

Submission to the Senate Inquiry

Thank you for the opportunity for the Magistrates Court of Western Australia to provide a submission.

My initial reaction to the terms of reference is that the Committee had missed the opportunity to address the wider need for there to be a nationally consistent approach to alcohol fuelled offending. Alcohol fuelled violence has received considerable attention recently however alcohol remains a contributing factor to a large number of dishonesty and public nuisance offences. One would hope that in developing any strategy it is sufficiently broad to address all types of offending and other social harms that result from the abuse of alcohol.

I would suggest that it would be difficult to develop and maintain nationally consistent legislation in this area. It would seem that each State has developed its legislation in response to particular so called "*one punch*" deaths without any research as to the effectiveness of the legislation. There has been an emphasis on increasing penalties and creating new offences but historically there is nothing to suggest that increasing penalties alone is an effective way to reduce offending. Very little has been done to restrict the ability of a person to obtain alcohol to the extent that they cannot control their actions. It is the experience of this court that there are very few prosecutions for the service of alcohol to intoxicated persons yet the number of people appearing before the courts for offences of violence in nightclubs and other licenced premises makes it extremely likely that they were served alcohol to enable them to become intoxicated.

I do not hold the expertise to recommend what strategies should be adopted other than to indicate that the current strategy, if one exists, is not working. Increasing penalties may increase the prison population but is of little comfort to the victims.

In my view, there needs to be considerable research as to effective means to control the supply of alcohol. I am aware that the liquor industry continually say that they comply with the responsible service of alcohol principles but it is simply not supported by the number of people appearing in court.

The restrictions on the sale of take away liquor that we introduced into the North West of Western Australia produced a considerable reduction in domestic violence in those locations. As the restrictions were confined to certain locations, some people chose to move to locations where those alcohol restrictions did not apply and hence moved problems to another location. If there were Australia wide restrictions then the problem could not be shifted.

Similarly if licenced premises where offences occurred because the offender was intoxicated were then subject to penalties including the possible loss of their licence, then I would anticipate that the licenced premises would be far more careful as to who was permitted into the licenced premises and the amount of alcohol which they were served.

Perhaps the time has come for the right to purchase alcohol to be controlled such that where an offender is convicted of an offence and the offender was intoxicated or intoxication is raised in litigation, there should be progressive restrictions on the ability to purchase, possess or consume alcohol.

Such suggestions would need to be carefully considered so as not to prejudice the socially marginalise and the emphasis should be upon those who profit from the sale of alcohol being required to enforced those restrictions.

The New South Wales Judicial Commission gives a good example of how sentencing statistics can provide consistency in sentencing. The majority of alcohol fuelled violence matters are dealt with in the Magistrates, Local County and District Courts. Any guidance from the Court of Appeal is therefore restricted to the very few cases where there is an appeal. It is unlikely given the differences between State legislation and sentencing practices and options that there would be national consistency unless there was single Commonwealth legislation. However the establishment of Judicial Commissions in each State and Territory, if properly funded, would ensure consistency because of the ability to quickly assess the range of sentences that have been applied by other Judicial Officers in the jurisdiction for similar offences.

As a Council member of the National Judicial College I would draw your attention to the Commonwealth Sentencing data base which is maintained by the College with the assistance of the Australian National University. It may be that rather than duplicating the cost of a Judicial Commission in each State and Territory that an increase in funding to the National Judicial College would enable it to establish a data base that could produce both jurisdiction specific information as well as creating a national data base. Again with appropriate funding the National Judicial College could provide additional programs to all jurisdictions within Australia in order to promote consistency in judgments in line with the community standards. In relation to these comments concerning the National Judicial College I must stress that they are my individual observations and made without any consultation with other members of the Council as to the amount of additional resources that would be required in order to fulfil such a role. It would be my belief however that whatever resources were required by the National Judicial College would be considerably less than the cost of establishing a separate Commission in each State and Territory. The Commonwealth and each of the States and Territories already contribute to the National Judicial College.

There is little research available as to the effectiveness of programs to prevent alcohol abuse. If there were effective programs that were available to be delivered in all areas of Australia, then there is a prospect that at least some of the more serious offending and the repeat offending could be prevented by sentencing offenders at an early time to attend an effective program. Indeed minor offending with an alcohol element might be initially diverted from the criminal justice system by requiring offenders to voluntarily participate in such a program. This would be similar to the Cannabis Cautioning Program that has been adopted in some jurisdictions. At present in Western Australia there are very few programs. They are often not available in the remote areas of this State and there is little information as to whether programs have any impact on the future drinking pattern of those who attend.

Thank you once again for the opportunity to make submissions to your Committee.

Yours sincerely

Steven Heath
Chief Magistrate

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