



Professor Ian Harper
Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600
contact@competitionpolicyreview.gov.au

Dear Professor Harper

Competition policy must defer to the public interest in minimising harm in the case of alcoholic beverage sales and service: Submission to the National Competition Policy Review

Introduction. I welcome the opportunity to submit to the Competition Policy Review, responding to the Panel's draft report. I am a professor at the University of Melbourne in Social Alcohol Research, and I head a research group, the Centre for Alcohol Policy Research, at Turning Point, Eastern Health. I have worked in research on alcohol and other drugs in five countries over the last half-century.

Competition, externalities and "demerit goods". This submission is primarily concerned with the potential adverse effects concerning problems from alcohol consumption of the recommendations in your draft *Competition Policy Review*.

However, the points concerning alcohol in this submission should be set in a broader frame of how competition policies should deal with governmental actions concerning items of consumption where the price or other dimensions of availability of the product do not reflect the full cost. Various terms have been used by economists to refer to this situation, in discussing potential remedies: that there are "externalities", costs not taken into account in the consumer's choice; that the product is a "demerit good"; and (more controversially) that the consumer's decision in the moment to purchase and consumer does not reflect

School of Population Health and Department of Public Health
The University of Melbourne Victoria 3010 Australia
T: +61 3 8413 8430
F: +61 3 9416 3420
E: RobinR@turningpoint.org.au
W: www.sph.unimelb.edu.au

his or her longer-term interest – that s/he has imperfect information or time-inconsistent preferences.¹ The main emphasis in the present discussion is on externalities, harms to others that can result from purchase and consumption of a consumer product. For alcohol, while the costs to governments from alcohol-induced social and health problems are substantial, the costs in Australia to specific others – members of the drinker’s family, friends, co-workers and passers-by – are greater.² The harms that these costs reflect are a strong argument that alcohol should be treated as a special commodity, and regulated in ways which are not justified for consumer products in general.

Alcohol is among a number of “demerit goods” to which governments apply special excise taxes (in economists’ terms, Pigouvian taxes), often in part to gently discourage consumption. But alcohol also has some special characteristics beyond such other goods as gambling or tobacco smoking, in that consumption of it affects motor skills, reasoning and judgement. Thus drinking has potential negative implications not only for the drinker, but also for those around him or her. It has therefore been common practice for governments throughout recorded history to influence or control when, where, and under what circumstances alcohol is sold or consumed. In every Australian jurisdiction, since the time of British settlement, there have been a variety of regulatory restrictions affecting time, place and manner of sale and consumption of alcoholic beverages. Many of these restrictions have already been weakened or swept away under the influence of the National Competition Policy. Your current Draft Report proposes to continue and augment this process.

Choices for governments in dealing with demerit commodities. Australian governments have used a variety of strategies to deal with the marketing and consumption of “demerit goods”. The most extreme, used for example for controlled drugs such a heroin and cannabis, is to forbid a particular product to be sold or even to be used (even though consumers may have a strong interest in purchasing and using them), and to criminalise sale or use. Governments thus often forbid and criminalise particular forms of consumption (with varying degrees of success), but your report does not seem to consider that these very coercive forms of government interference in the market would fall within the realm of policies to be weakened or abandoned in the interest of maximising

¹ McCormick, B. et al., (2007) Economic costs of obesity and the case for government intervention. *Obesity Reviews* 8(Suppl. 1):161-164.

² Laslett, A.-M. et al. (2010) *The Range and Magnitude of Alcohol’s Harm to Others*. Canberra: Alcohol Education and Rehabilitation Foundation. <http://www.fare.org.au/wp-content/uploads/2011/10/The-Range-and-Magnitude-of-Alcohols-Harm-to-Others.pdf>

competition, even though legalising the substance would certainly increase competition in selling it.

Governments also take less extreme steps to discourage particular forms of consumption and associated behaviour. Often these steps are taken in the case of commodities which can be seen as having some social or personal utility, but which are also associated with substantial harm, whether to the consumer or to others around the consumer. One such type of measure limits the behaviour associated with the consumption. Thus smoking is now forbidden in restaurants and pubs, a regulation which restricts the terms of competition of these establishments. Drink driving measures criminalise and will punish someone who drives a car after having consumed more than a certain limit of alcohol or other drugs. Or the citizen may be singled out for special treatment with respect to the consumption item, such as a “liquor ban” which excludes the consumer from the pubs in a certain district, or a restriction of a particular person’s social benefits so that they cannot be spent on alcohol. Again, your report does not seem to see these kinds of market restrictions as falling within its mandate to review.

There are other less coercive means through which governments seek to limit harms from such products as alcoholic beverages, through general restrictions on market availability. These can and do take various forms. Apart from excise taxes in part as a means to gently discourage consumption, there are temporal or geographic restrictions such as limitations of the number and locations of alcohol licenses to restrict harm from drinking or discourage purchases; and limits on hours of sale or service to restrict harm from drinking. So long as alcoholic beverages are regarded as just another commodity like soap or bread, under Australian competition policies – and in your draft report – such spatial and temporal availability restrictions are regarded as illegitimate restrictions on competition.

Given the harms which result from alcohol consumption, to remove the ability of governments to use these kinds of “nudging” market restrictions³ as instruments of policy will force governments back on measures directed at punishing or controlling individuals singled out as having failed in their duty to act responsibly while drinking or drunk. Going further in this direction is highly problematic, on three grounds. First, such punitive measures are often ineffective. The Australian history of high rates of arrests for public drunkenness, for instance, has provided two centuries of evidence that such measures are not effective deterrents, particularly for segments of society

³ Thaler, R.H. & Sunstein, C.R. (2008) *Nudge: Improving Decisions about Health, Wealth and Happiness*. London: Penguin

which have little to lose. Second, singling out drinkers for individual attention, whether from the justice system or welfare or treatment authorities, inevitably carries a substantial stigma. In a society with a cultural emphasis on individual responsibility, such official or professional attention is taken as a sign of moral failure of the individual.⁴ Third, such individual-attention approaches are much more expensive to governments and economically inefficient than controls on the market.

There are thus strong ethical reasons for preferring regulatory strategies which restrict and structure physical availability of alcohol without singling out individual consumers to be subjected to these coercive and stigmatising strategies. These regulatory strategies are also preferable because they are more economically efficient and because, as noted below, they have a history of effectiveness.

Alcohol and free-market reforms: a sobering record. In terms of rates of social and health problems from alcohol in Australia, the National Competition Policy and its implementation has been a disaster. In Victoria, for instance, a series of public inquiries, the most recent specifically in order to put the state more in compliance with competition policy,⁵ have resulted in greatly increased numbers of places selling alcohol, and substantial increases in hours of sale and service of alcohol. These changes have apparently not resulted in much increase in the amount of alcohol sold, served and consumed in the state. But along with the changes in availability have come very substantial increases in social and health harms from alcohol. In Victoria from 2000 to 2008, for instance, in a period when the number of alcohol licenses almost doubled, alcohol-related domestic violence attended by the police rose 43%, weekend night-time assaults rose 49%, treatment episodes for alcohol intoxication rose 55%, emergency department presentations for intoxication incidents were up 98%, and alcohol-involved ambulance presentations were up 167%.⁶ The increases in availability have made each litre of alcohol sold on average more harmful. Local authorities, police and emergency health services have had to struggle with such issues as unprecedented rises in trouble, largely alcohol-related, late at night, and problems from “cumulative impact” of concentrations of alcohol outlets.

⁴ Room, R. (2011) Addiction and personal responsibility as solutions to the contradictions of neoliberal consumerism. *Critical Public Health* 21(2):141-151; Room, R. (2005) Stigma, social inequality and alcohol and drug use. *Drug and Alcohol Review* 24:143-155.

⁵ Room, R. (2010) The political response to alcohol and drug advice in Australia: Comparing the response to two expert reports. *Contemporary Drug Problems* 37:525-535.

⁶ Livingston, M. et al., Diverging trends in alcohol consumption and alcohol-related harm in Victoria. *Australian and New Zealand Journal of Public Health* 34(4):368-373, 2010.

There have been repeated periods in British and now Australian society over the last three centuries when free-market ideologies have resulted in periods of oversupply of alcohol, with alcoholic beverages cheap and available on every street corner, and a substantial adverse effect on the health and safety of the people. The “gin epidemic” in 18th-century England was eventually brought under control by legislation licensing and restricting sales. The abolition of beer licences in early 19th century England brought another period of burgeoning social problems, to which the temperance movement and restrictive licensing laws were eventual answers.⁷ In Victoria in the early 1900s, the Liquor Licence Reduction Board bought out and closed down half the hotels in the state as an effective means of reducing rates of alcohol problems. In the 1910s, popular votes in four states imposed 6 o’clock closing on hotels, and as late as 1956 a majority of Victorian voters opposed bringing in longer opening hours.⁸ Weakening restrictions on alcohol sales is generally not a popular policy,⁹ for good reasons.

The effectiveness of regulation of number, type and location of outlets and of times of sale. There is a substantial international literature documenting the effectiveness of such measures in reducing rates of alcohol-induced problems,¹⁰ as well as recent Australian evidence of the effectiveness of limits on numbers of licenses¹¹ and on hours of sale¹² in keeping down rates of alcohol-induced health and social problems. There is thus ample evidence that the proliferation and location of alcohol sales points, and restrictions on hours and days of sale, affect rates of social and health problems from drinking in a community. Such measures can act not only through limiting the amount of drinking, but also through affecting the circumstances of drinking. For

⁷ Nicholls, J. *The Politics of Alcohol: A History of the Drink Question in England*. Manchester & New York: Manchester University Press, 2009.

⁸ Room, R. (2014) Regulating Australian alcohol markets for public health and safety. In: Manton, E. et al., eds., *Stemming the Tide of Alcohol: Liquor Licensing and the Public Interest*, pp. 3-8. Canberra: Foundation for Alcohol Research and Education.

⁹ Callinan, S. et al. (2014) Changes in Australian attitudes to alcohol policy: 1995-2010. *Drug & Alcohol Review*, 33(3):227-234.

¹⁰ Babor, T. et al. (2010) *Alcohol: No Ordinary Commodity - Research and Public Policy*. 2nd ed. Oxford, etc.: Oxford University Press.

¹¹ Livingston, M. (2013). To reduce alcohol-related harm we need to look beyond pubs and nightclubs. *Drug and Alcohol Review* 32(2):113-114.

¹² Kypri, K. et al. (2014). Restrictions in pub closing times and lockouts in Newcastle, Australia five years on. *Drug and Alcohol Review* 33(3):323-326.

instance, beside the issue of overall density, the clustering of pubs and clubs, with drinkers moving back and forth between them, can affect rates of harm.¹³

Limits on the time and place of selling alcohol can affect the rates of occurrence of harms from drinking regardless of the reasons that the limits have been adopted. From the point of view of public health and safety, the restriction on competition in Western Australia cited on p. 76 of the Draft Report, that “packaged liquor can be sold by hotels ... on Sunday, but not by specialist packaged liquor stores”, may well have been decided this way from a mixture of motives, some of which may have been anti-competitive. But the research evidence suggests that such a restriction is probably reducing health, social and amenity harms from alcohol,¹⁴ and evidence that this is the case should take precedence in terms of what would serve “the long-term interests of consumers”.

A primary means by which governments have acted in these areas are through local zoning and planning rules. Local governments are best situated to evaluate and adjudicate the competing claims of neighbourhood nuisance and harm against commercial benefit or consumer convenience. Their powers in these areas have been stripped back in the competition policy era, and are only just beginning to regain some sense of balance.¹⁵

Alcohol sales licensing as an instrument for public health, safety, and amenity.

A further mechanism that governments have used to restrict rates of alcohol problems is through licensing sellers, servers and others involved in customer service of alcohol. A licence to sell alcohol involves a bargain between the trader and the state: the seller is permitted to sell alcohol, in return for holding to a series of standards on service that are designed to hold down problems from drinking – for instance and notably, refusing to serve someone who is already drunk, even though the sale would usually be in the seller’s commercial interest.

Such a bargain works best, from an alcohol policy view, when the licence gives its holder a somewhat privileged position in the market – so that those who hold the licences collectively constitute a weak oligopoly. This, along with the fact of licensing, means that the licence-holder will lose financially if their licence is suspended or removed for failure to conform to the regulatory

¹³ Livingston, M. et al., (2007) Changing the density of alcohol outlets to reduce alcohol-related problems. *Drug and Alcohol Review* 26:557-566.

¹⁴ Babor, T. et al. (2010) *Alcohol: No Ordinary Commodity - Research and Public Policy*. 2nd ed., pp. 134-136 Oxford, etc.: Oxford University Press.

¹⁵ See chapters 4-10, 16-18 in: Manton, E. et al., eds., *Stemming the Tide of Alcohol: Liquor Licensing and the Public Interest*. Canberra: Foundation for Alcohol Research and Education.

standards. The ready availability of alcohol licences in the current era of deregulation (and the laxness of current Australian governments in enforcing the standards) have weakened the bargain by largely removing the benefit from holding the licence, freeing the seller to pursue naked commercial interest regardless of potential resulting harm.

Implications for the Panel's recommendations. Alcohol is thus a special commodity which needs to be treated differently from other commodities as an item for sale and consumption.

(1) Alcohol is an extremely hazardous commodity – hazardous not only to the drinker, but to others. In societies like Australia, the familiarity of it as an everyday item of consumption means that governments and consumers have paid too little attention to the extent of risks its consumption involves.¹⁶

(2) There are regulatory measures which are within the scope of and threatened by the competition policy review which have proven effectiveness in reducing rates of alcohol problems by restricting or structuring alcohol's availability for sale or service.

(3) These regulatory measures are usually more effective and cost-effective than the alternative of singling out, threatening and punishing or controlling individual drinkers, and are ethically more attractive by avoiding stigmatisation.

(4) For these reasons, the Report should be altered by exempting alcohol sales from the Report's recommendations and views on regulatory restrictions.

Recommendation 51: retail trading hours (p. 67); and the Panel's view on p. 106: These should be rewritten to make clear that governmental restriction of hours of sale of alcoholic beverages should be permitted. The statement on p. 68 concerning supermarkets selling liquor, "The panel recommends ... that retail trading hours be fully deregulated" should be removed.

Panel's view on regulatory restrictions (two boxes on p. 79, and box including Licensing requirements on p. 100): on grounds of the substantial harms to the drinker, to other individuals, and to the community linked to alcohol consumption, restriction of competition in alcohol sales should be allowed. Indeed, limited restrictions should be encouraged to increase the

¹⁶ Rehm, J. et al. (2014) Acceptable risk? Why does society accept a higher risk for alcohol than for other voluntary or involuntary risks? *BMC Medicine* 12:189. <http://www.biomedcentral.com/1741-7015/12/189>.

attractiveness of holding an alcohol license, which will provide an economic incentive for conforming to regulatory restrictions on sales. Given the substantial harms which have been shown to occur with increases in liquor sales outlets, the paragraph on p. 68 which begins “Trade restrictions and restriction preventing supermarkets from selling liquor” should be deleted.

Liquor and gambling regulation (pp. 108-109): the test set out in the Panel’s view (p.109) for such regulations is “that they are meeting their stated objectives at least costs to consumers”. This is an inappropriate test for liquor regulations. Australian governments have uniformly accepted that cost to the consumer is only one of a number of considerations in government alcohol policy, as shown by the fact that extra excise taxes are collected on alcoholic beverages, which increase costs to consumers. From the point of view of public health and order, the balancing test should not be in terms of the “stated objectives” of the regulations, but rather of their effectiveness (whatever the stated objectives) in minimising the harms from drinking, and particularly the harms to particular others and to the community, including community amenity.

The test for retention of a regulation that “no other way of achieving their purpose exists that is less damaging to competition” (Panel’s view on p. 79 and elsewhere) needs to be rethought and restated. The harms to health, safety and community amenity which regulations on the alcohol market seek to minimise are inherently complex and multi-causal, and the test the Panel proposes would only work appropriately in a much simpler world. For a commodity which as widely used and intertwined in the culture as alcohol in Australian society, experience shows that there will always be an argument that there is some other way (for instance, consumer education) which might have an effect, and the idea that this can serve as an alternative will often be used to invoke so rigid a test as the Panel proposes in reviews or adjudications.^{17,18}

¹⁷ E.g., by the alcohol inquiry report discussed in: Room, R. (2010) The political response to alcohol and drug advice in Australia: Comparing the response to two expert reports. *Contemporary Drug Problems* 37:525-535.

¹⁸ O’Brien, P. (2013) Australia’s double standard on Thailand’s alcohol warning labels. *Drug & Alcohol Review* 32(1):5-10.

Thank you again for the opportunity to make this submission. I would be pleased to follow up with you on any matters on which you would like more information or discussion.

Sincerely,

A handwritten signature in dark ink that reads "Robin Room". The signature is fluid and cursive, with the first name "Robin" and the last name "Room" clearly distinguishable.

Robin Room, PhD

Professor of Social Alcohol Policy
Melbourne School of Population and Global Health
University of Melbourne. Carlton, Victoria

Director, Centre for Alcohol Policy Research
Turning Point Alcohol & Drug Centre
54-62 Gertrude St., Fitzroy, Victoria 3065