

Excessive Alcohol Consumption: Aligning Profit and Behaviour

The Need for A New Approach

The problems arising from the violence and other misconduct brought about by the excessive consumption of alcohol has become a huge problem within our community. Management of the problem, in terms of police time, drain on the State's medical resources, damage to property and now sobering up venues; not to mention the loss of life and injury to individuals, places a huge burden on our community and the ordinary taxpayers.

The government's response is primarily centred around expensive treatment of symptoms instead of effectively treating the cause of the problem by investing in prevention. The only regulation aimed at prevention has been to place responsibility on those physically serving alcohol by way of the Responsible Service of Alcohol requirements. However these requirements are ineffective because it falls mostly upon the junior members of a business who have no authority to enforce the requirements and in many cases enforcement of those requirements is understood to be inconsistent with the objective of maximizing the sale of alcohol.

Now we have the philosophically indefensible concept of collective punishment as a primary response of the State to the excessive consumption of alcohol. Lock out is not primarily about prevention; it is about squeezing the same behaviour into a more limited timeframe. It runs the risk of increasing poor consumption habits and adding to the profits of those who are benefiting most from excessive consumption.

New South Wales and Australia in general, and Sydney in particular, are global destinations; key elements of the world's entertainment infrastructure. Sydney must have an industry which responsibly serves alcohol. The supply and distribution of alcohol is a huge industry, employing many thousands of people and providing mostly a valuable service to the community in terms of

Excessive Alcohol Consumption: Aligning Profit and Behaviour

relaxation and entertainment. The alcohol industry, which includes not only the service of alcohol itself but also includes the venues through which alcohol is distributed, is a cornerstone of our community, the tourist industry and is part of what makes Sydney an exciting destination for many of the millions of its visitors each year. Curtail the nightlife of Sydney and we run the risk of the modern day explorers of the world (which is a huge part of the market) bypassing Sydney on the way to Melbourne or South America.

The alcohol industry must be made to develop into a responsible part of our community infrastructure. It should be welcomed, but it should be required to exist responsibly within the community and operate in a manner consistent with community expectations. Currently it is not.

Licensees and Owners

The industry will only become responsible when those individuals who profit most from the industry accept responsibility for proper management of the industry. This will only occur when desired social outcomes are linked to profitability. Under the current system and under the current changes, profitability is linked to the volume of alcohol consumed. This relationship between profitability and excessive consumption has to change because the level of misconduct is a function of the excessive consumption.

The law should set standards of responsible behaviour for those who profit most from the consumption of alcohol and support those standards with strategically effective enforcement. Effective enforcement will mean that venues will be more profitable in the longer term by accepting responsibility for managing the excessive consumption of alcohol in a manner which is consistent with community expectations as set out in simple and clear legislation. In this way the

Excessive Alcohol Consumption: Aligning Profit and Behaviour

management of the problems posed by excessive consumption of alcohol will become self-policing.

In this way also over time New South Wales will improve the quality of management within the alcohol industry and the industry will develop to become a responsible and trustworthy participant in the community.

Regulation of the misconduct arising from the excessive consumption of alcohol should not only have the desired effect of reducing that misconduct but it also should achieve that result in a way which strengthens the management standards within the industry itself.

Reinforcing the basics

The industry is already heavily regulated. To serve alcohol is a privilege bestowed by the State. The privilege is bestowed upon licensees by way of the State issuing a license to Licensees and by the licensing of premises. Licensees include those who are licensed to manage license premises and the licensed premises themselves.

In order to develop reasonable standards for the management of the alcohol industry the following key players become the focal point of regulation:

- the owner of the alcohol serving business (**the Owner**). Owners will be personal owners, directors, controllers, trustees or associates of those people using concepts from the Corporations Act to trace control; and,
- the person with management control of the alcohol serving business (**the Licensee**).

Excessive Alcohol Consumption: Aligning Profit and Behaviour

Instead of adding layers of new regulation, the current Licensing System should be used to reinforce prescribed standards to achieve the outcomes which the community is entitled to expect with respect to the excessive consumption of alcohol.

The State should:

- reiterate that the ownership of an alcohol serving business; and, being the Licensee of such a business are privileges;
- emphasize that primary responsibility for controlling the excessive consumption of alcohol lies with the Licensees and Owners;
- provide reasonable support to Licensees and Owners in relation to the prevention and resolution of drinker misconduct; and,
- emphasise that Licensees and Owners which cannot manage to run alcohol serving business in accordance with required standards will be forced out of the industry.

In this way, the collective punishment which is inherent in the approach of lockouts and other measures being introduced by the current government is avoided and Sydney can function more rationally as an international destination. It is, after all, ludicrous to think that in Australia's premiere city it will be almost impossible for someone out and about to get a drink after one 1:30AM, unless they are locked in: so much for being a desirable tourist destination.

Regulatory Approach

The new regulation will focus on the conduct of Owners and Licensees and will follow the simple points system used in relation to driving licences and driving offences. This is a model

Excessive Alcohol Consumption: Aligning Profit and Behaviour

well understood on our community. It is easy to understand; it is transparent and simple and can be made flexible to accommodate the changing behaviours observed in the industry.

In the event that excessive consumption of alcohol arising within particular business or on particular premises reaches defined levels, the Licensee and Owners will be sanctioned by allocation of points. The aggregation of points within particular time frames will incur penalties for accumulating excessive points. Initially these penalties will be moderate in order to warn and to assist with remediation. However persistent bad behaviour will result in eventual exclusion from the industry where there is no evidence of behavioural change.

This approach will place pressure on the individual who manages particular premises to manage to a standard which preserves his licensee status. Owners who are not licensees will also be sanctioned and will be forced to bear the cost of improving the management standards of the licensed business.

The objective will be to apply sanctions so that is more profitable for both the Licensee and the Owner to run the business without the adverse consequences of excessive consumption of alcohol.

The sanctions at increasing accumulation levels will be tiered so that initially they are not so severe so as to cause significant economic harm to the licensee or to result in unemployment but are sufficiently material to encourage a change of behaviour.

Practical graded sanctions with natural attrition for good behaviour

The way in which the sanctions could work is as follows.

Excessive Alcohol Consumption: Aligning Profit and Behaviour

There will be a relatively short introductory phase. In this phase police will record of instances violence against person or property attributable to the “excessive alcohol consumption” which is traceable to particular premises. These records will or should be available from current police operations. Excessive alcohol consumption and violence to person or property will need to be defined according to the social objectives which are being sought. “**Excessive Alcohol Consumption**” could be defined as “the consumption of alcohol by an individual or group of individuals following which an individual, while being under the influence of alcohol of greater than 0.15%, become involved in acts of violence towards persons or property.” (0.15% is a suggested level; it may be more appropriate to set it at 0.1%). “**Violence against person or property**” will include “king hits” but could be more generally defined as simply “an act of violence conducted against a person or property. The limitation of the offence to excessive consumption situations is achieved in the definition of Excessive Alcohol Consumption.

Those businesses which serve excessive alcohol to the individuals are already in breach of the RSA requirements. Those businesses which run this risk of serving excessive alcohol to individuals who subsequently engage in violent behaviour and whose Excessive Alcohol Consumption is traced to their particular business will incur sanctions for both the Owner and the Licensee. Initially the sanctions will be limited to an award of demerit points and issuing a warning both the Licensee and the Owner.

Demerit Points and Closure Orders

On each occasion that Excessive Alcohol Consumption is traced to a particular business, both the Licensee and the Owner will receive one demerit point.

Excessive Alcohol Consumption: Aligning Profit and Behaviour

If there are three or more separate incidences of Excessive Alcohol Consumption coming from particular business within a period of two weeks, the licensed premises will be required to close for 24 hours.

Within that 24 hours the Owner will be required to retain on payroll all staff (including casual and part time) and will be required to provide those staff with a training program directed to towards the prevention of excessive consumption of alcohol.

The Owner and the Licensee will also be required to conduct an internal review of the business's operating standards and risk management procedures and confirm to the licensing authority that such a review has been conducted and that the Owner and Licensee are each satisfied that the operating standards and risk management procedures are satisfactory to effectively prevent the excessive consumption of alcohol.

On each further occasion of Excessive Alcohol Consumption being attributable to the particular business a further demerit point will be issued to each of the Licensee and the Owner.

For each period of one month in which there is no violent conduct attributable to the Excessive Alcohol Consumption at a particular business the Owner and the Licensee will have a demerit point deducted.

Where there is a second occurrence of three or more incidences of Excessive Alcohol Consumption coming from the same business within another two week period, or the Licensee or the Owner accumulate 9 demerit points, the licensed business will be required to close for 48 hours.

Excessive Alcohol Consumption: Aligning Profit and Behaviour

Within that 48 hour period the Licensee will be required to conduct a further training programme for all staff on the responsible service of alcohol and the procedures of the business designed to prevent the excessive consumption of alcohol. Within two weeks after that 48 hours suspension the Owner of the licensed the business will be required to have conducted an external review by a recognized industry consultant of its operating standards and risk management procedures.

The consultant will be required to write to the licensing authority advising that it has conducted the review of the practices of the business, that it has or has not (as the case may be) recommended changes and that the external consultant is satisfied that the operating standards and risk management procedures of the business are satisfactory to effectively prevent the excessive consumption of alcohol.

If there is a further occurrence of three or more instances of Excessive Alcohol Consumption coming from the same business within a further two week period, or the Licensee or the Owner accumulates 12 demerit points the licensed business will be required to close for a period of 72 hours, conduct training for all staff and obtain and further external review of its operating standards and risk management procedures.

Thereafter on each occasion of there being an Excessive Alcohol Consumption being attributable to that business and there has been no change of Licensee or Owner, the business will be required to close for 72 hours, conduct training for all staff and obtain and further external review of its operating standards and risk management procedures. .

Licensee Banning Orders

Excessive Alcohol Consumption: Aligning Profit and Behaviour

If a Licensee has been subject to three “closure orders” within a 9 month period or the Licensee accumulates 12 demerit points, the Licensee will receive a final warning which will stipulate that:

If there is one further incidence of Excessive Alcohol Consumption at a business managed by the Licensee, by an entity of which the Licensee is a director or in which the Licensee participates in the management or by person employed by or associated with the Licensee; then

that Licensee will be excluded from the alcohol serving industry, in all capacities for a period of one month and the Owner will be required to engage a new Licensee for that licensed business.

This is called a “Licensee Banning Order”

For each one month in which the Licensee is away from the business the Licensee will have a demerit point deducted. When the Licensee returns to the industry, for each month that the Licensee is without incident, a demerit point will be deducted. Licensee demerit points will be personal to a Licensee and will follow the Licensee from job to job. There will be a Register to record each Licensee and his/her accumulated demerit points.

Licensees who are the subject of 3 Licensee Banning Orders within a 3 year period will be excluded from the industry in all capacities for a period of 5 years commencing on the date of the first banning order.

Owner Exclusion Orders

An Owner Exclusion Orders may arise by virtue of Excessive Alcohol Consumption at one or more businesses. “Closures orders” for all businesses will be accumulated. If an Owner has been subject to three “closure orders” within a 6 month period, which may be attributable to one

Excessive Alcohol Consumption: Aligning Profit and Behaviour

or more businesses, or the Owner accumulates 12 demerit points, which may come from one or more businesses, the Owner will receive a final warning which will stipulate that if a licensed business owned by that Owner, or which is conducted from premises owned by that Owner, is subject to one further incidence of violence attributable to Excessive Alcohol Consumption, that Owner will be excluded from the alcohol serving industry for a minimum of 12 months. The owner will be required to either:

1. sell the businesses; or
2. engage independent arms-length management for the licensed businesses. The arms-length management entity will become the new Owner for the purposes of these regulations and will be subject to the same points regime as Owner.

This will be known as an “Owner Exclusion Order”.

Owner Demerit points are personal to the individuals who are involved in the ownership of the business or who are directors of companies which own businesses (or who are trustees of trusts etc) and remain with the Owner and not the licensed business. The concept is to relate anti-social behaviour to the underlying controllers. For each month the Owner is away from the business the Owner will have one demerit point deducted. . There will be a Register to record each Owner and his/her/its accumulated demerit points.

The Licencing Authority will maintain a register of demerit points attributable to Owners.

Owners and Licensees who have been the subject of 3 banning orders within a 5 years period will be excluded from the industry in all capacities for a period of 7 years commencing on the date of the commencement of the first banning order.

Excessive Alcohol Consumption: Aligning Profit and Behaviour

The regulations will contain Phoenix provisions and tracing provision to prevent individuals who are associated with Banned Licensees or Excluded Owners from re-entering or remaining in the industry through newly incorporated entities.

This approach will ensure those businesses which profit the most from the supply of alcohol will have the greatest self interest in ensuring that the service of alcohol is responsibly managed.

Consistent application of this approach over generations can be expected to reduce the criminal and irresponsible elements which currently have a too great representation in the management of Sydney's nightlife.

In this way, well run businesses will safely serve alcohol 24/7 and Sydney can continue to function as a well regarded international tourist destination.