Submission No 17

PROVISION OF ALCOHOL TO MINORS

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Submission from Cancer Council NSW into the inquiry into the provision of alcohol to minors

Social Policy Committee, Legislative Assembly, Parliament of New South Wales

1. Introduction

Cancer Council NSW's mission is to defeat cancer. Our vision is to engage the people of NSW to reduce the impact of cancer on communities. Cancer Council NSW is interested in simple, consumer-friendly messages to assist Australians to make healthier choices. Cancer Council has a series of evidence based recommendations aimed at preventing cancer at the population level, and these include limiting alcohol consumption.

Alcohol increases cancer risk, and is responsible for about 5,070 cases of cancer in Australia each year. Cancer Council NSW supports evidence based action to reshape Australian social attitudes towards drinking, and to reduce the burden of morbidity and mortality caused by alcohol use. Reducing the availability of alcohol to minors may help to reduce overall consumption, reduce the acceptability of drinking to excess, and positively influence the drinking culture in NSW.

We welcome the opportunity to comment on the provision of alcohol to minors in NSW. This submission focuses on terms of reference (a), (b), (c) and (f), as these are the aspects of the Inquiry where as an organisation we are best placed to assess the likely impact on reducing alcohol use.

In summary, Cancer Council NSW recommends:

- That the NSW Police Force strengthens enforcement of ss117(4) and (6) of the Liquor Act 2007 (NSW) relating to supply of alcohol to minors by persons other than the minor's parent or guardian; and
- That the NSW Parliament amends the Civil Liability Act 2002 (NSW) to provide that damages may be awarded in respect of the death of or injury to a minor notwithstanding that the minor is intoxicated.

2. Background

Alcohol and cancer risk

The International Agency for Research on Cancer classifies alcohol as a known human carcinogen.² There is convincing evidence (the strongest level of evidence) that alcohol causes cancers of the mouth, throat, larynx, oesophagus, bowel, liver and breast.^{2;3}

Cancer risk increases with the amount of alcohol consumed, and there is no threshold below which risk is not elevated: that is, there is no 'safe' level of alcohol consumption when it comes to cancer risk.^{3;4} All types of alcohol increase cancer risk,²⁻⁴ and although alcohol plays a role in preventing some types of chronic disease, the proportion of the total burden of disease that alcohol prevents (0.9%) is outweighed by the proportion that it causes (3.2%).⁵ Cancer Council NSW recommends that to reduce cancer risk, people limit their consumption of alcohol, or better still avoid alcohol altogether.¹

The burden of cancer is increasing even though survival is improving, because the number of new cancers is rising with population size and population ageing.⁶ Cancer Institute NSW

projects that cancer incidence will be 44% higher in 2021 than in 2006.⁶ Cancers of the bowel and breast, both linked to alcohol, are the second and third most common cancers in NSW.⁶

Alcohol use by minors

The National Health and Medical Research Council (NHMRC) Australian Guidelines to Reduce Health Risks from Drinking Alcohol advise that for under 18-year-olds, and especially under-15s, not drinking at all is the safest option. For 15 to 17-year olds, starting to drink should be delayed for as long as possible.

Yet the NSW School Students Health Behaviours Survey in 2008 found that 90% of 16 to 17-year-olds and 72% of 12 to 15-year-olds had already consumed alcohol. More than half of those aged 16–17 years and a quarter of those aged 12–15 years had drunk within the previous month.

The Australian School Students Alcohol and Drug Survey 2008 found that the most common source of alcohol for adolescents aged 12 to 17 was their parents (34%), meaning that often alcohol was provided by others. Of the students consuming alcohol, 59% did so under adult supervision, however the proportion was dependent on the setting that adolescents drank. That is, 75% of adolescent drinkers were supervised in their own home compared to 54% of adolescents drinking at a party and 49% if they were at a friend's home.

Most alcohol use by minors occurs in a private setting. Of survey respondents who had drunk within the previous seven days, more than 75% had done so at a party, their home, or a friend's home. A Victorian survey also shows a steady rise in very heavy drinking (more than 20 standard drinks in one occasion), from 26% of young people aged 16 to 24 years drinking at these levels in 2002 to 42% in 2009. Enforcement of underage drinking laws in licensed premises seems to have worked, and strategies should now be targeted to the home environment. This is likely to be met with some opposition, therefore innovative approaches will need to be developed to increase their acceptability.

Many Australian parents introduce teenagers to small amounts of alcohol in a supervised home environment in the belief that it is not harmful or may be beneficial because it 'teaches' moderate use. 11 The NHMRC guidelines are based on evidence that avoiding alcohol completely up to age 18 (or even later) is the best strategy to protect brain development and to prevent risky drinking later on. 12-16

Cohort studies surveying the same group of participants over many years have traced patterns of alcohol use from adolescence to adulthood. The Australian Temperament Project, for example, has followed a group of Victorians from infancy to their mid-twenties. Those who drank most as teenagers went on to become the heaviest drinkers as adults, but the greatest increase in drinking during the transition to adulthood occurred among those who drank moderately as teenagers. Those who did not drink at all as teenagers, on the other hand, generally became moderate drinkers in adulthood.

This matches the findings of other studies in Australia and internationally.¹⁸⁻²² In countries like Australia and the US, the pattern seems to apply even if teenagers are allowed to drink only at home with the family meal – probably because parental permission to drink normalises alcohol consumption and removes one constraint on young people's behaviour.^{11;20}

Although parents may think their children will drink regardless of their intervention, the research suggests that making alcohol available to minors increases alcohol use later on. There is also evidence that adolescents with parents who have higher expectations of their behaviour are less likely to drink alcohol than those with parents with lower expectations.²³ Cancer Council NSW therefore supports strategies to restrict provision of alcohol to minors to lower the incidence of cancer and other chronic diseases, and to lessen social and economic costs.

Law enforcement, education and cultural change

In 2010, NSW Health commissioned Leung and colleagues to produce a guide to family-based interventions to prevent alcohol harms in young people.²⁴ They did not identify any evidence on the effectiveness of legislation to reduce parental supply of alcohol to minors such the *Liquor Act 2007 (NSW)*,²⁴ nor has the Cancer Council identified any such evidence. However, Leung and colleagues drew a parallel with laws on blood alcohol limits for drivers and random breath testing (RBT).²⁴

Random breath testing was introduced in NSW in late 1982 amidst much controversy. A review in 1988 found the law had been "remarkably successful". There was a 36% decline in average alcohol-related road deaths per week that was sustained for five years after RBT was introduced. It is not successful to the successful of the successful

The review found RBT was more successful in NSW than in other states due to highly visible police enforcement and extensive publicity. ²⁵ On average, only 1 in 200 breath-tested drivers were charged. ²⁵ Survey data showed that after RBT was introduced, people changed their behaviour: they drank before driving less often, thought they were more likely to be caught if they did, and started to count drinks rather than judge by 'feel' how drunk they were. ²⁵ During the five years after implementation, people's attitudes also changed: a much greater proportion of respondents were willing to label a drink-driver as "irresponsible, a criminal, or a potential murderer" – an example of "moral deterrence". ²⁵

The success of RBT for blood alcohol levels shows the potential for strong enforcement of alcohol laws, even if initially unpopular, to reduce death and injury and to reset social norms around drinking behaviours.

More broadly, there is strong international evidence that policies restricting alcohol availability are both effective and high-impact. A global policy review concluded that the higher the cost of alcoholic drinks and the less accessible they were, the lower the levels of consumption. A study of systematic reviews of interventions to reduce harm from adolescent alcohol use found alcohol taxes and regulations had the strongest evidence of impact. The Assessing Cost–Effectiveness in Prevention study, a major study that assessed the cost-effectiveness of various prevention strategies, found increasing alcohol taxes in Australia would have a substantial health impact and result in cost savings to the government.

With respect to the provision of alcohol to minors in private homes, some will argue that education programs and parental responsibility should be favoured over legislative and policing approaches. Mediterranean societies are often held up as examples of cultures where parents allow children to drink small quantities of diluted wine with dinner, without leading to risky binge drinking. But in traditional Mediterranean cultures (perhaps less so contemporarily), getting drunk is much less part of the drinking culture than it is in Australia. 30;31

Visible enforcement of the *Liquor Act 2007 (NSW)* provisions on supply to minors could help change Australia's drinking culture. As argued by Geoff Munro of the Australian Drug Foundation:

"Australian families that try to act in accordance with the NHMRC guidelines have to cope with social structures and customs that place few limits on alcohol supply, marketing and use. They need to be supported with accurate and accessible information, along with legislative and regulatory systems that will help to draw firmer boundaries around the place of alcohol in our society". 30

A recent systematic review of Australian school-based prevention programs identified seven programs targeting alcohol use, most in students aged 13 to 14 years, five of which achieved reductions in students' alcohol consumption.³² However, reductions were small and further work is needed to implement the programs that work best.³² Family-based programs involving both parents and children have also been trialled with modest success.³³⁻³⁵

Cancer Council NSW supports a combination of law enforcement, education, and social marketing approaches to reducing alcohol use.

3. Current provisions of the *Liquor Act 2007 (NSW)* relating to sale or supply of alcohol to minors

Section 117 of the *Liquor Act 2007 (NSW)* sets out offences relating to the sale or supply of alcohol to minors. Relevant to the current Inquiry:³⁶

- A person must not sell liquor to a minor (s117(1));
- A person must not supply liquor to a minor on premises other than licensed premises, unless the person is the parent or guardian of the minor (s117(4)); and
- A person must not obtain liquor from a licensed premises on behalf of a minor unless the person is the parent or guardian of the minor (s117(6)).

The *Liquor Act 2007 (NSW)* also sets out defences to prosecution for the offences set out above. Under s117(5) and (7), it is a defence to prosecution for supplying liquor to a minor or obtaining liquor on behalf of a minor if the defendant was authorised to do so by the minor's parent or guardian.³⁶

Cancer Council NSW submits that the offences set out in ss117(1), (4) and (6) the *Liquor Act* 2007 (NSW) are adequate but require stronger enforcement to reduce alcohol use by minors.

We believe that with a good communication strategy, the NSW community would accept stronger enforcement of laws relating to minors. Previous campaigns about delaying drinking to protect brain development have paved the way. This opens a window of opportunity for capturing bigger gains, as recent data show alcohol use falling slightly.

The NSW School Students Health Behaviours Survey found that while alcohol use among 12 to 17-year-olds is still high, the proportion of students who had consumed alcohol in the past four weeks fell from 39.4% in 2005 to 32.7% in 2008.⁸ Nationally, respondents to the 2010 household drug survey expressed higher levels of support than previously for tobacco and alcohol harm reduction policies.³⁷ A higher proportion of 12 to 17-year-olds abstained from alcohol than in the previous survey in 2007, and a lower proportion of parents were regularly buying alcohol for children.³⁷ However, there was little change in the proportion of people drinking at risky levels,³⁷ indicating a need for more concerted action.

Cancer Council NSW recommends:

That the NSW Police Force strengthens enforcement of ss117(4) and (6) of the *Liquor Act* 2007 (NSW) relating to supply of alcohol to minors by persons other than the minor's parent or guardian.

4. Defence relating to authorisation by the minor's parent or guardian

Cancer Council NSW is of the view that this defence should be considered in the context of the Australian drinking culture. A US cohort study found that young women who were allowed to drink at home with friends drank more heavily than those allowed to drink only with their family.²⁰ The Australian School Students Alcohol and Drug Survey confirms this, with adolescents drinking at their friend's house or a party consuming more alcohol than when drinking at home.⁹ Studies have also found that parental monitoring of teenagers' drinking behaviour helps reduce later alcohol use, and that parents consistently underestimate their adolescent's alcohol consumption outside the home.³⁸

Action should be taken to stop minors from being put at risk by enabling them to drink at higher levels in settings with less adult supervision, such as parties.

5. Other related matters

Changes to the *Civil Liability Act 2002 (NSW)* would provide an additional legal deterrent to supply of alcohol to under-18s in private homes. Under current law, a host in a private home is not liable to pay damages to a person who suffers an injury while intoxicated, unless the court finds that the injury is likely to have occurred even if the person had not been intoxicated.³⁹ There is no exception for minors, nor is there flexibility for the judge to apply discretion in any individual case.⁴⁰

In the case of *Russell v Edwards & Anor* [2006] NSWCA 19, 16-year-old Ashley Russell was a guest at a birthday party for the son of the hosts, Mr and Mrs Edwards.⁴¹ The host allowed the guests, most of whom were under 18, to drink alcohol and to use the swimming pool during the party.⁴¹ Russell was seriously injured when he dived and hit his head on the bottom of the pool.⁴¹ Russell conceded that he had been affected by alcohol at the time.⁴¹

The trial judge, Sidis DCJ, found that Edwards owed Russell a duty of care and had breached that duty of care, but could not award damages because Russell had been intoxicated at the time. Her Honour's decision in respect of the application of s50 of the Civil Liability Act 2002 (NSW) was upheld on appeal. 41

Sidis DCJ, was critical of the lack of flexibility in the legislation, and recommended that the Parliament revise Part 6 of the *Act* "in order to amend the harshness of its consequences". In 2005, a NSW Legislative Council Inquiry into personal injury compensation recommended a NSW Law Reform Commission review of the liability provisions of the *Civil Liability Act* 2002 (NSW), particularly as they affect children and young people. No such review has yet been held.

Cancer Council NSW supports the amendment of Section 50 of the *Civil Liability Act 2002* so as to enable payment of damages (or partial damages) to minors who are intoxicated, if this is justified on the merits of the case. The current provisions of the *Civil Liability Act 2002* are in conflict with Section 117 of the *Liquor Act 2007 (NSW)*, and with government and community efforts to reduce the social and economic costs of alcohol.⁴⁰ If hosts were liable to pay damages to intoxicated minors, the law would provide a stronger deterrent to the supply of alcohol to under-18s and this would help shift social norms relating to young people's alcohol use. As argued by Watson:

"Tort law is a powerful tool for articulating values, educating, promoting safety, setting minimum standards of acceptable behaviour in a community, and bringing about social change, as well as for delivering compensation". 43

Cancer Council NSW recommends:

That the NSW Parliament amends the *Civil Liability Act 2002 (NSW)* to provide that damages may be awarded in respect of the death of or injury to a minor notwithstanding that the minor is intoxicated.

6. Conclusion

The financial cost of the burden of disease and injury from alcohol was estimated at \$15.3 billion in 2004-05.⁴⁴ This is an underestimate because it was calculated before research confirmed that alcohol also contributes to bowel cancer, the second most common cancer in Australia, ^{36;45} which is a preventable burden.

The National Preventative Health Taskforce recommended implementation and enforcement of best-practice liquor control laws as a high priority in reducing the health impacts of alcohol.⁴⁶

Cancer Council NSW supports stronger enforcement of laws on the supply of alcohol to minors by persons other than the minor's parent or guardian. Our position is based on evidence that cancer risk increases with alcohol consumption, that earlier and heavier alcohol use in adolescence increases consumption in later life, and that regulations restricting alcohol availability are effective in reducing adolescents' alcohol use. Our society needs to make it easier for young people to make healthy choices, and enforcing measures that restrict minors' accessibility to alcohol can positively influence the drinking culture and reduce alcohol consumption.

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