

PROVISION OF ALCOHOL TO MINORS

Organisation: Australian Hotels Association
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Date Received: 25/06/2012

14 June 2012

Mr Bruce Notley-Smith, MP
Chairman
Legislative Assembly Social Policy Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Bruce,

INQUIRY INTO THE PROVISION OF ALCOHOL TO MINORS

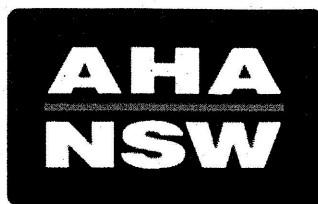
I am pleased to attach our detailed submission to the Parliamentary Inquiry into the provision of alcohol to minors.

I trust that the matters we have raised and our recommendations and suggestions will be of considerable benefit as you address such a pressing community issue.

Should you believe it may assist with the Inquiry's deliberations, I would be happy to meet with you personally and arrange for AHA (NSW) Executive Officers and staff to appear before the Inquiry to provide further detail and support.

Yours sincerely,

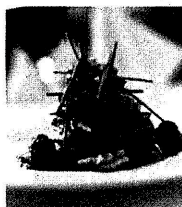
PAUL NICOLAOU
Chief Executive



**SUBMISSION TO THE
NSW Legislative Assembly
Social Policy Committee
INQUIRY INTO THE PROVISION
OF ALCOHOL TO MINORS**

by

Australian Hotels Association (NSW)



Lodged by:

Paul Nicolaou
Chief Executive Officer
Australian Hotels Association (NSW)

SUBMISSION TO THE NSW Legislative Assembly Social Policy Committee INQUIRY INTO THE PROVISION OF ALCOHOL TO MINORS

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1.0 Introduction

The Australian Hotels Association (NSW) (**AHA (NSW)**) is an industrial organisation of employers registered under the *Industrial Relations Act 1996* (NSW). AHA (NSW) is a counterpart branch association of the Australian Hotels Association, a federally registered industrial organisation which is the leading national voice of Australia's hotel and hospitality industry.

AHA (NSW) represents the interests of over 1700 members at both a local and state level in NSW.

Some of the issues affecting NSW hotels currently being addressed by AHA (NSW) include business regulation, liquor licensing, gambling policy, alcohol and health policy, tourism, and workplace relations & employment issues.

The majority of the AHA (NSW)'s members operate licensed premises as hotels, pubs and taverns. A significant number of members operate licensed premises incorporating hotel accommodation ranging from pub-style accommodation through to luxury 5-star international hotels.

Our members employ over 75,000 people, donate more than \$25 million per year to charitable, community and sporting organisations in NSW and contribute millions of dollars in taxes and other levies.

In addition to this submission — in which we have addressed the issues of relevance to our industry — we would be happy to arrange for our Executive and/or senior AHA (NSW) staff members to address the Social Policy Committee at a mutually convenient time and to further explore the issues about which you have been requested to inquire and report.

2.0 Submission - Terms of Reference (a) & (b)

(a) whether 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.

(b) whether 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.

2.1 Illegal to sell or supply alcohol to people under the age of 18

— includes comment on Terms of Reference (d)

2.1.1 The old adage, 'old enough to vote, and therefore old enough to drink' is an accepted cultural view which has been entrenched for many years in Australian society and remains to this day. Our position is that the Liquor Act definition of '*minor*' [at s4 (1)], being a person under 18 years of age, is one which is well accepted in our community and to change it,

would have considerable political consequences. We believe that the definition of 'minor' should remain unchanged.

2.1.2 Another related definition in the Liquor Act [also at s4 (1)] is that of 'responsible adult', which refers to those with guardianship responsibilities of minors being "(a) a parent, step-parent or guardian of the minor, or (b) the minor's spouse or de facto partner, or (c) for the time being standing in as the parent of the minor". This relates to adult oversight and control of minors in all licensed premises, including restaurants.

Our view is that the scope of this definition is appropriately narrow to exclude less responsible persons from assuming protection and control of persons under 18 years within in all licensed premises. We submit that it should remain unchanged.

2.1.3 One other over-arching consideration related to alcohol and minors is the requirement [at s100] in the Liquor Act that the responsible Minister, through regulations, may declare a specified liquor product (or class of liquor products) to be an undesirable liquor product, if the name of the liquor product, its design or packaging, is likely to be attractive to minors, or the product is likely, for any reason, to be confused with soft drinks or confectionery, or the product is, for any other reason, likely to have a special appeal to minors.

Experience has shown that, over the years, this provision has been effectively used at various times to immediately remove undesirable products from the marketplace, and we are of the view that it should remain in the legislation.

2.1.4 Provisions also exist [at s101 & 102] which allow the Director General to restrict or prohibit the sale or supply of any similarly specified liquor products in area or localities where there are significant concerns regarding intoxication or underage or irresponsible drinking and to prohibit promotions which are likely have a special appeal or be attractive to minors.

Again, we believe these provide sufficient regulatory powers and opportunity to address specific local and age-related issues if and when they arise.

2.1.5 Although it is presently not the major source of supply of alcohol to minors, it could be expected that the sale of liquor through the internet, and its direct delivery to private addresses will, like other consumables, become a more convenient and attractive way for persons to source their personal requirements.

In this regard, and while we do not offer a straightforward mechanism to tighten the provisions [at s114] of the Liquor Act, we recommend to the Inquiry that it is within the purview of its review that this matter receives further attention, so that particularly the receipt of alcohol on delivery can be better restricted to persons above 18 years of age.

2.1.6 The Liquor Act [at s124 & s 126] provides that a licensee of hotel or club premises commits an offence if a minor is allowed to enter or remain on licensed premises. While this is a now accepted part of responsible venue management, it does, however, place all the onus and sanctions on the licensee but does not in any way penalise offenders.

It is our view that the Inquiry should examine an extension of this provision so that monetary penalties and an infringement record are imposed against any underage person who

attempts to or enters licensed hotels and clubs and that satisfactory evidence would be by way of the laying of information to local police and the subsequent issuing of an infringement notice (on the young offender or their parent). This would go a long way to discourage underage persons from continually attempting to enter licensed premises.

The same provisions should also be more clearly extended to any underage person who enters a bottleshop (off-premise licence) without accompanying adult supervision, so that take-away liquor becomes less readily attractive.

2.1.7 The Liquor Act [at s117 & 118] contains specific, easily comprehended and widely accepted provisions covering the offences related to the sale and supply of liquor to minors on licensed premises, offences related to fraudulently obtaining liquor for minors from licensed premises and restrictions on minors obtaining, consuming or carrying away liquor from licensed premises.

The seriousness of supplying liquor to minors on or from licensed premises is also reflected in the Liquor Act's '3-Strikes' prescribed offence provisions which result in a three year strike and remedial directions being imposed on licensed premises for such an offence.

In regard to the s117 & 118 and '3-strikes' provisions, as they regulate activity by and prescribe action against hotels and clubs in relation to minors, the existing sanctions and harsh penalties have been proven to be effective deterrents in the vast majority of cases within the highly regulated operating environment of licensed venues.

This issue is also related to **Terms of Reference (d)**:

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

2.1.8 Our industry experience is that the provisions of the Liquor Act 2007 - which dictate strict controls on the sale and supply of alcohol to minors - are widely accepted by industry and have long proven to be appropriate measures. Those few in the industry who choose to ignore them are quickly weeded-out through the current regulatory and enforcement measures. The remaining difficulty is that some members of the public either ignore or purposely flaunt the existing laws.

2.1.9 It is of note that the offence provisions and the maximum penalties [in s118], as they relate to minors who attempt to obtain or indeed do obtain and take away liquor from licensed premises are, although well-known, generally less able to be enforced.

While we do not in any way wish to place additional and impractical burdens on Police, it would be useful if the Inquiry was to seek the view of Police as to how this provision could be more readily enforced. If an agreed practical solution can be found, it would then be valuable to include the provision and how it will be stringently enforced in further public education related to the liquor laws of NSW (see also para 3.4 of this submission).

2.2 Proof of Age

2.2.1 The difficulty of verifying 'proof of age' is a challenge which is faced by licensees, serving staff and door personnel on a regular basis. With computer graphic software and inexpensive forms of plastic-card laminators being far more readily available than in the past, there are now ample opportunities - and without too much experience or effort - for youngsters to misrepresent their age with falsified id's. We suspect this is not something that can or will be easily solved. However, the penalties for use of fake i.d, by minors for the purpose of gaining entry into or obtaining alcohol on licensed premises should receive attention.

The current provisions [s18–20 of the Liquor Act] impose penalties for manufacturing, giving, lending or tampering with proof of age cards. There are also infringement penalties [s129] for those who use documentation which misrepresents their correct identity to gain entry, remain, or obtain liquor from, licensed premises.

2.2.2 Our preference is that the provisions and monetary penalties [in s124 & s 126] for allowing minors on licensed premises be expanded to include an offence for attempting or actually entering licensed premises – as outlined above in para 2.1.6 – and that there also be included an offence for obtaining or attempting to obtain liquor – and that both be more widely advertised in the way we suggest at para 3.4 .

2.3 Secondary Supply

2.3.1 In considering the issue of supply to underage people, the matter of 'secondary supply' needs close attention.

Secondary supply is when an 'of age' person lawfully obtains liquor and then wilfully supplies it to another who is underage. This applies when a non-parent or guardian, or an over-18 friend or accomplice, provides liquor to and allows it to be consumed by an underage person.

This can occur in private settings and is also evident in parks and public places. It has become particularly common in, but is not limited to, lower socio-economic areas.

We will address this in more detail in para 2.4.2, and in Section 3 in regard to Parks and Public Places, but suffice to say that a stronger public awareness of the illegality of 'secondary supply' must be promoted through a specific government educational campaign, with which the hotel industry would be most willing to be involved.

2.4 Supply and consumption in homes and halls

— includes comment on Terms of Reference (c)

2.4.1 Currently, under s117(4) of the Liquor Act, parents can supply alcohol to their own children or authorise it to be supplied to their children.

This provision sits comfortably with the view held by many parents that to totally restrict some alcohol intake from youngsters is to demonise it and that, provided it is done under

parental supervision and in temperate moderation, this leads to a better understanding, it makes alcohol the norm rather than something to be coveted and makes it far less attractive to experimentation and abuse.

We believe that the community at large accepts that the provisions in s117(4) form the basis of this reasonable and long-accepted approach and that any further tightening of the current restrictions would be seen as political and government interference in their lives.

It is our view that the existing defence in s117(4) is appropriate, in that it provides a mechanism of natural justice. But, the ability to claim that a parent had authorised another to supply alcohol to a child could perhaps be tightened, after wider consultation, to make it only a defence if the authorisation was in writing and duly signed and that the written authorisation was in the possession of the defendant at the time the liquor was supplied (so that it clearly pre-dated the offence). Thus, an offence wouldn't be committed if each criterion was met.

This issue is also related to **Terms of Reference (c)**:

(c) whether 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.

2.4.2 The major difficulty is that s117(4) also attempts to preclude the supply of liquor, to a minor on any unlicensed premises, by persons other than a parent, guardian or another adult authorised by them. This provision is unambiguous, but unlike on licensed premises, it remains hard to enforce due to the inability to pry into or supervise activity in private premises, and particularly homes.

Government involvement into activities in private homes would not only be seen as unwanted interference but would be virtually ineffective due to a correctly perceived inability to enforce any ramped-up laws. However, the staging of functions in community halls and similar premises should be considered by the Inquiry for a greater level of supervision and control.

2.4.3 It is our view that the Inquiry should consider the benefit that may accrue if all hall hiring contracts were to include a requirement that whenever there is a likelihood of liquor being consumed (rather than only supplied) at any function attended by unaccompanied minors, that the responsible hirer must engage the services of two security personnel for each of any anticipated one hundred attendees and that the security personnel must hold current Responsible Service of Alcohol (RSA) accreditation and be proactively responsible for monitoring consumption and behaviour at the function.

Given that most public halls are owned or operated by local government bodies and community organisations, it would be possible that this legislative amendment, or similar, be a stipulation in all hiring documentation, rather than relying solely on the whim or decisions of the hall owner/operator. It would also bring public halls more into line with the RSA practices which are now the norm at licensed premises.

2.4.4 We believe it would be a useful and practical recommendation if the Inquiry was to accept that the provisions of s117(4) were not only strengthened but reinforced as part of (but not the main feature of) a public education campaign.

2.5 Supply and consumption in parks and public places

2.5.1 While the declaration of alcohol free zones (and alcohol prohibited areas) and publicly displayed signage throughout many local government areas has had some affect in reducing consumption in public places, community experience shows that more can and needs to be done.

2.5.2 In most instances, where public parks, some coastal and beach areas and playgrounds have become popular drinking spots for those who cannot gain access to licensed premises, it would seem the most appropriate remedy is more frequent attention by police patrols, which we recommend.

2.5.3 The Fahey Government initiative, as a response to increasing public concern about the perceived level of crime, particularly violent crime, occurring in the community saw the introduction of *The Children (Parental Responsibility) Act 1994* which gave police the power to remove from a public place an unsupervised child, who they believed on reasonable grounds to be of, or under 15 years of age, and escort the child to its parent's home or another guardian or a place of refuge, in cases where police considered such action may reduce (a) the likelihood of a crime being committed or (b) the child being exposed to risk.

While there were some misgivings about sections of the Parental Responsibility Act (and also with amendments made by a subsequent government), we believe the time is now ripe for a review of the provisions of that Act, and for amendments to be made to include:

- (i) children up to the age of 18;
- (ii) monetary penalties, both for offenders and for wilful neglect by defaulting parents (and where non-payment would preclude future re-registration of motor vehicles);
- (iii) state-wide application (rather than prescribed locations) and the direct involvement of Child Welfare specialists to review the family situation in each case;
- (iv) non-discretionary and reasonable force powers of detention, removal and escort for police;
- (v) underage drinking in public places being included as a defined trigger mechanism.

The introduction of and greater reliance on the above listed revised provisions would also need to be linked with gaining greater Police Force acceptance prior to settlement of the terms of the amendments we suggest.

These enhanced provisions, coupled with existing powers related to secondary supply of alcohol, would receive overall community acceptance and support, notwithstanding the anticipated criticism from some with a civil libertarian bent.

3.0 Submission - Terms of Reference (d)

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

3.1 Earlier in this submission we have addressed either the lack of community understanding but more so the lack, amongst some in the community, of a willingness to accept the various responsibilities related to the provision of alcohol to minors.

There already exist a number of public education initiatives which, in various ways and with varying degrees of success, attempt to deal with wider public acceptance. Some examples are:

3.2 DrinkWise Australia

3.2.1 DrinkWise Australia was established in 2005 with \$5M funding from the Federal Government as announced by the then Parliamentary Secretary to the Minister for Health and Ageing, the Hon Christopher Pyne MP. It is now voluntarily funded by the alcohol industry. The Chair is the Hon. Trish Worth, also currently a member of the Board of Management of the National Centre for Education and Training on addiction. Six out of thirteen members of the DrinkWise Board are representatives from within the Australian alcohol industry, including a nominee from the Australian Hotels Association's National Board.

DrinkWise Australia's corporate philosophy is underpinned by an agenda directed at cultural change. It aims to create a safer and more responsible drinking culture in Australia.

Its national education campaigns are supported by a variety of community engagement programs across Australia and include strategic collaboration with public figures and influential Australians. Ambassadors include Professor Ian Hickie of the Brain and Mind Institute, various sporting legends from The Sports Australia Hall of Fame, leaders from Government and the public service, and prominent physician and TV personality Dr Andrew Rochford.

3.2.2 Campaigns such as the 'Kids and Alcohol Don't Mix' strategy and 'Kids Absorb Your Drinking', are Drinkwise initiatives directed towards engendering generational change in attitudes to alcohol.

The 'Kids and Alcohol Don't Mix' campaign was developed to encourage and support parents to delay their children's introduction to alcohol and based on research which suggests alcohol can affect the developing adolescent brain.

In a federal government marketing and communications study, respondents maintained that the 'Kids Absorb Your Drinking' campaign was the most recalled of thirty popular mass-media advertisements.

3.2.3 All these endeavours are correctly aimed at empowering parents to positively influence their children's future drinking behaviour so that the next generation considers

intoxication as unhealthy and undesirable. All have received acclaim for their success and are appropriate within the overall strategy of public education and preventative frameworks.

But, they very much rely on the good sense of people to accept the seriousness of the messages and the personal consequences of non-adherence. Another limitation is that they generally do not refer to (or rely on) relevant sections of state and territory liquor law.

3.3 Public health messages

3.3.1 There have also been health-based campaigns and other advertising which suggest that 'x' number of drinks for men and 'y' number of drinks for women constitutes binge drinking and have a detrimental consequence on youth development and personal health.

Again, these rely on people accepting (which many don't) that high consumption equates (a) to binge drinking and (b) that it is detrimental to their health.

3.3.2 While we believe there is a place for these messages, that they have proved to be relatively effective and our industry vigorously supports them, sadly the people in society who need to accept these messages and adjust their consumption and/or behaviour are those who are most unlikely to do so. As with the DrinkWise campaigns (and for the same obvious reasons), these messages also fall short of referring to the requirement that citizens - and especially the young - must comply with liquor and 'summary offences' law.

3.4 Complementary Messaging

3.4.1 The Terms of reference (d) question whether there is '*broad community understanding*' regarding the provision of alcohol to minors. The AHA (NSW) view is that an additional question should be posed:

Whether there is an adequate level of community acceptance of the laws related to the provision of alcohol to minors.

3.4.2 Our experience is that there is broad understanding of the laws related to the provision of alcohol to minors but not complete or satisfactory knowledge of the finer detail of those laws. Together with that, it is our observation that some people have little or no desire to know or accept the relevant laws and this shortcoming applies to parents as well as young people.

3.4.3 Public Education

It is because of those observations, and the experience of our members who are at the coalface of the problem, that we are of the firm belief that a public education campaign would result in a far wider understanding and eventual acceptance of the relevant laws related to (a) the provision of alcohol to minors and (b) the consumption of alcohol by minors, particularly in other than on-premise settings.

3.4.4 In this regard, we caution that this education must only relate to the relevant laws of the State and not be cocooned as part of any health-warning message.

We also suggest, based on industry experience, that the campaign should be in the form of TV advertisements which need to be well-placed at times and in programs which attract the target demographic, i.e., during reality and talent quest shows popular with young people; during rugby league telecasts and music-video programs, etc and that they should be factual with only a minimal ingredient of humour.

As was experienced in the TV advertisements which ran prior to the introduction of smoking bans inside licensed premises, greater impact and success will be achieved if the advertisements are 'fronted' by an identity (or more than one) who is both popular and respected amongst the target community.

3.4.5 Perhaps a survey will be needed to gauge who is sufficiently authoritative but still respected amongst teenagers (and their parents). The question maybe: "Who is Australia's equivalent to David Beckham ?". Could it be the eventual winner of "The Voice" or might it be the most popular of our medal winners at the London Olympics ? And then, of course, the question will be, "What is their past record and do they carry any unwanted any 'baggage' ?

Although we are not in a position to provide all the answers in this submission, we believe that to get the message across, a long-running campaign will be the most effective way to tackle the lack of knowledge but more so the lack of willingness to accept the law. It will then need to be backed-up with on-the-ground effective and noticeable enforcement.

4.0 Conclusion

4.1 It is worthy of emphasis that in licensed premises in NSW, alcohol consumption by minors is prohibited. That legislative requirement is continually and rigidly enforced by licensees, many of whom are AHA (NSW) members. The thrust of this submission is that the same principle and the same level of enforcement must apply and become more widely accepted in other public situations where alcohol is likely to be consumed without the same level of direct supervision.

[Refer Summary of recommendations, next page]

5.0 Summary of Recommendations

5.1 The AHA (NSW) asks the Inquiry to consider and accept the following recommendations in this submission:

- that the Liquor Act definition of 'minor' should remain unchanged
 - para 2.1.1
- that the Liquor Act definition of 'responsible adult' should remain unchanged
 - para 2.1.2
- that the provisions related to 'undesirable products' in the Liquor Act should remain
 - paras 2.1.3 and 2.1.4
- that the Inquiry review the provisions [at s114] of the Liquor Act in relation to sale of alcohol over the internet and its receipt on delivery be better restricted to persons above 18 years of age
 - para 2.1.5
- that the inquiry recommends the extension of the offence provisions and monetary penalties in s124 & s 126 for allowing minors on licensed premises (including bottleshops)
 - paras 2.1.6
- that the inquiry similarly recommends the extension of the offence provisions for attempting or actually entering licensed premises
 - para 2.2.2
- that the Inquiry seeks the view of Police and examines how the provisions of s118 of the Liquor Act can be more readily enforced
 - para 2.1.9
- that the defence provisions in s117(4) of the Liquor Act be tightened
 - para 2.4.1
- that hire contracts for functions in community halls include a requirement to engage RSA-accredited security personnel
 - para 2.4.3
- that the provisions of s117(4) were publicly reinforced as part of a public education campaign
 - para 2.4.4
- that police patrols of public parks, etc be increased
 - para 2.5.2
- that the Inquiry recommend a review of *The Children (Parental Responsibility) Act 1994* and include the recommended additional provisions
 - para 2.5.3
- that the Inquiry recommends a targeted TV advertising campaign
 - paras 3.4.3 to 3.4.5

[ends]