



Risk and responsibility Harm minimisation strategies in Australian liquor laws

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Risk and responsibility in Australian liquor licensing laws

1. Trends in the development of liquor licensing legislation and the integration of harm minimisation
2. Harm minimisation through risk based licensing and secondary supply laws
3. Emphasis on personal responsibility in case law

Alcohol consumption in Australia

- Australia one of the top-30 highest alcohol consuming nations
- Rates of risky drinking in young people are increasing
- Alcohol consumption a significant contributor to acute and chronic conditions, as well as harm to others

Australia's legal system

- Powers are distributed between the federal government and the states.
- Australia has nine legal systems—the eight state and territory systems and one federal system.
- The states and territories have independent legislative power (limited by the operation of some Federal laws)

Best practice liquor licensing legislation

- WHO global alcohol strategy recommends controlling the availability of alcohol, through appropriate licensing systems
- Research has determined that effective licensing laws include:
 - Public health objectives
 - Preventing the sale of alcohol to intoxicated patrons
 - Modifying supply to young people

History of liberalisation

- Substantial increases in alcohol availability
- Increase in late night trading venues
- Increase in packaged liquor outlets
- Greater density of liquor outlets

From liberalisation to harm minimisation

- Increase in concern about levels of underage drinking, drink driving, and adverse impact on amenity
- 1985 'harm minimisation' adopted by Australian governments for alcohol issues
- Gradual adoption of harm minimisation as the object of liquor licensing legislation

Risk and responsibility in liquor licensing: risk based licensing

- Characteristics of licensed premises are used to calculate the risk of alcohol related harm associated with those premises
- Measures include:
 - Trading hours
 - Venue capacity
 - Compliance history

Risk and responsibility in liquor licensing: secondary supply

- Concerns around the supply of alcohol in private settings
- Australian states responded by making it an offence for a person who is not a parent* to supply a minor with alcohol in a private residence
- Qld and Tas require 'responsible supervision' of supply

Risk and responsibility in liquor licensing

Addressing risk

- Harm minimisation objects
- Risk based licensing

Addressing responsibility

- Secondary supply laws
- Responsible supply

Risk and responsibility in alcohol cases

- Divergent views in case law
- Inconsistency with trend in legislation
- E.g. server liability

Cole v South Tweed Heads Rugby League Football Club (2004)

- Ms Cole attended a champagne breakfast, and consumed a large quantity of free alcohol throughout the day.
- Refused service at 3pm; asked to leave at 5:30pm.
- Struck by a car walking home, and severely injured
- No duty of care to intoxicated patron

Cole v South Tweed Heads Rugby League Football Club (2004)

No duty of care

- No responsibility to protect people from harm caused by intoxication following a deliberate and voluntary decision on their part to drink
- Emphasised personal autonomy and choice

Duty of care

- Context of commercial setting in which alcohol provided for profit overrides concepts of personal autonomy
- Club staff should have taken steps earlier in the day to prevent the strong likelihood of harm.

Scott v CAL No 14 (Tandara Motor Inn) 2009

- Mr Scott was drinking at a hotel pub
- He handed over his motorcycle and keys
- Later demanded them back and drove home
- Mr Scott collided with a bridge and was killed
- Duty of care upheld
- “A reasonable person would have foreseen that if the deceased rode the motor cycle home...the risk that he would suffer injury was not insignificant”

Risk and responsibility in alcohol laws

- Tension between ideas of choice and personal autonomy, risk reduction and collective responsibility
- Shifts in the way alcohol is perceived in society, including responsibility for alcohol related harm
- Legislation is well placed to implement change