

17 November 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Submission from the National Alliance for Action on Alcohol (NAAA)

On behalf of the National Alliance for Action on Alcohol (NAAA), we are writing to provide a submission to the Competition Policy Review's *Draft Report* that was released on 22 September 2014.

The NAAA is a national coalition representing more than 75 organisations from across Australia that has formed with one common goal: strengthening policy to reduce alcohol related harm. The NAAA's members cover a diverse range of interests, including public health, law enforcement, local government, indigenous health, child and adolescent health and family and community services. A full list of our members is attached (Appendix 1).

1. SUMMARY

We wish to thank the Competition Policy Review Panel for considering our earlier submission to the *Issues Paper*, and we welcome some of the views formed by the Competition Policy Review Panel, as stated in the Draft report:

“The risk of harm to individuals, families and communities from problem drinking and gambling provides a clear justification for regulation”¹

The NAAA strongly supports this view, for the following reasons:

- (i) Alcohol is not an ordinary commodity; it is a product that causes significant harms and costs to the community.
- (ii) The benefits as a whole from regulating access to alcohol outweigh the costs of reducing competition in the market that supplies alcohol.
- (iii) Regulating access to alcohol with the objective of minimising harm can only be achieved by restricting the economic and physical availability of alcohol. This justifies the controls that may otherwise be seen as anti-competitive.

¹ Competition Policy Review. *Draft Report*. The Treasury. Commonwealth of Australia. Canberra. 17 September 2014. Page 109

- (iv) Alcohol should be considered in the same category as other harmful products such as tobacco where restrictions which limit competition are, rightly, justified in the interests of public health.

Notwithstanding the Panel's acknowledgement that there is a clear justification for regulating liquor, we are deeply concerned about the implications of the Panel's suggestion that "there is no case to exempt regulations in these areas from ongoing review to ensure that they are meeting their stated objectives at least costs to consumers".² We strongly disagree with this view, given that the overwhelming weight of evidence shows that the progressive deregulation of liquor in Australian jurisdictions over the past two decades has coincided with escalating rates of alcohol problems in their populations, coming at an enormous cost to the community, as we elaborate on further below.

We also wish to express our concerns specifically in relation to the Panel's draft recommendations regarding deregulation of retail trading hours of liquor outlets (#51), reviewing and potentially removing several important restrictions on liquor that are currently in place (#11), and giving greater weight to market interests over public interests in policy and decision making in the application of land use planning and zoning laws (#10). We submit our views on each of these further below.

2. THE HEALTH AND SOCIAL COST OF ALCOHOL TO THE COMMUNITY

Although alcohol is legally sold to adults and is very widely available and accepted in the community, it is important to recognise that it does have toxic properties and is an addictive substance that can have serious adverse effects on those who consume it as well as those around them. The health and social costs of alcohol to the community are wide ranging and were detailed in our first submission to the panel. Since our earlier submission, new research has been released which alarmingly shows that alcohol is responsible for 5,554 deaths and 157,132 hospitalizations in Australia every year.³ To put these numbers into context, the annual road toll in 2013 in Australia was 1,193.⁴ Alcohol affects not only the drinker but those around them and places a significant burden on health care and emergency services workers. Survey results released this month found that 92% of doctors and nurses have experienced violence or physical threats from alcohol affected patients in hospital emergency departments in the past 12 months.⁵

3. COMMUNITY BENEFITS FROM REGULATING LIQUOR

We welcome the Competition Policy Review Panel's acknowledgement in its *Draft Report* that "the risk of harm to individuals, families and communities from problem drinking and gambling provides a clear justification for regulation".⁶ The NAAA believes that the primary object of regulating liquor, which is enshrined in legislation in most Australian jurisdictions, should be to minimise the harm to the community from the misuse and abuse of alcohol.⁷ This is because alcohol is not an ordinary commodity; it is a product that causes significant harm as well as social and economic costs to the

² Ibid.

³ Gao C, Ogeil RP, & Lloyd B. *Alcohol's burden of disease in Australia*. Canberra: FARE and VicHealth in collaboration with Turning Point. 2014.

⁴ Bureau of Infrastructure, Transport and Regional Economics (BITRE), 2014, Road deaths Australia, 2013 Statistical Summary BITRE, Canberra ACT.

⁵ Australasian College of Emergency Medicine. *Alcohol Harm in Emergency Departments*. ACEM: Melbourne. 2014.

⁶ Competition Policy Review. *Draft Report*. The Treasury. Commonwealth of Australia. Canberra. 17 September 2014. Page 109

⁷ See for example, the *Liquor Control Reform Act 1998* (Vic), s 4 Objects.

community. The benefits to the community as a whole from regulating access to alcohol far outweigh the costs of reducing competition in the market.

It is our view, which is supported by scientific evidence, that the public interest objective regarding liquor regulation (i.e. to minimise harm) can most effectively be achieved by restricting the economic and physical availability of alcohol. This justifies the controls that may otherwise be seen as anti-competitive, and there are clear precedents for this approach. Alcohol should be considered in the same category as other harmful products such as tobacco where restrictions which limit competition are, rightly, justified in the interests of public health.

As set out in our earlier submission, there is a substantial scientific evidence base showing that the deregulation of liquor control following competition policy reviews has been correlated with an increase in alcohol-related harms. Evidence suggests that many of the regulations around alcohol in Australia have become so weakened over time, through gradual deregulation, that they now disproportionately favour commercial interests over the public interest and public health concerns. The NAAA is concerned that any further weakening of restrictions on the sale and supply of alcohol will worsen the already high level of alcohol-related disease and injury in the community. In forming its final recommendations to Government, we urge the Panel to ensure that there be no further relaxation of the current controls that limit the sale, supply and consumption of alcohol. Any recommendations made by the Panel which have the potential to affect the sale and supply of alcohol (including in relation to licensing, trading hours and land use planning) should be couched in terms that make it clear that alcohol is not an ordinary commodity and it should not be treated in the same way as other consumer goods, where competition policies may be more relevant.

4. COMMENTS ON DRAFT RECOMMENDATIONS

Draft Recommendation 51 — Retail trading hours

The Panel notes the generally beneficial effect for consumers of deregulation of retail trading hours to date and the growth of online competition in some retail markets. The Panel recommends that remaining restrictions on retail trading hours be removed. To the extent that jurisdictions choose to retain restrictions, these should be strictly limited to Christmas Day, Good Friday and the morning of ANZAC Day.

Restricting retail trading hours of liquor outlets is a highly effective strategy for preventing and reducing alcohol problems in the community, is widely used in Australia and is supported by a evidence-base. We consider these regulations to be of vital importance for public health and safety, and community amenity, even if the result is reduced competition. Where competition is restricted by limits on trading hours, the public benefits outweigh the costs of imposing such restrictions. Existing restrictions on liquor trading hours have arisen due to community and/or government concern about the escalating rates of alcohol-related harm in the population, and in recognition of the fact that levels of alcohol related harm occur disproportionately at certain times of day/night.

As such, the NAAA strongly submits that the Panel clarify in its final report and recommendation that the deregulation of retail trading hours should not apply to the sale and supply of alcohol. We

believe it is vitally important, for the purposes of sound public policy decision making and, in order to uphold the public interest, that Local and State/Territory governments and their agencies retain discrete powers to determine where and at what time it is appropriate for liquor to be sold in their local area/jurisdiction.

Currently in Victoria, the Ministerial guidelines concerning the granting of liquor licences to sell packaged liquor state that: “the provision of packaged liquor from licensed premises on a 24-hour basis is contrary to the aim of minimisation of harm from the misuse and abuse of alcohol and contrary to the aim of ensuring the amenity of community life”, and “in all circumstances, the extended hours for a packaged liquor licence should not extend past 12 midnight”.⁸ These policy guidelines exemplify important jurisdictional policies that are primarily motivated to minimise the harm from alcohol, rather than impose restrictions on competition. Such policies, which have a significant public health benefit, could be in jeopardy if the Panel’s draft recommendations are retained in the final report and are applied in a blanket fashion. Instead, the Panel could ensure that States are supported to apply existing policies universally, rather than restricting such policies to new license applications, as this will ensure that the effects on competition of restricting trading hours are minimised, and the community benefit in restricting the availability of alcohol is maintained.

There are several other examples throughout Australia where restrictions on the trading hours of liquor outlets directly impacts on competition, but are justifiable for public health and safety reasons. These are detailed in our previous submission and include the introduction of earlier closing times (3:00am) for licensed premises in the Sydney CBD and the CBD of Newcastle in NSW, and the introduction of a temporary freeze on granting new late night (after 1:00am) liquor licenses in the inner suburbs of Melbourne, including Stonington where the freeze is based on a sound evidence base and research that showed that a particular entertainment precinct had been saturated with licensed premises, to the significant determinant to community safety and amenity.⁹

Draft Recommendation 11 — Regulation review

All Australian governments, including local government, should review regulations in their jurisdictions to ensure that unnecessary restrictions on competition are removed.

Regulations should be subject to a public benefit test, so that any policies or rules restricting competition must demonstrate that:

- they are in the public interest; and
- the objectives of the legislation or government policy can only be achieved by restricting competition.

Factors to consider in assessing the public interest should be determined on a case-by-case basis and not narrowed to a specific set of indicators.

⁸ O'Brien M. *Decision Making Guidelines, Victorian Commission for Gambling and Liquor Regulation Act 2011 – Grant of Licenses for the Sale of Packaged Liquor*. The Hon Michael O'Brien MP, Minister for Consumer Affairs. State Government of Victoria. 7 June 2012.

⁹ City of Stonington. *C129 - Licensed Premises Saturation Provisions*. 2012 Accessed from: <http://www.stonington.vic.gov.au/residents-and-services/planning/planning-scheme-amendments/c129-changes-to-clause-2210-licensed-premises-policy-exhibition/>

Jurisdictional exemptions for conduct that would normally contravene the competition laws (by virtue of subsection 51(1) of the CCA) should also be examined as part of this review, to ensure they remain necessary and appropriate in their scope. Any further exemptions should be drafted as narrowly as possible to give effect to their policy intent.

The review process should be transparent, with highest priority areas for review identified in each jurisdiction, and results published along with timetables for reform.

The review process should be overseen by the proposed Australian Council for Competition Policy (see Draft Recommendation 39) with a focus on the outcomes achieved, rather than the process undertaken. The Australian Council for Competition Policy should conduct an annual review of regulatory restrictions and make its report available for public scrutiny.

In addition to the above draft recommendation, we also note the Panel's view that "trading hours restrictions and restrictions preventing supermarkets from selling liquor impede competition. The Panel recommends that restrictions preventing supermarkets from selling liquor be prioritised as part of the renewed round of regulatory review proposed at Draft Recommendation 11".¹⁰

We are alarmed at this view and recommendation, and we strongly oppose the sentiment and the recommendation. As stated previously, sound public policy and legislation in all Australian states and territories require that a primary object of regulating liquor must be to minimise the harm caused by the misuse and abuse of alcohol¹¹. This public interest objective can most effectively be achieved by restricting the economic and physical availability of alcohol and ensuring that venues that sell and supply liquor are only permitted in appropriate locations. This justifies the regulatory controls that may otherwise be seen as anti-competitive.

The NAAA is deeply concerned by the Panel's recommendation to remove restrictions to allow the sale of liquor within supermarkets given this will significantly increase the access and availability of alcohol in the community, both in physical and economic terms. Findings from scientific studies in Australia, and elsewhere in the world, show that increasing the access and availability of alcohol leads to increased rates of alcohol related harm in the population. For example, research in Victoria in 2011 found a 10 per cent increase in off-licence liquor outlets is associated with a 3.3 per cent increase in domestic violence.¹²

We call on the Panel to recognise that alcohol is not an ordinary grocery item; it has the potential to be extremely harmful and access to it should therefore be carefully controlled. The segregation of alcohol from ordinary supermarket goods is critical to ensure that appropriate licensing conditions and promotional restrictions can be maintained. Young people's access to alcohol, in particular, must be highly regulated, which would not be possible if liquor were to be sold within supermarkets, as these are environments where many young people work and frequently shop, often unaccompanied by an adult.

¹⁰ Competition Policy Review. *Draft Report*, page 68

¹¹ Trifonoff, A., Andrew, R., Steenson, T., Nicholas, R. and Roche, A.M. *Liquor Licensing Legislation in Australia: Executive Summary*. National Centre for Education and Training on Addiction (NCETA). Flinders University, Adelaide, SA. 2011

¹² Livingston, M. A longitudinal analysis of alcohol outlet density and domestic violence. *Addiction* 106(5):919-925. 2011

We are also concerned that allowing liquor to be sold within supermarkets is certain to increase the market domination of larger supermarket chains such as Woolworths and Coles which will lead to reduced competition in the liquor market in Australia, and see the continued use of 'loss leading' practices by these retailers, that experience has shown to result in higher consumption, including heavier drinking and underage drinking.¹³

Draft Recommendation 10 — Planning and zoning

All governments should include competition principles in the objectives of planning and zoning legislation so that they are given due weight in decision-making.

The principles should include:

- a focus on the long-term interests of consumers generally (beyond purely local concerns);
- ensuring arrangements do not explicitly or implicitly favour incumbent operators;
- internal review processes that can be triggered by new entrants to a local market; and
- reducing the cost, complexity and time taken to challenge existing regulations.

The NAAA has serious concerns regarding this recommendation and the principles listed, in so far as these threaten to undermine locally determined planning and zoning restrictions on liquor outlets. Local planning and zoning legislation provides important opportunities to uphold the public interests in decision-making on such matters as the location, size, opening hours, and trading conditions of liquor outlets. As stated previously, we believe that the primary object of regulating liquor must be to minimise the harm to the community from the misuse and abuse of alcohol. A key way for Local and State/Territory Governments to uphold the public interest objective is through planning and zoning controls that may restrict the location and trading hours of licensed premises to ensure that their development, location and operation is appropriate in the context of the particular community. This justifies the regulatory controls that may otherwise be seen as anti-competitive.

In light of the considerable evidence regarding the relationship between alcohol availability and alcohol-related harm, the NAAA strongly supports the ability of Local and State/Territory Governments to set restrictions on alcohol outlet numbers, density, size, type and opening hours through their respective liquor control and planning laws and regulations.

Currently in Victoria, the Ministerial guidelines concerning assessment of the cumulative impact of licensed premises state that: "Negative outcomes of cumulative impact can include crime, a loss of amenity, and anti-social behaviours" and that both the responsible planning authorities and the Victorian Commission for Gambling and Liquor Regulation should "consider cumulative impact when determining planning permit applications for licensed premises".¹⁴ This policy guideline exemplifies important Local and State/Territory policies that aim to minimise harm from the misuse and abuse of alcohol and is an acknowledgement of the potential for increased harm from a localised concentration of liquor outlets. The Panel's draft recommendation puts in jeopardy such

¹³ World Health Organization. *Addressing the harmful use of alcohol: A guide to developing effective alcohol legislation*. Geneva: World Health Organization. 2012

¹⁴ O'Brien M. *Decision Making Guidelines, Victorian Commission for Gambling and Liquor Regulation Act 2011 – Assessment of the Cumulative Impact of Licensed Premises*. The Hon Michael O'Brien MP, Minister for Consumer Affairs. State Government of Victoria. 7 June 2012.

considerations and may, if applied to licensing decisions, undermine Council's ability to consider broader community concerns, as well as public, health, safety and amenity issues.

5. ALTERNATIVES TO RESTRICTING THE AVAILABILITY OF ALCOHOL

The NAAA wishes to emphasise to the Panel that while there are a range of policy options for Governments to consider adopting for the purposes of minimising the harm from alcohol in the community, the most effective are those that restrict, both physically and economically, the availability of alcohol. While there are other highly effective public policy approaches to minimise alcohol-related harm including drink driving laws, health service interventions, and bans on advertising, these do not override the necessity to restrict the economic and physical availability of alcohol. Similarly, public education programs that warn about the health risks of drinking also have some potential to minimise harm, but on their own are unlikely to achieve substantial and sustained changes in drinking behaviour, particularly among young people, unless these are combined with other restrictions, including restrictions on the availability of alcohol.

The NAAA reiterates the importance of not only maintaining existing restrictions but also explicitly preserving the ability of Governments to impose further restrictions on liquor in the public interest as and when they consider appropriate. We strongly recommend that any new review or requirements of Competition Policy do not seek to impede Governments' ability to appropriately regulate to restrict the availability of a potentially harmful commodity – alcohol, and emphasis that alcohol should not be treated as other ordinary commodities.

Thank you for the opportunity to provide a submission. If you have any questions regarding our submission or require any additional information please do not hesitate to contact Brian Vandenberg, Executive Officer for the NAAA (naaa@cancervic.org.au).

Yours sincerely



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Co-Chair, National Alliance for Action on Alcohol



Mr Todd Harper

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Co-Chair, National Alliance for Action on Alcohol

Appendix 1.

Members of the National Alliance for Action on Alcohol (NAAA) as at November 2014.

- Aboriginal Medical Services Alliance Northern Territory
- Addiction Journal
- Alcohol and Drug Foundation Queensland
- Alcohol and Other Drugs Council of Australia
- Alcohol Policy Coalition (Victoria)
- Alcohol Tobacco and Other Drug Association ACT
- Anglicare Australia
- Anyinginyi Health Aboriginal Corporation
- Australasian College for Emergency Medicine
- Australasian Faculty of Public Health Medicine
- Australasian Professional Society on Alcohol and other Drugs
- Australian Chronic Disease Prevention Alliance
- Australian Dental Association
- Australian Dental Association – Queensland Branch
- Australian Drug Foundation
- Australian Health Promotion Association
- Australian Healthcare & Hospitals Association
- Australian Injury Prevention Network
- Australian Medical Association
- Australian National Council on Drugs
- Australian Research Alliance for Children and Youth
- *beyondblue*
- Byron Youth Service
- Cancer Council Australia
- Cancer Council Tasmania
- Cancer Council Victoria
- Centre for Youth Substance Abuse Research
- City of Port Phillip
- Dalgarno Institute
- Diabetes Australia
- Drug Arm
- Foundation for Alcohol Research and Education
- Hobart City Council
- Independent Order of Rechabites Fraternity (Victoria) Inc
- Independent Order of Rechabites Queensland District No. 87 Inc.
- Injury Control Council of Western Australia (Inc)
- Inner South Community Health Service
- Kidney Health Australia
- Local Government Association Northern Territory
- McCusker Centre for Action on Alcohol and Youth

- Miwatj Health Aboriginal Corporation
- National Drug and Alcohol Research Centre
- National Drug Research Institute
- National Heart Foundation Australia
- National Indigenous Drug and Alcohol Committee
- National Local Government Drug and Alcohol Committee
- National Organisation for Fetal Alcohol Syndrome and Related Disorders
- National Rural Health Alliance
- National Stroke Foundation
- Network of Alcohol and Other Drug Agencies
- OnTrack
- Pedestrian Council of Australia
- People's Alcohol Action Coalition (Alice Springs)
- Police Federation of Australia
- Public Health Advocacy Institute
- Public Health Association Australia
- Queensland Alcohol and Drug Research and Education Centre
- Queensland Network of Alcohol and Drug Agencies
- Royal Australasian College of Physicians
- Royal Australasian College of Surgeons
- Russell Family Fetal Alcohol Disorders Association
- Salvation Army – Southern Territory
- South Australian Network of Drug and Alcohol Services
- Sydney South West Area Health Service
- Tedd Noffs Foundation
- Telethon Institute for Child Health
- The University of Newcastle
- The University of Queensland
- The University of Southern Cross
- The University of Wollongong
- Turning Point Alcohol and Drug Centre
- Uniting Church in Australia
- UnitingCare ReGen
- Victorian Alcohol and Drug Association
- Western Australian Local Government Association
- Western Australian Network of Alcohol and other Drug Agencies
- Western Region Alcohol and Drug Centre