



**SANDAS submission to:**

**The 2023 Review of the Late Night Trading Code**

**Submitted to**

**Consumer and Business Services**

**January 2023**



The South Australian Network of Drug and Alcohol Services (SANDAS) was established in 2004, to enhance community wellbeing and reduce the harms associated with alcohol and drug use. As the peak body, we provide independent, state-wide representation, advocacy and support for non-government organisations working in the alcohol and other drug sector, through networking and policy development. SANDAS is a not-for-profit association funded by membership contributions, the Australian Government Department of Health, Drug and Alcohol Services of South Australia, the South Australian Department of Health and a range of other organisations on a project basis.

### **Our Vision**

SANDAS works to lead and strengthen community responses to the harms caused by alcohol and other drugs.

### **Our Mission**

SANDAS facilitates networking, collaboration, research, information sharing, advocacy, training and policy review to reduce the harmful impacts of alcohol and other drugs. We are the voice of our members and stakeholders at national and state levels.

### **Our Values**

The work of SANDAS is underpinned by 5 core values:

**Health and Wellbeing:** We work to reduce individual and community harm associated with alcohol and other drug use. Our work is underpinned by a belief in the rights of people to health, social justice, equity, reconciliation, cultural safety and social inclusion.

**Evidence:** We support alcohol and other drug treatment using evidence based interventions, provided by workers who are qualified and supported to deliver high quality, culturally appropriate services to individuals, families and communities.

**Lived experience:** We value the lived experience of clients, families, peer workers and communities as integral to the provision of effective treatment services.

**Collaboration:** We enable the strengthening of connections between individuals, organisations, communities, the alcohol and drug and other related sectors, to facilitate collaboration and co-operation.

**Representation:** We represent the AOD NGO sector knowing our united voice is stronger than individuals or organisations acting alone. We actively engage our members in the development of our representation work with the community, government, media and other stakeholders.

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## Introduction

'The estimated social cost of alcohol use in Australia was \$66.8 billion in 2017–2018. Of the total tangible amount, workplace costs were \$4.0 billion, with an estimated \$3.6 billion due to absenteeism. This was followed by crime (\$3.1 billion), total healthcare costs (\$2.8 billion) and road traffic crashes (\$2.4 billion). Of the total intangible amount, premature death was \$25.9 billion and lost quality of life was \$20.7 billion (Wheaton et al). (Australian Institute of Health and Welfare, 2022).

Consumer and Business Services is undertaking a review of the Late Night Trading Code (Late Night Code) of Practice under the Liquor Licensing Act 1997.

The aim of the review is to:

- assess whether the Late Night Code has successfully reduced alcohol-related harm in and around licensed venues
- assess whether the Late Night Code has resulted in any unintended consequences; and
- provide recommendations (if any) for amendments to the Late Night Code.

In October 2013, the South Australian government introduced the *Late Night Trading Code of Practice* ('the Code') as a means of reducing incidences of alcohol-related violence and antisocial behaviour in and around late night licensed venues in South Australia. Adelaide's nightclub district was especially targeted following several serious assaults, including at least one of which was fatal.

The then Minister for Business Services and Consumers, John Rau MP, cited statistics that indicated 2,500 hospital admissions and 600 deaths attributable to alcohol in the state annually (Chikritzhs, 2002) . Minister Rau noted South Australian Police data indicated that the demand on police and health services responding to alcohol-related issues was greatest in the early hours of Saturday and Sunday mornings. The Code was amended in 2016 and the current version is now the subject of this review.

The consumption of alcohol is an accepted part of Australian culture. Its use to drive the night-time economy is however contentious as 'alcohol is not an ordinary substance' but causes a range of harms (Babor T. C., 2023). These include short term harms such as individual accidents, injuries, motor vehicle accidents, public and family violence, and problematic behaviour in public and private spaces. Alcohol also has long term impacts on the community through loss of life expectancy (through chronic illness), loss of productivity and a significant burden on the public purse arising from both short and long term harms through health and justice interventions. Whist the 'night time economy' is beneficial in terms of employment, trade and social engagement, the costs to the community in terms of the harms mentioned above outweigh the benefits.

The purpose of a Late Night Code is to ameliorate, as far as possible the harms to individuals and the community arising from access to alcohol in public places in the late night economy. The purpose of the Code is to ensure that the late night economy of Adelaide remains vibrant and meets the needs of those in the community who wish to consume alcohol whilst ensuring that such consumption does not fuel a violent and harmful night-time culture in the city centre.

In addressing the Late Night Code review we have briefly addressed the local and international evidence, drawn some conclusions and made a number of recommendations. We have also included an annotated version of the Code with some suggestions for change. In the short term we believe the Code should be retained, better enforced and evaluated over the following two to three years.

## Evidence

### The Anderson Review

The most significant review of the South Australian Late Night Code was conducted as part of the Review of the South Australian Liquor Licensing Act 1997 undertaken by Mr Tim Anderson QC in 2016. Chapter 5 specifically addresses the Late Night Code and its impact. In that report Mr Anderson notes that submissions from various medical, health and victim support bodies refer to evidence from Australia and overseas which in their view consistently demonstrate that there is a correlation between increased liquor trading hours and an increase in harms and alcohol related assaults. Submissions from the Adelaide City Council, Australian Hotels Association and a number of licensees were supportive of the Code. the Late Night Venue Association ('LNVA') submitted that the 'Lockout' component of the Code caused or contributed to a \$50m loss to the Adelaide night-time economy, 1,000 South Australian job losses and the closure of one-third of late night venues. Whilst noting he was respectful of the submission made by the LNVA, Mr Anderson was unable to substantiate these claims and there is no data to support the submission (Anderson, 2016).

Anderson noted that in 2008-09 alcohol was responsible for 58% of victim reported crime and 65% of serious assaults within the Adelaide CBD alone. There appears to be no more up-to-date data on the causes of victim reported crime or serious assaults published in the public domain since this time. This is particularly unfortunate as it makes evaluation of the Late Night Code difficult. It would appear that Recommendation 14 in this report, that the 'current 'Lockout' provisions be retained for a further two or three years to allow for their effect to be assessed over a longer term' was not adopted.

Anderson recommended (Recommendation 15) that the Late Night Code require that all licenced premises must be closed for a minimum of three continuous hours between 3.00am and 9.00am. Alternatively, the premises could remain open for those three hours but not sell liquor (Anderson, 2016, p. 68). We would support this recommendation.

A number of Mr Anderson's recommendations have been incorporated into a revised version of the Code set out below.

There are very few other publications that provide the public and the non-government sector with data on the impact of alcohol in the context of the late night code. However, a SA Health report indicated that the estimated number and rate of metropolitan ED (ED) injury presentations for persons aged 15 years and older attributable to the use of alcohol increased between 2007-08 and 2012-13, with decreases thereafter. Although there was a slight increase in 2015-16, the trend over this period was a decrease in both number and rate (Longo M, 2018). Whilst there is not sufficient data in the report to make a connection between the decline and the Code, there may be a correlation. Further research is required.

### Other Australian evidence

In general terms, increased availability of alcohol leads to increased consumption and increased harms such as injuries and assaults. The prevalence of harm associated with licensed premises varies and is more commonly associated with premises that close after midnight or those in areas where there is a high density of outlets. Some research indicates that violence is most likely in venues selling alcohol between midnight and 3am. (Miller, 2013)

Restrictions on trading hours and outlet density are considered to be the second most effective policy lever to reduce alcohol related harm after pricing (Babor T. C., 2023).

A systematic review of 21 studies (published between 2005-15) noted a large body of Australian and international research which has established a strong relationship between trading hours of on-premises venues and levels of violence and other major alcohol-related harm (Wilkinson, 2016). This review concluded that “evidence of effectiveness is strong enough to consider restrictions on late trading hours for bars and hotels as a key approach to reducing late-night violence in Australia” (Wilkinson, 2016).

A further systematic review of literature published between January 2000 and October 2016 studied the impact of policies regulating alcohol trading times in alcohol-related harm (Wilkinson, 2016). The result supported the premise that policies regulating times of alcohol trading and consumption can contribute to reduced injuries, alcohol-related hospitalisations/emergency department visits, homicides, and crime (Wilkinson, 2016). Evidence supports that a change in time of alcohol sales is associated with changes in alcohol-related harms in both directions.

A reduction of one or two hours in late-night trading time can be enough to demonstrate a reduction in harms (Manton, 2014, pp. pp 122-136) (Rossow, 2012).

A major study by Curtin University found:

“There are robust links between alcohol intoxication and crime, across time and across countries, particularly in terms of violent crime and disorder offences. In a meta-analysis of meta-analyses, Duke and colleagues found that the link between alcohol and violence was robust to the inclusion of potential confounding variables, and across the type of study, including laboratory experiments (Duke et al., 2018). Overall, the relationship between alcohol and violence was stronger for males (effect size 0.43 compared to 0.23 for females) and for those who combined consumption of alcohol with illicit drugs” (Whetton, 2021).

“Amongst the contextual factors that appear to play a role in the prevalence of alcohol-attributable violence are the availability of alcohol (in term of travel time to a venue, geographic density of outlets, opening hours, and the scale of the outlets) and the extent to which venues manage the drinking and behaviour of their patrons (the latter factor relates primarily to assaults that occur in or adjacent to the premises (Donnelly and Briscoe, 2001)). There are differences in the nature and scale of the harms between outlet types. Density of venues focussed on ‘intensive’ consumption on-premises such as hotels, taverns and nightclubs appear on average to have a relatively more significant impact on rates of non-domestic violence assaults. The density of packaged liquor outlets appears to have a relatively stronger impact on rates of intimate partner violence for example in the domestic setting” (Whetton, 2021).

## International Evidence

“There is strong and reasonably consistent evidence from a number of countries that changes to hours or days of trade have significant impact on the volume of alcohol consumed and on the rates of alcohol-related problems. When hours and days of sale are increased, consumption and harm increase, and vice versa” (Babor T. C., 2023)

Babor et al have produced the most comprehensive analysis of the use of alcohol and its impacts on the individual and communities to date. They find that as is the case in South Australia the implementation of late night codes are often poorly evaluated. In a number of cases this is due to the implementation being compromised by being voluntary, or the data indicating possible changes

in the behaviour of patrons and enforcement personnel is not adequately monitored or controlled to give good evidence. They cite strategies such as the collection of 'last drinks' data as providing useful insights to where risky drinking is being facilitated and where the best return on investment in terms of staff training and licence compliance activities can be achieved (p. 255).

Babor et al also note "that many countries have inadvertently increased the availability of alcohol in their populations through policies encouraging the development of night- time economy in urban areas. Research shows that the density of alcohol sales outlets and drinking establishments and provisions for late- night service or sales are generally correlated with levels of alcohol- related problems, and restrictions on density and times of sale are therefore likely to be an effective antidote to intoxication, injuries, and violence because they reduce the attractiveness and convenience of heavy drinking" (Babor T. e., 2023, p. 317).

They conclude that there is substantial research on the regulation of late- night trading hours for on- premises outlets, with systematic reviews (e.g. Wilkinson et al. 2016; Nepal et al. 2020) finding mostly consistent evidence that changes to trading hours generally lead to changes in harm rates (Babor T. C., 2023, p. 137). Babor et al goes on to stress that regulation of availability, backed up with enforcement can be effective in reducing alcohol consumption and problems (Babor T. C., 2023, p. 148).

## Conclusion

The implementation of the late night code has been supported by a wide range of organisations including police, local council, the alcohol and drug treatment sector, health services and venues in previous submissions. It is clear however that the code as a stand alone intervention is not sufficient to address all of the issues arising from the late night service of alcohol. A comprehensive and locally appropriate model is required that incorporates the Code and a range of other elements that support its intent. This includes incorporating clear guidance into the code, ensuring that it is specific enough in its detail to make clear to staff in licenced premises (licensees, responsible persons, and general staff) their roles and responsibilities in relation to the service of alcohol and the monitoring and control of the behaviour of intoxicated patrons. Other elements that would support the code may include:

- The code needs to be backed up with comprehensive enforcement by the Consumer and Business Services and the Liquor Licensing Branch of SAPOL. This requires sufficient funding and other administrative support on the part of the State Government.
- a public complaints/notification process to enable members of the public to trigger inappropriate venue/venue staff/licence behaviour,
- modification to the Responsible Service of Alcohol training currently provided in South Australia to ensure it aligns with the modified code
- guidance for licenced businesses on the induction of new staff and their orientation to the code and related staff training
- a need to provide enhanced associated public information on the impact and scope of the late night code. The public needs to be aware of the scope of staff responsibility and their associated authority to refuse entry, service and require or request the removal of an intoxicated person.

Finally, a comprehensive evaluation process should be established which seeks to clarify the impact of the Code and its implementation. This should monitor direct outcomes such as licence breaches, expiation notices, prosecutions and licence variations or terminations, incidents causing harm, data

in relation to 'last drinks' for individuals taken into custody or presenting at emergency departments, ambulance retrievals, assaults, and other harms. Indirect outcomes could also be valuable. To date there is little research done on whether late night codes reduce consumption, they may drive pre-loading (though this should be mitigated by the refusals of entry to intoxicated persons) and overall impact on the night-time economy.

The long term outcome of the implementation of the Code should be the development of a vibrant night-time economy where a wide range of people wish to spend their time, enjoying the company of others and engaging in enjoyable activities that sustain the businesses that provide them with those opportunities. We do not want to achieve a night-time economy that is characterised by violence and risky and objectionable behaviour that negatively impacts on the lives of individuals, the community and in the longer term the economy.

## Recommendations:

**Recommendation 1:** That the Late Night Code as currently in force (and subject to the adoption of the changes suggested at Annex 1) be retained for a further two to three years at a minimum. During this period Consumer and Business Affairs fund independent research into its effectiveness in South Australia.

**Recommendation 2:** Consumer and Business Affairs undertake an analysis of existing currently unpublished data that is available as to the effect of Code since its inception in South Australia and publish a report that gives a comprehensive indication of what have been the benefits and challenges of having a Late Night Code. This could include a consolidation of the findings of the current review and submissions to it.

**Recommendation 3:** that the State Government provide sufficient funding to the CBS (and where relevant the Licensing Enforcement Branch ('LEB') of SA Police) to ensure that compliance monitoring of the Late Night Code can be effected in a sufficient and timely manner with:

- onsite inspections between the hours of 2.00am and 7.00am in relevant venues
- collection, evaluation, and publication of data relating to the implementation of the code including quarterly data on compliance activities, number of incidents (e.g., assaults, ambulance call outs, arrests, code violations, emergency department presentations related to the late night precinct and comparative data from other locations). The scope of such data to be developed through consultation with key stakeholders.
- public education campaigns relating to responsible service and consumption of alcohol
- promotion of the code to new and existing workers in the late night economy and appropriate training for licensees and drink marshals. This may involve a revision of or an extension to Responsible Service of Alcohol training for South Australia.

**Recommendation 4:** that recommendations arising from Mr Tim Anderson's Review of the SA Liquor Licensing Act 1997 be adopted including but not limited to:

15.3.6 Licensees not complying with the 'Lockout' provisions of the Late Night Code could also face an extended lockout imposition from 1.00am for example.

15.3.7 At the present time, licensed premises are regularly serving intoxicated persons. Quite simply, these persons are either intoxicated when entering the premises or become intoxicated by being sold liquor. This must be policed either by SA Police or CBS with more resources made available for this purpose.

15.3.8 There should also be more rigorous regulatory competency testing of persons to attain and maintain responsible service of alcohol accreditation. Clearly, on-line training has made it too easy, especially by persons seeking to be approved as responsible persons, to attain this level of accreditation. Essentially, once a person has registered with an on-line provider, anyone can fill in the on-line information on their behalf.

15.3.9 Further, unlike the provisions of the Gambling Code of Practice Notice 2013 issued by the IGA in respect to the State's gambling sector, there is no ongoing competency or refresher training requirement. (Anderson, 2016, p. 218)

**Recommendation 5:** Mr Anderson also recommended strengthening the right of a licensee or responsible person to refuse entry to an intoxicated person. He noted that anecdotally it must regularly occur that intoxicated persons are allowed into premises. He suggested making this an offence in its own right and removing the defence clause as it is 'antiquated and out of step with the responsible service of alcohol and harm minimisation requirements mandated by the General Code and Late Night Code. We would support this recommendation (recommendation 99 (Anderson, 2016, p. 221)

## Annex 1: Annotated Code with recommended changes to the existing Code

### Part 1 Preliminary

1. Citation
  - a. No changes
2. Commencement
  - a. As per usual procedure in updating a Code.
3. Purpose of the Code

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

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

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

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

4. Interpretation
  - a. No changes
5. Mandatory nature of the code
  - a. No changes
6. Application of this code of practice under section 11A (3) of the Liquor Licensing Act 1997
  - a. No change

### Part 2 – Required training and practices

#### 7. Drink marshal

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

For clarity a reworded section on Drink Marshals could read:

7. Drink marshal
  - (1) Between 2.01 am and 7.00 am at all times while open for trade, the licensee must ensure that at all times, at least one person who is approved as a Responsible Person under

the Liquor Licensing Act 1997 is performing the duties of a drink marshal. They should be identifiable to staff and patrons as performing this role.

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

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

(4) If the drink marshal suspects that a person is intoxicated or observes someone behaving in a disorderly, offensive, abusive or violent manner, the drink marshal may exercise the powers that they have under the Liquor Licensing Act 1997 as a Responsible Person. The drink marshal has the authority under the Act to ensure that an intoxicated person is not served alcohol and to so direct other staff, and where deemed necessary remove and bar from a premises a person they consider intoxicated or likely to exhibit risky behaviour. They must also immediately report this to the licensee or manager/supervisor on duty to ensure appropriate action is taken. Where necessary the drink marshal will liaise with SA Police in relation to the removal of an individual or group from a licenced premises or its vicinity.

## 8. First Aid

a) no change

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

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

## 10. Footpaths and other outdoor areas

a) no change

## 11. Entry onto licensed premises and use of metal detectors

A) no change

## 12. Restriction on the use of Glassware

a) no change

## Part 4

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

## 13. Late night restricted entry

a) No change

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

Part 5

14. Digital closed circuit television

This section is comprehensive but for the omission of consequences for a licensee or premises if CCTV is not operative. It would be of benefit to be specific about the penalties for a breach of this clause given that such footage may constitute significant evidence if harm occurs.

Schedule 1

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

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

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

Maximum penalty for an offence against a code of practice—

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

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

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

This section is subject to S45 of the Act.