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**From:**  
**Sent:**  
**To:**  
**Subject:**  
**Attachments:**

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**From:** Gene Tunny  
**Sent:** Friday, 2 October 2009 4:31 PM  
**To:** Amanda Honeyman  
**Cc:** John Marsden  
**Subject:** RE: Law, Justice and Safety Committee inquiry into alcohol-related violence

Amanda

Please find attached John's presentation to the Thinking Drinking conference, which we are happy for you to treat as a submission to the inquiry.

We would also be happy to appear before the Committee later in the month. Depending on the timing and our other commitments, both John and I may be able to appear, so we'd be grateful if you could invite both of us.

Please see our website [www.marsdenjacob.com.au](http://www.marsdenjacob.com.au) for further information on our firm and our professional services.

Happy to discuss.

Regards,

Gene Tunny  
Senior Economist  
Marsden Jacob Associates

Web: [www.marsdenjacob.com.au](http://www.marsdenjacob.com.au)

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**From:** John Marsden  
**Sent:** Monday, 28 September 2009 1:08 PM  
**To:** Gene Tunny; Tony Hand  
**Subject:** FW: Law, Justice and Safety Committee inquiry into alcohol-related violence

National Competition Policy &  
Effective Alcohol Policy

Market Failure  
CONSEQUENCES

Dr John Marsden & Philip Jones  
*Thinking Drinking 3 Conference*  
Brisbane  
6 August, 2009

Hollister Brisbane Perth  
www.marsdenjones.com.au

Marsden Jones  
CONSEQUENCES

Today's presentation is based on our 2005 paper for the NCC.

Why are we here today in 2009?

*Competition policy is a matter of some concern to the health, law enforcement and allied sectors who regard the policy as an impediment to the development of safer drinking standards.*

6 August, 2009 Thinking Drinking 3 2

NCC Occasional Series

Thinking Drinking 3  
The National Competition Council  
and the Alcohol Industry

John Marsden & Philip Jones

6 August 2009

<http://ncc.ncc.gov.au/docs/01/0111-001.pdf>

Marsden Jones  
CONSEQUENCES

### What is the NCC

The National Competition Council is an independent advisory body for all governments on the implementation of National Competition Policy reforms.

The Council's aim is to *'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest.'*

(underlining added)

6 August, 2009 Thinking Drinking 3 4

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CONSEQUENCES

## POLICY FOUNDATIONS

6 August, 2009 Thinking Drinking 3 5

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CONSEQUENCES

### Market failure & the political economy

Market failures

- > Multiple complex externalities
- > Public good characteristics
- > Imperfect information

i.e., three of five sources of market failure posited by CoAG

Both individually and collectively, market failures mean that individuals (and their governments) may make socially non-optimal decisions.

6 August, 2009 Thinking Drinking 3 6

## Problems for policy & regulatory response

1. Fact: profits from sales are strongly focussed in few corporations, but costs & harms are spread diffusely.
  - beneficiaries & supporters of increased liberalisation are more concentrated, better funded, more vocal and effective than more numerous & diffuse entities & individuals who bear costs.

4 August 2005

Thinking Drinking 7

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## Problems for policy & regulatory response cont'd

*"...democracy is not cheap. ...everybody's involved with assisting political parties ...we need to keep these people in place to have the democracy we have today. ...Yes, it costs money."*

John Thorpe -- AHA

4 August 2005

Thinking Drinking 7

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## Problems for policy & regulatory response cont'd

Fact: beneficiaries from alcohol production & sales tend to be nationally based whereas many costs (such as motor vehicle accidents, violence and crime) are local.

- Poor alignment between those who receive benefits and those who incur costs impedes public policy responses to deal with harms.
- unit of decision making matters

4 August 2005

Thinking Drinking 7

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## Problems for policy & regulatory response cont'd

3. Comfortable but incorrect views
    - e.g. the problems of alcohol are mainly due to a few problem drinkers
    - e.g. denial of strong relationships (such as consumption and harm) by focusing on exceptions and variance
- tend to weaken support for broader effective interventions.

(Note: imperfect and asymmetric information)

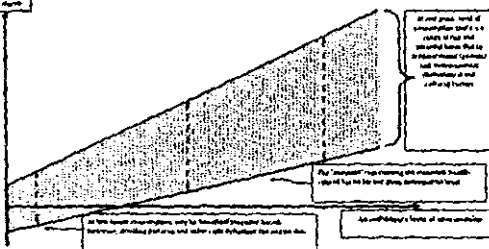
4 August 2005

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## Consumption & harm

Other things not always equal



4 August 2005

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*Community support [also] varies inversely with the strength of evidence that interventions work. Communities don't support price increases (the most effective intervention) unless they are in the form of a hypothecated tax (which governments and officials hate). Communities and politicians love 'education', which is unfortunately next to useless.*

Wodak 2005

4 August 2005

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## Standards of proof in regulatory options

- A considerable body of evidence
- Increasing medicalisation of alcohol
  - better insights – e.g. Alcohol and neuroplasticity in teenagers
- But
  - exceptionally high standard of proof esp. compared with other areas of social policy in Australia and other OECD

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## Standards of proof in regulatory options

- Similar demand for very high levels of evidence-based proof is not uniform but:
  - tobacco
  - response to global warming
- At worst, we cannot introduce a new regulation unless peer-reviewed documented experience of that intervention operating successfully elsewhere -- innovation??
- Not a risk-based approach such as used in industry or in the military or in personal life.

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## Standards of proof

- Range of standards across decision making
- Evidence-based medical approach
  - Criminal courts
    - 'Reasonable doubt' ≈ 95% confidence
  - Civil courts
    - 'Balance of probabilities' ≈ 66%
  - Cost-benefit analysis for regulatory impact??
  - Risk-based approach
  - 'Precautionary principle'
  - Shared parenting??

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## Best practice regulatory options

- A. WHO (Babor, Castano, et al 2003)
1. minimum legal purchase age;
  2. government monopoly of retail sales;
  3. alcohol taxes to increase the price;
  4. restrictions on hours or days of sale;
  5. outlet density restriction; and
  6. licensing and enforcement to ensure compliance with these measures.

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## Best practice regulatory options

- B. Commonwealth of Australia 2004
7. restrictions on price discounting (these do not currently extend to sales from liquor stores);
  8. licensee codes of conduct where supported by compliance pressure;
  9. the ability to declare and support special restrictions, including prohibition for indigenous communities; and
  10. the ability to discriminate by product type and/or alcohol content.

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## Best practice regulatory options

These 10 meet the high standards applied  
Other options likely to meet more "normal" standards applied to government policy / regulation, esp.:

11. Restrictions on alcohol promotions, esp. to young people.  
Note hardening of WHO stance

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L22: Alcohol Use

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## FINAL WORDS

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L22: Alcohol Use

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## Evaluation

1. Minimum legal age
 

*Several studies, mostly undertaken in North America, have indicated that such restrictions are effective at reducing motor vehicle crash fatalities among young people, even at relatively low levels of enforcement (Edwards et al., 1994; Wagenaar & Wolfson, 1995). At least 67 countries have some kind of minimum age legislation in place.*

WHO 1999

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L22: Alcohol Use

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## Evaluation

2. Government monopoly of retail sales
 

*... strong evidence that government monopolies on the manufacture, supply and sale of liquor tends to result in reduced harm*

Babor et al 2003

USA, Canada, Sweden, Finland...

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L22: Alcohol Use

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## Evaluation

3. Alcohol taxes to increase price
 

*Provision of alcohol at lower costs is known to increase consumption among various groups, especially those on limited incomes.*

Roche 1999

Australian affordability ranks 16<sup>th</sup> among 104  
Australian beer/cola index < 1.0

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L22: Alcohol Use

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## Evaluation

4. Restrictions on hours or days of sale
 

*... reduced hours and days of sale can reduce alcohol consumption and problem levels, with the effects concentrated during the time of closure but not matched by counter-balancing changes at other time of the week, i.e., since a large part of alcohol purchase and consumption is opportunistic, restrictions on hours and days of purchase are effective.*

Babor et al 2003

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L22: Alcohol Use

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## Evaluation

5. Outlet density restriction
 

*... the overall evidence base remains clear that outlet density is a powerful driver of levels of consumption and harm.*

Commonwealth of Australia 2004

...but how to make operational?  
- a major challenge

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2009-2010

## Evaluation

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6. Licensing & enforcement

*... among underage high school students, more binge drinkers reported using commercial outlets as their source of alcohol than non-binge drinkers. ... the most common method of obtaining alcohol for this group was purchasing it at liquor stores themselves. Increasingly, it is noted that commercial outlets have an important role to play in regulating the availability of alcohol to youth.*

Roche 1999

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2009-2010

## Evaluation

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7. Restrict discounting

*... Provision of alcohol at lower costs is known to increase consumption among various groups, especially those on limited incomes.*

Roche 1999

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## Evaluation

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8. Licensee codes of conduct

...

Effective if compliance pressure, otherwise ...

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## Evaluation

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9. Declare & support special restrictions

*... Closure of packaged liquor sales on certain days may also be warranted and desired in many indigenous communities.*

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2009-2010

## Evaluation

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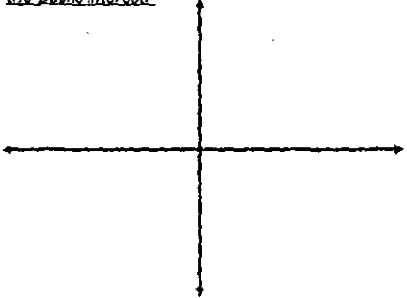
10. Discriminate by product type / alcohol content

*... The main weakness in current policy is the absence of an alcohol content-based tax on wines, resulting in the availability of very cheap bulk wines favoured by vulnerable groups and problem drinkers. ... also encourages the consumption of wine-based fruit drinks ('alcopops') and pre-,mixed spirits*

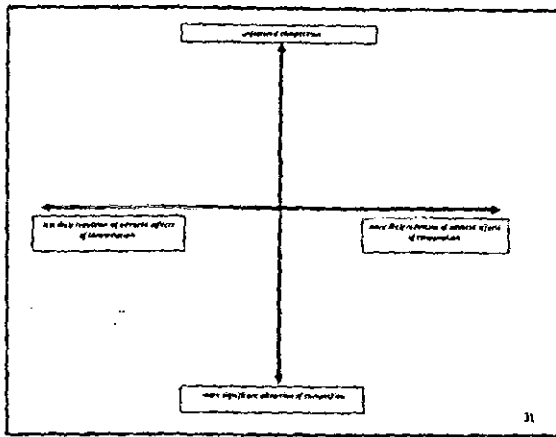
Commonwealth of Australia 2004

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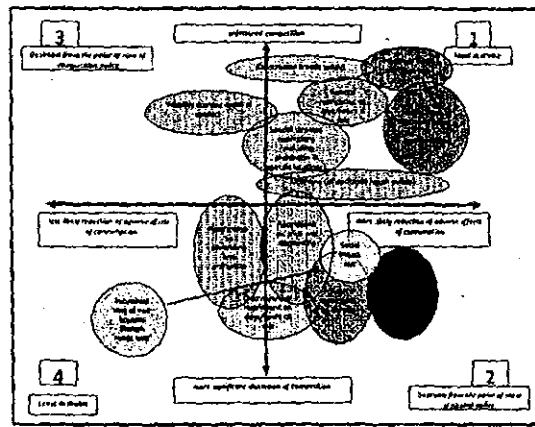
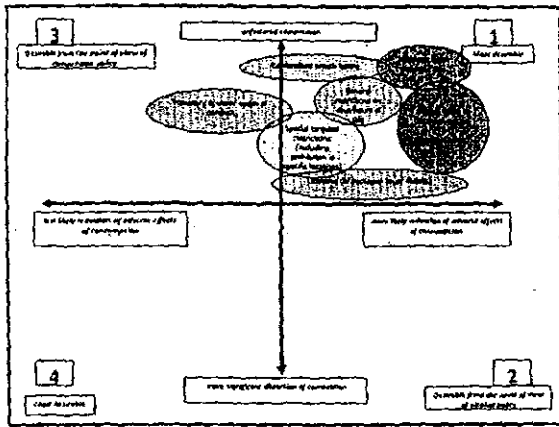
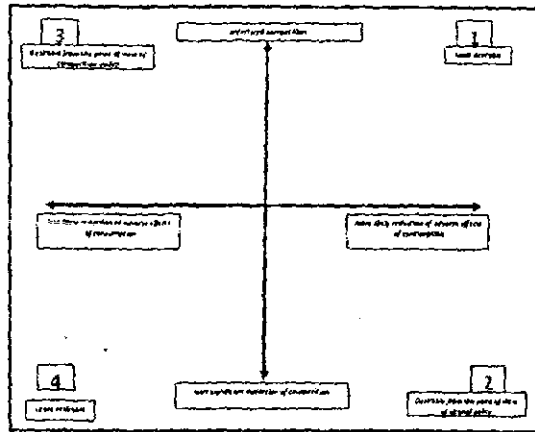
The Council's aim is to 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest.'



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### Best practice regulation of alcohol – guidelines

**Ministerial Policy**

- Clearly identifiable objectives & outcomes
- Development & design is rigorous & evidence based
- Enforced & effective
- Minimise regulatory burden
- Recognise the 3 levels of government by appropriate assignment of responsibilities & instruments
- Preferably output or performance regulation


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### Best practice regulation of alcohol – guidelines

**Ministerial Policy**

- Individual regulations designed & assessed in context of situation, as part of a bundle
- Local externalities require local action
- Burden of proof resting on proponents should not be unnecessarily duplicated again and again
- Processes for judgement & discretion should be impartial
- Unnecessary impacts should be avoided

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## Best practice regulation of alcohol – guidelines

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1) No discrimination between different suppliers – unless there are health, safety or other public policy reasons for doing so

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## CONCLUSIONS & DIRECTIONS

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## NCC PERSPECTIVE

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## From foreword

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- *Alcohol is not just another product.*
- *Case for regulation of sale of alcohol is clear even if some of that regulation will reduce competition in various markets.*
- *Regulation that addresses public interest but also restricts competition can be justified, if impact on competition is minimised.*

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## Foreword cont'd

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- *Vital to ensure that regulation serves public interest & is not harnessed to serve private interests to detriment of community.*
- *Consumers are entitled to the many benefits of competition. They are also entitled to the protection offered by appropriate regulation of alcohol. The task of those designing regulation in this area is to balance these two demands.*

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## Status of MJA report

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- *To consider evidence on effects of alcohol, set out & examine options for regulation of alcohol sales likely to be in public interest.*
- *An Occasional Paper.*
- *The Council recommends this study as a resource for jurisdictions to assist in meeting NCP commitments by adopting regulatory responses that meet the public interest in regulating the sale of alcohol.*

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## Conclusions and directions

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2009/09/04

- NCP is not a barrier to effective alcohol policy
- NCP is an added discipline
- Medicalisation of alcohol has set an exceptionally high standard of proof
- Should this apply uniformly to regulating interventions??
- Need to consider risk-based approach
- Role for NHMRC judicious innovation?

Marsden Jacob

Melbourne Brisbane Perth