

**Supplementary
Submission
No 12a**

PROVISION OF ALCOHOL TO MINORS

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PROVISION OF ALCOHOL TO MINORS: DISCUSSION PAPER

Social Policy Committee

New South Wales Legislative Assembly

**A submission from the
Australian Drug Foundation**

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EXECUTIVE SUMMARY

The Australian Drug Foundation (ADF) is pleased to respond to the Social Policy Committee's Discussion Paper on the provision of alcohol to minors. The ADF supports the strengthening of the NSW secondary supply legislation and a tightening of conditions around the grant of consent. In 2011-12 the ADF conducted a public education campaign on secondary supply legislation in Victoria and will share its experience with the Committee if that is deemed appropriate.

ADF RESPONSE TO PROPOSED RECOMMENDATIONS & QUESTIONS

PROPOSED RECOMMENDATION 1

The ADF agrees that the Liquor Act 2007 should be amended to ensure that the supply of alcohol to minors is subject to responsible supervision.

PROPOSED RECOMMENDATION 2

The ADF agrees that specific criteria would be helpful to determine whether a supply of alcohol to a minor is consistent with responsible supervision. The Committee could consider recommending an upper limit to the quantity of alcohol that might be supplied to a young person, and that the quantity should be no more than half the amount that is considered low risk for an adult.

PROPOSED RECOMMENDATION 2 - QUESTION

While there is a scientific justification for setting a minimum age for drinking alcohol, even under parental supervision, such a change would require extensive dialogue with the community. The Committee could consider recommending an inquiry to investigate whether Parliament has the capacity to establish an age limit for the supply of alcohol to minors by a parent or guardian.

PROPOSED RECOMMENDATION 3

The ADF believes section 117(4) of the Liquor Act 2007 which enables parents and guardians to supply alcohol to minors should be retained.

PROPOSED RECOMMENDATION 4 - QUESTION

The ADF believes section 117(5) of the Liquor Act 2007 which enables parents and guardians to authorise other adults to supply alcohol to their child should be retained, although the conditions under which is applied should be tightened.

PROPOSED RECOMMENDATION 4 - QUESTION

The Committee could consider recommending that consent must be conveyed in person. That would ensure the person to whom consent is given will know the consent is genuine and it implies that the parent/guardian personally knows the individual to whom consent is given.

PROPOSED RECOMMENDATION 5

A range of penalties is appropriate for offences against secondary supply. They include warnings, fines and referral to an educational session. However there is little justification for the option of incarceration.

PROPOSED RECOMMENDATION 6

A requirement for an adult offender to attend an education session is worthwhile and may also be offered as an alternative to a fine. A case by case decision is preferable as it is consistent with the discretion given police and the courts to issue warnings for a first offence regarding substances such as cannabis.

PROPOSED RECOMMENDATION 6 – QUESTION(S)

- (i) A young person involved in a secondary supply offence may also benefit from an education session on the risks of drinking early in life.
- (ii) A case by case decision on this matter is appropriate for the reason given in the preceding response.

PROPOSED RECOMMENDATION 7 - QUESTION

A substantial social marketing campaign to explain why young people should avoid drinking would have the dual effect of educating the whole community and providing substantiation for the strengthened secondary supply law. It would also be instructive if the number of people who received a warning or a fine for a secondary supply offence was published each year.

PROPOSED RECOMMENDATION 8

A public education campaign is crucial to disseminate the new law. The ADF shared the task with VicHealth of educating the public about secondary supply legislation in Victoria in 2011-12. The major elements were: a dedicated website; an online question and answer service; on-line podcasts; and community forums.

PROPOSED RECOMMENDATION 9

The public education campaign would properly have the dual aim of informing the public about the new law and also about the risk posed to young people by the consumption of alcohol.

PROPOSED RECOMMENDATION 10

As noted in our response to Proposed Recommendation 8, in Victoria in 2011 a dedicated website (www.teendrinkinglaw.vic.gov.au) provided accessible information to parents and young people about the new secondary supply law, the health risks of early drinking, and advice on parent /adolescent communication. We think it would serve as a useful model for a website in NSW.

PROPOSED RECOMMENDATION 11

Parents of young children will benefit from being informed as early as possible of the potential adverse impact of early drinking by children. Such advice will also enable parents to be aware of the importance of modelling low risk drinking if and when they themselves drink alcohol in the presence of children.

AUSTRALIAN DRUG FOUNDATION

The Australian Drug Foundation (ADF) is a charitable, non-government, not-for-profit organisation and is widely regarded as one of Australia's leading alcohol and other drugs prevention agencies. For over 50 years the ADF has worked with communities to prevent alcohol and other drug problems. Our focus is prevention and early intervention and our strategies include community action, health promotion, education, information, policy, advocacy, and research. Our vision is an Australia that is composed of 'Healthy People, Strong Communities'.

The Australian Drug Foundation is pleased to have the opportunity to address the response of the Social Policy Committee into the committee's investigation into the supply of alcohol to young people.

The Australian Drug Foundation's response to the recommendations and questions embodied in the Discussion Paper is outlined below.

ADF RESPONSES TO THE PROPOSED RECOMMENDATIONS AND QUESTIONS POSED IN THE DISCUSSION PAPER

PROPOSED RECOMMENDATION 1 That the Liquor Act 2007 be amended to provide that parents, guardians and responsible adults must supply alcohol to minors in a manner that is consistent with responsible supervision

ADF RESPONSE 1 The ADF agrees that the Liquor Act 2007 should be amended to ensure that the supply of alcohol to minors is subject to responsible supervision. Such an amendment would increase the efficacy of the existing legislation as it will require a parent or guardian to consent to the supply of alcohol to a minor.

It is important for parents to determine whether, and when, their child consumes alcohol. However it is equally important, if a minor does consume alcohol, that they do not consume an excessive quantity of alcohol, or consume it in circumstances that put them at risk of harm. Therefore, it is reasonable for the person who supervises a minor when they drink alcohol to be liable for the amount of alcohol that the minor consumes, and for the context and circumstances in which the consumption of alcohol occurs.

Although some people have objected that secondary supply law may be difficult to enforce, experience shows that that is not necessarily the case. In Victoria, within the first year of operation of the secondary supply law, 40 persons at least were fined for offending (Herald Sun, 2013). It should be kept in mind that secondary supply legislation, in common with all other legislation, can only be enforced when a breach is brought to the attention of law enforcement officers.

PROPOSED RECOMMENDATION 2 That the Liquor Act 2007 be amended to specify factors to be considered in determining whether supply of alcohol to a minor by a parent or guardians is consistent with responsible supervision including

- the minor's age
- whether the adult is drunk
- whether the minor is drunk
- whether the minor is consuming the alcohol with food
- whether the adult is responsibly supervising the minor's consumption of the alcohol
- the quantity and type of alcohol, and the time period over which it is supplied

ADF RESPONSE 2 The ADF agrees that the Liquor Act 2007 should be amended to specify factors to be considered in determining whether the supply of alcohol to minors is consistent with responsible supervision. The ADF believes the criteria cited in the Discussion Paper (see above) which reflects criteria employed in the implementation of secondary supply legislation in Tasmania, Queensland and the Northern Territory, is an appropriate characterisation of responsible supervision.

While a subjective judgment may be required to ascertain whether the criteria apply in a given case (e.g. whether relevant parties are intoxicated), police officers are already called upon to make that same judgment in the course of their duty in settings such as licensed venues. However, as the current medical advice suggests minors should drink as little as possible, it may be judicious for the Committee consider recommending the setting of an upper limit to the quantity that might be supplied to a young person on any occasion.

A relatively objective notion of a maximum quantity of alcohol that could be supplied to a minor may be extrapolated from the advice provided by the National Health and Medical Research Council of Australia: it states that to remain at low risk for alcohol related harm on any occasion of drinking, an adult should drink no more than four standard drinks (NHMRC, 2009). As a minor does not have the same level of physical or psychological maturity of an adult, it would be prudent to recommend that a minor should drink no more than 50% of the quantity that is regarded as responsible (or low risk) for an adult.

PROPOSED RECOMMENDATION 2 - QUESTION Should there be an age limit for the supply of alcohol to minors by parents and guardians? If so, what should the age limit be?

ADF RESPONSE TO 2 -QUESTION There is a scientific justification for setting an age limit for the drinking of alcohol. In 2009 the NHMRC advised there is not a safe level of alcohol consumption for a person less than fifteen years of age. That is due to the risk that drinking alcohol under fifteen might adversely affect the young person's subsequent development, and because young drinkers are at higher risk of developing an alcohol related dependency problem (NHMRC, 2009). Additionally, the NHMRC recommended young people under eighteen years avoid drinking, and if they do drink to consume the least possible amount of alcohol.

It has been a traditional practice for many people in Australia to introduce their children to alcohol at an age somewhere below fifteen years. While the evidence summarised by the NHMRC now suggests such a practice is risky, that knowledge may not have percolated throughout the community. In addition, at this time a substantial section of the public will likely resist the prohibition as usurpation of parental power and responsibility.

For Parliament to change the law to prohibit a parent or guardian from providing alcohol to their child aged less than fifteen years (for example) would require a community-wide knowledge and acceptance of the rationale for the change. That situation may not exist at this time. However it may be warranted for the Committee to recommend that the NSW Parliament determine its capacity to establish an age limit for the supply of alcohol to minors by a parent or guardian.

PROPOSED RECOMMENDATION 3 - QUESTION Should section 117(4) of the Liquor Act 2007 which enables parents and guardians to supply alcohol to minors be removed or retained?

ADF RESPONSE TO QUESTION 3 Consistent with our response to Question 2, the ADF believes section 117(4) should be retained. For Parliament to prohibit a parent or guardian from providing alcohol to a minor, including young people aged 15-17 years would require a burden of proof regarding alcohol related harm that is not available at this time. The NHMRC, whose guidelines in 2009 were the strictest iteration yet issued, did not suggest that minors aged 15-17 should not drink any alcohol at all. As we stated in response to (2) there is a scientific justification for an age limit of 15 years but to embody it in law would require widespread community acceptance which in turn would need an extensive community dialogue.

PROPOSED RECOMMENDATION 4 -QUESTION Should the defence against prosecution in section 117(5) of the Liquor Act 2007 which enables parents and guardians to authorise other adults to supply alcohol to their child be removed or retained?

ADF RESPONSE 4 - QUESTION The ADF believes section 117(5) of the Liquor Act 2007 which enables parents and guardians to authorise other adults to supply alcohol to their child should be retained, although the conditions under which is applied should be tightened (see following response).

PROPOSED RECOMMENDATION 4 QUESTION If it is retained, should authorisation for supplying alcohol to a minor be required to be in writing? How else could the current provision be improved?

ADF RESPONSE 4 - QUESTION Authorisation of consent from a parent or guardian to allow an adult to provide their child with alcohol is fraught. Current legislation in jurisdictions (such as Tasmania and Victoria) does not prescribe forms of consent; instead the onus is on the person supplying alcohol to demonstrate that they had obtained consent. While allowing for consent to be conveyed via a written note provides apparent proof, it is clear that signatures on notes may be forged and in that case the apparent consent would be fraudulent. The ADF has been informed that consent conveyed via text on a mobile phone was transmitted beyond the original recipient. The Committee could consider a

requirement that consent must be conveyed in person (e.g. face to face, by telephone or Skype) so that the person to whom consent is given is under no doubt that it is genuine. A personal passing on of consent (i.e. not in writing) would be appropriate given that the most usual rationale for the delegation of parental authority is to allow a member of the family to supply alcohol to a minor. That requirement may have the benefit of reducing access to alcohol for underage young people and lowering their consumption of alcohol.

PROPOSED RECOMMENDATION 5 - QUESTION What is an appropriate penalty for supplying liquor to a minor other than on licensed premises? Are current penalties adequate or should they be increased?

ADF RESPONSE 5 - QUESTION The current penalty in NSW is a maximum fine of \$11000 and or imprisonment. As recorded in the Discussion Paper the maximum fine in NSW is comparable to other jurisdictions. A term of imprisonment seems overly harsh and it is doubtful whether it would be imposed for secondary supply. In a case where incarceration might be justified (following a death or serious injury suffered by a minor) other laws concerning criminal negligence or manslaughter would likely be applicable. The ADF believes there is merit in having a referral to an educational session as an option in addition to the fine (see below).

PROPOSED RECOMMENDATION 6 That attendance at education workshops for adults who commit offences relating to the supply of alcohol to minors form part of the suite of penalties under the *Liquor Act 2007*.

ADF RESPONSE 6 It may be helpful for an adult who offends the secondary supply law to attend an education session on the rationale for the law and the importance of adhering to it. As the Discussion Paper noted, there are two problems to overcome. One is the risk of creating a second offence when the individual offender does not attend the session. This problem might be addressed by offering an education session as an alternative to the imposition of a monetary fine, so the offender would have a substantial reason to attend the session i.e. gain a financial benefit from so doing. The second problem is whether sufficient offenders would be identified to justify holding a group workshop or education session within a reasonable geographic area. This problem may be surmounted by the offender attending a personal education session at an alcohol and other

drug service. Such services are distributed throughout the community and would enable the session to be scheduled reasonably quickly.

PROPOSED RECOMMENDATION 6 - QUESTION Should there be provision for minors involved in secondary supply offences to attend education workshops?

ADF RESPONSE 6 - QUESTION In a similar vein to our response above, a young person involved in a secondary supply offence may benefit from an education session on the risks of drinking early in life. Our preference would be for a personal session delivered through an existing alcohol and drug service (see above) rather than a workshop, as a group setting may inspire a negative, peer-led reaction to the session by the young person.

PROPOSED RECOMMENDATION 6 – QUESTION Should the application of this penalty option be determined on a case by case basis or should it be mandatory?

ADF RESPONSE 6 - QUESTION The ADF believes a case by case decision on this matter is preferable as it is consistent with the discretion given police and the courts to issue warnings to an offender for a first offence regarding other psychoactive substances such as cannabis.

PROPOSED RECOMMENDATION 7 - QUESTION How could the enforcement of secondary supply laws be improved? Should the focus instead be on public education and preventing harmful drinking?

ADF RESPONSE 7 - QUESTION A substantial social marketing campaign to explain why young people should avoid drinking would have the dual effect of educating the whole community and justifying the strengthened secondary supply law. Second, given some people's view that the law may not be enforced, it would be instructive if the number of people who received penalty notices for offending the law was published each year. A widespread understanding that the law was enforced would add to its deterrence value.

PROPOSED RECOMMENDATION 8 That any amendments to the Liquor Act 2007 regarding the supply of alcohol to minors be accompanied by a social marketing / public education campaign?

ADF RESPONSE 8 A public education campaign is crucial to explain the new law. Following the passing of the secondary supply legislation in Victoria in 2010, the ADF, in partnership with the Victorian Health Promotion Foundation, conducted a

public education campaign on behalf of the Victorian government. The education campaign, which followed an information campaign conducted through mainstream media, consisted of four main elements: a dedicated website; an online question and answer service; on-line podcasts; and community forums.

Community forums: 9 public forums were held in metropolitan and country Victoria to ensure parents understood the laws, how they can assist their children to negotiate adolescence without experiencing alcohol related risks and harms. The forums targeted parents, teachers and health professionals.

Website A full website (www.teendrinkinglaw.vic.gov.au) was built to support parents and young people who wanted information about the law. The site was divided into two sections: one targeting young people and the other targeting parents and other concerned adults. It included information about:

- The law (parents and young people)
- How much young people drink, and why they drink (parents and young people)
- The harm caused by alcohol (parents and young people)
- Talking to young people about alcohol, including deciding whether to give permission for young people to drink (parents)
- Deciding whether to drink (young people)
- Reducing risk and harm (parents and young people).

The website also contained a comprehensive list of references and contacts for parents and young people seeking more information about specific topics, such as mental health, substance abuse or parenting support.

Key education activities were also delivered through the website, including a question and answer service, discussion forum and podcast series.

Online question and answer service: an online question and answer service, which was housed on the teen drinking law website, provided answers to questions submitted by parents, young people and workers.

Podcasts: A series of 4 podcasts comprised experts talking about specific issues related to the laws and alcohol-related harms. The podcasts focused on some of the issues that had been repeatedly raised through other channels, including the online question and answer service, and the online discussion forum.

Online discussion forums: 4 moderated online discussion forums to allow parents to share information and discuss issues related to the laws, alcohol and young people with other parents. The key topics were discussing alcohol with teenagers, BYO parties and the issue of consent.

Note The ADF can supply the Committee with more information about the secondary supply education campaign should the Committee determine that it would be helpful to it.

PROPOSED RECOMMENDATION 9 That the public education campaign have a dual focus – to clearly state what is permitted under the law, and to highlight the health risks of alcohol consumption by minors, based on National Health and Medical Research Council guidelines.

ADF RESPONSE 9 The ADF agrees with Proposed Recommendation 9 that the public education campaign would properly have the dual aim of informing the public about the new law and about the risk posed to young people by the consumption of alcohol. That was the motivation behind the secondary supply public education campaign run by the ADF and VicHealth in Victoria in 2011/12. (See response to Proposed Recommendation 8)

PROPOSED RECOMMENDATION 10 That, as part of a public education campaign, a website be developed to provide parents with clear, readily accessible information about their legal responsibilities in relation to supplying alcohol to minors. The website should also inform parents on how to talk to young people about the law and how to talk to other parents about the legal and health consequences.

ADF RESPONSE 10 The ADF agrees with Proposed Recommendation 10. As referred to in our response to Recommendation 8, in Victoria in 2011 a dedicated website (www.teendrinkinglaw.vic.gov.au) was established to provide readily accessible information to parents and young people about the law, about health risks of early drinking, and advice about parent /adolescent communication. One section of the website targeted parents and professionals while the other section targeted young people. We think that would serve as a useful model for a website in NSW.

PROPOSED RECOMMENDATION 11 That information about the legal and health consequences of supplying alcohol to minors be provided to parents

attending early childhood education/information sessions when their child is of pre-school age.

ADF RESPONSE 11 The ADF agrees with Proposed Recommendation 11. Parents of young children will benefit from being informed as early as possible of the potential adverse impact of early drinking by children. Such advice will also enable parents to be aware of the importance of modelling low risk drinking if and when they themselves drink alcohol in the presence of children.

5 REFERENCES

National Health and Medical Research Council, 2009. *Australian guidelines to reduce health risks from drinking alcohol*. Canberra: Commonwealth of Australia.

Davie A. *Herald Sun*, 5 February 2013.