

---

# **Need for a nationally- consistent approach to alcohol-fuelled violence**

---

**Senate Committee on Legal and  
Constitutional Affairs**

**31 March 2016**

---

## Table of Contents

<b>Acknowledgement</b> .....	<b>2</b>
<b>Executive Summary</b> .....	<b>3</b>
<b>Alcohol-fuelled violence</b> .....	<b>5</b>
<b>Sentencing Issues</b> .....	<b>7</b>
Mandatory sentencing laws not the solution .....	7
Intoxication as a sentencing factor.....	10
Diversionary Programs.....	11
<b>Current status of state and territory laws</b> .....	<b>12</b>
Liquor licensing .....	13
Effectiveness of lockout laws and alcohol service laws .....	14
Advertising and Marketing Restrictions.....	16
Bail requirements .....	16
<b>Aboriginal and Torres Strait Islander People</b> .....	<b>17</b>
<b>Education and information campaigns</b> .....	<b>18</b>
<b>National strategy</b> .....	<b>19</b>
<b>Judicial commissions</b> .....	<b>19</b>
<b>Attachment A: Profile of the Law Council of Australia</b> .....	<b>21</b>

## Acknowledgement

The Law Council acknowledges the assistance of its National Criminal Law Committee, the New South Wales Bar Association and the Law Society of New South Wales in the preparation of this submission.

---

## Executive Summary

1. The Law Council thanks the Senate Legal and Constitutional Affairs References Committee (the Committee) for the opportunity to make a submission to the Committee's inquiry into the need for a nationally-consistent approach to alcohol-fuelled violence (the Inquiry).

2. On 3 February 2016, the following matter was referred to the Committee for inquiry and report:

*The need for a nationally-consistent approach, negotiated, developed and delivered by the Federal Government together with all state and territory governments, to address and reduce alcohol-fuelled violence, including one-punch related deaths and injuries across Australia.*

3. This submission focuses on the following terms of reference for the inquiry:

(a) the current status of state and territory laws relating to:

- bail requirements and penalties surrounding alcohol-related violence, and
- liquor licensing, including the effectiveness of lockout laws and alcohol service laws;

(b) the effectiveness of the current state and territory:

(ii) educational and other information campaigns designed to reduce alcohol-related violence;

(c) the viability of a national strategy to ensure adoption and delivery of the most effective measures, including harmonisation of laws and delivery of education and awareness across the country, and funding model options for a national strategy; and

(d) whether a judicial commission in each state and territory would ensure consistency in judgments relating to alcohol-related violence in line with community standards.

4. It also briefly discusses alcohol-fuelled violence in the context of Aboriginal and Torres Strait Islander people.

5. Key recommendations of this submission include:

- Mandatory minimum penalties for alcohol-fuelled violence offences should be repealed and no new mandatory minimum penalties should be introduced.
- Sentencing legislation which prohibits the use of intoxication as a mitigating factor should be repealed.
- Offences which include an aggravated offence based on intoxication should be repealed and no new aggravated offences based on intoxication should be introduced.

- 
- Consideration should be given to increasing the sentencing options available to a court in relation to alcohol-fuelled violence offenders.
  - Consideration should be given to the inclusion of alcohol-violence diversionary programs.
  - Funding should be provided for further research into the most effective means to control the supply of alcohol and reduce alcohol-related violence.
  - Nationally consistent model legislation should be developed in accordance with the outcomes of such research, to standardise the licencing of the supply of liquor, responsible service of alcohol, and 'lockout' provisions.
  - Consideration should be given to introducing statutory restrictions on alcohol advertising and marketing, including penalising breaches of the advertising code.
  - There should be investment in diagnostic and treatment services, as well as education programs regarding the misuse of alcohol, particularly targeted at Aboriginal and Torres Strait Islander people.
  - The design and implementation of such programs should be led or informed by Aboriginal communities and must be consistent with the principles in the UN Declaration on the Rights of Indigenous Peoples.
  - There should be research into identification of further appropriate community based options which address the diverse legal and non-legal needs of Aboriginal and Torres Strait Islander people.
  - The Commonwealth Government in conjunction with States and Territories should give consideration to implementing a nationwide public education and awareness campaign about the dangers associated with alcohol-fuelled violence.
  - The Commonwealth, State and Territory Governments should give consideration through COAG to entering into a national agreement which becomes responsible for shaping laws governing alcohol-fuelled violence.
  - The development of the national strategy should consider and address the extent to which each jurisdiction is able to ensure consistency in judgements relating to alcohol-fuelled violence in line with community standards.

---

## Alcohol-fuelled violence

6. Alcohol is a disinhibitor and can facilitate aggressive behaviour, including violence.<sup>1</sup> Alcohol-fuelled violence is a complex community problem which can cause serious physical injuries and death. Alcohol intoxication is a well recognised and significant cause of violence, including domestic violence.<sup>2</sup> It can damage relationships, cause significant psychological distress and dissuade patronage in entertainment precincts.
7. Given the apparent strong association between the consumption of alcohol and violence,<sup>3</sup> the Law Council welcomes the current inquiry as an important step in a national conversation about how the negative effects of alcohol can be managed to reduce alcohol-fuelled violence.
8. Alcohol-fuelled violence is not a single issue. It covers a spectrum of behaviour and can range from minor assaults through to death. It can be one instance between strangers in public or it can be a history of escalating behaviour between family members in a home.
9. It is interesting to note the recent comments of William Milne of the Australian Bureau of Statistics National Centre for Crime and Justice Statistics:

*The proportion of people who indicated that they believed alcohol and/or drugs contributed to their most recent incident has remained fairly steady. In 2014-15, three in five (62 per cent) of those experiencing physical assault and half (49 per cent) of those experiencing face-to-face threatened assault believed alcohol and/or drugs contributed.*<sup>4</sup>

10. Dealing with offences involving alcohol-fuelled violence continues to be a problem requiring a tailored approach to deal with the specific root causes of the offending behaviour. Responding to alcohol-fuelled violence requires a multi-disciplinary, multi-pronged approach.
11. Education and legal responses are just some of the available strategies. Other initiatives may also have an impact, for example:
  - (a) Initiatives addressing situational factors such as crowding and lighting, for example enhanced monitoring of behaviour on public transport, staggered closing times and the provision of adequate lighting in places where crowds gather;
  - (b) Enforcement of licensing requirements requiring proper service of alcohol, the management of licenced premises and the appointment of marshals;

---

<sup>1</sup> The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists, Alcohol Policy (March 2016) 10. <<http://www.racp.edu.au/docs/default-source/advocacy-library/pa-racp-ranzcp-alcohol-policy.pdf>>

<sup>2</sup> Ibid.

<sup>3</sup> Anthony Morgan and Amanda McAtamney, 'Key Issues in Alcohol-related Violence', Australian Institute of Criminology (December 2009) citing Graham & Homel 2008. <<http://www.aic.gov.au/publications/current%20series/rip/1-10/04.html>>

<sup>4</sup> Australian Bureau of Statistics 4530.0 Crime Victimisation, Australia (2014-15) <[http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4530.0~2014-15~Media%20Release~Physical%20assault%20falls%20to%20seven%20year%20low%20\(Media%20Release\)~29](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4530.0~2014-15~Media%20Release~Physical%20assault%20falls%20to%20seven%20year%20low%20(Media%20Release)~29)>

- 
- (c) An overview and greater participation in awareness strategies such as alcohol pricing, advertising and availability.

12. As noted by the Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists, there is a clear link between the amount of alcohol consumed and the level of harm that results both for individuals and society:

*The spectrum of harm is also related to the pattern of alcohol consumption. For example, single episodes of acute intoxication can lead to interpersonal violence and injuries and result in emotional trauma; chronic medium to high level consumption is associated with liver and cardiovascular disease, mental health disorders and domestic violence....*<sup>5</sup>

13. In this context, the Law Council notes that data from the Australian Bureau of Statistics indicates that on a per capita basis there were 9.7 litres of pure alcohol available for consumption per person in 2013-14, 1.7% less than the amount in 2012-13 (9.9 litres).<sup>6</sup> As a standard drink consists of 12.5 mls of pure alcohol, this is equivalent to an average of 2.1 standard drinks per day per person aged 15 years and over.<sup>7</sup>

14. While this figure represented a 50-year low in Australian alcohol consumption, concerns appear to remain by health experts that this does not equal a reduction in alcohol-related harm.<sup>8</sup>

15. The biennial Australian Institute of Health and Welfare report of *Australia's Health* has stated that the consumption of alcohol in Australia is widespread and entwined with cultural activities.<sup>9</sup> The report noted that 'excessive consumption is a major cause of road and other accidents, domestic and public violence, crime, liver disease and brain damage, and contributes to family breakdown and broader social dysfunction'.<sup>10</sup>

16. In Australia approximately half of all homicides are alcohol-related.<sup>11</sup> According to the National Drug Strategy Household Survey, in 2007 approximately:

- 1 in 4 Australians were a victim of alcohol-related verbal abuse;
- 13% were made to feel fearful by someone under the influence of alcohol; and
- 4.5% of Australians aged 14 years or older were physically abused by someone under the influence of alcohol.<sup>12</sup>

17. A study funded by the Foundation for Alcohol Research and Education and undertaken by the Centre for Alcohol Policy Research, entitled *The Hidden Harm: Alcohol's Impact on Children and Families* (2015), examined the prevalence and

---

<sup>5</sup> The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists, *Alcohol Policy* (March 2016) 7.

<sup>6</sup> Australian Bureau of Statistics, 'Apparent Consumption of Alcohol, Australia 2013-14'.

<<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4307.0.55.001/>>

<sup>7</sup> Ibid.

<sup>8</sup> Dan Harrison, 'Australian alcohol consumption at 50-year low, ABS says', *The Sydney Morning Herald* (online) May 7 2015. <<http://www.smh.com.au/national/health/australian-alcohol-consumption-at-50-year-low-abs-says-20150506-ggva93.html>>

<sup>9</sup> Australian Institute of Health and Welfare, *Australia's Health 2014*, May 2014, 167.

<sup>10</sup> Ibid.

<sup>11</sup> Australian Institute of Criminology, 'Alcohol and drug related violence'.

<[http://www.aic.gov.au/crime\\_types/violence/alcohol%20and%20drug%20related%20violence.html](http://www.aic.gov.au/crime_types/violence/alcohol%20and%20drug%20related%20violence.html)>

<sup>12</sup> Australian Institute of Health and Welfare, '2007 National Drug Strategy Household Survey', December 2008. <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442459906>>

---

effects of heavy drinking on families and children, and the extent to which they persisted over time.<sup>13</sup> Key findings from the report include:

- in 2011 there were almost 30,000 police reported incidents of alcohol-related domestic violence in the states and territories where data is available, and excluding alcohol-related assaults in Queensland, South Australia, Tasmania and The Australian Capital Territory.
- children are verbally abused, left in unsupervised or unsafe situations, physically hurt or exposed to domestic violence because of others' drinking. Many also witnessed verbal or physical conflict, drinking or inappropriate behaviour.
- over a million children (22% of all Australian children) are estimated to be affected in some way by the drinking of others (2008). 142,582 children were substantially affected (2008), and more than 10,000 Australian children are in the child protection system because of a carers drinking (2006-07).

18. Alcohol has been found to be a significant factor in 50% of cases of domestic physical and sexual violence in Australia. The annual costs of alcohol-attributable domestic violence are estimated to be more than \$46.4 million.<sup>14</sup>

19. Conservative estimates suggest that in 2004–05 the total costs attributable to alcohol-related crime in Australia was \$1.7 billion; the social cost relating to alcohol-related violence (which excludes costs to the criminal justice system) was \$187 million; and the costs associated with the loss of life due to alcohol-related violent crime amounted to \$124 million.<sup>15</sup>

## Sentencing Issues

### Mandatory sentencing laws not the solution

20. As part of concerns about rising levels of alcohol-related violence and fatal assaults, some State Governments have introduced mandatory minimum sentences for a range of offences.

21. In NSW there is currently an offence for 'one punch' assaults, where a person causes the death of another person as a direct or indirect result of the assault.<sup>16</sup> The offence carries a maximum of 20 years imprisonment.

22. Such an offence is deemed aggravated where the offender was intoxicated in public by alcohol or drugs, with a minimum mandatory sentence of 8 years<sup>17</sup> and a maximum sentence of 25 years applicable.

---

<sup>13</sup> Foundation for Alcohol Research and Education, 'The hidden harm: Alcohol's impact on children and families', 24 February 2015. <<http://www.fare.org.au/2015/02/the-hidden-harm-alcohols-impact-on-children-and-families/>>

<sup>14</sup> The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists, Alcohol Policy (March 2016) 10.

<sup>15</sup> Anthony Morgan and Amanda McAtamney, 'Key Issues in Alcohol-related Violence', Australian Institute of Criminology (December 2009) citing Collins & Lapsley 2007.

<sup>16</sup> *Crimes Act 1900* (NSW), s25A.

<sup>17</sup> *Ibid*, s25B.

- 
23. On 24 January 2014, the Law Society of New South Wales provided a submission to the NSW Sentencing Council noting their opposition to the new offence:

*It is the Committees' view that mandatory minimum sentencing has no deterrent effects on offending and that deterrence arises out of fear of being caught, not from the length of the sentence. It is the Committees' further view that mandatory minimum sentencing is very unlikely to be effective in reducing future crime.*

And further:

*It is an established principle that the sentencing of offenders should take place on an individual basis. Mandatory minimum sentencing is a one size fits all form of justice which excludes the discretion of judges. The media release refers to "serious assaults where drugs and alcohol are involved" and a table of offences is also provided. This will create an inflexible penalty structure which excludes the operation of judicial discretion. Mandatory minimum sentencing will prevent the court from being able to give proper consideration to the objective and subjective circumstances of each case which can result in injustice. Penalties, in particular for serious crimes, must be tailored to fit the crime and the offender. It is the Committees' view that every case is unique and needs to be considered in light of the individual circumstances.*

24. In 2009, in relation to sentencing for alcohol-fuelled violence, the NSW Sentencing Council was satisfied:

*That the courts have given guidance in relation to the sentencing of offenders where intoxication is an issue, and the relevant principles are neither in doubt nor overlooked by sentencing judges. Accordingly, [the Sentencing Council] has not made any formal recommendation for the alteration of current sentencing laws and practices, or for the creation of any new offences to deal with alcohol related violence. Nor has [the Sentencing Council] made any recommendations for an increase in the maximum penalties available for the offences examined, since it is satisfied these maximum sentences are appropriate for the potential objective seriousness involved.<sup>18</sup>*

25. Mandatory minimum sentences also exist for other aggravated violence offences.<sup>19</sup>

26. The Law Council acknowledges the potential for serious social harms associated with alcohol-fuelled violence. The inclusion of a mandatory minimum penalty for these offences at the state level are aimed at the objective of ensuring offenders receive sentences that reflect the seriousness of their offending.

27. However, the Law Council is unconditionally opposed to the use of mandatory minimum sentences as a penalty for any criminal offence. This position applies irrespective of the potential harm to any individual or to the community that the conduct sought to be deterred may pose.

---

<sup>18</sup> NSW Sentencing Council, 'Sentencing for Alcohol-related Violence' (March 2009) XIX. <[http://www.sentencingcouncil.justice.nsw.gov.au/Documents/sentencing\\_for\\_alcohol-related\\_violence.pdf](http://www.sentencingcouncil.justice.nsw.gov.au/Documents/sentencing_for_alcohol-related_violence.pdf)>.

<sup>19</sup> For example, the *Sentencing Amendment (Violent Offences) Act 2009* (NT) introduced minimum sentencing provisions for first-time violent offenders for unlawfully causing harm or serious harm to another, aggravated assault causing harm and aggravated assault on a police officer. The *Sentencing Amendment (Mandatory Minimum Sentence) Act 2013* identifies five levels of violent offences with corresponding minimum sentences. Western Australia also provides for 'one punch' offences through section 281 of the *Criminal Code* (WA), and has a mandatory minimum where the offence is committed by an adult offender in the course of conduct that constitutes an aggravated home burglary.

- 
28. The Law Council's Mandatory Sentencing Policy and Discussion Paper describes in detail a number of concerns expressed by the Law Council's Constituent Bodies, the judiciary, other legal organisations and individuals regarding mandatory sentencing. A copy of the Mandatory Sentencing Policy and Discussion Paper are attached.
29. The Law Council has voiced its unconditional opposition to mandatory sentencing as a penalty for any criminal offence on the basis that mandatory sentencing raises the potential for unintended consequences, such as:
- the imposition of unacceptable restrictions on judicial discretion and independence which is inconsistent with rule of law principles;
  - the potential imposition of unjust or unduly harsh sentences;
  - the infringement of a fundamental sentencing principle that a sentence and punishment should be proportionate to the gravity of the offence, having regard to the circumstances of the case;
  - potentially increasing the likelihood of recidivism because prisoners are inappropriately placed in a learning environment for crime. This reinforces criminal identity and fails to address the underlying causes of crime. This has particular relevance to young and first time offenders.
  - undermining the community's confidence in the judiciary and the criminal justice system as a whole. Research demonstrates that when members of the public are fully informed about the particular circumstances of a case and the offender, 90% view judges' sentences as appropriate;<sup>20</sup> and
  - unjust outcomes, particularly for vulnerable groups within society: indigenous peoples, young adults, juveniles, persons with a mental illness or cognitive impairment and the impoverished.<sup>21</sup>
30. In addition, it has been the experience of prosecutors that mandatory minimum penalties mean that accused persons are less likely to enter pleas of guilty because of the prescribed minimum.<sup>22</sup> This has a significant impact on the courts and the resources of prosecuting agencies.<sup>23</sup>
31. For these reasons, the Law Council unconditionally opposes mandatory sentencing for alcohol-fuelled violence crimes and recommends that such existing measures be repealed and that no new mandatory minimum penalties be introduced.

**Recommendation:**

- **Mandatory minimum penalties for alcohol-fuelled violence offences should be repealed and no new mandatory minimum penalties should be introduced.**

---

<sup>20</sup> K Warner, J Davis, M Waler, R Bradfield & R Vermey, "Public Judgement on Sentencing: Final results of the Tasmanian Jury Study", *Trends & Issues in Crime and Criminal Justice*, Australian Institute of Criminology, February 2011, 3.

<sup>21</sup> Law Council of Australia, *Policy Position: Mandatory Sentencing*, May 2014.

<sup>22</sup> Director of Public Prosecutions (NSW), Submission 3 to the Senate Legal and Constitutional Affairs Committee's Inquiry into the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*, 1 August 2014, 1-2.

<sup>23</sup> Ibid.

---

## Intoxication as a sentencing factor

32. In 2014 the *Crimes (Sentencing Procedure) Act 1999* (NSW) was amended to create a special sentencing rule for self-induced intoxication. Section 21A(5AA) of the Act provides:

*In determining the appropriate sentence for an offence, the self-induced intoxication of the offender at the time the offence was committed is not to be taken into account as a mitigating factor.*

33. Before the introduction of this section, an offender's intoxication could explain an offence but ordinarily did not mitigate the penalty.<sup>24</sup> The NSW Court of Criminal Appeal has endorsed the statement in *Hasan v The Queen* [2010] VSCA 352 at [21] that:

*...courts around Australia have consistently rejected the proposition that intoxication can mitigate the seriousness of an offence or reduce the offender's culpability. An 'out of character' exception is acknowledged to exist, but it has almost never been applied.*<sup>25</sup>

34. As noted in a Special Bulletin by the Judicial Commission of New South Wales,<sup>26</sup> the new subsection 21A(5AA) abolished the 'out of character' exception, and abolished that part of *R v Fernando* (1992) 76 A Crim R 58 that the High Court approved in *Bugmy v The Queen* [2013] HCA 37:

*The propositions stated in Fernando are largely directed to the significance of the circumstance that the offender was intoxicated at the time of the offence. As Wood J explained, drunkenness does not usually operate by way of excuse or to mitigate an offender's conduct. However, his Honour recognised that there are Aboriginal communities in which alcohol abuse and alcohol-related violence go hand in hand. His Honour considered that where an offender's abuse of alcohol is a reflection of the environment in which he or she was raised it should be taken into account as a mitigating factor.*<sup>27</sup>

35. In 2009, prior to the introduction of subsection 21A(5AA), the NSW Sentencing Council gave consideration to whether or not the *Crimes (Sentencing Procedure) Act 1999* (NSW) should be amended to provide that intoxication be taken into account as an aggravating factor in sentencing. The report noted the arguments in favour of such an amendment,<sup>28</sup> however, found the arguments to the contrary to be more persuasive, including that:

- *the existing law adequately provides for intoxication to be taken into account;*
- *its adoption would give rise to inflexibility;*

---

<sup>24</sup> *Bourke v R* (2010) 199 A Crim R 38 at [26].

<sup>25</sup> See *GWM v R* [2012] NSWCCA 240 at [82] and *ZZ v R* [2013] NSWCCA 83 at [110].

<sup>26</sup> Judicial Commission of New South Wales, 'Special Bulletin 6 – Crimes and Other Legislation Amendment (Assault and Intoxication) Act 2014'.

<[http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/special\\_bulletin\\_06.html](http://www.judcom.nsw.gov.au/publications/benchbks/sentencing/special_bulletin_06.html)>

<sup>27</sup> *Bugmy v The Queen* [2013] HCA 37 per French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ at [38].

<sup>28</sup> Including that some suggest the use of alcohol as a mitigating factor in sentencing is widespread and inappropriate; current sentencing practices do not adequately address community expectations regarding the seriousness with which such offences should be treated; the prevalence of alcohol-related violent offences warrant special treatment; and the inclusion of intoxication in the table of s 21A factors would send a strong message to potential offenders that crimes involving intoxication will not be tolerated: NSW Sentencing Council report, pg96.

- *it would offend against the principle of equality of the act;*
- *it would risk having a disproportionate effect on disadvantaged members of the community, particularly Aboriginal and Torres Strait Islanders, the homeless and those with cognitive or mental impairment;*
- *it would give rise to a practical difficulty in its application, having regard to the problems in identifying a particular level of 'intoxication' at which such a provision would apply, and in securing an objective measurement of an offender's level of intoxication at the time of the offence.<sup>29</sup>*

36. In particular, the Council considered that it would be illogical to require an intoxicated offender who was likely to have reacted spontaneously and without premeditation, to face a potentially longer sentence than a sober offender who committed the same act.<sup>30</sup>

37. In the United Kingdom intoxication of the offender at the time of the offence is considered to be an aggravating factor,<sup>31</sup> however, the NSW Sentencing Council has noted that commentators have argued that intoxication can continue to be a mitigating factor at sentence, for example when the offence is 'out of character'.<sup>32</sup>

38. In New Zealand, intoxication is not treated as an aggravating factor<sup>33</sup>, but nor is it considered a mitigating factor. Section 9 of the *Sentencing Act 2002* (NZ) provides that:

*... the court must not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by the voluntary consumption or use of alcohol or any drug or other substance...*

#### **Recommendations:**

- **Sentencing legislation which prohibits the use of intoxication as a mitigating factor should be repealed.**
- **Offences which include an aggravated offence based on intoxication should be repealed and no new aggravated offences based on intoxication should be introduced.**

## **Diversionsary Programs**

39. Consideration should be given to increasing the sentencing options available to a court, to provide for greater discretion in sentencing alcohol-fuelled violence offenders.

40. An option which would provide a more tailored approach are diversionsary programs which take offenders out of the traditional criminal justice system on the condition that they participate in programs and therapy aimed at addressing the root cause of their behaviour.

<sup>29</sup> NSW Sentencing Council, 'Sentencing for Alcohol-related Violence' (March 2009).

<sup>30</sup> *Ibid*, 97.

<sup>31</sup> UK Sentencing Guidelines Council, *Overarching Principles: Seriousness*; Guideline (2004) [1.22].

<sup>32</sup> NSW Sentencing Council, 'Sentencing for Alcohol-related Violence' (March 2009) 85.

<sup>33</sup> It has been held that the consumption of alcohol or drugs does not normally justify an increase in the starting point: *R v Finau* [2003] NZCA 129, [16].

- 
41. Throughout Australia, there are currently programs that divert people who have been apprehended or sentenced for minor drug offences away from conventional criminal justice processes, with the aim of minimising their level of contact with the formal system, and allowing them to receive treatment.<sup>34</sup>
42. As with drug diversion programs, there should be an option to refer people charged with some alcohol-fuelled violence offences to behaviour change programs at an early stage. For example, in NSW, the Magistrates Early Referral Into Treatment Program enables referrals at the time of arrest or at the commencement of proceedings, without prejudice to a person's opportunity to plead not guilty.<sup>35</sup>
43. The Law Council has previously noted the potential benefits of justice reinvestment. In its submission to the Senate Legal and Constitutional Affairs References Committee on the inquiry into the value of a justice reinvestment approach to criminal justice in Australia, the Law Council noted:

*Justice reinvestment has been mentioned in a number of reports in recent years as a potential model that Australia could adopt as an alternative means of delivering justice. Indeed, in its report on its inquiry into Access to Justice in 2009, the Senate Legal and Constitutional Affairs References Committee approved justice reinvestment as a “concept to divert funds from incarceration to community-based programs and services that address the underlying causes of crime”,<sup>36</sup> and recommended that “the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.”<sup>37</sup>*

**Recommendations:**

- **Consideration should be given to increasing the sentencing options available to a court in relation to alcohol-fuelled violence offenders.**
- **Consideration should be given to the inclusion of alcohol-violence diversionary programs.**

## **Current status of state and territory laws**

44. It would be beneficial to have greater uniformity in criminal law provisions that deal with the consequences of alcohol-fuelled violence. Such regulatory approaches would, for example, need to consider standardising the licencing of the supply of liquor, responsible service of alcohol and ‘lockout’ provisions.
45. A national approach to these provisions would make it easier for interstate and international travellers to understand and comply with provisions across Australia.

---

<sup>34</sup> Australian Institute of Health and Welfare, *Alcohol and other drug treatment and diversion from the Australian criminal justice system*, (October 2014) 4.

<<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129549012>>

<sup>35</sup> Magistrate Jeff Linden, *Magistrates Early Referral Into Treatment Program (MERIT)*, Judicial Commission of New South Wales. <[http://www.judcom.nsw.gov.au/publications/selected\\_papers/merit](http://www.judcom.nsw.gov.au/publications/selected_papers/merit)>

<sup>36</sup> Senate Legal and Constitutional Affairs References Committee, *Report of Inquiry into Access to Justice*, 8 December 2009, xviii.

<sup>37</sup> *Ibid*, Recommendation 21, xxiii.

- 
46. The content of any proposed national scheme would need to be the subject of very careful and detailed investigation, research and drafting.

## Liquor licensing

47. There needs to be greater attention given to the enforcement of rules against serving intoxicated persons and selling takeaway liquor at certain times. Reliance upon voluntary compliance by providers is unrealistic given the inherent conflict of interest that exists in that liquor licensees reap direct profits from patrons who drink more excessively than those who drink less.

48. The 2009 NSW Sentencing Council report concluded that the response to alcohol-related violence, and the steps required to reduce its incidence, lay more in the hands of those involved in the liquor industry and in public education, than in the criminal justice system, noting its support for:

*... the introduction of strict licensing laws that will curb excessive drinking, and that will impose professional standards on bar and security staff of the kind that will allow timely and effective intervention in the kinds of incidents, on such premises, that can erupt into violence.<sup>38</sup>*

49. An effective solution may be to have licensing police shut down venues temporarily or permanently when licensing laws are breached. Licensing laws could further contribute to reducing intoxication, for example by:

- a) banning the sale of 'shots' after a certain time or at all;
- b) allowing patrons to purchase a single drink at a time after a certain hour and not allowing drinks to be purchased for others (both discouraging 'shouts' and allowing a sobriety check on the actual drinker, not just the person buying the drinks);
- c) banning the sale of caffeinated alcoholic drinks after a certain hour;
- d) selling mixed drinks in diluted form only (e.g. no 'double-shots' in a small glass);
- e) banning the use of glass vessels after certain times or in certain venues; and
- f) requiring the provision of free tap water preferably automatically with every drink after a certain time.

50. NSW legislation in 2014 introduced measures including temporary bans of 48 hours for troublemakers; a prohibition on takeaway alcohol sales after 10pm for bottle shops, hotels and clubs; a two year freeze on approvals for new and existing liquor licenses; the revoking of competency cards and disqualifications for bar staff breaching responsible service of alcohol requirements; and licensee fines of up to \$11,000 and/or imprisonment of up to 12 months, as well as strikes under the Government's 'Three Strikes' disciplinary scheme for failure to comply with the new laws.<sup>39</sup>

---

<sup>38</sup> NSW Sentencing Council, 'Sentencing for Alcohol-related Violence' (March 2009) 114.

<sup>39</sup> New South Wales Government, 'New alcohol laws now in place – Sydney's alcohol laws'.

<<http://www.nsw.gov.au/newlaws>>

---

51. On Wednesday 17 February 2016, the Queensland Government passed the Tackling Alcohol-Fuelled Violence Legislation Amendment Bill 2015 which includes the following measures:

- A ban on supply of high-alcohol content drinks after 12 midnight;
- A reduction on extended trading hours, including changes for Safe Night Precinct licensees;
- Power for an investigator to require a person to produce documents that are relevant to the administration or enforcement of the *Liquor Act 1992* (QLD);
- The ability for results of a breath test analysis to be used as evidence in prosecutions against a licensee (as supplementary evidence) where there is other evidence to suggest a licensee may have committed an offence; and
- Lockout provisions.

## Effectiveness of lockout laws and alcohol service laws

52. In 2014, New South Wales legislation introduced 1.30am lockouts and 3am last drinks laws across the Sydney CBD Entertainment Precinct. The NSW Bureau of Crime Statistics and Research produced a study on the impact of the liquor licence reforms on assaults in NSW which found:

*Following the reforms statistically significant and substantial reductions in assault occurred in both the Kings Cross (down 32%) and Sydney CBD Entertainment Precinct (down 26%) (including a 40% decline in the sub-section George Street – South). A smaller but still significant reduction in assault occurred across the rest of NSW (9% decrease).<sup>40</sup>*

53. Evidence indicates that increased opportunities for consumption of alcohol in public places may increase the number of assaults and alcohol-related harms. The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists notes that Australian and international studies have indicated that:

*...increased trading hours for licensed outlets are accompanied by substantially higher levels of alcohol consumption and associated harms such as drink-driver road crashes, serious violent offences committed in the early hours of the morning, and assaults per 100,000 inhabitants. Further studies provide indirect evidence of this relationship, showing that over 40% of assaults at licensed premises occur after midnight.<sup>41</sup>*

54. Prior to 2010 Tim Stockwell and colleagues examined 49 studies from various countries concerning the effects of trading hours and violence. The review:

*... concluded that the balance of reliable evidence from the available international literature suggests that extended late-night trading hours lead to increased*

---

<sup>40</sup> NSW Bureau of Crime Statistics and Research, 'Crime and Justice Bulletin', Number 183 (April 2015) 1. <<http://www.bocsar.nsw.gov.au/Documents/CJB/CJB183.pdf>>

<sup>41</sup> The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists, Alcohol Policy (March 2016) 19.

---

*consumption and related harms. Further well-controlled studies are required to confirm this conclusion.*<sup>42</sup>

55. A review by Hahn et al. in 2010 found:

*There was sufficient evidence in ten qualifying studies to conclude that increasing hours of sale by 2 or more hours increases alcohol-related harms. Thus, disallowing extensions of hours of alcohol sales by 2 or more should be expected to prevent alcohol-related harms, while policies decreasing hours of sale by 2 hours or more at on-premises alcohol outlets may be an effective strategy for preventing alcohol-related harms.*<sup>43</sup>

56. A 2010 study of the Newcastle liquor restrictions concluded that a 'restriction in pub closing times to 3.30am in Newcastle, NSW, produced a large relative reduction in assault incidence or 37% in comparison to a control locality'.<sup>44</sup> Professor Kypri has explained that 'we saw one-third for a two-hour change in trading'.<sup>45</sup>

57. A 2011 Norwegian study found that each additional 1-hour extension to the opening times of premises selling alcohol was associated with a 16% increase in violent crime.<sup>46</sup>

58. Lockout laws need to be carefully considered before being implemented and before the scope of their operation is determined. There are competing factors to be balanced, such as:

- a) their effectiveness in reducing violent crime in the particular area;
- b) whether the crime is simply displaced to other areas;
- c) the extent to which other measures (including limiting alcohol intake) could reduce violent crime; and
- d) the financial and cultural effect on the vitality of a particular entertainment district.

**Recommendations:**

- **Funding should be provided for further research into the most effective means to control the supply of alcohol and reduce alcohol-related violence.**
- **Nationally consistent model legislation should be developed in accordance with the outcomes of such research, to standardise the licencing of the supply of liquor, responsible service of alcohol, and 'lockout' provisions.**

---

<sup>42</sup> Stockwell T, Chikritzhs T. 'Do relaxed trading hours for bars and clubs mean more relaxed drinking? A review of international research on the impacts of changes to permitted hours of drinking' *Crime Prevention and Community Safety* (2009) 11(3): 153-70.

<sup>43</sup> Hahn, R.A., Kuzara J.L., Elder R., Brewer R., Chattopadhyay S., Fielding J, et al. 'Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms.' *American Journal of Preventative Medicine* (2010) 39(6): 590-604.

<sup>44</sup> Queensland Parliament Legal Affairs and Community Safety Committee, *Tackling Alcohol-fuelled Violence Legislation Amendment Bill 2015*, Report No. 20, February 2016, 9 citing Kypri et al, 2010, 1.

<sup>45</sup> *Ibid.*

<sup>46</sup> Rossow I, Norstrom T. 'The impact of small changes in bar closing hours on violence: The Norwegian experience from 19 cities.' *Addiction* (2012); 107:530-7.

---

## Advertising and Marketing Restrictions

59. The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists Alcohol Policy notes that research indicates that advertising contributes to an increase in alcohol consumption among existing drinkers and encourages non-drinkers, particularly young people, to become drinkers.<sup>47</sup>
60. The Policy further notes that current regulations on alcohol advertising rely on self-regulation in respect of both content and placement of advertising, and there is a lack of legally enforceable sanctions for instances when regulation breaches occur.<sup>48</sup>
61. In light of such concerns about the ineffectiveness of a predominantly self-regulatory approach to alcohol advertising and marketing, consideration should be given to more comprehensive restrictions.

### Recommendation

- **Consideration should be given to introducing statutory restrictions on alcohol advertising and marketing, including penalising breaches of the advertising code.**

## Bail requirements

62. Generally, a judicial officer or authorised officer may impose conditions or a conduct requirement<sup>49</sup> on a grant of bail in the public interest having regard to the nature of the offence for which the accused is in custody and the circumstances of the accused.<sup>50</sup> Conditions may be imposed to ensure (among other things) that the accused does not commit an offence while on bail, or endanger the safety, welfare or property of any person.<sup>51</sup>
63. Bail conditions can include enforcement conditions that are imposed for the purpose of monitoring or enforcing compliance with another bail condition.<sup>52</sup> For example an enforcement condition imposed in connection with an underlying bail condition that requires a person to refrain from consuming alcohol may require the person to undergo testing for alcohol as directed by a police officer.
64. The option for a judicial officer to include a condition not to consume alcohol as a bail requirement is either explicit in bail legislation<sup>53</sup>, or could come under the general provision that allows any other condition that the court considers appropriate to impose in relation to the conduct of the accused.
65. The Law Council has not received feedback from its Constituent Bodies or Advisory Committees indicating that current bail laws are ineffective when dealing with alcohol-fuelled violence.

---

<sup>47</sup> The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists, Alcohol Policy (March 2016) 24.

<sup>48</sup> Ibid.

<sup>49</sup> *Bail Act 2013* (NSW) s25. A conduct requirement is a requirement that the accused people do or refrain from doing anything.

<sup>50</sup> *Bail Act 1982* (WA), s17; *Bail Act 2013* (NSW), Div 2;

<sup>51</sup> *Bail Act 1982* (WA), Sch 1, Pt D, cl 2; *Bail Act 1977*(Vic) s5(3);

<sup>52</sup> *Bail Act 1982* (WA), s30; *Bail Act 2013* (NSW), s30;

<sup>53</sup> See for eg s5(2A)(i) of the *Bail Act 1977* (Vic).

---

## Aboriginal and Torres Strait Islander People

66. In 2014, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs undertook an inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities. In a submission to the inquiry, the Australian Drug Foundation made a number of comments and recommendations.<sup>54</sup>

- a) *It is important to acknowledge that Aboriginal and Torres Strait Islander people are more likely than non-Aboriginal and Torres Strait Islander people to abstain from alcohol (24.5% compared to 19.0%) but it is equally important that those Aboriginal and Torres Strait Islander people who do drink alcohol are more likely to do so at risky or high risk levels for both short term harm (52%: 40%) and long term harm (31.0%: 20%).*<sup>55</sup>
- b) *The impact of alcohol upon Aboriginal and Torres Strait Islander populations has been documented many times: excessive consumption of alcohol is directly and indirectly responsible for high rates of mortality and morbidity.*<sup>56</sup>
- c) *The social and economic determinants of health must be addressed simultaneously with concerted action to reduce excessive and problematic drinking in Aboriginal and Torres Strait Islander communities*<sup>57</sup>.
- d) *Indigenous people and communities deserve access to the full suite of treatments for alcohol disorders and, whenever appropriate, those treatments must be adapted for delivery in ways that are culturally sensitive*<sup>58</sup>.

67. There are serious inequities of access to treatment services for drug and alcohol abuse for people living in regional and remote NSW and disproportionate disadvantage for Aboriginal people living in remote communities with even more diminished access to detoxification and rehabilitation services.

68. Furthermore, and fundamentally, there are high numbers of Aboriginal people entering and cycling through the criminal justice system with high levels of untreated mental and cognitive disabilities, often combined with substance addiction. The research undertaken through the *Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System Project* clearly illustrates that offending and reoffending could be prevented by early intervention and community-based support that address the drivers of alcohol-fuelled violence<sup>59</sup>.

69. There is a need for investment into sufficient and accessible diagnostic and treatment services, and education programs regarding the misuse of alcohol to reduce the levels of offending fuelled by alcohol-fuelled violence, including those targeted at Aboriginal and Torres Strait Islander people.

---

<sup>54</sup> Australian Drug Foundation *Inquiry into the Harmful use of Alcohol in Aboriginal and Torres Strait Islander Communities* (April 2014) 5

<[http://www.adf.org.au/images/stories/Policy\\_Advocacy/SubHarmfulAlcoholInquiry\\_April2014](http://www.adf.org.au/images/stories/Policy_Advocacy/SubHarmfulAlcoholInquiry_April2014)>.

<sup>55</sup> Australian Institute of Health and Welfare *Substance use among Aboriginal and Torres Strait Islander People* (February 2011) <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418265>>.

<sup>56</sup> Above n6 8.

<sup>57</sup> Ibid 3.

<sup>58</sup> Ibid.

<sup>59</sup> University of NSW *Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System Project* <<https://www.mhdc.d.unsw.edu.au/>>

- 
70. The design and implementation of these programs should be led by Aboriginal communities, or at least informed by the needs and approaches identified by the specific Aboriginal communities targeted. The programs must be consistent with the principles in the UN Declaration on the Rights of Indigenous Peoples, particularly in relation to decision-making, self-determination and consent. The programs should also be trauma-informed and culturally appropriate.
71. In addition there should be research into identification of further appropriate community based options which address the diverse legal and non-legal needs of affected communities, and which may expand the scope of existing community based sentencing responses.

**Recommendations:**

- **There should be investment in diagnostic and treatment services, as well as education programs regarding the misuse of alcohol, particularly targeted at Aboriginal and Torres Strait Islander people.**
- **The design and implementation of such programs should be led or informed by Aboriginal communities and must be consistent with the principles in the UN Declaration on the Rights of Indigenous Peoples.**
- **There should be research into identification of further appropriate community based options which address the diverse legal and non-legal needs of Aboriginal and Torres Strait Islander people.**

## **Education and information campaigns**

72. The Law Council believes that there should be a nationwide public education and awareness campaign about the dangers associated with alcohol-fuelled violence.<sup>60</sup> The educational and information campaign could be tied to a national strategy and be intended to accomplish specific objectives that support the strategy. Objectives of the educational and information campaign could include encouraging:
- understanding of the dangers of alcohol-fuelled violence;
  - understanding of the laws governing alcohol-fuelled violence; and
  - access to appropriate services (for example, mental health services).

**Recommendation:**

- **The Commonwealth Government in conjunction with States and Territories should give consideration to implementing a nationwide public education and awareness campaign about the dangers associated with alcohol-fuelled violence.**

---

<sup>60</sup> Similar government campaigns include the [National Drugs Campaign](#) and the [Quit Smoking Campaign](#).

---

## National strategy

73. The Australian, State and Territory Governments could enter into a national agreement (through COAG) which becomes responsible for shaping laws governing alcohol-fuelled violence.
74. The aim of the agreement could be to encourage the adoption of consistent alcohol-fuelled violence laws in all States and Territories to ensure a uniform national approach to regulation. The Australian Government could work with State and Territory Governments to develop new legislative and policy initiatives in support of the agreement and to improve community safety.
75. Government agencies are best placed to advise the Committee on the viability of such a national strategy.

### Recommendation:

- **The Commonwealth, State and Territory Governments should give consideration through COAG to entering into a national agreement which becomes responsible for shaping laws governing alcohol-fuelled violence.**

## Judicial commissions

76. Paragraph (d) of the Terms of Reference of the Inquiry require the Committee to consider whether a judicial commission in each state and territory would ensure consistency in judgments relating to alcohol-related violence in line with community standards.
77. This will depend largely on what is meant by 'judicial commission'.
78. The Law Council recognises the importance of maintaining public confidence in convictions and sentencing decisions.
79. The Judicial Commission of New South Wales plays an important role in NSW in assisting the courts to achieve consistency in sentencing and organising an appropriate scheme of continuing education and training of judicial officers. Each State and Territory should have appropriate mechanisms to fulfil such functions, which is separate from the question relating to examining complaints against judicial officers.
80. In some States, the work of Sentencing Councils may also inform judicial sentencing and public perception. Sentencing Councils, through the process of public consultation, polling, community outreach and education programs, may raise public and judicial awareness about alcohol-fuelled violence convictions and sentencing.
81. The Law Council appreciates that the establishment of state and territory bodies that assist courts in achieving consistency in sentencing is ultimately a matter for State and Territory Governments.

---

**Recommendation:**

- **The development of the national strategy should consider and address the extent to which each jurisdiction is able to ensure consistency in judgements relating to alcohol-fuelled violence in line with community standards.**

---

## **Attachment A: Profile of the Law Council of Australia**

---

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2016 Executive as at 1 January 2016 are:

- Mr S. Stuart Clark AM, President
- Ms Fiona McLeod SC, President-Elect
- Mr Morry Bailes, Treasurer
- Mr Arthur Moses SC, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Michael Fitzgerald, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.