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Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Submission from the National Alliance for Action on Alcohol (NAAA)

On behalf of the National Alliance for Action on Alcohol (NAAA), we are writing to provide a submission to the Competition Policy Review.

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.

As the National Competition Review Issues Paper identifies, public health and safety concerns may necessitate regulatory restrictions on the sale of various goods within in Australia.¹ Alcohol is one product where such restrictions are appropriate and indeed, important.² In our submission below, we wish to reinforce four main points to the Competition Policy Review:

1. Alcohol is not an ordinary commodity; it is a product that causes significant harms and costs to the community.
2. The benefits as a whole from regulating access to alcohol outweigh the costs of reducing competition in the market that supplies alcohol.
3. Regulating access to alcohol with the objective of minimising harm can only be achieved by restricting the economic and physical availability of alcohol. This justifies the controls that may otherwise be seen as anti-competitive.
4. Alcohol should be considered in the same category as other harmful products such as tobacco where restrictions which limit competition are rightly, justified in the interests of public health.

¹ The Treasury. *Competition Policy Review Issues Paper*. Canberra: Commonwealth of Australia. 14 April 2014, para 2.10.

² Ibid, para 2.11

The impact of alcohol on the community

Although alcohol is legally sold to adults and is very widely available and accepted in the community, it is important to recognise that it does have toxic properties and is an addictive substance that can have serious adverse effects on those who consume it as well as those around them. The impacts of alcohol are wide ranging:

- Alcohol plays a role in more than 200 different chronic health problems, including cardiovascular disease, cancers, diabetes, nutrition-related conditions, cirrhosis, overweight and obesity and Fetal Alcohol Spectrum Disorders (FASD)³
- The consumption of alcohol can also cause severe acute/immediate harms for both the drinker and others around the drinker. The harm to others from somebody's drinking are often indiscriminate and far-reaching, ranging from random acts of drunken violence to child maltreatment and neglect⁴
- The economic costs of alcohol misuse in Australia each year have been estimated to exceed \$14 billion, including costs to the health system, law enforcement, lost productivity in the workplace, and the pain, suffering and harm to drinkers and those around them⁵
- Indigenous Australians experience disproportionate rates of alcohol-related harm. Mortality rates from alcohol-related diseases are four-times higher among Indigenous Australians than non-Indigenous Australians⁶
- Drinking alcohol can adversely affect the brain development of young people and lead to a higher likelihood of alcohol-related problems in later life. Alcohol can trigger or worsen pre-existing mental health conditions (including anxiety, depression and schizophrenia)⁷
- Alcohol is a factor in almost 90% of calls for police intervention between the hours of 10pm and 2am, and it has been estimated that a quarter of police resources nationally are spent responding to alcohol-related incidents
- Alcohol is a greater factor than speed, fatigue, weather or road conditions in fatal road crashes in Australia and is responsible for more than a third of road deaths⁸
- Nearly half of all homicides in Australia are preceded by alcohol consumption, either by the victim or the offender⁹

³ World Health Organisation (WHO) *Global status report on alcohol and health, 2014 Edition*. Geneva: WHO. 2014

⁴ Laslett A-M, Catalano P, Chikritzhs T, et al. *The Range and Magnitude of Alcohol's Harm to Others*. Fitzroy, Victoria: AER Centre for Alcohol Policy Research, Turning Point Alcohol and Drug Centre, Eastern Health. 2010

⁵ Manning M, Smith C, and Mazerolle P. *The societal costs of alcohol misuse in Australia*. Trends and Issues in Crime and Criminal Justice, No. 454. Australian Institute of Criminology: Canberra. 2013

⁶ SCRGSP (Steering Committee for the Review of Government Service Provision) *Overcoming Indigenous Disadvantage: Key Indicators*, Productivity Commission, Canberra. 2011

⁷ NHMRC. *Australian Guidelines to Reduce the Health Risks from Drinking Alcohol*. Canberra: Commonwealth of Australia. 2009

⁸ Bureau of Infrastructure, Transport and Regional Economics (BITRE). *Fatal road crashes in Australia in the 1990s and 2000s: crash types and major factors*. Department of Infrastructure and Transport, Canberra. 2011.

⁹ Chan A and Payne J. *Homicide in Australia: 2008–09 to 2009–10 National Homicide Monitoring Program annual report*. Canberra: Australian Institute of Criminology. 2013

Community benefits from regulating liquor

The application of National Competition Policy (NCP) has been purported to increase competition in the sale of alcohol in Australia. This has mainly been attempted through the review and removal of regulatory controls on the sale and supply of liquor in each State and Territory, noting that in some jurisdictions (e.g. Victoria) this also occurred prior to NCP reviews. However, as will be illustrated further below, while the liberalisation of liquor control laws following NCP reviews may have allowed for increased competition in some areas, it has been correlated with an increase in alcohol-related harms.

There is a substantial body of international scientific evidence that examine how the physical availability of alcohol impacts on overall consumption levels, patterns of drinking, and the incidence of alcohol-related harm. The evidence comes from a broad range of contexts and has been developed using a wide range of statistical methodologies.¹⁰ There is now growing Australian evidence that also links the density of liquor outlets to heavy drinking and alcohol-related harms. In longitudinal analyses, these studies have shown positive associations over time between the density of packaged outlets and rates of domestic violence, general assaults and alcohol-specific chronic disease.^{11,12,13}

It is our view, which is supported by evidence, that over time the benefits to the community from the increase in access to alcohol are significantly outweighed by the social cost from the rise in alcohol-related harms, including injury, disease and death. Evidence suggests that many of the current regulations around alcohol are already too weak to achieve the objective of minimising harm and that these regulations disproportionately favour commercial interests over the public interest and public health concerns. The NAAA is concerned that any further weakening of restrictions on the sale and supply of alcohol will worsen the already high level of alcohol-related disease and injury in the community.

The NAAA urges the National Competition Policy Review to ensure that there is no further relaxation of the current controls that limit the sale, supply and consumption of alcohol.

Liberalisation – the effect in Victoria

The situation in Victoria provides an example of where the liberalisation or de-regulation of the sale of alcohol to remove impediments to competition, while bringing benefits for the tourism and hospitality industry, has come at a huge cost to the Victorian community. During the 1980s and 1990s, a gradual process of liberalisation of liquor control laws took place. This liberalisation came

¹⁰ Babor T, Caetano R, Caswell S, et al. *Alcohol: No Ordinary Commodity. Research and Public Policy*. Second Edition. Oxford University Press. New York 2010.

¹¹ Livingston M. A longitudinal analysis of alcohol outlet density and assault. *Alcoholism: Clinical and Experimental Research*, 32, 1074-1079. 2008

¹² Livingston M. Alcohol outlet density and harm: comparing the impacts on violence and chronic harms. *Drug and Alcohol Review*, 30, 515-523. 2011

¹³ Livingston M. A longitudinal analysis of alcohol outlet density and assault. *Alcoholism: Clinical and Experimental Research*, 32, 1074-1079. 2008

about through the State government initiating policy reviews, including some reviews which sought to liberalise liquor control laws, and others which aimed to explicitly address compliance with NCP. Overall, this led to it becoming significantly easier and cheaper for businesses to obtain a liquor license in Victoria. Consequently, the number of licensed premises in Victoria has increased substantially, and the landscape of alcohol availability in the State changed enormously.

We believe that the relative ease of obtaining licenses has weakened the previous implicit contract between government and licensees that saw the licensee's competition in the marketplace restricted in return for the licensee taking greater responsibility to control the drinking behaviour of patrons in order to minimise harm. While Victoria's inner city small-bar laneway culture is credited to liberalisation and the focus on encouraging a larger licensed hospitality industry, there have also been many unforeseen consequences of liberalisation with negative implications for public health and community safety. In particular, there has been significant growth in the number of late night licensed premises which research shows are closely associated with an increased risk of alcohol-related harm.¹⁴

After these initial waves of liberalisation, further changes occurred with the removal of legislative restrictions that prevented any person or corporation from owning more than 8% of the general or packaged liquor licenses.¹⁵ This has contributed to the number of packaged liquor licenses (i.e. take-away alcohol) increasing by 41% between 2002 and 2011.¹⁶ Removal of the 8% rule has also enabled large retailers to significantly increase their market share of packaged liquor trading in Victoria, and this is also now apparent across the rest of Australia. Coles and Woolworths now control 58% of Australia's liquor market.¹⁷ One result of this has been a significant increase in the availability of cheap alcohol. For example, the substantial market power of these two alcohol retailers now enables them to source and sell very cheap wine under their own home brands¹⁸ and also use 'loss-lead' tactics in pricing to increase sales and maintain dominance over their competitors.¹⁹ The diminished competition in States such as Victoria due to the dominance of the Coles-Woolworths duopoly raises important questions about whether State and local government and their respective liquor and land use planning authorities are able to adequately balance the interests of the community with increasingly powerful commercial interests.

In Victoria, in contrast to electronic gaming machines, there is currently no limit on the total number, size, type, or density of liquor licenses that can be issued across the State or within a defined region, municipality, or neighbourhood. There are now more than 20,000 active liquor licenses across the State; more than in any other jurisdiction in Australia. The number of packaged liquor outlets in Victoria now stands at 1,958. During this period where packaged liquor outlets have

¹⁴ Victorian Auditor-General's Office. *Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm*. Melbourne: State Government of Victoria. 2012. p. 23

¹⁵ *Ibid.* p.25

¹⁶ *Ibid.* p.25

¹⁷ Sheftalovich Z. Supermarket Wines. *Choice Online*. 17 May 2012. Accessed from: <http://www.choice.com.au/reviews-and-tests/food-and-health/food-and-drink/supermarkets/supermarket-liquor-sales.aspx>

¹⁸ *Ibid.*

¹⁹ Ferguson A. Beer wars: big retail v Foster's. *Sydney Morning Herald*. 23 March 2011. Accessed from: <http://www.smh.com.au/business/beer-wars-big-retail-v-fosters-20110322-1c59d.html>

grown in number, size, and opening hours, the rates of alcohol-related harm have increased sharply.²⁰

The increase in alcohol-related harms is graphically demonstrated by the increase in both the number and the rates of alcohol-related ambulance attendances in Metropolitan Melbourne over the last ten years (See Figure 1).

Figure 1: Increase in alcohol-related attendances by year

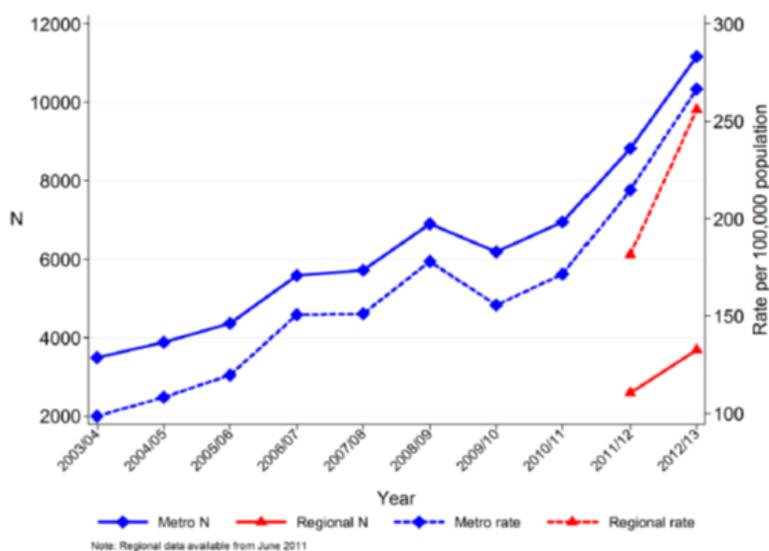


Figure 4: Alcohol-related attendances by year - 2003/04 to 2012/13

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As an indicator of alcohol-related harm, these trends broadly correlate to the increase in the physical availability of alcohol. The trends are consistent with the substantial international research that links the density of alcohol outlets in a neighbourhood to the rate of alcohol-related problems experienced in that neighbourhood²².

Increased restrictions – the positive effects in New South Wales

Some measures that restrict alcohol are necessary to reduce alcohol-related harm. These are important even if the result is reduced competition. Where this is the case, the public benefits generally outweigh the costs or detriment of imposing such restrictions. Increased restrictions on alcohol typically arise due to community and/or government concern about the escalating levels of alcohol-related harms, which can come about as a result of the increased economic and physical

²⁰ Victorian Auditor-General's Office. *Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm*. Melbourne: State Government of Victoria. 2012.

²¹ Lloyd B. et al. *Trends in alcohol and drug related ambulance attendances in Victoria: 2012/13*. Fitzroy, Victoria: Turning Point, p 21. 2014 Accessed from: <http://www.turningpoint.org.au/site/DefaultSite/filesystem/documents/TP.ambocallout.fullreport.080514.pdf>.

²² Babor T, Caetano R, Caswell S, et al. *Alcohol: No Ordinary Commodity. Research and Public Policy*. Second Edition. Oxford University Press. New York 2010.

availability of alcohol. Two examples where restrictions on market freedom have been introduced with positive health and social effects are Newcastle and, most recently, the Sydney CBD.

- **Example One: Newcastle**

In 2008, as a result of escalating local concern about alcohol-related violence, particularly late at night, the NSW Liquor Administration Board imposed licensing restrictions on 14 licensed premises in the City of Newcastle. These included a 3.00am closing time and a 1.00am lockout (which were later amended to 3.30am and 1.30am, respectively, following a legal challenge by some licensed premises).

An evaluation carried out in the 12 months following the introduction of these restrictions found that there had been a 37% reduction in night-time alcohol-related assaults in Newcastle. Also, there had been no geographic displacement of alcohol violence or related problems to the nearest late-night licensed district of Hamilton.²³ These positive effects have been sustained over time. Research conducted three years after the introduction of the Newcastle restrictions found a 35% reduction in night-time non-domestic assaults requiring police attention and a 50% reduction in night-time street offences in the city. An evaluation undertaken five years after the introduction of the restrictions found that there was a sustained reduction in alcohol-related assaults in the Newcastle CBD, with an average of a 21% decrease in assaults per hour.²⁴

It is arguable that these measures have had an anti-competitive effect. However, there is no evidence to suggest that these restrictions have impaired the local economy. A report commissioned by the Australian National Local Government Drug and Alcohol Advisory Committee found that between 2009 and 2011, although there was a 9.6% decline in 'drink' sales revenue, this was offset by a 10.3 per cent increase in 'food' sales revenue.²⁵ This indicates that the restrictions led to a diversification of the night-time economy in Newcastle.

- **Example Two: Sydney CBD Entertainment Precinct**

On 24 February 2014, new alcohol laws were introduced across the new Sydney CBD Entertainment Precinct (which includes Kings Cross, the Rocks and parts of Surry Hills). This was in response to growing community concerns about late-night drug and alcohol-fuelled violence in the City of Sydney, particularly the one-punch deaths of Thomas Kelly and Daniel Christie. These new precinct laws include measures that target the availability of alcohol, such as 1.30am lockouts and 3.00am last drinks at hotels, registered clubs, nightclubs and licensed karaoke bars, and a 10:00pm close on takeaway alcohol sales (this restriction to takeaways sales applies across all of NSW).²⁶

Although it is too soon to make quantifiable conclusions about the success of these interventions, anecdotal reports suggest that there have been noticeable reductions in alcohol-related harms. The

²³ Kypri K et al. 'Effects of restricting pub closing times on night-time assaults'. *Addiction* 106(2): 303–310. 2011

²⁴ Kypri K. et al. Restrictions in pub closing times and lockouts in Newcastle, Australia five years on. *Drug and Alcohol Review*, 33, 323–326. 2014

²⁵ Bevan, T. The Australian Night Time Economy A First Analysis 2009 to 2011. A report prepared for the National Local Government Drug and Alcohol Advisory Committee. Economic research and Business Intelligence. 2013

²⁶ New South Wales Government. *Alcohol and Drug fuelled violence initiatives*. Accessed from: <http://www.nsw.gov.au/alcohol-and-drug-fuelled-violence-initiatives>. 2014

director of St Vincent's Hospital's emergency services Dr. Gordain Fulde reported that three weeks after the commencement of the new laws, there had been a reduction in the number of alcohol-related admissions, and no 'coward punch' victims.²⁷ Police and ambulance officers have also reported significant drops in violent incidents in the city since the introduction of the laws, with the police further stating that there has been no discernible displacement of alcohol-related violence to areas surrounding the precinct.²⁸

Minimising harm from alcohol misuse justifies the potential impediments to competition

Australian and international research has shown that the most effective public policies to minimise alcohol-related harm are to restrict the economic and physical availability of alcohol. Conversely, as detailed above, the removal of restrictions on alcohol availability generally leads to an increase in alcohol-related harm. Appropriate restrictions on the *economic* availability of alcohol include setting a minimum (floor) price for alcohol and prohibiting excessive discounting and/or loss-leading tactics. Appropriate restrictions on the *physical* availability of alcohol include the requirement to hold a license to sell and supply alcohol, imposing caps on the number of outlets that can sell alcohol, and restricting trading hours. Other appropriate restrictions, such as *how alcohol is sold*, include stringent license renewal requirements, license fees, and conditions of operation (e.g. server training, patron numbers, venue security). All of these restraints on trade can be justified because of the risk of harm to the community and the impacts on public health and safety that alcohol presents.

While there are other highly effective public policy approaches to minimise alcohol-related harm including drink driving laws and bans on advertising, these do not override the necessity to restrict the economic and physical availability of alcohol. Similarly, public education programs that warn about the health risks of drinking also have some potential to minimise harm, but on their own are unlikely to achieve substantial and sustained changes in drinking behaviour, particularly among young people, unless these are combined with other restrictions, including restrictions on the availability of alcohol.

In light of the considerable evidence regarding the relationship between alcohol availability and alcohol-related harm, the NAAA has been calling on State and Territory governments around Australia to maintain current restrictions and/or introduce further restrictions on alcohol outlet numbers, density, size, type and opening hours through their respective liquor control and planning laws and regulations. However, there remains a tension between the way governments interpret and implement such regulations versus the actual requirements under competition policy, and this can prove to be an obstacle to protecting public health interests.

²⁷ Jacob, P., Mullany, A. & Morri, M. Liquor laws: All quiet on the Eastern Front. *Daily Telegraph*. 17 March, 2014. Accessed from: <http://www.dailytelegraph.com.au/news/nsw/liquor-laws-all-quiet-on-the-eastern-front/story-fni0cx12-1226856374286>

²⁸ Chambers, G., Morri, M. & Crawford, S. New booze laws make the city and Kings Cross a safer place as assault incidents fall by half in wake of lockout laws. *Daily Telegraph*. 31 March, 2014. Accessed from: <http://www.dailytelegraph.com.au/news/nsw/new-booze-laws-make-the-city-and-kings-cross-a-safer-place-as-assault-incidents-fall-by-half-in-wake-of-lockout-laws/story-fni0cx12-1226869289625>

Competition policy should not undermine public health and harm minimisation objectives

The NAAA considers that competition policy is not, and should not, be an obstacle to the appropriate regulation of alcohol because evidence shows that availability controls on alcohol are the most effective means of minimising harm from alcohol misuse.

Examples of measures aimed at harm minimisation that are currently in place in Victoria include:

- the freeze on new late night liquor licenses in inner city Melbourne; and
- the ban on certain retail outlets such as service stations and convenience stores from selling any alcohol at all.²⁹

In New South Wales, examples include:

- 1:30am lockouts and 3:00am last drinks restrictions within the Sydney CBD Entertainment Precinct;
- the Statewide ban on packaged liquor sales after 10:00pm; and
- a new two year freeze on approvals for new and existing licenses.³⁰

In the Northern Territory, several regions are subject to special restrictions on the sale of alcohol for harm minimisation purposes. For example, in Alice Springs:

- takeaway alcohol sales are only permitted between 2.00pm to 9.00pm on weekdays, 10.00am to 9.00pm on Saturday and public holidays, and 12noon to 9.00pm on Sundays (pubs and clubs only).
- cask wine and fortified wine is limited to one purchase of either product per person per day and only available between 6.00pm to 9.00pm.³¹

Queensland has successfully sought authorisation from the Australian Competition and Consumer Commission (ACCC) enabling a pro forma liquor accord that allows for:

- price controls such as bans on discounts and drink cards; and
- supply controls such as banning drinking games and particular promotions, in licensed premises.

Authorisation was granted on the basis that the measures were targeted at reducing an identified harm.³²

²⁹ State Government of Victoria. *Reducing the alcohol and drug toll: Victoria's plan 2013 – 2017*. Melbourne: State Government of Victoria. 2012. Accessed from: <http://www.health.vic.gov.au/aod/strategy/>

³⁰ New South Wales Government. *Alcohol and Drug fuelled violence initiatives*. Accessed from: <http://www.nsw.gov.au/alcohol-and-drug-fuelled-violence-initiatives>. 2014

³¹ Northern Territory Government. *Alcohol Restrictions: Central Australia region*. Darwin: Department of Business, Northern Territory Government. 2014. Accessed from: <http://www.dob.nt.gov.au/gambling-licensing/liquor/liquor-restrictions/alcohol-measures/Pages/central-australia.aspx>

³² ACCC Determination Authorisation no. A91224 & A91225, Accessed from: <http://registers.accc.gov.au/content/trimFile.phtml?trimFileTitle=D10+3687371.pdf&trimFileFromVersionId=952568&trimFileName=D10+3687371.pdf>.

While some of these measures may be considered anti-competitive, they are measures which have been deemed appropriate and necessary by the responsible State and local governments as well as the ACCC to reduce and control alcohol-related harms; such that the overall benefits of these measures outweigh reductions in competition. The NAAA urges the National Competition Policy Review to ensure that there are no provisions in the revised NCP that would impede State and Local governments' ability to enact such restrictions.

Public health grounds – not limited to alcohol

Aside from restricting access to alcohol, there are a number of other potentially harmful products where restricting competition has been justified on public health grounds. For example, there are now very strict controls on the sale and advertisement of tobacco that limits the ability for new entrants to compete in the market. In the case of tobacco, the justification for restricting competition is that the public health benefits in reducing smoking rates far outweigh the benefits to the market of allowing businesses to compete without restriction in the sale of a harmful product. The NAAA believes that this same justification applies to the case for restricting the availability of alcohol.

We are reassured that the Competition Policy Review Issues Paper recognises that restraints may be imposed on competition to ameliorate public health and safety concerns. The NAAA reiterates the importance of not only maintaining existing restrictions but also explicitly preserving the ability of governments to impose further restrictions in the public interest as and when they consider appropriate, in any NCP. The National Competition Policy Review should ensure that any new NCP provisions do not seek to impede governments' ability to appropriately regulate to restrict the availability of a potentially harmful commodity, alcohol.

Thank you for the opportunity to provide a submission. If you have any questions regarding our submission or require any additional information please do not hesitate to contact Brian Vandenberg, Executive Officer for the NAAA (naaa@cancervic.org.au).

Yours sincerely



Professor Mike Daube

Director, McCusker Centre for Action on Alcohol and Youth
Co-Chair, National Alliance for Action on Alcohol



Mr Todd Harper

Chief Executive Officer, Cancer Council Victoria
Co-Chair, National Alliance for Action on Alcohol