



3 March 2009, nos. 100–101, 2008–09, ISSN 1328-8091

**This Digest replaces an earlier version published on 24 February 2009. It revises some of the material in the Key issues section.**

## **Excise Tariff Amendment (2009 Measures No. 1) Bill 2009**

## **Customs Tariff Amendment (2009 Measures No. 1) Bill 2009**

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## **Excise Tariff Amendment (2009 Measures No. 1) Bill 2009**

## **Customs Tariff Amendment (2009 Measures No. 1) Bill 2009**

**Date introduced:** 11 February 2009

**House:** House of Representatives

**Portfolio:** Excise Tariff Amendment Bill—Treasury; Customs Tariff Amendment Bill—Home Affairs

**Commencement:** 27 April 2008

**Links:** The [relevant links](#) to the Excise Tariff Amendment Bill, [relevant links](#) to the Customs Tariff Amendment Bill, their Explanatory Memoranda and second reading speeches can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### **Purpose**

The purpose of the Bills is to amend the schedules to the *Excise Tariff Act 1921* (the Excise Tariff Act) and the *Customs Tariff Act 1995* (the Customs Tariff Act) to increase the tax applying to ‘other excisable beverages not exceeding ten per cent alcohol by volume’ from \$39.36 to \$66.67 per litre of alcohol from 27 April 2008.

### **Background**

The increase in excise has been presented by the Government as a part of its broader strategy to tackle the problem of ‘risky drinking’ among young Australians, and especially young women. Ready-to-drink (RTD) beverages, or ‘alcopops’, are widely recognised as being young Australian women’s drink of choice. Such pre-mixed beverages are broadly described as mixtures of alcohol (in particular distilled spirits) with fruit juices or other flavourings.<sup>1</sup>

Other complementary measures introduced by the government in the 2008-09 Budget as a part of its National Binge Drinking Strategy include:

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1. Explanatory Memorandum, p. 8.

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- \$19.1 million over four years to support early intervention and diversion programs for people under the age of 18 years who engage in binge drinking<sup>2</sup>
- \$20 million over two years towards an education and information campaign via television, the radio and the Internet that will confront people with the costs and consequences of binge drinking<sup>3</sup>
- a further \$14.5 million over four years to develop partnerships with community and sporting organisations to tackle binge drinking among young people.

Each of these measures is funded through existing resources.

Many of the debates around the alcopop tax have already been canvassed in the Senate Standing Committee on Community Affairs' (the First Senate Committee) Report entitled *Ready-to-drink alcohol beverages*, released in June 2008. The First Senate Committee was charged with examining the likely effectiveness of the new tax in reducing binge drinking among young people, and with scrutinising the modelling and evidence on which the excise increase was based.<sup>4</sup> It was also to examine the effectiveness of alternative measures for tackling binge drinking among young people.<sup>5</sup>

### Evidence of drinking by young people

A number of commentators have questioned whether or not there could be said to have developed a youth 'binge drinking epidemic' in Australia in recent years. The available evidence does not lend itself to a clear answer to this question.

The National Drug Strategy Household Survey, conducted by the Australian Institute of Health and Welfare (AIHW), is the most comprehensive source of data on the use of licit and illicit drugs in Australia. The results of this survey are released on a three-yearly basis, with the latest data available being for 2007.<sup>6</sup>

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2. Australian Government, 'Part 1: Revenue Measures', Budget Paper No. 2, Budget Measures 2008-09, Commonwealth of Australia, Canberra, 2008 at <http://www.aph.gov.au/budget%20dummy/budget%202008-09%20mirror/2008-09/content/bp2/html/index.htm>, accessed 20 February 2009.
  3. *ibid.*
  4. Senate Standing Committee on Community Affairs, '[Ready-to-drink alcohol beverages](#)', Commonwealth of Australia, Canberra, June 2008, p. 1.
  5. *ibid.*
  6. While the National Drug Strategy Household Survey contains data on alcohol consumption, because these data are self-reported, they should be treated with a deal of caution. These data significantly under-estimate the amount of alcohol consumed by Australians, with the alcohol use measured in the survey only accounting for about 60 per cent of the alcohol that is sold. Given that response rates to the last two surveys (2004 and 2007) have been less

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Based on the evidence of 2001, 2004 and 2007 National Drug Strategy Household Survey data, the Australian Institute of Health and Welfare argues that there has been virtually no change in the pattern of 'risky' drinking among young Australians between 2001 and 2007.<sup>7</sup>

It should be noted, however, that while some evidence suggests that there has not been an overall increase in risky drinking among young Australians in recent years, there are indications that a significant number of underage drinkers are nevertheless consuming alcohol at risky levels.<sup>8</sup> Various studies also show a clear and increasing trend in alcohol-related harm among those young people who do drink at risky levels.<sup>9</sup>

In light of this evidence, some participants in the First Senate Committee argued that debate over whether or not there has been an increase in risky drinking among young Australians was in fact misplaced. As these commentators saw it, the fact that a

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than 50 per cent, concerns have also been raised as to the representativeness of the data for population alcohol use. It should also be noted that, according to the Australian Institute of Health and Welfare, the survey data do not lend themselves to a direct link between particular types of alcohol and drinking consumption. All the data can really inform us about, then, are broad patterns of preference for particular types of alcohol at a population level.

7. That is, there has been no significant increase in the number of people drinking at risky levels and no significant shift between categories of risky drinking (that is, 'low' and 'high' risk). Australian Institute of Health and Welfare, *Submission, Senate Community Affairs Committee, Inquiry into Ready-to-Drink Alcohol Beverages*, May 2008, [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_beverages/submissions/sub23.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_beverages/submissions/sub23.pdf), accessed 20 February 2009.
8. V. White and J. Hayman, *Australian secondary school students' use of alcohol in 2005 report*, Centre for Behavioural Research in Cancer, Cancer Control Research Institute, The Cancer Council Victoria, June 2006, p. 29.
9. According to the Australian Institute of Health and Welfare, the proportion of total treatment episodes for which alcohol was the principal drug of concern has increased from 15 per cent to 23 per cent among 10 to 19 year olds in the past 5 years. Australian Institute of Health and Welfare, *Submission, Senate Community Affairs Committee, Inquiry into Ready-To-Drink Alcohol Beverages*, May 2008. See also M. Livingston, 'Recent trends in risky alcohol consumption and related harm among young people in Victoria, Australia', *Australian and New Zealand Journal of Public Health*, 32: 3, 2008, [http://parlinfo/parlInfo/download/library/jrnart/L1QQ6/upload\\_binary/11qq62.pdf;fileType=application/pdf#search=%22Recent%20trends%20in%20risky%20alcohol%20consumption%20and%20related%20harm%20among%20young%20people%20in%20Victoria%20Australia%22](http://parlinfo/parlInfo/download/library/jrnart/L1QQ6/upload_binary/11qq62.pdf;fileType=application/pdf#search=%22Recent%20trends%20in%20risky%20alcohol%20consumption%20and%20related%20harm%20among%20young%20people%20in%20Victoria%20Australia%22); S. Allsop, T. Chikritzhs and V. Rechichi, 'Alcohol and Teenagers: risky business', *Issues* 74, March 2006, [http://parlinfo/parlInfo/download/library/jrnart/F78N6/upload\\_binary/f78n62.pdf;fileType=application/pdf#search=%22Alcohol%20and%20risky%20business%22](http://parlinfo/parlInfo/download/library/jrnart/F78N6/upload_binary/f78n62.pdf;fileType=application/pdf#search=%22Alcohol%20and%20risky%20business%22), accessed 23 February 2009.

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significant number of young people continue to drink at levels that place themselves and others at risk indicates that there is a serious problem that needs to be dealt with.

### What is 'risky' drinking?

It may be the case that the definition and general understanding of what constitutes risky drinking for young people (and Australians in general) needs to be revised, depending on the final content of the soon-to-be released National Health and Medical Research Council (NHMRC) Australian alcohol guidelines for low-risk drinking. It is the model of risk outlined in these guidelines that forms the basis for Australian Institute of Health and Welfare analyses of National Drug Strategy Household Survey findings.

### **Australian alcohol guidelines for low-risk drinking**

To enable Australians to make informed decisions about their alcohol consumption and, in particular, decisions that are made based on latest available scientific evidence, the NHMRC compiles the Australian Alcohol Guidelines.<sup>10</sup> These guidelines are intended to give people an indication of the limits of alcohol consumption that are associated with an increasing risk to health and social well-being. The goal of the guidelines is to assist people to minimise the risk of incurring alcohol-related harms. The guidelines are based on the Australian Standard Drink measure of 10 grams of alcohol. They are subject to a routine five-year review, with the last review having been conducted in October 2007.

The latest Draft Australian Alcohol Guidelines reflect a substantially changed approach by the NHMRC.

Under the existing guidelines, men are advised that they should drink no more than four Standard Drinks a day on average, and no more than six Standard Drinks on any one day. It is also recommended that they should observe one or two alcohol-free days per week. Women are advised that they should drink no more than two Standard Drinks a day on average, and no more than four standard drinks on any one day. Like men, women are advised to have one or two alcohol-free days a week.

Depending on whether people drink above these recommended levels in a single day or over a long period of time, the NHMRC distinguishes between short-term and long-term

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10. The Draft Australian Alcohol Guidelines for low risk drinking are available at [http://www.nhmrc.gov.au/guidelines/files/draft\\_australian\\_alcohol\\_guidelines.pdf](http://www.nhmrc.gov.au/guidelines/files/draft_australian_alcohol_guidelines.pdf). The NHMRC has indicated that the draft Guidelines are to be reviewed by the Council of the NHMRC in early February. Should the Council approve the Guidelines, they are due for release within the next few weeks. National Health and Medical Research Council, 'NHMRC 2009 Draft Alcohol Guidelines Still to be Approved', media release, 1 February 2009, <http://www.nhmrc.gov.au/media/media/rel09/090201-alcohol-guidelines.htm>, accessed 21 February 2009.

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risks to people's health and social well-being. Short-term risks are those associated with occasional drinking episodes confined to a single day (such as injuries from violence, accidents, falls, having unprotected sex, and alcohol poisoning) while long-term risks (diseases such as cancer, diabetes, and brain damage) are associated with regular and repeated daily drinking. Within these two categories, the NHMRC delineates three levels of risk:

- *low risk* a level of drinking at which there is a minimal risk of harm
- *risky levels* at which risk of harm is greatly increased, and
- *high risk* at which there is high risk of serious harm, and above which the risk increases rapidly.

In October 2007, the NHMRC revised in draft form the current Australian Alcohol Guidelines to indicate that both men and women should drink no more than two Standard Drinks a day. Under the revised, draft guidelines, children under the age of 15 years and pregnant women are advised not to drink at all, on the grounds that, for them, there is no safe level of alcohol consumption.<sup>11</sup> The draft guidelines also advise that 15 to 17 year olds should only drink under parental supervision. Where older teenagers do drink under adult supervision, it is recommended that this should be within the adult guideline for low-risk drinking (that is, two Standard Drinks in any one day).

Based on analysis by medical experts of scientific research from around the world, the NHMRC arrived at the decision that it is not possible to determine a limit at which it is safe for expectant mothers to drink without risking foetal alcohol syndrome. Similarly, it was determined that given the vulnerability of an adolescent's developing brain (indeed, for young adults up to the age of 25 years), no safe level could be set for this demographic either.

In justifying the changes to the guidelines, the Chairman of the committee responsible for drafting the new guidelines (the NHMRC Drafting Committee), Professor Jon Currie, advised that the new levels for adult drinking were not a safe or no-risk drinking level, but an *advisory* level for low risk drinking. Where people drink above these levels, Currie maintains, the risk 'starts to rise precipitously'.<sup>12</sup> Thus, under the proposed new guidelines, the 'risky' and 'high risk' designations, described above, have been dispensed with.

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11. Under the current guidelines, pregnant women (and those planning on becoming pregnant) are advised that they should drink no more than two standard drinks a day and no more than seven standard drinks per week. This advice is mirrored in the *National clinical guidelines for the management of drug use during pregnancy, birth and the early development years of the newborn*. These guidelines were published by the NHMRC in March 2006.
  12. See B. Stark, '[Two a day safe limit on drinks](#)', *Sydney Morning Herald*, 13 October 2007, p. 1.

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Under the new approach, a level of alcohol consumption to ensure low risk of harm is defined, with any drinking above this level carrying a higher risk than not drinking, and therefore advised against by the NHMRC. This changed approach seeks to shift the focus from *level of consumption* as being the key indicator of alcohol-related problems to an *alcohol-related harm* focus. As the NHMRC Drafting Committee sees it, the main benefit of this shift would be that it allows for a far more accurate and targeted measure of alcohol-related harm than does the relatively arbitrary measure of consumption levels. Another advantage of the proposed shift in focus is that the policy objective of reducing alcohol-related *harm*, rather than simply *consumption*, is one that can be generally agreed upon.

In developing the new draft guidelines, the NHMRC Drafting Committee has avoided, wherever possible, the use of the term ‘binge drinking’.<sup>13</sup> It has done so on the grounds that the meaning of the term is ‘ill-defined and unclear’ and, thus, not particularly useful in terms of providing guidance on safe drinking. As McCarthy notes, where it comes to defining binge drinking, the thresholds used are arbitrary as there is no consensus on the number of drinks that is considered a binge, the alcohol content of drinks varies and there is not an international definition of what constitutes a ‘standard drink’, and the length of time in a drinking session is not defined.<sup>14</sup> While in the field of epidemiology, the threshold of five drinks for men and four or more for women per occasion has gained some currency as a measure for binge drinking, the lack of specificity where it comes to the size, strength or type of drink and the duration of an occasion, reduces the practical usefulness of this measure. The clinical definition of a binge is closer to the Australian cultural definition: the consumption of alcohol to intoxication, lasting up to several days and involving a loss of control.<sup>15</sup>

It should be noted that the NHMRC Drafting Committee’s refusal to define or to quantify in terms of consumption what is ‘binge drinking’ is in keeping with its changed overall approach (see above). Under the current guidelines, binge drinking could be interpreted as the drinking of five or more standard drinks in a session in the case of men and three or more in the case of females. Under the new, draft guidelines, binge drinking is interpreted

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13. Indeed, the National Health and Medical Research Council prefers the use of the term ‘heavy, episodic drinking’ over ‘binge drinking’, due to the lack of consistency and specific meaning of the latter term. It is not clear, however, that the use of the term ‘heavy, episodic drinking’ provides any more clarity than does the term ‘binge drinking’. The advantage of the term ‘binge drinking’ is that it has a broadly understood and agreed upon cultural meaning, outside the field of epidemiology and clinical practice.

14. P. McCarthy, *What is ‘binge drinking’?* DrinkWise Australia, May 2006, p. 1.

15. *ibid.*

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by the Australian Drug Foundation as drinking ‘on any single occasion, significantly more than the low-risk levels advised by the National Health and Medical Research Council’.<sup>16</sup>

The proposed new alcohol guidelines are among the most stringent in the world and this has—as is to be expected—caused some controversy.

### Criticisms of the revised Australian Alcohol Guidelines

The revised guidelines have been the subject of criticism on the grounds that they are unrealistic. It is argued that the advised safe drinking level is set far too low, and that insufficient guidance is given on alcohol consumption when this moves beyond the low-risk level. As a result, some commentators have it that the draft guidelines do not provide a useful guide to assist Australians in making decisions about their alcohol consumption. Indeed, these commentators argue that because the guidelines are so out of touch with Australians’ actual drinking habits, and because they are so much more restrictive than the existing version of the guidelines, they risk being ignored altogether.<sup>17</sup>

For example, in the ‘National clinical guidelines for the management of drug use during pregnancy, birth and the early development years of the newborn’—which essentially followed the approach of the previous version of the current Australian Alcohol Guidelines—the NHMRC counselled against an abstinence-based approach to the guidelines for pregnant women. It did so on the grounds that such advice could ‘result in disproportionate anxiety’ and ‘precipitous decisions to terminate a pregnancy’. The guidelines went on to state that ‘affected mothers should be persuaded from such decisions with information that many babies show no evidence of damage despite heavy exposure’. The guidelines also advised that pregnant women who had consumed alcohol during the course of their pregnancy could be reassured using new knowledge of the ways the brain can defend itself, and should only then be advised to refrain from further risk.<sup>18</sup>

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16. Drug Info Clearinghouse, The facts about binge drinking – for young people, [http://www.druginfo.adf.org.au/article.asp?ContentID=the\\_facts\\_about\\_binge\\_drinking](http://www.druginfo.adf.org.au/article.asp?ContentID=the_facts_about_binge_drinking), accessed 20 February 2009.

17. See, for example, Members of the National Alcohol Beverage Industries Council Inc, *Submission to the National Health and Medical Research Council on the Australian Alcohol Guidelines for low risk drinking*, December 2007, <http://www.dsica.com.au/pdfs/0712SubAustAlcGuide.pdf>; Australian Medical Association, *Draft Australian alcohol guidelines for low-risk drinking*, Submission by the Australian Medical Association, December 2007, <http://www.ama.com.au/node/4190>, accessed 22 February 2009.

18. For a critique of the National clinical guidelines for the management of drug use during pregnancy, birth and the early development years of the newborn that pre-empt the changed draft Australian Alcohol Guidelines, see J. Whitehall, ‘National guidelines on alcohol use during pregnancy: a dissenting opinion’, *Medical Journal of Australia*, 186: 1, 1 January 2007,

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It has also been argued that the guidelines do not sufficiently account for the health benefits that may be realised through moderate alcohol consumption.<sup>19</sup>

Some research indicates that longer term health benefits may be associated with low to moderate alcohol consumption. Low to moderate alcohol consumption can reduce the risks of stroke and ischaemic heart disease in older men and women. While acknowledging this protective effect, the NHMRC nevertheless argues that any health benefits need to be balanced against the risks of other chronic diseases at low drinking levels. Given the trade-off in risks, the NHMRC feels that people who do not already drink should not take up drinking to gain these long-term benefits.<sup>20</sup>

### **The Australian Alcohol Guidelines and young drinkers**

Australian School Students' Alcohol and Drug Survey (ASSAD) and National Drug Strategy Household Survey data indicate that alcohol consumption among Australian adolescents before the legal age of 18 years is commonplace. There is also evidence that many young adults (18 to 24 year olds) and underage drinkers are drinking at risky levels according to the *current* Australian Alcohol Guidelines.

Should the draft Australian alcohol guidelines for low-risk drinking be adopted in their current form, and taken seriously, then the problem of risky drinking among young Australians would appear to be more acute and extensive than was previously thought. This finding would lend weight to arguments that effective measures to decrease young Australians' (and Australians' in general) alcohol consumption are urgently required if alcohol-related harm in this population is to be reduced.

### **Link between young people's drinking and alcopops**

The consumption of alcopops in Australia has increased over recent years.

According to latest Australian Bureau of Statistics (ABS) data, between 2005 and 2007, there was an increase of 5.9 per cent in apparent consumption of alcohol in the form of Ready-to-Drink (RTD) products for persons aged 15 years and over. This equates to an

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[http://parlinfo/parlInfo/download/library/jrnart/6K9M6/upload\\_binary/6k9m62.pdf;fileType=application/pdf#search=%22National%20guidelines%20on%20alcohol%20use%20during%20pregnancy%20a%20dissenting%20opinion%22](http://parlinfo/parlInfo/download/library/jrnart/6K9M6/upload_binary/6k9m62.pdf;fileType=application/pdf#search=%22National%20guidelines%20on%20alcohol%20use%20during%20pregnancy%20a%20dissenting%20opinion%22), accessed 23 November 2009.

19. See Access Economics and Distilled Spirits Industry Council of Australia, 'Australia on the road to flawed guidelines for alcohol consumption', media release, 16 April 2008.
20. National Health and Medical Research Council, *Australian alcohol guidelines for low-risk drinking – FAQs*, p. 3, [http://www.nhmrc.gov.au/guidelines/files/aust\\_alcohol\\_guidelines\\_faqs.pdf](http://www.nhmrc.gov.au/guidelines/files/aust_alcohol_guidelines_faqs.pdf), accessed 22 February 2009.

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increase from 1.0 to 1.1 litres of alcohol per person and an overall increase in consumption from 15.4 million litres in 2005 to 18.1 million litres in 2007.<sup>21</sup>

Data gathered over a longer period indicate more starkly the increased popularity of alcopops in Australia. As a percentage of total alcohol sales, alcopops have increased from 3 per cent in 1997 to 15 per cent in 2006—an increase of more than 450 per cent. Per-capita expenditure on pre-mixed spirits increased from \$51 to \$252 (an increase of 394 per cent) over the same period.<sup>22</sup>

Much of the consumption of alcopops is by young Australians and, in particular, young women.

The drink of preference for Australian females aged between 18 and 29 years across the past three National Drug Strategy Household Surveys has been roughly divided between pre-mixed spirits in a bottle or a can (alcopops) and bottled spirits. The same pattern holds for females under the age of 18 years. For Australian males aged between 18 and 29 years the drink of preference between 2001 and 2007 has been regular strength beer, followed by pre-mixed spirits in a can (such as bourbon and cola). For males aged under 18 years, the drink of preference has been relatively evenly balanced between regular strength beer and pre-mixed spirits in a can.<sup>23</sup>

According to data from the latest *Australian secondary school students' use of alcohol* (ASSAD) survey, alcopops are popular among underage drinkers, and more likely to be consumed by girls than boys. Of the students participating in the survey, pre-mixed spirits were consumed by 25 per cent of 12 to 15 year olds and 34 per cent of 16 to 17 year olds.

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21. Ready-to-Drink pre-mixed products include spirit-based, wine-based, and other than spirit- or wine-based products. Australian Bureau of Statistics, *4307.0.55.001 – Apparent Consumption of Alcohol, Australia, 2006-07 (Reissue)*, 18 April 2008, at [http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4307.0.55.001Main%20Features22006-07%20\(Reissue\)?opendocument&tabname=Summary&prodno=4307.0.55.001&issue=2006-07%20\(Reissue\)&num=&view=](http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4307.0.55.001Main%20Features22006-07%20(Reissue)?opendocument&tabname=Summary&prodno=4307.0.55.001&issue=2006-07%20(Reissue)&num=&view=), accessed 20 February 2009. The ABS draws on information provided by government agencies such as the tax office and customs—but not sales data from a majority of the states and territories—to compile the annual publication, *Apparent consumption of alcohol, Australia*.
  22. C. Doran and A. Shakeshaft, 'Using taxes to curb drinking in Australia', *The Lancet*, Vol. 372, 30 August, 2008, p. 701.
  23. Australian Institute of Health and Welfare, *Submission, Senate Community Affairs Committee, Inquiry into Ready-to-Drink Alcohol Beverages*, May 2008 at [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_beverages/submissions/sub23.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_beverages/submissions/sub23.pdf), accessed 20 February 2009.

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Forty-seven per cent of girls and 14 per cent of boys aged 12 to 17 were found to have drunk alcopops in the week prior to the survey.<sup>24</sup>

According to the results of recent research, the popularity of alcopops among young people is to be expected, given that the development and marketing of these drinks appear to be targeted directly at young people.

For example, a 2005 National Drug and Alcohol Research Centre (NDARC) study that aimed to determine the palatability across age groups of a range of drinks, including alcopops, and their potential impact on age of initiation and patterns of alcohol use, found grounds for concern in relation to alcopops. The study found that alcopops:

- are designed to appeal to a young audience through their marketing and packaging
- are likely to appeal to children and teenagers and, in some instances, to be confused with similar non-alcoholic products
- are relatively affordable for teenagers in individual packaging, and
- make it easier and more palatable for teenagers to drink alcohol, due to the drinks' high sugar content and to their disguising the bitter taste of alcohol.<sup>25</sup>

A similar study that focused specifically on the acceptability of alcopops to 12 year old to 30 year olds found that among the younger drinkers studied alcopops were typically the first used and most preferred alcoholic beverage.<sup>26</sup>

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24. V. White and J. Hayman, *Australian secondary school students' use of alcohol in 2005 report*, Centre for Behavioural Research in Cancer, Cancer Control Research Institute, The Cancer Council Victoria, June 2006.
25. J. Copeland, P. Gates, D. Stevenson and P. Dillon, *Young people and alcohol: taste perceptions, attitudes and experiences*, NDARC Technical Report No. 241, National Drug and Alcohol Research Centre, Sydney, 2005 at [http://www.med.unsw.edu.au/NDARCWeb.nsf/resources/TR239-243/\\$file/TR.241.pdf](http://www.med.unsw.edu.au/NDARCWeb.nsf/resources/TR239-243/$file/TR.241.pdf), accessed 20 February 2009. For a counter view, see the Distilled Spirits Industry Council of Australia (DSICA), 'The 'Alcopop' myth', media release, 12 April 2005. DSICA issued this media release in response to perceived claims that RTDs were a key contributor to an epidemic of underage drinking across Australia. In the release, the DSICA claimed that, while there has indeed been a significant shift among underage drinkers towards RTD beverages, on the basis of the best available evidence and objective research, there is no 'explosion' of underage drinking in Australia, and no demonstrable link between the growth of RTDs and underage drinkers.
26. J. Copeland et al., 'Young Australians and alcohol: the acceptability of ready-to-drink (RTD) alcoholic beverages among 12-30 year olds', *Addiction*, Society for the Study of Addiction, 2007, 102, p. 1744.

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### Is there an increase in 'risky' drinking?

While alcopops are clearly the drink of preference for many young Australians, and especially young Australian women and girls, evidence for the link between alcopops and an *increase* in risky drinking (as it is currently defined) is limited. The AIHW summarises the situation as follows: 'given the stable prevalence of risky drinking, and the lack of any clear trend regarding preferences for RTDs, the increased availability of RTDs does not appear to have directly contributed to an increase in risky alcohol consumption'.<sup>27</sup>

That said, there is evidence to suggest that where young Australians do engage in risky drinking, this is frequently likely to involve alcopops. For example, Australian Bureau of Statistics alcohol consumption data from 2004-05 indicate that of risky/high risk drinkers aged 18 to 24 years, 75 per cent drank ready-to-drink spirits and liqueurs compared to 56 per cent of low risk drinkers of the same age.<sup>28</sup>

### Link between increases in alcohol price and reduced risky drinking

There is substantial evidence to support the link between alcohol affordability and levels of alcohol consumption, with increased prices typically resulting in reduced consumption. For example, a recently published macro analysis of data from 112 studies that tracked the relationship between alcohol pricing and consumption found that the more alcohol costs, the less people drink it. Alcohol prices were found to affect the consumption of all types of alcoholic beverage, and the drinking behaviours of all types of drinker.<sup>29</sup>

While there were variations in the magnitude of price effects across groups, situations, places and times, at the most basic level, increased price was found to interact with income in reducing alcohol consumption. Based on their findings, the report's authors argued that increasing the price of alcohol through taxation is the most consistently successful means of reducing drinking:

We know of no other preventive intervention to reduce drinking that has the numbers of studies and consistency of effects seen in the literature on alcohol taxes and prices.<sup>30</sup>

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27. Australian Institute of Health and Welfare, *Submission, Senate Community Affairs Committee, Inquiry into Ready-to-Drink Alcohol Beverages*, May 2008 at [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_beverages/submissions/sub23.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_beverages/submissions/sub23.pdf), accessed 20 February 2009.
  28. Australian Bureau of Statistics, *4832.0.55.001 – Alcohol Consumption in Australia: A Snapshot, 2004-05*, 25 August 2006 at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4832.0.55.001/>, accessed 20 February 2009.
  29. A. Wagenaar, M. Salois and K. Komro, 'Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 estimates from 112 studies', *Addiction*, Vol. 104, No. 2, 2009, pp. 179–190.
  30. *ibid.*

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Increasing the price of alcohol not only reduces alcohol consumption, but it also reduces alcohol-related harm. According to another recent summary of international research into the links between higher alcohol taxation and alcohol consumption, an increase in alcohol prices:

reduces hazardous and harmful alcohol consumption, alcohol dependence, the harm done by alcohol, and the harm done by alcohol to others than the drinker.<sup>31</sup>

A volume of research indicates that young people, in particular, are price sensitive when it comes to alcohol consumption.

According to the **World Health Organisation** (WHO), increased alcohol taxation has proven to be effective in reducing alcohol-related problems among young people. Because young people tend to be on limited budgets, the WHO notes that alcohol consumption amongst this demographic is more sensitive to price changes. In addition, where alcohol taxes have been increased in some developed countries, this has been found to have reduced among young people the harmful consequences associated with excessive drinking.<sup>32</sup>

Drawing on such evidence, as well as their extensive knowledge of the costs of alcohol-related harms in Australia, **Collins and Lapsley** have claimed that ‘increasing the tax rate on alcoholic drinks which are specifically targeted at the youth market (for example, alcopops) is likely to be effective [in reducing alcohol consumption and alcohol-related harm]’. On these grounds Collins and Lapsley argued that ‘there would appear to be strong justification for the April 2008 increase in the Australian tax on pre-mixed drinks (alcopops) by 70 per cent’.<sup>33</sup>

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31. P. Anderson and B. Baumberg, *Alcohol in Europe: a public health perspective. A report for the European Commission*, Institute of Alcohol Studies, U.K., 2006, [http://ec.europa.eu/health/ph\\_determinants/life\\_style/alcohol/documents/alcohol\\_europe.pdf](http://ec.europa.eu/health/ph_determinants/life_style/alcohol/documents/alcohol_europe.pdf), accessed 23 February 2009.
  32. World Health Organisation, *WHO Expert Committee on problems related to alcohol consumption*, WHO, Geneva, 2007; D. Jernigan, *Global Status Report: Alcohol and Young People*, World Health Organisation, Geneva, 2001, pp. 41–2, [http://whqlibdoc.who.int/hq/2001/WHO\\_MSD\\_MSB\\_01.1.pdf](http://whqlibdoc.who.int/hq/2001/WHO_MSD_MSB_01.1.pdf), accessed 23 February 2009. Alcopop-specific taxes have been introduced in France, Ireland, Germany, Austria, Switzerland and California. The intent of these taxes is to discourage young people and underage drinkers from consuming alcopops, and to discourage manufacturers from targeting young people in their advertisements and promotions of the beverages.
  33. D. Collins and H. Lapsley, *The avoidable costs of alcohol abuse in Australia and the potential benefits of effective policies to reduce the social costs of alcohol*, National Drug Strategy Monograph Series No. 70, 2008, p. 16, [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/0A14D387E42AA201CA2574B3000028A8/\\$File/mono70.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/0A14D387E42AA201CA2574B3000028A8/$File/mono70.pdf), accessed 23 February 2009.

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In their recent analysis of the alcopop excise increase, and the use of taxes to improve public health outcomes related to alcohol consumption more generally, **Doran and Shakeshaft** were more circumspect in their conclusions than were Collins and Lapsley. Doran and Shakeshaft determined that ‘although the Australian Government’s recent decision is likely to arrest the increased sales of premixed spirits, it is unlikely to substantially reduce overall rates of usual or binge consumption’. Doran and Shakeshaft then proceeded to qualify this statement, as follows:

This conclusion does not indicate, however, that the Government’s decision was wrong—going part of the way is not the same as going the wrong way. The principle of a standardised tax rate [for spirits and spirit-based products] is sound, and governments have a clear role to proactively improve public health.<sup>34</sup>

## Evidence of the impact of the alcopop excise increase

### Sales of alcopops

Based on the available evidence, the alcopop excise increase has resulted in a significant decrease in the overall consumption of alcopops.<sup>35</sup>

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34. C. Doran and A. Shakeshaft, op cit., p. 702.

35. The availability and reliability of alcohol sales data has recently become something of an issue. This is largely a result of the liquor industry’s having presented what some commentators claim to be inaccurate data in support of its arguments against the alcopop excise increase. See The Australian Drug Foundation, ‘New data shows the alcohol industry cannot be trusted’, media release, 3 August 2008; G. Vumbaca, ‘Why would you listen to alcohol lobbyists on health issues?’, *The Age*, 29 July 2008, [http://parlinfo.parlInfo/download/media/pressclp/KB4R6/upload\\_binary/kb4r61.pdf;fileType=application/pdf#search=%22Why%20would%20you%20listen%20to%20alcohol%20lobbyists%20on%20health%20issues?%22](http://parlinfo.parlInfo/download/media/pressclp/KB4R6/upload_binary/kb4r61.pdf;fileType=application/pdf#search=%22Why%20would%20you%20listen%20to%20alcohol%20lobbyists%20on%20health%20issues?%22), accessed 23 February 2009.

In a recent edition of the *Medical Journal of Australia*, Professor Wayne Hall from the School of Public Health Policy at the University of Queensland has called on the Australian Government to order liquor retailers to provide accurate data on alcohol sales in Australia. Hall maintains that, from a public health perspective, such data are crucial. Data on how much alcohol is being sold and consumed is a very strong predictor of alcohol-related problems such as liver cirrhosis, violence, motor vehicle accidents and suicide. And, without good data on alcohol use and alcohol-related harm in the Australian population, it is difficult to conduct meaningful debates about alcohol policy. Hall argues that, were sales volumes data to be collected in ways that enable estimations at local levels, this would allow for the evaluation of the effectiveness of policies and initiatives to manage alcohol consumption and reduce alcohol-related harm. W. Hall, et al., ‘Alcohol sales data are essential for good public policies towards alcohol’, *Medical Journal of Australia*, 189: 4, 18 August 2008, [http://parlinfo.parlInfo/download/library/jrnart/OPBR6/upload\\_binary/opbr60.pdf;fileType=application/pdf#search=%22Alcohol%20sales%20data%20are%20essential%20for%20good%20public%20policies%20towards%20alcohol%22](http://parlinfo.parlInfo/download/library/jrnart/OPBR6/upload_binary/opbr60.pdf;fileType=application/pdf#search=%22Alcohol%20sales%20data%20are%20essential%20for%20good%20public%20policies%20towards%20alcohol%22), accessed 23 February 2009.

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According to excise figures for May to September 2008, there was a decrease of 40 per cent in sales of alcopops.<sup>36</sup>

While there are seasonal variations in alcohol sales figures, these figures are consistent with earlier data and appear to indicate a general trend. In the month following the introduction of the alcopop excise increase, a Nielsen ScanTrak Liquor Survey commissioned by the Distilled Spirits Industry Council of Australia (DSICA) indicated that there was a national reduction in alcopop sales of up to 39 per cent.

Such has been the decline in consumption of alcopops since the introduction of the excise increase that excise revenue for 2008-09 and 2009-10 has been substantially revised down.<sup>37</sup> While the decrease in excise from alcopops has been partly offset by the substitution of spirits and other excisable alcoholic beverages, the Bills' Explanatory Memorandum indicates that the alcopops excise increase will only deliver \$1.6 billion from 27 April 2008 and over the forward estimates period. This is significantly less than the estimate of \$3.1 billion contained in the 2008-09 Budget Measures, and a reduction on Minister Roxon's original estimate of \$2 billion.<sup>38</sup>

### **Substitution effects**

From a public health perspective, the main issue associated with increasing the price of alcopops is that this could lead to the use of harmful substitutes among young drinkers for whom alcopops are the drink of choice. Alternatively, the excise increase could lead young people to purchase bottled spirits and soft drinks and mix their own drinks. In doing so, they could mix drinks that have an alcohol content significantly higher than that of alcopops, and suffer more alcohol related harms in the process.

The evidence for young drinkers switching to other forms of drug use in response to alcohol price rises is limited. Instead, young drinkers tend to change their alcohol preference: the data suggest that where alcohol prices are raised, this results in a reduction in overall consumption among young drinkers, but also a shift to cheaper beverages.<sup>39</sup>

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36. As reported by Senator Ludwig in the Senate on 4 February 2009.

37. Commonwealth of Australia, *Mid-year economic and fiscal outlook 2008-09*, 2008, <http://www.budget.gov.au/2008-09/content/myefo/html/index.htm>, accessed 20 February 2009.

38. Australian Government, 'Part 1: Revenue Measures', *Budget Paper No. 2: Budget Measures 2008-09*, Commonwealth of Australia, Canberra, 2008, p. 22. On the reduction in alcopop related excise see C. Kerr, 'Alcopop revenue hopes cut in half', *The Australian*, 4 November 2008, [http://parlinfo.parlInfo/download/media/pressclp/PC0S6/upload\\_binary/pc0s60.pdf;fileType=application/pdf#search=%22Alcopop%20revenue%20hopes%20cut%20in%20half%22](http://parlinfo.parlInfo/download/media/pressclp/PC0S6/upload_binary/pc0s60.pdf;fileType=application/pdf#search=%22Alcopop%20revenue%20hopes%20cut%20in%20half%22), accessed 23 February 2009.

39. A. Wagenaar, M. Salois and K. Komro, op cit.

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It is difficult to determine the nature and extent of drink substitution as a result of the alcopop excise increase.

Based on excise figures for May to September 2008, a number of former alcopop drinkers would appear to have either taken to drinking spirits or mixing their own versions of alcopops. According to these figures, there was a 19 per cent increase in full-strength spirits sales.<sup>40</sup> Once again, these data appear to be relatively consistent. In the month following the excise increase, ScanTrak Liquor data revealed that there had been a 21 per cent increase in sales of hip flask and 700ml bottles of full-strength spirits.<sup>41</sup>

While these figures suggest that some drink substitution has been taking place, it is important to bear in mind that excise figures for May to September 2008 indicate a decrease in total spirits clearances of 9.2 per cent, relative to the same five month period in 2007.<sup>42</sup> Assuming that former alcopop drinkers have not substituted beer, wine or cider for their preferred mixed spirits (something that is difficult to determine with any degree of certitude), then this outcome could support research findings that increased alcohol prices tend to result in reduced overall alcohol consumption.

It is also important to note that drink substitution has been rendered easier with the recent introduction to the Australian market of so-called 'malternatives'. The new drinks, which are pitched at drinkers aged between 18 years and 30 years, are similar in alcohol content, flavour and appearance to many alcopops. However, because these drinks are beer- rather spirits-based, they attract far less excise than do their alcopop equivalents, and retail for around half their price. The maker of one of the new 'malternatives' is reported as having introduced the new product directly as a result of the alcopop excise increase. Corporate relations director of Diageo, the world's largest alcohol company, has stated that 'this is a time when [the launch of the product] makes sense. The government has created an environment where it makes sense'.<sup>43</sup>

## Comment

Other than by extrapolation from reduced alcopop consumption levels, it is not clear whether or not the alcopop excise increase has resulted in reduced alcohol-related harm among young people. Indeed, it is difficult to determine how this might be definitively

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40. As reported by Senator Ludwig in the Senate on 4 February 2009.

41. See S. Evans and J. Breusch, 'Drinkers driven to mix own drop', *Australian Financial Review*, 29 May 2008, [http://parlinfo.parlInfo/download/media/pressclp/MOLQ6/upload\\_binary/m0lq62.pdf;fileType=application/pdf#search=%22Drinkers%20driven%20to%20mix%20own%20drop%22](http://parlinfo.parlInfo/download/media/pressclp/MOLQ6/upload_binary/m0lq62.pdf;fileType=application/pdf#search=%22Drinkers%20driven%20to%20mix%20own%20drop%22), accessed 23 February 2009.

42. *ibid.*

43. See J. Rolfe, 'Brewers expose Rudd's teen alcohol farce', *The Daily Telegraph*, 19 January 2009.

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assessed in the absence of data that draw a clear association between alcopops and alcohol-related harm.

The AIHW publication, *Alcohol and other drug treatment services in Australia, Report on the National Minimum Data Set*, provides data on closed treatment episodes for people with alcohol or other drug use problems. However, these data do not distinguish the types of alcohol drunk by people receiving treatment. The same holds for alcohol-related hospital admissions data.

The only major existing data source that could enable a more or less conclusive assessment of whether or not the alcopop excise had resulted in reduced risky drinking and alcohol-related harm among young people is the National Drug Strategy Household Survey. However, detailed findings of the 2007 National Drug Strategy Household Survey were only recently released (in December 2008), and the report of the next survey is not due to be released until 2010.

That said, if there *is* consistent evidence of reduced risky drinking and alcohol-related harm among young people following the alcopop excise increase, then it is reasonable to assume that this is in large part a result of the excise increase itself, given the popularity of alcopops among this segment of the population.

It is also reasonable to expect that based on substantial research evidence the alcopop excise increase should result in reduced alcohol-related problems among young people over the longer term. This was the conclusion reached by the First Senate Committee.<sup>44</sup> While the First Senate Committee acknowledged the potential for alcohol substitution in response to the alcopop excise increase, it felt that the degree to which substitution would undermine the overall benefits brought about by the restrictions were likely to be limited in the longer term.<sup>45</sup>

The Department of Health and Ageing advised the Community Affairs Committee during Senate Estimates hearings on 4 June 2008 that it was in the process of designing an evaluation for both the alcopop excise increase and all of the other components of the National Binge Drinking Strategy. It is to be assumed that the findings of this evaluation will be presented to the Community Affairs inquiry into the Bills.

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44. Senate Standing Committee on Community Affairs, *'Ready-to-drink alcohol beverages'*, op. cit., p. ix.

45. *ibid.*

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## Committee consideration

On 12 February 2009, the **provisions** of the Bills, along with an assessment of the impact of the alcopop excise increase, were referred to the Senate Community Affairs Committee (the Second Senate Committee) for inquiry and report by 13 March 2009.<sup>46</sup>

As already stated, on 15 May 2008, the alcopop excise increase was referred to the Senate Standing Committee on Community Affairs Committee (the First Senate Committee).<sup>47</sup> That Committee reviewed a wide range of evidence on the alcohol consumption patterns of young people in terms of risky drinking and alcopops. It concluded that while the majority of evidence showed that alcohol consumption in general remains steady, the evidence that some young people are commonly engaging in risky drinking behaviour at unacceptable levels, and that alcopops figure in this behaviour, indicated the need for action to be taken to prevent the negative health and social consequences of risky drinking behaviour in young people.<sup>48</sup>

The First Senate Committee supported the increased excise on alcopops, on the understanding that this was one of a range of measures being introduced or considered to address harmful alcohol consumption by young people.<sup>49</sup> That said, there was a dissenting report from Liberal Senators and Senators' Andrew Murray and Rachel Siewert provided additional comments.

## Position of significant interest groups

### Health and drug experts

Support from public health and drug experts for the increase in alcopop excise has been strong and sustained.<sup>50</sup> Since its introduction, the excise increase has been backed by these

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46. Details of the inquiry are at:  
[http://www.aph.gov.au/senate/committee/clac\\_ctte/excise\\_customs\\_tariff/index.htm](http://www.aph.gov.au/senate/committee/clac_ctte/excise_customs_tariff/index.htm),  
accessed on 23 February 2009.
  47. R. Colbeck (Shadow Parliamentary Secretary for Health), media release, Parliament House, Canberra, 15 May 2008.
  48. Senate Standing Committee on Community Affairs, 'Ready-to-drink alcohol beverages', op.cit.
  49. *ibid.*, recommendation 4.21.
  50. See, for example, The Australian Drug Foundation, 'Crunch time – increase alcopop tax now', media release, 11 February 2009; The Alcohol and other Drugs Council of Australia, 'Alcopop tax supported by evidence and must be passed says ADCA', media release, 11 February 2009; The Alcohol Education Rehabilitation Foundation (AER), 'AER welcomes the government's introduction of RTD excise', media release, 11 February 2009; Public Health Association of Australia, 'Alcopops: Public Health welcomes tax introduction', media release, 11 February 2009; Australian Medical Association, Submission to Senate

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experts on the grounds that it would help to reduce risky drinking among young Australians, and lessen the likelihood of young people taking up drinking early in life.

Nevertheless, most health experts have argued for an increased range of complementary measures to support the alcopop excise increase and National Binge Drinking Strategy. These proposed measures include restricting the availability of alcohol (through reducing outlet density and opening hours), targeting alcohol advertising and marketing aimed at young people, better policing of alcohol sales to underage drinkers and community alcohol awareness projects.

A number of commentators have also supported the introduction of a volumetric taxation system for alcohol.<sup>51</sup> Such a system would result in all forms of alcoholic beverage being taxed consistently according to their alcoholic content. It is argued that this would be an improvement over existing arrangements from a public health perspective. A volumetric system could help to tackle the problem of risky drinking throughout the Australian population as a whole by increasing the relative cost of drinking higher alcohol beverages and making lower alcohol beverages more affordable and attractive.<sup>52</sup>

### **The liquor industry**

The liquor industry has fiercely resisted the alcopop excise increase since its introduction, labelling it ‘unfair, unworkable and dishonest’.<sup>53</sup> Both the Distilled Spirits Industry Council of Australia (DSICA) and Independent Distillers Australia have argued that:

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Community Affairs Committee inquiry regarding Ready to Drink Alcohol Beverages, May 2008, Australian General Practice Network, Submission to the Senate Community Affairs Committee Inquiry into Ready-to-Drink Alcohol Beverages, May 2008, Alcohol and the Other Drugs Council of Australia on behalf of the alcohol and other drugs sector, Submission, Senate Inquiry into Ready-to-Drink Alcohol Beverages, May 2008.

51. In this respect, they are in agreement with both Independent Distillers Australia and the Distilled Spirits Industry Council of Australia (DSICA).
52. Australian Medical Association, *Submission to Senate Community Affairs Committee inquiry regarding Ready to Drink Alcohol Beverages*, [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_beverages/submissions/sub33.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_beverages/submissions/sub33.pdf), accessed 21 February 2009; Alcohol Education and Rehabilitation Foundation, ‘AER welcome alcopop tax as first step towards a fairer alcohol taxation system’, media release, 27 April 2008. The introduction of a volumetric system would likely see a reduction in the price of alcopops. As such, if the intent of the alcopop excise increase were to be realised, this would demand that a ‘sin tax’ be imposed on alcopops in order to reduce their appeal to young drinkers.
53. Distilled Spirits Industry Council of Australia, ‘Unfair, Unworkable, Dishonest. Alcopop tax failure campaign confronts returning politicians’, media release, 2 February 2009.

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- there is no indication that harmful alcohol consumption patterns among young people have changed
- there is no evidence of a direct link between alcopops and risky drinking
- the excise increase has and will continue to result in young people shifting to cheaper and potentially higher alcohol content products
- the excise increase will neither lead to a decrease in alcohol consumption, nor address the underlying causes of young people's risky drinking.<sup>54</sup>

## Position of political parties

### The Coalition

Since the introduction of the excise increase, the Coalition has dismissed it as an opportunistic exercise in revenue raising—a 'tax grab'—on the part of the government, and not as a measure that is primarily concerned with the health of young drinkers.<sup>55</sup>

This accusation is based mainly on the fact that because of inconsistencies in alcohol taxation, young people are able to binge drink on similarly priced or cheaper beverages that may have a higher alcohol content than that of alcopops. This argument has it that unless the price of these alternative, substitutable beverages is also increased by the government, the excise increase cannot be said to be truly concerned with tackling the problem of risky drinking among young people.

### The Greens

The Greens have expressed concerns with the government's overall approach to tackling the problem of risky drinking among Australians, and young people in particular. While noting that the alcopop excise increase goes some way towards addressing the problem of underage drinking and risky drinking among younger Australians, they have argued that a more comprehensive and integrated approach to problem drinking is required. Such an approach would include the introduction of a volumetric tax on alcohol, stricter regulation of opening hours and the concentration of venues in problem areas, a ban on alcohol

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54. See Distilled Spirits Industry Council of Australia Inc (DSCIA), *Submission to the Senate Standing Committee on Community Affairs Inquiry into Ready to Drink Alcohol Beverages (RTDs) June 2008*, [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_beverages/submissions/sub27.PDF](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_beverages/submissions/sub27.PDF); Independent Distillers Australia, *Senate Inquiry into Ready to Drink (RTD) Alcoholic Beverages, Submission from Independent Distillers Australia, 30 May 2008*, [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_beverages/submissions/sub22.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_beverages/submissions/sub22.pdf), accessed 21 February 2009.

55. '[Alcopops tax gets grab wrap](#)', Herald Sun, 15 May 2008, p. 7.

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advertising and sponsorship, and increased efforts in community education, referral, treatment and rehabilitation.<sup>56</sup>

## Independents

Senator Steve Fielding is reported by some sources to have promised to support the alcopop excise increase.<sup>57</sup> However, Senator Fielding is also said to be demanding the introduction of liquor advertising restrictions, including limits to the broadcasting of television alcohol advertisements before nine pm.<sup>58</sup> It is not clear whether or not Senator Fielding intends to make further demands, such as those contained in his Alcohol Toll Reduction Bill 2007 [2008], introduced to the Senate on 19 September 2007, and referred to the Community Affairs Committee for inquiry and report by 18 June 2008.<sup>59</sup>

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56. See R. Siewert, 'Alcopops legislation must be comprehensive: Greens', media release, 11 February 2009; R. Siewert, 'Additional Comments by the Australian Greens', *Senate Community Affairs Committee, Inquiry into Ready-to-Drink Alcohol Beverages*, May 2008 at [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_beverages/submissions/sub23.pdf](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_beverages/submissions/sub23.pdf), accessed 20 February 2009.
57. C. Kerr, 'Alcopop revenue hopes cut in half', *The Australian*, 4 November 2008, [http://parlinfo.parlInfo/download/media/pressclp/PC0S6/upload\\_binary/pc0s60.pdf;fileType=application/pdf#search=%22Alcopop%20revenue%20hopes%20cut%20in%20half%22](http://parlinfo.parlInfo/download/media/pressclp/PC0S6/upload_binary/pc0s60.pdf;fileType=application/pdf#search=%22Alcopop%20revenue%20hopes%20cut%20in%20half%22), accessed 23 February 2009; A. Tillett, 'Alcopops tax a winner, says Roxon', *The West Australian*, 12 February 2009, [http://parlinfo.parlInfo/download/media/pressclp/6KRS6/upload\\_binary/6krs60.pdf;fileType=application/pdf#search=%22Alcopops%20tax%20a%20winner%20says%20Roxon%22](http://parlinfo.parlInfo/download/media/pressclp/6KRS6/upload_binary/6krs60.pdf;fileType=application/pdf#search=%22Alcopops%20tax%20a%20winner%20says%20Roxon%22), accessed 23 February 2009.
58. A. Tillett, 'Alcopop deal tied to liquor ad crackdown', *The West Australian*, 23 January 2009, [http://parlinfo.parlInfo/download/media/pressclp/VXLS6/upload\\_binary/vxls60.pdf;fileType=application/pdf#search=%22Alcopop%20deal%20tied%20to%20liquor%20ad%20crackdown%22](http://parlinfo.parlInfo/download/media/pressclp/VXLS6/upload_binary/vxls60.pdf;fileType=application/pdf#search=%22Alcopop%20deal%20tied%20to%20liquor%20ad%20crackdown%22), accessed 23 February 2009.
59. These included a requirement for health information labels on all alcohol products, a requirement for all alcohol advertisements to be approved by a government body and the banning of alcohol advertisements that are aimed at children or that link drinking to personal, business, social, sporting, sexual or other success in life. Alcohol Toll Reduction Bill 2007 [2008], [http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s602\\_first/toc\\_pdf/0719220.pdf;fileType=application%2Fpdf#search=%22alcohol%20toll%20reduction%20bill%20alcohol%20toll%20reduction%20bill%202007%22](http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/s602_first/toc_pdf/0719220.pdf;fileType=application%2Fpdf#search=%22alcohol%20toll%20reduction%20bill%20alcohol%20toll%20reduction%20bill%202007%22), accessed 20 February 2009; Standing Committee on Community Affairs, Alcohol Toll Reduction Bill 2007 [2008], June 2008, [http://www.aph.gov.au/senate/committee/clac\\_ctte/alcohol\\_reduction/report/index.htm](http://www.aph.gov.au/senate/committee/clac_ctte/alcohol_reduction/report/index.htm), accessed 20 February 2009.

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Some reports have it that Senator Nick Xenophon is ‘open to the idea of the tax increase but ... concerned with the projections’.<sup>60</sup> Judging by questions posed by Senator Xenophon in the Senate on 5 February 2009, his main concerns appear to be that evidence should be produced to confirm the success or otherwise of the alcopop excise increase, and that funding raised through the increase should be invested in drug and alcohol education and addiction programs.<sup>61</sup>

### **Australian Labor Party**

Alcohol is currently subject to three taxes:

- all forms are subject to the Goods and Services Tax (GST)
- wine is subject to the *A New Tax System (Wine Equalisation Tax) Act 1999* and
- beer and spirits are subject to excise—although the rate of excise per litre of alcohol differs considerably.

The inconsistency in the manner and level of alcohol taxation between different alcoholic beverages is the result of a number of factors including:

- the desire to increase revenue
- the desire to minimise the social costs of alcohol consumption
- political compromise and
- industry protection.

According to Daryl Smeaton, Chief Executive of the Alcohol Education and Rehabilitation Foundation, it is largely the desire to increase revenue and industry protection that has contributed to the alcohol taxation system’s having become so ‘distorted’. As Smeaton sees it

the taxation system is riddled with loopholes because of backroom agreements between industry and government designed to boost the liquor industry. As a consequence the system encourages substitution of alcoholic products based on price whereby people switch to alcohol that is only cheaper because there is less tax on it.<sup>62</sup>

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60. C. Kerr, op cit.

61. Senator Nick Xenophon, Senate, *Debates*, 5 February 2009, p. 49.

62. D. Smeaton, ‘Close tax loopholes to fight rise in risky drinking’, *The Canberra Times*, 31 July 2008. For a historical description of how inconsistencies have arisen in Australia’s alcohol taxation system, see D. James, ‘Beer and Cigs Up!’: A recent History of Excise in Australia’, Parliamentary Library background paper no. 5, 1995-96.

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The government has argued that the excise increase proposed in the Bills serves to ‘close an existing loophole on the excise on alcopops’.<sup>63</sup> This loophole arose from ‘a decision of the previous Government to tax RTDs and alcopops at a rate similar to that applied to full strength beer’ rather than the rate applied to full strength spirits.<sup>64</sup> As a result spirit-based products (such as alcopops) with less than 10 per cent alcohol content were taxed at a lower rate than bottled spirits.

The amendments proposed by the Bills equalise the tax applied to spirits, regardless of the form they take—that is, pre-mixed or straight.

## Key issue

### Tariff proposals

The conventional procedure for effecting excise and customs tariff amendments is a tariff proposal followed by validating legislation.<sup>65</sup> The rationale for this method is set out in [Odger’s Senate Practice](#) as follows:

The *Customs Act 1901* (ss 226 and 273EA) and the *Excise Act 1901* (ss 114 and 160B) contain provisions which allow the collection of customs duties and excise duties from the time of the announcement of proposals by the government, within a period of 12 months before the passage of legislation to validate the duties. The purpose of these provisions is to ensure that windfall profits may not be made between the time of announcement of duties and the enactment of legislation to levy the duties.<sup>66</sup>

The tariff proposal process is described in [House of Representatives Practice](#):

Customs (duties levied on imports and exports) and excise (duties charged on goods produced in Australia) tariff measures are usually not initiated by a bill, as considerations relating to timing and drafting make a bill an unsuitable vehicle to initiate the variety and number of tariff proposals that come before the House. Such measures are generally introduced *by way of motion*, in the form of custom tariff and excise tariff proposals. These, as ‘proposals dealing with taxation’, may be submitted to the House without notice [under standing order 178]...

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63. Hon. Nicola Roxon MP, Minister for Health and Ageing, ‘[Keeping People Well—Focus on Prevention](#)’, Media Release, 13 May 2008.
  64. Hon Wayne Swan MP, Treasurer and Hon. Nicola Roxon MP, Minister for Health and Ageing, ‘[Increased Tax on ‘Ready to Drink’ Alcoholic Beverages](#)’, Joint Press Release, 13 May 2008.
  65. Such legislation has retrospective effect from the date the tariff proposal itself applied.
  66. J. R Odgers, *Australian Senate Practice*, 12<sup>th</sup> edition, Department of the Senate, Canberra, 2008, p. 302.

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The moving of a customs tariff (or excise tariff) proposal is normally treated as a formal procedure for the purpose of initiating the collection of the duty... It is usual for the debate to be adjourned by an opposition Member and for all tariff proposals to be listed together on the Notice Paper under the one order of the day... ***Collection of duties is thus commenced on the authority of an unresolved motion***, and this has been accepted as a convention.

When the Parliament is prorogued or when the House has expired by effluxion of time or been dissolved or is adjourned for a period exceeding seven days, a notice of a customs or excise tariff proposal may be published in the *Gazette* and ***the proposal is deemed to have effect*** as from such time after the publication of the notice as is specified in the notice.<sup>67</sup>

The changes to the ‘alcopop’ customs and excise duties were contained in two tariff proposals which were tabled in the House of Representatives on 13 May 2008 by the Hon. Nicola Roxon who stated that:

The excise and customs tariff proposals that I have just tabled contain alterations to the *Excise Tariff Act 1921* and *Customs Tariff Act 1995*.

The proposals formally place before the parliament changes to both acts to increase the rate of excise and customs duty applying to ‘other excisable beverages not exceeding 10 per cent by volume of alcohol’ from \$39.36 to \$66.67 per litre of alcohol content, on and from 27 April 2008.<sup>68</sup>

The two proposals were [Excise Tariff Proposal \(No. 1\) 2008](#) (covering goods made in Australia) and [Customs Tariff Proposal \(No. 1\) 2008](#) (covering imported goods). Notices of Excise Tariff Proposal (No. 1) 2008<sup>69</sup> and Customs Tariff Proposal (No. 1) 2008<sup>70</sup> were duly published in the *Gazette* of 26 April 2008.

### **Validating a tariff proposal**

A tariff proposal is not legislation. It is an executive instrument. A proposal does not legally alter the relevant legislative tariff<sup>71</sup> and it is arguable that caselaw suggests that a

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67. I. C. Harris, *House of Representatives Practice*, 5<sup>th</sup> edition, House of Representatives, Canberra, 2005, p. 428.

68. Hon. Nicola Roxon, Minister for Health and Ageing, ‘Tariff Proposals: Excise Tariff Proposal (No. 1) 2008 and Customs Tariff Proposal (No. 1) 2008’, [House Hansard](#), 13 May 2008, p. 2613.

69. [Gazetted](#) as S87.

70. [Gazetted](#) as S88.

71. Simon Daley and R A Kenway, ‘Customs and Excise’, *Laws of Australia*, Lawbook Co., March 2001, Chapter 24.1, paragraph 233.

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proposal alone does not actually give the Commonwealth legal authority to collect duties according to the new or amended tariff contained in the proposal.<sup>72</sup>

However, using the example of the practical operation of the customs system, customs officials could simply refuse to release the goods which are the subject of a tariff proposal unless the customs duty was paid according the proposal. In such a case, section 226 of the [Customs Act 1901](#) prevents the importer of the goods who refuses to pay the tariff in the proposal from taking action against the customs officials for wrongfully withholding the goods.<sup>73</sup> According to section 226, that prohibition lasts for the period of 12 months from the date of the proposal or until the end of the parliamentary session, whichever is the earlier. This 12 month period provides the basis for the convention that governments pass validating legislation within 12 months of a proposal coming into effect.

Notwithstanding the doubtful legal force of tariff proposals as mentioned above, the content of the vast majority of such proposals are uncontroversial, and thus the amended duties are presumably paid in the expectation that validating legislation will be passed within the 12 month period.

### **What happens if validating legislation fails to pass within 12 months?**

Odgers Senate Practice states:

The Senate has not declined to pass a bill validating increases in duties, and there has long been speculation about the remedial action which might be taken in such a case. In June 2000 the Senate passed a resolution expressing opposition to rates of excise contained in an excise tariff proposal tabled in the House of Representatives (29/6/2000, J.2980). A compromise by the government avoided rejection by the Senate of the measure.<sup>74</sup>

The compromise which is alluded to led to the introduction of the Alcohol Education and Rehabilitation Account Bill 2001. The [second reading speech](#) to the Bill and the [Bills Digest](#) provide relevant information. In that case, the Senate allowed amended versions of the validating customs bill and excise bill respectively<sup>75</sup> to pass on condition that the Alcohol Education and Rehabilitation Account was established to fund the charitable work of the Alcohol Education and Rehabilitation Foundation.

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72. See *Sargood Brothers v Commonwealth* (1910) 11 CLR 258, per O'Connor J at 276, cited in Simon Daley and R A Kenway, *ibid*.

73. Simon Daley and R A Kenway, *op. cit*.

74. J. R. Odgers, *op. cit*.

75. The bills were the Customs Tariff Amendment Bill (No. 2) 2001 and the Excise Tariff Amendment Bill (No.1) 2001. As passed, the bills only validated the controversial aspect of the tariff during the period 1 July 2000 to 3 April 2001.

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If the 12 month protective period elapses and no validating legislation has passed, the Commonwealth would be open to legal action for the repayment of the difference between the duty paid under the proposal and the duty imposed by the legislative tariff. Even in the absence of such action, it is unclear whether the Commonwealth could retain that amount. However, the government view appears to be that the Commonwealth could not retain the amount paid to date under the tariff proposals. The Minister for Health and Ageing has stated that ‘if this measure is not passed, the money must be returned to the distillers’.<sup>76</sup>

In support of this view, newspaper commentary is that:

If the excise rise is blocked in the Senate, money already collected since the Budget will have to be returned - but not to the customers. Liquor importers and manufacturers will pocket it as a windfall profit.<sup>77</sup>

Whether the government would be legally entitled to publish a subsequent notice in the Gazette of a second tariff proposal for a further 12 months in the face of a rejection by either chamber of the Parliament of the validating legislation is also unclear. The records do not immediately reveal a similar circumstance. However, were a ‘rolling proposal’ to be attempted it is likely the collection of the relevant customs and excise would be the subject of a challenge in the High Court.

## Financial implications

According to the Explanatory Memorandum, the Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 and Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 will result in an ongoing gain to revenue of \$1.6 billion from 27 April 2008 and over the forward estimates period.<sup>78</sup>

## Main provisions

**Item 1** of Schedule 1 of the Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 amends the Schedule to the Excise Tariff Act to increase the rate under item 2 from \$39.36 to \$66.67.

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76. Hon. Nicola Roxon MP, Minister for Health and Ageing, House of Representatives, *Debates*, 25 February 2009, p. 86.

77. Laurie Oakes, ‘[Sobering stats for Libs on alcopops](#)’, *Daily Telegraph*, 2 August 2008, p. 20.

78. Explanatory Memorandum, p. 8.

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**Items 1–11** of Schedule 1 of the Customs Tariff Amendment (2009 Measures No. 1) Bill 2009 amend Column 3 (the rates of duty column) in Schedule 3 of the Customs Tariff Act so that the rates accord with the Excise Tariff Act.

**Items 12–22** of Schedule 1 amend Column 3 in Schedule 5 of the Customs Tariff Act to show that the rate of duty for various beverages originating from the US is \$66.67 per litre of alcohol.

**Items 23–33** of Schedule 1 amend Column 3 in Schedule 6 of the Customs Tariff Act to show that the rate of duty for various beverages originating from Thailand is \$66.67 per litre of alcohol.

**Item 34** is an applications provision which states for the avoidance of doubt that the amendments apply in relation to goods imported into Australia on or after 27 April 2008, and goods imported into Australia before 27 April 2008 where the time for working out the rate of import duty on the goods had not occurred before 27 April 2008.

## Concluding comments

A significant body of evidence supports the use of pricing mechanisms, such as the alcopop excise increase, as the single most effective means of reducing alcohol consumption and alcohol-related harm. However, if the objective is to tackle an underlying culture of risky drinking among young Australians over the longer term, then a broad-based approach that employs a range of different measures is required. It is questionable whether or not the National Binge Drinking Strategy is sufficiently robust and wide-ranging to achieve this objective.

The alcopop excise increase has, as is to be expected, resulted in reduced consumption of ready-to-drink alcoholic beverages. It is safe to assume that this means less drinking of these products by young Australians. On the face of it, there does not appear to be a large amount of drink substitution by young people as a result of the tax hike.

While intuitively it might be tempting to assume that the excise increase has resulted in a decrease in risky drinking among young Australians, based on the currently available evidence this assumption is not *strongly* supported. Nor is there evidence to suggest that the alcopop excise increase has *not* achieved the government's stated objectives. The absence of sufficient evidence means that it is not possible to make a *conclusive* judgement, either way.

If risky drinking among the broader Australian population and the problem of drink substitution are to be addressed, this signals the need for reform of Australia's alcohol taxation system. The findings of the Henry Commission of Inquiry into the taxation system, which includes an examination of alcohol excise, should assist in any such revision.

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