

PROVISION OF ALCOHOL TO MINORS

Organisation: Shannon Donaldson Province Lawyers

Name: Mr Adair Donaldson

Position: Partner

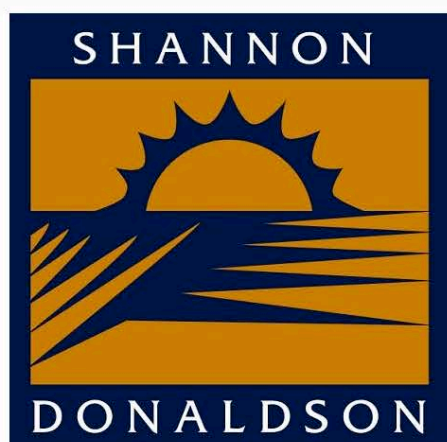
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PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE ASSEMBLY
SOCIAL POLICY COMMITTEE

INQUIRY INTO THE PROVISION OF ALCOHOL TO MINORS

SUBMISSION BY ADAIR DONALDSON



Province Lawyers

BACKGROUND

Adair Donaldson is a partner at Shannon Donaldson Province Lawyers in Toowoomba and a Director of Province Promotions.

In addition to being a legal practitioner, he is also the creator of the acclaimed "Putting Youth in the Picture" resource that is designed to focus on the legal consequences of people's behaviour. The resource uses highly interactive visual resources as well as real life examples to assist young people and parents to understand the consequences of their behaviour.

In October 2011 the Department of Education, Employment and Workplace Relations, the National Rugby League and the Indigenous Employment Alliance provided funding to make the "Putting Youth in the Picture" resource available to every secondary school, TAFE, university residential college, sporting club and community organisation in Queensland. Presently there are more than 300 organisations using the resource. One of the modules in the training resource deals with an underage party with the focus on the consequences of failing to take reasonable care when hosting a party. The resource is aimed at educating youth and their parents.

Funding has also recently been confirmed through the National Rugby League and Charles Sturt University to make the resource available for the whole of New South Wales.

TERMS OF REFERENCE

- A. Whether the 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.

A summary of the laws in the other States with respect to the supply of alcohol to a person under the age of 18 are summarised in the following table.

	Supply of liquor to minors
QLD	S 156A <i>Liquor Act 1992</i> : an adult must not supply alcohol to a minor at a private place unless the adult is a responsible adult for the minor.
VIC	S 119 <i>Liquor Control Reform Act</i> : a person cannot supply alcohol to a minor in a private home without parental consent.
TAS	<i>Sale or Supply of Alcohol to Youths (Police Offences Act 1935)</i> : a person cannot supply minor with alcohol on private property unless they are a responsible adult (parental rights and responsibilities) or has the permission of the responsible adult and supplies it in a responsible manner.

The legislation is aimed at preventing the irresponsible consumption of alcohol by minors.

Unfortunately, the legislation is difficult to police primarily due to the onus in proving that alcohol has been “*supplied*”. In the majority of situations where minors are consuming alcohol, alcohol is not being “*supplied*” rather a “*venue*” is provided to “*consume*” alcohol.

There are no laws in Australia that prohibit private premises being made available for minors to consume alcohol. For example, if a person hosted an event where minors consumed alcohol, then provided they did not “*supply*” alcohol they are not committing an offence. As a result, the majority of the underage private events are BYO.

Consideration needs to be given as to whether the legislation requires amendment which would make providing premises for minors to consume alcohol an offence.

- 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.**

It is appropriate that concessions are allowed for the parent or guardian of the minor to make reasonable decisions with respect to when, how and if they choose to introduce alcohol to their children.

The Tasmanian legislation is the most progressive legislation in addressing this issue. It recognises that the supply needs to be consistent with the responsible supervision of youth. (Refer to the submission made by Ms Deborah Salter to this Inquiry on behalf of the Department of Police and Emergency Management, Tasmania).

Unfortunately, in NSW the consequences of a parent/guardian not providing proper supervision is not sufficient to act as a deterrent. A summary of the laws in Australia with respect to civil liability (including NSW) is as follows:

	Duty of care for intoxicated persons
QLD	S 47 <i>Civil Liability Act 2003</i> : a person is deemed to be contributory negligent for any injury or damaged caused when intoxicated.
NSW	S 50 <i>Civil Liability Act 2002</i> : courts will not award damages for injury sustained or damage to property by a person when intoxicated unless the injury or damage to property would have occurred regardless of intoxication.
VIC	S 14 <i>Wrongs Act 1958</i> : when awarding damages for personal injury or damage to property the court must take into consideration whether the plaintiff was intoxicated so as to reduce the amount of damages for contributory negligence.
TAS	S 5 <i>Civil Liability Act 2002</i> : there is a presumption of contributory negligence where a person is intoxicated and sustains injury or damage to property.

Currently in NSW owners of private premises are able to use the *Civil Liability Act 2002* as a shield to protect them from being held liable for their irresponsible behaviour.

It is the writer's opinion that rather than amending the *Liquor Act 2007* to address this issue, amendments should be made to the *Civil Liability Act 2002* to enable minors to claim damages for injuries suffered whilst intoxicated if it is found that the host of the event did not take "reasonable care". This places the onus and responsibility on the owner of the property. This would bring the NSW legislation in line with the other States.

It should be emphasised that provided that the owners take "*reasonable care*" then it will be difficult for a claimant to succeed. Under the current legislation there is no incentive to take "*reasonable care*" as the owner is protected by the legislation.

- C. The defence against prosecution for an offence of providing liquor to a minor if it is provided that the defendant was authorised by the minor's parent or guardian to supply liquor to the minor, remains appropriate.**

No comment

- D. There is a broad community understanding of the rights and responsibilities of parents, guardians and responsible adults regarding the provision of alcohol to minors.**

Over the last 7 years I conservatively estimate that I have delivered training sessions on the risks associated with alcohol related events to more than 20,000 young adults and parents. Based on this experience, my strong opinion is that there is general ignorance with respect to the understanding of the rights and responsibilities of parents, guardians and responsible adults regarding the provision of alcohol to minors.

Unfortunately, past and current awareness campaigns have simply focused on the premise that providing alcohol to minors is illegal – no exceptions. That is not the law. The focus rather should be on ensuring that parents are making responsible decisions with respect to minors consuming alcohol. It has been our experience that

rather than taking a “blame alcohol” approach that the focus should be on the consequences of irresponsible behaviour.

Governments point to social marketing campaigns as evidence that the government is educating parents and youth. Invariably these take the form of internet campaigns or advertising campaigns which are traditionally health focused. Whilst well meaning I believe that they have little affect. Instead the focus should be on providing training support to those dealing directly with youth and their parents. For example, funding should be made available to school based youth health nurses, teachers, youth workers, crime prevention officers etc who are able to address the issues locally and face to face. The writer is aware from working closely with frontline workers that they have great difficulty securing funding despite their desire to proactively address these issues.

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.

No comment.

F. Any other related matters.

Licensed premises are governed by the tightest regulations and are heavily policed. Licensees know that if they do not comply with the regulations they will be subject to fines and can potentially be held liable for civil claims. In contrast the owner of a private residence can provide their property as a venue for a BYO underage alcohol event without the risk of breaching the *Liquor Act 2007*, licensing laws and civil litigation.

Unfortunately it follows that the unacceptable attitudes and expectations that the minors are forging at underage events are exposing them to adverse consequences when they reach 18 years of age. Many youth are finding themselves in trouble with the law as a result of behaving in a manner that they have become accustomed to at underage events that is totally unacceptable in public or on licensed premises.

Adair Angus Donaldson
LL.B., B.Bus (R.P.V.A), LL.M