

# THE SUPERMARKET WITH NO BEER: A REVIEW OF LIQUOR LICENSING IN QUEENSLAND

NOELEN MCNAMARA\*

## ABSTRACT

Queensland is one of the few states in Australia where takeaway liquor cannot be sold in supermarkets and convenience stores, despite calls for reform from various sectors (including the tourism industry) over the years. This paper discusses the history of liquor regulation in Queensland, together with major reviews of the sale of takeaway liquor to understand why this position seems immutable. It can be argued that the restrictions on purchasing liquor is beneficial to the health of Queenslanders, and is a case of the 'government acting in the best interests of the public'. However, Queenslanders already have the second highest consumption of alcohol per capita in Australia. The regulation of takeaway liquor in a range of other jurisdictions will also be reviewed to give some perspective to the Queensland legislation.

## I INTRODUCTION

Queensland is one of the few states in Australia where packaged liquor (takeaway alcohol) cannot be purchased in supermarkets. Instead, it has to be purchased from hotels or bottle shops (the location and number of which are related to a hotelier's licence).<sup>1</sup> Hours of operation are also prescribed by regulation and they are generally more restrictive than in other states that allow supermarket sales. Yet despite these tighter restrictions, Queensland has the second highest per capita consumption of alcohol in Australia, behind only the Northern Territory.<sup>2</sup>

This paper examines the history of the regulation of packaged liquor in Queensland. The liquor legislation has been reviewed several times in the last 100 years. The most significant reviews will be discussed, together with various submissions made to these reviews, with a view to understanding the policy reasons behind the current legislation. There is little relevant literature that deals with the history of specific legislation and regulation. The intention in this paper is there limited to a brief history of the regulation and a short comparative analysis of the experience in a number of other jurisdictions — Victoria, the Northern Territory, New Zealand and Hong Kong — to illustrate other models that could be used to regulate the sale of packaged liquor in Queensland.

## II THE HISTORY OF LIQUOR LICENSING IN QUEENSLAND

The history of liquor licensing can be summed up as follows:

Throughout recorded history various controls have been placed over the availability and use of alcohol in an effort to minimise its potentially negative consequences, while simultaneously allowing the enjoyment of this beverage. Finding the balance between control and availability has always been fraught with difficulty.<sup>3</sup>

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\* B Com, LLB, LLM, PhD, GCTT; Associate Professor (University of Southern Queensland)

<sup>1</sup> *Liquor Regulation 2002* (Qld) reg 7.

<sup>2</sup> Northern Territory Department of Health, *Northern Territory Alcohol Policies and Legislation Review: Issues Paper* (May 2017) 6.

<sup>3</sup> Queensland Government, *National Competition Policy Review of the Queensland Liquor Act 1992* (5 August 1999) 26

At common law, there were no restrictions on the sale of intoxicating liquors.<sup>4</sup> Until Queensland separated from New South Wales in 1859, the relevant legislation was the *Licensed Publicans Act 1838* (NSW)). In order to sell packaged liquor, a person needed a Publican's General Licence or a Wine and Beer Licence. Interestingly, there were prohibitions on the sale of spirits and mixed drinks to convicts without permission of their Master or Overseer<sup>5</sup> as well as to 'aboriginal natives'.<sup>6</sup> There was also a requirement 'to keep a lamp with at least two burners affixed over the door of [licensed premises] lighted and to be kept burning the whole of each and every night from sunset to sun-rise during the time of his or her holding such licence'<sup>7</sup> — presumably so travellers could find the hotel before street lighting was commonplace.

Queensland's first independent liquor law was the *Publicans Act of 1863*. It provided for two types of licences: a Publican's licence — a licence to 'retail fermented and spirituous liquors'<sup>8</sup> and a Packet licence (which just related to sale of alcohol on a ship).<sup>9</sup> Alcohol could be purchased from a publican between 4am and midnight Monday to Saturday and between 1 and 3pm on Sunday.<sup>10</sup>

This was replaced by the *Licensing Act 1885*, an 'Act to Consolidate and amend the laws relating to the sale of intoxicating liquors by retail, and for other purposes connected therewith'.<sup>11</sup> This Act provided for four categories of licence: licensed victualler's licence; wine-seller's licence; packet license; and billiard or bagatelle licence.<sup>12</sup> This legislation permitted the sale of liquor 6 am to 11 pm, Monday to Saturday and prohibited the sale of liquor on Sundays. As was similarly provided in the *Publicans Act 1863*,<sup>13</sup> takeaway liquor could only be purchased between 6 and 9am, 1 and 3pm and 8 and 10pm on Good Friday and Christmas Day.<sup>14</sup> These provisions were subject to exceptions, as follows:

nothing in this section contained shall be construed to prohibit the sale of any liquor by a licensed victualler at any time to any person being really a lodger in the licensed premises, or a bona fide traveller seeking refreshment on arriving from a journey, or to any person suddenly disabled by accident or sickness and brought to such premises for rest or accommodation; or to prohibit the consumption of any liquor by any such lodger, traveller, or person disabled.<sup>15</sup>

The lodger, traveller or person disabled had the burden of proof of this fact,<sup>16</sup> and a fine of up to 5 pounds could be imposed if the person made a false representation.<sup>17</sup> There

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<<http://ncp.ncc.gov.au/docs/Qld%20review%20of%20the%20Liquor%20Act%201992%2C%20August%201999.pdf>>.

<sup>4</sup> *R v Fawkner* (1669) 2 Keb 506; *Resolution of the Judges* (1624) Hut 99.

<sup>5</sup> *Licensed Publicans Act 1838* (NSW) s 48.

<sup>6</sup> *Ibid* s 49.

<sup>7</sup> *Ibid* s 35.

<sup>8</sup> *Publicans Act 1863* (Qld) ss 5, 32.

<sup>9</sup> *Ibid* s 6.

<sup>10</sup> *Ibid* s 41.

<sup>11</sup> *Licensing Act 1885* (Qld) Long Title.

<sup>12</sup> *Ibid* s 23.

<sup>13</sup> *Publicans Act 1863* (Qld) s 41.

<sup>14</sup> *Licensing Act 1885* (Qld) s 75(1), (2).

<sup>15</sup> *Ibid* s 75(4).

<sup>16</sup> *Ibid* s 75(5).

<sup>17</sup> *Ibid* s 77.

was, however, provision for a licensed victualler to reduce the hours of opening to 7am-10pm and the licensee could refuse to serve liquor to travellers on a Sunday.<sup>18</sup>

The Act contained an interesting 'home brew' exemption in s 60, stating that nothing in this Act shall ... apply to any person who 'sells cider or perry made by him from apples, pears or other fruit, the growth of the Colony and not to be drunk on the premises'.

In terms of the purchasing of packaged liquor, s 67 provided that it was an offence to be a person who:

- (b) supplies, or permits to be supplied, any liquor to any boy or girl apparently under the age of 14 years; or
- (c) supplies, or permits to be supplied, any liquor to any boy or girl apparently under the age of 18 years, for consumption on the premises; or ... supplies, or permits to be supplied, any liquor to any aboriginal native of Australia, or half-caste of that race, or to any aboriginal native of the Pacific Island, or Polynesian born in the Colony, or any half-caste of that race.<sup>19</sup>

The *Liquor Act 1912* (Qld) increased the legal drinking age to 21 years.<sup>20</sup> Penalties applied for the licensee, as well as the person purchasing the liquor and the person 'who sends or causes or permits to be sent to licensed premises any person under twenty-one years of age'.<sup>21</sup> There was however an interesting provision in s 72 which stated that:

- (2) No child under the age of sixteen years shall be convicted of an offence against this section if it is proved to the satisfaction of the court that such child was ordered or requested by some other person to obtain or convey liquor as aforesaid, but such other person shall be deemed to have committed such offence and shall be liable accordingly.<sup>22</sup>

The Act, as passed in 1912, provided for the sale of liquor between 6am-11pm, Monday to Saturday.<sup>23</sup> This was amended in 1923 to reduce trading hours to from 8am-8pm, Monday to Saturday.<sup>24</sup> It is noteworthy that Queensland was one of the few states which did not introduce the 'six o'clock swill'. This was introduced during World War I to 'improve public morality and as an austerity measure'<sup>25</sup> in the other states. In 1941, trading hours (and hence hours for the sale of takeaway liquor) were once again changed. This time, to between 10am and 10 pm.<sup>26</sup> In debating this amending legislation, the Premier, William Forgan Smith, noted that these hours 'are more favoured by the people of this State, particularly those living outside Brisbane'.<sup>27</sup>

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<sup>18</sup> Ibid s 78.

<sup>19</sup> The penalty for breaching this section was a penalty not exceeding 5 pounds nor less than 1 pound; and for the second and every subsequent offence of either kind, to a penalty not exceeding 10 pounds nor less than 3 pounds; and in every case to the payment of the costs of the conviction.

<sup>20</sup> *Liquor Act 1912- 65* (Qld) s 58.

<sup>21</sup> Ibid. The penalty for the purchaser and the procurer was a fine of between \$20 and \$40. The licensee was liable to a penalty of between \$40 and \$100.

<sup>22</sup> Ibid s 72 (this wording was a modification of the original Act's s 84 and was substituted for it in 1945 by Act 9 Geo 6 No 20, s 25).

<sup>23</sup> Ibid.

<sup>24</sup> *The Liquor Acts Amendment Act of 1923* (Qld) s 4.

<sup>25</sup> Mick Roberts, 'The Six O'Clock Swill', *Time Gents: Australian Pub Project* (29 April 2016) <<https://timegents.com/2016/04/29/the-six-oclock-swill/>>.

<sup>26</sup> *Liquor Act Amendment Act of 1941* (Qld), 5 Geo 6 No 25, s 5(1).

<sup>27</sup> Queensland, *Parliamentary Debates*, Legislative Assembly, 2 December 1941, 1617 (William Forgan Smith, Premier).



In terms of the sale of takeaway liquor, the next noteworthy event occurred in 1988 when hoteliers were permitted to locate take-away liquor outlets away from their main premises.<sup>28</sup> This permission came in the form of a decision by the Licensing Commission that licensed areas for the sale of takeaway liquor did not have to be contiguous to the hotel. This interpretation was written into the *Liquor Act 1992*, which repealed the 1912 Act.

The current *Liquor Act 1992* provides that liquor can only be sold through a detached bottle shop if the seller already holds a commercial hotel licence. The primary hotel licensee may hold up to three off-site licences. The bottle shop must:

- Be no more than 10km by road from the main hotel (unless the proposed bottle shop is in a remote area, not serviced by takeaway facilities);
- Be operated by the licensee of the main licensed premises;
- Have a floor area of not more than 150 sq m;
- Have no direct access from any other business premises;
- Have direct access from a public place; and
- Have no drive-through facility.<sup>29</sup>

The *Liquor Act 1992* also removed the requirement for hotels to have a public bar.

### III MAJOR RECENT POLICY DEVELOPMENTS IN LIQUOR LICENSING IN QUEENSLAND

There have been a number of recent policy reviews in relation to liquor licensing in Queensland which directly addressed the issue of where takeaway liquor can be lawfully sold and it is instructive to consider both the findings of these reviews and relevant submissions to understand why the position in Queensland remains intractable.

#### A 1999 National Competition Policy Review

An extensive review into the liquor industry in Queensland was conducted in 1999, in accordance with the principles of the National Competition Policy agreed at a meeting of the Council of Australian Governments (COAG) on 11 April 1995. The *Liquor Act 1992* was reviewed, 'to ensure that the provisions contained therein do not restrict competition unless it can be demonstrated that:

- (i) the benefits of the restriction to the community as a whole outweigh the costs; and
- (ii) the objectives of the legislation can only be achieved by restricting competition'.<sup>30</sup>

The review panel enunciated a fundamental question for discussion which was 'whether, and to what extent, the regulation of who can sell liquor and in what circumstances this supply is made, is an appropriate or effective means of addressing social impacts caused by the sale of liquor'.<sup>31</sup> Relevantly for this paper, it directly addressed the issue of 'the restriction of the right to sell take-away liquor to the general

<sup>28</sup> KPMG Consulting, *Public Benefit Test of Queensland Liquor Act 1992* (July 1999) 7 <<http://ncp.ncc.gov.au/docs/Qld%20review%20of%20the%20Liquor%20Act%201992%2C%20August%201999.pdf>>.

<sup>29</sup> *Liquor Regulation 2002* (Qld) s 7; Australian Government, 'Detached Bottle Shop – Queensland' (20 November 2017) <<https://ablis.business.gov.au/QLD/pages/d41ed6dd-6908-4cb1-88ef-fc46f52331ff.aspx>>.

<sup>30</sup> Queensland Government, above n 3, 3.

<sup>31</sup> Ibid 4, 5.

public to hotels and some Special Facility Licences'.<sup>32</sup> The review relied heavily upon a report prepared, as part of the review, by accounting firm KPMG Consulting. This report was entitled 'Public Benefit Test of Queensland Liquor Act 1992' (KPMG Report). The KPMG Report found that 'there does not appear to be a strong correlation between number of outlets licensed to sell alcohol and per capita consumption of alcohol within a region'.<sup>33</sup>

It is particularly instructive also to consider various submissions made by stakeholders to this 1999 National Competition Policy review, in order to understand the politics behind the current restrictive sale of takeaway alcohol in Queensland. The Queensland Hoteliers Association submitted:

[T]here can be no argument mounted that Queensland is under serviced with regard to take-away liquor outlets and that the social harm costs of extra alcohol availability in the environment of a supermarket or convenience store clearly outweigh the benefits. [...] [S]upermarkets are unlikely to have a patron care program that will meet the standards provided by the current industry.<sup>34</sup>

Not surprisingly, the Retailers Association of Queensland (before supermarkets Coles and Woolworths purchased many liquor outlets)<sup>35</sup> noted that:

current legislation denies Queensland consumers access to an improved quality of service, better outlets, lower liquor prices and more conveniently located outlets. They believe that the community as a whole will experience a net social gain from regulatory reform that would allow additional entrants into the liquor markets.<sup>36</sup>

This submission also drew attention to the fact that Queensland is the only state where takeaway liquor must be sold at premises owned by a hotel or club.<sup>37</sup>

The Australasian Association of Convenience Stores Incorporated submitted that:

the current objectives of the Act are no longer relevant to the liquor industry, rather that industry should be left to market forces such as consumer demand. The current regulations: restrict consumer choice, competition and entry to new entrants. [...] [T]here is a worldwide expectation of the availability of alcohol in convenience stores.<sup>38</sup>

The Review Panel stated that it considered the likely impact of deregulation on the economic viability of hotels and the social impacts on communities, stating:

The Panel recognises that hotels, especially in rural and regional areas, provide much more to the local community than simply a place to drink. They provide a meeting place, entertainment, meals, support for local activities and sometimes accommodation and a tourist facility. Given their current levels of profitability and the important contribution of

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<sup>32</sup> Ibid 4.

<sup>33</sup> Ibid 14.

<sup>34</sup> Ibid 33, 34.

<sup>35</sup> This acquisition started through a joint venture with the Bruce Mathieson Group in 2000 and was wholly acquired by Woolworths in 2005. In this transaction, they acquired 130 hotels and 400 bottle shops. The following year Coles obtained the Hedley Group which included 36 hotels and 103 bottle shops in Queensland. These two companies now own the majority of the takeaway liquor market share in Queensland, around 78%, even though they have not acquired the majority of hotels and bottle shops: MGA Independent Retailers and The Chamber of Commerce & Industry Queensland, Submission Paper to *Queensland Trading Hours Review*, November 2016, 35.

<sup>36</sup> Queensland Government, above n 3, 35.

<sup>37</sup> Ibid, 36.

<sup>38</sup> Ibid 37.

take-away sales to hotel revenues, it seems likely that deregulation would have a significant impact on hotels' profitability.<sup>39</sup>

The sale of alcohol was regarded by the Review Panel as a 'specialist product'<sup>40</sup> and therefore its sale should be limited to 'discrete liquor outlets who have a primary focus on the sale of alcohol'.<sup>41</sup>

The Review Panel concluded:

on balance, the Panel finds that to open the retail liquor market to any further licence types would have a detrimental effect on the economic balance of this State and on the social and economic fabric of rural and regional areas in particular and, therefore, does not recommend the extension of the retail packaged liquor market to entities other than general licensees and, in the case of those who are members, to clubs and the current restricted availability under Limited Licences.<sup>42</sup>

The Review Panel report did not explain further what was meant by the 'economic balance of this state' or the effect of new licence types as having a detrimental effect 'on the social and economic fabric of rural and regional areas'. It is notable the Review Panel adopted a view which was diametrically opposite that of the KPMG Report, which report had been commissioned by the Panel.

#### B *Harper Competition Policy Review 2015*

A further review of competition policy was commissioned in 2014 when a national panel, chaired by Professor Ian Harper, was constituted to conduct an inquiry into, inter alia, 'legislation governing Australia's competition policy, in regard to achieving competitive and productive markets throughout the economy, by identifying and removing impediments to competition that are not in the long-term interest of consumers or the public interest'.<sup>43</sup> Competition in retail alcohol was one aspect of this review.

Several submissions, including from Master Grocers Australia/Liquor Retailers Australia,<sup>44</sup> AURL FoodWorks,<sup>45</sup> and small supermarket operators<sup>46</sup> cite the example of Queensland's liquor licensing regime, as an impediment to their ability to respond to consumers and compete with Coles and Woolworths.

Even those organisations concerned about increased alcohol availability, including the Foundation for Alcohol Research and Education (FARE) and the National Drug and Alcohol Research Centre, drew attention to problems with Queensland's liquor laws. As FARE noted:

[Queensland's restrictions] prompted Coles and Woolworths to undertake, as IBISWorld describes it 'a pub buying frenzy during the last decade in an effort to circumvent this

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<sup>39</sup> Ibid 43.

<sup>40</sup> Ibid 54.

<sup>41</sup> Ibid 54.

<sup>42</sup> Ibid 54. For example, inclusion of alcohol in gift baskets.

<sup>43</sup> Australian Government, *Competition Policy Review*, Draft Terms of Reference (December 2013) <<https://www.australiancompetitionlaw.org/reports/2014harper-tor-draft.html>>.

<sup>44</sup> Master Grocers Australia and Liquor Retailers Australia, Submission to the Competition Policy Review 2014, June 2014, 44-46.

<sup>45</sup> Australian United Retailers Limited (AURL), trading as FoodWorks, Submission to the Competition Policy Review 2014, 17 November 2014, 1, 7, 22-24.

<sup>46</sup> Australasian Association of Convenience Stores Limited, Submission to the Competition Policy Review 2014, 3 November 2014, 7-8.



legislation. These companies now own ... 49 per cent of detached bottle shops [in Queensland].

Relevantly the final report stated that liquor licensing rules in Queensland ‘that restrict packaged alcohol sales to holders of hotel licences appear to have induced major supermarkets to buy hotel licences, which may have made it harder for smaller independent stores to compete’.<sup>47</sup> Whilst the Panel acknowledged that jurisdictions might want to restrict the sale of liquor for issues of the public good, they did state that:

Trading hours restrictions and restrictions preventing supermarkets from selling liquor impede competition. The Panel recommends that restrictions preventing supermarkets from selling liquor be reviewed as part of a new round of regulation reviews and that retail trading hours be deregulated.<sup>48</sup>

### C 2016 Queensland Trading Hours Review

The issue as to whether to expand the range of outlets that could sell alcohol was considered again in 2016, when the Government conducted a review into Queensland’s commercial trading hours. Once again, the diametrically opposed positions of the various stakeholders are clear.

In a submission to this Review, the Master Grocers Association, Retailers and the Chamber of Commerce & Industry Queensland lodged a joint submission. They submitted that the sale of takeaway liquor should be within the purview of the enquiry and argued, inter alia, against ‘the legislative constraints that exist in ... Queensland which prevent independent supermarkets from participating in the liquor industry’.<sup>49</sup>

They noted that the *Liquor Act 1992* had undergone a series of amendments in recent years and, despite previous lobbying to remove restrictions on the sale of packaged liquor in supermarkets, ‘the laws remain discriminatory and anti-small business’.<sup>50</sup>

Small independent supermarkets across Queensland struggle every day against the domination of their giant counterparts, namely Woolworths and Coles, in all aspects of grocery sales. In addition, in Queensland, small businesses watch their retail competitors buy up a hotel and then open 3 bottle shops within a 10 kilometre radius, thereby seizing a profitable commercial opportunity, simply because of their extensive wealth.<sup>51</sup>

They argued that the rules ‘protect larger businesses which have been able to establish themselves as the main retail distributors of packaged liquor in Queensland and who are often heard promoting the deregulation of trading hours while stringently opposing any further liberalisation of liquor licensing laws’.<sup>52</sup> Their proposal was therefore to amend the *Liquor Act* to allow a new class of liquor licence to permit the sale of packaged liquor in independently owned supermarkets.<sup>53</sup>

They argued that the benefits would be to increase the prosperity of the independent supermarket sector, and benefit tourism, since a number of independent supermarkets are located in smaller, remote towns on tourist routes. This will benefit Australian tourists, as well as visitors from overseas who are already accustomed to shopping for

<sup>47</sup> Australian Government, *Competition Policy Review, The Final Report* (31 March 2015) 115.

<sup>48</sup> Ibid 89, recommendations 8 and 12 respectively.

<sup>49</sup> MGA Independent Retailers and The Chamber of Commerce & Industry Queensland, Submission Paper to *Queensland Trading Hours Review*, November 2016, 34.

<sup>50</sup> Ibid, 34.

<sup>51</sup> Ibid 35.

<sup>52</sup> Ibid 37.

<sup>53</sup> Ibid 38.

their liquor in supermarkets. 'In places like America, the United Kingdom and Europe, alcohol is sold through licensed supermarkets and when tourists visit Australia they expect to shop with the same ease and convenience in a controlled retail environment that they are accustomed to back home'.<sup>54</sup> Other associations were of a similar view. The Master Grocers Australia spokesperson, Jos de Bruin, said the organisation would put forward a submission. MGA member and FoodWorks director, Joseph Eid, said changes were necessary to ensure all retailers were on a level playing field. 'Queensland is behind the eight ball,' Mr Eid said. 'It's something that should have been looked at (as part of the review)'.<sup>55</sup>

Aldi supermarket's regional managing director, Mr Viktor Jakupc, said his company would also place a submission. 'Australian consumers want convenience and choice when shopping. The large majority of Australians drink responsibly and should not be disadvantaged when purchasing', Mr Jakupc said.<sup>56</sup>

It should be noted, however, that allowing more stores to sell liquor was not part of the Terms of Reference of the Review and therefore was not dealt with in the Review's recommendations, despite submissions being received on this issue. Questioned about this on the release of the report, Premier Anastacia Palaszczuk is reported to have said that 'the government had no intention to pursue it'.<sup>57</sup>

#### IV QUEENSLAND - CONSUMPTION OF ALCOHOL

It is a widely held proposition that excessive consumption of alcohol is detrimental to a person's health and has an adverse impact on society, through violence, amongst other social harms. Therefore, if there is a social good to be achieved through limiting the places and the hours in which alcohol may be purchased, it could be argued that this should be continued in Queensland. Accordingly, it is important to consider whether restrictive locations and hours result in less consumption of alcohol in Queensland.

In discussing the methodology for collecting data on alcohol consumption, Rankin and Livingston note that there is an absence of uniform and effective data collection on alcohol sales in Australia at present.<sup>58</sup> They note that there is a mix of survey, sales and harms data currently being used to map trends. They suggest that wholesale sales data is the most accurate method, but this data is not publicly available in every jurisdiction. Alcohol sales data is presently only collected by the state and territory governments of the Australian Capital Territory, Western Australia, Victoria, Queensland and the Northern Territory, albeit each with different reporting requirements. It should be noted, however that the annual reporting requirements in both Victoria and Queensland are the same for beer, wine, spirits and cider, with an additional requirement to report alcoholic sodas and mead in Queensland. Both states report on wholesale data. It is for

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<sup>54</sup> Ibid 39.

<sup>55</sup> Sarah Vogler, 'We want to sell booze: retailers', *The Courier Mail* (online), 26 February 2013 <<http://www.couriermail.com.au/news/queensland/we-want-to-sell-booze-retailers/news-story/10a37c65d7c2af2272f0ac4108904d8e?nk=44bacaef8bb30ae8cf2fcc475213e98a-1504863067>>.

<sup>56</sup> Ibid.

<sup>57</sup> Felicity Caldwell, 'Trading Hours Set for Reform in Queensland', *Brisbane Times* (online), 14 February 2017 <<https://www.brisbanetimes.com.au/national/queensland/trading-hours-set-for-reform-in-queensland-20170214-gucv1o.html>>.

<sup>58</sup> G Rankin and M Livingston, *Understanding alcohol sales data in Australia* (Foundation for Alcohol Research and Education, Canberra, 2016). The issue of differing methodologies used to collect data was also addressed in Australian Government, *Alcohol in Australia: Issues and Strategies, A background paper to the National Alcohol Strategy: A Plan for Action 2001 to 2003/04* (July 2001).



this reason that Victoria provides the more appropriate comparison with Queensland and is one of the case studies chosen for comparison.

The Rankin and Livingstone report does not itself include data. The Australian Bureau of Statistics (ABS) releases an annual Apparent Consumption of Alcohol, but 'data is only available on an annual basis, at the national level. Data are not available by particular demographic characteristics (such as state/territory ...)'.<sup>59</sup> Accordingly, the only State based data available from the ABS is data derived from individuals' self-reported consumption in the National Health Survey 2014-15. It is detailed in Table 1.

**Table 1. Proportion of adult population who breach the NHMRC Guidelines**

State/ Territory	Percentage Breaching Guideline 1 <sup>60</sup>	Percentage Breaching Guideline 2 <sup>61</sup>
Queensland	18.0	46.4
New South Wales	17.6	42.5
Australian Capital Territory	15.7	44.3
Victoria	15.6	42.5
Tasmania	18.6	45.7
South Australia	16.8	44.7
Northern Territory	19.3	47.8
Western Australia	20.8	47.0
Overall	17.4	44.0

Source: National Health Survey, 2014-15

Another data source is available from the Foundation for Alcohol Research and Education, which released an Annual Alcohol Poll 2016.<sup>62</sup> Their data was provided from a survey conducted by Galaxy Research in January 2016. This does not include data from the Territories. It also discloses heavier drinking patterns in Queensland than in Victoria. Relevantly, their table on alcohol consumption behaviours includes state-based data detailed in Table 2 (below):

<sup>59</sup> Australian Bureau of Statistics, *Apparent Consumption of Alcohol, Australia, 2015-16*, Catalogue Number 4307.0.55.001.

4307.0.55.001, Explanatory Notes; personal communication, Senior Project Officer, Health Section, Population, Labour and Social Statistics Group, 18 January 2018.

<sup>60</sup> Guideline 1: reducing the risk of alcohol-related harm over a lifetime. This is breached by exceeding more than two standard drinks on any day.

<sup>61</sup> Guideline 2: reducing the risk of injury on a single occasion of drinking. This is breached by exceeding more than four standard drinks on a single occasion.

<sup>62</sup> Foundation for Alcohol Research & Education, *Annual Alcohol Poll 2016: Attitudes and Behaviours* (Sydney, 2016).

**Table 2. Percentage of adult population who consume alcohol**

	Australia %	NSW %	QLD %	SA %	VIC %	WA %
Consumes alcohol	78	80	77	77	78	78
1-2 standard drinks on a typical occasion	56	58	57	52	50	65
3-5 standard drinks on a typical occasion	28	25	28	32	30	25
6+ standard drinks on a typical occasion	13	14	13	13	10	10
Increased alcohol consumption in the last 12 months	10	9	9	12	13	14
Comfortable with how much they drink	70	72	72	70	64	68
Drink to get drunk	37	34	37	41	33	39
Influenced by alcohol promotion	68	69	67	69	64	65

Source: Foundation for Alcohol Research & Education, 2016

Each set of data that is available discloses that Queensland has one of the highest levels of alcohol consumption in Australia, second only to the Northern Territory. This is despite the fact that alcohol is arguably less ‘available’ in Queensland than some other jurisdictions. It is consequently relevant to consider the Victorian experience, which, arguably, has led to less alcohol consumption than in Queensland. This paper will also discuss the regulation of takeaway liquor in the Northern Territory, as well as other jurisdictions in the region, by way of demonstrating different liquor licensing regimes.

## V THE SALE OF TAKEAWAY LIQUOR IN OTHER JURISDICTIONS

### *A Victoria, Australia*

Given that Victoria has one of the lower rates of alcohol consumption in Australia, it is instructive to consider its regulation of takeaway liquor which may be sold from a supermarket or bottle shop, normally through to 11pm.<sup>63</sup> A licence is granted for a defined area of the premises, and this must be noted on the liquor licence application. Businesses can also apply for a late night licence, which allows the sale of takeaway alcohol past 1am. The availability of takeaway liquor at supermarkets and the relaxation of trading hours had its genesis in the Nieuwenhuysen Review of 1986 and the *Liquor Control Act 1987* (Vic), as well as amendments that were made in 1993 and 1995. The *Liquor Control Reform Act 1998* (Vic) ‘focussed largely on making Victoria compliant with National Competition Policy’. The review to the Queensland Liquor Act to ensure its compliance with the National Competition Policy has already been discussed. It did not result in amendments to the Queensland legislation.

<sup>63</sup> A package liquor licence is required under the *Liquor Control Reform Act 1998* (Vic), see also the Victorian Commission for Gambling and Liquor Regulation, *Apply for a package liquor licence* (22 March 2017) <<https://www.vcglr.vic.gov.au/liquor/bottleshop/apply-new-licence/apply-liquor-licence>>.

There is currently a freeze on granting new liquor licence applications to trade after 1am in the local government areas of Melbourne, Stonnington, Yarra and Port Phillip until 30 June 2019.<sup>64</sup> However, the existing late night trading provisions provides a direct contrast with the position with Queensland, where the government has announced that applications to extend trading by bottleshops beyond 10 pm would be rejected 'as part of the Palaszczuk Government's crackdown on alcohol-fuelled violence'.<sup>65</sup>

In terms of direct comparisons between Queensland and Victoria, Medibank, a private health fund, releases what it calls a 'Better Health Index' (BHI) which reports on seven health areas, one of which is alcohol consumption. The latest BHI, released in March 2016, reports that Victorians consume the least amount of alcohol, drinking 9.79 alcoholic drinks per week. It says, 'at the other end of the scale, Queenslanders are the biggest drinkers ... drinking an average of 11.14 alcoholic drinks per week'.<sup>66</sup> These figures suggest that Queenslanders are drinking more than the national average and certainly more than Victorians. This is despite Victorians being able to purchase takeaway alcohol more hours of the day and night from a wider range of sources.

## B Northern Territory

The regulation of takeaway alcohol in the Northern Territory has been included because this region has the highest level of alcohol consumption in Australia. In general, licences may be issued for the sale of alcohol for consumption at the premises, away from the premises, or both. Strangely, the Northern Territory *Liquor Act* does not define what categories of licences exist or what type of business relates to those categories.<sup>67</sup>

De facto categorisation is used administratively, with one relevant category being 'store licence'. As a consequence of this broad administrative discretion, local stores, ie Coles, Woolworths and others, are able to sell liquor from within their existing stores (though they are currently limited to a maximum trading area of 400m<sup>2</sup>). For no readily apparent reason, these stores are not permitted to trade on Sundays, whereas hotels, taverns and club are able to sell takeaway liquor in Sunday. With this exception, licence holders can sell takeaway liquor between 10 am to 10 pm Sunday to Friday and 9am to 10 pm on Saturdays and public holidays.<sup>68</sup>

## C New Zealand

New Zealand provides another example of a jurisdiction where alcohol can be purchased in supermarkets or other 'grocery' type outlets, as well as from bottleshops. An 'off-licence' is required pursuant to the *Sale and Supply of Alcohol Act 2012* for the sale or supply of alcohol for consumption off the premises. Sales can be through a bottle store or supermarket. Default maximum trading hours are provided in the Act, which

<sup>64</sup> Victorian Commission for Gambling and Liquor Regulation, *Late Night Freeze* (16 November 2017) <<https://www.vcglr.vic.gov.au/liquor/bottleshop/apply-new-licence/late-night-freeze>>.

<sup>65</sup> Sarah Vogler, 'Alcohol Laws: Palaszczuk Government to Restrict Takeaway Alcohol', *The Courier-Mail* (online), 10 November 2015 <<http://www.couriermail.com.au/news/queensland/alcohol-laws-palaszczuk-government-to-restrict-sale-of-takeaway-alcohol/news-story/c357ee48a2d4c191709427a3bf19eec2?nk=44bacaef8bb30ae8cf2fcc475213e98a-1504843808>>.

<sup>66</sup> Medibank, *Introducing the Medibank Better Health Index: How much do you know about our nation's health* (22 March 2016) <<https://www.medibank.com.au/livebetter/introducing-the-medibank-better-health-index/>>.

<sup>67</sup> Northern Territory Department of Health, above n 2, 23.

<sup>68</sup> Northern Territory Government, Sunday takeaway alcohol (28 November 2017) <<https://nt.gov.au/industry/hospitality/sunday-takeaway-alcohol>>. Other restrictions apply to areas around Alice Springs and Tennant Creek, which do not form part of this study.



are between 7am and 11pm on any day for off-licences. However, a local alcohol policy can set different maximum permitted trading hours. A district licensing committee can issue a licence subject to more restrictive trading hours than national default hours or hours set out in local alcohol policies.

The sale of wine and mead in supermarkets and similar stores has been permissible since 1989, following enactment of the *Sale of Liquor Act 1989*. Amendments to the Act in 1999 allowed Sunday trading, the sale of beer in supermarkets/ grocery outlets and lowered the minimum purchase age from 20 to 18 years of age.<sup>69</sup>

## D Hong Kong

Hong Kong provides an even more striking contrast with Queensland. The sale of liquor at licensed premises is regulated by the Liquor Licensing Board. However, there are no restrictions on the sale of takeaway liquor from 7-Elevens or supermarkets. That is, no liquor licence is required to sell takeaway liquor. Howard Winn, in his famous *Lai See* column in the *South China Morning Post*, notes that it is legal for a 10 year old to walk into a 7-Eleven or supermarket and buy alcohol.<sup>70</sup> He does however note that '7-Eleven says it is scrupulous in only serving alcohol to those over 18 years old'. Nevertheless, he states that in the 7-Elevens in Lan Kwai Fong (an entertainment district on the Island) 'there is a bottle opener on the counter and invariably people are drinking inside and there is usually a crowd outside'. Winn argues that these premises should have to apply for a liquor licence, like the nearby bars, but notes that 'undoubtedly, 7-Eleven, which is run by Dairy Farm and is part of the Jardine group of companies along with other retail outlets that sell liquor, would find it an enormous pain to have to apply for off-licences for its various premises'.<sup>71</sup>

The magazine *Time Out* also reports on the competition between 7-Elevens, dubbed 'Club 7-Eleven' and bars, noting that s 25A of the *Dutiable Commodities (Liquor) Regulations* ties the sale of liquor to location, as opposed to the individual consuming the drink. Regulation 28 says 'no licensee shall permit any person under the age of 18 years to drink any intoxicating liquor on any licensed premises'. As an establishment that does not permit drinking on the premises, 7-Eleven is under no legal obligation to refuse the sale of alcohol to minors.<sup>72</sup>

One loophole was removed, however, when the *Dutiable Commodities (Amendment) ACT 2017* (HK) commenced, as it provides that it is illegal to sell alcoholic beverages from a vending machine<sup>73</sup> and a person must not, in the course of business, sell or supply intoxicating liquor to a minor.<sup>74</sup> A fine of \$HKD50,000 applies.

<sup>69</sup> Alcohol Healthwatch, *Information Sheet: Sale and Supply of Liquor* (September 2009) <<http://www.ahw.org.nz/Portals/5/Resources/Fact%20Sheet/Info%20sheet%20sale%20and%20supply%20of%20liquor%20final%2009.pdf>>.

<sup>70</sup> Howard Winn, 'Should retail outlets be required to get an off-licence to sell liquor?', *South China Morning Post* (Hong Kong), 10 January 2015.

<sup>71</sup> *Ibid*.

<sup>72</sup> *Time Out Hong Kong*, *Is 'Club 7-Eleven' killing Hong Kong's bar scene?* (20 May 2016) <<https://www.timeout.com/hong-kong/blog/is-club-7-eleven-killing-hong-kongs-bar-scene-052016>>.

<sup>73</sup> *Dutiable Commodities (Amendment) Bill 2017* (HK) s 35.

<sup>74</sup> *Ibid* s 36.

## V CONCLUSION

As this paper has shown, the regulation of liquor in early Queensland, including takeaway liquor, was very liberal. Even as the influence of the ‘wowsers’<sup>75</sup> movement was felt, Queensland did not succumb in the way that the southern states did by not having the ‘six o’clock swill’ restrictions.

Yet, over the years, the political influence of first the hotel lobby and now Coles and Woolworths can be seen in the current restrictions as to who can sell takeaway liquor — despite this falling foul of the National Competition Policy.

This paper has chosen four case studies to demonstrate alternative licensing regimes, but any other number of jurisdictions could have been considered as well where takeaway alcohol can be purchased along with the meat and vegetables — the United Kingdom, many part of Europe and Asia to name a few. Often the supermarkets have their own ‘home brands’, hence increasing competition in the market. Convenience for customers (both tourist and the domestic market) and competition amongst retailers are but a few reasons why this should be considered in Queensland.

The fact remains that alcohol is a legal product, and regardless of which data source is considered, is widely used throughout Australia, with Queenslanders being one of the highest users. Indeed, the greater availability of access in states such as Victoria and Canberra has not resulted in greater consumption than in Queensland.

Despite some studies<sup>76</sup> which indicate a connection between density of outlets and overall liquor consumption, the relative experience of Queensland, where density is restricted, and Victoria, where it is not, would seem to demonstrate the logical fallacy known as *post hoc ergo propter hoc*, which is Latin for ‘after this, therefore because of this’. In short, some studies may be mistaking correlation for causation. Certainly more detailed studies are needed in this area, and such studies, to be valid, would need to consider a range of factors beyond mere density. They would need to consider, *inter alia*, the social and economic status of given demographics, the extent of other substance abuse and the psychological stressors in a given demographic which may lead to self-medication.

In summary, the Queensland approach which demonstrably operates to the benefit of Coles and Woolworths, is in reality founded on the quite vague assertion that allowing sales of liquor through minor stores would result in a corresponding increase in the consumption of alcohol. This assertion, this author suggests, cannot be justified on the basis of any empirical study or on the basis of the national experience.

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<sup>75</sup> See further Robin Room, ‘The long reaction against the wowser: The prehistory of alcohol deregulation in Australia’ *Health Sociology Review* (2010) 19(2) 151.

<sup>76</sup> Peter Howat, Colin Binns and Jonine Jancey, ‘Booze barns: fuelling hazardous drinking in Australia?’ (2013) 24 *Health Promotion Journal of Australia* 85; Wenben Liang and Tanya Chikritzhs, ‘Revealing the link between licensed outlets and violence: counting venues versus measuring alcohol availability’ (2011) 130(5) *Drug and Alcohol Review* 524.

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