

**Regulation of alcohol & tobacco by local
government in Western Australia:**
An exploratory study

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1 Abstract

This paper has a number of objectives involving exploratory research to identify the role of local government authorities (LGAs) in Western Australia (WA) in developing and implementing community-level measures to reduce the alcohol and tobacco-related harm.

The first is to identify recent developments to update research some ten years ago, which had identified the potential for local government in WA to assume a key role, through the use of planning powers, to regulate the display of alcohol advertising in public spaces.²

This earlier research considered some lesser known statutory derived powers and mechanisms that LGAs could deploy to address concerns, such as the normalisation of alcohol that arose from poorly regulated alcohol-related advertising in public spaces, on building facades and the use of public infrastructure such as bus shelters, roadside and street furniture.

This is to continue examination of the potential scope to utilise broader powers available to LGAs to assume a more prominent role related to the use of alcohol to mitigate its harms by regulation, particularly, but not restricted to advertising.

A recent initiative by a metropolitan local government authority to regulate tobacco smoking in public spaces will be considered as an exemplar of the use of public health-based powers which could be adopted to potentially underpin measures within a local community to reduce alcohol harms.

It suggested that policy makers should encourage local authorities to become more actively concerned to promote alcohol-focussed policies, such as by the adoption of model policies by utilising available mechanisms and provisions in current legislative powers.

2 Introduction

'The city is a personal experience owned by each person, whether resident or visitor. From a legal perspective, it is tantamount to an urban property right that transcends public and private domains. Our right to see, hear, touch, and smell the city is our affordable lease, easement or license that allows us to cross space and time and organic forces of growth or decline.'³

² G Swensen, 'Public space and alcohol advertising: exploratory role of local government' (2016) 5(3) *International Journal of Alcohol and Drug Research* 117.

³ C R Wolfe, *Seeing the city: How to explore, observe, and improve urban space* (Island Press, 2016) 24.

In approaching the issue of expanding the role of local government, it is important to recognise there has existed a long-standing belief in Australia that the primary role of local government rests with roads, rates and rubbish, the so-called “3 Rs”.

A conventional view of this role is reflected in this current statement on the WA Department of Planning, Lands and Heritage website -

‘Local governments are responsible for planning their local communities by ensuring appropriate planning controls exist for land use and development. They do this by preparing local planning schemes and strategies. Local planning schemes set out the way land is to be used and developed, classify areas for land use and include provisions to coordinate infrastructure and development within the local government area. This is set out via scheme text and maps.’⁴

However, in spite of this view, there has been a growing interest and awareness that the scope of councils should extend beyond these narrow parameters. An example is the reported comments by the former national president of the Australian Local Government Association in 2006 that

‘councils could “add regulation, recreation, relief (as in welfare, childcare, aged care and healthcare services), regionalism and regional development, and retail services such as water, sewerage and transport services” to the list of roles they performed for their local communities’.⁵

We might claim this statement recognises that an expansion in the role of local governments involves many Rs, not just the 3Rs.

Another example is the statement some 20 years ago by a Federal parliamentary committee, that local governments throughout Australia were involved in

‘taking on responsibility for social functions, such as management of health, alcohol and drug problems, community safety and improved planning and accessible transport... (as well as) also playing an increasing regulatory role in the areas of development and planning, public health and environmental management.’⁶

In relation to how local government might be involved with the regulation of alcohol, we should be aware that the regulation of alcohol has relied on a combination of statutory measures embodied in liquor licensing legislation.

This system has been firmly overseen by the State government here in WA, as in other Australian jurisdictions, has involved a complex system for determining an array of

⁴ Department of Planning, Lands and Heritage. ‘Local planning strategies, schemes and structure plans listed by local government’. < <https://www.wa.gov.au/organisation/departments-of-planning-lands-and-heritage/local-planning-strategies-schemes-and-structure-plans> >

⁵ R Busbridge, M Chou and S Rutledge-Prior, ‘The three Rs and beyond: public perceptions on the role of Australian local government today’ (2024) *Urban Policy and Research*, 1-2.

⁶ Finance and Public Administration Standing Committee on Economics, *Rates and taxes: A fair share for responsible local government* (House of Representatives, Parliament of the Commonwealth of Australia, 2003) 9.

categories of licenses,⁷ prescribed opening hours, patron behaviour on licensed premises, the exclusion of particular groups from licensed premises and penalties for non-compliance, etc.

Policy makers in WA have over a period of time moved away from statutory frameworks to regulate the alcohol market and access to alcohol that operated in the 1970s, towards policies which reflect a greater level of self-regulation. This approach is encapsulated in the term 'responsible' drinking' that has been used in a number of jurisdictions.⁸

In 2022 the Department of Local Government, Sport and Cultural Industries launched consultation about proposed reforms which were described as being the “next chapter” in WA’s liquor laws.⁹

The Chamber of Commerce and Industry WA’s submission to the consultation supported these reforms as they would ‘reduce red tape associated with holding a liquor license ...(and improve and modernise) regulation and remove redundant and archaic rules’.¹⁰

This evolution in regulation may evolve to a form of quasi self-regulation involving a combination of controls to liberalise the drinking environment, involving the *Liquor Control Act 1988*, local government. This approach involves a framework of public health campaigns to educate about low risk drinking¹¹ and use of banning¹² and prohibition orders.¹³

This approach of liberalisation involves the notion of a so-called “safety net” for alcohol dependent drinkers, those with impaired control, to not be able to access alcohol from licensed premises. This concept of a safety net can be seen clearly as part of alcohol policy in the UK, ‘from having a narrow focus on “alcoholism” pre-1970 to its current

⁷ For example, presently in WA there presently a range of types of liquor licenses – Casino, club, club restricted, hotel, hotel restricted, tavern, tavern restricted, liquor store, night club, occasional, producer, restaurant, small bar, special facility and wholesaler: Department of Local Government, Sport and Cultural Industries. *Licence types and trading hours*.

<<https://www.dlgsc.wa.gov.au/racing-gaming-and-liquor/liquor/liquor-licensing/license-types-and-trading-hours>>

⁸ P L O’Brien, 'Strong drink, weak rules: Alcohol, public health and industry self-regulation in Australia' (PhD Thesis, 2019) <<https://findanexpert.unimelb.edu.au/scholarlywork/1476562-strong-drink--weak-rules--alcohol--public-health-and-industry-self-regulation-in-australia>>; T F Babor et al, *Alcohol no ordinary commodity: research and public policy* (Oxford University Press, 2010).

⁹ Department of Local Government Sport and Cultural Industries, *The next chapter of WA’s liquor laws - have your say* (Department of Local Government Sport and Cultural Industries, 2022).

¹⁰ Chamber of Commerce and Industry WA, *Submission to the next chapter of liquor licensing reform* (2023).

¹¹ Such as the Alcohol think again campaign. <<https://alcoholthinkagain.com.au>>

¹² Department of Local Government Sport and Cultural Industries, 'Banned drinkers register legislation', *Department of Local Government Sport and Cultural Industries* (Blog Post).

¹³ Sport and Cultural Industries Department of Local Government, 'Prohibition orders', (Blog Post) <<https://www.dlgsc.wa.gov.au/racing-gaming-and-liquor/liquor/prohibition-orders>>.

focus on the “alcohol problems” or the misuse that exists throughout society’;¹⁴ informed by the then UK’s 2007 alcohol policy - Safe Sensible Social.¹⁵

The UK alcohol strategy has undergone a number of iterations, such as in 2012, which provided for an increased role for local councils to have input into liquor licensing controls to reduce public health impacts from alcohol, and to ‘support individuals to make informed choices about healthier and responsible drinking, so it is no longer considered acceptable to drink excessively’.¹⁶

These concepts apparent in both WA and UK examples, parallel reform in other jurisdictions and have been characterised for the emphasis on social restraint, ie responsible drinking, what has been referred to as “smooth manners” - a ‘constraint to be unconstrained’.¹⁷ This evolution in the shift to self-control and less regulation on the liquor industry has occurred in a number of jurisdictions, driven, with the consequence presaged more than two decades ago, as opening ‘up the alcohol market to what is often presented as ‘continental-style drinking’, resulting in an explosion of cafes, restaurants, bars and hotels obtaining ‘footpath’ trading licenses.’¹⁸

The nature of the Australian alcohol market is that it is fully privatised and involves the three tiers of government, the Commonwealth government, the states and territories and local government performing distinct regulatory functions.

Accordingly, whilst the Commonwealth (federal) government has exclusive powers related to customs and excise, consumption (goods and services) taxes and regulation of the content of television and radio broadcasting, responsibility for liquor licensing functions and law and order matters (eg public law and order and drink driving) is a state and territory level responsibility, with local government being concerned with the enforcement of planning, public health and environmental matters.

3 Case study: The City of Vincent

3.1 Overview

This case study considers the approach adopted by the City of Vincent’s regulation of both alcohol and tobacco, involving two recent policies.

¹⁴ L Williamson, ‘Public policy on alcohol in the United Kingdom: Towards a safety net for the alcohol-dependent’ (2009) 17(3) *Journal of Law and Medicine* 386, 2.

¹⁵ Department of Health and Home Office, *Safe, Sensible, Social: The next steps in the National Alcohol Strategy* (Department of Health, 2007).

¹⁶ Secretary of State for the Home Department, *The government’s alcohol strategy* (Stationery Office, 2012) 4.

¹⁷ C Wouters, ‘How civilizing processes continued: towards an informalization of manners and a third world personality’ (2011) *Monograph Series 7 Sociological Review* 140 - 159, 151.

¹⁸ A Pennay and R Room, ‘Prohibiting public drinking in urban spaces: a review of the evidence’ (2012) 192(2) *Drugs, Education, Prevention and Policy* 91, 99.

The first of these concerns smoking tobacco and e-cigarettes, involving reliance on public health regulatory powers, in its July 2022 *Smoke free areas – education and enforcement policy*.¹⁹ (See Plate 2)

The second involves reliance on its planning powers to permit use of parts of roadways and footpaths for the serving of food and alcohol by adjoining operating businesses, in its *Parklets policy*.²⁰

Whilst the operation of local government in WA is primarily determined by the *Local Government Act 1995*, local councils also rely upon and exercise a broad range of regulatory powers contained in other provisions such as planning, operation of streets, maintenance of thoroughfares, parks and recreation facilities:

‘A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.’²¹

In relation to the regulation of alcohol and tobacco, local governments are provided with wide-ranging powers involving public health matters:

‘Nothing in the *Health (Miscellaneous Provisions) Act 1911* or the *Public Health Act 2016* prevents a local government from making local laws under this Act about matters relating to public health (as defined in the *Public Health Act 2016* section 4(1)).’²²

There is an expansive meaning of what ‘public health’ means set out in the *Public Health 2016*, which defines this term as involving:

‘the health of individuals in the context of (a) the wider health and wellbeing of the community and (b) the combination of safeguards, policies and programmes designed to protect, maintain, promote and improve the health of individuals and their communities and to prevent and reduce the incidence of illness and disability’.²³

This definition underlines that local government in WA has a potentially broad role, not just confined to the more familiar understanding embodied in the 3Rs (eg regulating facilities involved in the preparation and handling of food, ventilation of restaurants and other establishments), but also health prevention, which arguably encompass smoking and alcohol-related harms. The *Public Health Act 2016* provides that -

¹⁹ City of Vincent, 'Smoke free areas - education and enforcement policy ', (Blog Post) <<https://www.vincent.wa.gov.au/documents/2089/smoke-free-areas-education-and-enforcement-policy>>.

²⁰ City of Vincent, 'Parklets', *City of Vincent* (Blog Post) <<https://imagine.vincent.wa.gov.au/parklets>>; City of Vincent, 'City of Vincent policy manual. Technical services - Parklets policy: Policy No. 2.2.13' *City of Vincent*.

²¹ *Local Government Act 1995* s. 3.5 (1).

²² *Local Government Act 1995* s. 3.5 (4B).

²³ *Public Health Act 2016* s. 4(1).

‘A local government has the following functions in relation to the administration of this Act -

- (a) to initiate, support and manage public health planning for its local government district;
- (b) to develop and implement policies and programs to achieve the objects of this Act within its local government district.²⁴

The City of Vincent enacted the *Local Government Property Local Law 2021*, which it is required to have done, like all other local authorities in WA, to be able to regulate all public property within its area.²⁵

In October 2020 the City of Vincent adopted its Public Health Plan 2020 – 2025. (See Plate 1) This was predicated on a power in its updated Property Local Law 2021, which sets out the rationale and purpose for this Plan.

‘Public health programs and plans across the world are guided by the Social Determinants of Health. These are the conditions in which a person is born, grows up, lives, works and ages; and in turn influences their opportunity to be healthy, their risk of illness and life expectancy.

The social determinants of health are broad and include socioeconomic status, employment, education, housing, social support, access to health care and other services, transport, food security and community safety.’²⁶

3.2 Smoke free areas

The *Local Government Property Local Law 2021* sets out the framework for the City of Vincent’s tobacco use policy, which involves proclaiming particular areas as “smoke free,” as part of the City’s vision to ‘normalise smoke free environments’.

It is to be noted that in WA it is not an offence to smoke in public areas, except not in certain prescribed areas under the State’s legislation framework involving the sale, advertising etc of tobacco.²⁷ The *Local Government Property Local Law 2021* defines a smoke free area as being a prescribed area that may include -

- (a) An Activity Centre;
- (b) A Public Open Space that is local government property (recreation, sport and nature spaces defined by the Department of Local Government, Sport and Cultural Industries Public Open Space Classification);
- (c) A thoroughfare adjacent to a business or facility where there is activity that caters for children and/or young people; and

²⁴ *Public Health Act 2016* s. 16.

²⁵ Note: The *City of Vincent local Property Local Law 2021* revoked the council’s earlier local law first enacted in 2008: *Government Gazette*, 30 November 2021, No. 201 Special.

²⁶ City of Vincent. Public health plan: 2020 – 2025, p. 10.

<<https://www.vincent.wa.gov.au/documents/1897/public-health-plan-2020-2025>>

²⁷ *Tobacco Products Control Regulations 2006*.

(d) A thoroughfare adjacent to a business or facility where trading with an outdoor eating area as an extension of food premises or licensed premises.²⁸

The smoke free areas policy defines smoking to mean to ‘smoke, hold or otherwise have control over an ignited tobacco product; light a tobacco product; or use an e-cigarette.’ It defines a tobacco product has the same meaning as defined in the *Tobacco Products Control Act 2006*:

A person must not smoke in a smoke free area. Where an authorised person believes on reasonable grounds that a person is contravening or has contravened subclass (1), the authorised person may direct the person to extinguish the tobacco product or e-cigarette.

The *Local Government Property Local Law 2021* makes it a specific offence if a person who is smoking in a prescribed area fails to extinguish tobacco product or e-cigarette when asked to do so by an authorised officer.

It is to be noted this is not an arrestable offence, but can be characterised as an “infringeable offence” which attracts a modified penalty \$200. This means that an offence involving any of the City of Vincent’s five prescribed smoke-free areas will not involve not appearance before a Magistrate nor may a conviction the be recorded.

Non-payment of such an infringement notice will ultimately result in recovery of the unpaid debt owed to the City of Vincent in accordance with the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

3.3 Alcohol use

The City of Vincent has not enacted an alcohol policy, such as like the previous far-reaching policy the City of Subiaco had adopted between 2015 and 2018. Nor is there any arrangement that is comparable to the smoke free areas policy, even though arguably alcohol-related harms fall within the recognition of the importance of social determinants of health statement that are set out in its Public Health Plan 2020 – 2025.

One measure which is relevant to alcohol is the City of Vincent’s Parklets policy which has been styled as a means to repurpose and thereby ‘improve’ the streetscape.

‘Parklets are small public parks set into the existing streetscape. A Parklet repurposes part of the street into a public space for people and enhances the streetscape by adding interest and amenity. They are for anyone to use, providing a place to rest, eat or work.

They provide simple amenities like shade, bike parking and seating. They help local businesses by encouraging people to linger longer, and are a point of interest in the community for residents and visitors to experience.’²⁹

²⁸ *City of Vincent local Property Local Law 2021*, Division 6, s. 5.16.

²⁹ City of Vincent. *Parklets*. < <https://imagine.vincent.wa.gov.au/parklets>>

In the *Local Government Property Local Law 2021* there is a provision that makes it an offence for a person to consume or have in their possession alcohol, unless permitted under the *Liquor Control Act 1988* (eg such as under an event or special permit permit), or so long as 'consumption does not, in the reasonable opinion of the local government, result in any anti-social or unsafe behaviour or cause risk to members of the public accessing the local government property'.³⁰

4 Case study: The City of Subiaco

4.1 Overview

There is a total of 137 local government areas (LGAs) in WA, which consists of 27 cities, 102 shires and 8 towns; of these 137 there is a total of 30 LGAs in the Perth metropolitan area. There is a large variation in size of each metropolitan area, from just over 9,000 persons in the Mosman Park LGA to some 220,000 in the City of Stirling LGA. See Table 1.

The sheer volume of the range of arrangements and provisions undertaken by each LGA at this stage limited the exploratory research to a detailed review of two adjoining inner city LGAs, the City of Subiaco and the City of Vincent, which have populations of just over 17,000 and 36,000, respectively.

The City of Subiaco case study illustrates difficulties that have occurred involving this particular council, which sought to regulate signage and the activities of the alcohol industry within its jurisdiction through reliance on its planning powers.

4.2 Alcohol policy: 2005 - 2018

The City of Subiaco adopted a *Liquor licensing policy* in October 2005, which was revised in 2007, which in conjunction with other policies and statutory instruments, sought to establish a broad framework to regulate the location and operation licensed premises to mitigate related secondary social impacts from their operation.³¹

This policy s relied on provisions in the *Liquor Control Act 1988*, involving the provision for a Public interest assessment (PIA) by amendments in 2006. The PIA is an important provision and enabled local government authorities to provide input into evaluation of a liquor license, involving a number of impacts –

The matters the licensing authority may have regard to in determining whether the granting of an application would in the public interest, by including consideration of -

- a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
- b) whether the amenity, quiet or good order of the locality in which the licensed premises or proposed licensed premises are, or are to be, situated might in some manner be lessened; and

³⁰ *City of Vincent local Property Local Law 2021*, s. 3.20 (c).

³¹ City of Subiaco. Town planning scheme No. 4 - Planning policy 2.12: Liquor licensing policy

- c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
- d) any effect the granting of the application might have in relation to tourism, or community or cultural matters; and
- e) any other prescribed matter.³²

The City of Subiaco policy also relied on a proponent for a new or existing liquor license being required to lodge with the relevant local authority Forms 39 and 40 (named after sections of the legislation). These forms are required as a pathway for a proponent to receive requisite certificates of compliance issued by the LGA for the use of the premises in accordance with food, health and building conditions³³ and for operating a liquor license in accordance with planning requirements eg parking, amenity etc.³⁴

The City of Subiaco has a number of other provisions it utilised to regulate advertising in public space, including its *Streetscape Policy*, its *Signs Local Law 2004* and its *Activities in Thoroughfares and Public Places Local Law 2003*. The penalties under the City's for breaches of these laws applicable to signs can be substantial, with a fine of up to \$5,000 under the *Signs Local Law 2004*.

4.3 Reaction to policy

The City's 2007 *Liquor Licensing Policy*, which was promulgated as part of the City's Town Planning Scheme No. 4, was subject to harsh criticism from a number of business interests.

'The State Government's move to liberalise WA's liquor laws has been dealt a major blow by a City of Subiaco push to ban small bars from its entertainment district and put tough restrictions on the number of restaurants which can serve alcohol to patrons who are not eating.'³⁵

These criticisms give currency to the proposition that the City's alcohol policy reflected "wowserism", a term that has a long currency in Australia, usually invoked to deride those seeking to regulate the use of alcohol by restricting opening hours.³⁶ The critique of wowserism has been invoked in recent criticisms of the City's approach to setting limitations on the operation of small bars, imputing that such restrictions spoil fun and stop people enjoying themselves.

Another commentator asserted that the policy was responsible for a decline in the night time economy in Subiaco as it restricted the operation of bars and other licensed outlets, which it was asserted, when changed would "revitalise" and "reinvigorate" social life in Subiaco.

³² *Liquor Control Act 1988*, s. 38(4).

³³ *Liquor Control Act 1988*, s. 39.

³⁴ *Liquor Control Act 1988*, s. 40.

³⁵ S Riley, 'Subiaco plan sinks liquor laws', *ClubConnect* (Blog Post) <www.clubconnect.com.au/news/2007/07/news13022.asp>.

³⁶ K Dunstan, *Wowzers* (Cassell Australia, 1968); D Dunstan, 'Boozers and wowzers' in V Burgmann and J Lee (eds), *Constructing a culture* (McPhee Gribble/Penguin, 1988).

‘A policy restricting new bars within 100m of parts of Subiaco’s high street could be reviewed within weeks in a move frustrated business owners hope may breathe new life into the suburb. The move comes amid concerns the city is not doing enough to support small business and hospitality in the area, at the expense of its vibrancy.’³⁷

Another thread of criticism of the City’s alcohol policy was that it enabled the City of Subiaco to exploit the public interest provisions under the *Liquor Control Act 1988* to place onerous conditions on licensees, thereby denying locals the freedom to drink alcohol because of restrictions on the opening of small bars.³⁸

In November 2014 this policy was amended to facilitate expanded trading by one of the City’s small bars, which had been engaged in a long running dispute about restrictions in the conditions of its license.³⁹ Overturning of these restrictions was described in an editorial in the *Western Suburbs Weekly* as being ‘progress and quite simply, fun’.⁴⁰

The City of Subiaco’s *Liquor licensing policy* was revoked by the Council in February 2018, which encouraged a commentator to claim that

‘Subi slipped into a slumber several years earlier when its notoriously negative council failed to take advantage of the change in the small bar laws that were designed to inject life into inner-city neighbourhoods. “Small bars were popping up everywhere – in the city, in Leederville, in Northbridge, in Beaufort Street. Small bars were on trend. It changed the way people drank and ate,” she says.

“Instead of going to big establishments they would start drinking in one bar then move on to the next and then on to a restaurant. But we missed out on this transformation in hospitality because of the failure to act on the change in laws. Consequently, Subiaco was left a decade behind.”⁴¹

5 Alcohol advertising in public places

5.1 Overview

The arrangements for advertising alcohol involve a complex self-regulatory framework, with the principles and processes contained in the codes and standards of Federal self-regulatory schemes initially established by the alcohol industry to regulate advertising in TV and radio.⁴²

³⁷ K Emery, 'Red tape chokes old favourites: traders', *The West Australian* <<https://au.news.yahoo.com/thewest/a/24619118/red-tape-chokes-old-favourites-traders/>>.

³⁸ C Black and GS Ellis, 'Controversial liquor licensing policy announced - City of Subiaco moves to expand its powers' (2 September 2014).

³⁹ Emery *The West Australian* 3 August 2014 (n

⁴⁰ R Candler, 'Bar approval divides neighbours', *Western Suburbs Weekly*.

⁴¹ M Naglazas, 'The greatst comeback since Lazarus! Subiaco has awakened from its slumber', *WAToday* <<https://www.watoday.com.au/national/western-australia/the-greatest-comeback-since-lazarus-subiac-has-awakened-from-its-slumber-20230831-p5e0t2.html>>.

⁴² Senate Standing Committee on Environment Communications and the Arts, *The effectiveness of the broadcasting codes of practice* (Senate, Australian Parliament, 2008).

However, the growth in alcohol advertising in public places has created regulatory difficulties for local government, which has a unique exclusive control over most public places. Whilst the ambit of the Federal government's power to regulate advertising is restricted to electronic media, this model of self-regulation has been extended to regulate the content of outdoor advertising, through utilising the codes of ethics issued by the Australian Association of National Advertisers (which has established the Advertising Standards Bureau) and the Outdoor Media Association applicable to all forms of advertising, supplemented by the Alcohol Beverages Advertising Code (ABAC) in relation to the regulation of alcohol advertising.

The ABAC principles in relation to alcohol advertising stipulate advertisements present a 'mature, balanced and responsible approach to alcohol consumption', that they do not have a 'strong or evident appeal to children or adolescents' or that they 'do not suggest the consumption or presence of alcohol may create or contribute to a significant change in mood or environment' contained in the ABAC code. However, industry's interpretation of these general principles has been found wanting on many occasions.⁴³

5.2 The role of local government

There is an astounding array of advertising in public places, from signage associated with a particular business, large free standing billboards, displays on the sides of buildings, free-standing small advertising on signs on footpaths adjoining entrances to licensed premises and product promotions on public facilities like bus shelters, street furniture and kiosks.⁴⁴

It is argued the assumption of regulatory function in relation to alcohol advertising is consistent with an expansive understanding of local government's long-standing involvement in public safety, environmental health, the management of public facilities and infrastructure and maintaining road ways and adjoining footpaths to accommodate the flow of both pedestrians and motor vehicles.

These roles are consistent with the 3Rs perspective of the domain of local government and as both thoroughfares and roads fall within the domain of local government, this establishes a basis for regulation of other activities, such as advertising.

The power to regulate advertising in public places arises as local government 'owns' almost all public space on which the roads, footpaths, seating, bus shelters, parklands etc are located. The argument for a great involvement of local government is part of

⁴³ Australian National Preventive Health Agency, *Alcohol advertising: the effectiveness of current regulatory codes in addressing community concerns: Issues paper* (Australian National Preventive Health Agency, 2012); SC Jones, D Hall and G Munro, 'How effective is the revised regulatory code for alcohol advertising in Australia?' (2008) 27 *Drug & Alcohol Review* 29 - 38; G Munro, 'A decade of failure of alcohol advertising in Australia' (2006) 3 *The Globe*; S Pettigrew, R Johnson and M Daube, 'Introducing and applying a new Australian alcohol advertising code' (2013) 13(1) *Journal of Public Affairs* 72 - 83; B Saunders and E Yap, 'Do our guardians need guarding? An examination of self-regulation of alcohol advertising' (1991) 10 *Drug and Alcohol Review* 15.

⁴⁴ Standing Committee on Social Policy and Legal Affairs, *Reclaiming public space: Inquiry into the regulation of billboard and outdoor advertising* (Australian Parliament, House of Representatives, 2011).

larger concerns about the content of advertising in general, such as the use in clothing and apparel advertising of strategies that sexualise children and women.⁴⁵

As can be seen in a number of examples of alcohol advertising in public places in Plates 3 and 5 involving locations in the City of Vincent and other inner metropolitan areas (Plate 4 involves an another jurisdiction), these are instances of the growing adoption of gender stereotyping in alcohol marketing.⁴⁶ Plate 6 provides a surprising contentious proposition involving alcohol and swimming involving a sign on the pavement outside a bar.

Further research is necessary to determine if the content and form of public alcohol advertising may be impacted and shaped in the longer term by the growth in advertising on social media, which it has been noted reflects a growing feminisation of alcohol marketing.⁴⁷

The ubiquitous nature of public advertising means pedestrians who pass along public thoroughfares and motorists who drive on roads are compelled to view it, enables the alcohol industry to sidestep some of the key principles contained in the ABAC system.⁴⁸

A compelling advantage for alcohol advertiser wanting to advertise on public structures, is that compared to ABAC advertising framework for television and radio, public infrastructure is available 24 hours a day seven days per week. Another advantage is that the audience is unrestricted, whereas the advertising codes developed for TV broadcasting take account of specific time bands based on when children and young people are most likely to view programs.

‘As outdoor media companies are fond of pointing out to potential advertisers, outdoor is the only medium that you cannot turn off. (Hampp 2007⁴⁹). As such, the regulation of its content is particularly important.’⁵⁰

⁴⁵ Standing Committee on Environment Communications and the Arts, *Sexualisation of children in the contemporary media* (Senate, Australian Parliament, 2008); R Bailey, *Letting children be children: Report of an independent review of the commercialisation and sexualisation of childhood. Final report* (Department for Education, 2011).

⁴⁶ A M Atkinson, 'It's time to call time on the use of gender stereotypes in alcohol marketing', *Institute of Alcohol Studies* (Blog Post) <<https://www.ias.org.uk/2019/10/16/its-time-to-call-time-on-the-use-of-gender-stereotypes-in-alcohol-marketing/>>; *ibid.*; A M Atkinson et al, *A rapid narrative review of literature on gendered alcohol marketing and its effects: exploring the targeting and representation of women* (Public Health Institute, Liverpool John Moores University, 2019); J Murray, 'The feminisation of alcohol marketing', *BBC* (Blog Post) <<https://www.bbc.com/worklife/article/20200924-the-feminisation-of-alcohol-marketing>>.

⁴⁷ A M Atkinson et al, 'Pretty in Pink' and 'Girl Power': An analysis of the targeting and representation of women in alcohol brand marketing on Facebook and Instagram' (2022) 101 *International Journal of Drug Policy* 103547.

⁴⁸ K Iveson, 'Branded cities: outdoor advertising, urban governance and the outdoor media landscape' (2011) 44(1) *Antipode: Radical Journal of Geography* 151; Alcohol Advertising Review Board, 'Alcohol Advertising Review Board content and placement code' (2012).

⁴⁹ A Hampp, 'AdSpace, with Nielsen, sets out to quantify its audience' (19 July 2007).

⁵⁰ K Iveson, 'Submission to Inquiry into the regulation of billboard and outdoor advertising', *House Standing Committee on Social Policy and legal Affairs*) <www.aph.gov.au/house/committee/spla/outdoor%20advertising/subs/Sub%2046.pdf>.

5.3 Summary

It has been argued that alcohol advertising, because of its pervasive 24/7 presence, 'normalising' alcohol, by making it a pervasive part of everyday life, such that the consumption of alcohol is a 'normal' part of everyday living.⁵¹ An important 'benefit', from the perspective of the alcohol industry, is that advertising in public places embeds alcohol as being part of everyday life and thereby 'normalises' its presence and use.⁵²

It is contended it should be a non-contentious proposition that local government, because of its role concerning public health should perform a key role in regulating alcohol advertising in public places, so as to 'de-normalise high levels of alcohol consumption (as it is) confounded by the prevalence of alcohol advertising in Australia',⁵³ thereby preventing alcohol-related harm.

6 Summary

The paper has sought to explore some of tensions that local government authorities attempt to navigate through commercialisation of the use of public space, through the examples of approaches in the City of Subiaco and the City of Vincent.

An examination of the intrusion of alcohol advertising on privately built and maintained bus shelters and other public infrastructure seems to have not produced discernible community benefits as it was largely concerned with the priorities and interests of business. This commercialisation is closely related to the shift towards policies underpinned by self-regulation and of a limited role for government.

This is a phenomenon which has been argued is due to a decline in social values based on authoritarian-like social controls in favour of informalised social controls, because of increased levels of 'permissiveness' and the adoption of 'more calculative and reflexive self-controls'.⁵⁴

A recent development involving the City of Vincent related to regulation of the use of tobacco could be a harbinger of greater involvement by local government in adopting measures to reduce the harms from alcohol.

This would be predicated on the utilisation of a public health strategy and be championed by LGAs to facilitate a greater assumption by councils of a direct role in promoting and supporting behaviour change related to reducing alcohol-related harms in local communities

The case study identifying concerns from the normalisation of alcohol that has occurred through poorly regulated alcohol advertising in public places, also highlighted the

⁵¹ Pettigrew, Johnson and Daube (n

⁵² Alcohol Policy UK, "Stick to the facts": Alcohol Concern call for tougher regulation on alcohol advertising') <www.alcoholpolicy.net/2013/08/stick-to-the-facts-alcohol-concern-report-on-alcohol-advertising-and-regulation.html>.

⁵³ Pettigrew, Johnson and Daube (n

⁵⁴ C Wouters, 'Changing patterns of social controls and self control' (1999) 39(3) *British Journal of Criminology* 416, 417.

difficulties faced by the City of Subiaco in regulating alcohol use in response to attendant increases in public order and health-related harms.

Finally, as local authorities possess substantial statutory powers under a range of public health, local government and town planning laws, they are well placed to develop policies and establish a framework to regulate the sale and advertising of alcohol, as well as other approaches, to reduce the health and social harms related to the use of alcohol at a community level.

7 Appendix 1: Tables and Plates

Table 1: Perth Metropolitan Local Government Areas

LGA name	Population		LGA name	Population
Armadale, City of	87,634		Melville, City of	101,940
Bassendean, Town of	15,739		Mosman Park, Town of	9,067
Bayswater, City of	68,232		Mundaring, Shire of	39,139
Belmont, City of	41,510		Serpentine–Jarrahdale, Shire of	30,933
Cambridge, Town of	28,481		Nedlands, City of	22,554
Canning, City of	92,965		Peppermint Grove, Shire of	1,721
Claremont, Town of	10,704		Perth, City of	27,762
Cockburn, City of	112,165		Rockingham, City of	133,389
Cottesloe, Town of	8,188		South Perth, City of	43,554
East Fremantle, Town of	8,711		Stirling, City of	220,249
Fremantle, City of	30,868		Subiaco, City of	17,106
Gosnells, City of	123,325		Swan, City of	143,374
Joondalup, City of	160,031		Victoria Park, Town of	36,601
Kalamunda, City of	58,946		Vincent, City of	36,088
Kwinana, City of	43,511		Wanneroo, City of	203,679

Source: https://en.wikipedia.org/wiki/Local_government_areas_of_Western_Australia

Note: Population 2018



CITY OF VINCENT

Public Health Plan

2020 – 2025

A strategy for a healthy,
happy and connected
community for all



Plate 1: City of Vincent Health Plan 2020 - 2025



Plate 2: City of Vincent -
North Perth Proclaimed smoke free area



Plate 3: Bus shelter ad - Catch me



Plate 4: Bottle shop - Shoot your lunch



Plate 5: Hotel



Plate 6: Night swimming

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