DSICA

Senate Select Red Tape Committee

The Effect of Red Tape on the Sale, Supply & Taxation of Alcohol

Submission

January 2017

DSICA

Table of Contents

DSICA

Summary

DSICA welcomes this Senate Inquiry and congratulates the Committee for prioritising the issue of red tape on the sale of alcohol.

DSICA contends that a competent, national approach to alcohol regulation should meet the dual expectations of the ability to access and consume alcohol, free of unnecessary restraint, coupled with a targeted focus on alcohol misuse and a duty of care to vulnerable Australians.

The sale of alcohol in Australia is subject to unnecessarily complex and in some cases irrational and ineffective regulation. DSICA supports regulatory approaches based on the key principles of responsible service ie ensuring that alcohol is not supplied to underage or intoxicated drinkers. Over time these key principles have been diluted by micro regulation which is not evidenced based and unnecessarily constrain outlets and individuals.

Wide-ranging reform of Australia's alcohol taxation regime is long overdue. Continued inactivity entrenches distorted consumption patterns, encourages unfair competition between the various beverage sectors, and places unnecessary administrative burdens on industry and Government alike, all of which is ultimately borne by the consumer.

DSICA believes the ideal system for alcohol tax is a single volumetric tax rate for all alcohol beverages. Such a tax supports consumers' choices and recognises that all alcohol is the same, regardless of the type of beverage. A single rate volumetric tax would be simpler, fairer, and more efficient, ending the discrimination between drinkers. DSICA recognises that transition to such a system will take some time but recommends the Government adopt the recommendations of the Henry Review:

Recommendation 71: All alcoholic beverages should be taxed on a volumetric basis, which, over time, should converge to a single rate, with a low-alcohol threshold introduced for all products. The rate of alcohol tax should be based on evidence of the net marginal spillover cost of alcohol.

Recommendation 72: The introduction of a common alcohol tax should be accompanied by a review of the administration of alcohol tax, to ensure that alcohol taxpayers do not face redundant compliance obligations.

DSICA is strongly supportive of development of a new Act which covers all administrative matters relating to excisable goods and EEGs; while Imposition Acts concerning excise duty and customs duty would remain separate, maintaining the separation between excise duty and customs duty mandated under the Constitution.[1]

In implementing this reform option, DSICA recommends that all revenue related matters should be the sole responsibility of the ATO, while border protection issues should be the responsibility of Customs.

DSICA also proposes the government abolish the five per cent ad valorem customs duty or if that is not done to allow payment of the ad valorem customs duty and excise equivalent customs duty to be split, effectively treating EEGs as excisable goods.

[1] *Australian Constitution* s 55.

DSICA

Introduction

The sale of alcohol in Australia is regulated by a plethora of federal, state and local regulation ranging from an illogical and complex tax, excise and duty system at the federal level to state liquor licencing legislation such as Queensland's 676 pages of Liquor legislation and regulations.

The existing alcohol taxation administration and regulatory systems in Australia are particularly burdensome on industry. The operation of multiple licensing regimes at state and territory level, the unjustifiable discriminatory treatment of various forms of alcohol by regulators, multiple systems for taxing alcohol and dealing with several entities creates significant costs for business – both financially, and in terms of staff resourcing.

The time and resources expended on complying with various regulatory and administrative requirements inhibits the continued growth and development of the Australian distilled spirits industry, at both a domestic and international level and unnecessarily constrains consumer choice whilst imposing unnecessary and excessive costs on consumer.

DSICA welcomes this Senate Inquiry and congratulates the Committee for prioritising the issue of red tape on the sale of alcohol.

Governments of all political persuasions have expressed the goal of reducing red tape and making it easier to do business. Unfortunately, with a few exceptions there has been little progress in reducing the complexity of regulation of alcohol sales and in fact we seem to have greater complexity with regular bolt on regulation often as a knee jerk reaction to a specific incident. This complexity DSICA believe is counterproductive in achieving public policy objectives. Poorly thought out and complex regulation is more difficult to understand, making compliance and enforcement more costly and difficult. DSICA supports fact based regulation which sensibly manages the risks associated with the sale and consumption of alcohol.

This submission focuses on 3 areas of concern to DSICA members:

1. licensing restrictions on the sale of spirits
2. the structure of the current alcohol tax system, and
3. the administration of the current alcohol tax and duty system.

About DSICA

The Distilled Spirits Industry Council of Australia Inc (DSICA) is the peak body representing the interests of distilled spirit manufacturers and importers in Australia.

DSICA was formed in 1982, and the current member companies are:

- Bacardi Lion Pty Ltd;
- Beam Global Australia Pty Ltd;
- Brown-Forman Australia;
- Bundaberg Distilling Company Pty Ltd;
- Diageo Australia Limited;
- Moët-Hennessy Australia Pty Ltd;
- Rémy Cointreau International Pte Ltd;
- Suntory (Australia) Pty Ltd; and
- William Grant & Sons International Ltd.

DSICA's goals are:

- to create an informed political and social environment that recognises the benefits of moderate alcohol intake and to provide opportunities for balanced community discussion on alcohol issues; and
- to ensure public alcohol policies are soundly and objectively formed, that they include alcohol industry input, that they are based on the latest national and international scientific research and that they do not unfairly disadvantage the spirits sector.

DSICA's members are committed to:

- responsible marketing and promotion of distilled spirits;
- supporting social programs aimed at reducing the harm associated with the excessive or inappropriate consumption of alcohol;
- supporting the current co-regulatory regime for alcohol advertising; and
- making a significant contribution to Australian industry through primary production, manufacturing, distribution and sales activities.

DSICA

DSICA's vision for alcohol policy

DSICA contends that a competent, national approach to alcohol policy should be aligned with the dual expectations of the ability to access and consume alcohol, free of unnecessary regulations, coupled with a targeted focus on alcohol misuse and a duty of care to vulnerable Australians.

DSICA a vision for alcohol policy in Australia is for policy that focuses on reducing alcohol misuse through comprehensive and inclusive national approaches incorporating the following core commitments:

- partnership between government (Commonwealth, Territory, State and Local), the alcohol industry and other relevant stakeholders;
- nationally agreed targets for reducing the scale and impact of alcohol misuse coupled with rigorous evaluation of outcomes of all strategies implemented;
- strict enforcement of existing regulations targeting underage drinking, public intoxication and drinking and driving;
- targeted education of professionals on evidence-based strategies for tackling alcohol misuse;
- increased community-based services at the primary care level in the areas of early and brief interventions;
- national mass-media campaigns to increase the reach of messages aimed at promoting a culture of moderation in relation to all alcohol used in Australia; and
- recognition that reducing the misuse and abuse of alcohol cannot be achieved without paying attention to those factors in modern Australia that undermine social cohesion and personal responsibility.

Furthermore, DSICA advocates for the following specific policy objectives:

- encouraging the consumption of alcohol in moderation;
- endorsing the absolute right of adults to purchase and consume alcohol without the imposition of intrusive controls;
- reducing community tolerance towards, and the incidence of, intoxication;
- developing and implementing comprehensive age-appropriate educational alcohol programs within the school curriculum, including a renewed emphasis on the transition years between school, further education and the workplace;
- developing and implementing a national approach to appropriately inform pregnant women and other at-risk populations;
- a commitment to rigorous, evidence-based evaluation of policies to ensure efficacy and cost-effectiveness; and
- a commitment that all categories of alcohol product be treated equally by all governments.

DSICA

Licensing restrictions on the sale of Spirits

In recent times, many state jurisdictions have responded to appalling incidents of criminal behaviour with poorly thought out restrictions on the sale of specific types of alcohol. The most recent state to do this was Queensland.

On 4 March 2016, the Queensland Government amended the Liquor Act 1992 (Liquor Act) to prohibit the sale or supply of rapid intoxication drinks that pose a high risk of alcohol-related harm.

A statutory ban prohibits the sale or supply of rapid intoxication drinks between 12 midnight and 5am for venues authorised to trade past midnight. Under the Liquor Act, a rapid intoxication drink is one that is designed to be consumed rapidly or contains a high percentage of alcohol, and is prescribed by regulation.

The drinks to be banned have now been prescribed in the Liquor Regulation. This came into effect on 1 July 2016.

DSICA raised its concerns on the then proposed legislation in a submission to the Queensland Legal Affairs and Community Safety Committee.

In the treatment of "high alcohol content" and "rapid consumption" drinks, the Explanatory Notes[2] to the then Bill set out a narrative logic which can be summarised as follows:

1. It is the objective of the Proposed Bill to reduce alcohol-related violence in Queensland.
2. Street violence occurs in nightlife districts with the highest frequency in the early hours of the morning, and it is believed that a large proportion of offenders are under the influence of alcohol, having consumed on nearby premises.
3. There is a belief that late-night drinking is characterised by the drinking of spirits, and that the consumption of spirits delivers more alcohol, and is therefore more intoxicating, than the consumption of wine or beer.
4. Therefore, if the late-night drinking of spirits can be curbed or eradicated, violence will fall.

This singling-out of spirits products for special treatment does not survive exposure to the lightest scrutiny, even within the context of a broad package of measures.

It relies on the most basic confusion between the concepts of correlation and causation, and lacks the most basic appreciation of the biology of alcohol consumption.

Two questions of key importance arise immediately:

1. What data supports the implied causative link between street violence and the consumption of "high alcohol content drinks" (versus other drinks) and "rapid consumption drinks" (versus slow consumption drinks)?[3]

2. What is the significance of the midnight threshold, in terms of this implied causative link?

[2] http://www.legislation.qld.gov.au/Bills/55PDF/2015/TacklingAFVLegAB15E.pdf

[3] Our focus in this submission is to expose the unfair treatment of spirits versus other spirits categories. We are aware of, but will not repeat, the many arguments that seek to rebut the alleged causative link between consumption of alcohol per se, and street violence.

As the Australian Centre for Alcohol Policy Research recently noted: "There is no general pattern which holds across cultures of more or less trouble being associated with a particular beverage type." [4]

This observation is of no surprise given the basic biology associated with consumption of alcohol and intoxication. A person's level of intoxication at any given point in time is broadly determined by the total amount of alcohol (measured by standard drinks, where 1 standard drink = 10 grams of alcohol) consumed over the time period since the drinking session started (i.e. *x* standard drinks/grams in *y* hours), reduced in proportion to the amount of alcohol which has been processed and eliminated from the consumer's system over the same time period (as a guideline only, and recognizing a multitude of variables, the body is generally held to process in the range of 1 standard drink per hour)[5], with some small mitigating adjustments for intervening food and water consumption.

High Alcohol Content Drinks

As the "standard drinks"[6] system demonstrates, a consumer's chosen drink (method of delivery of his or her alcohol - wine, beer, RTD, spirit) is immaterial to the impact of the alcohol on his/her system. A schooner of mid- or full-strength beer, or a standard serve glass of wine, actually contains (delivers) more alcohol (i.e. is more intoxicating) than a standard serve of spirits.

Rapid Consumption Drinks

We must also address the concept of "Rapid Consumption Drinks", and how they might differ from, or overlap with, "High Alcohol Content" drinks. One only has to have recall of the recent and highly public participation by a past Prime Minister in a celebratory "skulling' of a beer at the cricket to realise that any drink, intended or designed and marketed by its producer for relaxed and slow-paced enjoyment can be misused in a rapid consumption behaviour. The rapid consumption, or "downing", of drinks is not confined, in practice, or reality, to spirits or "High Alcohol Content" products.

It is also often overlooked that short or small serves of spirits products which are most often (mis)associated with this type of misuse, such as tequila, are in their traditional cultures and in their intended consumption in Australia, for sipping enjoyment; just as nuanced appreciation of a Scotch single malt whisky and related connoisseurship demands freedom to access small, neat, unmixed serves of higher alcohol-by-volume products.

Timing of Consumption (i.e. time of night)

The time of night is also arbitrary in this context. Someone who has consumed 12 standard drinks' content of beer or wine between 8pm and 12am and then stops drinking will be more intoxicated at 2am (12 standard drinks minus 6 standard drinks processed) than had they drunk 6 standard drinks

[4] Source: Mathews, Callinan: "Over the Limit" Report, August 2013, for the Centre for Alcohol Policy Research and the Foundation for Alcohol Research and Education. http://www.fare.org.au/wp-content/uploads/research/Over-The-Limit.pdf
[5] Source: Drinkwise Australia https://drinkwise.org.au/drinking-and-you/how-much-have-you-had-to-drink/#
[6] Source: Drinkwise Australia https://drinkwise.org.au/drinking-and-you/how-much-have-you-had-to-drink/#, and see also our Appendix A infographic regarding standard drink equivalence across drinks types and typical serves.

of spirits between 11pm and 2am (6 standard drinks minus 3 standard drinks processed). In plain terms, what matters is how much someone has drunk over the whole course of their night.

The legislation nominates midnight as an appropriate time to introduce restriction of consumer choice. It is important to remember that 'after-midnight' drinks only aggravate the effects of consumption to the extent that they come on top of 'pre-midnight' consumption. From theatre- and cinema-goers, to restaurant workers, there are many nighttime consumers who might have their first drink late at night, and would like to select their drink of choice from a full range.

The Understanding of Alcohol Consumption which Underpins the Legislation is Self-Evidently Misguided

A set of restrictions such as those in the Queensland legislation makes no sense: a drinker in a typical Queensland pub or club at 1am can order a bottle of wine (approx. 7 standard drinks) or a jug of beer (approx. 4 standard drinks), but not a single serve of whisky on ice (1 standard drink).

Equally, the measures allow the consumption over a night, either side of midnight, of 3 shots of tequila and 4 schooners of beer, but only provided the tequila was consumed at the beginning of the evening, and not the end. Because, under the logic of the legislation, the order in which drinks are consumed matters: to ban the consumption of shots of tequila at the end of a consumer's night would have a causative reduction in the consumer's propensity to violence, even though precisely the same number of drinks are consumed over the same time period.

In response to the industry concerns about the impact on low risk specialist venues, the Legislation authorises the Commissioner to consider and grant applications for exemption provided the business seeking exemption specialises in the sale of premium spirits. The definition of premium spirits in the Act means liquor prescribed by regulation for this definition that has, or is of, a higher value or quality than ordinary liquor. The exemption provision also specifies that the premises has capacity to seat no more than 60 patrons at a time, the service of liquor is conducted in a manner that does not facilitate rapid liquor consumption, the type and quality of liquor supplied differs from other types and qualities of liquor sold in the locality.

It might be expected that DSICA would welcome this planned exemption, which we assume is intended for luxury hotels, resorts, traditional cocktail bars, and so-called "small bars" which are so often to the fore in the aspirational entertainment choices of young, adult (LDA+) Australians.

Indeed, we welcome the acknowledgement that the spirits industry is at the vanguard of industry efforts to enable Australians to "drink better", not more. We also note that the exemptions are offered based in part on a risk assessment, which we understand to be a prudent and inescapable element in policy-making.

However, we believe that this contemplated set of exemptions, however well-intentioned, serves only to highlight the inconsistency and fundamental wrongheadedness of seeking to draw distinctions between spirits and other product types.

Here, the Queensland Government states that it will be permissible for Queenslanders and visitors to drink spirits late at night, but only in high-class establishments and at premium prices.

There are 2 core objections to this idea. First, while it is not for DSICA to comment on the potential popularity or advisability of a policy which seeks to impose one rule for the rich, and one for the poor, but we do identify in the proposed exemptions a sense and acknowledgement on the part of the Government that it is not the categories of product that matter, or indeed have any differentiated causative link to violence, but that many other factors exert influence. If it is the Queensland's Government's view that violence only arises because of patrons drinking certain products in certain types of outlet, but that acceptably less violence ensues when the same or similar products are drunk in different physical and service environments, then surely that points to a policy approach that seeks to encourage better drinking environments, and not to seek to statutorily entrench differentiated access to products by venue.

Second, a practical difficulty concerning the criteria for exemption, as they might be applied in the real world. The exemptions are limited to "premises used for the sale of premium spirits", and there is a further requirement that "the type and quality of liquor sold, and the way in which liquor is served at the premises, differs from other types and qualities of liquor sold, and ways in which liquor is served, in the locality." How are 'premium spirits' to be legally differentiated from non-premium spirits? How are regulators to draw the lines of differentiation between the service styles of various premises?

Instead, we return to the essential observation which lies at the heart of our position: namely, that the correct policy approach to the issue of violence in entertainment districts is to address the culture and behaviours around drinking and drinks service in all premises, via consumer and trade education, promotional codes of practice, and enforcement of existing licensing and service laws.

DSICA

Structure of the Current Alcohol Tax system

Wide-ranging reform of Australia's alcohol taxation regime is long overdue. Continued inactivity entrenches distorted consumption patterns, encourages unfair competition between the various beverage sectors, and places unnecessary administrative burdens on industry and Government alike, all of which is ultimately borne by the consumer.

DSICA's view is that the role of alcohol taxes should be limited to addressing social costs but in the most efficient manner. This means that it is important that there be an objective and reliable way of measuring those social costs and this is discussed in the submission.

DSICA believes the ideal system for alcohol tax is a single volumetric tax rate for all alcohol beverages. Such a tax supports consumers' choices and recognises that all alcohol is the same, regardless of the type of beverage. A single rate volumetric tax would be simpler, fairer and more efficient, ending the discrimination between drinkers.

Finally, DSICA believes that alcohol tax reform is an imperative because of questions around the sustainability of the current system. There is evidence to suggest that alcohol revenue targets continue not to be met. Some of the reasons are clear, such as consumers substituting out of highly taxed products (eg, RTDs) into lower taxed products (eg, cider). Other reasons are not so clear but worth considering, such as whether the excise rate on spirits is so high (caused by indexation) that the revenue maximising point of the rate has been reached and is being exceeded.

Alcohol beverage taxation in Australia

Revenue authorities around the world apply two main methods in taxing alcohol products:

- tax on the basis of the volume of alcohol in the beverage (a 'volumetric', or specific rate method); and
- tax on the basis of the value of the product (an 'ad valorem' method).

Australia uses a combination of both methods, depending on the beverage type as follows:

- beer, spirits, ready-to-drink alcohol products (RTDs) and flavoured cider are subject to excise duty on a volumetric litres of pure alcohol (LPA) basis; and
- wine, wine products and traditional cider are subject to the ad valorem Wine Equalisation Tax (WET) at 29 per cent of the product's wholesale selling price.

The Australian alcohol market in 2013-14 and revenue estimates for 2015-16

DSICA estimates that of the beverage alcohol market in 2013-14 (when measured in LPA):

- beer comprised 40.4 per cent;
- **spirits overall (including RTDs) comprised 18.7 per cent;**
- wine (and grape wine products) comprised 38.0 per cent;
- traditional cider comprised 2.0 per cent; and
- flavoured cider comprised 0.9 per cent of the market.

DSICA estimates that the Federal Government will collect approximately $8.2 billion in taxation revenue from the production and consumption of alcohol beverages in the 2015-16 financial year. This revenue will comprise:

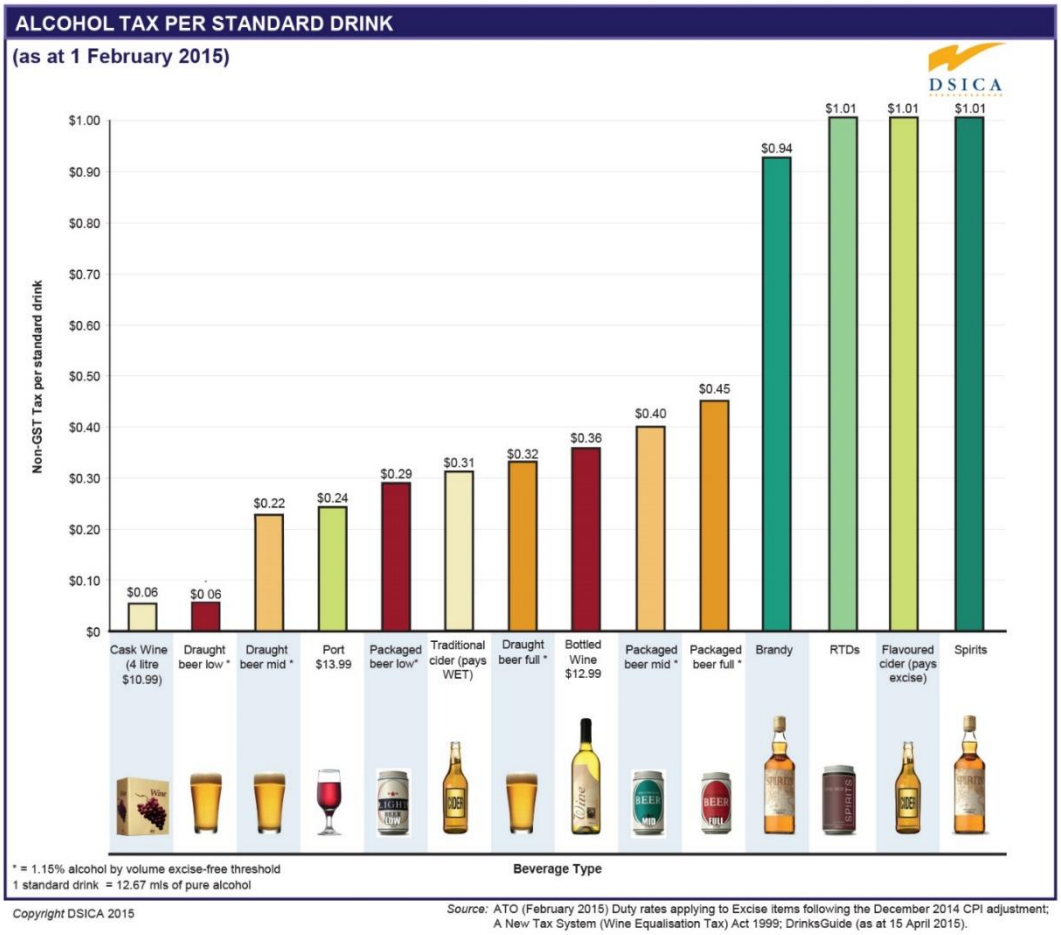
- $2.2 billion in customs duty;
- $3.2 billion in excise duty; and
- $892 million in WET.

This results in $6.2 billion in non-Goods and Services Tax (alcohol tax) revenue, and $2.0 billion in GST revenue. It is important to note that RTDs and spirits represent 18.7% of the volume of total beverage alcohol sold (in LPA) but contribute approximately 45% of alcohol tax revenue.

Non-GST (alcohol) taxes per standard drink

A standard drink is any drink containing 12.67 mls of pure alcohol. One standard drink always contains the same amount of alcohol regardless of container size or alcohol type, that is, beer, wine, RTDs or spirits. Using the concept of a standard drink allows for a uniform comparison of the incidence of taxation on products of differing alcohol strength and retail price, shown in Figure 2-1. The graphic highlights some of the issues and complexities inherent in the current tax system.

Figure 2-1: Alcohol tax per standard drink as at 1 February 2015



The inconsistency in the tax treatment of different beverages becomes particularly clear when one considers that:

- cask wine (typically with an alcohol by volume [abv] of 11 to 13 per cent) pays only 6 cents per standard drink;
- full-strength RTDs (which are less than half the abv of most cask wines) pay 101 cents per standard drink (16 times that paid by cask wine);
- full-strength packaged beer (at about the same abv as full-strength RTDs) only pays 45 cents per standard drink, less than half that paid by RTDs of equivalent alcohol content; and
- 'traditional cider' only pays 31 cents per standard drink,[7] less than a third of that paid by 'flavoured cider'.[8]

The tax treatment of ginger beer demonstrates the inconsistencies in the current tax arrangements for alcohol, with the tax treatment dependent on alcohol content. For example, a ginger beer with 4.5 per cent alcohol by volume is taxed as a 'ready to drink' (RTD) at a rate of $1.01 per standard drink. The tax payable on a case of twelve 500ml bottles is $21.54 under the excise regime. However, a ginger beer that is nearly identical except that it has 8 per cent or more alcohol by volume is, instead, taxed on its wholesale selling price because it is characterised as a fruit or vegetable wine and subject to the WET regime. At a wholesale price of $30, the tax payable on a case of twelve 500ml bottles is $8.70 under the WET regime. The producer may also be able to claim the wine producer rebate. This shows the significantly lower rate of taxation that can apply to beverages subject to taxation under the WET regime, despite the beverage containing more alcohol.

DSICA believes the ideal system for alcohol tax is a single volumetric tax rate for all alcohol beverages. Such a tax supports consumers' choices and recognises that all alcohol is the same, regardless of the type of beverage. A single rate volumetric tax would be simpler, fairer, and more efficient, ending the discrimination between drinkers. DSICA recognises that transition to such a system will take some time but recommends the Government adopt the recommendation of the Henry Review:

Recommendation 71: All alcoholic beverages should be taxed on a volumetric basis, which, over time, should converge to a single rate, with a low-alcohol threshold introduced for all products. The rate of alcohol tax should be based on evidence of the net marginal spillover cost of alcohol.

[7] A 'traditional cider' product is a beverage that is the product of the complete or partial fermentation of the juice or must of apples. See *A New Tax System (Wine Equalisation Tax) Act 1999* (Cth) s 31-5.
[8] A 'flavoured cider' product is a traditional cider product that has had added to it either ethyl alcohol or any liquor or substance (other than water or the juice or must of apples or pears) that gives colour or flavour. See *WETR 2009/1* [28].

DSICA

The current alcohol tax / excise system

As the peak industry body representing over 80 per cent of Australia's distilled spirits importers and manufacturers, DSICA and its members are well aware of the administrative complexities and burdens borne by alcohol manufacturers and importers in Australia. Indeed, a majority of DSICA members have interests in both domestically manufactured goods (which are subject to excise duty), and imported goods (which are subject to excise equivalent customs duty and customs duty), compounding the financial, resourcing and time cost associated with alcohol manufacture and importation in Australia.

The Henry Review acknowledged the complexities faced by the Australian alcohol industry and made the following recommendation (Recommendation 72):

> *'The introduction of a common alcohol tax should be accompanied by a review of the administration of alcohol tax, to ensure that alcohol taxpayers do not face redundant compliance obligations.'* [9]

DSICA strongly supports this recommendation, and notes that under the previous *Better Regulation Ministerial Partnership,* responsibility for several key functions relating to warehoused Excise Equivalent Goods (EEGs) was transferred from Customs to the ATO on 1 July 2010. Under this arrangement:

- a number of DSICA members have been assigned a dedicated Client Relationship Manager to oversee their excise, GST and customs affairs;
- applications for licences and permissions (settlement and movement) for excisable goods and EEGs are assessed, processed and approved by the ATO;
- compliance activities for excisable goods and EEGs have been centralised within the one agency; and
- there have been reduced compliance costs and the development of a single point of contact for customs and excise obligations.

DSICA is strongly supportive of the single administration initiative, and acknowledges the highly collaborative, industry-inclusive manner in which the reforms were developed and implemented. However, it remains the case that not all responsibilities for the administration of EEGs have been transferred from Customs to the ATO. As such, while the administrative burden borne by DSICA's members has reduced following the single administration reforms, significant additional progress is required to further minimise the regulatory and compliance issues faced by Australian alcohol manufacturers and importers.

DSICA has participated in the *Excise Equivalent Goods Administration: Legislation and Policy Better Regulation Ministerial Partnership* consultation process, making two submissions canvassing key reform opportunities and participating in industry consultation days. In participating in this collaborative process, DSICA has worked with the Treasury and other key stakeholders to identify four key reform opportunities:

- development of a new Act which covers all administrative matters relating to excisable goods and EEGs;

[9] Henry, above n 9 442.

- removal of (or at the least, amendment of the administrative practices pertaining to) the five per cent ad valorem customs duty;
- introduction of monthly PSPs for larger businesses; and
- alignment of circumstances in which customs and excise duty refund permissions may be sought

These issues are discussed individually below.

Introduction of a new Administration Act

DSICA is strongly supportive of development of a new Act which covers all administrative matters relating to excisable goods and EEGs; while Imposition Acts concerning excise duty and customs duty would remain separate, maintaining the separation between excise duty and customs duty mandated under the Constitution.[10]

In implementing this reform option, DSICA recommends that all revenue related matters should be the sole responsibility of the ATO, while border protection issues should be the responsibility of Customs. In practice, this would result in:

- the ATO assuming full and sole responsibility for:
  - all revenue collection matters for both excisable goods and EEGs, including collections, remissions, drawbacks and refunds pertaining to excise duty, excise equivalent customs duty and (potentially) the relevant five per cent ad valorem customs duty;
  - all licensing and warehouse matters (including licence applications) for both excisable goods and EEGs;
  - all movement permissions, returns and settlement permissions for both excisable goods and EEGs;
  - all supervisions relating to the disposal of excisable goods and EEGs; and
  - all compliance and/or audit functions, including inspections.
- Customs maintaining responsibility for all import, export and Integrated Cargo Support (ICS) transaction related inquiries with **no Customs interaction required for the administration of duties.** It is not envisaged that ATO representatives would be required at any border points, such as airports or cargo/shipping areas.

DSICA notes that a regime of this nature would help to further enable the observed evolution of the roles of each agency, whereby the ATO is the Government's principal revenue collection agency, and Customs manages the security and integrity of Australia's borders.

DSICA understands that there are constitutional limitations that prevent a customs duty and an excise duty being imposed in the same Act, and that further imposition of customs duties and excise duties must remain separate in law[11].

Despite this, DSICA contends that the legislative provisions regulating excisable goods and EEGs contained in the *Excise Regulations 1925 (Cth)* and the *Customs Regulations 1926 (Cth)* should be reflective of one another. As a result, DSICA envisages that the majority of the revenue collection and administration functions are to fall within the responsibilities of the ATO. A logical consequence of

[10] *Australian Constitution* s 55.
[11] *Australian Constitution s 55*

such a change would be to transfer legislative policy development responsibility for EEGs from the Customs portfolio to the Treasury portfolio with overall responsibility resting with the Treasurer.

DSICA also recommends that, should this option be implemented, portfolio responsibility for the new Administration Act rest with the Treasurer. This enables the ATO, being the Act's primary administrator, to provide input and guidance on the legislation as required.

The implementation of a single Act governing all administrative matters relating to excisable goods and EEGs will:

- enable alcohol importers and manufacturers to deal with one single agency (i.e. the ATO) for all revenue matters, and one single agency (i.e. Customs) for all border protection issues. This would greatly simplify the volume of administrative transactions required and reduce the number of agency representatives that a company with interests in both domestic and imported goods is required to deal with;
- result in significant compliance cost savings to the Australian alcohol industry;[12] and
- enable harmonisation and simplification of the differing administration requirements pertaining to excisable goods and EEGs through the development of a single, unified regime for all products.

DSICA understands and acknowledges that:

- the financial and resourcing cost of undertaking any proposed reforms will be an important consideration for the Government; and
- consolidation of the varying regimes and administrative matters pertaining to excisable goods and EEGs into a single Act is likely to be a lengthy process.

Notwithstanding these considerations, DSICA contends that undertaking reform will be a worthwhile investment of time and resources and will:

- maximise the benefit derived from the single administration initiative through substantial simplification and harmonisation of existing administration requirements;
- enhance business and government efficiency;
- ensure appropriate use of government resources;
- ensure consistency in the treatment of both excisable goods and EEGs;
- deliver the greatest cost reduction benefits to the Australian alcohol industry over the medium to long-term; and
- significantly reduce the regulatory and administrative burden placed on alcohol importers and manufacturers.

Administration of the five per cent ad valorem customs duty

The customs and excise duty regimes applying to alcohol beverages in Australia are highly complex, and inevitably require considerable time and effort to satisfy compliance requirements. For businesses with interests in both excisable goods and EEGs, this level of complexity is substantially

[12] Note that the savings expected to accrue under this reform option have not yet been quantified by the Australian distilled spirits industry.

greater, especially for those businesses with interests in imported distilled spirits and RTDs which attract a five per cent ad valorem customs duty.

Imported spirits and RTDs are currently subject to a five per cent nuisance ad valorem customs duty (the nuisance duty) where imported from countries other than countries with which Australia has a preferential trade agreement. In addition to this 'protective' customs duty, a volumetric excise equivalent customs duty of $76.98 per LPA (as at 1 August 2013) applies to imported spirits and RTDs, whilst domestically-produced spirits and RTDs are subject to an excise duty of $76.98 per LPA only.[13] The complexities associated with administering this nuisance duty are significant for businesses – such that some DSICA members require additional staff to assist in managing warehoused goods as a result of the time and labour intensive processes associated with managing EEGs subject to this duty. In light of the small amount of revenue this duty generates for government, and the significant administrative burden it carries, DSICA contends that removal, or at the very least, reform, should be addressed by Government.

This issue is addressed below.

Impact of the five per cent ad valorem customs duty

Complying with administrative requirements relating to payment and tracking of the nuisance duty is particularly burdensome on businesses, as outlined below.

When importing EEGs into Australia, an entry is lodged with Customs as either:

- duty paid (Nature 10); or
- duty deferred (Nature 20).

In most cases, the five per cent ad valorem duty component is calculated on the basis of the price the importer pays, less international freight and insurance costs. As purchase prices, freight costs, insurance costs and container quantities frequently change, the calculation of the ad valorem duty payable is variable. However, it is generally a small amount, especially when compared to the excise equivalent customs duty liability, as demonstrated in Figure 0-1.

Figure 0-1: Comparison of ad valorem and excise equivalent customs duties payable – imported spirits products

Product	Country of Origin	Estimated customs value per case	Ad valorem customs duty		Excise equivalent customs duty (as at 1 February 2013)	
			Rate	Duty payable	Rate	Duty payable
Imported spirits (12 x 700mL; 40° abv)	Scotland (MFN customs duty rate)	$50	5%	$50 x 5% **$2.50**	$76.98 per LPA	40° x 8.4L x $76.98 **$258.65**
Imported spirits (12 x 700mL; 40° abv)	United States of America (preferential customs duty rate)	$50	0%	$50 x 0% **$0.00**	$76.98 per LPA	40° x 8.4L x $76.98 **$258.65**

Significant administrative burdens are incurred by businesses in accounting for and paying this particularly low-value nuisance duty. Most notably:

- Customs recording requires the goods to be tracked according to the original entry (Nature 20);
- until the ad valorem customs duty applying to EEGs is duty-paid, an importer must receipt, store, transfer and/or settle the tax liability via the original Nature 20 entry; and

[13] Note that there is a concessional rate of $71.88 per LPA (as at 1 August 2013) applying to brandy products.

- a bond register (at the import container level) needs to be maintained where EEGs are recorded via the original Nature 20 entry. As the ad valorem duty component is variable due to changes in cost per shipment, a bond register must be kept to ensure that the importer's warehouse has the capacity to record inventory appropriately and trace every individual bottle back to the shipment and its calculated ad valorem customs duty.

As such, all transactions must be recorded from this Nature 20 register. This requirement is not a standard part of most inventory systems and therefore must be custom-built into the inventory system (which is particularly expensive), or run in parallel to the inventory system (which results in significant duplication).

Further, in instances where EEGs are imported from a country with which Australia has a preferential trade agreement (and therefore there is no nuisance duty payable), this identical process must be completed (including a Nature 20 entry to account for the excise equivalent customs duty payable), even though there is no variable cost due to there being no ad valorem duty payable.

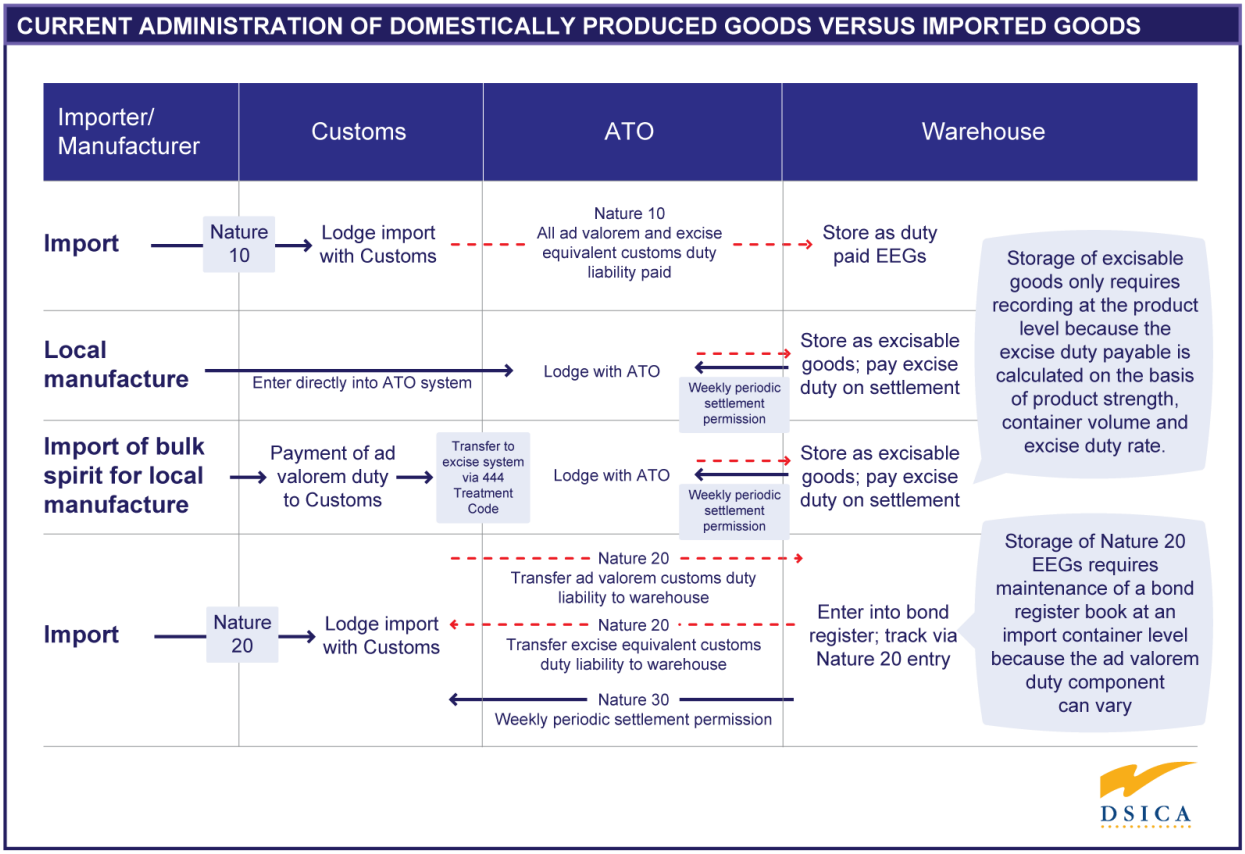
This minimal nuisance duty creates a significant administrative burden for importers as it requires:

- tracking to the original shipment or clearance, as opposed to reporting at the product level;
- a complicated bond register at a warehouse level to record the inventory at a Nature 20 level;
- additional functionality in the inventory system (e.g. sequential number reporting);
- added complexity in transferring to other bonds;
- payments of customs duty and lodgement of ex-warehouse declarations (Nature 30 entries) to reference the original Nature 20 entry; and
- extra resources to manage the complexity of Nature 20 entry recording for smaller businesses.

Conversely, tracking and payments pertaining to domestically-manufactured spirits and RTDs (which do not attract this ad valorem customs duty) are undertaken at the product level. This is considerably simpler, and only requires knowledge of the product's bottle size, applicable excise duty rate and alcohol strength.

Figure *0-2* contrasts the complex nature of managing EEGs, and the simplicities associated with management of excisable goods.

Figure 0-2: Administration of domestically produced goods versus imported goods



Source: Australian Taxation Office

Figure *0-2*, there is a need to enhance the current administrative processes to reflect this simplicity and reduce the burden borne by importers. This consideration is further magnified by the fact that this significant administrative burden is borne by businesses to account for a very small tax amount payable – as demonstrated in Figure 0-1, approximately only $2.50 per case of spirits. Given this, it is unsurprising that ad valorem customs duty collections are expected to deliver only approximately $19 million in revenue in 2013-14.[14]

Reform of the five per cent ad valorem customs duty

DSICA has identified two potential reform opportunities in relation to the five per cent ad valorem customs duty:

- **Reform Option 1: abolish the five per cent ad valorem customs duty (preferred DSICA position).**
- **Reform Option 2: allow payment of the ad valorem customs duty and excise equivalent customs duty to be split, effectively** treating EEGs as excisable goods.

Each of these reform options is discussed below.

Reform Option 1: Abolish the five per cent ad valorem customs duty

DSICA seeks immediate removal of the five per cent ad valorem customs duty on all spirits and RTDs imported into Australia. This would significantly reduce the administrative burden borne by alcohol importers, and overcome time and labour-intensive reporting requirements.

Reform Option 1 is supported by the WTO, the Henry Review and the Productivity Commission and would result in broader benefits to the industry and consumers alike. Removal of the five per cent ad valorem customs duty, and the administrative burdens associated with it, would be a perfect example of the Government's commitment cutting red tape for business.

Reform Option 2: Allow payment of the ad valorem customs duty and excise equivalent customs duty to be split

Should Reform Option 1 not be accepted, DSICA proposes that payment of the ad valorem customs duty and the excise equivalent customs duty be split, thereby treating the goods as excisable goods, rather than subject to excise equivalent customs duty. In essence, this proposal would allow for:

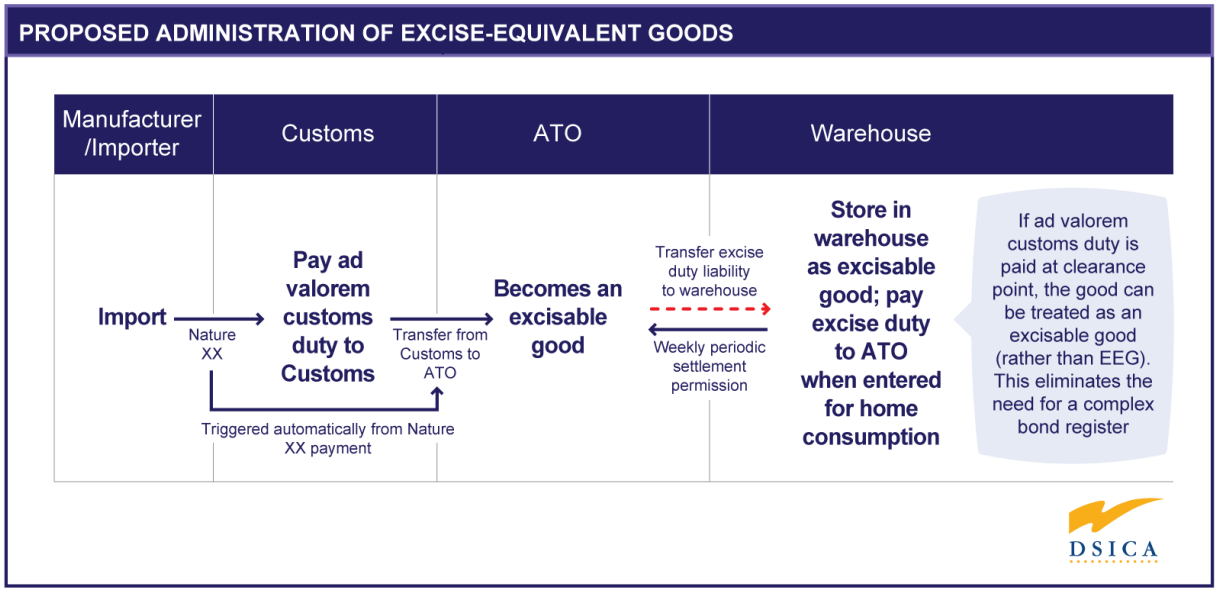
- payment of the ad valorem customs duty at the time of clearance; then
- deferral of the excise equivalent customs duty payable (i.e. at the time the goods are entered for home consumption, effectively treating it as excise duty).

In implementing this regime, DSICA envisages that:

- a new Customs payment regime would be arranged, facilitating payment of the ad valorem customs duty to Customs at the time of clearance; and
- payment of the ad valorem customs duty would extinguish liability for payment of excise equivalent customs duty, simultaneously transferring the EEGs to the excise system, where they would be subject to excise duty (which is payable when the goods are entered for home consumption).

Figure *0-3* provides a diagrammatic representation of DSICA's proposal.

Figure 0-3: DSICA's proposal to split ad valorem customs duty and excise equivalent customs duty payments, treating EEGs as subject to excise duty



Source: DSICA Pre-Budget Submission 2013-14

Figure *0-3* is currently in operation in the context of domestic RTD manufacture using imported bulk spirit. Under this system:

- the five per cent ad valorem customs duty payable on the bulk spirit is recorded and paid using a Nature 20 entry; and
- the liability to pay excise equivalent customs duty on the bulk spirit is extinguished when the goods are entered for warehousing (in a warehouse which has both an Excise Manufacture Licence and a Customs Warehouse Licence) and for later manufacture into excisable goods (i.e. RTDs) (for further detail, see the *Customs Act 1901* (Cth) s 105B). The excise duty liability on the manufactured RTDs is payable when the goods are entered for home consumption.

Multiple benefits are to be derived from implementing this arrangement, including:

- removing the need to maintain a complicated, time and labour-intensive Nature 20 bond register, as entries would be recorded directly in the excise system;
- the development of one set of rules for drawback and remission applications, which would relate to both EEGs and excisable goods; and
- the development of one payment pertaining to excisable goods to the ATO, rather than two payments – one pertaining to excise duties made to the ATO, and one pertaining to excise equivalent customs duties made to Customs.

These benefits would greatly reduce the administrative and reporting burden borne by importers of EEGs (and commensurate use of resources in the ATO and Customs), and would further enhance effectiveness of the single administration initiative.

Conclusion

This submission has barely touched on the levels of red tape that bind the sale, supply and taxation of alcohol in Australia. Much of this red tape has been applied based on poor analysis and once applied is very difficult to remove. In fact, the trend has been for the red tape to be duplicated between jurisdictions often on the basis that the implementation in one geography is in itself justification for its expansion. The debate on the need for regulation and further action if generally at odds with the facts – the vast majority of Australian drinkers enjoy alcohol in a responsible manner and its sale provides a bedrock for an ever-increasing range of hospitality businesses across the country. Where regulation has been simplified we have seen the rapid development of diverse vibrant and innovative businesses creating welcoming destinations for locals and tourists alike. Where the heavy hand of regulation has been recklessly applied, we have seen exactly the opposite.

Contrary to picture painted by the anti-alcohol lobby, the key health indicators surrounding alcohol are moving in the right direction. According the 2013 AIHW Drug and Alcohol survey between 2010 and 2013 for those aged 14 and over:

- there was a decrease in the proportion of people exceeding the NHMRC guidelines for lifetime risk by consuming more than 2 standard drinks per day on average, from 20% to 18.2%
- the number of people in Australia drinking at levels that placed them at lifetime risk of an alcohol-related disease or injury in 2013 fell by approximately 250,000 (3.7 million in 2010 down to 3.5 million in 2013)
- fewer people consumed 5 or more standard drinks on a single drinking occasion at least once a month, declining from 5.2 million in 2010 to 5.0 million in 2013. The proportion exceeding these guidelines declined from 29% in 2010 to 26% in 2013
- a higher proportion abstained from drinking alcohol and the proportion rose from 19.9% in 2010 to 22% in 2013
- the average age at which young people aged 14–24 first tried alcohol has steadily risen since 1998 from 14.4 to 15.7 in 2013.

There remains a small proportion of the Australian population for whom alcohol causes significant problems. DSICA believes the best way to help those people is through targeted support and where necessary strict enforcement of current regulatory measures rather than the continued application of red tape which impacts on the whole population.