

Select Committee inquiry into the effect of restrictions
and prohibitions on business (red tape) on the economy
and community

*The effect of red tape on the sale, supply and taxation of
alcohol*

Background on Diageo Australia

Diageo Australia is the leading premium drinks company in Australia, best known for its award winning brands including Bundaberg Rum, Johnnie Walker and Smirnoff, among many others. We are the largest premium spirits company in Australia, with 32% market share and revenues in excess of \$520 million annually.

Diageo employs more than 450 talented individuals across nine sites in Australia, including two manufacturing sites: Bundaberg, where we produce the famous Bundaberg Rum, and Western Sydney, where we have operated a bottling plant at Huntingwood for close to 25 years. Around 80% of the products we sell in Australia are manufactured locally. We also contribute to the Australian economy, paying more than \$1 billion in taxes per annum (including excise).

We take our responsibility as an alcohol producer and marketer very seriously and are proud of the work we do to reduce the impact of harmful drinking through programs such as:

- Our partnership with the Wake-Up Foundation, which uses peer-to-peer education to drive cultural change among young Australians
- Our support for DrinkWise, an independent, not-for-profit organisation which aims to help bring about a healthier and safer drinking culture in Australia
- Our commitment to Responsible Marketing which is guided by the industry leading Diageo Marketing Code and our commitment to Australia's Alcohol Beverages Advertising Code

Summary

We congratulate the Committee on a well-timed inquiry and welcome the opportunity to submit our views on an under-looked issue, in particular the focus on the sale, supply and taxation of alcohol. The Australian alcohol beverage industry makes a substantial contribution to Australia's employment and economy, and to Commonwealth and State tax revenue. It provides jobs for more than 404,000 Australians and injects more than \$19.7 billion every year into the Australian economy, including a \$5.9 billion in tax revenue¹.

While Diageo fully supports regulation that ensures the responsible sale and supply of alcohol, this needs to be proportionate, evidence-based and not unduly burdensome on businesses. This submission will focus on some key challenges for the sector - in particular compliance costs, the alcohol tax system, specific areas of red tape and regulatory interventions at Federal and State level – which greatly inhibit the industry's operating environment.

It is worth reflecting that evidence shows Australia is moving towards a more moderate drinking culture – the vast majority of Australians drink responsibly and the proportion of people drinking at risky levels is continually declining². In particular consumers are 'trading up' to drink better rather than more, and the spirits industry is leading this trend through the growing 'premium' small bar and cocktail culture.

Despite these positive trends an increasingly challenging regulatory landscape and 'red tape' culture is suffocating the industry. Australian distillers and consumers currently pay some of the highest alcohol taxes in the world, while businesses have to decipher a maze of overly-complex bureaucracy which varies significantly across the States. Small bars and the spirits sector are under particularly intense

¹ Alcohol Beverages Australia (2017): <http://www.alcoholbeveragesaustralia.org.au/information/industry-contribution-2/>

² AIHW Drug and Alcohol survey (2013): <http://aihw.gov.au/publication-detail/?id=60129549469>

pressure - in some states such as New South Wales (NSW) and Queensland (QLD) there exists a plethora of micro-regulation that restricts the sale of spirits and ready-to-drinks (RTDs) in the on-premise at certain times, despite the lack of evidence these beverages are any 'higher risk' than other categories of alcohol like beer or wine.

Not only does this undermine the businesses environment and restrict consumer choice, blanket measures such as lockouts or spirit restrictions fail to offer a targeted approach to deal with the harmful drinking of specific, at-risk groups. Rather, these blunt approaches penalise the vast majority of Australians who drink responsibly and do not cause others harm, because of the behavior of a tiny minority.

This submission seeks to illustrate areas that are excessively burdensome, ones that we hope the Committee will consider in its recommendations to the Federal Government in its report.

Burdensome, complex, redundant or duplicated across jurisdictions

Alcohol tax

The most obvious example of an area of regulation that is particularly complex and burdensome is alcohol tax. There are 16 different tax rates across categories of alcohol³, which distorts consumption patterns and places huge administrative burdens on industry and Government alike, which is then borne by the consumer.

Australian distillers and consumers currently pay some of the highest alcohol taxes in the world⁴. As a result, over 70% of the price of a bottle of Johnnie Walker Red or Bundaberg UP is tax. This creates market distortion where spirits and ready-to-drinks (RTDs) beverages, which account for less than 20% of Australian alcohol sales, contribute about 50% of alcohol excise.

We are seeing great innovation in the Australian craft spirits industry which is being recognised on the world stage, creating jobs and supporting local businesses – Tasmanian whisky is globally-regarded while Bundaberg Rum Blenders Edition 2015 won best rum in the world⁵ - however, this growth is severely hindered by the excessive levels of tax and a twice-yearly CPI excise increase.

- Diageo supports the recommendations in the Henry Review (2010) that calls for the Federal Government to implement a gradual transition to a volumetric alcohol tax system, which would boost the embryonic local distilling industry
- This would support consumer choice and recognise that all alcohol is the same, regardless of the type of beverage. A single rate volumetric tax would be simpler, fairer and more efficient, ending the discrimination between drinkers

Reform of the alcohol tax system is also crucial given concerns regarding the sustainability of the current system. The Laffer curve theory highlights the concept of taxable income elasticity⁶ – i.e. taxable income changes in response to changes in the rate of taxation. The continued twice-yearly CPI increases is creating a growing disparity in the tax rate between spirits, and beer and wine.

If spirits excise continues to increase relative to other categories, it will likely reach a revenue-maximising point that will see declining revenue for the Government. This undermines the

³ ATO (2017) <https://www.ato.gov.au/Business/Excise-and-excise-equivalent-goods/>

⁴ University of Adelaide (2014): https://www.adelaide.edu.au/wine-econ/pubs/working_papers/0214-alcohol-tax-comparison-sep2014.pdf

⁵ Bundaberg rum (2015) <https://www.bundaberg.com.au/explore/mdc-blenders-edition-2015-voted-worlds-best-rum>

⁶ The Laffer Curve (2016) <http://www.laffercenter.com/the-laffer-center-2/the-laffer-curve/>

Government's important goal to achieve budget repair, while having little effect on consumption trends as consumers switch to significantly cheaper options.

A gradual move towards volumetric would rectify market distortions, offer a fairer deal for consumers and is likely to increase government revenue over the long-term.

Diageo fully supports the position and evidence highlighted in the DSICA submission – please refer to this for more detail.

Customs and ad valorem duty

As the largest spirits producer in Australia – with both domestic and imported brands – complying with administrative requirements relating to payment and tracking of duty is particularly burdensome.

We have two individuals (an analysts and a manager) within our business whose full-time jobs is to track the compliance costs of duty and duty payment – this includes duty and ad-valorem payments, overall compliance, bonded warehouse set up, CPI updates and import compliance. The following are some suggestions for simplifying the process:

- Moving to a monthly settlement (rather than weekly), which would reduce the related working hours including payment and reconciliation from approximately 30 hours to 10 hours
- Remission for imported products – currently the ATO allows producers to destroy locally produced products (without paying duty) without pre-approval requirement (although we are required to keep the back-up document for audit purposes for 5 years). However Customs still require businesses to lodge remission requested *prior* to destroying any Imported Products, which delays the write off process due to an approval lead time. We recommend Customs align to the ATO's approach
- Abolish the five per cent ad valorem customs duty on all spirits and RTDs imported into Australia. This would significantly reduce the administrative burden borne by alcohol importers, and overcome time and labour-intensive reporting requirements. This is supported by the WTO, the Henry Review and the Productivity Commission and would result in broader benefits to the industry and consumers alike

Please refer to the DSICA submission for more detail on the types of customs recording keeping and bond register processes that are particularly burdensome.

Different licensing rules across all states and territories

Diageo is strongly committed to supporting regulation that has clear public policy goals and is evidence-based. RSA training, education on the effects of alcohol and strict enforcement of laws prohibiting the sale of alcohol to minors are all good examples of policies which seek to mitigate potential risks associated with sale and consumption of alcohol, and have led to sharp reductions in underage drinking⁷.

However regulation needs to be effective, proportionate and evidence-based. The sale of alcohol in Australia is subject to a plethora of extremely complex, overlapping and bureaucratic regulation across federal, state and local tiers of government which greatly inhibits the business environment. It is worth bearing in mind that this proliferation in red tape and bureaucratic burden has occurred over recent years, despite the predicated downward trends in anti-social behaviour and alcohol misuse.

⁷ Alcohol Beverages Australia (2017): <http://www.alcoholbeveragesaustralia.org.au/information/underage-drinking/>

This is particularly manifested in the area of licensing:

- There are 676 pages in Queensland's liquor regulation, with the level of micro-legislation going down to the detail of what a cocktail menu can look like⁸
- There are 36 restrictions on operators in the Kings Cross in Sydney, including an absurd requirement to 'remove litter' from outside their premises as a licence condition⁹
- The number, type and cost of alcohol licences across the eight states and territories is extremely complex. There are 63 different alcohol licences across the country – 5 in ACT, 7 in NSW, 3 in NT, 7 in QLD, 11 in SA, five in TAS, 14 in Victoria and 11 in WA. It is difficult to understand why SA requires 11 different types, whereas TAS has a more streamlined 5

Navigating this maze of regulation takes a huge amount of man hours and is off-putting for a licensee to set up or expand a business. Furthermore, there is the ever-increasing cost of obtaining or maintaining a licence. This borders on the ridiculous when we consider the approach of other similar countries – for example, the UK Government's licensing regulation is [listed simply on one page on a website](#).

Even for an area as uncontroversial and universally supported as RSA training, NSW does not recognize RSA accreditation obtained interstate. This means additional and needless hiring and training costs.

Specific areas of red tape that are particularly burdensome and complex

Some States have reacted to what have been awful acts of criminal behavior with badly thought-out restrictions on the sale of spirits and RTDs – for example, no neat serves after midnight (NSW CBD). This derives from the common misperception that spirits and pre-mixed drinks are 'higher risk' compared to beer or wine.

This is incorrect – the choice of beverage for at-risk drinkers varies significantly across all age cohorts and gender. A wide ranging-piece of researched conducted by academics worldwide studied the link between harm and different drinks in 19 different countries and found that there is no increased risk from any particular type of drink¹⁰ (*see below table for more information*).

A standard gin and tonic - or vodka and soda - contain less alcohol than a glass of wine or a schooner of beer (www.drinkiq.com). Scientifically all alcohol has the same effects on the human body – it is how much a person drinks and their response to alcohol that matters, not what type of drink¹¹.

Despite this evidence, Governments and regulators continue to discriminate against spirits through restrictions in states like NSW and QLD (as well as much higher levels of taxation compared to beer and wine).

⁸ Liquor (Rapid Intoxication Drinks)

Amendment Regulation (No. 1) 2016: <https://www.legislation.qld.gov.au/LEGISLTN/SLS/2016/16SL071.pdf>

⁹ NSW Liquor & Gaming (2017) <https://www.liquorandgaming.justice.nsw.gov.au/Pages/liquor/law-and-policy/precincts/kings-cross-precinct.aspx#KingsCrossPrecinctPlanofManagement>

¹⁰ Australian Demographic and Social Research Institute (2014), *Beverage consumption patterns and risk category*

¹¹ Source: Drinkwise Australia <https://drinkwise.org.au/drinking-and-you/how-much-have-you-had-to-drink/#>

Table 1: Myths and Facts about spirits and pre-mixed drinks

MYTH	FACTS
Spirits and pre-mixed drinks are higher risk drinks and lead to increased intoxication and harm.	Research by the Australian Centre for Alcohol Policy Research (funded by FARE) found there is no increased risk of harm from any one alcohol type. ¹²
Spirits and pre-mixed drinks are the drink of choice for binge drinkers.	Research by the Australian Demographic and Social Research Institute found that for risky drinkers, beer was more likely to be the drink of choice among young men and there is no specific beverage preference among young women. ¹³
Pre-mixed drinks are primarily consumed by young adults, especially young women	The single largest demographic of pre-mixed drink consumers is actually males aged 35-55. These people enjoy the convenience of pre-mixed spirits drinks, including on licensed premises.
People get drunk faster off spirits and pre-mixed drinks.	A standard serve of spirits contains only 1 standard drink of alcohol, compared to 1.5 standard drinks in a glass of wine or 2 standard drinks in a pint of beer. Scientifically, the effects of one standard drink of alcohol are the same, whatever the drink.

Examples - New South Wales and Queensland

While we welcome the changes to Sydney's "lockout laws" announced in December 2016 – in particular the changes to small bars and bottle shop closing hours – we believe there are further opportunities for more balanced reforms.

A number of extremely bureaucratic regulations and licensing provisions exist in the New South Wales CBD which go beyond the 1.30am lockouts, 3.00am last drinks and 10.00pm bottle shop closing times that were the subject of the recently completed Callinan Review – indeed these are some of the most bureaucratic licensing provisions in the world.

These regulations (contained within the Kings Cross and Sydney CBD Plans of Management) seek to prevent intoxication by applying controls around the types of drinks consumers can drink. These include restrictions on the sale of certain spirits products – including shots; neat serves; doubles; cocktails containing more than 50% alcohol; and premix drinks over 5% - after midnight. When you look at the practical impacts of the restrictions there are some bizarre outcomes:

- After midnight you cannot drink a single malt whisky on the rocks, but you can drink the same liquid if it's mixed with coke or in a listed cocktail
- If a patron wants a cocktail that isn't on an existing printed menu at 12.01am, they have to be refused
- The same is true if they want a classic cocktail such as a Martini, Negroni or Old Fashioned, because they contain a product with more than 50% alcohol-by-volume (ABV)

While we fully support the Government's intention to reduce alcohol-related violence – any patron who causes trouble and any operator that allows it to happen on their premises should be severely punished – the severe regulatory environment is creating an excessive burden on operators in the Sydney

¹² Centre for Alcohol Policy Research (2013) *Differences in trouble per litre of different alcoholic beverages – A global comparison with the GENACIS dataset*

¹³ Australian Demographic and Social Research Institute (2014), *Beverage consumption patterns and risk category*

Entertainment Precinct. In particular this is affecting small businesses (i.e. specialist bars) who have never had any incidence of alcohol-related violence on their premises and are being treated as 'guilty until proven innocent'. This in turn puts people off coming out in the city of Sydney, which at the moment needs all the support it can get to attract patrons. A better approach would be to impose sanctions on those failing to comply rather than burden everyone.

We understand that licensees in the CBD precinct may apply for exemptions to some of these restrictions to NSW Liquor & Gaming. However, since the introduction of these regulations in 2014, only two venues have been granted an exemption. Furthermore, the process and criteria for applying for an exemption is burdensome and bureaucratic. The relevant form requires that the applicant licensee:

- Complete a separate form for each special condition (of which there are 15) applied to be exempted; and pay \$500 in respect of each such condition
- State that an exemption will only be granted if the licensee can persuade the regulator that it "is unlikely to result in an increase in the level of alcohol-related violence, anti-social behaviour or other alcohol-related harm in the precinct"

This plethora of paperwork and high costs - without any real prospect of success - stops many small businesses from even applying. These restrictions do not just hurt bars and clubs but a range of businesses - restaurants, cafes, coffee shops – and punish responsible drinkers for the actions of a tiny minority.

The message to business is also inconsistent - on one hand the NSW State Government (and other states) says it wants to support the growth of low-risk, responsible cocktail bars, but on the other hand these very operators face numerous restrictions that are directing hampering their growth.

Our recommendation would be to encourage a more focused approach to licensing. South Australia's Late Night Code, for example, specifically addresses the question of 'shots' and 'shooters' while allowing licensees scope to serve traditional spirits serves, e.g. sipping drinks served on ice and cocktails.

Queensland

As part of the State-wide last drinks legislation brought in by the Queensland Government on 1 July 2016 (2am/3am in Safe Night Precincts), it also amended the Liquor Act 1992 to prohibit the sale or supply of 'rapid intoxication drinks' from midnight onwards that are deemed to pose a high risk of alcohol-related harm.

In justifying these restrictions on spirits the Queensland Government set out a narrative in the Bill¹⁴ which claimed that the increased frequency of alcohol-fuelled violent incidents after midnight is due to the consumption of spirits and, therefore, restrictions on their service would result in a reduction in violence.

This assumption is fundamentally flawed and based on misconceptions of spirits as 'higher-risk', as outlined earlier in this submission. There are a number of flaws:

- A basic misunderstanding of the biology of alcohol consumption i.e. a person's level of intoxication is determined by the total amount of alcohol (measured by 1 standard drink = 10g of ethanol) consumed over the time period, not the type of alcohol one drinks

¹⁴ <http://www.legislation.qld.gov.au/Bills/55PDF/2015/TacklingAFVLegAB15E.pdf>

- The Bill's rationale seems to be focused on dealing with excessive consumption, however after midnight a consumer can purchase a bottle of wine (8 standard drinks) or a pint of beer (2 standard drinks) but not a neat serve of spirits (1 standard drink). 'Doubles' of spirits are banned after midnight, despite having the same amount of alcohol as a pint of beer (2 standard drinks)
- A 5.8% ABV beer is permitted, but a 5.5% ABV pre-mixed drink is banned
- The very concept of 'rapid consumption drinks' is extremely subjective. Any drink that is designed and marketed for relaxed consumption – be it a premium tequila, a schooner or a glass of wine – can be misused for rapid consumption by 'downing'. This is not an issue that is spirits-specific, yet spirits are specifically targeted
- From theatre- and cinema-goers, to restaurant workers, there are many nighttime consumers who might have their first drink late at night, and would like to select their drink of choice from a full range
- The legislation authorises exemptions for businesses that specialize in the sale of premium spirits i.e. that people can only drink spirits late at night in high-class establishments. Apart from the legal difficulties of defining what 'premium' is, this clearly penalises people of a lower socio-economic status

These are just some of the examples that highlight the absurdity of restricting spirits over other beverage alcohol products, with little evidence basis. Given that these restrictions have been introduced with a raft of other measures – i.e. last drinks, increased enforcement – it makes it difficult to quantify the overall economic impact on the businesses and consumers affected.

Rather than arbitrary bans on certain alcohol categories and the time of consumption, to deal with the issue of violence we encourage governments to more holistically address the culture and behaviour around drinking. In particular through consumer education programs, promotional codes of practice and more effective enforcement of existing RSA service laws, which the industry readily funds and supports.

Container Deposit Schemes

Lastly, another example of regulation that is complex and duplicated across jurisdictions is Container Deposit schemes (CDS). These are being introduced in different states at different times – South Australia's CDS was introduced in 1977, NSW is due to introduce one 1 July 2017 while QLD, WA and ACT have announced their intentions for a similar scheme.

The introduction of a container deposit scheme in NSW will add major complexity and cost for manufacturers and inevitably, for consumers. It is yet another burden on the alcohol beverage industry which – as demonstrated in this submission - is already extremely heavily taxed and regulated.

As well as the cost to business and consumers, there is a high degree of cross-state complexity involved in terms of the refund mark, refund level, product registration and how to effectively protect against fraud and arbitrage. While we note that the NSW Government is working with South Australia, the Northern Territory and other jurisdictions to agree some degree of consistency across States, the costs and complexity for industry is huge.

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