

Independent review of the impact of liquor law reforms

Submission of the Australian Taxpayers' Alliance

Introduction

1. The Australian Taxpayers' Alliance (ATA) welcomes the decision by the NSW Government to appoint The Hon. Ian Callinan AC QC to conduct a review of the Liquor Amendment Act 2014 (The Act) and expresses thanks for the opportunity to present the following submission to the Independent review of the impact of liquor law reforms in NSW. The ATA wishes to express its regret at both the limited time available to prepare a submission to the Review, as well as an excessively limited maximum submission size of 2500 words, and expresses its eagerness to submit further testimony.
2. The ATA is a grassroots, free-market advocacy group, consisting of over 25,000 members. The ATA stands for the principles of limited government, personal responsibility, federalism and rolling back the regulatory state. The ATA has received no funding or donations from any individual or business that is affected by the lockout laws.
3. The ATA notes its regret that a preponderance of organisations and individuals in favour of maintaining the current policy are either employed (directly or indirectly) or funded by the NSW and/or Commonwealth governments and it is submitted that the committee significantly discount on the value of these submissions.
4. The ATA submits that The Act has comprehensively failed in its stated policy objectives, whilst significantly damaging the NSW economy, undermining fundamental principles of personal responsibility, and penalising law-abiding NSW residents.
5. The ATA recommends a repeal of 130am lockouts & 3am cession of liquor sale requirements on venues, the 10pm closing of liquor take away outlets, and the imposition of licenses fee loading. If this is not accepted, the ATA recommends the compromise measures proposed by the City of Sydney Council, exempting well-managed premises from the lockout and removing the 3am last drinks rule.
6. The ATA supports the continued removal of alcohol as a mitigating factor in the criminal justice system, and submits the review consider going further in making it an aggravating factor. The ATA further recommends an increase in police powers and a strengthening of criminal sanctions on persons engaged in anti-social behaviour. In addition, the ATA recommends the Review consider the recommendation of orders banning convicted individuals from the Sydney CBD precinct, thereby locking out the guilty, as opposed to the innocent.
7. The ATA, noting the overwhelming international research on the relationship between culture and "alcohol related violence", recommends a fundamental rethink of the entire approach to the regulation of alcohol in NSW.

8. The ATA endorses the submissions of MyChoice Australia, UBER, and Freelancer CEO Matt Barrie to this review. The ATA further supports the review examining measures proposed in the submission of Keep Sydney Open.

Alcohol Related Violence

9. It is not disputed that there exists a problem in NSW with a small minority of individuals engaging in antisocial activities while under the influence of violence, and that this is an appropriate question of public policy for the NSW government to address. The issue for this review is the appropriateness of the measures undertaken in The Act to deal with this problem.
10. It is noted that data released by the Bureau of Crime Statistics and Research (BOSCAR) has demonstrated that in the Kings Cross precinct the assault rate was falling since 2008 – six years *prior* to the introduction of lockouts & that the incidents triggering the lockout laws occurred at a time which would have been unaffected by the lockouts.
11. It is further noted that since the introduction of lockout laws, assaults have reduced by 36.2% in Kings Cross. However, this should be viewed in conjunction with research conducted by the City of Sydney Council that has shown an 84% decrease in foot traffic¹. As such therefore, per capita assaults in the Cross have *increased* by a factor of 4.5.
12. It is further submitted that increased police visibility and changes to criminal statutes relating to assaults committed by persons under the influence of alcohol may have contributed to the reduction in assault rates, and it is noted that there appears to be an increase in assaults in Pyrmont and other surrounding areas. Furthermore, anecdotal evidence would suggest that many instances of what is termed “alcohol related violence” in Sydney is in fact committed by perpetrators misusing substances, whether illicit or performance enhancing steroids and other such drugs.
13. The ATA submits that the issues in NSW with “alcohol-related violence” must be viewed in the context of overwhelming international research on the subject spanning decades, and can not be viewed in isolation. The ATA notes that any traveler to the European Continent would note the widescale drinking in public areas post midnight, with little to no violence occurring as a result. This is in line with research that demonstrates that “*There is enormous cross-cultural variation in the way people behave when they drink*”². As such, the fundamental question that must be addressed is the reasons underpinning criminal actions *in NSW* which do not occur elsewhere – a question addressed overwhelmingly in scientific literature on the topic^{3,4,5}.

¹ Submission 110, City of Sydney. NSW Parliament Legislative Assembly Law and Safety Committee Inquiry into measures to reduce alcohol and drug related violence p2

² Social and Cultural Aspects of Drinking, A report to the European Commission. The Social Issues Research Centre. March 1998 p6

³ “It is noted that a landmark study looking at alcohol-related aggressive behaviour across the world found that “alcohol-related aggressive behaviour—as measured by male involvement in drunken brawls—is about as likely to be present as it is to be absent” Alcohol and Disinhibition: Nature and Meaning of the Link, Washington DC: US Department of Health and Human Services, Research Monograph 12, 1983

⁴ “men engaged in drunkenness in 76% of 60 small societies examined, but aggressive drunken behaviour was found in less than half “ Alcohol and Violence :Exploring Patterns and Responses. International Centre for Alcohol Policies. 2008 p12

⁵ The prestigious journal Criminology has noted that “The evidence suggests that drinking has a strong effect on adolescent violence in the Nordic and Eastern European countries but has little or no effect in the Mediterranean countries” Feelson et al, The Cultural Context Of Adolescent Drinking And Violence In 30 European Countries. Criminology. 7 Aug 2011

14. It is noted that both multiple controlled experiments conducted under double blind control conditions and longitudinal/cross cultural studies have confirmed that aggressive behaviour is determined by cultural expectations rather than the chemical actions of ethanol⁶ ⁷. A meta-analysis of the international evidence has concluded that *“From the research evidence available, we can conclude that there is no direct causal relationship between alcohol and violence”*⁸⁹
15. Given the overwhelming international evidence of variability and that “alcohol related violence” is not a universal factor, and the evidence demonstrates that cultural factors are at the core of alcohol-related violence, it is submitted that this is what ought to be addressed.
16. The academic consensus on the cultural differences between nations is relatively straightforward. “Integrated” cultures, such as in Continental Europe, where societies generally hold positive beliefs and expectancies about alcohol, and children often sip wine from their parents' glass have almost no alcohol related violence. In contrast, in “non-integrated” cultures, such as Australia, public discourse is primarily on the negative effects of drinking and there is a belief in “the disinhibiting powers of alcohol”. In these societies, alcohol is associated with aggression violence and anti-social behaviour” It is the non-integrated cultures where a relationship arises: *“This variation cannot be attributed to different levels of consumption – most integrated drinking cultures have significantly higher per-capita alcohol consumption than the ambivalent drinking cultures. Instead the variation is clearly related to different cultural beliefs about alcohol, different expectations about the effects of alcohol, and different social rules about drunken comportment.”*¹⁰¹¹.

⁶ “Reviews of ethnographic evidence show that the behavioural outcomes of drinking are always in accord with what people in a given culture (or sub-culture) expect to happen, and that individuals internalise such expectations during the learning process of socialisation...Experiments conducted under controlled conditions (double-blind, with placebos) in different cultures confirm that aggressive behaviour is determined by cultural expectations rather than the chemical actions of ethanol: in cultures where alcohol is believed to cause aggression, subjects become aggressive even when they have been given a placebo”. Alcohol and Violence: Cultural Factors. Social Issues Research Centre.

sirc.org/publik/alcohol_and_violence_7.html Accessed 4 April 2016

⁷ “Both comparative studies and controlled experiments have demonstrated, however, that while ethanol produces well-understood neurochemical changes, the wide variations in social and behavioural outcomes of drinking can only be explained with reference to cultural factors, and to culturally determined beliefs about the effects of drinking” Social and Cultural Aspects of Drinking, A report to the European Commission. Op Cit. p5

⁸ Alcohol and Violence: Cultural Factors. Social Issues Research Centre.

http://www.sirc.org/publik/alcohol_and_violence_8.html Accessed 4 April 2016

⁹ It is noted that so foreign is the belief that alcohol can trigger violence in European cultures that researches recently attempted to ask 300 individuals in Italy their perceptions of links between alcohol consumption and disorder/aggression. The note in the report is telling: “Their responses caused some difficulty and our translators were unable to convince many of them that there was not a ‘hidden agenda’ to the questioning. Quite simply, the vast majority of interviewees could not understand how anyone could imagine a connection between drinking alcohol and aggressive behaviour”. Drinking and Public Disorder A report of research conducted for The Portman Group by MCM Research Peter Marsh and Kate Fox Kibby p135

¹⁰ Kate Fox, BBC Viewpoint 12 October 2011 <http://www.bbc.com/news/magazine-15265317> Accessed 4 April 2016

¹¹ Social anthropologist Kate Fox once argued:” I could very easily engineer a nation in which coffee would become a huge social problem – a nation in which young people would binge-drink coffee every Friday and Saturday night and then rampage around town centres being anti-social, getting into fights and having unprotected sex in random one-night stands. There are cultures where drinking is not associated with violence I would restrict access to coffee, thus immediately giving it highly desirable forbidden-fruit status. Then I would issue lots of dire warnings about the dangerously disinhibiting effects of coffee. I would make sure everyone knew that even a mere three cups (six “units”) of coffee “can lead to anti-social, aggressive and violent behaviour”, and sexual promiscuity, thus instantly giving young people a powerful motive to binge-drink double espressos, and a perfect excuse to behave very badly after doing so. I could legitimately base many of my scary coffee-awareness warnings on the known effects of caffeine, and I could easily make these sound like a recipe for disaster, or at least for disinhibition and public disorder. It would not take long for my dire warnings to create the beliefs and expectations that would make them self-fulfilling prophecies. This may sound like a science fiction story, but it is precisely what our misguided alcohol-education programmes have done” Kate Fox, BBC Op Cit.

17. Paradoxically, the result of government policies and rhetoric in NSW creates “a special alcohol-stamped “license to transgress” so ingrained in society that it has, in itself, become a rule... When intoxicated, drinkers are expected to alter their behavior and to engage with the crowd in varying degrees of promiscuity, vandalism, public displays of affection, loud and boisterous behavior, dancing, sex, and other activities that are normally under fairly strict social constraint”¹² rather unsurprisingly, they do so! Expectations not only shape drunken behaviour, they also “enable subsequent rationalisation, justification and excuses”¹³: In cultures where there is an expectation that alcohol will lead to aggression, people appeal to the fact that they were drunk in order to excuse their conduct¹⁴.
18. Furthermore, this unscientific belief in alcohol excusing behaviour has previously extended to our judicial system with accused persons pleading for mitigation on the basis that they were intoxicated at the time of the offence, creating a denial of personal responsibility and encouraging further criminal activities. This is in contrast to cultures where learned expectations about the effects of alcohol are very different and “appeals to drunkenness as an excuse for aggressive behaviour would not only fail to be persuasive, they might actually compound the severity of the offence.”
19. The ATA supports the 2014 amendments to remove intoxication as a mitigating factor, however suggests that the Review consider going further and adopting the suggestion of Dr Eric Crampton from the University of Canterbury:

If we want to address the social costs of alcohol-related crime, and if we want to impose the burden where it belongs – on louts who think it fun to get drunk and inflict harms on others – then we could start by taking intoxication at the time of an offense as being an exacerbating factor at the time of sentencing. We don’t try to reduce speeding by hiking petrol taxes, we do it by fining speeders. Why should we try to affect crimes committed by drunks by hiking alcohol excise taxes?”¹⁵

20. It is submitted therefore that any serious attempt to reduce alcohol related violence in Australia shall not be found through legislation such as The Act, and indeed, that The Act is counterproductive to this overall goal. Further actions, such as changing political rhetoric and *normalising* moderate alcohol consumption, is the evidence-based solution to the issues in NSW. While this is by no means the only step necessary – concepts of masculinity, bar layouts, the management of drinking establishment, and indeed also the presence of security also need to be addressed, as does the provision of adequate transport options, these must all be done through a overall rethinking of alcohol in Australian society.

¹² Social and Cultural Aspects of Drinking. Op Cit p13

¹³ Ibid Op cit p13

¹⁴ Malcolm Gladwell, writing in the New Yorker, recently examined anthropological studies observing drinking culture in Italian migrant communities in New Haven which determined that it was unheard of for Italians to engage in violent behaviour, despite the fact that they drank as much as their next door neighbour who did. He concluded: “When confronted with the rowdy youth in the bar, we are happy to raise his drinking age, to tax his beer, to punish him if he drives under the influence, and to push him into treatment if his habit becomes an addiction. But we are reluctant to provide him with a positive and constructive example of how to drink. The consequences of that failure are considerable, because, in the end, culture is a more powerful tool in dealing with drinking than medicine, economics, or the law.” Malcolm Gladwell. Drinking Games. The New Yorker. February 15&22, 2010

¹⁵ Dr Eric Crampton. offsettingbehaviour.blogspot.com.au/2014/01/drinking-ed.html Accessed April 4 2016

Safety and General Amenity

21. Through forcing patrons onto the street at 3:00am, creating severe transport bottlenecks, the legislation further exacerbates the problem of creating situations which may lead to potentially violent incidents.
22. Through primarily penalising law abiding citizens, the lockout laws have failed in their aim to increase safety and general amenity. It is noted that on March 13 Headlines read: "Hundreds involved in violent brawls that shut down city streets"¹⁶ Bafflingly, the report continues that "just two men were arrested and taken to Kings Cross Police Station where they are expected to be charged." This represents, it is submitted, a fundamental failure of law & order policies in NSW. The continued failure to act on criminal elements by the NSW Police allows and excuses poor behaviour. It is submitted that an increased police presence and a focus on charging, prosecuting, and sentencing persons guilty of antisocial behaviour is a far superior strategy than penalising the innocent.
23. It is further noted that legislation prohibiting a scotch on the rocks after midnight or a serving of alcohol greater than 30ml considerably reduces the amenity of all bar patrons and is beyond any sense of comprehension. These rules are particularly ludicrous and in need of repeal. Furthermore, it is noted that the requirement that drinks be served in plastic cups post midnight is likewise unnecessary, given the use in other jurisdictions of tempered glass making them unsuitable for violent actions without reducing their amenity.
24. The ATA also wishes to note the affect on shift workers who might wish to purchase a drink following the conclusion of a night shift, and are presently unable to. Similarly, tourists who fly into Sydney late at night and may wish a drink at the hotel bar are similarly negatively affected.
25. The ATA also submits that such legislation, by attempting to create a command and control system of micromanaging residents law abiding behaviour, is the antithesis of Western liberal values. Through denying personal responsibility, and restricting both individual and business freedoms, such legislation is corrosive to society at large.

Business, financial and social impacts

26. Significant negative economic impacts with dozens of entertainment venues, as well as retailers, food sellers etc, forced to shut down at a cost to the NSW economy in the tens of millions. The live music industry has been similarly decimated, with artists unable to perform, leading to a marked decline in Australian music talent. In addition, significant international reporting on this legislation has led to numerous anecdotal reports of a decline in tourism to Sydney, exacerbating the economic affects of this legislation. We refer the Inquiry to the submissions of Keep Sydney Open for further information on this.
27. The ATA recommends that persons associated with the review visit the areas of Sydney associated by the lockout and witness firsthand how a once vibrant, lively international city has become a virtual ghost town.

¹⁶ Daily Telegraph, March 12, 2016 Accessed 04 April 2016 dailytelegraph.com.au/news/hundreds-involved-in-violent-brawls-that-shut-down-city-streets/news-story/e159d8828c2ed385ce62af5facecbdfa

10pm takeaway Liquor Restrictions

28. The ATA submits that there is no basis in logic or evidence for the 10pm takeaway liquor restrictions, and that these present a considerable hindrance to law abiding citizens. It is particularly noted that these cause significant problems in regional and rural areas and they should be abolished statewide.
29. The ATA further recommends that alcohol be permitted to be sold at convenience stores and inside supermarkets, as occurs without incident in almost every other western country without any incidents, despite the powerful vested interests protecting the status quo.

Conclusion

30. It is submitted that the 2014 Act is fundamentally immoral and contrary to the rules of good public policy. It penalises the vast majority of law abiding NSW residents, is contrary to the principles of personal responsibility and entrepreneurship, and has significantly damaged the NSW economy.
31. In lamenting the state of federalism in Australia, Sir Harry Gibbs referenced Book 6 of Virgil's Aeneid¹⁷. The point was clear - It is easy for bad policy to be enacted, but the road to reform is considerably more difficult; once poor policy is entrenched, it becomes nigh impossible to dislodge and institute positive reform. This applies particularly in this field, with both the large multi-million dollar public health industry in Australia, and the scare campaigns instituted. Nevertheless, the ATA hopes that the review will accept the overwhelming evidence of the destructive nature of these laws, and call for their wholesale repeal.

Tim Andrews
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¹⁷ *Facilis descensus Averno, Sed revocare gradum, superasque evadere ad auras, Hoc opus, hic labor est.* (Easy is the descent to Haydes, but to retrace one's footsteps, and ascend again to the upper air – that is the labour, that is the toil) In Defence Of Federalism, Chief Justice Harry Gibbs.