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Tackling Alcohol-Fuelled Violence Legislation Amendment Bill 2015

Enquiry of the Legal Affairs and Community Safety Committee

DSICA Submission



Introduction: Who is DSICA?

The Distilled Spirits Industry Council of Australia Inc (DSICA) is the peak body representing the interests of distilled spirits manufacturers and importers in Australia.

DSICA was formed in 1982, and the current member companies are:

- Bacardi Lion Pty Ltd;
- Beam Suntory Australia Pty Ltd;
- Brown-Forman Australia;
- Bundaberg Distilling Company Pty Ltd;
- Diageo Australia Limited;
- Mast-Jägermeister SE;
- Moët-Hennessy Australia Pty Ltd;
- Rémy Cointreau International Pte Ltd;
- William Grant & Sons Australia Pty Ltd.

DSICA's goals are:

- to create an informed political and social environment that recognises the benefits of moderate alcohol intake and to provide opportunities for balanced community discussion on alcohol issues; and
- to ensure public alcohol policies are soundly and objectively formed, that they include alcohol industry input, that they are based on the latest national and international scientific research and that they do not unfairly disadvantage the spirits sector.

In reducing alcohol related harm, DSICA believes that policy should be based on the following three underlying principles:

- Reducing harm is a shared responsibility of Governments, Industry, individuals and the community.
- Evidence based, targeted interventions and individual responsibility must be the primary focus.
- Measures to reduce alcohol related harm must not unfairly penalise the vast majority of Australians who drink responsibly and who should be free to enjoy a night out.

DSICA strongly supports measures to reduce alcohol related harm in our communities, recognising the shared responsibility of Industry, Governments, communities and individuals. DSICA's members are committed to:

- responsible marketing and promotion of distilled spirits;
- supporting social programs aimed at reducing the harm associated with the excessive or inappropriate consumption of alcohol;
- supporting the current co-regulatory regime for alcohol advertising; and
- making a significant contribution to Australian Industry through primary production, manufacturing, distribution and sales activities.

We welcome the opportunity to make this submission to the Committee's Enquiry.



The Key Focus of our Submission

One of DSICA's principal goals is to ensure public alcohol policies are soundly and objectively formed, that they include alcohol Industry input, that they are based on the latest national and international scientific research and that they do not unfairly disadvantage the spirits sector.

As the peak body representing the spirits sector, we are particularly concerned that the draft provisions concerning the service of "high alcohol content" and "rapid consumption" drinks within the Proposed Bill appear to be based on flawed assumptions.

These draft provisions will be the focus of our submission, and we welcome the opportunity to be able to correct the fundamental misconceptions concerning the effects of consumption of different types of beverage alcohol products, on which these provisions are based.

In the treatment of "high alcohol content" and "rapid consumption" drinks, the Explanatory Notes¹ to the Proposed Bill set out a narrative logic which can be summarised as follows:

1. It is the objective of the Proposed Bill to reduce alcohol-related violence in Queensland.
2. Street violence occurs in nightlife districts with the highest frequency in the early hours of the morning, and it is believed that a large proportion of offenders are under the influence of alcohol, having consumed on nearby premises.
3. There is a belief that late night drinking is characterised by the drinking of spirits, and that the consumption of spirits delivers more alcohol, and is therefore more intoxicating, than the consumption of wine or beer.
4. Therefore, if the late night drinking of spirits can be curbed or eradicated, violence will fall.

This singling-out of spirits products for special treatment does not survive exposure to the lightest scrutiny, even within the context of a broad package of measures.

It relies on the most basic confusion between the concepts of correlation and causation, and lacks the most basic appreciation of the biology of alcohol consumption.

Left uncorrected, this logic will result in bad policy, since it will needlessly and disproportionately constrain the consumer choices of Queensland residents and visitors, for want of appropriate rigour and scrutiny in the legislative process.

To provide a structure to this submission, and to outline our key areas of contention, we have excerpted on the following pages the section of the Explanatory Notes which sets out the purported rationale for the (potentially unlawful) differentiated treatment of spirit products within the Proposed Bill, and inserted our highest level observations, within the text.

DSICA calls on the Legal Affairs and Community Safety Committee to recommend the removal of Clause 49 of the Tackling Alcohol-Fuelled Violence Legislation Amendment Bill.

Faithfully submitted,

A handwritten signature in black ink, appearing to read 'Gordon J. Broderick', with a horizontal line underneath.

Gordon J. Broderick

Executive Director

¹ <http://www.legislation.qld.gov.au/Bills/55PDF/2015/TacklingAFVLegAB15E.pdf>



Excerpt from the Explanatory Notes, verbatim, but with DSICA passage separation:

“Objective: Tackle alcohol-fuelled violence

Banning the sale of high alcohol content and rapid consumption drinks after midnight

Consumption of high levels of liquor after midnight in licensed premises can potentially lead to increased intoxication and associated problems for patrons and the community.

The Bill amends the Liquor Act to allow for high alcohol content and rapid consumption drinks, as defined in the Liquor Regulation, to be prohibited from being sold or supplied after midnight. The specific types and amounts of drinks will be prescribed by regulation following further consultation with stakeholders.

At first sight, the opening sentence in the Explanatory Notes seems a statement of the obvious. It may broadly hold true, if “consumption of high levels of liquor after midnight” is understood as “continued and incremental consumption over a lengthy period of large amounts of (any type of) alcoholic drinks”. Or, more colloquially, “people continuing to drink late into the night and early morning, who have already had enough, earlier in the evening”.

But, there are existing licensing and retail laws which, correctly observed and enforced, should prevent patrons becoming intoxicated in Queensland’s pubs and clubs.

There is no reason why the second passage, above, should logically follow the opening statement, and contextualize it as a supporting rationale for discriminatory treatment of ‘high alcohol content drinks’ (i.e. mainly spirits, versus other categories of alcohol) and ‘rapid consumption drinks’ in the Proposed Bill and accompanying regulations.

Two questions of key importance arise immediately:

1. What data supports the implied causative link between street violence and the consumption of “high alcohol content drinks” (versus low alcohol content drinks) and “rapid consumption drinks” (versus slow consumption drinks)?²
2. What is the significance of the midnight threshold, in terms of this implied causative link?

As the Australian Centre for Alcohol Policy Research recently noted: “There is no general pattern which holds across cultures of more or less trouble being associated with a particular beverage type.”³

This observation is of no surprise given the basic biology associated with consumption of alcohol and intoxication.

A person’s level of intoxication at any given point in time is broadly determined by the total amount of alcohol (measured by standard drinks, where 1 standard drink = 10 grams of alcohol)

² Our focus in this submission is to expose the unfair treatment of spirits versus other spirits categories. We are aware of, but will not repeat, the many arguments that seek to rebut the alleged causative link between consumption of alcohol per se, and street violence.

³ Source: Mathews, Callinan: “Over the Limit” Report, August 2013, for the Centre for Alcohol Policy Research and the Foundation for Alcohol Research and Education. <http://www.fare.org.au/wp-content/uploads/research/Over-The-Limit.pdf>

consumed over the time period since the drinking session started (i.e. x standard drinks/grams in y hours), reduced in proportion to the amount of alcohol which has been processed and eliminated from the consumer's system over the same time period (as a guideline only, and recognizing a multitude of variables, the body is generally held to process in the range of 1 standard drink per hour)⁴, with some small mitigating adjustments for intervening food and water consumption.

High Alcohol Content Drinks

As the “standard drinks”⁵ system demonstrates, a consumer's chosen drink (method of delivery of his or her alcohol - wine, beer, RTD, spirit) is immaterial to the impact of the alcohol on his/her system. A schooner of mid- or full-strength beer, or a standard serve glass of wine, actually contains (delivers) more alcohol (i.e. is *more* intoxicating) than a standard serve of spirits.

In addition, an analysis of the product choices of riskier drinkers shows a preference for beer among males, with no discernible preference for females. See Appendix C.

Rapid Consumption Drinks

We must also address the concept of “Rapid Consumption Drinks”, and how they might differ from, or overlap with, “High Alcohol Content” drinks. One only has to have recall of the recent and highly public participation by a serving Prime Minister in a celebratory “skulling” of a schooner of beer to realise that any drink, intended or designed and marketed by its producer for relaxed and slow-paced enjoyment can be misused in a rapid consumption behaviour. The rapid consumption, or “downing”, of drinks is not confined, in practice, or reality, to spirits or “High Alcohol Content” products.

It is also often overlooked that short or small serves of spirits products which are most often (mis)associated with this type of misuse, such as tequila, are in their traditional cultures and in their intended consumption in Australia, for sipping enjoyment; just as nuanced appreciation of a Scotch single malt whisky and related connoisseurship demands freedom to access small, neat, unmixed serves of higher alcohol-by-volume products.

Timing of Consumption (i.e. time of night)

The time of night is also arbitrary in this context. Someone who has consumed 12 standard drinks' content of beer or wine between 8pm and 12am and then stops drinking will be more intoxicated at 2am (12 standard drinks minus 6 standard drinks processed) than had they drunk 6 standard drinks of spirits between 11pm and 2am (6 standard drinks minus 3 standard drinks processed). In plain terms, what matters is how much someone has drunk over the whole course of their night.

The Proposed Bill nominates midnight as an appropriate time to introduce restriction of consumer choice. It is important to remember that ‘after-midnight’ drinks only aggravate the effects of consumption to the extent that they come on top of ‘pre-midnight’ consumption. From theatre- and cinema-goers, to restaurant workers, there are many nighttime consumers who might have their first drink late at night, and would like to select their drink of choice from a full range.

⁴ Source: Drinkwise Australia <https://drinkwise.org.au/drinking-and-you/how-much-have-you-had-to-drink/#>

⁵ Source: Drinkwise Australia <https://drinkwise.org.au/drinking-and-you/how-much-have-you-had-to-drink/#>, and see also our Appendix A infographic regarding standard drink equivalence across drinks types and typical serves.



The Understanding of Alcohol Consumption which Underpins the Proposed Bill is Self-Evidently Misguided

A set of restrictions such as those proposed in the draft bill makes no sense: as drafted, the Proposed Bill would allow a consumer in a typical Queensland pub or club at 1am to order a bottle of wine (approx. 7 standard drinks) or a jug of beer (approx. 4 standard drinks), but not a single serve of whisky on ice (1 standard drink).

Equally, the draft measure could allow the consumption over a night, either side of midnight, of 3 shots of tequila and 4 schooners of beer, but only provided the tequila was consumed at the beginning of the evening, and not the end. Because, under the logic of the Proposed Bill, the order in which drinks are consumed matters: to ban the consumption of shots of tequila at the end of a consumer's night would have a causative reduction in the consumer's propensity to violence, even though precisely the same number of drinks are consumed over the same time period.

This is patently absurd.

New South Wales successfully introduced limits on types and amount of liquor that can be sold in the Kings Cross Precinct and the Sydney CBD Entertainment Precinct for late-night liquor trading periods.

What does "successfully" mean here?

It is true that the measures are introduced, and that New South Wales legislators identify their package of restrictions as a success, but it is far from certain whether or not they can be objectively and measurably assessed as successful.

There are a number of reasons why the Queensland Government should not follow suit in introducing the same package of restrictions as were adopted in NSW.

First, the introduction of differentiated treatment of spirits in NSW is an example of poor policy process and a misconceived outcome (for all the reasons set out above). The restrictions were adopted without industry consultation, and based on unsupported perception, as opposed to evidential support. By consulting with stakeholders, Queensland is already legislating better, with a view to better balancing consumer, business and community interests. We hope for a better balanced outcome.

While the NSW restrictions are one precedent, they are a policy response to specific challenges, in particular in the Kings Cross area, and should be confined to their own matrix of reference. Other countries, many with similar drinking cultures and licensing regimes to Australia, find ways of addressing the challenges of intoxication and violence which do not impinge on their citizens' and businesses' personal and commercial freedoms, in the manner contemplated under the Proposed Bill.

And, where NSW legislators claim a causative link between the package of restrictions; others see only correlation, and a lack of regard for the impact of other factors. Since the introduction of the restrictions, businesses have been closing in very significant numbers, footfall and patronage has significantly reduced. Not only is it unsurprising, in such circumstances, that the numbers of recorded assaults have fallen over the same period, but reporting of the success of the package often fails to mention that recorded assaults in NSW have in any event been trending downwards



for each of the last 6 years. See also Appendix B, which contains a detailed extract of DSICA's submission to the National Alcohol Strategy, concerning the Sydney CBD Lockouts.⁶

Returning to the discriminatory treatment of spirits, it is notable that there is no data forthcoming to support or isolate any purported particular contribution to the success of the NSW package of the spirits restrictions, versus the more impactful broader lockout measures.

To ensure the ban will not disadvantage low risk specialist venues, the Bill authorises the Commissioner to consider and grant applications for exemption provided the business seeking exemption specialises in the sale of premium spirits. The definition of premium spirits will be defined by regulation following further consultation with stakeholders. The exemption provision also specifies that the premises has capacity to seat no more than 60 patrons at a time, the service of liquor is conducted in a manner that does not facilitate rapid liquor consumption, the type and quality of liquor supplied differs from other types and qualities of liquor sold in the locality, and the exemption would not otherwise cause undue adverse impacts on public health and safety or amenity in the community. Exemptions sought in relation to part of a licensed premises may be granted, provided the area to which the exemption applies is a fixed area capable of being defined on a permanent or semi-permanent basis by walls or structures.

The criteria also provides for the Commissioner to have regard to the type and quality of liquor being sold at the premises and the extent to which non-premium spirits are also sold on the premises. These considerations are intended to ensure that exemptions are granted only to premises whose principal activity is the service of premium spirits, and not premises that offer a few premium selections as part of a standard bar service whose offerings are in line with the offerings of other licensed premises in the area."

It might be expected that DSICA would welcome this planned exemption, which we assume is intended for luxury hotels, resorts, traditional cocktail bars, and so-called "small bars" which are so often to the fore in the aspirational entertainment choices of young, adult (LDA+) Australians.

Indeed, we welcome the acknowledgement that the spirits industry is at the vanguard of industry efforts to enable Australians to "drink better", not more. We also note that the contemplated exemptions are to be offered based in part on a risk assessment, which we understand to be a prudent and inescapable element in policy-making.

However, we believe that this contemplated set of exemptions, however well-intentioned, serves only to highlight the inconsistency and fundamental wrongheadedness of seeking to draw distinctions between spirits and other product types.

Here, the Queensland Government states that it will be permissible for Queenslanders and visitors to drink spirits late at night, but only in high-class establishments and at premium prices.

There are 2 core objections to this idea. First, while it is not for DSICA to comment on the potential popularity or advisability of a policy which seeks to impose one rule for the rich, and one for the poor, but we do identify in the proposed exemptions a sense and acknowledgement on the part of the Government that it is not the categories of product that matter, or indeed have any differentiated causative link to violence, but that many other factors exert influence. If it is the Queensland's Government's view that violence only arises as a result of patrons drinking certain

⁶ NSW Bureau of Crime Statistics and Research shows alcohol related non-domestic assaults in NSW alone have declined 30% since 2008



products in certain types of outlet, but that acceptably less violence ensues when the same or similar products are drunk in different physical and service environments, then surely that points to a policy approach that seeks to encourage better drinking environments, and not to seek to statutorily entrench differentiated access to products by venue.

Second, a practical difficulty concerning the criteria for exemption, as they might be applied in the real world. The exemptions are limited to “premises used for the sale of premium spirits”, and there is a further requirement that “the type and quality of liquor sold, and the way in which liquor is served at the premises, differs from other types and qualities of liquor sold, and ways in which liquor is served, in the locality.” How are ‘premium spirits’ to be legally differentiated from non-premium spirits? How are regulators to draw the lines of differentiation between the service styles of various premises?

Instead, we return to the essential observation which lies at the heart of our submission: namely, that the correct policy approach to the issue of violence in entertainment districts is to address the culture and behaviours around drinking and drinks service in all premises, via consumer and trade education, promotional codes of practice, and enforcement of existing licensing and service laws.

An Alternative Perspective: Behaviour

DSICA supports the overall objectives of the Proposed Bill, and shares the Queensland Government’s concerns.

But we have seen that these concerns are, more properly categorised, concerns around the effects of drunkenness which has accumulated over the entirety of a night out, and sometimes facilitated by irresponsible drinks promotions.

Examined with the forensic approach which befits legislation at the nexus of public health, individual liberty and commercial freedoms, there is no justification for the Proposed Bill’s discriminatory treatment of particular products or venues, reduction in consumer choice and disadvantage to business.

Rather, it is DSICA’s submission that the correct policy approach is to educate consumers regarding the impact of alcohol consumption on their bodies, and for all stakeholders to join in the promotion of responsible drinking behaviours, so as to enable consumers to make better choices, for themselves and their communities.

As noted in the Introduction to this submission, DSICA’s members have significant international experience of various forms of regulation. In this context, DSICA would draw the Committee’s attention to the “Code Compliance Help Note Concerning Rapid and “Down-In-One” Drinking”⁷ published by the Portman Group; the UK’s highly respected industry regulator.

This note describes various potential contradictions which can undermine the fair and proportionate regulation of products which can be subject to unintended behavioural misuse, and suggests that the correct approach is to seek to impose a code of behaviour at the point of use,

⁷ <http://portmangroup.org.uk/docs/default-source/advice-and-guidance/rapid-and-down-in-one-drinking.pdf?sfvrsn=4>



encompassing naming and promotional restrictions, aimed at eradicating the facilitation of problematic consumption behaviours.



Appendix A: Standard Drinks, Typical Serves





Appendix B: Extract from DSICA Submission to the National Alcohol Strategy re: Sydney Lockouts

Population control theorists claim that extended trading hours are directly linked to increases in alcohol related violence and hospital admissions. Such arguments are often predicated on the increase in intoxication and alcohol related incidents after midnight.

One much cited example of a “success story” of restricted trading hours is the NSW CBD/Kings Cross lockouts and related measures.

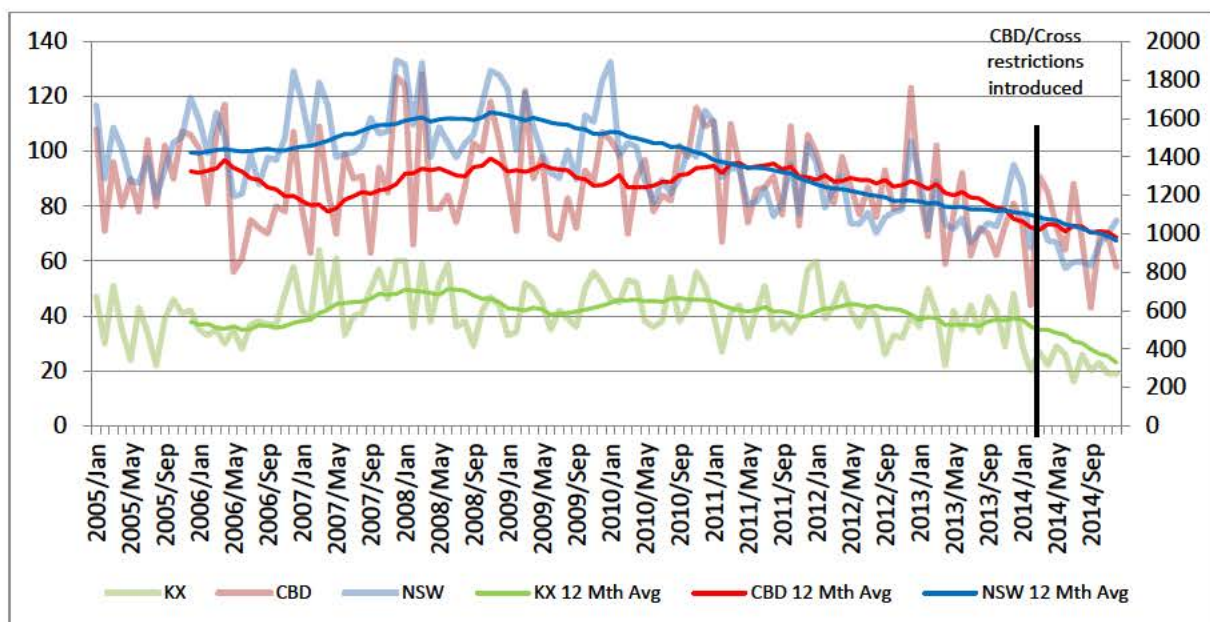
While an initial glance at the NSW Bureau of Crime Statistics and Research (BOCSAR) data does suggest a direct causal relationship between lockouts and reduced alcohol related assaults, closer analysis reveals that there are broader issues at play.

Firstly, there was a pre-existing downward trend in alcohol related assaults. Looking at NSW as a whole, it is clear that alcohol related assaults have been decreasing steadily since 2008, with a decline in incidents of approximately 35% in that period. This trend pre-dates the introduction of lockouts and in fact the majority of NSW is not subject to lockouts, suggesting there is a broader pre-existing downward trend.

A similar pre-existing downward trend in alcohol related assaults is evident in the Sydney CBD Local Area Command (LAC), pre-dating the introduction of lockouts. Assaults in the Sydney CBD LAC have been in decline since 2011 and there has been no change in this trend following the introduction of lockouts, suggesting they have had little impact on reducing alcohol related assaults in the CBD.

DSICA contends that these statistics and pre-existing trends highlight that the decrease in alcohol related assaults cannot simply be attributed to restricted trading hours.

Figure 3: Number of alcohol-related non-domestic assaults, Kings Cross LAC, Sydney LAC, & NSW - 2005 to 2014



Secondly, to attribute any change in assaults and harm to lockouts ignores the range of additional measures introduced prior to and simultaneously with the lockouts. To date there has been no analysis of the individual impacts of specific measures, so to credit one specific measure with any positive results is disingenuous.



This view was supported by a recent NSW Parliamentary Report which acknowledged the ongoing decrease in alcohol related violence but concluded it was not possible to attribute this trend to any specific policy response or suite of responses.

*"It is not clear to what extent this reduction in assaults was due to trading hour restrictions, banning orders, or to less people frequenting those areas."*⁸

Similarly, recent research by the University of Adelaide questioned the impact of lockouts in Adelaide and more broadly, highlighting the simultaneous introduction of other measures to reduce harm. Dr Giancaspro from the University of Adelaide concluded:

*"While I commend the [South Australian] State Government for trying to make our pubs and clubs safer after dark, I question its reliance on the available data, which indicates there is no obvious and systemic correlation between the introduction of lockout laws and a reduction in incidences of alcohol-related violence."*⁹

Dr Giancaspro also noted that lockouts in Queensland and Victoria had been found to be ineffective in reducing alcohol related harm, while the data relating to lockouts in Perth and Sydney "does not paint a clear picture either way".

DSICA believes that the Sydney CBD/Kings Cross experience highlights that blunt population wide restrictions on the availability of alcohol are ineffective. Rather than addressing the causes of alcohol related harm, the lockouts have simply damaged the local economies of these precincts. Lockouts also do not strike the right balance between protecting the rights of the responsible majority while addressing the actions of the minority.

⁸ NSW Parliamentary Research Services (2015): *Liquor licensing restrictions to address alcohol-related violence in NSW*

⁹ University of Adelaide (2015): *Jury's still out on pub and club lockout laws*



Appendix C: Drinks Choices of Riskier Drinkers

