>• Like incident registers that must be maintained for incidents that occur on some NSW licensed premises, the record would need to be available from the licensee for inspection by NSW Police or compliance inspectors. This will support monitoring and investigations that occur as part of the ongoing enhanced regulation of the sector – noting that monitoring compliance in a home delivery environment can be a challenge.</li> <li>• As with the incident register requirements, licensees would also be required to maintain these records for a minimum of 3 years.</li> </ul>
6	<p><b>Introduce an offence for any licensee that causes or permits an arrangement that financially penalises a delivery agent for refusing to make a same day delivery on the basis that it would contravene liquor legislation that:</b></p> <ul style="list-style-type: none"> <li>- prohibits supply to a minor;</li> <li>- prohibits supply to an intoxicated person.</li> </ul>	<p>To ensure delivery agents are not financially penalised for refusing supply so as not to commit an offence – e.g. if any licensee refuses to refund.</p>	<ul style="list-style-type: none"> <li>• Current employment practices in the gig economy can often provide payments based on the number of deliveries made. It is critical that licensees do not financially penalise delivery agents that chose to refuse service so as not to commit an offence under the NSW liquor laws.</li> </ul>

7	<p><b>Wherever alcohol is being advertised for sale online for <i>same day delivery</i>, an avenue for self-exclusion – either temporarily or permanently – must be provided on the operator’s website (and wherever else an order may be made).</b></p> <p>This would be provided together with the relevant liquor licence number, which is already required.</p> <p>If a request is made by a person to enter into a self-exclusion agreement, the licensee must enter into the agreement for the requested duration and each of the parties is required to comply.</p>	<p>To ensure vulnerable members of the community are able to self-exclude from rapidly obtaining alcohol via online channels.</p>	<ul style="list-style-type: none"> <li>• Physical packaged liquor outlets are currently required to enable customers to self-exclude from making liquor purchases on the licensed premises.</li> <li>• Alignment of requirements between online and ‘bricks and mortar’ outlets and online same day delivery services will ensure that problem drinkers wishing to self-exclude from rapidly obtaining alcohol cannot readily circumvent their exclusion by going online.</li> </ul>
8	<p><b>Restrict <i>same day deliveries</i> to residential and business addresses only</b></p> <p>(Note: Picnic hampers would be excluded under the proposed definition of <i>same day delivery</i>).</p>	<p>To limit risk of alcohol being delivered into parks and other public areas where consumption of alcohol may be restricted or prohibited.</p>	<ul style="list-style-type: none"> <li>• This measure would help to limit the risk of ready to drink alcohol being delivered to alcohol-free zones, where public consumption of alcohol is either restricted or prohibited by council by-laws or agreements under the respective liquor accords. This recognises it would be extremely challenging for all delivery personnel across the State to be equipped to understand where all alcohol-free zones and alcohol-prohibited areas are located.</li> <li>• It could also help to prevent potential misuse of same day delivery services by minors or intoxicated persons, by linking a specific home or business address back to the person accepting delivery.</li> </ul>

## 6. Potential supporting administrative changes

L&GNSW has also identified two potential supporting administrative changes that could complement any regulatory measures to enhance industry guidance and oversight of same day deliveries – see below.

	Proposed Measure	Policy Rationale	Analysis
10	<p><b>L&amp;GNSW to develop and release industry guidance for same day deliveries.</b></p> <p>This guidance will clarify how statutory requirements apply to the various online business models facilitating same day deliveries.</p>	<p>The guide will help to address uncertainties as to how some of business models currently operating – particularly food delivery applications and task-matching platforms.</p>	<ul style="list-style-type: none"> <li>Enhanced guidance released by L&amp;GNSW will help to show how different online business models can comply with the requirements, in a simple and easy to understand format.</li> <li>Many requirements and restrictions that apply to licensed businesses will also apply to same day deliveries made via non-licensed operators including task matching and food delivery platforms. Enhanced guidance will support various businesses in understanding the approach in NSW.</li> </ul>
11	<p><b>Licensing processes to be enhanced to seek more information in applications about the nature of any proposed same day alcohol delivery model.</b></p>	<p>To enable decision-makers and members of the community to be better positioned to consider impacts and risks that may arise from the grant of a licence where same day delivery is being proposed.</p>	<ul style="list-style-type: none"> <li>This would support new licence applications for same day delivery being determined by the Independent Liquor &amp; Gaming Authority, based on an assessment of risk of each proposed model.</li> <li>It would also provide a mechanism for L&amp;GNSW to consider whether, over the longer term, it may be appropriate to introduce any additional licensing controls around same day delivery to help monitor and track alcohol availability and related issues around the State.</li> </ul>