

**Supplementary
Submission
No 26a**

PROVISION OF ALCOHOL TO MINORS

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Foundation for Alcohol
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Supplementary submission to the NSW Legislative Assembly Social Policy Committee:

Inquiry into the Provision of Alcohol to Minors

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About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent charitable organisation working to prevent the harmful use of alcohol in Australia. Our mission is to help Australia change the way it drinks by:

- helping communities to prevent and reduce alcohol-related harms;
- building the case for alcohol policy reform; and
- engaging Australians in conversations about our drinking culture.

Over the last ten years FARE has have invested more than \$115 million, helped 800 organisations and funded over 1,500 projects addressing the harms caused by alcohol misuse.

FARE is guided by the [World Health Organization's Global Strategy to Reduce the Harmful Use of Alcohol](#)^[1] for addressing alcohol-related harms through population-based strategies, problem-directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email fare@fare.org.au. All donations to FARE over \$2 are tax deductible.

^[1] World Health Organization (2010). *Global strategy to reduce the harmful use of alcohol*. Geneva: World Health Organization.

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Introductory remarks

Overview comments

- As a society we are rightly concerned about young people's drinking.
 - However, we shouldn't be surprised by under-age drinking given how available and accessible alcohol has become in our community.
 - Our concern about under-age drinking is supported by the medical evidence. The National Health and Medical Research Council (NHMRC) recommend that the time that young people begin to drink be delayed as long as possible.
 - Secondary supply laws partly address the community's efforts to reduce young people's risky drinking behaviours.
 - Parents are confused about what is the best way to introduce and manage their children's use of alcohol.
 - Significantly raising parent's awareness about the risks of young people's alcohol consumption is required.
- Legislation regarding the sale and supply of alcohol to young people is not working.
 - This is evidenced by the fact that eight out of every ten Australian secondary school students aged between 12 and 17 years have tried alcohol at some time in their lives and six out of ten have consumed alcohol in the past 12 months.¹
 - While it is not against the law for people under the age of 18 years to drink alcohol - which is a popular misconception - it is against the law for young people to be sold alcohol or to be supplied alcohol by anyone other than a parent, guardian or authorised adult.
 - Despite this, among current underage drinkers, 5.2 per cent had purchased alcohol themselves, 20.1 per cent had someone who wasn't a family member or a friend buy them alcohol, 5.1 per cent took alcohol from home, 22.4 per cent got alcohol from a friend, 8.6 per cent got the alcohol from a sibling and 33.7 per cent got the alcohol from a parent [note figures do not add to 100%].
 - Even when parents are purchasing the alcohol for young people, it does not necessarily mean that they are supervising its consumption.
 - A study undertaken by the University of Newcastle and released by the Foundation today: *Adolescent risky drinking: Sources of alcohol and the role of parents*, found that almost one in five parents that provide alcohol to young people do so without any adult supervision.²

- This is concerning because young people are far more likely to drink at risky levels when they are not being supervised by their own parents. Despite what is commonly thought by adults, even when young people were being supervised by other adults, this still resulted in risky drinking.
- The rates of risky drinking among young people are concerning. 28.1 per cent of current underage drinkers consume alcohol at risky levels on at least one occasion in one year (more than 5 drinks for women and 7 drinks for men). This peaks among 17 year olds, of whom 44.5 per cent consumed alcohol at risky levels.
- These rates of risky drinking among young people contribute to the higher proportion of alcohol-related harms experienced by young people. This results in one Australian teenager dying and more than 60 being hospitalised each week from alcohol-related causes.³
- This is too many, and the community should be doing all that it can to prevent these harms. Young people should not be dying from drinking a product that's consumption is restricted under law. The fact that these deaths are occurring is further evidence that the current legislation is not effective.
- This is not a law that is in place for the sake of legislating – it is a law that if drafted and enforced effectively, can save lives.
- The Governments independent health advice from the NHMRC clearly specifies that young people under the age of 18 years should delay the onset of alcohol consumption for as long as they can.
- This is because of the higher risk of harms, the potential impact on brain development and the impact of the age of first drink and first episode of drunkenness shapes future drinking habits.
- Strengthening the *Liquor Act 2007* (NSW) can contribute to reductions in the number of young people that are drinking alcohol and the number of people that are being harmed.
- However, this needs to be supported by community action. It is not enough to change the laws regarding the sale and supply of alcohol to minors without also changing the broader environment in which alcohol is made available, marketed and sold.
- The task to prevent alcohol-related harms is now harder than ever. This is because alcohol has never been more readily available, it has never been more heavily promoted and it is cheaper than it has been for decades.
- A perfect storm is brewing in the area of alcohol-related harms and our young people are those that are most vulnerable.
- To look at just the laws relating to the sale and supply of alcohol to minors, without also looking at the broader cultural environment will have limited effect – so we urge the Inquiry to consider these factors when handing down their recommendations and to consider the *Foundation's 10 point plan to reduce alcohol-related harms in NSW*.



Response to the Inquiry Terms of Reference

a) *provisions in the Liquor Act 2007, which make it illegal for persons to sell or supply alcohol to people under the age of 18 years, including in homes, parks, halls and public places generally, are sufficient;*

Talking points

(The response to this ToR focuses on the sale of alcohol – ToR (b) focuses on the supply of alcohol).

- The provisions in the Liquor Act 2007 (NSW) that make it illegal for persons to sell alcohol to people under the age of 18 years are not sufficient. The Liquor Act 2007 (NSW) could be strengthened by two amendments.
 1. Section 117 (3) should be changed to remove the defence to a prosecution that it is proved that the minor was at least 14 years of age and had used a convincing proof of age document to acquire the alcohol.
 2. The *Liquor Act 2007* (NSW) can be further strengthened by allowing ‘controlled purchase operations’ by police for alcohol to better enforce the provisions regarding the sale of alcohol to minors.
- The inadequacy of the provisions in the Liquor Act 2007 (NSW) which relate to the sale of alcohol to minors is demonstrated by the number of young people under 18 years still able to access alcohol.
- Among current underage drinkers 5.2 per cent had purchased alcohol themselves.⁴

Background information

- Section 117 (3) of the *Liquor Act 2007* (NSW) should be changed to remove as a defence to a prosecution that it is proved that the minor was at least 14 years of age and had used a convincing proof of age document to acquire the alcohol. This will place greater onus on the retailer of alcohol to ensure that the person is over 17 years before selling them alcohol.
- ‘Controlled purchase operations’ for alcohol is the most effective enforcement solution for the identification of irresponsible retailers. This involves using minors to test licensees’ willingness to sell them alcohol. This type of procedure is employed in NSW tobacco enforcement⁵ and should also be legal for use in alcohol enforcement.
- Changes should be made to the *Liquor Act 2007* (NSW) to allow ‘controlled purchase operations’ for alcohol to better enforce the provision. It can be argued that one of the reasons why young people can access alcohol is because the provisions in the *Liquor Act 2007* (NSW) which make it an offense to sell alcohol to minors are not enforced. By introducing controlled purchase operations – this will place greater onus on retailers to check for identification before selling alcohol to a minor.

- Currently, in Western Australia is working towards legalising ‘controlled purchase operations’, which would allow police to send in an underage volunteer to buy alcohol and gather evidence. This would send a strong message to alcohol retailers that Government will not tolerate the sale of alcohol to people under 18 years.
- Controlled purpose provisions have operated effectively in New Zealand for more than 10 years.


b) provisions in the Liquor Act 2007, which provide that a person must not supply liquor to a minor on any premises other than licensed premises unless the person is a parent or guardian of the minor, remain appropriate;

Talking points

- The provisions in the *Liquor Act 2007* (NSW) should be supplemented by the introduction of irresponsible supply laws similar to those in Queensland and Tasmania.
- Irresponsible supply laws require the parent, guardian or authorised adult to take greater responsibility for the way in which alcohol is consumed by people under the age of 18 years. This makes it the responsibility of the adult to ensure that alcohol consumption is supervised and not consumed irresponsibly.
- This is because risky alcohol consumption by minors under parental supervision is limited, but once that supervision is removed risky drinking increases four fold.

Background information

- In Queensland and Tasmania, there are irresponsible supply laws which prohibit the unsafe provision of alcohol (e.g. excessive amounts) or the inadequate supervision of the minor’s alcohol consumption.^{6,7}
- Under s.156A(2) of the *Liquor Act 1992* (Qld) it is an offence for a ‘responsible adult’ to supply alcohol to a person aged under 18 years without responsibly supervising the consumption of the alcohol. Section 5 defines a responsible adult as a parent, step-parent, guardian or adult who has parental rights for the young person.
- Irresponsible supply is determined using a range of factors under s.156A(3) including whether the adult is unduly intoxicated, whether the minor is unduly intoxicated, the age of the minor and the quantity of liquor supplied and the period of time over which it is supplied. A conviction of an offence of irresponsible supply could result in a maximum fine of \$8,000.
- In Tasmania the Sale or Supply of Alcohol to Youths (Police Offences Act 1935) (Tas) legislation regulates the private supply of alcohol to persons under the age of 18 years. If a person supplies a minor with alcohol on private property, and is not the responsible adult (i.e. a parent or adult with parental rights and responsibilities), does not have the permission of the



responsible adult, and does not supply alcohol in a responsible manner, they may be fined up to \$12,000 or face imprisonment of up to 12 months.


c) the defence against prosecution for an offence of providing liquor to a minor if it is proved that the defendant was authorised by the minor's parent or guardian to supply liquor to the minor, remains appropriate;

Talking points

- These provisions are weak and do not provide sufficient onus on the person providing alcohol to a minor that a parent or guardian have authorised the supply of liquor.
- This should be strengthened by more clearly defining the proof that will be required to demonstrate that an adult is 'authorised' to provide alcohol to the minor.
- One way that this can occur is by requiring for the authorisation to be provided in writing by the parent or guardian and the legal definition of 'authorisation' should be more clearly stipulated in the legislation.

Background information

- Currently section 117 of the *Liquor Act 2007* (NSW) simply states that it needs to be proved that a person was authorised to obtain alcohol on behalf of the minor by the parent or guardian. However it does not stipulate what constitutes authorisation.
- This should be more clearly defined.
- This will not only remove legal ambiguity but may also encourage dialogue between the parties. This action may also encourage parents to more carefully consider their decision to provide alcohol to their child.



d) *there is broad community understanding of the rights and responsibilities of parents, guardians and responsible adults regarding the provision of alcohol to minors;*

Talking points

- There is very poor community understanding of the rights and responsibilities of parents, guardians and responsible adults regarding the provision of alcohol to minors.
- Research carried out by the University of Newcastle found that parents were largely unaware of the detail of the *Liquor Act 2007* (NSW).⁸
- While several parents spoke about the ‘law’, they generally referred to their understanding that drinking under 18 years of age is illegal and parents generally had little understanding of the law surrounding alcohol consumption in private settings and secondary supply.
- A community-based education campaign is needed to improve the awareness these laws and the implications. This should include information about the NHMRC Alcohol Guidelines and why they recommend that it’s best to refrain from alcohol consumption for as long as possible.

Background information

- Enforcement of secondary supply laws can be difficult. An important way to offset this difficulty is to increase community awareness about laws relating to the provision of alcohol to minors.
- The FARE-funded *Supply Means Supply* (SMS) campaign evaluation found that there was a great deal of confusion regarding the supply of alcohol to minors.
- The campaign sought to redress this confusion by running a multimedia education campaign communicating the illegality of secondary supply. Post campaign results were promising, with a significant decrease in people stating that they would willingly supply alcohol to an underage person. However, the specifics of the legislation, particularly in regards to parental supply in the home, were still unclear post campaign and this was attributed to the vague wording used in the campaign as well as its relatively short duration and low intensity.⁹
- Mere knowledge of the secondary supply laws is not enough to allow parents to make informed choices. The qualitative component of the FARE-funded *Supply Means Supply* evaluation revealed that participants remained largely unconvinced that the illegality of supply would sufficiently deter them from supplying alcohol to minors. Therefore, it is important to inform parents and the adult community in general of the non-legal consequences of alcohol supply to minors, especially because in many cases these are far more damaging than any legal ramifications.
- Many parents who supply alcohol to their children do so because they believe that supervised alcohol use will prevent later irresponsible consumption.¹⁰ This suggests that parents are largely unaware of the wide body of research demonstrating the association between early



alcohol use (including in adult-supervised settings) and a range of physical and mental health harms both in the short and the long term.^{11 12}

- NSW parents and the wider community require clear and extensive communication of the Alcohol Guidelines for young people detailing the full range of negative harms associated with underage alcohol consumption. This will complement the principles behind the secondary supply laws and assist in de-normalising the provision of alcohol to minors.

e) New South Wales can benefit from experiences in other jurisdictions in relation to the provision of alcohol to minors by parents, guardians or responsible adults;

Talking points

- NSW can benefit from experiences in other jurisdictions in relation to the provision of alcohol to minors by parents, guardians or responsible adults. The main way in which this can occur is strengthening the *Liquor Act 2007* (NSW) to include irresponsible supply laws (as adopted in QLD and Tasmania) and in following the moves being suggested in Western Australia to introduce ‘controlled purchase operations’. These have been described earlier.
- There should also be an effort to harmonise the laws relating to the sale and supply of alcohol to minors across all states and territories to avoid confusion in the laws and requirements of adults across different jurisdictions.
- New Zealand’s experience with ‘controlled purchase’ of alcohol provisions should also be considered.


f) any related matters

Talking points

- To address the broader drinking culture which encourages risky drinking, policy responses are also required that address the availability, affordability and marketing of alcohol.
- The culture of permissiveness of alcohol’s use by young people needs to be addressed.
- The Foundation’s *10 point plan to reduce alcohol-related harms in NSW* outlines key areas for action required by the NSW Government and should be adopted in whole.

Background information

- Even after improvements to legislation relating to secondary supply in NSW, it must be acknowledged that these laws are difficult to enforce. Therefore, it is essential to address the broader drinking culture which encourages risky drinking through excessive alcohol availability, affordability and marketing.

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- FARE's *10 point plan to reduce alcohol-related harms in NSW* includes ten areas for action, being:
 1. Wind back late night trading hours
 2. Impose a moratorium on late night trading
 3. Make late night licensed premises contribute to the costs of alcohol-related harms
 4. Control the density of licensed premises
 5. Prevent the harmful discounting and promotion of alcohol
 6. Enforce responsible service of alcohol requirements
 7. Give people a say on the availability of alcohol in their community
 8. Introduce appropriate transport and crowd management options in high density areas
 9. Further the evidence-base for alcohol-related policies through improved data collection, and
 10. Measure, evaluate and improve.



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