

The Hon. I.D.F. Callinan AC

NSW Liquor Law Review

By email to: liquorlawreview@justice.nsw.gov.au

1 April 2016

Dear Sir,

NSW Liquor Law Review (“the Review”)

Liquor Act 2007 ss.116A(2)(b), 116I(2)(b), 144(2)(e) and Schedule 4(5)(1), and Liquor Regulation 2008 ss. 53F(2)-(3) and 53ZB(1)-(3) (“the Spirits Restrictions”)

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

In reducing alcohol-related harm, DSICA believes that policy should be based on the following three underlying principles:

- Reducing harm is a shared responsibility of Governments, Industry, individuals and the community.
- Evidence-based, targeted interventions and individual responsibility must be the primary focus.
- Measures to reduce alcohol related harm must not unfairly penalise the vast majority of Australians who drink responsibly and who should be free to enjoy a night out.

DSICA strongly supports measures to reduce alcohol related harm in our communities, recognising the shared responsibility of Industry, Governments, communities and individuals. DSICA’s members are committed to:

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

One of DSICA’s goals is to ensure (i) that public alcohol policies are soundly and objectively formed, (ii) that they include alcohol Industry input, (iii) that they are based on the latest national and international scientific research and (iv) that they do not unfairly disadvantage the spirits sector.

While we do not dispute the objectivity and good intentions of the NSW Government, and support wholeheartedly the animating goal of eliminating violence from our streets, the NSW *Liquor Amendment Act 2014* (“the Act”), in so far as it relates to service of distilled spirits, satisfies none of the remaining criteria for good policy.

We therefore welcome, equally wholeheartedly, the opportunity offered by the Review consultation for us to contribute matters concerning the Spirits Restrictions for your consideration, and value greatly the scrutiny and transparency the Review will bring.

Our Chief Concerns

The Act was implemented in a procedural vacuum. There was no industry consultation; certainly not among producers and suppliers of beverage alcohol, prior to the Act's implementation.

The Act included certain provisions within the broader package of measures, noted above and referred to in this submission as the Spirits Restrictions, which isolated spirits products for special, disproportionate and discriminatory service restriction, compared with other forms of beverage alcohol.

The Spirits Restrictions lack a basis in evidence. No data was publically cited by way of supporting rationale for these provisions; it seems that they were enacted, at best, on the basis of the common mistake between correlation and causation.

Moreover, little account seems to have been given to the wider circumstances, or potential unintended consequences of the measures enacted, including in the context of the need to maintain balance and proportionality between public safety on the one hand, and personal responsibility, consumer choice, and business interests on the other.

Correlation, Not Causation.

Our understanding of the Government's rationale for imposing post-midnight service restrictions on spirits is a simple hypothesized correlation that, since violence tends to occur in late evening/early morning hours, and there is a perception that spirits are consumed later in the evening, perhaps when people 'move to spirits' after having first consumed beer or wine, consumption of spirits is an aggravating, determining factor in the causation of street violence of such import as to justify restricting consumer access and choice at a population level, versus other types of alcohol product.

Let us be clear what this means, in the context of the Act: the Government asks us to believe that the patron, A, who drinks 4 schooners of beer, followed by a nip of whiskey at the end of the evening, is, by reason of his consumption of that nip, so significantly more pre-disposed to violence than a patron, B, who follows the first 4 schooners of beer with a further 4 schooners of beer, that it justifies the removal of A's choice of late night drink, the removal of that choice for the remainder of the population, as well as well as a range of wider implications addressed below.

There are of course thousands of other single-night consumption pattern permutations which can be cited to illustrate the imbalance between the remaining permission to licensees to sell and potential troublemakers to consume, after midnight and within the general prohibition against serving the visibly-intoxicated, still-significant amounts of wine or beer.

The hypothesized correlation which underpins the Spirits Restrictions does not survive analysis based on the widely accepted means of assessing and calculating the impact of the consumption of alcohol (of all types).

As the Australian Centre for Alcohol Policy Research recently noted: **“There is no general pattern which holds across cultures of more or less trouble being associated with a particular beverage type.”**¹

In addition, an analysis of the product choices of riskier drinkers shows a preference for beer among males, with no discernible preference for females. Please see the Appendix.

Here, an analysis based on basic mathematics, and biology – the ‘standard drinks’ system – also assists.

A person’s level of intoxication at any given point in time is broadly determined by the total amount of alcohol (measured by standard drinks, where 1 standard drink = 10 grams of alcohol) consumed over the time period since the drinking session started (i.e. x standard drinks/grams in y hours), reduced in proportion to the amount of alcohol which has been processed and eliminated from the consumer’s system over the same time period (as a guideline only, and recognizing a multitude of variables, the body is generally held to process in the range of 1 standard drink per hour)², with some small mitigating adjustments for intervening food and water consumption.

As the “standard drinks”³ system demonstrates, a consumer’s chosen drink (method of delivery of his or her alcohol - wine, beer, RTD, spirit) is immaterial to the impact of the alcohol on his/her system. A schooner of mid- or full-strength beer, or a standard serve glass of wine, actually contains (delivers) more alcohol (i.e. is *more* intoxicating) than a standard serve of spirits.

No supporting data, then, and no data-investigation, now.

As we have noted, there was no data cited in public support of the Spirits Restrictions at the time of the Act’s design and implementation.

Now, we in the spirits industry are seemingly locked into a vicious cycle. Since the Spirits Restrictions are, as we have seen, above, based on a false premise outside the realm of data proof, how to refute them?

Our enquiries with Government and other stakeholder agencies to date have seen agreement in this area – all are agreed that there is no data capable of being broken down or out of the high level BOCSAR or similar data which would isolate the success or failure of the Spirits Restrictions, independent of the broader package of measures enshrined in the Act.

What we can note is that the research which underlay the City of Sydney report⁴, surveying the traffic of patrons in the affected areas, didn’t even ask after their drinks of choice or consumption patterns whilst consuming alcohol in the affected areas.

¹ Source: Mathews, Callinan: “Over the Limit” Report, August 2013, for the Centre for Alcohol Policy Research and the Foundation for Alcohol Research and Education. <http://www.fare.org.au/wp-content/uploads/research/Over-The-Limit.pdf>

² Source: Drinkwise Australia <https://drinkwise.org.au/drinking-and-you/how-much-have-you-had-to-drink/#>

³ Source: Drinkwise Australia <https://drinkwise.org.au/drinking-and-you/how-much-have-you-had-to-drink/#>, and see also our Appendix A infographic regarding standard drink equivalence across drinks types and typical serves.

⁴ Late Night Management Areas Research Phase 4 report, September 2015

Similarly, the Centre for Program Evaluation within NSW Treasury is conducting an evaluation to assess the implementation and impact of the Sydney CBD Plan of Management, in parallel with the Review. As part of this evaluation, NSW Treasury is seeking to assess changes to business operations, employment, turnover and visitor numbers, but we are not aware of any focus within the relevant surveys of ground level businesses (non-licensed) and takeaway liquor stores (licensed) located in the Sydney CBD on choice of drink, or the Spirits Restrictions.

Even within the Terms of Reference for this very Review, the Spirits Restrictions do not feature in the list of aspects of the Act allocated explicit callout in the Justice Department's Background Paper.⁵

So, we have severe discriminatory restrictions, enacted without consultation and on a basis which is vulnerable to scrutiny, yet seemingly undeserving of focus in the researches undertaken in order to inform the Review and parallel Treasury evaluations. If there was (a) no data at the start to support a causative link between spirits consumption and violence, and (b) no data now to add to the knowledge base, does it really remain justifiable and proportionate to maintain restrictions on spirits?

Here, our contention is that, in the absence of an evidence base for a restrictive, discriminatory measure, it should be set aside. It is the burden of the legislator to justify, including by reference to proportionality, the restriction of individual and business freedoms resulting from a law; not the burden of those so restricted to rebut something originated in a false premise.

Proportionality. Re-assessment against the statutory test.

DSICA can rationalise the broad package of measures as an emergency policy response to specific-in-time, localised, and politicised, social disorder challenges, but we are grateful for the recognition and foresight of the legislator in providing for the Review, which we find both necessary and proper in light of the nature of the measures implemented.

We are concerned to ensure that, as befits legislation at the nexus of public health, individual liberty and commercial freedoms, the measures are properly assessed against the test set out in the Act itself; namely whether "the terms of [the 2014] amendments remain valid and...appropriate for securing [their] objectives".

The Spirit Restrictions not only deprive consumers of choice, and unfairly taint the reputation of our products and businesses, but also deprive NSW licensees of the capacity to sell premium spirits as they would like, with attendant limitations on the scope to develop their business and premiumise consumption and the atmosphere in their premises.

We are greatly concerned that in our sector, the effects of the Spirits Restrictions will have widespread national impact, for example by depriving the nascent, highly respected, Australian

⁵ **A note on the Review terms of reference:** we note that the focus of the Review is threefold, being (a) the 1.30am lock out and 3am cease sales measures, (b) the 10pm takeaway liquor sales restriction and (c) the periodic licence fee scheme. However, we note that Clause 47 of Schedule 1 of the Liquor Act 2007, which provides the basis for the Review, provides for a review of those amendments relating to lock outs, the cessation of liquor sales at 3am, and "any other measure prescribed by the regulations". Accordingly, we do hope that the Review committee will share our view that, while there are clearly primary, priority areas for consideration, it was the intent of the Government via Clause 47 to recognize that the package of measures should be reviewed holistically, and that consideration of whether "the terms of those amendments remain valid and...appropriate for securing [their] objectives" applies equally to the Spirits Restrictions as they do other amendments in the Act.

domestic craft distilling industry of what should be the primary international showcase for their premium products.

Appreciation and connoisseurship of premium spirits, whether it be a Tasmanian whiskey or a Victorian gin, demand freedom to access neat, unmixed serves and a full range of traditional cocktails.

In consultations with stakeholder agencies, it has been noted that there is intent within the Spirits Restrictions to permit service of cocktails; yet, the definition of “cocktail” adopted is inexplicably narrow (an “alcoholic drink... *that contains spirits or liqueur (or both) mixed with other ingredients* and that is not designed to be consumed rapidly”) and, together with the prohibition against drinks containing over 50% spirits or liqueurs, excludes the traditional Martini, Manhattan, Old Fashioned or Whisky Sour.

We do think that NSW has a wider responsibility to promote best-in-class legislation, owing to Sydney’s unique status as Australia’s world city.

Sydneysiders and tourists are increasingly deprived of the opportunity to enjoy such indulgences in the city, but it is notable that other countries, many with similar drinking cultures and licensing regimes to Australia, find ways of addressing the challenges of intoxication and violence which do not impinge on their broader population’s freedoms.

We are not aware of any other country which pursues the balance of restriction represented by the Spirits Restrictions.

Even within Australia, examples such as South Australia’s Late Night Code⁶ demonstrate a more focused approach; addressing specifically the question of ‘shots’ and ‘shooters’⁷, while allowing licensees scope to serve traditional spirits serves, e.g. sipping drinks served on ice.

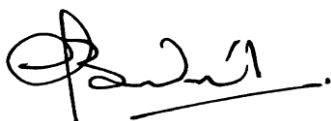
Alcohol is alcohol.

There is no data to suggest that violence in Kings Cross and the CBD is exacerbated by the product choices of violent patrons – to the extent that alcohol is an aggravating factor, it is that: alcohol, of any type. It is about drunkenness which has accumulated over the entirety of a night out.

Existing laws address the (prohibition of) service to intoxicated patrons of licensed premises, and it is the better path to legislate and seek to place controls by reference to the level of intoxication of the consumer; it is a truism that the breathylser does not distinguish between products consumed, and nor is it the case that only spirits are rapidly consumed.

Reinforcement, and re-enforcement, of the laws applicable across the alcohol spectrum by relevant agencies should be more than sufficient to curb and mitigate harms arising from alcohol consumption. The Spirits Restrictions should be set aside.

Faithfully submitted,

A handwritten signature in black ink, appearing to read 'Gordon Broderick', with a horizontal line underneath.

Gordon Broderick
Executive Director

⁶ SA Liquor Licensing Act 1997, Late Night Trading Code of Practice, effective October 2013

⁷ Part 6, Clause 16(a)

Appendix: Drinks Choices of Riskier Drinkers

