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Consultation on the National Competition Policy Review Final Report

We appreciate the opportunity to comment on the Final Report of the National Competition Policy Review (Final Report).

We provide this submission on behalf of the National Alliance for Action on Alcohol (NAAA), the Public Health Association of Australia (PHAA), and the McCusker Centre for Action on Alcohol and Youth (McCusker Centre). Each organisation has made previous submissions towards the review. We will not repeat the detail of those submissions here, rather we will comment directly on the content of the Final Report as it relates to alcohol policy.

Who we are

The NAAA is a national coalition representing more than 75 organisations from across Australia that has formed with one common goal: strengthening policy to reduce alcohol related harm. The NAAA's members cover a diverse range of interests, including public health, law enforcement, local government, Indigenous health, child and adolescent health, and family and community services.

The PHAA is recognised as the principal non-government organisation for public health in Australia and works to promote the health and well-being of all Australians. The PHAA seeks better population health outcomes based on prevention, the social determinants of health and equity principles.

The McCusker Centre is an independent organisation committed to reducing harms from alcohol among young people. The work of the McCusker Centre is directed towards raising awareness of the magnitude of alcohol-related harms among young people, the approaches we know can work, other options and the need to act without delay.

Comment on the Final Report of the National Competition Policy Review

We are pleased that the Final Report of the National Competition Policy Review recognises:

- The risk of harm from alcohol provides clear justification for regulating alcohol;
- The concerns expressed by our organisations and others about any relaxation of restrictions on the sale of alcohol;
- That alcohol is not an ordinary product and, given it causes significant health and social harms, should be treated differently to products such as washing powder and orange juice;
- That the promotion of competition should not trump other legitimate public policy considerations, such as harm minimisation;
- The rights of state and territory governments to be able to restrict trading hours and/or set planning and zoning controls relevant to their jurisdiction through their liquor licensing and planning laws;
- The importance of harm minimisation as an objective of liquor licensing legislation in Australia; and
- The public interest in minimising harm from alcohol should be given proper weight as part of any review of liquor regulations.

We commend the Panel for accepting that there is clear justification for regulating alcohol and that alcohol is not an ordinary product. We are very pleased that the Panel has recognised the need to minimise harm from alcohol and recommends that this should be an objective of state and territory liquor licensing legislation. This allows for health to be considered in liquor licensing regulation across Australia and is important in protecting the community from harm.

There are two specific areas of the Final Report where we have concerns.

1. The Panel has not accepted that alcohol should be exempt from competition policy.

The Panel acknowledges that “[a] number of submitters consider that regulations relating to alcohol should be entirely exempt from any review of regulations against competition principles” [p145]. However, the Panel has not recommended that alcohol be exempt from competition policy, noting that regulations relating to alcohol “also restrict competition and reduce consumer choice” [p145]. Accordingly, while the Panel recognises that the promotion of competition should not always trump other legitimate policy considerations, it nevertheless holds to the principle that “all [such] regulations must be assessed to determine whether there are other ways to achieve the desired policy objectives that do not restrict competition” [p146].

The Panel’s insistence that alcohol regulation remain within the purview of competition policy has two concerning implications. Firstly, the Panel maintains that any alcohol regulation must be subject to a public interest test. That is, to justify the maintenance or introduction of any alcohol regulation, two criteria must be met: it must be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and that the objectives of the regulation can only be achieved by restricting competition. The Panel further states that the onus of proof to demonstrate that the benefits of anti-competitive regulation outweigh the costs remains with those arguing for the public health interest. To date, however, the application of the public interest tests to alcohol regulations has been inconsistent and problematic, premised on a narrow understanding of evidence and giving undue weight to economic factors over other social and health considerations.

The second key concern is the Panel’s recommendation that “liquor regulation be included in a new round of regulation reviews” to ensure that legislation in each state and territory “are meeting their stated objectives

at least cost to consumers and are not unduly restricting competition” [p150]. Given liquor regulations remain subject to competition policy, the Panel recommends that existing regulations be reviewed “to assess their impact and to compare outcomes in jurisdictions that have implemented competition reforms with those that have not” [p150].

While we welcome the opportunity to review the strengths and weaknesses of alcohol regulations in different jurisdictions, we believe that public health considerations must be paramount in any such reviews. We remain concerned that the onus of proof remains on those demonstrating the public health benefits of a particular regulation. It is not always possible to definitively establish if a particular regulation or measure has resulted in fewer alcohol harms in a given jurisdiction. Data on alcohol related harms and alcohol sales data is inconsistently collected across Australia, and within some jurisdictions there is insufficient data to conclusively establish correlation or causation in these factors.

We are disappointed that the Final Report does not recommend that alcohol be exempt from National Competition Policy. It is our view, which is supported by scientific evidence, that the public interest objective regarding liquor regulation (i.e. to minimise harm to the community from alcohol) can most effectively be achieved by restricting the economic and physical availability of alcohol. This justifies the controls that may otherwise be seen as anti-competitive, and there are clear precedents for this approach.

2. We strongly oppose the sale of alcohol in supermarkets and are disappointed that the Panel may be seen as endorsing the sale of alcohol in supermarkets.

The Panel notes that “restrictions preventing supermarkets from selling liquor impede competition. The Panel recommends that restrictions preventing supermarkets from selling liquor be reviewed as part of a new round of regulation reviews” [p89].

As we outlined in our responses to the Draft Report, we strongly oppose the sale of alcohol in supermarkets as this will significantly increase the access and availability of alcohol in the community, both in physical and economic terms. Substantial evidence from Australia and elsewhere shows that increasing access and availability of alcohol leads to increased rates of alcohol related harm in the population.¹

The Final Report recognises that alcohol is not an ordinary product and should be treated differently to products such as washing powder and orange juice; it would therefore be inappropriate for alcohol to be sold alongside ordinary products in the supermarket.

We’re very disappointed that the Panel may be seen as endorsing the sale of alcohol in supermarkets. From a public health perspective, any moves to increase the availability of alcohol through supermarkets, or elsewhere, would be of great concern.

¹ National Preventative Health Taskforce. Australia: The Healthiest Country by 2020 – National Preventative Health Strategy – the roadmap for action. Canberra: Commonwealth of Australia; 2009.

Conclusion

Overall, we are pleased with the Final Report of the National Competition Policy Review as the Panel has acknowledged the harms associated with alcohol and the need for regulation to minimise harm. We are, however, disappointed that the Panel did not recommend that alcohol be exempt from competition policy and that alcohol not be sold in supermarkets.

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