



Restaurant
& Catering

Enhanced regulatory measures for same day alcohol delivery

R&CA Submission

November 2019

RESTAURANT & CATERING AUSTRALIA

Restaurant & Catering Australia (R&CA) is the national industry association representing the interests of more than 47,000 restaurants, cafés and catering businesses across Australia. The café, restaurant and catering sector is vitally important to the national economy, generating over \$37 billion in retail turnover each year as well as employing 450,000 people. Over 92 per cent of businesses in the café, restaurant and catering sector are small businesses, employing 19 people or less.

In NSW, R&CA represents over almost 17,000 cafés and restaurants across the state, with 88% being small, single site operators employing less than 19 people. The sector employs over 192,000 people in NSW with an expected 31,000 new jobs to be created over the next five years, representing employment growth of 14.9%.

R&CA delivers tangible outcomes to small businesses within the hospitality industry by influencing the policy decisions and regulations that impact the sector's operating environment. R&CA is committed to ensuring the industry is recognised as one of excellence, professionalism, profitability and sustainability. This includes advocating the broader social and economic contribution of the sector to industry and government stakeholders, as well as highlighting the value of the restaurant experience to the public.

INTRODUCTION

R&CA is pleased to provide a submission to NSW Liquor and Gaming's 'Enhanced regulatory measures for same day alcohol delivery' discussion paper. The Same Day Alcohol Delivery (SDAD) market in NSW is undoubtedly growing, with the ease and convenience provided by same day delivery providing increasingly attractive to customers.

However, the restaurant industry does have some complex interactions with this new sector – some positive and some negative – which require further regulatory clarification to ensure that restaurant owners and licensees are not unduly implicated by SDAD operators not properly adhering to their legal duties.

Recent IBISWorld Reports show that as online shopping continues to grow in popularity, the industry's product lines are diversifying, and industry competition is increasing. Industry revenue is expected to increase at an annualised 14.1% over the five years through 2018-19, as demand has risen steadily from year to year. This includes anticipated revenue growth of 16.5% in the current year, to \$569.4 million. Online sales are expected to account for 4.6% of total liquor retail sales in the current year. Online alcohol sales are forecast to increase over the next five years as discretionary income rises and delivery systems and technologies continue to improve. The industry will likely remain an attractive option for consumers over the period due to its diverse product range and competitive prices.

Interactions between the restaurant industry, or food businesses generally, and the SDAD industry are generally limited. However, three key interactions should be noted:

1. BYO Restaurant businesses at times rely on the SDAD industry where customers choose to have their alcohol delivered directly to the restaurant to consume on premises.
2. Some restaurants will use same day delivery to quickly replace stock ahead of lunch or dinner service if required.
3. Restaurants in other jurisdictions have become unwilling partners with SDAD operators through online delivery platforms such as UberEats, Deliveroo and Menu Log, allowing customers to order food and alcohol as part of a single order. This is done with far less regulatory control over the alcohol sold with food online than would be allowable through the restaurants existing on-premise licence.

R&CA is supportive of moves to better regulate the SDAD industry as an emerging market that may be open to abuse by minors or intoxicated persons but cautions against new measures that would hamper restaurants ability to attract new customers by limiting the flexibility offered by SDAD when operating in conjunction with restaurants who allow BYO.

POLICY RECOMMENDATIONS

R&CA makes the following recommendations to Liquor and Gaming NSW relating to proposals raised in the discussion paper:

1. More clarification is needed regarding whether restaurant businesses ordering from SDAD companies will be captured by proposed new regulatory measures including:
 - a. Whether alcohol wholesalers would be captured if delivery was able to be completed on the day of ordering.
 - b. How same day delivery is defined and regulated relating to business to business sales under the Liquor Act;
 - c. Whether a prohibition on same day delivering being left unattended would extend to restaurants purchasing alcohol as customers; and
 - d. How self-exclusionary arrangements would interact with BYO Restaurants.
2. Notwithstanding points raised above, a new definition of same day delivery under the liquor act would be supported by R&CA, to address risks specific to same day delivery of alcohol and provide certainty to industry. R&CA also suggests that where a SDAD is made to a BYO restaurant, the delivery person should be required to inform the restaurant that they have delivered alcohol to that address, to assist the restaurant in meeting their obligations under the Liquor Act.
3. R&CA also supports proposals for all persons making same day deliveries to hold a full RSA certificate, rather than the proposal put forward in the discussion paper for those people to simply understand RSA principles or to undertake a knowledge test before completing online deliveries.
4. Better education and training for businesses owners is also supported by R&CA to better clarify how statutory requirements apply to the various online business models facilitating same day deliveries.
5. R&CA supports the proposal to introduce a new offence for a person who makes a same day delivery to an intoxicated person.
6. The newly released NSW Digital Drivers Licence should be better utilised, and consideration be given to mandating, when required for completing a SDAD order or when complying with new provisions proposed the discussion paper.

KEY ISSUES TO CONSIDER

INTERACTIONS BETWEEN RESTAURANTS AND SDAD MARKET

The Restaurant industry generally interacts with SDAD in two key ways, the delivery of alcohol using SDAD operators to BYO restaurants, and restaurants using SDAD to quickly fill stock shortages before service. These are, for the most part, positive relationships that allow flexibility for both the customer and the restaurant to utilise SDAD as needed.

R&CA is of the strong view that any proposed moves to further regulate SDAD in NSW should not negatively affect restaurants who rely and use these services to further grow their customer base by offering a more flexible dining experience that does not require them to carry a full on-premise licence.

However, R&CA is supportive of moves to better regulate SDAD operators as BYO restaurants are still required to ensure no minor or intoxicated person is served on their premise. Where an SDAD operator delivers to a restaurant, it should firstly be that operators' responsibility to ensure they are not supplying to a minor or intoxicated person rather than this responsibility be wholly on the restaurant.

Equally, any new proposed regulatory structure should not stop restaurants from being able to utilise SDAD as a helpful means to fill stock shortages at short notice. Restaurants routinely make short term orders to wholesale suppliers of all kinds. R&CA is of the view that any new regulations should not make it harder for restaurants to engage with SDAD operators when operating in business to business environment. An example of this would be the proposal to amend section 114(3)(b)(iii) of the Liquor Act 2007 so that alcohol purchased online and delivered the same day can no longer be dropped off unattended at a delivery address. It is common for deliveries made at short notice to be delivered the next day (usually in the morning when the restaurant is closed, and no staff present) where they may not be delivered to a person but instead left unattended, usually via a back entrance to the kitchen.

This example would not meet the rationale stated in the discussion paper relating to additional protection of persons under 18, but if extended to business to business deliveries, would mean a more rigid and complex delivery arrangement between the SDAD operator and the restaurant.

Finally, R&CA is concerned that the full scope of SDAD has not been adequately clarified in the discussion paper. Specifically, the relationship between business wholesale deliveries and restaurants, which has operated at a very low risk profile without risk for many years and should not be suddenly subject to new and onerous regulatory arrangements.

EMERGING MARKETS IN SDAD INDUSTRY

Finally, the advent of online delivery platforms has significantly affected the restaurant industry in Australia and the world. Recently, other Australian jurisdictions such as Victoria have introduced new delivery options where food products purchased from a restaurant can be combined with packaged alcohol products from another local retailer into a single online delivery order through platforms such as UberEats, Deliveroo & Menu Log. This practice is occurring in limited form in NSW but is growing in popularity with major food delivery platforms investigating how to bring alcohol on board as part of their customer offering as well as food.

This places restaurants, many of whom already hold an existing on-premise liquor licence, in a situation where they are party to alcohol supply often without their knowledge and often with far less regulatory control than would exist if the customer bought alcohol from them in person via their on-premise licence. Equally so in relation to the packaged liquor store who is likely to be supplying the alcohol.

This arrangement means that the delivery platform (Uber etc) can possibly circumvent two classes of licences and deliver to customer with little or no regulatory control. R&CA strongly supports a stronger regulatory approach, or even a new class of licence, that would ensure that an arrangement where food businesses and liquor store become unwilling business partners in a single customer transaction, brokered by an online delivery provider, is more appropriately regulated.

Finally, R&CA submits that existing controls in place relating to the responsible service of alcohol for on premise consumption should be amended to incorporate SDAD. In short, this would require SDAD operators. This would require that any person supplying alcohol should be required to hold a valid RSA and meet all requirements to hold an RSA. To create a new regime for SDAD drivers that would exist in addition to the current framework would be unnecessary and would undermine the existing RSA framework.

CONCLUSION

The SDAD industry is clearly on the rise, with customers excited by the ease of access and convenience of alcohol delivered straight to your door. However, there exists a strong public policy imperative to better regulate the sector to ensure further safeguards against minors and intoxicated people having easy access to alcohol.

R&CA is supportive of these new measures. However, we strongly suggest that two key interactions between the restaurant sector and the SDAD sector be maintained. Firstly, the ease afforded to customers of BYO restaurants to have alcohol delivered directly to them at the business, this increasing the customer reach and offering of that restaurant and secondly, the ability for restaurants to use SDAD to quickly fill gaps in stock levels ahead of busy services where no person may be present at the business to accept delivery.

R&CA has also sought clarification from L&G NSW regarding how these laws will affect existing business to business deliveries between restaurants and wholesale suppliers (or if they will at all).

Finally, we have brought L&G NSW's attention to the rise and use of online delivery platforms as brokers to allow customers to order food from a restaurant and alcohol from a separate alcohol retailer and deliver both products as part of a single order. We also strongly submit that any SDAD driver should be required to hold a full RSA rather than undertake a lesser training or knowledge test.

R&CA is also seeking clarification of how these platforms would be treated by any new regulatory regime.

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