

**coles**  
liquor

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1 March 2013

Executive Officer  
Liquor Act Review Committee  
PO Box 6119  
EAST PERTH WA

Via E-mail – [LiqActReview@rgl.wa.gov.au](mailto:LiqActReview@rgl.wa.gov.au)  
PRIVATE & CONFIDENTIAL

Dear Sirs,

**Re: Review of Liquor Control Act 1988**

Coles Liquor Group currently operates 96 liquor stores and 5 hotels employing more than 700 team members across Western Australia. Coles Liquor operates under four brand names in Western Australia, first CHOICE Liquor Superstore, Vintage Cellars, Liquorland and Spirit Hotels. As a leading retailer of alcohol in Australia, Coles Liquor is supportive of the responsible sale, service and promotion of liquor.

We aim to operate our business to the highest standards, often well beyond any legislative requirements, to ensure that our business contributes in a positive way to the communities in which we operate. However, it is important that individuals consume alcohol in a responsible manner.

Coles Liquor actively works with governments and communities to reduce alcohol-related harm. However we believe that measures to reduce alcohol related harm should be targeted to have the greatest impact on the minority of people who consume alcohol in a harmful manner.

We attach our submission. Should you require any further clarification or assistance please don't hesitate to contact me on [REDACTED]

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Yours sincerely,

[REDACTED]

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Coles Liquor

**CHOICE** **LIQUORLAND** **VINTAGE CELLARS**

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## REVIEW OF THE LIQUOR CONTROL ACT 1988 COLES LIQUOR SUBMISSION

### 1. Introduction

The responsible consumption of alcohol is a lawful, socially acceptable recreational activity which provides considerable social benefit to large numbers of the community. The majority of people who consume alcohol do so responsibly and the problems arising from excessive and harmful consumption of alcohol are caused by a minority group only. Licensed premises have the potential for significant positive social impact in the way they serve a legitimate community demand. The liquor industry in Western Australia provides employment and has a positive role in the economic and social life of communities.

There are many opportunities for consumers in Western Australia to purchase liquor either at liquor stores, at hotels, restaurants, bars and online.

We acknowledge that there are considerable responsibilities when selling of alcohol. Whilst liquor licensing laws set out many of these responsibilities and are aimed at protecting both individuals and the broader community from the harm caused by excessive alcohol consumption, as a responsible retailer we operate well beyond these regulatory requirements. These include:

- The ID25 program: if a customer looks under 25 our team will ask them to provide proof of age identification prior to selling them liquor. This is also supported by point of sale material in store.
- Supporting campaigns on responsible drinking in conjunction with key stakeholders such as governments and organisations like Drinkwise. These campaigns have included the Drinkwise Kids Absorb Your Drinking, standard drink information, secondary supply laws and specific campaigns during Schoolies events.
- Strong policies and procedures regarding the sale and supply of alcohol including providing ongoing training to our team.

Coles Liquor has always worked with key stakeholders, including Police, Councils and the local community to address problem drinking. In many communities we have voluntarily introduced measures such as removing products from sale or reducing trading hours to assist those communities with the management of alcohol-harm related measures.

However, we believe that it is important to note that the majority of Australians drink responsibly. Coles Liquor is supportive of harm minimisation measures that are targeted, evidence based and proportional, which do not penalise the vast majority of drinkers who consume alcohol in a moderate manner and do not cause harm to themselves or those around them. We believe, any regulatory environment needs to be designed to minimise harms associated with harmful alcohol use while minimising the impact on responsible consumers.

If there is a desire on behalf of Governments to change drinking behaviour or patterns then it is important to look at why people drink. Arguably the intention or motivation to drink, whether in moderation or to excess, is in most cases formed prior to the consumers' attendance at a licensed premises. The importance of education and enforcement should also not be understated.

### 2. Alcohol Consumption Trends

Alcohol has been part of the Australian lifestyle for a long time and for the vast majority of Australians, is consumed responsibly.

There has been a steady decline in alcohol consumption in Australia over the last twenty years. In 2010/11 per capita alcohol consumption fell to 9.99 litres (from 10.37) of pure alcohol per head per



annum<sup>1</sup>. This indicates that current controls and measures regarding the sale of alcohol are starting to have an impact on harmful alcohol consumption.

However, we recognise that there are still a minority of Australians who consume alcohol in a harmful manner. We are supportive of educational and enforcement measures that target those who consume alcohol in a harmful manner.

### 3. The Operation and Effectiveness of the Act

Under the current licensing regime in Western Australia significant time and cost is invested by applicants in making applications yet this is often without any certainty as to the prospects of the application. There is the opportunity to improve processes including application of the Director's policies in a consistent manner and with reference to the Act. For example:

- changes were made to the Director's Public Interest Assessment Policy ("PIA Policy"). Applications that had been lodged but not determined were subject to the new PIA Policy. This required those applicants to submit additional evidence to meet the PIA Policy.
- the requirement to provide a section 40 certificate in order to lodge an application. There is the discretion under sections 4 (1) and (4) for the application to be accepted and the applicant provide the section 40 certificate prior to the final grant of a licence being issued.
- objections to applications not being served in accordance with the Act. We have had a number of instances where objections have been lodged but not served on us as required by the Act. In those instances we have only become aware of the objections well after the end of the advertising period and often been required to make urgent submissions in response to the objection. However, despite the objection not being served properly it has been accepted as valid.

We recently lodged an application for a new liquor licence and the advertising is completed. We were advised by the Department this week that objections have been received, which were not served on us as required by the Act. Additionally, the Department would not provide copies of the objections to us when requested to do so. It is important from a procedural fairness point of view the Act is applied consistently.

The application process in Western Australia is extremely uncertain, difficult, costly and time consuming. We believe there is the opportunity to improve the operation and effectiveness of the Act to improve the application process to reduce these difficulties. This will not necessarily result in an increase in licence applications being approved, just greater certainty for applicants as to the prospects of obtaining a licence. We suggest the effectiveness of the Act could be improved by:

- Improved consultation with licensees and other key stakeholders in respect of any proposed changes to the Director's policies or the way in which applications will be determined prior to them coming into effect.
- Refining the application process so that a public interest assessment is not warranted or necessary for either a redefinition or relocation within a short distance (such as a relocation within a shopping complex or short distance).
- Development of guidelines regarding the criteria for an application being referred to the Commission for determination.
- Applicants being provided with clear time frames for determination of their application.
- The introduction of an online application search function showing the status of all liquor applications.

<sup>1</sup> Australian Bureau of Statistics, Apparent Consumption of Alcohol Australia 2010/11 4307.0.55.001



#### 4. Public Interest Test – Continuation for low risk –v- high risk venues

While Coles Liquor understands that an applicant needs to demonstrate that an application is in the public's interest and that a determination on an application will be made on the basis of its social, community, economic and health implications and/or benefits, there needs to be an appropriate balance between the requirements of consumers for liquor and related services with minimising harm or ill-health caused to any group of people, due to the use of liquor.

We believe it is important for the Licensing Authority to balance the objectives of harm minimisation with the appropriate development and regulation of the liquor industry. We believe it is the Licensing Authority's role to regulate the sale and supply of liquor, not implement public health policy. There is a need to develop a practical public interest model to maintain a balance between meeting consumer demand and addressing community issues.

For example the current Public Interest Assessment Policy (PIA Policy) lists a number of "at risk" groups including "children and young people" and "families". Growth areas of Western Australia are likely to have a higher than average number of children, young people and families, yet consumers will still have requirements for goods and services, including packaged liquor. Under the PIA Policy, growth areas will automatically be deemed to have a high level of "at risk" groups and a presumed level of harm which can result in harm minimisation being given a primary focus over consumer demand and requirements.

The relationship between liquor consumption, availability and harm is complex and we believe any liquor licence application should be individually assessed and take into account specific information about a site or local area. It is also important that the assessment take into consideration additional factors unique to the applicant, including their past experience and record of compliance, policies and procedures etc.

International studies<sup>2</sup> suggest that the density of liquor outlets is associated with a range of alcohol-related harms; these studies have also consistently emphasised that these relationships are complex as outlet densities may be associated with different types of problems and different categories of licensed premises. To date these studies have generally not distinguished between packaged liquor outlets and other types of liquor outlets and the relative purpose of different outlets.

We are also concerned that if an application was assessed only on the grounds of outlet density in the local area then potentially we would be reverting to the old system whereby applications were determined on whether there was a "public need" for a new licence. Limiting outlets on the basis of density alone may operate as de facto protection from competition for some of these outlets. The evidence about what constitutes an appropriate level of outlet density is unclear and inconclusive.

The types of impacts which may arise from the granting of a new licence will be influenced by the nature of the existing situation, changes that may result as a grant of the new licence and measures put in place to mitigate any negative impacts and enhance positive impacts. The impact of an additional liquor outlet will vary from area to area. The relationship between alcohol related violence and outlet density appears to be strongly influenced by situational factors and routine activities in the licensed drinking environment. We note that an increase in alcohol related harm can have as much to do with We have seen an increase in objections being lodged to applications on the basis that alcohol causes harm. Often, no site specific information for that particular objection is included, rather it is standard pro-forma objection that is lodged. This kind of pro-forma objection process results in a delay in processing of licensing applications and applicants incur additional costs.

In our view other licensees should be specifically excluded from being able to make a submission about a licence application or public interest when it is quite clear they have a competitive interest in the refusal of an application for a new liquor licence.

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<sup>2</sup> For example [redacted] (2004), "Controls on the physical availability of alcohol", in [redacted] *The essential handbook of treatment and prevention of alcohol problems*, [redacted], pp.213-233 and [redacted] (2006), "Ecological; models of alcohol outlets and violent assaults: crime potentials and geospatial analysis", *Addiction*, vol. 101, pp. 666-677.



## **5. Three Year Restriction on Re-Appealing for Liquor Licence**

With the introduction of the public interest test, applicants are required to provide objective evidence in support of any assertions it makes as part of the liquor licensing process. We do not believe the continuation of the moratorium is in the public interest as it prevents anyone who may produce the required evidence to satisfy the public interest test from lodging an application for three years.

## **6. Trading Hours**

The expectations of consumers have broadened recently to demand increased access, variety and convenience in respect of any product or service they seek. Licensed trading hours should reflect these expectations. Coles Liquor believes the current standard trading hours should be maintained with the current provisions for licensees to apply for permanent extended trading permits to remain.

Coles Liquor believes that the current provisions which allow all metropolitan liquor stores to trade from 10am to 10pm on a Sunday should be extended to cover regional Western Australia, particularly the South West region, so that regional consumers are not penalised by the current restrictive regime and can also enjoy broader choice and convenience.

The definition of "metropolitan area" in the Act is based on the Metropolitan Region Town Planning Scheme definition as at 1 June 1998. This definition does not take into account the significant growth in the Perth metropolitan area since that time and we believe should be amended to include areas such as Mandurah and other key growth areas, particularly with access to Perth from these areas being vastly improved, for example, the Perth-Mandurah train line.

## **7. Approved Manager on Premise**

The current Approved Manager requirements have imposed significant financial and administrative burden on licensees. For our smaller liquor stores where there are only a small number of employees on duty at any one time, we have been required to arrange for all team members to become Approved Manager, as these team members could be left alone in the store at any point in time. A more reasonable and flexible approach would be for an Approved Manager to be reasonably available during standard trading hours and on duty during any period of extended trading hours. Reasonably available could be defined as being able to attend the premises within an hour. This requirement has been in place in Queensland for several years for hotels and we have found it to be effective.

## **8. Marketing and Advertising**

Coles Liquor fully supports the responsible promotion and marketing of alcohol and believes a licensee should ensure that any promotional activity it conducts does not encourage either rapid or excessive consumption of alcohol. We have guidelines in place to ensure that our promotions do not have the potential to appeal to minors, encourage irresponsible or inappropriate alcohol consumption or associate alcohol with inappropriate behaviour or associations.

In terms of promotional activities and advertising, Coles Liquor does not believe that any further controls should be imposed on licensees given the vast majority of advertising that occurs in the packaged liquor segment of the market relates to only product and price images.

As referred to above alcohol consumption in Australia has remained relatively stable. The issues and debates regarding alcohol advertising and promotion are complex ones and to date the evidence linking alcohol promotion and consumption remains inconclusive. Whilst advertising may play a role in influencing a person's alcohol consumption other groups such as parents and peers are likely to be more significant influences in determining how a person consumes alcohol. The International Center for Alcohol Policy (ICAP) states.

*The most powerful factors in shaping beliefs and attitudes about drinking are parental and peer influence. Alcohol advertising, on the other hand, plays only a small role. In fact, there is no compelling evidence of a correlation between advertising and either drinking patterns among young people, or rates of abuse. It is likely that other forces, especially parental and peer*



*influences, play a more significant role and that drinking patterns among young people are much more likely to be influenced by the prevailing culture around alcohol, than by advertising.*<sup>3</sup>

In addition, we note the comments of the 2006 Inquiry into Strategies to Reduce Harmful Alcohol Consumption report Victorian Drugs and Crime Committee Report which stated *"Notwithstanding the highly persuasive sources and arguments in favour of stricter (statutory) interventions, the Committee believes any firm links between alcohol advertising and increased or harmful alcohol consumption (particularly among young people) remain inconclusive. As contribution authors to a leading Australian textbook on alcohol policy have recently remarked, "the effect of advertising restrictions on [young people's] drinking is best considered an open question..."*

The impact of marketing and promotional activities will differ between on-premises outlets, where liquor is consumed immediately and off-premises outlets, where liquor is consumed over a period of time, often weeks and months, after the purchase.

With respect to "specials", being a special price that runs for a short period of time, there is no evidence to suggest that "specials" offered at Coles Liquor stores result in more alcohol being consumed. A customer may save money due to purchasing at the "special" price or they may "trade up" to a brand which is normally beyond their budget, but this does not mean that they will necessarily consume more alcohol.

This is consistent with existing consumer behaviour in Australia for other goods and services. If a particular brand of product is on special one week, a customer often purchases additional quantities of the product. When the products return to their original price after the "special" ends there is a decrease in the purchase of that product. There is nothing unusual or of concern with this activity. Offering consumers significant savings does not necessarily mean that cheap alcohol is sold. For example, selling a well known proprietary brand of wine for \$12 a bottle, reduced from \$20 represents a significant saving to consumers but could not be regarded as "cheap".

## **9. Internet and Online Sales**

The expectations of consumers have broadened to demand increased access, variety and convenience in respect of any product or service they seek and the way they purchase that product or service. However we believe it is important that alcohol sold online is sold in accordance with liquor licensing laws and responsible service of alcohol practices.

We confirm that we have practices in place including:

- Requiring customers to confirm they are over 18 when they make an order.
- Not supply alcohol to any person who cannot provide proof of age demonstrating their over 18 years of age or who may be intoxicated or disorderly.

## **10. Secondary Supply/minors**

The National Drug Strategy Household Survey Report and Australian Secondary Schools Alcohol Survey, indicate that parents and older siblings are by far the greatest single source of alcohol to minors.

As part of its Responsible Service of Alcohol policies Coles Liquor requires all team members to:

- ask for proof of age for any person who looks under 25. If proof of age is unable to be provided the person is refused service; and
- refuse service to any person our team member believes may be purchasing alcohol to supply to a minor or intoxicated person.

We are supportive of the introduction of a specific offence for the secondary supply of alcohol to

<sup>3</sup> International Center for Alcohol Policy, Industry Views on Beverage Alcohol Advertising and Marketing, with Special Reference to Young People: Prepared for the World Health Organization by the International Center for Alcohol Policies on behalf of its sponsors (p.9).

<http://www.icap.org/linkClick.aspx?fileticket=u8V8L5W870U%3d&tabid=105> accessed 13 December 2012.

minors. However, based on our experience in other jurisdictions where secondary supply is an offence, it seems many parents may not be aware that secondary supply is actually an offence in those jurisdictions. Therefore, we consider an education campaign to be much needed to help address the issue of secondary supply. We also recommend further education through schools and other government funded awareness programs.

#### **11. Penalties**

We are supportive of appropriate penalties for breaches of liquor licensing laws. However, Coles Liquor believes that where a licensee receives a penalty for the conduct of its employees, prior to any action being taken against the licensee, it must have the ability to demonstrate that it had in place appropriate processes to prevent any breach occurring. Additionally, penalties should apply to any person who breaches liquor licensing laws, including customers and patrons.

#### **12. Conclusion**

We believe that ultimately it is up to the individual to consume alcohol in a responsible manner. However, we aim to operate our business to the highest standards, often well beyond any legislative requirements, to ensure that our business contributes in a positive way to the communities in which we operate.

Coles Liquor actively works with governments and communities to reduce alcohol-related harm. However we believe that measures to reduce alcohol related harm should be targeted to have the greatest impact on the minority of people who consume alcohol in a harmful manner.

We believe, any regulatory environment needs to be designed to minimise harms associated with harmful alcohol use while minimising the impact on moderate consumers.

We again express our appreciation for the opportunity to provide comment and look forward to the providing input into the development of any new liquor laws.