

**Submission
No 13**

PROVISION OF ALCOHOL TO MINORS

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The Hon Bruce Notley-Smith MP
Chair
Legislative Assembly Social Policy Committee
Inquiry into the Provision of Alcohol to Minors
Parliament of NSW
Macquarie St
SYDNEY NSW 2000

Dear Mr Notley-Smith

Re: NCETA Submission to the Legislative Assembly Social Policy Committee Inquiry into the Provision of Alcohol to Minors

Thank you for the opportunity to provide a submission to the Inquiry.

The National Centre for Education and Training on Addiction (NCETA) is an internationally recognised research centre that works as a catalyst for change in the alcohol and drugs field. NCETA is one of three national centres of excellence focusing on alcohol and other drug issues in Australia.

The Centre has a particular interest in issues related to alcohol and young people and this is reflected in our overall program of work. NCETA has undertaken a number of large studies examining young people's views and experiences in relation to alcohol and has also investigated preventative roles that schools and other bodies might play in this regard.

NCETA was responsible for a large body of work examining the role of cultural influences in shaping patterns of alcohol consumption among young people in Australia. This involved a review of relevant literature and observations, interviews and focus groups. A number of key themes emerged including:

- the importance of consumerism and changes in social trends to shaping young people's alcohol consumption;
- the extent to which alcohol has become an integral part of contemporary leisure lifestyles;
- the strong links between alcohol consumption and the need for social contact, acceptance and confidence;
- difficulties associated with constructing personal identities in the absence of alcohol consumption;
- the degree to which alcohol was used to transform an 'occasion' into an 'event'; and
- conflicting cultural norms surrounding alcohol and gender in which young women are encouraged to adopt masculine drinking patterns (resulting in intoxication) while being sanctioned for intoxicated behaviours.

The Centre has also recently undertaken a national review of liquor licensing legislation. This review was unique in that it not only examined the legislation itself but also focused on the perceptions of police concerning the effectiveness of these Acts in reducing alcohol related harms,

including those associated with the provision of alcohol to minors. The reports from this study will be released shortly.

Alcohol consumption by minors is associated with a range of harms to the Australian community. These include violence, injury, social disruption, adverse impacts on brain development and memory, suicidal ideation and attempts, exposure to environmental hazards and increased risk of problem drinking in adulthood.

While NCETA welcomes the additional focus which the work of the Committee brings to this important issue, notwithstanding evidence of harms, we recognise that secondary supply laws, which are the major focus of the Committee's inquiry, are not designed to prevent underage drinking. Rather, they seek to shape underage drinking towards less harmful patterns.

In evaluating the effectiveness of the current provisions of the NSW legislation it is important to clarify the ways in which the legislation is intended to achieve a reduction in harmful secondary alcohol supply. If, for example, the legislation is intended to influence aberrant behaviour by the imposition of sanctions against those who transgress, then its effectiveness could be evaluated by the number of successful prosecutions for relevant offences.

The intent of the legislation could also be to send a message to the community about harmful secondary supply being unacceptable. In this case its effectiveness would be evaluated using criteria which reflect the extent to which the legislation has contributed to a change in community attitudes. In other words, the legislation could be having positive impacts on shaping community attitudes even if few suppliers of alcohol to minors have been successfully prosecuted.

In addition, in assessing the efficacy of the *NSW Liquor Act* in shaping the supply of alcohol to young people, it will be important to obtain the perspectives of those who are most significantly impacted by the legislation - young people. Without this perspective it will be difficult to gain a comprehensive understanding about the ways in which the legislation affects the group that it is targeted to protect.

Ideally, decisions concerning the effectiveness or otherwise of legislative interventions would be based on direct evidence stemming from targeted pre-post evaluation studies. In the absence of studies concerning the relevant NSW legislation, information about current trends in alcohol consumption among young people in the State since the legislation has been in place warrants examination. This information comes from population-level research.

The secondary supply provisions were initially inserted in the *NSW Liquor Act* in 1987. The 2008 NSW School Students' Health Behaviours Survey indicated that the proportion of 12–17 year old students who had consumed alcohol in the last seven days decreased between 1984 and 2008 (32.5% to 20.4%). This decrease occurred among both 12–15 year old students (28.4% to 14.2%) and 16–17 year old students (49.8% to 36.2%). There was also a decrease between 1984 and 2008 in the proportion of students aged 12–17 years who reported consuming alcohol in the last 12 months (72.4% to 56.1%). The decrease occurred among both 12–15 year old students (68.1% to 47.1%) and 16–17 year old students (90.5% to 79.2%).¹

¹ Centre for Epidemiology and Research. New South Wales School Students Health Behaviours Survey: 2008 Report. Sydney: NSW Department of Health, 2009.

Conversely, other data shows increases among sub-populations of young people. There is data supporting the speculation that overall community mean consumption has decreased, while at the same time, increasing among specific cohorts who are at greater risk of harmful alcohol use. Nationally, the proportion of 12-15 year olds consuming alcohol at risky levels for short term harm doubled (from 2.5% to 5%) between 1990 and 2005 and by the age of 18 years approximately half of all Australians are risky drinkers. In addition, the age at which Australians initiate alcohol consumption has declined for each successive 10 year cohort over the past 50 years.²

While the trend evident from the NSW data is encouraging, this needs to be treated with some caution in the context of the national trends.

Outlined are a range of factors that NCETA maintains are of relevance to the Committee's deliberations.

1. The utility of secondary supply legislation

Overall NCETA's position is that secondary supply legislation is a useful tool to reduce alcohol-related harm among young people. Legislation is a powerful way of sending a message concerning community expectations regarding the supply of alcohol to minors. The legislation does, however, need to be part of a comprehensive series of approaches aimed at addressing the supply of alcohol to young people. As outlined below NSW's legislative approach to this issue could be enhanced by addressing a number of aspects of the current arrangements.

2. It is recommended that the offence of *supply* be amended to one of a *failure to take reasonable steps to prevent harmful supply*.

During our national review of liquor licensing legislation, we also received consistent feedback from law enforcement officers concerning the difficulties associated with enforcing secondary supply offences. These difficulties arose from their frequent occurrence on private property, the often close relationship between suppliers and minors, problems with proving that the supply occurred with the knowledge and consent of the adult, a lack of corroborating testimony and a lack of resources available for enforcement. Even if these laws are enforced only when the drinking activities of minors place them at significant risk of harm or involve grossly antisocial behaviour, the difficulties associated with securing successful prosecutions is a major impediment to their effectiveness.

It appears that proving the offence of 'supply' represents too high a legal threshold to have a deterrent effect. It is therefore recommended that the nature of the offence be changed to one involving a failure to take reasonable steps to prevent harmful supply. This approach could have two potential outcomes. Firstly, it would facilitate prosecutions against adults who do not take reasonable steps to avoid harmful supply, without the need to prove actual supply. Secondly it would protect responsible adults in situations where they have taken reasonable steps, but where minors have nonetheless gained harmful access to alcohol.

² Roche, A.M., Bywood, P., Borlagdan, J., Lunnay, B., Freeman, T., Lawton, L., Tovell, A., Nicholas, R. (2007). *Young people and alcohol: The role of Cultural Influences: National Centre for Education and Training on Addiction, Adelaide.*

3. It is recommended that provisions contained in legislation in Queensland, Tasmania and the Northern Territory concerning the need to supply alcohol in a responsible and supervised manner be incorporated into NSW legislation.

The current legislative provisions in NSW are similar to those recently adopted in Victoria. However, they are different in nature from those adopted in Queensland, Tasmania, and the Northern Territory as they do not impose any legal obligation upon those authorised to supply alcohol to minors (such as parents of guardians) to do so in a responsible and/or supervised manner.

The responsible supply provisions in these jurisdictions require that when parents or authorised persons choose to provide children with alcohol, the supply must be consistent with responsible use and consumption must be supervised. However, there is no determinative understanding of what constitutes 'responsible supervision'. Rather, a court must take into account several factors when considering whether alcohol was supplied under 'responsible supervision'. These include: whether the adult and minor are 'drunk' (Northern Territory), 'intoxicated' (Tasmania) or 'unduly intoxicated' (Queensland), the age of the minor, whether the adult is 'directly' (Tasmania) or 'responsibly' (Northern Territory and Queensland) supervising the minor's consumption of alcohol. Also considered are factors such as whether food is provided for minors to consume, the quantity and type of liquor consumed and the period of time over which it is consumed.

This is a significant difference between the NSW provisions and those in Queensland, Tasmania, and the Northern Territory which place heavier responsibilities on alcohol suppliers. This is an issue that warrants consideration in any potential adjustments to the NSW legislation.

4. Is liquor licensing legislation is the most appropriate Act to contain provisions relating to the secondary supply of alcohol to minors?

Liquor licensing legislation is one of the most powerful tools available to government to control the supply of alcohol to the community. The role of the legislation is to regulate the nature of transactions between alcohol sellers and purchasers. It affects who can buy and sell alcohol and the environment and timing of sales. From this perspective, it is appropriate that this legislation contains provisions that restrict the supply of alcohol to minors on licensed premises and the sale of alcohol off licensed premises.

It is, however, less clear that this legislation is the most appropriate vehicle to restrict the harmful secondary supply of alcohol to minors in settings other than licensed premises. There are a number of reasons for this.

Firstly, the harmful secondary supply of alcohol to minors should most appropriately be regarded as a child/youth welfare issue. Legislative responses to harmful secondary alcohol supply should therefore be regarded as a subset of measures designed to prevent harms that occur when adults fail to adequately discharge their responsibilities towards younger people. From this perspective, rather than being appended to alcohol regulatory arrangements, harmful secondary supply provisions might instead, be better incorporated into legislation which focuses more specifically on child/youth protection. To facilitate expeditious policing intervention it would also be beneficial to have mirroring provisions in Summary Offences Legislation.

Secondly, liquor licensing legislation has its roots in administrative law. Administrative law regulates bureaucratic managerial procedures and defines the powers of administrative agencies. In the context of alcohol regulation, it focuses on: balancing the needs of the alcohol industry with the need to reduce community harm; problem rectification; facilitating due administrative processes; and procedural fairness. This administrative framework is less suited to responding to issues of child/youth welfare. Consequently, having secondary supply provisions in liquor licensing legislation relegates a welfare issue to a largely administrative or bureaucratic legislative context, which is arguably unsuitable to address the interpersonal nature of harmful secondary supply offences.

Thirdly, NCETA's review of liquor licensing legislation revealed that in most jurisdictions the legislation was regarded by police as being overly complex, unwieldy, difficult to enforce and best left to the realm of specialist enforcement bodies. Therefore having secondary supply provisions contained in liquor licensing legislation, rather than in legislation focused on the welfare of young people and mirrored in the Summary Offences Act, risks these provisions being viewed in the same way and not widely enforced because of the perceived difficulties in doing so.

Secondary supply provisions are contained in the Tasmania Police Offences Act (1935) at Section 26, for example.

While NCETA fully supports the existence, and strengthening, of secondary supply legislative provisions it is also important to avoid unintended effects of this legislation and to recognise anomalies that occur between liquor licensing legislation and other legislation impacting upon young people. Some of these are outlined below.

5. The need for caution in applying criminal liability to parents and others who supply alcohol to young people.

While recognising the potential problems associated with harmful secondary supply, there are two reasons to be cautious when attributing criminal liability to parents and/or others who supply alcohol to minors.

Firstly, minors are not passive recipients of legal direction concerning alcohol. They have the capacity to actively seek out alcohol of their own volition. Therefore, responsible adults cannot be expected to take total responsibility for the actions of young people who obtain alcohol. They can, however, be expected to take reasonable steps to prevent harmful secondary supply.

Secondly, having a conviction concerning supplying alcohol to minors could have profound effects on the individuals concerned, for example, if they later seek employment in settings that require a *Working With Children Check*.

Thirdly, the majority of adults who supply alcohol to minors are likely to be the friends of the minor. Consequently there is a need to ensure that young people's social groups and experiences are not unnecessarily criminalised.

6. The risk of over-reliance on legislation.

Legislative provisions concerning harmful secondary supply are an important component of responses to this problem. They should not, however, be regarded as a comprehensive response. Other important measures including mass media campaigns (such as, but not limited to, the

Supply Means Supply campaign), harm reduction and brief intervention programs and the provision of support to responsible adults to help them deal with decisions about the supply of alcohol to young people.

7. Inconsistencies with aspects of other legislation

It is important to recognise that laws which restrict the supply of alcohol to young people are inconsistent with other areas of law. Minors are able to consent to receive medical advice and treatment without their parents' consent and, once over the age of 16, can legally engage in sexual activity. Yet as far as alcohol consumption is concerned, young people cannot drink alcohol unless they are in the presence of their parents or their parents have consented to it. This is not to suggest that the legal drinking age should be lowered but it is important to note that there is an inherent tension between the legal sanctions which apply to different aspects of the lives of young people.

8. The risk of secondary supply laws disproportionately and adversely impacting on marginalised populations.

Secondary supply laws are likely to disproportionately and adversely affect marginalised populations (such as Indigenous Australians and other socially disadvantaged groups) for two reasons. Firstly these populations are more heavily policed due either to the greater incidence of crime within their neighborhoods or their greater involvement with, and reliance upon, state agencies. Secondly, while NSW students who are least disadvantaged are significantly more likely than the most disadvantaged students to have ever had an alcoholic drink³, the nature of their home circumstances means that affluent students are more likely to have the opportunity to access alcohol from their homes without their parents' consent. Current secondary supply laws would have limited impact in this circumstance because the legal obligation to 'supervise' as adopted by the Northern Territory, Queensland, and Tasmania, does not arise.

It is therefore important that enforcement practices take this into consideration to avoid adverse impacts on marginalised populations.

Notwithstanding these potential unintended consequences, it is NCETA's position that the existing secondary supply legislation in NSW, while a useful tool to send a strong message concerning the supply of alcohol to young people, could benefit from modification to facilitate its enforcement. This could be achieved by changing the offence of *supply* to one of *a failure to take reasonable steps to prevent harmful supply* and by incorporation of a requirement that the provision of alcohol to young people by authorised parties be responsible and supervised. We also suggest that child welfare legislation may be a more appropriate legislative vehicle than liquor licensing legislation for this purpose with mirroring legislation in the Summary Offences Act.

³ Centre for Epidemiology and Research. New South Wales School Students Health Behaviours Survey: 2008 Report. Sydney: NSW Department of Health, 2009.

May I take this opportunity to wish the Committee well in its deliberations and I trust that this submission is of assistance in this regard.

Yours sincerely,

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