

The Senate

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Legal and Constitutional Affairs  
References Committee

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Need for a nationally-consistent approach to  
alcohol-fuelled violence

Interim report

May 2016

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# Table of contents

<b>Members of the committee</b> .....	<b>iii</b>
---------------------------------------	------------

<b>Recommendation</b> .....	<b>vii</b>
-----------------------------	------------

## Chapter 1

<b>Introduction</b> .....	<b>1</b>
---------------------------	----------

Referral and conduct of the inquiry .....	1
---	---

References to the Hansard transcript .....	2
--	---

Structure of the report .....	2
-------------------------------	---

Background .....	2
------------------	---

Scope of the inquiry .....	5
----------------------------	---

## Chapter 2

<b>Relationship between alcohol and violence</b> .....	<b>7</b>
--	----------

Terminology .....	7
-------------------	---

Does alcohol cause violence? .....	9
------------------------------------	---

## Chapter 3

<b>Entertainment precincts: strategies on the frontline</b> .....	<b>15</b>
---	-----------

Recent reforms .....	16
----------------------	----

The night-time economy .....	20
------------------------------	----

Lockout laws .....	25
--------------------	----

Early cessation of alcohol service .....	28
--	----

Alcohol outlets .....	29
-----------------------	----

Staggered closing times .....	31
-------------------------------	----

Other strategies in entertainment precincts .....	32
---	----

<b>Chapter 4.....</b>	<b>39</b>
<b>Punishing alcohol-related violence: offences, penalties, sentencing and bail ...</b>	<b>39</b>
Introduction .....	39
Offences and penalties.....	39
Sentencing .....	42
Bail requirements.....	45
Drug courts .....	46
 <b>Chapter 5</b>	
<b>Alcohol advertising, taxation, and education.....</b>	<b>47</b>
Advertising .....	47
Taxation .....	48
Education .....	52
 <b>Chapter 6</b>	
<b>A national strategy to address alcohol-related violence.....</b>	<b>55</b>
A nationally-consistent approach? .....	55
Funding a national strategy .....	59
Committee view.....	60
 <b>Dissenting report by Government Senators .....</b>	<b>63</b>
 <b>Appendix 1 - Public submissions .....</b>	<b>65</b>
 <b>Appendix 2 - Public hearings and witnesses.....</b>	<b>69</b>

# Recommendation

## Recommendation 1

**6.25** In the event that the committee is unable to conclude its inquiry during the current Parliament, the committee recommends that the 45<sup>th</sup> Parliament re-refer the matter of a nationally-consistent approach to alcohol-related violence to the relevant committee for further inquiry and report.





# Chapter 1

## Introduction

### Referral and conduct of the inquiry

1.1 On 3 February 2016, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 30 June 2016:

The need for a nationally-consistent approach, negotiated, developed and delivered by the Federal Government together with all state and territory governments, to address and reduce alcohol-fuelled violence, including one-punch related deaths and injuries across Australia, with particular reference to:

- a. the current status of state and territory laws relating to:
  - i. bail requirements and penalties surrounding alcohol-related violence, and
  - ii. liquor licensing, including the effectiveness of lockout laws and alcohol service laws;
- b. the effectiveness of the current state and territory:
  - i. training requirements of persons working within the hospitality industry and other related industries, and
  - ii. educational and other information campaigns designed to reduce alcohol-related violence;
- c. the viability of a national strategy to ensure adoption and delivery of the most effective measures, including harmonisation of laws and delivery of education and awareness across the country, and funding model options for a national strategy;
- d. whether a judicial commission in each state and territory would ensure consistency in judgments relating to alcohol-related violence in line with community standards; and
- e. any other related matter.

1.2 In accordance with usual practice, the committee advertised the inquiry on its website. The committee also wrote to relevant organisations and individuals inviting submissions.

1.3 The committee received 65 submissions. The submissions are listed at Appendix 1.

1.4 The committee held a public hearing in Brisbane on 15 April 2016. A list of witnesses who appeared at the hearing is at Appendix 2.

1.5 Although the Senate asked that the committee report by 30 June 2016, this interim report has been prepared with awareness that a double dissolution election may be called before that date. This report outlines some of the issues raised by submitters and witnesses.

1.6 The committee thanks all those that have contributed to the inquiry thus far.

### **References to the Hansard transcript**

1.7 References to the committee Hansard in this report are to the proof Hansard. Page numbers may vary between the proof and the official Hansard transcripts.

### **Structure of the report**

1.8 This chapter offers some brief background on alcohol-related violence in Australia, providing the context for this inquiry.

1.9 Chapter 2 examines some foundational issues of this inquiry by considering terminology and the extent of the causal relationship, if any, between alcohol and violence.

1.10 Chapter 3 focuses on entertainment precincts, examining possible policies to reduce alcohol-related violence in those areas.

1.11 Chapter 4 considers recent legal responses to alcohol-related violence, including the creation of new so-called 'one-punch' offences.

1.12 Chapter 5 examines broader policy options to reduced alcohol-related violence, including alcohol advertising, taxation, and public education.

1.13 Chapter 6 considers the content and practicality of a national strategy on alcohol-related violence. It also provides a brief summary and outlines the committee's view.

### **Background**

1.14 Australia has long had drinking cultures. Consuming alcohol, often to excess, is a common and accepted practice throughout many parts of the country. Yet where alcohol is consumed to excess, alcohol-related or 'fuelled' violence can often follow.

1.15 In relation to the scope of alcohol consumption in Australia, the Law Council of Australia (LCA) stated that:

...data from the Australian Bureau of Statistics indicates that on a per capita basis there were 9.7 litres of pure alcohol available for consumption per person in 2013-14, 1.7% less than the amount in 2012-13 (9.9 litres). As a standard drink consists of 12.5 mls of pure alcohol, this is equivalent to an average of 2.1 standard drinks per day per person aged 15 years and over.

While this figure represented a 50-year low in Australian alcohol consumption, concerns appear to remain by health experts that this does not equal a reduction in alcohol-related harm.

The biennial Australian Institute of Health and Welfare report of Australia's Health has stated that the consumption of alcohol in Australia is widespread and entwined with cultural activities. The report noted that 'excessive consumption is a major cause of road and other accidents, domestic and

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public violence, crime, liver disease and brain damage, and contributes to family breakdown and broader social dysfunction'.<sup>1</sup>

1.16 Alcohol-related harms are estimated to cost the community between \$15 billion and \$36 billion each year.<sup>2</sup> The LCA suggested that:

...in 2004–05 the total costs attributable to alcohol-related crime in Australia was \$1.7 billion; the social cost relating to alcohol-related violence (which excludes costs to the criminal justice system) was \$187 million; and the costs associated with the loss of life due to alcohol-related violent crime amounted to \$124 million.<sup>3</sup>

1.17 According to St Vincent's Health Australia (SVHA), alcohol-related disease and injury lead to over 5 500 deaths and 157 000 hospitalisations each year.<sup>4</sup> Professor Tanya Chikritzhs, Professor Steve Allsop, Mr William Gilmore and Mr Vic Rechichi of the National Drug Research Institute (NDRI) informed the committee that:

...between 1996 and 2005, an estimated 32,000 Australians died from alcohol-attributable injury and disease caused by risky or high risk drinking. In the 10 years between 1995/96 and 2004/05 an estimated 813,000 hospitalisations in Australia were caused by alcohol.<sup>5</sup>

1.18 The Deakin University Violence Prevention Group (DUVPG) stated that:

During high-alcohol-hours (HAH; 20.00 hours Friday to 06.00 hours Saturday and 20.00 hours Saturday to 06.00 hours Sunday), alcohol accounted for 36.1% of all injury presentations. In total, 41.7% of alcohol related attendances during HAH reported consuming last drinks at identifiable hotels, bars, nightclubs or restaurants, or identifiable public areas/events. Approximately 60% of all alcohol related presentations had purchased their alcohol at packaged liquor outlets.<sup>6</sup>

1.19 A range of submitters also provided statistics in relation to alcohol and violence. For example, the DUVPG told the committee that there are over 70 000 alcohol-related assaults every year in Australia and:

...72% of Australian men who were physically assaulted by another man said the perpetrator had been drinking or taking drugs, and 28% had done so themselves. Almost half (47%) of women physically assaulted and most (84%) women who were sexually assaulted by a man said that the perpetrator had been drinking or taking drug...Alcohol has been identified

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1 Law Council of Australia (LCA), *Submission 30*, p. 6.

2 Royal Australasian College of Physicians (RACS), *Submission 16*, Attachment 1, pp 10-11; Deakin University Violence Prevention Group (DUVPG), *Submission 47*, Attachment 23, p. 1.

3 LCA, *Submission 30*, p. 7.

4 St Vincent's Health Australia (SVHA), *Submission 38*, p. 2.

5 Professor Tanya Chikritzhs, Professor Steve Allsop, Mr William Gilmore and Mr Vic Rechichi, National Drug Research Institute (NDRI), *Submission 28*, p. 1.

6 DUVPG, *Submission 47*, p. 52.

as a factor in around three-quarters of assaults and incidents of offensive behaviour on the street.<sup>7</sup>

1.20 Dr Kate Fitz-Gibbon stated '[a]lcohol has long been cited as a key contributory factor to family violence, where women and children are victimised at rates far greater than their male counterparts'.<sup>8</sup>

1.21 The LCA informed the committee that:

...in 2011 there were almost 30,000 police reported incidents of alcohol-related domestic violence in the states and territories where data is available, and excluding alcohol-related assaults in Queensland, South Australia, Tasmania and The Australian Capital Territory.<sup>9</sup>

1.22 The LCA also advised that over one million children (22 per cent of all Australian children) 'are estimated to be affected in some way by the drinking of others', including verbal abuse, lack of supervision or being placed in unsafe situations, physical harm or exposure to domestic violence. Further, more than 10 000 Australian children are in the child protection system because of a carer's drinking.<sup>10</sup>

1.23 As this evidence elucidates, alcohol-related harm includes but also extends beyond violence; these statistics also emphasise the extent of the problem.

1.24 In recent years a number of assaults have gained significant media attention. Many well-known instances have been 'one-punch' assaults, also known as 'coward punches' or 'king hits'. The following young men died following such assaults, with their cases attracting public outcry:

- Mr Thomas Kelly, 18 years old, attacked on 7 July 2012 in Kings Cross, NSW;
- Mr Daniel Christie, 18 years old, attacked on 31 December 2013 in Kings Cross, NSW;
- Mr Cole Miller, 18 years old, attacked on 3 January 2016 in Fortitude Valley, Queensland.
- Mr Thomas Keaney, 23 years old, attacked in December 2013 in Northbridge, Western Australia;
- Mr Trevor Duroux, 40 years old, attacked in December 2015 in Coolangatta, Queensland; and
- Mr Patrick Cronin, 19 years old, attacked on 16 April 2016 in Diamond Creek, Victoria.

1.25 Additionally, Ms Melissa Abdo, 36 years old, suffered serious head injuries after being attacked in the early hours of 9 January 2016 in Mount Isa, Queensland.

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7 DUVPG, *Submission 47*, pp 7–8.

8 Dr Kate Fitz-Gibbon, *Submission 49*, p. 2.

9 LCA, *Submission 30*, p. 7.

10 LCA, *Submission 30*, p. 7.

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1.26 Most policy responses to alcohol-related violence have been enacted by state or territory governments. These responses are diverse, touching on liquor trading restrictions, policing, public transport, criminal punishments, and education campaigns.

1.27 Alcohol-related violence has gained significant media attention of late, and a number of high-profile and controversial reforms have been introduced. Some of the most prominent reforms include:

- lockout laws, which restrict access to late night venues after a certain time;
- restrictions on access to alcohol, such as early cessation of alcohol sales or the state-wide ban on takeaway alcohol after 10:00pm implemented in NSW;
- the introduction of new offences for alcohol-related one punch assaults; and
- increased punishments for alcohol-related violence, including mandatory minimum sentences.

### **Scope of the inquiry**

1.28 Alcohol-related violence manifests in many and diverse forms. It clearly extends beyond one-punch assaults to other forms of violence, including sexual assault, violence in Indigenous communities, and family violence.

1.29 As this evidence above elucidates, the character of alcohol-related violence can depend on many things, including the background of and relationship between the perpetrator(s) and victim(s), the location of the violence, the time at which the violence occurs, the extent of the violence, and whether the violence is one-off or repeated. Illicit and other drugs may also contribute to violence.

1.30 The evidence received by the committee in submissions and at the public hearing focused on night-time violence in entertainment precincts, including one punch assaults, and this is the main focus of this report. The report also considers the potential value of a nationally-consistent approach to alcohol-related violence.



## Chapter 2

### Relationship between alcohol and violence

#### Terminology

2.1 The terms of reference for the inquiry refer to both 'alcohol-fuelled violence' and 'alcohol-related violence'. Some submitters argued that it is important to use terminology that accurately describes the problem, and proffered their preferred terms.

2.2 Step Back Think (SBT) argued for careful consideration of terminology:

Language is a vitally important part of our culture and societies...It is important to consider the language we use to describe social violence as it has the power to transform our culture surrounding social violence. Language can also be a barrier to creating change, as multiple or conflicting terminology can limit and confuse discourse.<sup>1</sup>

2.3 SBT supported the term 'social violence', which it defined as 'interpersonal physical violence that occurs in a community setting, such as a one-punch assault, pub brawl or street fight'.<sup>2</sup> SBT claimed using this term would both 'emphasise the social and cultural elements of this type of violence' as well as 'identify that social violence is a specific type of violence'.<sup>3</sup> SBT preferred this term because it does not distinguish between violence caused by alcohol or by other drugs.<sup>4</sup>

2.4 Ms Martha Tsamis, the licensee of Chasers and Inflation Nightclubs, opposed both the term 'alcohol-fuelled violence' and the term 'alcohol-related violence', because the association between alcohol and violence 'does not mean there is a causal correlation between alcohol and violence'.<sup>5</sup> She advocated for thoughtful terminology, positing that:

Getting the terminology right and separating cause and effect in relation to alcohol misuse and violence is vital to effective public policy and practice in relation to these two serious national issues.<sup>6</sup>

2.5 Several submissions made similar points regarding the causal implications of the term 'alcohol-fuelled violence', but did not extend this to the term 'alcohol-related violence'. For instance, Alcohol Beverages Australia (ABA) opposed the term 'alcohol-fuelled violence' because 'alcohol does not "fuel" violence',<sup>7</sup> adding that:

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1 Step Back Think (SBT), *Submission 27*, p. 1.

2 SBT, *Submission 27*, p. 1.

3 SBT, *Submission 27*, p. 2.

4 SBT, *Submission 27*, p. 3.

5 Ms Martha Tsamis, *Submission 45*, p. 5.

6 Ms Tsamis, *Submission 45*, p. 4.

7 Alcohol Beverages Australia (ABA), *Submission 59*, p. 3.

This mislabelling of violence as 'alcohol-fuelled' contributes to increase rates of violence because it lessens responsibility from the violent perpetrator for their actions: they are not held fully accountable for their behaviour because the alcohol is seen to have been the cause or "fuel".<sup>8</sup>

2.6 Similarly, the Australian Hotels Association (AHA) preferred the term 'anger-fuelled violence', submitting that: '[t]he term *alcohol-fuelled violence* inaccurately lays the blame for this criminal behaviour at the foot of the alcohol industry instead of with the violent criminals that commit it'.<sup>9</sup>

2.7 Dr Kate Fitz-Gibbon supported the term 'alcohol-related violence' because:

The notion of violence as 'alcohol-fuelled violence' rather than, for example, 'alcohol-related violence' partially shifts focus and responsibility for the act of violence from the individual to the alcohol involved. The term 'alcohol fuelled violence' suggests a causal relationship between alcohol consumption and violence which is not always the case.<sup>10</sup>

2.8 Professor David Moore, Professor Suzanne Fraser, Associate Professor Helen Keane, Dr Kate Seear and Dr kylie valentine (Professor Moore et al.) argued that the term 'alcohol-fuelled violence':

...explicitly frames the relationship between alcohol and violence as directly causal. Yet extensive anthropological, sociological and historical research consistently demonstrates that alcohol-related effects, including violence, are contingent on the historical, social and political contexts in which drinking is embedded...<sup>11</sup>

2.9 Professor Moore et al. added that:

Replacing the term 'alcohol-fuelled violence' with 'alcohol-related violence' acknowledges the involvement of alcohol but leaves open the precise relationship between alcohol and violence, and thus allows for the incorporation in policy of other crucial elements that shape this relationship.<sup>12</sup>

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8 ABA, *Submission 59*, p. 3.

9 Australian Hotels Association (AHA), *Submission 51*, p. 3.

10 Dr Kate Fitz-Gibbon, *Submission 49*, p. 2.

11 Professor David Moore, Professor Suzanne Fraser, Associate Professor Helen Keane, Dr Kate Seear and Dr kylie valentine, *Submission 31*, p. 3.

12 Professor Moore, Professor Fraser, Associate Professor Keane, Dr Seear and Dr valentine, *Submission 31*, p. 3.



2.10 Many submissions used the term 'alcohol-related violence', and the term was commonly used at the public hearing.<sup>13</sup> This report uses the term 'alcohol-related violence' in place of 'alcohol-fuelled violence', 'social violence', or other suggested terms.

### **Does alcohol cause violence?**

2.11 The committee heard evidence that alcohol can cause harm to the drinker and to others. Apart from the obvious harm to a person's own health if they regularly drink to excess, intoxication can also cause individuals to engage in activities which may be dangerous to their health, and that of others. St Vincent's Health Australia (SVHA) stated that: '[a]lcohol is second only to tobacco as a leading preventable cause of death and hospitalisation'.<sup>14</sup> The Foundation for Alcohol Research and Education (FARE), the Public Health Association of Australia (PHAA) and the National Alliance for Action on Alcohol (NAAA) labelled alcohol a 'toxic substance' with the capacity to cause both long and short term harm, including harm to people other than the drinker.<sup>15</sup> The Royal Australian College of Surgeons (RACS) likewise submitted that:

Surgeons are dramatically confronted with the effects of alcohol misuse when treating patients with injuries resulting from road traffic trauma, interpersonal violence and personal accidents that are caused by excessive alcohol consumption.<sup>16</sup>

2.12 There was, however, contention around the extent of the causal relationship, if any, between alcohol and violence. The relationship between alcohol and violence is important because policy responses to alcohol-related violence often rest on assumptions about the underlying causes of the problem.

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13 See, for example, Australian Medical Association (AMA), *Submission 7*; Royal Australasian College of Physicians (RACP), *Submission 16*; WA Nightclubs Association (WANA), *Submission 18*; Queensland Nurses' Union (QNU), *Submission 19*; The Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Submission 25*; Professor Tanya Chikritzhs, Professor Steve Allsop, Mr William Gilmore and Mr Vic Rechichi, *Submission 28*; Victorian Alcohol & Drug Association (VAADA), *Submission 29*; Professor Moore, Professor Fraser, Associate Professor Keane, Dr Seear and Dr valentine, *Submission 31*; McCusker Centre for Action on Alcohol & Youth (MCAAY) and Public Health Association of Australia (PHAA), *Submission 32*; Australian Drug Foundation (ADF), *Submission 34*; St Vincent's Health Australia (SVHA), *Submission 38*; Australian Liquor Stores Association (ALSA), *Submission 44*; Deakin University Violence Prevention Group (DUVPG), *Submission 47*; Dr Fitz-Gibbon, *Submission 49*; Foundation for Alcohol Research and Education (FARE), Public Health Association of Australia (PHAA) and National Alliance for Action on Alcohol (NAAA), *Submission 50*; Western Australian Network of Alcohol & other Drug Agencies (WANADA), *Submission 52*; Aboriginal Health Council of Western Australia (AHCWA), *Submission 58*; and ABA, *Submission 59*.

14 SVHA, *Submission 38*, p. 2.

15 FARE, PHAA and NAAA, *Submission 50*, p. 4.

16 Royal Australian College of Surgeons (RACS), *Submission 43*, p. 2.

2.13 SVHA argued that alcohol is 'a major contributor' to alcohol-related violence.<sup>17</sup> It outlined the findings of four international studies into the correlation between alcohol and violence:

- a one hour extension of alcohol outlet closing times in some of Amsterdam's nightlife areas was associated with 34 per cent more alcohol-related injuries;
- a study of 18 cities in Norway found a 16 per cent increase in violent crime associated with each additional hour of trading;
- a late-night off-premise alcohol sales ban in Germany has been effective at reducing alcohol-related hospitalisations among adolescents and young adults in the short term; and
- in New York, every additional hour of trading was associated with a greater reported incidence of violent crimes.<sup>18</sup>

2.14 However, Ms Tsamis argued that 'correlation does not imply causation'.<sup>19</sup> She argued that 'alcohol does not directly cause violence' and that 'most people who drink are not violent'.<sup>20</sup> Ms Tsamis also presented research papers which she claimed 'demonstrate that cultural factors alone are a strong indicator in whether violence will occur, regardless of whether alcohol is consumed or not'.<sup>21</sup>

2.15 A number of submissions argued a similar point, and referred to a study by Dr Anne Fox titled *Understanding behaviour in the Australian and New Zealand night-time economies*.<sup>22</sup> The AHA highlighted 'violent people as being the real issue' and quoted Dr Fox's report:

If alcohol alone makes people violent, we would expect to find incidents of violence spread evenly across the full range of drinkers, from female post-menopausal librarians to young male rugby players, but we don't.

We would also expect to find an equal incidence of violence among drinkers in all societies, but we don't. We would expect to find equal levels of violence in all drinking situations, from weddings to funerals to Saturday nights out on the town, but we don't.

The conclusion of this, and many previous studies, is that alcohol can, in certain cultures and situations, be a facilitator of aggression if aggression is there to begin with, both in the individual and in the cultural environment. It does not produce it where it doesn't already exist.<sup>23</sup>

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17 SVHA, *Submission 38*, p. 3.

18 SVHA, *Submission 38*, p. 4.

19 Ms Tsamis, *Submission 45*, pp 16-17.

20 Ms Tsamis, *Submission 45*, p. 16.

21 Ms Tsamis, *Submission 45*, p. 18.

22 ALSA, *Submission 44*, pp 7-8; AHA, *Submission 51*, p. 7; Brewers Association of Australia and New Zealand, *Submission 61*, p. 9.

23 AHA, *Submission 51*, p. 7.

2.16 The Australian Liquor Stores Association (ALSA) summarised findings from Dr Fox's report, including that 'the physical effects of alcohol do not determine a behavioural response' and that 'it's the wider culture that determines the behaviour whilst drinking, not just the drinking'.<sup>24</sup> However, the Woman's Christian Temperance Union (WCTU) Australia opposed Dr Fox's report, and asserted that it was funded by Lion, an alcohol company.<sup>25</sup>

2.17 The Deakin University Violence Prevention Group (DUVPG) highlighted the link between alcohol and violence, arguing that:

The evidence is very substantial in terms of the links, and in a number of different ways you can see that. So you can do studies, as they have been doing in America for quite a long time, where you get people in a room and you add alcohol and you provoke them. When they do not have alcohol or when they have a placebo they do not respond as aggressively as when they do have alcohol. You can track people throughout time, and you can measure that when alcohol is involved people are more likely to be involved in violence than when it is not involved...

One of the key things that we are finding is that alcohol also creates victims...In terms of victims, they tend to walk into situations they would never walk into, and they respond to prompts that they would never normally respond to from people they would never normally respond to.<sup>26</sup>

2.18 The DUVPG ultimately argued that there is no single cause of alcohol-related violence; the causes are many and complex. It contended that:

Conceptualising alcohol-related violence as an outcome from a mix of psychological, developmental and environmental risk and protective factors it the only scientifically valid framework to work [from].<sup>27</sup>

### ***Aggressive masculinities***

2.19 Various submitters and witnesses highlighted that men are frequently both the perpetrators and victims of alcohol-related violence. For example, Dr Fitz-Gibbon explained:

Australian research...observed that nationally between 2000 and 2012 the vast majority of one-punch deaths took place at night in public drinking venues, such as hotels and pubs, and involved young males (as both offender and victim) acting under the influence of alcohol and/or drugs.<sup>28</sup>

2.20 Professor Moore et al. emphasised certain aggressive masculinities as a cultural factor contributing to alcohol-related violence. These masculinities, it was argued, are socially constructed and 'inextricably linked to struggles for social power

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24 ALSA, *Submission 44*, p. 8.

25 Woman's Christian Temperance Union (WCTU) Australia, *Submission 13*, pp 4-5.

26 Professor Peter Miller, DUVGP, *Committee Hansard*, 15 April 2016, p. 6.

27 DUVPG, *Submission 47*, p. 9.

28 Dr Fitz-Gibbon, *Submission 49*, p. 1.

between men and between men and women'.<sup>29</sup> The authors pointed to a large body of research that:

has consistently highlighted the disproportionate involvement of men, and particularly young men, in acute forms of alcohol-related harm (e.g. violence, sexual assault, traffic accidents, drink driving and public disorder).<sup>30</sup>

2.21 According to this view, aggressive masculinities play a 'key role' in public assaults, and it is simplistic to consider alcohol as 'the "precipitating or influencing" factor'.<sup>31</sup> The authors concluded that:

...violence is gendered and most often perpetrated by men, especially young men. Although these are not new insights, they are strikingly absent from contemporary policy discourse and legal debates on alcohol and violence (such as the effectiveness of lockout laws).<sup>32</sup>

2.22 The DUVPG submitted that 'violence and alcohol feed each other, making both more common and more severe'.<sup>33</sup> The DUVPG also explored many possible causes of alcohol-related violence, including masculinities, stating that:

What we find overwhelmingly is that if you are someone who is aggressive and you drink, that virtually explains whether you will perpetrate a fight. Trait aggression, heavy episodic drinking and if you experienced violence in the home as a child are the key predictors of whether you will be violent in later life, not masculinity.<sup>34</sup>

### ***Domestic violence***

2.23 As discussed briefly in chapter 1, some submitters identified a relationship between alcohol consumption and domestic (family and intimate partner) violence.

2.24 The Law Council of Australia (LCA) advised that alcohol is a significant factor in 50 per cent of domestic physical and sexual violence in Australia, and that \$46.4 million per year in costs can be attributed to alcohol-related domestic violence.<sup>35</sup>

2.25 The DUVPG stated that there is clear evidence about the long-term and intergenerational effects of family and domestic violence 'of which 30–50% are

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29 Professor Moore, Professor Fraser, Associate Professor Keane, Dr Seear and Dr valentine, *Submission 31*, p. 4.

30 Professor Moore, Professor Fraser, Associate Professor Keane, Dr Seear and Dr valentine, *Submission 31*, p. 5.

31 Professor Moore, Professor Fraser, Associate Professor Keane, Dr Seear and Dr valentine, *Submission 31*, p. 7.

32 Professor Moore, Professor Fraser, Associate Professor Keane, Dr Seear and Dr valentine, *Submission 31*, p. 9.

33 DUVPG, *Submission 47*, p. 59.

34 DUVPG, *Submission 47*, p. 35.

35 Law Council of Australia (LCA), *Submission 30*, p. 7.

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alcohol-related'.<sup>36</sup> The DUVPG told the committee that children who survive family or domestic violence 'are three times more likely to become perpetrators and twice as likely to become victims' and:

Boys who are abused physically by their fathers, who normally do so when drunk, are twice as likely to be perpetrators of bar-room violence as adults. They often destroy their lives as well as others before they even really begin.<sup>37</sup>

2.26 The DUVPG also told the committee that its research revealed incidents of intimate partner violence and family violence (as well as other violence), with 32.7 per cent of participants had experienced violence involving alcohol and that a:

...participant was more likely to report that they had themselves consumed alcohol for other violence, whereas the other person (not the survey participant) was more likely to be reported as having consumed alcohol for intimate partner violence.

The alcohol consumed, including during intimate partner violence incidents was most frequently purchased at a supermarket liquor store (38.8%) and consumed at the respondent's home (55.9%).<sup>38</sup>

### ***Violence towards nurses and carers***

2.27 The Queensland Nurses' Union (QNU) described some of the violence directed towards nurses and carers. In commissioned research, the QNU found that:

...almost half of the Queensland nurses and midwives who responded to their survey had experienced workplace violence in the previous three months with the lowest incidence of workplace violence reported in the private sector. Overall half of the nurses and midwives who responded said that workplace violence had remained the same but a third noted an increase. There were more aged care nurses who said it had decreased whilst private sector nurses were more likely to say that it had remained the same. Clients/patients/residents were the highest source of workplace violence.

This study did not differentiate between alcohol-related and other forms of violence, but the prevalence of alcohol could be assumed to correlate to other studies (for example Crilly, Chaboyer & Creedy, 2004) where alcohol and drugs accounted for half of the incidents.<sup>39</sup>

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36 DUVPG, *Submission 47*, p. 7.

37 DUVPG, *Submission 47*, p. 9.

38 DUVPG, *Submission 47*, p. 39.

39 QNU, *Submission 19*, p. 7.



## Chapter 3

### Entertainment precincts: strategies on the frontline

3.1 Reforms in entertainment precincts have been some of the most prominent features of government responses to alcohol-related violence, as well as the most contentious.

3.2 All submitters and witnesses were supportive of reducing alcohol-related violence. Many also argued that the most effective solution will comprise multiple measures, rather than single policies in isolation. For example, Professor Steve Allsop of the National Drug Research Institute (NDRI) discussed the strategy implemented in Newcastle, which he regarded as successful:

What happened in Newcastle was a combination of factors where the community came onside, where there were lockouts, but there was also a two-hour reduction in the sale of alcohol. From an evidence base point of view, and based on evidence from overseas, for example in some of the Scandinavian countries, there is sufficient evidence to say that, if you wish to have an immediate impact on reducing alcohol-related violence in those areas where alcohol-related violence is clearly related to the increased availability of alcohol, then this will have an impact. It means that you also need to do other things. You cannot just do that. It is about changing attitudes and values towards bad behaviour, intoxicated or not. You need to have a comprehensive approach to this issue.<sup>1</sup>

3.3 Nonetheless, there was disagreement about how reductions in alcohol-related violence could be best achieved, and to what extent other potentially negative consequences should be tolerated when reducing rates of violence. Submitters noted their preference for responses to be based on sound evidence.

3.4 This chapter discusses a range of strategies that could be applied in entertainment precincts to reduce alcohol-related violence. It briefly outlines recent reforms to liquor trading in Australia, and then considers liquor trading within the context of the night-time economy (NTE). It then examines some key liquor trading policies in turn, namely:

- lockout laws;
- early cessation of alcohol service;
- regulation of alcohol outlets; and
- staggered closing times.

3.5 Subsequently, this chapter considers other possible reforms in entertainment precincts, particularly with regards to services, namely:

- identification scanners;

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1 Professor Steve Allsop, Director, National Drug Research Institute (NDRI), Curtin University, *Committee Hansard*, 15 April 2016, p. 3.

- staff training;
- police presence; and
- public transport.

### **Recent reforms**

3.6 A number of state and territory governments have enacted reforms to address alcohol-related violence. Much of the evidence heard by the committee analysed recent liquor restrictions introduced in Sydney, Newcastle, and Queensland. This section briefly outlines some key recent reforms in states and territories.

#### ***New South Wales***

3.7 Newcastle, NSW, was one of the first cities in Australia to implement lockout laws and other alcohol service restrictions. The laws were introduced in March 2008 following 'a troubled period concerning alcohol-fuelled violence and related anti-social behaviour' from 2001 to 2008.<sup>2</sup>

3.8 The laws were amended following a legal challenge in July 2008. The laws applied to 14 late night licenced premises in the Newcastle central business district. Under the amended laws:

- patrons cannot enter venues after 1:30am (the 'lockout');
- venues must close by 3:30am (rather than 4:30am or 5:00am);
- licensees are required to adopt plans of management;
- alcohol "shots" cannot be served after 10:00pm;
- last drinks are served 30 minutes before closing;
- licensees are required to have a responsible service of alcohol (RSA) officer on-site from 11:00pm until closing; and
- licensees are subject to compliance audits.<sup>3</sup>

3.9 While these laws applied in Newcastle, they did not apply in nearby Hamilton, and Hamilton therefore provided a control site to measure the effectiveness of the new laws. The City of Newcastle quoted academic research which showed that:

In the 18 months following introduction of restrictions in the Newcastle CBD, there was a reduction in assaults by one-third, with no indication of temporal or spatial displacement...in the 18 months following the implementation of these laws Newcastle saw a 22% decrease in assaults per hour of restricted trading and an estimated effect of a 21% decrease for the following three and a half years. These findings are very similar to a comprehensive study conducted in Norway, where, when trading hours increased, there was an average of 20% increase in assaults per additional hour of trading, and in cities where trading hours were restricted; there was

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2 City of Newcastle, *Submission 6*, p. 1.

3 City of Newcastle, *Submission 6*, p. 1.



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an average decrease of 20% in alcohol-related assaults. These findings have also been replicated in Western Australian and the Netherlands.<sup>4</sup>

3.10 In relation to the Newcastle reforms, St Vincent's Health Australia (SVHA) informed the committee there had been a 'substantial (37%) reduction in non-domestic assaults requiring attention', 'a significant decrease in injury-related [emergency department] presentations – an estimated 344 ED attendances were prevented each year' and 'five years after the reforms [the] reduction in assaults had been sustained while in a comparator city (Hamilton) the assault rate had not declined over the same period'.<sup>5</sup>

3.11 Similar restrictions were imposed in Hamilton in August 2010, including a 1:00am lockout, closing time of 3:30am, and last drinks 30 minutes before closing.<sup>6</sup>

3.12 The City of Newcastle's examination of the Newcastle and Hamilton cases concluded that 'it is reasonably likely that the reduction in trading hours from 5am to 3:30am had the most impact on reducing alcohol-fuelled violence', not the lockout laws.<sup>7</sup>

3.13 Similar reforms were introduced in Kings Cross, Sydney. Following the fatal assault of Mr Thomas Kelly in 2012, the NSW government introduced the following measures in Kings Cross:

- a ban on shots, doubles and use of glassware after midnight on Fridays and Saturdays;
- the mandatory inclusion of two Responsible Service of Alcohol (RSA) marshals in all venues;
- a freeze on new licensed venues in the Kings Cross precinct until at least 2015;
- ID scanners at licensed venues to ensure that patrons thrown out of one venue would be barred from entering another venue in the Kings Cross area;
- increased night bus services and a pre-paid taxi trial; and
- the establishment of a sobering up centre.<sup>8</sup>

3.14 At the time, some criticised these measures for not including lockout laws. The NSW Police Commissioner, Mr Andrew Scipione, and the NSW Police

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4 City of Newcastle, *Submission 6*, p. 2.

5 St Vincent's Health Australia (SVHA), *Submission 38*, p. 5.

6 City of Newcastle, *Submission 6*, p. 2.

7 City of Newcastle, *Submission 6*, p. 2.

8 *Liquor Amendment (Kings Cross Plan of Management) Bill 2012* (NSW).

Association President, Mr Scott Weber, both argued in favour of introducing lockout laws.<sup>9</sup>

3.15 Following the fatal assault on Mr Daniel Christie in December 2013, the NSW government introduced lockouts and other new policies in February 2014. These policies included:

- a state-wide ban on takeaway alcohol sales after 10:00pm; and
- specific regulations in the designated Sydney CBD Entertainment Precinct:
  - patrons cannot enter a venue after 1:30am (colloquially known as the 'lockout law');
  - last drinks are served at 3:00am (venues can stay open after 3:00am without alcohol service);
  - temporary bans of 48 hours for troublemakers; and
  - stricter liquor licence requirements, including higher fines and punishments for venues that breach their obligations, such as responsible service of alcohol requirements.<sup>10</sup>

3.16 Data from the NSW Bureau of Crime Statistics and Research (BOCSAR) has shown that, following the laws introduced into Sydney in February 2014, assaults decreased by 4 per cent in Kings Cross and by 20 per cent in the CBD entertainment district. However, Dr Don Weatherburn, Director of BOCSAR, has stated that '...assaults have been coming down in NSW since 2008, so you had this pre-existing downward trend...What the lockout laws did was accelerate the existing downward trend, so it fell even faster than before'.<sup>11</sup>

3.17 SVHA supported the BOCSAR evidence, noting 'an "immediate and substantial" reduction in assaults' of 32 per cent in Kings Cross following the 2014 NSW liquor law reforms, as well as 'a "substantial and perhaps ongoing" reduction in assaults' by 26 per cent in the Sydney CBD.<sup>12</sup>

3.18 SVHA also emphasised a decrease in alcohol-related injuries. It argued that this change was seen across the week, but was most visible during the 'high alcohol

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9 Alicia Wood, 'Door shut on Kings Cross lockouts despite pleas to cut alcohol-fuelled violence', *The Daily Telegraph*, 19 September 2012, available at <http://www.dailytelegraph.com.au/door-shut-on-kings-cross-lockouts-despite-pleas-to-cut-alcohol-fuelled-violence/story-e6freuy9-1226476821869> (accessed 3 May 2016).

10 New South Wales Government, 'New alcohol laws now in place', webpage, available at: <http://www.nsw.gov.au/newlaws> (accessed 3 May 2016).

11 'Crime statistician Don Weatherburn refutes NSW Premier Mike Baird's assault statistics', *Australian Broadcasting Corporation*, 10 February 2016, available online: <http://www.abc.net.au/news/2016-02-10/crime-statistician-refutes-bairds-sydney-assault-figures/7154804> (accessed 3 May 2016).

12 SVHA, *Submission 38*, p. 5.

consumption period' (between 6:00pm Friday and 9:00am Sunday) where 'there was a 25% drop in alcohol-related serious and critical injuries'.<sup>13</sup> SVHA added that:

Our neurosurgeons also report a decrease in the number of patients presenting between 8pm and 8am with serious head injuries (which often require immediate surgery) – from 26 patients in the year prior to the lock-outs to 11 patients in the year following.<sup>14</sup>

3.19 SVHA further noted research showing that alcohol-related violence and injuries have not been displaced to neighbouring hospitals or suburbs.

3.20 These arguments were based on SVHA's experience in the Sydney CBD and Kings Cross entertainment precincts, with SVHA noting that because St Vincent's Hospital Sydney serves the Kings Cross and Sydney CBD areas, it has 'close experience of before and after the NSW Government's liquor law changes', and its experience has been 'compelling'.<sup>15</sup>

### ***Queensland***

3.21 On 17 February 2016, the Tackling Alcohol-fuelled Violence Legislation Amendment Bill 2015 passed the Queensland Parliament. Under these reforms:

- last drinks are served at 2:00am;
- approved venues that are located in a declared Safe Night Precinct may sell alcohol until 3:00am;
- all venues in a precinct that introduces 3:00am trading will be subject to a 1:00am lockout;
- the sale of high-alcohol content, rapid consumption drinks (shots) after midnight is prohibited; and
- no new licences will be granted for the sale of takeaway liquor after 10:00pm. Licensees that were granted their licence prior to 10 November 2015 may continue in accordance with their licence.<sup>16</sup>

### ***Victoria***

3.22 From June to September 2008, the Victorian government trialled a lockout in designated parts of central Melbourne, known as the '2:00am lockout'. Under this lockout, patrons could not enter venues in the designated areas between 2:00am and 7:00am.

3.23 The then Brumby government commissioned a report into the lockouts, conducted by KPMG. The report found that the policy did not achieve its aim and that violence increased in the hours leading up to 2:00am.<sup>17</sup>

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13 SVHA, *Submission 38*, p. 5.

14 SVHA, *Submission 38*, p. 5.

15 SVHA, *Submission 38*, p. 5.

16 Queensland Government, *Submission 55*, p. 1.

3.24 At the time, Professor Peter Miller, now of the Deakin University Violence Prevention Group (DUVPG), stated that the lockout failed because it was implemented poorly and in isolation, without other policies alongside it.<sup>18</sup>

3.25 The Victorian government has recently rejected the re-introduction of lockout laws, citing other policies to reduce alcohol-related violence. Minister for Liquor Regulation the Hon Jane Garrett MLA said:

We tried lockout laws and it didn't work for Melbourne...Unlike other cities, Melbourne has 24-hour public transport, a liquor freeze on big beer barns and inspectors out on the beat making sure licensees are doing the right thing.<sup>19</sup>

3.26 Similarly, the Victorian Opposition Leader, the Hon Matthew Guy MLA, explained that:

We trust Victorians to choose where and when to have a drink and we believe the solution to violence is to punish the violent and not everyone else. We don't see any sense in creating the ghost town that Sydney has become.<sup>20</sup>

### **The night-time economy**

3.27 The NTE supports and is supported by entertainment precincts. The committee was informed that strategies that aim to reduce alcohol-related violence in entertainment precincts are therefore likely to have an effect on the NTE.

3.28 Numerous submitters considered the negative impact that strategies to reduce alcohol-related violence may have on the NTE. For example, Mr Bill Hormann AM APM asked 'how is success of the lockout project to be assessed?'.<sup>21</sup> He proposed a

17 Benedict Brook, 'Melbourne lockout laws were dumped in months, while Brisbane looks to trial laws modelled on Sydney', *news.com.au*, 9 February 2016, available online: <http://www.news.com.au/finance/business/other-industries/calls-for-melbourne-to-look-again-at-alcohol-restrictions-as-brisbane-examines-lockouts/news-story/53de7a25306574f24cb23b91fc394ad8> (accessed 3 May 2016).

18 See Professor Peter Miller, quoted in: Benedict Brook, 'Melbourne lockout laws were dumped in months, while Brisbane looks to trial laws modelled on Sydney', *news.com.au*, 9 February 2016, available online: <http://www.news.com.au/finance/business/other-industries/calls-for-melbourne-to-look-again-at-alcohol-restrictions-as-brisbane-examines-lockouts/news-story/53de7a25306574f24cb23b91fc394ad8> (accessed 3 May 2016).

19 Richard Willingham, 'Victorian Government says lockout laws would destroy Melbourne', *The Age*, 14 February 2016, available online: <http://www.theage.com.au/victoria/lockout-laws-would-destroy-melbourne-victorian-government-20160214-gmtppt.html> (accessed 3 May 2016).

20 Richard Willingham, 'Victorian Government says lockout laws would destroy Melbourne', *The Age*, 14 February 2016, available online: <http://www.theage.com.au/victoria/lockout-laws-would-destroy-melbourne-victorian-government-20160214-gmtppt.html> (accessed 3 May 2016).

21 Mr Bill Hormann AM APM, *Submission 14*, p. 2.

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need to balance reductions in crime with any negative effects on the NTE and employment.

3.29 The Australian Medical Association (AMA) argued:

The AMA recognises that there is opposition among business owners and certain vested interests who think they may lose revenue as a result of alcohol management measures. There are claims that music and cultural aspects of the community will be ruined from these measures, and some argue that these measures impact on everyone, when only a small few are responsible for the problem.

The AMA refutes these claims. The truth is that most Australians drink at levels that puts themselves and others at risk of harm...Regardless of which data is analysed, clearly too many Australians drink over the recommended safe levels; binge and excessive drinking is rife, and alcohol-related violence is not a small or isolated problem but exists in every city, town, suburb and community.<sup>22</sup>

3.30 This view was echoed by the Queensland Nurses' Union (QNU), which contended that:

If this inquiry's recommendations can prevent just one injury or save one life, if they can prevent one family from the trauma of dealing with the loss of a son or daughter, if they can alleviate the emotional and physical stress that is placed on paramedics, nurses and doctors, then it will be worth the discontent of an earlier night for patrons and owners of licensed premises.<sup>23</sup>

3.31 The DUVPG opined that the data on rates of alcohol-related violence in Australia 'absolutely' supported stronger laws:

The evidence is very clear in terms of the demand. I also think there has been a strong shift in public opinion over the last decade around the acceptability of violence. I think in the past, both within the home and on the streets, and certainly when I worked in nightclubs a long time ago, there was a different level of acceptance of violence. I think that has been a major change in terms of community attitudes. That is really what is driving a lot of the push to say, 'this is not good enough'.<sup>24</sup>

3.32 However, the DUVPG also recognised that:

Fortunately, many consumers visiting nightlife districts consume alcohol in moderation and do not experience alcohol related violence. However, risky alcohol consumption and high levels of intoxication are strong predictors of involvement in alcohol related violence in licensed venues and on the street.

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22 Australian Medical Association (AMA), *Submission 7*, pp 6-7.

23 Mr James Gilbert, Occupational Health and Safety Officer, Queensland Nurses' Union (QNU), *Committee Hansard*, 15 April 2016, p. 31.

24 Professor Peter Miller, Deakin University Violence Prevention Group (DUVPG), *Committee Hansard*, 15 April 2016, p. 4.

As such, measures that seek to reduce high intoxication and risky drinking behavior will have the strongest impact upon violence levels.<sup>25</sup>

3.33 In contrast, Music Australia acknowledged 'that violence is being committed is clearly of high importance. However, we submit that remedial action should not be at the expense of, or failure of, legitimate businesses'.<sup>26</sup> Similarly, the Australian Music Industry Network (AMIN) argued that, while alcohol-related violence must be tackled, great care should be taken to minimise negative consequences:

AMIN submits that the delicate balancing act of ensuring the safety of citizens while protecting the United Nations-sanctioned rights for individuals to enjoy cultural diversity can't be solved with a one size fits all approach. Sensible, targeted approaches to the root causes of this violence are needed. After all, governments don't ban cars to reduce road fatalities; they implement targeted strategies.<sup>27</sup>

3.34 The bulk of concerns raised during the course of the inquiry were that liquor trading reforms may have negative consequences for the economy and the live music industry. These concerns are outlined below.

### ***Economic implications***

3.35 The Foundation for Alcohol Research and Education (FARE), the Public Health Association of Australia (PHAA) and the National Alliance for Action on Alcohol (NAAA) jointly argued that liquor trading restrictions could diversify the NTE. They cited a study of Newcastle's NTE, commissioned by the Australian National Local Government Drug and Alcohol Advisory Committee, which found that 'between 2009 and 2011 there was a 9.6 per cent decline in "drink" sales revenue in Newcastle which was offset by a 10.3 per cent increase in "food" sales revenue'.<sup>28</sup>

3.36 In contrast, the Australian Hotels Association (AHA) expressed concern that many night-time venues in Sydney have struggled following the recent introduction of new liquor restrictions in NSW, and named several longstanding venues that have now closed.<sup>29</sup> AMIN also claimed that 16 live music venues have closed in the Kings Cross area since the new liquor restrictions were introduced.<sup>30</sup>

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25 DUVPG, *Submission 47*, p. 32.

26 Mr Chris Bowen, Chief Executive Officer, Music Australia, *Committee Hansard*, 15 April 2016, p. 19.

27 Australian Music Industry Network (AMIN), *Submission 33*, p. 2.

28 Foundation for Alcohol Research and Education (FARE), Public Health Association of Australia (PHAA), and National Alliance for Action on Alcohol (NAAA), *Submission 50*, p. 10.

29 Australian Hotels Association (AHA), *Submission 51*, p. 4.

30 Mr Joel Edmondson, Deputy Chair, Australian Music Industry Network, *Committee Hansard*, 15 April 2016, p. 17.

3.37 The AHA added weight to these concerns, claiming that the Australian NTE in 2013 was measured at \$102 billion, and implying that it should therefore be considered 'a key economic dynamic'.<sup>31</sup>

3.38 Additionally, other submissions highlighted the economic contribution of the music industry, which they alleged is diminishing due to recent liquor trading reforms. APRA AMCOS referred to a commissioned study which found that 'the venue-based live music sector contributed \$1.2 billion to the national economy, and provided over 15,000 full-time jobs'.<sup>32</sup> Similarly, the City of Sydney claimed that:

the economic value of live music in Australia is approximately 2.1 billion, while the civic (jobs created and government taxation produced) and individual benefits (such as social capital and improved health-and-wellbeing) can be valued at 13.6 billion.<sup>33</sup>

### ***The live music industry***

3.39 AMIN explained that, 'because of the impact of the digital economy', live music is critical to the broader music industry:

A recent study by the Australian Association of Artist Managers showed that, on average, between 60 and 70 per cent of artists' incomes are derived from live music, and all the other circulation of income within the music industry is based on artists' income.<sup>34</sup>

3.40 Music Australia emphasised that live music 'plays a key role in developing artists' careers and is a pathway to success'.<sup>35</sup> AMIN also argued that:

But this debate shouldn't be limited to statistics, as it is impossible to quantify the redemptive power of music. The warmth and community it engenders. The way it gives meaning and comfort to what might look, sometimes, like a vicious and meaningless world.<sup>36</sup>

3.41 MusicNSW acknowledged that 'lockout laws may reduce violence', but recommended increased government consultation with the music industry, noting 'the unintentional consequences of those [lockout] laws on the live music industry'.<sup>37</sup>

3.42 These unintended consequences were discussed by Music Australia, which referenced industry data showing 'a 40 per cent drop in live music revenue in the Sydney CBD lockout zone since the laws were introduced in 2014', as well as 'a 19 per cent decrease in attendances at night clubs and dance venues in the affected

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31 AHA, *Submission 51*, p. 4.

32 APRA AMCOS, *Submission 54*, pp 2-3.

33 City of Sydney, *Submission 63*, p. 27.

34 Mr Edmondson, AMIN, *Committee Hansard*, 15 April 2016, p. 17.

35 Mr Bowen, Music Australia, *Committee Hansard*, 15 April 2016, p. 19.

36 AMIN, *Submission 33*, p. 3.

37 MusicNSW, *Submission 40*, p. 2.

zone'.<sup>38</sup> The Live Music Office argued that 'the future looks bleak unless the 1:30am lockout can be lifted for live music venues to restore confidence and reputation'.<sup>39</sup>

3.43 Music Australia sought to explain how the recent liquor trading reforms were linked to losses in the music industry:

We have an issue with the 1.30 lockout laws, because the dynamics of a typical live music venue mean that you need to do two shows to be viable. Typically, for example, you might do your first show at 8 pm and you do your second show at midnight. If patrons cannot move between or into and out of venues after 1.30, then that kills the viability of the second show, which does affect the overall viability of a music venue. The result is that patrons are less likely to attend and the venues are less likely to continue.<sup>40</sup>

3.44 MusicNSW also argued that the liquor reforms are damaging confidence, leading to the 'perception that the industry is weak and under threat'.<sup>41</sup>

3.45 The City of Sydney highlighted the heavy reliance of the live music industry on alcohol sales, citing research showing that 'around 83% of venue income comes from food and beverage, while only 16% is derived from ticket sales'.<sup>42</sup> The City of Sydney continued:

...government regulation of liquor that reduces access to income for the live music industry and increases costs of compliance for live music venues can have a significant impact on the viability of the businesses that sustain it, especially in light of the predominance of small businesses within the industry...<sup>43</sup>

3.46 Some submitters argued that the live music industry could actually help to reduce alcohol-related violence. The City of Sydney referred to research undertaken during the development of its *Live Music and Performance Action Plan*, which found 82 per cent of respondents agreed that 'venues that offer live music and performance have a more welcoming and safer environment'.<sup>44</sup>

3.47 Moreover, AMIN referred to 'anecdotal evidence that live music audiences don't "face off" when they're facing the stage'.<sup>45</sup> Music Australia quoted researchers as follows:

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38 Music Australia, *Submission 22*, p. 3.

39 Live Music Office, *Submission 39*, p. 3.

40 Mr Bowen, Music Australia, *Committee Hansard*, 15 April 2016, p. 20.

41 MusicNSW, *Submission 40*, p. 1.

42 City of Sydney, *Submission 63*, p. 27.

43 City of Sydney, *Submission 63*, p. 27.

44 City of Sydney, *Submission 63*, p. 28.

45 AMIN, *Submission 33*, p. 3.



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...bands, even loud ones, do not cause aggression and violence...Quality bands that entertain an audience generate a positive social atmosphere, that has been observed to counteract other negative variables.<sup>46</sup>

3.48 MusicNSW suggested that live music may even reduce alcohol consumption, remarking that 'anecdotally...music venues, have informed us that people absolutely drink less when there's a live music offering'.<sup>47</sup>

### **Lockout laws**

3.49 As stated earlier, a number of states and territories have sought to reduce alcohol-related violence by implementing lockout laws.

3.50 In the Northern Territory, a 3:00am lockout applies to venues with a 4:00am closing time, and venues are also required to engage an appropriate number of security staff. The Northern Territory government indicated its support for these laws, submitting that:

The lockouts have been effective in reducing alcohol related violence, as it removes the majority of people from the streets into controlled licensed environments which should be much safer and less potential for violence.<sup>48</sup>

3.51 Other submitters supported lockouts as one component of a broader approach. The AMA argued that:

Reducing the availability of alcohol via lockouts and designated last drink times, as well as restrictions on the availability of take-away alcohol, should noticeably reduce the incidence of alcohol-related violence.<sup>49</sup>

3.52 However, many other submitters were less convinced that lockouts are effective. Professor Allsop referred to the successful reduction in assaults in Newcastle that followed a package of reforms, and explained that:

[T]here is no evidence that simply having lockouts makes a difference. That does not mean that it does not work, it just means that there is no evidence that it makes a difference. There is not a good evidence base around lockouts on their own.<sup>50</sup>

3.53 The QNU considered one of the few cases in which lockouts were implemented in isolation:

At the last inquiry we had with the state government a question was put to us around: why did the Victorian lockout laws fail? Well, all that was was a lockout. From my understanding, there were no restrictions on the sale in terms of hours. You have to compare apples to apples, and we can only go with what we have. We are hoping that the changes that Queensland has

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46 See, Tomsen, Homel and Thommeny, 2006, quoted in Music Australia, *Submission 22*, p. 4.

47 MusicNSW, *Submission 40*, p. 2.

48 Northern Territory Government, *Submission 62*, p. 5.

49 AMA, *Submission 7*, p. 3.

50 Professor Allsop, NDRI, *Committee Hansard*, 15 April 2016, p. 3.

introduced will have results for the Royal Brisbane and Women's Hospital similar to the results they had in St Vincent's Hospital in Sydney.<sup>51</sup>

3.54 The DUVGP argued that access to alcohol, not lockouts, was key:

The effects of other measures, such as lockouts are not as simple to interpret and are entangled in the effects of earlier trading hours. Our research suggests that lockouts, drink restrictions, education campaigns and other interventions have had no significant effect upon assaults up to five years later, despite positive feedback from key informants.<sup>52</sup>

3.55 Professor Kypros Kypri argued that 'the evidence does NOT support the use of lockouts'.<sup>53</sup> The Royal Australasian College of Physicians (RACP) echoed this view, submitting that 'there is no evidence of [lockout laws] effectiveness in reducing alcohol-related harms when their impacts are considered separately from those of earlier closing times'.<sup>54</sup> The Small Bar Association of Western Australia (SBAWA) opposed lockout laws, referring to a trial of the policy in Western Australia from 2009 to 2010 in which the Western Australia Liquor Commission found lockouts were ineffective.<sup>55</sup>

#### ***An arbitrary and blanket approach?***

3.56 Many submitters claimed that lockout laws and related trading restrictions fail to acknowledge differences between venues, locations, and patron demographics. Such arguments implied that restrictions on liquor trading have unfairly restricted well-behaved patrons and venues, which constitute the majority of those affected.

3.57 Mr Andrew Zheng-Macdonald, security manager at Chasers Nightclub, concisely argued that 'lockout laws don't work as they punish the majority, not stopping the minority of idiots'.<sup>56</sup> Ms Martha Tsamis, the licensee of Chasers and Inflation Nightclubs, added that '...violence in entertainment precincts will not be solved by simplistic and arbitrary measures such as lockouts'.<sup>57</sup> SBAWA held a similar view, contending that:

Blanket restrictions such as lockouts are a blunt instrument that will not address the issues in any meaningful way and, we believe, will only force the problems to occur in other, less well-regulated, places. They will punish the largest number of well-behaved consumers for the offences of a minority.<sup>58</sup>

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51 Mr Gilbert, QNU, *Committee Hansard*, 15 April 2016, p. 32.

52 DUVGP, *Submission 47*, pp 49-50.

53 Professor Kypros Kypri, *Submission 4*, p. 1.

54 Royal Australian College of Physicians (RACP), *Submission 16*, Attachment 1, pp 19-20.

55 Small Bar Association of Western Australia (SBAWA), *Submission 21*, p. 4.

56 Mr Andrew Zheng-Macdonald, *Submission 1*, p. 1.

57 Ms Martha Tsamis, *Submission 45*, p. 29.

58 Small Bar Association of WA, *Submission 21*, p. 4.

3.58 The unfairness alleged by these submitters was articulated by Alcohol Beverages Australia (ABA) which opined that, by virtue of reducing choice, lockout laws diminish the ability for patrons to enjoy a night out. It reasoned that:

By forcing patrons to make a choice between competing venues as to which venue they will be in for the rest of their evening, customers cannot move to another venue that better suits their mood or their intentions. Lockouts remove customers' flexibility to decide where they drink, eat and dance.<sup>59</sup>

3.59 This aversion to uniform approaches has resulted in support for more discerning policies. The AHA argued that:

...targeted measures are more effective than blunt whole of population measures. Lockouts are a blunt policy instrument; they prevent entry to anyone that was not inside licensed premises at the time the lockout is imposed, regardless of their sobriety or demeanour.<sup>60</sup>

3.60 This idea was implicit in Music Australia's claim that the liquor restrictions in NSW are both 'over inclusive' and 'under inclusive'.<sup>61</sup> Music Australia argued that the laws unfairly harmed musicians, venues, tourism, and other stakeholders, while failing to prevent harmful behaviours such as violence within venues and preloading of alcohol.<sup>62</sup>

3.61 Some submitters reasoned that uniform restrictions would penalise some venues and prioritise others, without good reason. ABA claimed that lockouts advantage large venues that can offer the most options to patrons after the lockout comes into effect. It held that:

The perverse effect out of lockouts may be to encourage venues to stay open longer or until the legislated close of service in order to attract patrons before the lockout start time.<sup>63</sup>

3.62 Extending this idea, Keep Sydney Open (KSO) proposed targeted measures that differentiated between venues:

It is the style of venue, not its closing time which has a greater impact on violent behaviour. Identifying well-run venues and encouraging similar businesses while inversely penalising venues with poor atmosphere (potentially by restricting their hours of trade) will improve the drinking culture of our cities.<sup>64</sup>

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59 Alcohol Beverages Australia (ABA), *Submission 59*, p. 5.

60 AHA, *Submission 51*, p. 8.

61 Music Australia, *Submission 22*, p. 2.

62 Music Australia, *Submission 22*, p. 2.

63 ABA, *Submission 59*, p. 5.

64 Keep Sydney Open (KSO), *Submission 64*, p. 1.

### Early cessation of alcohol service

3.63 As implied in the evidence above, many submitters argued that restricting access to alcohol, often through early cessation of alcohol service, is one of the most effective ways to reduce alcohol-related violence. As expressed by FARE, 'cessation of the service of alcohol...is what the evidence shows has the biggest bang for your buck'.<sup>65</sup>

3.64 The joint submission from FARE, PHAA and NAAA furthered this point, positing that:

The extent to which trading hours are restricted determines the extent to which alcohol-related harm occurs within that jurisdiction since the availability of alcohol is one of the key drivers of alcohol harm in Australia.<sup>66</sup>

3.65 RACP and the Royal Australian and New Zealand College of Psychiatrists (RANZCP) argued that there is strong evidence demonstrating that restricting the availability of alcohol can lead to significant reductions in levels of alcohol consumption and associated harms. According to the RACP and RANZCP's *Alcohol Policy* of March 2016:

Australian and international studies indicate that increased trading hours for licensed outlets are accompanied by substantially higher levels of alcohol consumption and associated harms such as drink-driver road crashes, serious violent offences committed in the early hours of the morning, and assaults per 100,000 inhabitants. Further studies provide indirect evidence of this relationship, showing that over per cent of assaults at licensed premises occur after midnight. Regular heavy drinkers are especially likely to take advantage of longer trading hours.

A Norwegian study has found that every additional hour of trading in on-licence premises is associated with a 16 per cent increase in assaults. The relationship also holds for off-licence outlets. For example, a study in New Zealand found that people purchasing alcohol in off-licences at later hours are more likely to drink in a hazardous fashion, both in quantity and frequency.<sup>67</sup>

3.66 The QNU cited research from the Australian College for Emergency Medicine (ACEM), which examined the suite of laws introduced in NSW in February 2014, and 'categorically concluded' that the policies, 'particularly early closure, have demonstrated beyond doubt that when you reduce availability you reduce harm'.<sup>68</sup>

3.67 Professor Kypri emphasised that 'the key to effectiveness is earlier cessation of alcohol consumption'. He claimed that 'the research evidence supports a nationwide

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65 Mr Michael Thorn, Chief Executive, FARE, *Committee Hansard*, 15 April 2016, p. 28.

66 FARE, PHAA and NAAA, *Submission 50*, p. 9.

67 RACP and Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Alcohol Policy*, March 2016, p. 19.

68 Mr Gilbert, QNU, *Committee Hansard*, 15 April 2016, p. 31.

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limit of no later than 2am for "last drinks" in licensed premises, and 10pm closure of off-license outlets', and added that 'there is no evidence that requiring premises to close is necessary to achieve reduction in violence'.<sup>69</sup>

3.68 Professor Miller took a broader view but supported the effectiveness of early cessation of alcohol service:

The evidence is overwhelming with regard to the effectiveness of limiting the availability of alcohol, primarily in this case through the limits on trading hours, pricing measures and caps on the number of licences per head of population. Cessation of alcohol service, last drinks or reduced trading hours has a very strong research backing for achieving the reduction in violent events.<sup>70</sup>

3.69 The Law Council of Australia (LCA) referred to the 2014 NSW liquor law reforms, which included 'a two year freeze on approvals for new and existing liquor licenses'.<sup>71</sup>

### **Alcohol outlets**

3.70 Some academics argued that areas with a high density of alcohol outlets can facilitate alcohol-related violence. Professor Allsop explained that:

What tends to happen is that large concentrations and dense concentrations of liquor outlets can increase risk because of what happens when people start engaging in unsafe practices, from a public health perspective, in order to compete with their colleagues. Also, these areas can become attraction points for people who are interested in drinking large amounts of alcohol.<sup>72</sup>

3.71 Professor Tanya Chikritzhs, Professor Allsop, Mr William Gilmore and Mr Vic Rechichi (Professor Chikritzhs et al.) noted that 'higher liquor outlet density is associated with heavier drinking among young people'.<sup>73</sup> They also stated that:

Typically, as it becomes 'easier' to access alcohol within a community, overall alcohol consumption, at least among some, and related problems also increase. Australian and overseas evidence clearly identifies late night/early morning trading for hotels and nightclubs as being closely linked to alcohol-related violence and road trauma.<sup>74</sup>

3.72 The NAAA highlighted that the root of the issue is the availability of alcohol, which is provided by outlets. Professor Najman stated:

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69 Professor Kypri, *Submission 4*, p. 1.

70 Professor Miller, *DUVPG, Committee Hansard*, 15 April 2016, p. 2.

71 Law Council of Australia (LCA), *Submission 30*, pp 13-14.

72 Professor Allsop, NDRI, *Committee Hansard*, 15 April 2016, pp 3-4.

73 Professor Tanya Chikritzhs, Professor Steve Allsop, Mr William Gilmore and Mr Vic Rechichi, NDRI, *Submission 28*, p. 3.

74 Professor Chikritzhs, Professor Allsop, Mr Gilmore and Mr Rechichi, NDRI, *Submission 28*, p. 3.

...the issues of lockout are a distraction. The evidence shows that they are not, of themselves, material. It is the number of outlets, it is the number of hours the outlets are open and it is the cost of the alcohol. Anything which makes alcohol more easily purchased seems to increase the level of use and then harm. Anything which restricts access—fewer outlets, shorter hours of opening or higher price—all of those things reduce consumption and reduce harm.<sup>75</sup>

3.73 RANZCP told the committee that restrictions on outlet density are believed to reduce high risk drinking and that the 'evidence is strongest for off-licences such as bottle shops, which is especially relevant given that 78% of all alcohol bought in Australia is packaged liquor for off-premises consumption'.<sup>76</sup>

3.74 Dr Kate Fitz-Gibbon highlighted that the regulation of alcohol outlets should be considered in the context of broader alcohol policy, including any lockouts or last drinks laws. She argued that:

I think what is important to be done in conjunction is to ensure that we are not just driving the alcohol and the excessive alcohol consumption into the home, as we see in preloading but also in sending people home at 2 am to continue their drinking there.<sup>77</sup>

3.75 With regard to policy recommendations, Professor Miller suggested that 'I think we could be looking at a maximum density of alcohol outlets in terms of both late night outlets and packaged liquor'.<sup>78</sup> Professor Allsop suggested that not all liquor outlets should be treated the same:

There are clearly differences in the evidence between very large bottle shops versus small wine shops versus restaurants versus nightclubs. We need to have strategies that inform liquor licensing decision makers about what is going on in a particular area so they can make more informed decisions about risk and also equip communities so that they can have a stronger voice in what happens.<sup>79</sup>

3.76 Mr Terry Mott of the Australian Liquor Stores Association (ALSA) supported a more targeted approach to both venues and outlets. He proffered that:

...I do not think it only comes down to risk profile; I think it comes down to behaviours and to the record of compliance of the individual outlet. So if an individual outlet has been doing something stupid then that needs to be addressed, but it is not a one size fits all.<sup>80</sup>

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75 Professor Jakob Najman, Queensland Representative, NAAA, *Committee Hansard*, 15 April 2016, p. 29.

76 RANZCP, *Submission 25*, p. 3.

77 Dr Kate Fitz-Gibbon, *Committee Hansard*, 15 April 2016, p. 13.

78 Professor Miller, DUVPG, *Committee Hansard*, p. 7.

79 Professor Allsop, NDRI, *Committee Hansard*, 15 April 2016, pp 3-4.

80 Mr Terry Mott, Chief Executive Officer, Australian Liquor Stores Association (ALSA), *Committee Hansard*, p. 21.

3.77 However, the NAAA supported the NSW state-wide ban on takeaway alcohol after 10pm. Dr John Crozier argued that 'that single whole-of-state measure resulted in a dramatic nine per cent reduction of nondomestic assault requiring police call-out'.<sup>81</sup>

### **Staggered closing times**

3.78 Some submitters considered staggered licencing schemes, in which different types of venues are licensed for different closing times, as a way to reduce alcohol-related violence.

3.79 The WA Nightclubs Association (WANA) strongly supported such a scheme, as it is currently applied in Western Australia, as the 'premier system in Australia'.<sup>82</sup> WANA highlighted that staggered licensing can treat hotels and nightclubs differently in recognition that, as WANA argued, 'the main point of difference between hotels and nightclubs is that a nightclub's primary purpose is the provision of entertainment; service of alcohol is ancillary to entertainment'.<sup>83</sup>

3.80 SBAWA also supported staggered closing times, contending that:

Western Australia, unlike many of its eastern state counterparts, still maintains discrete categories of licence with different conditions being placed upon each category. We would argue that this is a more sensible regime than a blanket, deregulated one.<sup>84</sup>

3.81 WANA also argued that staggered closing times minimise pressure on the public transport system by spreading demand.<sup>85</sup> This argument was also articulated by the AHA:

Staggered closing times and people moving away as they finish their night is the far more agreeable solution. When people all move onto the streets at the same time, again you have different groups clashing and overlapping. You have transport being overloaded, particularly in regional towns. The taxi services cannot match demand and the infrastructure and policing do not match. They are put under significant strain.<sup>86</sup>

3.82 ABA added that such strain can increase the chances of alcohol-related violence. On that basis, ABA supported staggered closing times:

...that would have the effect of reducing the peak number of people leaving venues at a single closing time and then seeking food or transport out of the

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81 Dr John Crozier, Co-Chair, NAAA, *Committee Hansard*, 15 April 2016, p. 29.

82 WA Nightclubs Association (WANA), *Submission 18*, p. 1.

83 WANA, *Submission 18*, p. 4.

84 SBAWA, *Submission 21*, p. 2.

85 WANA, *Submission 18*, p. 2.

86 Mr John Green, Director, Liquor and Policing, AHA of New South Wales, *Committee Hansard*, 15 April 2016, p. 20.

precinct. Conflicts over taxis and in food venues are recognised flashpoints for violence.<sup>87</sup>

3.83 Professor Chikritzhs et al. offered some academic support for staggered trading hours:

...the outpouring of patrons onto the streets after venues close has been associated with violence and disorder in surrounding areas. Studies on staggered venue closing times suggest the success of such measures is related to transport availability rather than extending trading hours...<sup>88</sup>

### **Other strategies in entertainment precincts**

3.84 The committee heard evidence regarding other measures that may also help to address violence in entertainment precincts. These included scanning people to help identify them as they enter venues, responsible service of alcohol (RSA), maintaining a strong police presence in precincts, and having adequate public transport so as to move people out of precincts.

#### ***Identification scanners***

3.85 The committee heard mixed evidence with regards to the usefulness of identification scanners at the doors of clubs and pubs. Mr Zheng-Macdonald submitted that the mandatory use of networked computer identification scanners is the best approach to addressing alcohol-related violence.<sup>89</sup> He stated that at Chasers Nightclub these scanners had reduced violence by 95 per cent.<sup>90</sup> The AHA submitted that scanning should be 'considered as simply one more tool in a range of tools and practices which, when combined, provide a layered system of safety, deterrent, preventative and interventionist measures which increase venue and patron safety'.<sup>91</sup> The AHA further argued that venues should be allowed to voluntarily use scanners at times where there is a high risk, or only during times of high trade.<sup>92</sup> The AHA stated:

What is common in many precincts now is what is called 'barred from one, barred from all'. It is not that you are moving from venue to venue. If you are misbehaving that then leads to you, and probably your friends, not being allowed into any venues in that precinct...So their friends will start to pull them aside and say, 'You behave, otherwise we are all out of the place and the other places in that area'.<sup>93</sup>

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87 ABA, *Submission 59*, p. 5.

88 Professor Chikritzhs, Professor Allsop, Mr Gilmore, and Mr Rechichi, NDRI, *Submission 28*, p. 4.

89 Mr Zheng-Macdonald, *Submission 1*, p. 1.

90 Mr Zheng-Macdonald, *Submission 1*, p. 1.

91 AHA, *Submission 51*, p. 13.

92 AHA, *Submission 51*, p. 13.

93 Mr Green, AHA, *Committee Hansard*, 15 April 2016, p. 23.



3.86 The DUVPG, in contrast, submitted that measures such as scanners have only a small benefit, are comparatively expensive, and do nothing to help prevent harm from actual assaults.<sup>94</sup>

### ***Responsible service of alcohol***

3.87 Shopkeepers, security staff, bar and floor staff, and venue managers work at the front line in terms of regulating alcohol consumption, enforcing liquor laws, and thereby seeking to prevent intoxication and associated violence.

3.88 Such staff is often placed in a difficult position in terms of actually enforcing RSA. As the Australian Drug Foundation (ADF) argued, '[a] desire among licensees, managers and staff to retain custom and therefore maintain revenue, a social acceptance of intoxication, and a belief that intoxication is harmful only if a person is driving may contribute to the failure of RSA training'.<sup>95</sup> The FARE, PHAA, and NAAA likewise noted that staff are often working in busy, noisy venues, with a high volume of customers, under pressure to serve people quickly, and may be serving people within their own peer group.<sup>96</sup>

3.89 The DUVPG highlighted that in the *Dealing with alcohol-related harm and the night-time economy* (DANTE) study '80% of people who were observed as being too intoxicated were subsequently served another drink'. In the *Patron Offending and Intoxication in Night-Time Entertainment Districts* (POINTED) study, the figure was even higher at 84.6%.<sup>97</sup>

3.90 The DUVPG also discussed 'pre-drinking' and the challenges it poses for enforcement of RSA:

Pre-drinking has been identified as a major impediment to responsible service of alcohol, and is a major driver of intoxication and an increased likelihood of experiencing violence.

Importantly, intoxication from pre- and side-loading is extremely difficult for licensed venues to police, substantially harms the business of licensed venues, and makes intoxication and violence more likely. It is one of the major barriers to effectively reducing harm in the NTE.

In our DANTE study, around two-thirds of the patrons (65%) reported consuming alcohol before attending licensed venues/'going out'. In addition to simply being more highly intoxicated, people who were pre-drinkers were also more likely to be in a fight; twice as likely if they'd had five or more drinks and up to four and a half times as likely for 25+ drinks before heading out.

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94 Professor Miller, DUVPG, *Committee Hansard*, 15 April 2016, p. 2.

95 Australian Drug Foundation (ADF), *Submission 34*, p. 12.

96 FARE, PHAA and NAAA, *Submission 50*, p. 13.

97 DUVPG, *Submission 47*, p. 54.

The DANTE and POINTED studies identified pre-drinking as a significant predictor of alcohol-related harm and a major impediment to responsible service of alcohol. This behaviour reflects a culture of people seeking heavy intoxication and requires serious, substantial, evidence-based interventions across a range of variables (for example, price, availability and advertising).<sup>98</sup>

3.91 Submitters who addressed the issue of staff training expressed support for maintaining RSA training, but argued that it is critically important for liquor laws to be enforced, to ensure that RSA laws are being implemented at the coal face. The ADF highlighted a NSW study which indicated that only four per cent of police actions regarding liquor law breaches had been directed towards licensees and managers.<sup>99</sup> The FARE, PHAA and NAAA likewise quoted a 2011 Bureau of Crime Statistics and Research survey of young adults which found that only 7.1 per cent of those who had at least one sign of being intoxicated were refused service, and only 4.2 per cent were asked to leave the premises.<sup>100</sup>

3.92 The LCA noted that the 2014 NSW liquor law reforms increased punishments for licensees that failed to comply with liquor laws, as follows:

the revoking of competency cards and disqualifications for bar staff breaching responsible service of alcohol requirements; and licensee fines of up to \$11,000 and/or imprisonment of up to 12 months, as well as strikes under the Government's 'Three Strikes' disciplinary scheme...<sup>101</sup>

3.93 Professor Kypri argued that RSA training must be accompanied by enforcement in order to be effective:

[T]here is not good evidence that training of bar staff in the 'responsible service of alcohol' is effective in preventing service of intoxicated patrons. This is not because service staff fail to learn from the training but because the conditions in which they are expected to make judgements about patrons, the pressure from patrons, and financial imperatives, make it unlikely that even well trained servers will consistently comply with the desired practices. What evidence does exist on service practices shows that regular, intense police enforcement is necessary to maintain compliance with liquor laws, i.e., that RSA alone is ineffective.<sup>102</sup>

3.94 Professor Chikritzhs et al. echoed this sentiment, citing Professor Kypri's findings, and positing that:

the conditions [in which staff] are expected to make judgements about patrons, the pressure from patrons, and financial imperatives make it

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98 DUVPG, *Submission 47*, p. 44.

99 ADF, *Submission 34*, p. 12.

100 FARE, PHAA and NAAA, *Submission 50*, p. 12.

101 LCA, *Submission 30*, p. 13.

102 Professor Kypri, *Submission 4*, p. 1.

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unlikely that even well trained servers will consistently comply with the desired [RSA] practices'.<sup>103</sup>

3.95 Professor Chikritzhs et al. also highlighted that academic research has 'demonstrated the significance and value of well-trained and professional security personnel on licensed premises'.<sup>104</sup> Although the presence of security door staff 'has been positively correlated with the frequency and severity of violent incidents', the authors argue that 'it is not the presence of security personnel that increases violence, but rather a lack of quality training'.<sup>105</sup> It is important that security staff 'display firm, rather than aggressive, demeanour', are well trained, present in appropriate numbers, and work professionally with venue management and other staff.<sup>106</sup>

### ***Police presence***

3.96 Submitters who discussed the visible present of police in entertainment precincts and in enforcing liquor laws, generally spoke in favour of the police's work, and highlighted the importance of maintaining high levels of policing during peak drinking times.

3.97 The WANA highlighted the work of WA police in combatting alcohol-related violence, including 'a concerted effort to use their powers to arrest and move on offenders on the streets where the majority of offences were occurring'.<sup>107</sup> Ms Tsamis, the licensee at two Melbourne nightclubs, also advocated adequate policing, and SBAWA argued that nightlife districts must be 'well policed with a high police presence'.<sup>108</sup> Ms Tsamis also noted the written mutual agreement between Victoria Police, the City of Greater Geelong, and local licensees, whereby Victoria Police agreed to 'maintain a visible police [presence] on the streets at weekends and key times', and argued that the result has been a significant reduction in street crime without negative consequences associated with lockouts elsewhere.<sup>109</sup>

3.98 A number of submitters also highlighted the role of police in enforcing liquor laws. Professor Chikritzhs et al. stated that evidence indicates that 'regular, intense police enforcement is necessary to maintain compliance with liquor laws'.<sup>110</sup> Mr Simon Barwood stated that:

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103 Professor Chikritzhs, Professor Allsop, Mr Gilmore, and Mr Rechichi, NDRI, *Submission 28*, p. 5.

104 Professor Chikritzhs, Professor Allsop, Mr Gilmore, and Mr Rechichi, NDRI, *Submission 28*, p. 5.

105 Professor Chikritzhs, Professor Allsop, Mr Gilmore, and Mr Rechichi, NDRI, *Submission 28*, p. 5.

106 Professor Chikritzhs, Professor Allsop, Mr Gilmore, and Mr Rechichi, NDRI, *Submission 28*, p. 5.

107 WANA, *Submission 18*, p. 1.

108 SBAWA, *Submission 21*, p. 3; Ms Tsamis, *Submission 45*, p. 14.

109 Ms Tsamis, *Submission 45*, p. 45.

110 Professor Chikritzhs, Professor Allsop, Mr Gilmore and Mr Rechichi, *Submission 28*, p. 5.

In WA a dedicated branch of the police force, the Liquor Enforcement Unit (LEU), is responsible for policing licensed premises and licensees. There are wide ranging powers under sections 64 and 95 of the Liquor Control Act 1988 (WA) that police can use to place restrictive conditions on licences to bring 'rogue' operators to heel, or in extreme circumstances to close offending premises.<sup>111</sup>

### ***Public transport***

3.99 As Professor Allsop stated, a lack of readily available public transport in some entertainment precincts can lead to people remaining in outdoor public places where they might otherwise choose to be inside a venue or indoors elsewhere:

Significant increased alcohol in the early hours to the late hours of the morning has impact partly because people might have more time to drink and partly because people, when they come out of a venue at three in the morning, do not come out into a diverse community; they come out into an environment where there are other intoxicated people and where public transport to get them home is not as available as it might be at other hours of the day.<sup>112</sup>

3.100 Submitters were generally in favour of ensuring public transport is readily available when people typically exit entertainment precincts and are not able to drive themselves home. FARE flagged the increased public transport services available in Sydney to 'try to get people out of these entertainment precincts'.<sup>113</sup> The Burnet Institute also quoted a study in which extension of public transport hours was compared with venue lockouts in terms of the number of incidents of verbal aggression, numbers of people being ejected for intoxication and the percentage of consumption and transport related harms.<sup>114</sup> It found that '[a]ll-night public transport reduced verbal aggression in the model by 21 [per cent] but displaced some incidents among outer urban residents from private to public settings' and '[e]xtending public transport by two hours had similar outcomes to 24-hour public transport except with fewer incidents of verbal aggression displaced'.<sup>115</sup>

3.101 The WANA noted a recommendation that public transport options and the availability of taxis on weekends be improved in order to address alcohol-related problems in the Northbridge area.<sup>116</sup> The DUVPG likewise stated that according to its research across a number of large Australian cities:

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111 Mr Simon Barwood, *Submission 17*, p. 2.

112 Professor Allsop, NDRI, *Committee Hansard*, 15 April 2016, p. 1.

113 Mr Thorn, FARE, *Committee Hansard*, 15 April 2016, p 28.

114 The Burnet Institute, *Submission 15*, p. 3.

115 The Burnet Institute, *Submission 15*, p. 3.

116 WANA, *Submission 18*, Attachment 2, Coakes Consulting, 'Response to WA Police Report: "Is Your House in Order?" Re-visiting Liquor Licensing Practises and the Establishment of an Entertainment Precinct in Northbridge' (2009), p. 7.

In all the cities where data collection was conducted, major public transport infrastructure is closed during the hours when intoxication/risk of harm is at its peak. Increasing the availability and security supervision of large-scale public transport in NTEs would help remove intoxicated patrons from unsupervised streets where most assaults occurred, and would ease the strain on struggling taxi services and ranks. The best option from the available research is to align venue trading hours with public transport availability and allow patrons up to 30 minutes after venues close to use public transport. Such services would be well served by employing additional security personnel.<sup>117</sup>

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117 DUVPG, *Submission 47*, Attachment 3, Professor Peter Miller et al., 'Patron Offending and Intoxication in Night-Time Entertainment Districts (POINTED)' (2013), p. 88.



# Chapter 4

## Punishing alcohol-related violence: offences, penalties, sentencing and bail

### Introduction

4.1 The criminal justice system can have an important retrospective, and perhaps prospective, role to play in tackling alcohol-related violence. It has certainly been a significant component of previous state and territory government strategies on the issue. This chapter examines the evidence heard by the committee regarding the criminal justice system and related legal issues, particularly:

- specific offences and penalties for alcohol-related violence, or certain types of alcohol-related violence;
- sentencing for alcohol-related violence; and
- bail requirements in alcohol-related violence cases.

### Offences and penalties

4.2 There is a broad range of violent criminal conduct which may fall under the umbrella of 'alcohol-related violence' purely by reason of alcohol being a significant factor related to the violence. This report does not analyse all potential alcohol-related offences in each jurisdiction, but rather focuses on the range of 'one-punch' offences introduced in some states, and the prevailing judicial approaches to sentencing alcohol-related violent offences.

#### *'One-punch' offences*

4.3 Following a series of deaths as a result of a single punches, five Australian jurisdictions introduced so-called 'one-punch' offences:

- As of 2008, in Western Australia it is an offence to assault another person who dies as a direct or indirect result of the assault, punishable by 10 years imprisonment.<sup>1</sup>
- As of 2012, in the Northern Territory it is an offence to engage in conduct involving a violent act against another person, and which caused the death of that other person, or of any other person.<sup>2</sup> The maximum penalty is imprisonment for 16 years.
- As of 2014, in New South Wales it is an offence for a person to assault another person by intentionally hitting the other person with any part of the person's body or with an object held by the person, and cause that person's death. This may be punished by a maximum of 20 years imprisonment.<sup>3</sup>

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1 *Criminal Code Act 1913* (WA), s 281.

2 *Criminal Code Act* (NT), s 161A.

3 *Crimes Act 1900* (NSW), s 25A.

Where a defendant was intoxicated at the time the maximum penalty increases to 25 years imprisonment, and a court must impose a minimum of 8 years imprisonment, including a non-parole period of 8 years.<sup>4</sup>

- In Queensland it is an offence to unlawfully strike another person on the head or neck, and directly or indirectly cause that person's death. The maximum penalty is life imprisonment. Where a court imposes a custodial sentence of less than life, it must make an order that the person not be released until they have served 80% of their term of imprisonment, or 15 years imprisonment, whichever period is less.<sup>5</sup>
- In Victoria, a single punch or strike to the head or neck, is taken to be a dangerous act for the purposes of 'manslaughter by an unlawful and dangerous act'.<sup>6</sup> Manslaughter itself is punishable by imprisonment for a maximum of 20 years.<sup>7</sup>

4.4 However, Associate Professor Julia Quilter and Professor Luke McNamara argued that given the construction of these offences, the label 'one-punch offence' is a misnomer. They highlighted that in no jurisdiction is the 'one-punch' offence confined to conduct involving one punch, or even to punches. Rather, the offences variously include conduct such as 'unlawful assault', 'violence act', 'intentionally hitting', 'unlawful striking' and 'punch or strike'.<sup>8</sup>

4.5 Professors Quilter and McNamara further noted that only NSW makes 'intoxication' a specific feature and aggravating factor in the offence, whereas in most jurisdictions 'it neither features as part of the offence definition nor as a sentencing factor'.<sup>9</sup> They argued that this is problematic because the provisions 'go well beyond the stated justification of dealing with one-punch fatalities' and that '...the breadth and potential seriousness of the conduct that may be prosecuted within the terms of the provisions...undermines the claimed justification for creating such offences'.<sup>10</sup> They submitted that these moves to introduce new forms of homicide 'were unnecessary and have produced legal and operational complexity to the law'.<sup>11</sup> They also argued that some of the offence constructions will lead to the exclusion of certain actions, meaning a person cannot be convicted of the so-called 'one-punch offence':

The Queensland provision...[requires that] the strike must 'land' on the victim's head/neck. Thus, a strike to the chest causing a victim to fall backwards and hit his/her head on the road or footpath and die (ie

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4 *Crimes Act 1900* (NSW), s 25B(1).

5 *Criminal Code Act 1899* (QLD), s 314A.

6 *Crimes Act 1958* (VIC), s 4A.

7 *Crimes Act 1958* (VIC), s 5.

8 Associate Professor Julia Quilter and Professor Luke McNamara, *Submission 20*, p. 9.

9 Professors Quilter and McNamara, *Submission 20*, p. 9.

10 Professors Quilter and McNamara, *Submission 20*, p. 10.

11 Professors Quilter and McNamara, *Submission 20*, p. 15.



reminiscent of a 'classic' one-punch attack) will not fall within the definition of unlawful striking causing death. The Queensland law also excludes a number of other fatal assaults identified above largely depending on where the strike 'lands'. Furthermore, the specificity of the Queensland definition is likely to invite evidentiary challenges to the Crown's capacity to prove that the strike was to the head/neck and/or to establish causation. For example, where an assault includes a punch to the head and a strike to the chest, but it is the latter that makes the victim topple over and hit a hard surface and suffer fatal injuries, it is doubtful that it can be said that the strike to the head/neck was the direct or indirect cause of death.<sup>12</sup>

4.6 The NSW Court of Appeal recently stated that 'it is not meaningful to speak of one-punch or single-punch manslaughter cases as constituting a single class of offences [because] the circumstances of these cases vary widely',<sup>13</sup> and a sentencing court must simply consider the particular case before it.<sup>14</sup> The Office of the Director of Public Prosecutions NSW (ODPP NSW) echoed this sentiment, stating:

...alcohol-fuelled violence is not susceptible to confinement to a limited number of situations. Violence caused by intoxication can arise in a broad range of scenarios involving vastly different levels of criminality...The backgrounds of the perpetrators of alcohol-fuelled violence are as varied as the crimes they commit. Thus attempts to use the criminal justice system as a tool to fix the problem are immediately challenged by the extremely diverse situations which are seeking to be addressed.<sup>15</sup>

4.7 Dr Kate Fitz-Gibbon also questioned the necessity of these offences to either address a gap in the law, or to ensure harsh penalties were imposed in the case of one-punch deaths. She argued that the 'gap' perceived to exist within the laws of homicide did not in fact exist, noting that each Australian jurisdiction has, at a minimum, offences of murder and manslaughter (involuntary and voluntary), and a complete defence of self-defence.<sup>16</sup> She stated that 'the criminal law in each jurisdiction was adequately structured to respond to the myriad contexts within which alcohol-related homicides are committed prior to the creation of new legal categories'.<sup>17</sup>

4.8 As for the notion that new offences are needed to deter offenders, Miss Yasmin Murray argued that 'criminalisation of an act through a specific offence does not necessarily deter it, even when the creation of an offence is highly publicised'.<sup>18</sup>

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12 Professors Quilter and McNamara, *Submission 20*, p. 11.

13 *R v Loveridge* [2014] NSWCCA 120, at [215].

14 *R v Loveridge* [2014] NSWCCA 120, at [215].

15 Office of the Director of Public Prosecutions NSW (ODPP NSW), *Submission 35*, p. 1.

16 Dr Kate Fitz-Gibbon, *Submission 49*, p 9.

17 Dr Fitz-Gibbon, *Submission 49*, p. 4.

18 Miss Yasmin Murry, *Submission 9*, p. 4

## Sentencing

### *Alcohol as a factor when sentencing violent offenders*

4.9 A number of submitters discussed the criminal justice system's treatment of intoxication in the context of criminal offences. Professors Quilter and McNamara considered case law which suggests that courts may regard intoxication as an 'indirect' mitigating factor,<sup>19</sup> such as where the intoxication lends support to the argument that the conduct was out of character,<sup>20</sup> or where the intoxication is considered within a wider context of disadvantage.<sup>21</sup>

4.10 In NSW there has been some debate as to whether intoxication should be a factor which mitigates or aggravates a criminal offence. In NSW and QLD, a person's self-induced intoxication at the time of an offence is *not* to be taken as a mitigating factor.<sup>22</sup> In 2009 the NSW Sentencing Council considered whether the law should be amended so that intoxication would be regarded as an aggravating factor in sentencing, but the Council concluded that the law should not change.<sup>23</sup> It was particularly persuaded by the arguments that existing law adequately allowed for intoxication to be taken into account. To consider intoxication as an aggravating factor would lead to inflexibility, and risk a disproportionate effect on disadvantaged members of the community, including the Indigenous population.<sup>24</sup>

4.11 The Australian Medical Association (AMA) echoed this concern, stating that while the proportion of Aboriginal and Torres Strait Islander people who consume alcohol is lower than the rest of the population, those people who do consume alcohol do so at more harmful levels and alcohol-related conflict can be a significant problem.<sup>25</sup>

4.12 A key concern was the need for sentences to act as a deterrent. One of the cases which triggered the introduction of a 'one-punch offence' in NSW was the death of Mr Thomas Kelly (*R v Loveridge*). In this case the offender, Mr Loveridge, was charged with manslaughter. The NSW Supreme Court initially sentenced Mr Loveridge to imprisonment with a non-parole period of 4 years, and an additional term of two years.<sup>26</sup> The ODPP NSW then appealed this sentence, and the Court of

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19 Professors Quilter and McNamara, *Submission 20*, p. 15.

20 See, *Hansan* (2010) 222 A Crim R 306; *GWM* [2012] NSWCCA 240, in Quilter and McNamara, *Submission 20*, p. 16.

21 See, *Bugmy* (2013) 249 CLR 571; *Munda* (2013) 249 CLR 600, in Quilter and McNamara, *Submission 20*, p. 16.

22 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(5AA), *Penalties and sentences Act 1992* (QLD), s 9A.

23 Law Council of Australia (LCA), *Submission 30*, pp 10-11.

24 LCA, *Submission 30*, pp 10-11.

25 Australian Medical Association (AMA), *Submission 7*, p. 4.

26 *R v Loveridge* [2013] NSWSC 1638.

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Appeal imposed a non-parole period of seven years with a balance of three years and six months,<sup>27</sup> stating:

The use of lethal force against a vulnerable, unsuspecting and innocent victim on a public street in the course of alcohol fuelled aggression accompanied, as it was, by other nonfatal attacks by the Respondent upon vulnerable, unsuspecting and innocent citizens ...called for the express and demonstrable application of the elements of general deterrence as a powerful factor on sentence in this case.<sup>28</sup>

...[T]he commission of offences of violence, including manslaughter, in the context of alcohol-fuelled conduct in a public street or public place is of great concern to the community, and calls for an emphatic sentencing response to give particular effect to the need for denunciation, punishment and general deterrence.<sup>29</sup>

4.13 Professors Quilter and McNamara stated that since this judgment was handed down, subsequent sentences have increased considerably in NSW.<sup>30</sup> Miss Murray similarly referred to convictions post-Loveridge, where existing manslaughter provisions were used to impose sentences similar to those that could occur under 'one-punch laws'.<sup>31</sup> She questioned the capacity of penalties to deter in any case, stating that:

Deterrence relies on the premise that a potential offender makes a rational choice not to commit an offence because of fear of the consequences. One punch attacks are by their nature not rational, but impulsive, the inebriation of offenders often compounding this. The introduction of 'one punch laws' has proven to have had little impact in deterring conduct that often occurs in an instant, without premeditation.<sup>32</sup>

4.14 The Magistrates Court of Western Australia also argued that '...historically there is nothing to suggest that increasing penalties alone is an effective way of reducing offending'.<sup>33</sup>

### ***Mandatory sentencing***

4.15 Debate surrounding the suite of 'one-punch' offences led to discussion as to whether the sentences imposed are appropriate. This is of particular importance given the introduction of mandatory sentences in NSW and QLD. Submitters who addressed the introduction of mandatory sentencing were overwhelmingly opposed to their use.

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27 *R v Loveridge* [2014] NSWCCA 120.

28 *R v Loveridge* [2014] NSWCCA 120, at [105].

29 *R v Loveridge* [2014] NSWCCA 120, at [216].

30 Professors Quilter and McNamara, *Submission 20*, p. 18.

31 *DPP v Closter* [2014] VSC 484; *DPP v Townsend* [2015] VSC 456; *R v Sharp* [2015] VSC 116; *R v Skondin* [2015] QCA 138, in Ms Yasmin Murry, *Submission 9*, p. 3.

32 Miss Murry, *Submission 9*, p. 4.

33 Chief Magistrate Steven Heath, Magistrates Court of Western Australia, *Submission 2*, p. 1

4.16 The Law Council of Australia (LCA) submitted that mandatory sentencing laws are not the solution to concerns about alcohol-related violence and fatal assaults.<sup>34</sup> The LCA highlighted the NSW Sentencing Council's 2009 decision with regards to sentencing for alcohol-fuelled violence, where the Council stated that it was satisfied with the courts' guidance in regards to sentencing offenders who were intoxicated, and that the current maximum penalties for existing offences were appropriate.<sup>35</sup>

4.17 The LCA further submitted that it is opposed to mandatory sentencing for any criminal offence because it:

- imposes unacceptable restrictions on judicial discretion and independence;
- can lead to potentially unjust or unduly harsh sentences;
- infringes the fundamental sentencing principle that sentence and punishment should be proportionate to the gravity of the offence having regards to the circumstances; and
- undermines the community's confidence in the judiciary and criminal justice system.<sup>36</sup>

4.18 Dr Fitz-Gibbon echoed these concerns, arguing that mandatory sentencing schemes can lead to unjust outcomes, particularly for 'marginalised members of the community' and do not increase public confidence in the criminal justice system.<sup>37</sup> Crucially, Dr Fitz-Gibbon also argued that mandatory sentencing schemes do not act as a deterrent, and that 'the deterrence justification is particularly undermined in this context given it is being applied to what are often considered "impulse" crimes'.<sup>38</sup>

4.19 Several practical issues flowing from the imposition of mandatory sentences were also flagged. The LCA argued that, in practice, mandatory minimum penalties mean defendants are less likely to enter a plea of guilty, which has a significant impact on both courts and prosecuting agencies.<sup>39</sup> Dr Fitz-Gibbon highlighted the impact which mandatory incarceration sentences have on the already strained Australian prison system, and noted that several states in the United States of America have removed mandatory sentencing so as to reduce high rates of imprisonment.<sup>40</sup>

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34 LCA, *Submission 30*, p. 8.

35 NSW Sentencing Council, *Sentencing for Alcohol-Related Violence* (March 2009), in LCA, *Submission 30*, p. 8.

36 LCA, *Submission 30*, p. 9.

37 Dr Fitz-Gibbon, *Submission 49*, p. 6.

38 Dr Fitz-Gibbon, *Submission 49*, p. 6.

39 LCA, *Submission 30*, p. 9.

40 Dr Fitz-Gibbon, *Submission 49*, p. 7.

4.20 Both the LCA and Dr Fitz-Gibbon concluded that mandatory minimum penalties for alcohol-related violence offences should be repealed.<sup>41</sup>

### **Bail requirements**

4.21 The committee did not receive any submissions which raised specific problems with bail laws and the way they operate in the context of alcohol-related violence. The LCA stated that it had not received any feedback indicating that current bail laws are ineffective when dealing with alcohol-related violence.<sup>42</sup> The ODPP NSW also submitted that it:

[D]oes not consider that any change to bail laws will materially affect the incidence of alcohol-related violence offences in NSW. While national uniformity of bail laws is in theory at least a desirable aim, the ODPP does not consider that such uniformity is likely to assist in the battle to reduce alcohol-fuelled violence offences. It can safely be assumed that alcohol-fuelled violence offenders, prior to offending, pay little attention to bail laws in this State...<sup>43</sup>

4.22 Several submitters did, however, address the question of whether measures addressing a person's alcohol or drug dependence could be used at the time of arrest, or as a condition of bail.

4.23 The ODPP NSW stated that recent amendments to NSW law, which will enable courts to order that rehabilitation accommodation be readied for a defendant prior to their release on bail, can produce better outcomes for offenders than in remand custody.<sup>44</sup>

4.24 The City of Sydney flagged the availability of alcohol arrest referral schemes where people detained in custody for an alcohol-related offence are offered screening and intervention.<sup>45</sup>

4.25 Professor Peter Miller similarly stated that there is good evidence for the effectiveness of alcohol and drug courts as well as drinking restrictions as a condition of bail.<sup>46</sup> Professor Miller also raised the example of mandatory sobriety in the case of drink driving charges, arguing that it has produced good outcomes:

Under the mandatory sobriety, 24/7 sobriety, where people are not allowed to drink when on parole, a 12 per cent reduction in recidivist drink drivers was demonstrated...There was a nine per cent reduction in domestic violence statewide. But it has also been replicated in over 30 states in America, it has been put in place in the whole of the UK, and we are now

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41 LCA, *Submission 30*, p. 9; Dr Fitz-Gibbon, *Submission 49*, p 7.

42 LCA, *Submission 30*, p. 16.

43 ODPP NSW, *Submission 35*, p. 4.

44 ODPP NSW, *Submission 35*, p. 4.

45 City of Sydney, *Submission 63*, p. 9.

46 Professor Peter Miller, Deakin University Violence Prevention Group (DUVPG), *Committee Hansard*, 15 April 2016, p. 5.

seeing moves to put it in place in a number of European countries. So there is a great interest in this sort of response.<sup>47</sup>

### **Drug courts**

4.26 It was suggested to the committee that drug courts, such as those currently in use in some Australian jurisdictions, might be used throughout all of Australia to provide 'an alternate court process for people who commit particular crimes whilst under the influence of drugs or alcohol'.<sup>48</sup>

4.27 The Deakin University Violence Prevention Group (DUVPG) explained:

...the central objective of all drug courts is to divert illicit drug users from incarceration into treatment programs to address their substance use and, in doing so, reduce their risk of recidivism. Orders imposed by drug courts typically involve treatment, supervision, prohibition/abstinence, and mandatory alcohol and/or drug testing. In some instances there is also a custodial component, for example, upon acceptance into the NSW drug court program defendants are remanded in custody for up to two weeks for detoxification and assessment.<sup>49</sup>

4.28 The DUVPG informed the committee that since non-adversarial drug courts were introduced in the United States of America in the 1980s, they have been established in jurisdictions worldwide 'because they have been proven to produce better outcomes (i.e., reduced recidivism) and reduce costs'.<sup>50</sup> The DUVPG remarked that 'the Australian prison population is exponentially growing each year' and:

Unfortunately...the current eligibility criteria of Australian drug courts preclude individuals charged with alcohol-fuelled violent offences; Australian drug courts target illicit drug addiction (excluding alcoholism, although this may be an associated or secondary problem) and typically preclude people charged with an offence involving violent conduct. Matters involving alcohol-fuelled violence are required to go through the usual sentencing process.<sup>51</sup>

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47 Professor Miller, DUVPG, *Committee Hansard*, 15 April 2016, p. 5.

48 DUVPG, *Submission 47*, p. 26.

49 DUVPG, *Submission 47*, p. 26.

50 DUVPG, *Submission 47*, p. 26.

51 DUVPG, *Submission 47*, p. 26

# Chapter 5

## Alcohol advertising, taxation, and education

5.1 Aside from strategies in entertainment precincts, key methods for addressing intoxication and related violence were raised during the course of this inquiry, such as:

- regulation of alcohol advertising;
- taxation and price control of alcoholic beverages; and
- education programs aimed at changing Australian drinking culture(s).

5.2 These methods are discussed in this chapter.

### Advertising

5.3 Alcohol marketing is regulated by a number of measures including legislation and industry codes of practice.<sup>1</sup> One such measure is the Alcoholic Beverages Advertising Code (ABAC) Responsible Alcohol Marketing Code, which requires that alcohol advertising meet standards with regards to the following issues:

- responsible and moderate portrayal of beverages;
- responsibility toward minors;
- responsible depiction of the effects of alcohol; and
- alcohol and safety.<sup>2</sup>

5.4 A number of submitters raised concerns about the current regulatory scheme, particularly with regards to the level of self-regulation and the lack of penalties for breaches. The Royal Australian & New Zealand College of Psychiatrists (RANZCP) submitted that 'Stronger regulations are required in order to limit the impact of advertising and marketing on alcohol consumption'.<sup>3</sup> The Australian Medical Association (AMA) recommended that 'the regulation of alcohol marketing and promotion...be statutory and independent of the alcohol and advertising industries, and...carry meaningful sanctions for non-compliance'.<sup>4</sup> The Law Council of Australia (LCA) recommended that consideration be given to introducing statutory restrictions on alcohol advertising and marketing, including penalising breaches.<sup>5</sup> The McCusker

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1 Australian National Preventive Health Agency (ANPHA), *Alcohol Advertising: the effectiveness of current regulatory codes in addressing community concern* (February 2014) <http://health.gov.au/internet/anpha/publishing.nsf/Content/draft-report-alcohol-advertising+~chapter-4> (accessed 3 May 2016).

2 Alcoholic Beverages Advertising Code (ABAC) Scheme, *ABAC Responsible Alcohol Marketing Code*, p. 2, <http://www.abac.org.au/wp-content/uploads/2014/06/ABAC-Responsible-Alcohol-Marketing-Code-30-4-14.pdf> (accessed 3 May 2016).

3 Royal Australian & New Zealand College of Psychiatrists (RANZCP), *Submission 25*, p. 6.

4 Australian Medical Association (AMA), *Submission 7*, p. 11.

5 Law Council of Australia (LCA), *Submission 30*, p. 16.

Centre for Action on Alcohol and Youth (MCAAY) and Public Health Association of Australia (PHAA) also submitted that there is 'an urgent need for strong, independent, legislated controls on all forms of alcohol advertising and promotion'.<sup>6</sup>

5.5 The Royal Australasian College of Physicians (RACP) and RANZCP stated that current levels of alcohol advertising in Australia are pervasive. They added that the advertising has a particular impact on children, who are especially exposed to advertising when watching sport on television.<sup>7</sup> The Australian Health Promotion Association (AHPA) labelled the ability for alcohol to be advertised during daytime sports coverage an 'absurd loophole'.<sup>8</sup>

5.6 The RANZCP flagged research indicating that alcohol advertising leads to 'increased awareness of alcohol, more positive attitudes towards drinking, increased consumption among existing drinking, and greater likelihood that non-drinkers will begin drinking'.<sup>9</sup> It recommended that 'the content of alcohol advertising should be subject to more rigorous and socially responsible standards'.<sup>10</sup>

5.7 The RACP and RANZCP recommend that sponsorship of the sporting industry by the alcohol industry be banned.<sup>11</sup> The Victorian Alcohol & Drug Association (VAADA) made a similar recommendation, arguing that restricting alcohol advertising during sporting events viewed by minors would help disassociate the relationship between sporting events and alcohol consumption.<sup>12</sup>

## **Taxation**

5.8 Alcoholic beverages are currently subject to tax, and Alcohol Beverages Australia (ABA) claimed the tax is one of the highest alcohol taxes in the world.<sup>13</sup> The Australian Liquor Stores Association (ALSA) submitted that the taxation of alcohol sold through liquor stores contributes over \$5 billion to the economy each year, which is over 60% of the value of all alcohol taxation in Australia.<sup>14</sup>

5.9 Nonetheless, a number of submitters raised serious concerns about the ease with which individuals can procure extremely cheap alcohol beverages—whether

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6 McCusker Centre for Action on Alcohol and Youth (MCAAY) and Public Health Association of Australia (PHAA), *Submission 32*, p. 4.

7 Royal Australasian College of Physicians (RACP), *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 24.

8 Australian Health Promotion Association (AHPA), *Submission 24*, p. 2.

9 RANZCP, *Submission 25*, p. 6.

10 RANZCP, *Submission 25*, p. 7.

11 RACP, *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 27.

12 Victorian Alcohol & Drug Association (VAADA), *Submission 29*, p. 7.

13 Alcohol Beverages Australia (ABA), *Submission 59*, p. 7.

14 Mr Terry Mott, Chief Executive Officer, Australian Liquor Stores Association (ALSA), *Committee Hansard*, 15 April 2016, p. 23.



from a liquor store, or as part of a cheap promotion at an entertainment venue. Dr Jason Ferris recalled that:

...[A] colleague of mine...successfully went into an off-licence premise with \$20 in her hand and came out with seven bottles of wine and change, which worked out to be 49-odd standard drinks at about 40c a drink. If you can do that at 20 bucks—almost cover charge in the night-time economy...It is quite a reminder, when you pull out seven bottles from a box, of how much you can get for 20 bucks.<sup>15</sup>

5.10 PHAA furthered this point, asserting that '[a]lcohol is more affordable, more available and more heavily promoted today than at any stage in recent history'.<sup>16</sup> Mr Brown similarly stated '[a]lcohol has never been more available, heavily promoted and dirt cheap in Australia'.<sup>17</sup>

5.11 Additionally, several submitters argued that the current taxation system is too complex, the tax revenue generated is outweighed by the cost to Australia of alcohol-related harm, and that increasing the tax on alcohol beverages and/or amending the taxation of alcohol is likely to have positive outcomes in terms of reducing excessive alcohol consumption.

5.12 The RACP and RANZCP called the current alcohol taxation system 'illogical and complex', as it involves different tax rates for beer, wine and spirits.<sup>18</sup> The Royal Australasian College of Surgeons (RACS) stated that the system has not been developed according to a set of consistent policy principles.<sup>19</sup>

5.13 The RACP and RANZCP also submitted 'the taxation revenue generated from sales of alcohol in Australia is approximately \$6 billion a year (net of rebates provided to wine producers), while the social costs from alcohol-related harm is estimated at \$15 to \$36 billion. In effect, the community is subsidising alcohol drinkers'.<sup>20</sup>

5.14 The RACS stated that in 2010 the total cost of alcohol 'misuse' in Australia was estimated to be up to \$36 billion, whereas in that same year the Commonwealth government received an estimated \$7.075 billion in alcohol tax revenue.<sup>21</sup>

5.15 St Vincent's Health Australia (SVHA) recommended that some of the revenue from alcohol taxation be directed towards measures to prevent alcohol-related harm,

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15 Dr Jason Ferris, *Committee Hansard*, 15 April 2016, p 7.

16 Adjunct Professor Michael Moore, Chief Executive Officer, PHAA, *Committee Hansard*, 15 April 2016, p. 25.

17 Mr Tony Brown, *Submission 46*, p. 1.

18 RACP, *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 16.

19 Royal Australasian College of Surgeons (RACS), *Submission 43*, p. 4.

20 RACP, *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 17.

21 RACS, *Submission 43*, p. 4.

to provide treatment for people with alcohol-related problems, and to fund research into these areas.<sup>22</sup>

5.16 A large number of submitters recommended that alcoholic products be taxed on the basis of the volume of alcohol they contain.<sup>23</sup> The AMA argued that such a volumetric alcohol tax would be an incentive for manufacturers to produce products with a low alcohol content.<sup>24</sup> The Australian Drug Foundation (ADF) argued that such a tax would be 'economically efficient and fair' because it would treat all kinds of alcohol in the same way, rather than differentiating between beer, wine and spirits.<sup>25</sup> The RACS stated:

New economic modelling commissioned by the Foundation for Alcohol Research and Education has shown that replacing the WET and rebate with a ten percent increase to all alcohol excise and a volumetric tax on wine and cider would deliver \$2.9 billion revenue and reduce alcohol consumption by 9.4 per cent.<sup>26</sup>

5.17 A number of submitters argued that increasing the tax on alcohol beverages will reduce the consumption of alcohol, and associated harm. The ADF flagged that, while the states have carriage of liquor licensing, the Commonwealth has the power to reduce excessive drinking by influencing the price of alcohol through taxation.<sup>27</sup> The ADF also argued that:

...influencing the price of alcohol through taxation is the most effective means governments have of reducing excessive consumption and, therefore, the level of harm to a community...Many people believe that heavy drinkers are not affected by price change, but they are. They drink less when the price increases. Taxation increases are cost effective. It is the most cost-effective measure government's can introduce because it costs very little to administer.<sup>28</sup>

5.18 SVHA stated that alcohol taxation is 'one of the most effective policy interventions to reduce the level of alcohol consumption and related problems', and submitted that a 10 per cent increase in price would likely lead to a five per cent decrease in consumption.<sup>29</sup> It also highlighted the 2010 Review of Australia's Tax

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22 St Vincent's Health Australia (SVHA), *Submission 38*, p. 8.

23 AMA, *Submission 7*, p. 13; AHPA, *Submission 24*, p. 2; VAADA, *Submission 29*, p. 5; Australian Drug Foundation (ADF), *Submission 34*, p. 5; SVHA, *Submission 38*, p. 8; RACS, *Submission 43*, p. 4; Mr Brown, *Submission 46*, p. 5; Foundation for Alcohol Research and Education (FARE), PHAA and National Alliance for Action on Alcohol (NAAA), p. 6; Western Australian Network of Alcohol & other Drug Agencies (WANADA), *Submission 52*, p. 3.

24 AMA, *Submission 7*, p. 13.

25 ADF, *Submission 34*, p. 11.

26 RACS, *Submission 43*, p. 1.

27 Mr Geoff Munro, National Policy Manager, ADF, *Committee Hansard*, 15 April 2016, p. 26.

28 Mr Munro, ADF, *Committee Hansard*, 15 April 2016, p. 27.

29 SVHA, *Submission 38*, p. 8

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System (the Henry Review) which identified taxation as 'an appropriate measure for improving social outcomes because of the high cost imposed by excessive alcohol consumption'.<sup>30</sup>

5.19 The LCA argued that cost implications like taxation of minimum pricing are 'likely to be an effective policy tool',<sup>31</sup> as did the PHAA, highlighting that the alcohol taxation is one of the best policy practices as recommended by the World Health Organisation (WHO).<sup>32</sup>

5.20 Both SVHA and the AMA were of the opinion that all licensed premises should set a 'minimum floor price' for drinks to prevent promotions involving free or heavily discounted drinks.<sup>33</sup> The Deakin University Violence Prevention Group (DUVPG) argued that this can be effective in addressing alcohol consumption and associated violence:

I think there was a review in 2009 of the international evidence that says that, when you increase the price of alcohol—so not taxation per se—you see reductions in violence. The order of magnitude varies in different communities. Probably one of the most relevant examples recently has been in Vancouver and British Columbia, where they put in place a minimum price on alcohol. That is really important because minimum price addresses two key populations. It addresses the 20 per cent of the population who drink the most—alcoholics and young people—and it addresses their consumption patterns. What they found was an across-the-board reduction—across the whole state, a reduction of 10.4 per cent—in both violence on the street and domestic violence. They did not separate that out but they reported that it was about equally matched.<sup>34</sup>

5.21 The RACP and RANZCP supported this notion, claiming that 'younger people and heavy drinkers are particularly sensitive to alcohol pricing, with changes to alcohol pricing yielding significant changes in total alcohol consumption in these groups'.<sup>35</sup> They raised the example of the 2008 'alcopops tax' which increased tax on ready-to-drink spirits by 70 per cent, and which was followed by a 30 per cent reduction in consumption of those drinks.<sup>36</sup> They also argued that this particular tax was associated with a significant decrease in the number of young people presenting

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30 SVHA, *Submission 38*, p. 8

31 Mr Phillip Boulten SC, Member, National Criminal Law Committee, LCA, *Committee Hansard*, 15 April 2016, p. 14.

32 Adjunct Professor Moore, PHAA, *Committee Hansard*, 15 April 2016, p. 25.

33 SVHA, *Submission 38*, p 8; AMA, *Submission 7*, p. 13.

34 Professor Peter Miller, Deakin University Violence Prevention Group (DUVPG), *Committee Hansard*, 15 April 2016, pp 4-5.

35 RACP, *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 16.

36 RACP, *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 17.

at hospital emergency departments.<sup>37</sup> The 2012 *Dealing with alcohol-related harm and the night-time economy* or 'DANTE' report did, however, flag that this tax may have merely changed the substances people use, or the way in which they consume them, and highlighted international research which indicated that the increased cost of drinks in licensed venues led to more people 'pre-loading'.<sup>38</sup>

## Education

5.22 The committee heard that there are a number of education campaigns currently running in Australia. The Queensland government highlighted programs in Queensland that target individual responsibility and encourage cultural change, including:

...school programs and a multimedia education and awareness campaign targeting young people, particularly young men. The first phase of the campaign, bearing the slogan, 'What is your relationship with alcohol?' has already commenced, and subsequent phases will be rolled out over the next three years. The government is also supporting Mr Danny Green's national coward punch campaign.<sup>39</sup>

5.23 The Australian Hotels Association (AHA) highlighted similar programs, and argued that rather than regulating the industry, education programs should be used to bring about a cultural change:

Examples of recent campaigns aimed at changing culture include the Danny Green One Punch Campaign Australia and also changing the term 'king-hit' to 'coward punch'. We believe there are several organisations working successfully in the space of changing culture amongst our young people. They include organisations such as DrinkWise, the Sammy D Foundation and the Wake Up Foundation. While regulation has its place in minimising violence, we believe the most effective way to decrease violence is to drive cultural change.<sup>40</sup>

5.24 Step Back Think (SBT) likewise submitted that social violence is 'intricately linked with cultural and social norms regarding violence, masculinity, and alcohol, among other things' and that the factors influencing a person to make violent choices are complex.<sup>41</sup> It also highlighted that its own education programs are designed to:

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37 RACP, *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 17.

38 DUVPG, *Submission 47*, Attachment 1, Professor Miller et al., 'Dealing with alcohol-related harm and the night-time economy' (DANTE), (April 2012), p. 11.

39 Mr David Ford, Deputy Director-General of Liquor, Gaming and Fair Trading and Commissioner for Liquor and Gaming, Department of Justice and Attorney-General, Queensland Government, *Committee Hansard*, 15 April 2016, p. 36.

40 Mr Stephen Ferguson, Chief Executive Officer, Australian Hotels Association (AHA), *Committee Hansard*, 15 April 2016, p. 18.

41 Step Back Think (SBT), *Submission 27*, p. 1.

motivate young people to reflect on cultural norms and their own attitudes about social violence. Ultimately we want to empower, mobilise and support young people to actively promote respectful community relationships and safe social environments.<sup>42</sup>

5.25 The LCA highlighted the particular challenges facing indigenous communities, and recommended 'investment in diagnostic and treatment services, as well as education programs regarding the misuse of alcohol, particularly targeted at Aboriginal and Torres Strait Islander people'.<sup>43</sup> The LCA added that:

The design and implementation of such programs should be led or informed by Aboriginal communities and must be consistent with the principles in the UN Declaration on the Rights of Indigenous Peoples.<sup>44</sup>

5.26 The DUVPG stated that education campaigns which focus on telling a person how to think before they act when they are intoxicated will not work. This is because when you are intoxicated:

you start not using certain parts of your brain; you start to close down particularly the frontal cortex and the midbrain and you go back to the very basic brainstem operation, very basic emotions...we start to operate from that very base level and respond in ways that we would not normally respond.<sup>45</sup>

5.27 The committee heard that for education programs to be effective, they need to be long-term sustained programs aimed at bringing about a change in the Australian culture of drinking and associated aggression, rather than focusing on how to think when you drink.

5.28 The Alcohol and Public Policy Group flagged that 'the impact of education and persuasion programs tends to be small, at best' and '...a focus upon educating and persuading the individual drinker to change his or her behaviour without changing the broader environment cannot be relied upon as an effective approach'.<sup>46</sup>

5.29 The Queensland government argued that:

The one-off advertising campaign will not do it. As we have seen with other social media campaigns, such as the drink driving and smoking campaigns, they took a long time to really start to have an effect, but the cumulative effect over some years was the trick'.<sup>47</sup>

5.30 The Foundation for Alcohol Research and Education (FARE) similarly argued that:

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42 SBT, *Submission 27*, p. 7.

43 LCA, *Submission 30*, pp 17-18.

44 LCA, *Submission 30*, pp 17-18.

45 Professor Miller, DUVPG, *Committee Hansard*, 15 April 2016, p. 6.

46 See, Professor Kypros Kypri, *Submission 4*, Attachment 1, Alcohol and Public Policy Group, 'Alcohol: No Ordinary Commodity – a summary of the second edition' (2010), p. 126.

47 Mr Ford, Queensland Government, *Committee Hansard*, 15 April 2016, p. 37.

...we need strong and sustained campaigns. What we have in Australia[n] campaigns are weak and episodic public health programs around alcohol harm. That is the problem. If public awareness and public education campaigns are going to have an impact, we need to look to what happened with road safety and with the Quit campaigns which were designed to reduce the prevalence of smoking. I strongly support those sorts of campaigns. The fact is that we just do not really have them anywhere in Australia.<sup>48</sup>

5.31 Professor Steve Allsop argued that education is important, but only when combined with other regulatory measures:

Education is critically important...to inform people. But we should not expect behaviour to change if we continually make alcohol more available and we do not challenge the way in which communities have historically accepted some of the bad behaviour that happens when people are intoxicated. It is not about investing everything in education. It is recognising the proper role of education as a strategy to inform and to provide the backdrop for the policy. It is not a substitute for policy. It is not a substitute for strategies that address the factors that contribute to harm.<sup>49</sup>

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48 Mr Michael Thorn, Chief Executive, FARE, *Committee Hansard*, Friday 15 April 2016, p. 30.

49 Professor Steve Allsop, Director, National Drug Research Institute (NDRI), Curtin University, *Committee Hansard*, 15 April 2016, p. 4.

## Chapter 6

### A national strategy to address alcohol-related violence

6.1 This chapter outlines evidence heard by the committee regarding a nationally-consistent approach to addressing alcohol-related violence.

6.2 Under the Constitution, only states have the power to regulate alcoholic liquids.<sup>1</sup> This is not an area which the Commonwealth can directly legislate without state and territory negotiation, potentially through the Council of Australian Governments (COAG). The Commonwealth government's approach to illicit drugs and alcohol is outlined in the National Drug Strategy (NDS) 2010-2015, which is 'the product of collaboration between Commonwealth, state and territory governments, and extensive community and sector consultation'.<sup>2</sup> The National Alcohol Strategy (NAS) is being developed as a sub-strategy of the NDS. Both strategies are being revised and are to be considered in mid-2016 by the Ministerial Drug and Alcohol Forum, which comprises ministers with responsibility for alcohol and drug policy.<sup>3</sup>

6.3 As the previous chapters demonstrate, any strategy to address alcohol-related violence requires consideration of a plethora of issues. These included reforms to liquor trading such as lockouts or early cessation of alcohol service, as well as the responsible service of alcohol, the availability of public transport, the nature of criminal punishments, alcohol advertising regulations and public education campaigns.

#### A nationally-consistent approach?

6.4 The committee heard mixed evidence regarding the implementation of a national strategy which is 'consistent' in its approach to addressing and reducing alcohol-related violence.

6.5 Some submitters expressed support for the concept of a nationally-consistent approach. Ms Caterina Politi, whose son was killed in 2012 as the result of a one-punch attack, argued that: 'We are all part of Australia...The message, education, punishment and deterrence approach needs to be consistent nationally'.<sup>4</sup>

6.6 The Australian Medical Association (AMA) was strident in its support for action by the federal government, stating:

The message arising from the [AMA National Summit on Alcohol] was clear – Federal Government action on alcohol is overdue...the AMA's recommendations for Commonwealth action on alcohol, including an updated National Alcohol Strategy that should:

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1 *Australian Constitution*, s 113.

2 Department of Health, *Submission 48*, p. 3.

3 Department of Health, *Submission 48*, pp. 2-3.

4 Ms Caterina Politi, *Submission 57*, p. 1.

- (a) provide for a consistent national approach to access and availability;
- (b) an effective and sustained advertising and social marketing campaign around unsafe drinking and the harms associated with excess alcohol use;
- (c) increasing the availability of alcohol prevention and treatment services;
- (d) measures that respond specifically to the particular needs and preferences of Aboriginal and Torres Strait Islander people, and other culturally and linguistically diverse groups;
- (e) statutory regulation of alcohol marketing and promotion;
- (f) clear and consistent monitoring and measurement of alcohol use;
- (g) review current alcohol taxation and pricing arrangements; and
- (h) prohibiting political donations from the alcohol industry and the development of a code of conduct to guide government engagement with the alcohol industry.<sup>5</sup>

6.7 In respect of the NAS, the AMA submitted that it was 'a matter of priority' and expressed hope that the 2016-2021 NAS would be finalised and released, given the previous NAS expired in 2011.<sup>6</sup> The AMA recommended that the new NAS should 'specify a clear role for the Australian government in coordinating a consistent approach across the national to access and availability provisions'.<sup>7</sup> The Department of Health likewise submitted that the 'existing collaborative approach', through the NDS and the NAS, 'is an appropriate policy mechanism to lend support to a national strategy to harmonise laws and education on alcohol related violence'.<sup>8</sup>

6.8 The McCusker Centre for Action on Alcohol & Youth (MCAAY) and Public Health Association of Australia (PHAA) argued that '[a] consistent national framework of measures to reduce alcohol-related violence and other harms will support market equality across jurisdictions and is likely to increase consumer acceptance of measures'.<sup>9</sup> The Deakin University Violence Prevention Group (DUVPG) stated that it would 'increase...the perception of fairness, market equality and equal opportunity for commercial interests'.<sup>10</sup>

6.9 The Woman's Christian Temperance Union (WCTU) of Western Australia submitted that Australia lacks nationally-consistent policy in support the NAS:

The lack of governance arrangements and coordinating policy infrastructure also undermines a more consistent approach to areas that fall under the responsibility of state and territory governments. For instance, there is a

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5 Australian Medical Association (AMA), *Submission 7*, p. 2.

6 AMA, *Submission 7*, p. 3.

7 AMA, *Submission 7*, p. 9.

8 Department of Health, *Submission 48*, p. 5.

9 McCusker Centre for Action on Alcohol & Youth (MCAAY) and Public Health Association of Australia (PHAA), *Submission 32*, p. 3.

10 Deakin University Violence Prevention Group (DUVPG), *Submission 47*, p. 57.



lack of cohesive policy guidance and infrastructure to support a more evidence based approach on regulating alcohol outlet density and opening hours. There is a need for national guidelines outlining how these issues should be considered in planning and liquor licensing decision making, and defining levels of risk related to outlets densities that can be used to control laws in each jurisdiction.<sup>11</sup>

6.10 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) likewise argued that '[a] nationally consistent, streamlined and coordinated framework should provide the overarching structure for the implementation of programs and policies aimed at reducing alcohol-related harm' and suggested that the new NAS could be the starting point for this.<sup>12</sup>

6.11 A number of submitters discussed the importance of nationally-consistent data collection. The Queensland Nurses' Union (QNU) stressed the importance of a nationally-consistent database for information about drinking and violence.<sup>13</sup> The Royal Australasian College of Physicians (RACP) and RANZCP recommended that Australia have nationally consistent data on alcohol consumption which could be compared and made public.<sup>14</sup> The MCAAY and PHAA recommended the consistent national collection of alcohol-related data including wholesale alcohol sales data, emergency department presentations, hospital admissions and alcohol-related crime data.<sup>15</sup> The Western Australian Network of Alcohol and other Drug Agencies (WANADA) stated:

Wholesale sales data provides the most accurate and efficient data collection on consumption levels, yet it is not routinely collected in Australia. While several jurisdictions collect alcohol sales data under the National Alcohol Sales Data Project (NASDP), variation in the type of data reported and the absence of Victorian, South Australian and Tasmanian data ultimately prevents a nationally consistent approach. A greater focus is needed to address current gaps and support the systematic and consistent collection of alcohol-related data across jurisdictions, covering not only alcohol sales but also hospital presentations and admissions, and alcohol-related crime data.<sup>16</sup>

6.12 The WCTU of Australia submitted that consistency is desirable with regards to alcohol marketing:

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11 Woman's Christian Temperance Union (WCTU) of WA Inc, *Submission 23*, p. 3.

12 The Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Submission 25*, p. 4.

13 Dr Liz Todhunter, Research and Policy Officer, Queensland Nurses' Union (QNU), *Committee Hansard*, 15 April 2016, p. 33.

14 RANZCP, *Submission 25*, p. 7; Royal Australasian College of Physicians (RACP), *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 45.

15 MCAAY and PHAA, *Submission 32*, p. 4.

16 Western Australian Network of Alcohol and other Drug Agencies (WANADA), *Submission 52*, p. 4.

While the Commonwealth is responsible for regulating most aspects of alcohol marketing, state and territory governments can regulate aspects of advertising, pricing promotions and point-of-sale promotions through liquor licensing legislation and restrictions on advertising in public spaces and on stated-owned assets such as public transport. We do need a nationally consistent approach to alcohol advertising and the Commonwealth Government needs to take responsibility for this.<sup>17</sup>

6.13 St Vincent's Health Australia (SVHA) recommended that 'standards in relation to advertising and promotion are clear and consistent' and apply to all forms of advertising.<sup>18</sup>

6.14 Some submitters also considered national-consistency in the legal sphere. The Law Council of Australia (LCA) recommended that nationally-consistent model legislation be developed in accordance with the outcomes of relevant research to standardise alcohol licensing laws, the responsible service of alcohol, and 'lockout' provisions.<sup>19</sup>

6.15 Additionally, Associate Professor Julia Quilter and Professor Luke McNamara argued that serious consideration needs to be given to the development of a nationally standardised legislative terminology in this area, but acknowledge that this would be a difficult task given the different ways in which intoxication can affect people in different contexts.<sup>20</sup> They further argued that if a nationally consistent 'one-punch' offence were to be recommended, it should be drafted so that it is an offence which is less serious than murder and manslaughter.<sup>21</sup>

6.16 Other submitters opposed the concept of a nationally-consistent approach to tackling alcohol-related violence. The Brewers Association of Australia and New Zealand submitted that '[n]ationally mandating closing time or lockout laws would fail to appreciate the differences between different cities and regions and risk imposing unsuitable and irrelevant solutions'.<sup>22</sup> Keep Sydney Open held a similar view, stating:

...inner-city, suburban and rural areas vary wildly in their characteristics. Similarly, our cities differ from each other. Newcastle does not have the same cultural, economic or employment properties of more significant cities. Even between major cities, a city like Melbourne has a strong creative cultural element embedded in its inner-city and surrounding areas that lends itself to a more positive drinking culture. On the other hand Sydney, while not suffering from any epidemic – levels of violence, has

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17 WCTU Australia, *Submission 13*, p. 3.

18 St Vincent's Health Australia (SVHA), *Submission 38*, p. 10.

19 Law Council of Australia (LCA), *Submission 30*, p. 4.

20 Associate Professor Julia Quilter and Professor Luke McNamara, *Submission 20*, p. 6.

21 Professors Quilter and McNamara, *Submission 20*, p. 15.

22 Brewers Association of Australia and New Zealand, *Submission 61*, p. 11.

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gone about replacing its cultural diversity with a focus on gambling, particularly since the 1990s.<sup>23</sup>

6.17 Ms Martha Tsamis likewise argued that each location has its own unique set of issues which have to be understood in order to be addressed, and that '[a]ny consistency of approach to liquor licensing, violence mitigation and development of the night time economy (NTE) across jurisdictions must be evidence based, multifaceted, and progressive'.<sup>24</sup>

6.18 An additional objection was raised by Alcohol Beverages Australia (ABA) which expressed concern that a national strategy may, depending on its implementation, clutter policymaking:

Given there is a regularly updated National Alcohol Strategy, an additional initiative of 'a nationally consistent approach, negotiated, developed and delivered by the Federal Government together with all state and territory governments to address and reduce violence' risks working at cross-purposes to the National Drug Strategy and the National Alcohol Strategy.<sup>25</sup>

6.19 The objections raised apply primarily to nationally-consistent strategies, not to a national strategy more broadly. As Step Back Think submitted, a national approach to alcohol-related violence should be 'adaptable to local contexts'.<sup>26</sup>

### **Funding a national strategy**

6.20 Of those submissions that addressed the question of how a national strategy could be funded, many suggested that increased tax on alcohol would be the logical source of funds for a national strategy.<sup>27</sup> The Australian Drug Foundation (ADF) argued:

...the committee is interested in the funding or potential funding of a national strategy to reduce alcohol related violence. Increasing the price via taxation and hypothecating that money is a natural and feasible source of funding for a national strategy, so I would recommend increasing the price of alcohol via taxation as the most effective and cost-effective means government can choose to reduce excessive drinking and therefore all of the harms that have been mentioned so far.<sup>28</sup>

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23 Keep Sydney Open, *Submission 64*, p. 2.

24 Ms Martha Tsamis, *Submission 45*, pp 7-8.

25 Alcohol Beverages Australia (ABA), *Submission 59*, p. 2.

26 Step Back Think, *Submission 27*, p. 9.

27 AMA, *Submission 7*, p. 14; RACP, *Submission 16*, Attachment 1, RACP and RANZCP Alcohol Policy (March 2016), p. 18; RANZCP, *Submission 25*, p. 7; MCAAY and PHAA, *Submission 32*, p. 3; Australian Drug Foundation (ADF), *Submission 34*, p. 5; SVHA, *Submission 38*, p. 13; DUVPG, *Submission 47*, p. 59; Foundation for Alcohol Research and Education (FARE), PHAA and National Alliance for Action on Alcohol (NAAA), *Submission 50*, p. 16.

28 Mr Geoff Munro, National Policy Manager, ADF, *Committee Hansard*, 15 April 2016, p. 27.

6.21 Professor Tanya Chikritzhs, Professor Steve Allsop, Mr William Gilmore and Mr Vic Rechichi raised the example of the Northern Territory 'Living With Alcohol' program introduced in 1992, and funded by a tax on beverages with more than a three per cent alcohol content:

The levy added 5 cents to the price of a standard drink. The average rate of acute alcohol attributable deaths in the NT during the decade the program was in place dropped by a third (36.6%) with an earlier study evaluating per capita alcohol consumption in the NT four years after the introduction of the program estimated consumption to have declined by one fifth. Such results 'present an argument for the effectiveness of combining alcohol taxes with comprehensive programs and services designed to reduce the harm from alcohol'.<sup>29</sup>

### **Committee view**

6.22 The evidence received by the committee thus far suggests the need for a national, but locally adaptable, approach to address alcohol-related violence in Australia. Submitters and witnesses have identified a range of issues, such as entertainment precincts and their regulation, changes to the criminal law (for example 'one punch' offences), advertising, taxation and public education, as matters worthy of consideration.

6.23 The committee believes that alcohol-related violence and effective strategies to address it are important issues that warrant further and more detailed investigation than the committee has had the opportunity to undertake to date. In the event that the committee's inquiry continues in the current Parliament, the committee intends to explore in greater detail both the issues and possible solutions outlined by stakeholders, and give thorough consideration to whether and what a national approach to address alcohol-related violence might comprise.

6.24 However, if the committee is unable to conclude its inquiry by 30 June 2016 as a result of a simultaneous dissolution of the Senate and the House of Representatives, the committee strongly recommends that the new Parliament re-refer the matter of a nationally-consistent approach to alcohol-related violence to the relevant committee for inquiry and report.

### **Recommendation 1**

**6.25 In the event that the committee is unable to conclude its inquiry during the current Parliament, the committee recommends that the 45<sup>th</sup> Parliament**

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29 Professor Tanya Chikritzhs, Professor Steve Allsop, Mr William Gilmore and Mr Vic Rechichi, National Drug Research Institute (NDRI), *Submission 28*, p. 7.

**re-refer the matter of a nationally-consistent approach to alcohol-related violence to the relevant committee for further inquiry and report.**

**Senator Glenn Lazarus  
Chair**



## **Dissenting report from Government Senators**

1.1 Due to other Senate Committee commitments Government Senators were unable to participate in this Inquiry.

1.2 Government members question how this subject is a matter for the Legal and Constitutional Affairs Committee which, by its charter, deals with legal and constitutional issues, and matters for which the Attorney-General's Department and the Department of Immigration and Border Protection have responsibility. An Inquiry into alcohol consumption and its correlation to anti-social behaviour would find a more appropriate home with the Community Affairs References Committee.

1.3 Government Senators note that the report of the majority correctly identifies at paragraph 6.2 that the regulation of alcoholic beverages is within the purview of State and Territory governments, not the Commonwealth. Government Senators further note that Chapter 4 of the majority report details at some length the fact that it is State and Territory governments who are responsible for the common law relating to aberrant and anti-social behaviours.

1.4 The majority Committee report's single recommendation is that, due to the incomplete nature of the Inquiry, this same Inquiry subject be referred to the Legal and Constitutional Affairs References Committee in the 45th parliament. Government Senators disagree with this recommendation and instead recommend that the Inquiry be abandoned completely and indefinitely. The parliamentary committee process has limited time and limited resources during each parliamentary term, and the investigation of matters from outside the Commonwealth jurisdiction should be considered reckless and irresponsible. Government Senators do not believe that it is the purpose of Senate Committees to conduct politically opportunistic inquiries into matters subjected to fulsome investigation in other jurisdictions.

**Senator the Hon Ian Macdonald**  
**Deputy Chair**

**Senator Dean Smith**  
**Senator for Western Australia**





# Appendix 1

## Public submissions

1. Mr Andrew Zheng-Macdonald
2. Magistrates Court of Western Australia
3. Chief Magistrate Hribal, Adelaide Magistrates Court
4. Professor Kypros Kypri
5. Australian Beverages Council
6. Newcastle City Council
7. Australian Medical Association
8. Government of South Australia
9. Miss Yasmin Murry
10. AlcoCups: alcohol and drug education specialists
11. Dalgarno Institute
12. Ms Kristine Harper
13. Woman's Christian Temperance Union (WCTU) Australia
14. Mr Bill Horman AM APM
15. Burnet Institute
16. Royal Australasian College of Physicians
17. Mr Simon Barwood
18. WA Nightclubs Association
19. Queensland Nurses' Union
20. Associate Professor Julia Quilter and Professor Luke McNamara
21. Small Bar Association of Western Australia
22. Music Australia
23. Woman's Christian Temperance Union of WA Inc
24. Australian Health Promotion Association
25. The Royal Australian and New Zealand College of Psychiatrists
26. Police Federation of Australia
27. Step Back Think

28. Tanya Chikritzhs, Steve Allsop, William Gilmore and Vic Rechichi, National Drug Research Institute
29. Victorian Alcohol & Drug Association (VAADA)
30. Law Council of Australia
31. Professor David Moore, Professor Suzanne Fraser, Associate Professor Helen Keane, Dr Kate Seear & Dr kyliie valentine
32. McCusker Centre for Action on Alcohol & Youth and Public Health Association of Australia
33. Australian Music Industry Network
34. Australian Drug Foundation
35. Office of the Director of Public Prosecutions NSW
36. Carlton & United Breweries
37. Council of Capital City Lord Mayors
38. St Vincent's Health Australia
39. Live Music Office
40. MusicNSW
41. Commonwealth Director of Public Prosecutions
42. Attorney-General's Department
43. Royal Australasian College of Surgeons
44. Australian Liquor Stores Association (ALSA)
45. Ms Martha Tsamis, Chasers and Inflation Nightclubs
46. Mr Tony Brown
47. Deakin University Violence Prevention Group
48. Department of Health
49. Dr Kate Fitz-Gibbon
50. Foundation for Alcohol Research and Education, Public Health Association of Australia, and National Alliance for Action on Alcohol
51. Australian Hotels Association
52. Western Australian Network of Alcohol & other Drug Agencies
53. Ms Carol Baker
54. APRA AMCOS
55. Queensland Government
56. ACT Government

57. Caterina Politi
58. Aboriginal Health Council of Western Australia
59. Alcohol Beverages Australia
60. Confidential
61. Brewers Association of Australia and New Zealand
62. Northern Territory Government
63. City of Sydney
64. Keep Sydney Open
65. ACT Policing



## **Appendix 2**

### **Public hearings and witnesses**

#### **Friday 15 April 2016—Brisbane**

ALLSOP, Professor Steve, Director, National Drug Research Institute, Curtin University

BOULTEN, Mr Phillip SC, Member, National Criminal Law Committee, Law Council of Australia

BOWEN, Mr Christopher, Chief Executive Officer, Music Australia

CRANE, Ms Meredythe, Senior Policy Officer, Foundation for Alcohol Research and Education

CROZIER, Dr John, Co-Chair, National Alliance for Action on Alcohol

EDMONDSON, Mr Joel, Deputy Chair, Australian Music Industry Network

FERGUSON, Mr Stephen, National Chief Executive Officer, Australian Hotels Association

FERRIS, Dr Jason Alexander, Private capacity

FITZ-GIBBON, Dr Kate, Private Capacity

FORD, Mr David Kenneth (David), Deputy Director-General and Commissioner for Liquor and Gaming, Department of Justice and Attorney-General, Government of Queensland

GILBERT, Mr James, Occupational Health and Safety Officer, Queensland Nurses' Union

GILMORE, Mr William, Research Fellow, National Drug Research Institute, Curtin University

GREEN, Mr John Raymond, Director, Liquor and Policing, Australian Hotels Association New South Wales

LAVARCH, Ms Linda, Director of Member Services, Queensland Nurses' Union

MILLER, Professor Peter, Deakin University

MOLT, Dr Natasha, Senior Legal Adviser, Policy Division, Law Council of Australia

MOORE, Adjunct Professor Michael, Chief Executive Officer, Public Health Association of Australia

MOTT, Mr Terry, Chief Executive Officer, Australian Liquor Stores Association

MUNRO, Mr Geoff, National Policy Manager, Australian Drug Foundation

NAJMAN, Professor Jakob Moses, Queensland Representative, National Alliance for Action on Alcohol

QUILTER, Associate Professor Julia, Private Capacity

STEELE, Mr Damian, Business Development Manager, Queensland Hotels Association

THORN, Mr Michael, Chief Executive, Foundation for Alcohol Research and Education

TODHUNTER, Dr Elizabeth, Research and Policy Officer, Queensland Nurses' Union

VEACH, Ms Kate, Research Officer, Queensland Nurses' Union