

Tackling Excessive Drinking Or Excessive Supply

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The traditional view of excessive drinking is that of individuals who, inherently because of some genetic defect, are unable to 'hold their liquor' and whose first drink somehow takes their consumption beyond their control. In fact, there is evidence that children of 'alcoholics' are likely to develop an alcohol dependency possibly due to a variety environmental factors such as exposure to alcohol during gestation, learned coping styles, and modelled behaviour (Greenberg undated).

Alcohol dependence is the product of excessive drinking, as is the development of indices of personal and social harm that accompany excessive drinking. Drinking behaviour is on a continuum so that increased consumption can turn a 'social' drinker into a 'problem' drinker (see Figure 1). The same applies to a population. The more alcohol consumed in a society, as measured by per capita consumption, the greater the incidence of alcohol related problems.

Figure 1

Drinking Risk Levels

Risk	Maximum Daily Grams of Alcohol*	
	Female	Male
Low	20	40
Harmful	20-40	40-60
Hazardous	40<	60<

*One standard drink contains approximately 10 grams of alcohol

Source: Pols & Hawks 1987

Australia is the highest consumer of alcohol in the English-speaking world (Department of Community Services and Health Statistical Services Section 1988) we drink at levels that range between 24.4 - 36.3 gm daily (see Figure 2).

Figure 2

Estimated Per Capita Alcohol Consumption Australia 1987

	daily gm alc
Persons aged 15 years and older	24.42

15 years<	31.02 (a)
with a 21% abstinence rate	33.08 (b)
with a 25% abstinence rate	36.30 (c)
with a 32% abstinence rate	

Source: Note - Estimated per capita consumption figures based on demographic and alcohol sales figures, related to abstinence rates given in (a) Armyr, G., Elmer, A. & Herz, U. 1982; Alcohol in the World of 80s. Stockholm: Sober Forlags AB (b) Homel, R., Berger, D., Loxley, W. & Snortum, J. 1989; General Prevention of Drinking and Driving. A Comparative Study of Compliance with Drinking and Driving Laws in Australia, the United States of America and Norway. A report prepared for the Criminology Research Council, Sydney NSW, Macquarie University (c) Australian Bureau of Statistics 1985. Alcohol Consumption Patterns, Western Australia. October. Cat No. 430 1.5.

Alcohol related ill-health and social misbehaviour are the products of excessive consumption (Stephens 1987; Skog 1984; Lieber et al. 1986; Secretary of Health and Human Services 1983; Report of the Task Force on Domestic Violence to the WA Government 1986; WA Police Department 1986). The impact of alcohol on Australian society (see Figure 3) makes it clear that the social debt is not created by the 3 per cent of the adult population who are estimated to be alcohol dependent (Senate Standing Committee on Social Welfare 1977). All the drinking population, at some time, experiences the adverse effects of alcohol use and is, therefore, potentially part of the problem.

While not wishing to exonerate the individual from responsibility for the consequences of their alcohol consumption, as with all drug use there are two sides to that consumption. The converse of excessive drinking, in the public arena, is excessive alcohol supply (see Figure 4).

Figure 3

Some Adverse Effects of Australia's Per Capita Alcohol Consumption

Alcohol is associated with

- 50 per cent of liver cirrhosis;
- cancers of the upper alimentary tract, the rectum, the breast, the pancreas, the liver;
- one-fifth of all admissions to approved hospitals in the Mental Health Services;
- 2-30 per cent of all hospital admissions;
- at least 10 per cent of total health costs;
- 30 per cent of drownings;
- 20 per cent of suicides;
- 40 per cent of marital breakdown;
- 30 per cent of child abuse and incest assaults;
- >70 per cent violent crime;
- loss of >\$1.5 billion annually to industry; and

- >40 per cent of all fatal road accidents.

Source: Alcohol Advisory Council of Western Australia Inc. 1987

Figure 4

Factors in Alcohol's Supply

Direct	Indirect
hotels bottle shops restaurants free sampling prizes	advertising sponsorships editorial content television program content cultural norms travel availability

Four issues from A New South Wales Police Proposal to Address Consumption and possession of Alcohol by Juveniles (Ireland 1988) are of immediate interest to policy makers when considering the supply side of excessive alcohol consumption. These are (1) juvenile drinking; (2) licensing law; (3) Dram Shop liability; and (4) liquor industry self-management.

Juvenile Drinking

One of the most high-profile issues related to alcohol consumption is that of juvenile drinking (persons aged under 18 years of age), an issue which is regarded by the public as a major social ill (Scott 1988; Nieuwenhuysen 1986).

Every State and Territory proscribes the sale and supply of alcohol to juveniles (ACT Liquor Ordinance 1975; NSW Liquor Act 1982; NT Licensing Ordinance 1939-1971; Qld. Liquor Act 1912-1985; SA Liquor Licensing Act 1985; Vic. Liquor Control Act 1987; WA Liquor Licensing Act 1988; Tas. Licensing Act 1976) and even the presence of juveniles on licensed premises (unless in exceptional circumstances such as having a meal in the company of an adult). There are a variety of defences to charges under these sections of the various Acts, ranging from the juvenile in fact being 16 years or older and the licensee having a reasonable belief that s/he is actually 18 years or older (Liquor Ordinance Act; Liquor Licensing Act WA) to having requested proof of the person's age (Liquor Act NSW; Liquor Act Qld.; Liquor Licensing Act SA). The employment of juveniles to sell or serve alcohol is proscribed by some Acts (Licensing Ordinance NT) although in other parts of Australia they are allowed to work on licensed premises in capacities other than in the sale or service of liquor.

There are many studies of school students' alcohol consumption (Cormack et al. 1987; Hill et al. 1987; Bardsley et al. 1986; Ministry of Education and Health Commission Victoria 1986; Homel et al. 1984). Researchers have also investigated the reasons for underage drinking (Potvin & Lee 1980), estimated the social harm associated with, and the probable impact of changes to, the

current minimum drinking ages (Smith 1988; Williams & Lillis 1988; Smith, in press). Undeniably, there would be a reduction in the morbidity and mortality, as well as in other indices of social dysfunction, of 16-19 year olds if the minimum drinking age were raised in 20 years or older.

Licenses point to the necessity of identification to stop juveniles being served on licensed premises (Gleeson & Prenesti 1986; *The West Australian* 1984) although this is reported to be rarely requested (McNamara 1988). State branches of the Australian Hoteliers Association (AHA) have introduced education campaigns (*Australian Hotelier*, May and August 1988). The Northern Territory has introduced 'Pub Card' photo identification for non-drivers as a joint AHA/Transport Department initiative (Ireland 1988); Queensland, too, has a system of voluntary photo identification and Western Australia and Victoria have recently adopted similar schemes for drivers' licences.

Juvenile curfews have been introduced in the United States of America and have been recommended for NSW (Ireland 1988) to relate to the times of highest juvenile road accident rates and a system of graduated drivers' licensing has been developed (Boughton & Noonan 1986) that recommends the gradual achievement of full road privileges over four distinct stages (see Figure 5) lasting two years.

The notion of a minimum drinking age is a relatively recent phenomenon, introduced, for example, in only 1911, in the Licensing Act, Western Australia. Since then, the legal drinking age has changed twice - from 16 to 21 years, then to 18 years. A minimum drinking age is a cultural construct, based on demands of the time rather than on scientific evaluation of the effects of alcohol on a developing body or on appropriate social behaviour. Current explanations for proposing higher minimum drinking age discuss the disproportionate implication of young people (age range 17-20 years) in mortality and morbidity figures related to alcohol consumption, but we could just as easily demand a much higher age restriction to protect people until a greater degree of maturity has been reached. This is not to say that our children do not have a right to protection from risk. What society should determine, however, is a framework of limitations based on fact so that the question 'why not' can be answered with logic rather than with 'because the law says so'.

Young people's drinking deflects attention from an arguably more pressing problem, that of the adult drinking population's consumption. The problems associated with alcohol consumption do not belong with youth any more than they belong with alcohol dependents. Indeed, it might be said that the majority's drinking is the model for that of youth and dependents and it is to our own behaviour that we should look to effect universal change.

Figure 5

A Graduated Driving Licence Proposal

Stage 1: Driving under supervision, only during the day, no passengers.

Stage 2: Driving during the day with supervision, with passengers. Driving during the night with supervision, no passengers.

Stage 3: Driving unsupervised during the day, carrying passengers day or night if supervised.

Stage 4: Unsupervised driving both day and night, supervised only at night if carrying passengers.

NO alcohol consumption at any driving time during this period and for a further year to be regarded as a provisional licence year.

Source: Boughton & Noonan 1986.

Dram Shop Liability

Dram Shop Liability is 'a term of art referring to the potential legal liability of servers of alcoholic beverages for injuries caused by their intoxicated and underage patrons' (The Model Dram Shop Act: Introduction, California. Prevention Research Centre. Undated).

First introduced to the USA in 1849 (Ireland 1988; Meacham 1987), Dram Shop Liability is on the statute books in 38 states and has recently proved to be a powerful agent for change in the manner in which licensees serve their customers. In some states, social hosts are also liable for damage caused by their drunken guests to third parties (Prugh 1986), however the liability is generally limited to people who will profit from the sale of alcohol (Article 11, Dram Shop Provisions, New York State).

Example of Dram Shop Liability Legislation

1. . Any person who shall be injured in person, property, means of support or otherwise by a person whose abilities are impaired by the use of a controlled substance, or by reason of such person's impairment, shall have a right of action against any person who caused or contributed to such impairment by unlawfully selling to or unlawfully assisting in procuring a controlled substance for such person.
 - b. In any such action, the injured person shall have right to recover and exemplary damages.
2. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator and the amount so recovered by either a husband, wife or child shall be his or her sole and separate property.
3. Such action may be brought in any court of competent jurisdiction.
4. In any case where parents shall be entitled to such damages, either the father or mother may sue alone there from, but recovery by one of such parties shall be a bar to suit brought by the other.

5. The term 'controlled substance' when used in this section, means and includes any substance listed in section thirty-three hundred six of the public health law' (Prugh 1986).

A model Dram Shop Act was drafted in the mid-1980s by the Prevention Research Centre and, by 1985, had been either fully or partially adopted by eight states, some of whom previously had no such legislation.

Prior to the early 1960s, and despite Dram Shop Liability laws, a drinker was held by the courts to be solely responsible for his or her own actions' (Mosher & Colman 1986). The rising road toll and other alcohol related problems however have commercial undertaking: 'if an action creates a reasonably foreseeable risk of harm to others, then liability may be imposed' (Mosher & Colman 1986).

Model Dram Shop Act: Summary

Purpose of Act

1. To prevent intoxicated-related traumatic injuries, death, and other damages;
2. To provide compensation to those suffering damages as a result of intoxication-related incidents.

Plaintiffs

Any person who suffers injury, except that the intoxicated adult is not permitted to recover for self-inflicted injuries.

Defendants

Any alcohol beverage retailer (and their employees and agents), who, at the time of the furnishing of the alcohol, was required by law to hold an alcoholic beverage licence.

Acts Which Give Rise to Civil Liability

Defences

1. The negligent or reckless service of alcoholic beverages to a minor or an intoxicated person. Any defences generally applicable to tort actions under law;
2. Responsible business practices defence (California Prevention Research Centre, undated).

Licensing Law in Australia

The degree to which alcohol is available in a society is a major factor in that society's per capita alcohol consumption and concomitant community harm. Any legislation affecting the availability of alcohol has the potential to make a positive contribution to the community's social wellbeing and health status. Generally, liquor licensing law does not recognise this.

Liquor laws have focused on regulating the provision of alcoholic beverages within the framework of a stable licensed industry. They detail who may sell alcoholic beverages under permit or licence, the hours that licensed premises may operate, where the premises may be located, and specify to whom liquor may not

be sold; for example, to underage drinkers, intoxicated persons, and so forth. Penalties are also prescribed for breaches of the law.

Some Acts incorporate objects which define their intent. These are, in no particular order:

1. to promote economic and social growth by encouraging to regulate, and to contribute to the proper development of the liquor, hospitality and related industries (Western Australia);
2. to cater for the requirements of the tourism industry;
3. to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;
4. to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor;
5. to provide a flexible system, with as little formality or technicality as may be practicable, for the Act's administration;
6. to contribute to the effective co-ordination of the efforts of government and non-government agencies in the prevention and control of alcohol abuse and misuse (See Liquor Licensing Act 1988 WA; Liquor Control Act 1987 Vic.).

This last object is the only instance of liquor licensing being acknowledge as affecting alcohol related community harm.

However, Dram Shop Liability's 'duty of care' (Colman et al. 1985) principle can be found in all Australian licensing law. For example, in New South Wales, no liquor is to be sold or supplied to an intoxicated person and where a person is found to be intoxicated on licensed premises, the licensee is deemed to have permitted this state of affairs unless it can be shown that all reasonable steps were taken to prevent it (Liquor Act 1982 NSW s.125). In Tasmania, no responsible person (that is, licensee or agent) must allow anti-social behaviour on their premises, nor sell alcohol to intoxicated patrons, with the burden of proof lying on the defendant should the law be breached (Licensing Act 1976 Tas. s.59). Similar provisions can be found in all other states' and territories' Acts.

Substantial sections of each liquor licensing Act address the prevention of juvenile drinking - for example, Part VII of South Australia's Liquor Licensing Act 1985 and Division 9 of Western Australia's Liquor Licensing Act 1988 totally focus on the control of juveniles in licensed premises, although the qualifications contained in the WA Act make policing the presence of juveniles on licensed premises quite difficult.

However, from the first, the relationship between alcohol consumption and anti-social behaviour has been made clear in Australia's liquor licensing legislation (An Act to Regulate the Sale of Spirituous and Fermented Liquors by Retail, 2 Wm IV. No. 8 1832, WA). Also made clear has been the licensee's duty to serve their goods in a responsible fashion, or face the consequences which might range from receiving a reprimand to loss of licence (see Liquor Licensing Act 1988 WA, s.96).

Liquor Industry Self-Regulation

When discussions were held regarding the introduction of Dram Shop Liability to Western Australia, the official response was a derisive 'Where would you begin? They're all doing it (serving illegally)'.

Given the magnitude of offending, it is understandable that licensing law enforcement has a low priority, despite the commitment of the Liquor and Gaming squad to upholding the law (see Figure 6).

Figure 6

Selected Charge Rates in Western Australia, 1983-87

	1983	1984	1985	1986	1987
No. of charges	1976	2545	3065	3141	3309
Permitting disorderly conduct	2	-	-	7	2
Sell/supply intoxicated person	-	-	-	-	-
Permit intoxicated person in the bar	1	3	20	3	12
Sell/supply to juvenile	27	26	40	55	46
Permit juvenile on premises	35	48	115	98	125
Juvenile on premises	233	229	274	404	480
Juvenile furnishing false certificate	1	4	19	19	9
Park drinking	292	292	539	578	676
Street drinking	629	790	738	772	867

Sources: WA Police Department Annual Reports 1983-85; Licensing Court information 1986, 1987.

When increased enforcement has been proposed, the liquor industry has argued that there will be loss of employment and reduced licensing fees to contribute to government revenue if their sales are affected. The lack of enforcement had reduced in turn, the perceived severity of licensing law breaches in the public's eyes. The serving of intoxicated persons and underage drinkers is regarded as inevitable with the onus on the offending drinker. Consequently, there is a risk that licensees will assume little responsibility for maintaining their legal serving requirements and that blatant offending might occur.

This paper argues that the liquor industry should be self-managing, reinforced by stringent penalties (Ireland 1988), so that only a few licensees might risk offending and abuse the trust given them by the community by virtue of their

having achieved a liquor licence. It was found in the USA that when Dram Shop Liability began to cut into the industry's hip pocket (in terms of insurance premiums and pay-outs), licensees began adopting the credo of responsible serving and provided training for the staff in server responsibility (see Figure 7).

Figure 7

Framework for Responsible Serving Training - Goals

- reduce the risk of intoxication;
- reduce the risk of customers driving while intoxicated;
- reduce the risk of underage drinking;
- improve staff moral and functioning;
- maintain profitability; and
- develop good community relations

Source: Saltz 1986.

It has been found that staff can monitor patrons' consumption (Saltz 1986) and reduce the less pleasant effects of their jobs such as dealing with drunken truculent customers.

In Australia, Queensland's Hotel Patrol Care Program (Queensland Department of Health Alcohol and Drug Dependence Services 1983) - a co-operative venture of government departments, run by TAFE, and supported by liquor producers and vendors - has been operating for several years. The program trains liquor servers to serve responsibly, and to intervene when patrons' drinking becomes problematic. In other parts of Australia, hospitality courses are run (for example, Western Liquor Guide, March 1987, p. 20) though the emphasis is on serving technique and administration. Serving limitations are addressed only in terms of legal requirements, not as a goal in themselves.

Hospitality course trainees are employed by business where good, comprehensive service is demanded. Staff training is not offered by the majority of licensed premise operations. Casual labour is a feature of the liquor trade industry, employed to deal with demand at peak periods. No licensing Act requires licensees to know liquor law before achieving a licence and it is apparent that many casual staff are unaware that their serving practices are prescribed by law.

Notwithstanding its popular, widespread use, ethyl alcohol is a powerful psychoactive drug and should be served (or dispensed) with respect. Licensees should be aware that they are responsible for more than just the running of a commercial business, and be equipped with the necessary knowledge of their goods and service to ensure the 'duty of care'.

To that end, the successful passing of a test similar to that necessary to achieve a driver's licence should be an important requirement to being granted a liquor licence. Further, a commitment to responsible serving (that is, upholding the provisions in licensing law) should be demonstrated by licensees being required

to provide training for their staff before a licence is granted or renewed.

The effects of this would be to raise the status of the industry; provide a better service to patrons; perhaps increase patronage; and increase the well-being of the community.

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