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15 December 2011

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**PRIVATE AND CONFIDENTIAL**

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Mr Bryce Wilson  
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Dear Sir

**RE: WOOLWORTHS LIMITED - VARIOUS OUTSTANDING APPLICATIONS FOR  
PACKAGED LIQUOR LICENCES – LIQUOR PRICING ISSUES.**

We refer to your letter dated 30 November 2011 and our interim response of 5 December 2011. We also refer to the recent exchange of emails between the writer and yourself, where you sought our client's confirmation that our letter of 5 December 2011 comprised our client's entire submission in response to the specific points raised by the Authority in its letter of 30 November 2011.

The purpose of this letter is to confirm what is relied upon by our client in response, namely:-

- A. Our correspondence dated 5 December 2011;
- B. Our correspondence dated 2 March 2011, with respect to the Tura Beach Liquor Application (including your response of 7 October 2011);

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- C. The additional points outlined by this correspondence, which must viewed in association with the abovementioned two letters;
- D. The **attached** correspondence from consultancy firm Duane Location (an expert economics advisory firm with extensive experience in market analysis) addressed to Mr Shane Tremble of Woolworths Limited ("WOW") dated 12 December 2011 (the "DL Correspondence").

It is noted that the concerns of the Authority relate to *"the effect that heavily discounted, or very cheap alcohol products are being sold by packaged liquor stores"* and *"what role, if any, concerns regarding liquor pricing should play when the Authority considers the social impact of granting a new packaged liquor licence"*.

The Authority has provided to us: Liang W and Chikritzhs T: *"Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability"* Drug and Alcohol Review (September 2011) (the "Paper"). Our client has addressed aspects of the Paper by our letters dated 2 March 2011 and 5 December 2011. It is therefore not proposed to touch upon the specifics of this Paper again. The response previously provided explains why that the Paper cannot be relied upon for present purposes.

With respect to the DL Correspondence referred at item "D" above, its research is relied upon by WOW, which is summarised in its conclusion as follows:-

*Overall all of the factual evidence produced indicates that the opening of a large format liquor store has not resulted in increased consumption of alcohol on a per capita basis in Australia, or resulted in significant price deflation across any category (of liquor product).*

*Further, these large format liquor stores provide greater convenience for resident by providing a wide range of goods across all alcoholic categories for people generally up to a 5-10km radius around their sites.*

In addition to the DL Correspondence (which the Authority has not reviewed previously), our client's submits the following:-

### **Introduction**

1. As the Authority is aware WOW operates three brand names in NSW (namely *Dan Murphy's*, *BWS – Beer Wine Spirits* and *Woolworths Liquor*). For the convenience of the Authority WOW operates 47 *Dan Murphy's* stores, 116 *BWS – Beer Wine Spirits* ("BWS") stores and 173 *Woolworths Liquor* ("WL") stores in NSW today.
2. Whilst some emphasis on the *Dan Murphy's* brand has been highlighted in this response, this is so because the public may perceive a higher level of

“discounting” of liquor associated with that brand name. In general however the information provided to the Authority applies across all WOW brand names.

### **Pricing in General**

3. WOW confirms within its *liquor applications* (where it is appropriate to do so) that there is no evidence that any unreasonable price reductions will occur when a particular WOW stores opens. It states that the “standard NSW prices” within each brand name are the same and that no matter where that particular brand name store is located within the State, the customer will find the majority, if not all, of its liquor products are sold at the same price. This however depends on the location of the new store, as WOW has previously confirmed an individual store will match (or perhaps beat but only slightly) local prices, on selected well known brands, where its “standard NSW price” is above that of the local competition.
4. Today there are many opportunities for competitive pre-packaged take-away liquor purchases to be made (either through internet sales (including WOW’s own on-line stores); at existing retail liquor stores; at hotels through attached bottleshops or over-the-counter sales; or at Clubs that are permitted to make such sales to their members). Most so called independent retail liquor stores are members of a buying group, which in turn means they have significant buying power from the major suppliers, which permits them to offer liquor at very competitive prices. This position is also supported by the pooling of resources available to the buying group by way of group type advertising, which is promoted through various media outlets such as newspaper, television, and radio advertisements. Whilst submitters can place significant weight on “pricing” at WOW stores, this does not mean more alcohol is consumed by the population in the applicable locality.

### **“Specials”, “Pricing” and Existing WOW stores**

5. Within our 5 December 2011 correspondence evidence was provided that “discounting” is offered throughout NSW and that the pricing at, for example, *Dan Murphy’s* stores is not dissimilar to what is already widely available to the public. For example, a comparison was made of the cheapest “cleanskin” bottle of wine sold on a regular basis at Dan Murphy’s stores at \$2.99 (which equates to \$15.95 for a 4 litre cask) and this was compared to a 4 litre cask of wine sold at Quakers Hill Cellars (and at many other retail liquor outlets in NSW) at \$10.99. Additionally and as clearly stated in all Dan Murphy’s *liquor applications*, Dan Murphy’s sells predominantly premium brands. The brands recently featured in Dan Murphy’s advertising material are overwhelmingly positioned at the premium end of the market and on a “cost per standard drink” basis there is not a single line that would be lower in cost than one could get by purchasing a cheap 4 litre cask from virtually any outlet in NSW.
6. We are aware that the Authority has been quoted as stating, in recent media coverage on this issue, that it has been “concerned about alcohol pricing for

*some time but pre-Christmas advertising by the supermarket chains has caused it to act. Coles has been running advertisements for its 1st Choice liquor superstores stating "war declared on liquor prices". Whilst WOW does not support the aggressive nature of the advertising recently launched by their major competitor, there is no indication that this is other than a marketing ploy. There is no evidence that prices are any lower now than they have been in past years (whether looked at over a longer period of time, such as 12 months, or at this time of the year).*

7. With respect to "specials" (with specials being a one off "price" that runs for a short period of time) and "pricing" at WOW stores, there is no evidence that "specials" offered at existing WOW stores means more alcohol is consumed by the population. It may be that the customer ends up with a few more dollars in their pocket at the end of the transaction, or that they may "trade up" to a brand that is usually beyond their budget, but this does not mean more alcohol is consumed by that customer.
8. As an example only, the Applicant confirms that it recently offered "Rosemount Chardonnay" for \$5.90 a bottle (with any six) for a short period of time at its Dan Murphy's stores. Whilst this "special" price attracted much media attention at the time of offer, this did not in turn mean that customers, who were attracted to that price and who purchased the "Rosemount Chardonnay", consumed that product in any way which was different to the manner that they would otherwise consume a liquor product of that nature. A person may be holding a function or event or some form of celebration and wish to provide wine to their guests. These persons, when making a choice in purchasing several bottles of wine for that purpose, might choose the product on special, particularly if it is a well known and quality product at a cheaper than normal price over another selection.
9. The evidence available to WOW, through its internal figures, is that when a "special" is offered, customers may purchase a number of the same item that is on special, but when the item returns to its regular price there is a significant drop off of purchases made for that item (more so than at any other time). This in turn means that a customer may purchase, for example, two cartons of beer one week when the product is on "special" but the following week, when the product returns to its regular price, they do not have a need to make the same or any purchase. Due to the competitive nature of the industry customers are well aware that their favourite brand is likely to be sold as a special at some point and consequently many will hold off purchasing it until this occurs and purchase sufficient quantities to meet their needs when it does.
10. The above is consistent with existing consumer behaviour in Australia for every market commodity. If a particular breakfast cereal is on special one week, a customer generally purchases more than 1 box. The following week (when the item returns to its regular price) there is a decline in purchases for that item, but in the following weeks after the special ends the demand for that item returns to

its normal level where it plateaus, until the item then returns to a "special" price, and the above scenario is repeated again. There is nothing unusual or of concern with the above activity. The customer does not consume the box of cereal in one day as opposed to a week, but holds the second box over to the following week when it is consumed through their existing pattern of behaviour for that particular item. The same can be said and applied to liquor purchased from WOW stores.

11. The evidence within the Paper is not specific enough with respect to *package liquor licences*, and the arguments with respect to alcohol availability are completely mischievous when the retail sale of alcohol is already available in the applicable locality. This is because a new retail liquor store does not introduce new drinkers, it simply provides the existing drinkers with a choice. There is no evidence that a consumer drinks more because the "price" of a particular product is on "special". Whilst a consumer drinks the same volume of alcohol, it is accepted that the choice of product, or the outlet from which they choose to purchase it from, may change (as set out above).
12. The Paper is flawed as Dr Chikritzhs' view and purported evidence is specifically designed for the purposes of restricting outlet density. Dr Chikritzhs is a well known advocate for strict restriction on alcohol availability. She has given evidence to Courts and administrative bodies on a number of occasions in opposition to WOW'S *licence applications* at licensing hearings in Victoria and to the State Administrative Tribunal in Western Australia. However on those occasions her evidence was rejected and the licences in question were granted. (see our letter of 2 March 2011). Even those who believe that there is a direct causal link between alcohol violence and anti-social behaviour (and this link is far from proven) acknowledge that for harm to result the alcohol must be consumed. There is ample evidence to support the contention that additional volumes of alcohol sold in a particular store are offset by reduced volumes sold in other outlets. There are also some very significant questions around the integrity of the data used in research in this area, including:-
  - (a) NSW does not collect data on liquor sales from licensed premises.
  - (b) Even in those jurisdictions that do collect this data (WA and NT), wholesale not retail sales are used.
  - (c) In an off-premise context the data can provide some indication of the amount of alcohol sold however it cannot define when or where it is consumed.
  - (d) Dan Murphy's acts as a "wholesale" or "cash and carry" business to many restaurants, sporting clubs, licensed cafes, nightclubs, even other liquor retailers.

### **"Pricing" and New WOW stores**

13. WOW repeats that customers to new WOW stores are drawn from other less attractive (to the public) retailers, which may be due to, for example, a convenience factor. Those stores could include WOW outlets in the trade area

or retail liquor stores operated by other persons or organisations, however there is no evidence to support the allegation that a new WOW store brings with it any substantial change to the price liquor is sold to the community.

14. Whilst the Authority has stood over the Dan Murphy's Wolli Creek *liquor application* until this response has been provided, the position at Wolli Creek is that the nearest other Dan Murphy's store is at Alexandria (see paragraph 1.7 of the *Statement of Impact*).
15. The Authority is aware that WOW, in the majority of its applications, obtains trade area assessments by independent consultants who are an expert in that field. A trade area assessment was obtained for Wolli Creek in February 2010. It took into account the location of other stores including the Dan Murphy's Alexandria store and the likely trade area was adjusted accordingly. A trade area assessment was also completed in 2003 in respect of the Dan Murphy's Alexandria store. It is certainly the case that the trade area of the surrounding Dan Murphy's stores (and WOW other stores) will be reduced upon the opening of the Wolli Creek premises. Market research undertaken by WOW at the time of investigating the feasibility of the Wolli Creek site showed that in excess of 25% of its annual sales would in fact come from existing WOW stores, including Woolworths Liquor stores at Rockdale, Kogarah, South Murrumbidgee and Murrumbidgee Metro. The population of Wolli Creek is already exposed to *Dan Murphy's* "pricing" by virtue of the location of Dan Murphy's store to the North (Alexandria), East (Kingsford), and South (Hurstville). The Wolli Creek premises therefore do not introduce the population of Wolli Creek to a Dan Murphy's store (or a WOW store) for the first time; it merely places a new Dan Murphy's store in a more convenient location. The same principles, as above, apply to Quakers Hill, where the population of the *Local Community* of that proposed outlet are already exposed to a competitive market place and other WOW liquor stores.
16. Notwithstanding the above, it appears that the Authority is now asking how could the Dan Murphy's Wolli Creek and BWS Quakers Hill affect "pricing" considerations in the future on the identified *Local Community* of those stores (and in particular on the risk groups or elements identified at page 2 of the Authority's letter). Where the population is already exposed to a competitive market place (including other retail liquor stores, the internet and from its own stores) "pricing" has no potential for increased social harm at all.

#### **"Pricing" and Young Persons**

17. Whilst media reports place much reliance on the impact of alcohol on young adult persons than any other age category, "price" is **not** the main determining factor for "young persons" who purchase liquor for consumption within a relatively short time of purchase<sup>1</sup>. These people are far more interested in

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<sup>1</sup> Article in the Leader newspaper on 11 July 2011 titled: *Liquor outlets worry Casey residents*; article by KYLIE ADORANTI where a young person interviewed stated "It usually depends where I am at the time, but the prices don't really influence where I get the grog".

convenience and in particular the proximity of the store to their location at a particular time, rather than price. The National Drug Strategy Household Survey Report and the Australian Secondary Schools Alcohol Survey, indicate that parents and older siblings are also by far the largest single source of alcohol for minors. Strong policies on secondary supply of the kind developed and used by the WOW Liquor Group are an effective deterrent (**nb:** these policies have been documented to the Authority in the past and can be provided again if necessary).

18. It also therefore relevant to consider the location of WOW stores when considering "pricing" issues. Again this is something that is clearly addressed by WOW on an individual basis with all of its *liquor applications*.
19. Our 5 December 2011 correspondence states, with respect to RTDs (which are said to be the predominant drink of choice for young persons – being the higher at-risk group for alcohol related harm), that the industry average is that 16% of all sales at licensed premises are RTD products, but the rate at Dan Murphy's stores is only 9%. Research<sup>2</sup> indicates that a typical Dan Murphy's customer is an older male and that stores are less attractive to young persons due to their obvious focus on premium wine (and this evidence is clearly stated within each of its Dan Murphy's *liquor applications*).

### **Why People Drink and Cultural Considerations**

20. It must be recognised that responsible consumption of alcohol is a lawful, socially acceptable, recreational activity which provides considerable social benefit to large numbers of people in the community. By far the majority of people, who consume alcohol, do so responsibly. The problems arising from the excessive consumption of alcohol are caused by a minority group only. Outlets for the sale of alcohol therefore have the potential for significant positive social impact in the way that they serve this legitimate community demand. "Specials" have considerable benefit to the community and, as set out above, there is no evidence that "specials" sold from WOW packaged liquor licences in turn means more alcohol is consumed.
21. Research confirms the effects of alcohol on behaviour are determined by cultural rules, expectation and norms, not by the chemical actions of ethanol upon the human brain or body<sup>3</sup>. With respect to alcohol use and violence, Dr Richard Gelles states within his research<sup>4</sup> "*there is little scientific evidence to support the theory that alcohol and drugs such as cocaine and crack have chemical and pharmacological properties that directly produce violent and abusive behaviour*". Studies<sup>5</sup> on the behavioural effects of alcohol (in circumstances of a controlled group environment where some were provided with alcohol but

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<sup>2</sup> *Liquor Segmentation Study – Summary Findings 19.10.07*

<sup>3</sup> 11 October 2011 Viewpoint: Is the alcohol message all wrong? Many people think heavy drinking causes promiscuity, violence and antisocial behaviour. That's not necessarily true, argues Kate Fox (social anthropologist)

<sup>4</sup> Richard J. Gelles And Mary M. Cavanaugh; *Association Is Not Causation; Alcohol and Other Drugs Do Not Cause Violence*.

<sup>5</sup> Lang, A. R., Goeckner, D. J., Adesso, V. J., & Marlatt, G. A. (1975). Effects of alcohol on aggression in male social drinkers. *Journal of Abnormal Psychology*, 84, 508–518.

others a placebo) found that although drinking (whether the subjects correctly knew they were drinking alcohol or not) was related to fine motor skills, drinking was related to aggression only as a function of expectancy. In other words, the most aggressive subjects were those who thought they were drinking alcohol, regardless of whether their glasses actually contained alcohol. It is expectancy that determines how people behave when they are, or even believe they are, drinking. With respect to the minority of persons who are irresponsible users of alcohol today, researchers<sup>6</sup> are now recognising, and providing lectures to those in the health industry, that alcohol itself is not the problem, it is used as a self medication to dampen down the underlying issue – and that it is the underlying issue that needs to be addressed and treated.

22. Dr Chikritzhs' herself states in the introduction to the Paper *"the degree to which alcohol consumption or sales plays a part in levels of violence is not clear."* Additionally, there are a number of countries with higher alcohol consumption levels than Australia, but without the attendant problems of violence and anti-social behaviour. Even in some countries where "binge" drinking is commonplace e.g. Japan there is no culture of alcohol related violence.
23. Research<sup>7</sup> indicates there is no direct causal relationship between alcohol and violence. The probability of aggression is increased when the effects of alcohol-induced cognitive impairment are amplified or exacerbated by both the characteristics of the immediate situation and cultural expectations that drinking causes aggression. Where the immediate social context is non-aggressive and where cultural beliefs and norms inhibit aggression, drinkers are highly unlikely to become aggressive.
24. There are many credible professors, doctors and researchers in the field of alcohol and violence studies that have a different view to Dr Chikritzhs. For instance, Dr Clare Murphy's<sup>8</sup> (see footnote for qualifications) questions<sup>9</sup> the causal link between alcohol and domestic violence. With respect to violence in general, Dr Richard J Gelles<sup>10</sup> (see footnote for qualifications) states<sup>11</sup> *"It is clear that there is no simple link between substance use and family violence. The relationship cannot be explained simply by stating that alcohol or certain drugs "release inhibitions" and cause violent behaviour. Even in the case of amphetamines, which have the most direct psychopharmacological relationship to violence, the effect depends on dosage and pre-use personality (Goldstein,*

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<sup>6</sup> Professor Alexander McFarlane of the University of Adelaide – the intertwined nature between trauma and drug and alcohol use: the self-medication hypothesis.

<sup>7</sup> Analysis Of KPMC's Evaluation Of Melbourne's 2am Lockout Trial - A paper prepared by David Butten for Peter Iwaniuk, Entertainment Management Services Pty Ltd (EMS) on behalf of Melbourne's Late Night Entertainment Industry - 18<sup>th</sup> November 2008

<sup>8</sup> <http://speakitoutloud.net/about-clare/qualifications>

<sup>9</sup> <http://speakitoutloud.net/category/alcohol-violence>

<sup>10</sup> Dean at the University of Pennsylvania and holds The Joanne and Raymond Welsh Chair of Child Welfare and Family Violence in the School of Social Policy & Practice. He is the Director for the Center for Research on Youth & Social Policy and Co-Director of the Field Center for Children's Policy Practice & Research. Gelles is an internationally known expert in domestic violence and child welfare. He was influential in the passage of the Adoption and Safe Families Act of 1997.

<sup>11</sup> <http://www.umsl.edu/~marinap/DOCUMENTS/problemsurbancomm/mail/Association%20is%20Not%20Causation-%20Alcohol%20and%20Other%20Drugs%20Do%20Not%20Cause%20Violence.pdf>



*1985). The use of alcohol and/or drugs is not the sole determinant of whether or not an individual exhibits violent behaviour. The influence of substances on the likelihood of violence is mediated by social factors, such as income, education, and occupation; cultural factors, such as attitudes about violence, drugs, alcohol, and the effects of alcohol; and personality factors. The relationship between substance abuse and violence is complex and mediated by a myriad of individual, situational, and social factors."*

25. With regard to the Paper (ie by Chikritzhs) – to the extent that it makes the claim that violence in entertainment precincts is determined to a greater extent by the number of outlets as opposed to the amount of alcohol sold actually supports the view that it is not the substance (ie the effects of ethanol) that is the problem. The Paper assumes that the alcohol sales generated by a new outlet will be incremental, and takes no account of the drop in sales in other outlets as a result of the opening of a new business. Presumably the Paper expects that there is an increase in the number of patrons in an entertainment precinct determined by the actual number of premises that are available for those persons to attend. However, as previously advised, comments regarding on-premises consumption do not apply here. The Paper however takes no account of management practices by licensees which have been shown by many researchers to have a significant impact on violence in and around licensed premises. There is also no weight given to the development of industry leading responsibility initiatives such as *ID 25*, *Don't Buy it for Them*, the *Ethical Product* checklist, or the significant ongoing investment by WOW in training, Liquor Accords and the significant contribution it makes to Drinkwise (which it is a member of), an organisation dedicated to changing Australia's negative drinking culture. Significantly, the Paper takes no account of where alcohol purchased is consumed. The Paper is critically flawed as previously shown by our 2 March and 5 December 2011 letters and this correspondence.
26. It has also been suggested that drinking habits of our youth are established by the drinking habits of their peers. Therefore to break the cycle of established drinking norms amongst some cultures requires a change of attitude towards alcohol, which can only be achieved through educating individuals of the effects of drinking alcohol at harmful levels. A WOW retail liquor store and its "*pricing*" structure or "*specials*" offered cannot contribute to established cultural factors.
27. It therefore must also follow<sup>12</sup> that to change an established pattern of behaviour, you need to examine the circumstances giving rise to it. Behaviour changes only when its context changes. Acknowledging there is a general public health and safety alcohol related problem in Australia does not solve any concerns. Cultures, like individuals, do not usually change from within. Nothing changes until we modify the circumstances that encourage the problem however "*pricing*" has no impact on problematic drinkers at all.

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<sup>12</sup> Hugh Mackay, April 10, 2010 article titled "*Close bars early to stop alcohol-fuelled violence*"

28. As an example, the Government, in recent years, introduced a RTD tax in answer to the increasing concern with alcohol consumption, particularly amongst young persons. Recent evidence confirms the RTD tax did **not** have the desired effect of reducing alcohol consumption at all. Parliament acknowledged that this measure led to the purchase and consumption of other categories of alcohol in place of RTDs. That is the introduction of the tax merely resulted in a shift in the types of products purchased by consumers. Therefore the tax had little overall impact as to existing consumer behaviour regarding the levels of alcohol consumed. This has also been confirmed by the Australian Taxation Office's website<sup>13</sup> where it states *"Diageo advised, the consensus in an AC Nielsen poll was a 30% decrease in consumption, and this corresponded with an increase in spirits consumption, indicating a shift in demand"*.
29. Accordingly the "pricing" of RTDs did not change existing consumer behaviour as to the overall amount of alcohol consumed – the tax merely resulted in customers swapping to a cheaper or more desirable product. The same applies in reverse. Where a product is on "special" a customer might swap to that cheaper product but this does **not** mean that the volume of alcohol consumed increases.
30. As provided above, there is already a competitive market place in NSW today and as such there is no evidence a new WOW retail liquor store would introduce a new "price" structure not already available to the public. Additionally, there is no evidence that the "price" of alcohol sold from WOW stores has any impact whatsoever on rates of violence. These types of comments are unsubstantiated when the available evidence of alcohol related matters is considered.
31. The Applicant is also aware of recent research released by the Australian Bureau of Statistics and Research<sup>14</sup> with respect to violence. The results of the study show that the risk of actual or threatened violence was significantly higher to those persons who in the last 12 months had experienced financial stress. The risk is also much higher among those who experience personal stressors such as divorce or separation, death of a family member/close friend, serious illness, serious accident, mental illness, serious disability, unemployment, involuntary loss of unemployment and gambling problems. This supports the research noted at paragraphs 21 and 24 above that neither alcohol nor its price is the trigger for violence but it is used as a self medication to dampen down an underlying issue.
32. Attempts to therefore restrict consumption of alcohol (through availability of WOW retail liquor stores) will be unsuccessful in preventing or reducing problems of disorder and violence. A more effective approach would involve measures designed to improve the management of drinking environments (particularly on-premises licences) as also educational measures to change the Australian drinking culture. The change in community attitudes toward drink-

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<sup>13</sup> <http://group2.www.ato.gov.au/Businesses/content.aspx?menuid=43310&doc=/content/00181618.htm&page=6&H6>

<sup>14</sup> *Personal stress, financial stress and violence against women, Crime and Justice Bulletin, NSW Bureau of Crime Statistics and Research, Contemporary Issues in Crime and Justice, Number 151, August 2011*

driving is one of the most successful examples of a positive change in drinking culture. It was brought about not by restricting the availability of alcohol (in fact if anything alcohol became more available during the period this change was taking place), but rather by a combination of education, effective social marketing campaigns, and rigorous enforcement in the form of random breath testing.

33. Research<sup>15</sup> indicates community based harm minimisation and risk avoidance strategies such as peer education programs, school based drug education and health promotion programs are most successful in reducing alcohol-related health problems for both young people and adults. Therefore the most effective way to minimise alcohol-related health problems is a combination of community-based harm minimisation strategies and responsible service of alcohol practices, including those to be implemented at WOW retail liquor stores.
34. In summary, it is unrealistic to look at the liquor market in NSW and "pricing" policies on a micro-scale. In a competitive market "price" can be determined by demand and it is this demand (and the underlining triggers for violence – see paragraphs 21, 24 and 31) that need to be addressed, not the sale or "price" of alcohol. Therefore, the concern with alcohol use, "pricing" and harm should be addressed by reducing the net demand for alcohol by the minority group who are said to be irresponsible consumers in today's society by addressing the triggers or underlying issue that causes these persons to drink irresponsibly. WOW's "specials" do not encourage irresponsible consumption of alcohol. This is clearly the case where the net consumption of liquor has not changed (see evidence at paragraphs 11 and 13 of our letter of 5 December 2011 and the DL Correspondence). The increased consumption of a "discounted" liquor product is clearly offset by the decreased consumption of another product line.

#### **Removal of Product Lines from WOW stores**

35. There are also many examples where products and/or product lines have been excluded or removed from a particular WOW store because they were perceived to be a problem in that location. This occurred most recently at Dan Murphy's Brisbane and Far North Queensland stores. WOW undertakes to continue with this practice; that is of removing from sale at any of its WOW stores any products and/or products lines that are found to be problematic to the community in that particular area.

#### **The role, if any, concerns regarding liquor pricing should play when the Authority considers the social impact of granting a new packaged liquor licence.**

36. We are aware that the Authority is concerned about introducing new outlets offering heavily discounted liquor in local communities vulnerable to alcohol-

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<sup>15</sup> Loxley, W., Toumbourou, J.W., Stockwell, T., Haines, B., Scott, K., Godfrey, C., Waters, E., Patton, G., Fordham, R., Gray, D., Marshall, J., Ryder, D., Siggers, S., Sanci, L., and Williams, J., with Carruthers, S., Chikritzhs, T., Lenton, S., Midford, R., Snow, P., and Spooner, C. (2004). *The Prevention of Substance Use, Risk and Harm in Australia: a review of the evidence*. National Drug Research Centre (NDRC) and Centre for Adolescent Health for the Ministerial Council on Drug Strategy, Commonwealth of Australia, Canberra.

related harm with the Authority being recently quoted in the media as stating *"We are aware of the potential for alcohol sales to increase violence and antisocial behaviour, public drinking, underage drinking and specifically the availability of liquor in a community if it is heavily discounted"*.

37. As the Authority itself has acknowledged each WOW liquor application must be considered on its own merits. In this respect we note that perhaps WOW's liquor applications are the most comprehensive applications lodged with the Authority. All WOW's liquor applications properly consider the potential for impact (including "pricing" at a local level) of operating a particular branded store in a particular location.
38. In summary, there is no evidence that a new "price" structure will be introduced to the public by the approval of a new WOW retail liquor store (and again this is something that is dealt with by WOW on an individual basis within its *liquor applications*) unless there are specific circumstances at a location which make "pricing" relevant (such as introducing a competitive market place to that community for the first time). Therefore "pricing" and "specials" should play no role when the Authority considers the social impact of granting that new *packaged liquor licence*.
39. With respect to "specials" and the like, these are of considerable benefit to the community and are spread throughout every market commodity in Australia. With respect to pre-packaged take away liquor products, there is no evidence that "specials" have the consequence of making a customer consume more alcohol than would otherwise be the case. The increased consumption of a "discounted" liquor product is clearly offset by the decreased consumption of another product line.
40. Whilst "pricing" can be an individual factor at a specific location as to what a customer might purchase from a WOW store on that day; there is no evidence that this in turn means the customer is placed at a higher than usual social risk of alcohol related harm. With respect to packaged liquor licences there is no correlation between the volume of alcohol purchased on a particular day and the volume of alcohol consumed on that day or within the days, weeks or months that might follow that purchase. That is to say customers often purchase a number of items when the "price" appeals to them but this may be consumed over a much longer period of time with the consequence that this particular customer has no need to visit a WOW store on a regular basis.
41. What is significant to WOW stores is its ability to change with the environment (namely removing product lines where necessary to avoid abuse) and ensuring all licensees are kept abreast of changes in the environment etc. In this respect WOW's trading history speaks for itself. We also draw to the Authority's attention (in case it is not already aware) that Woolworths has invested considerable resources to ensure its policies and procedures are constantly under review and stay abreast with changes in the environment. For instance, it has

established a national intranet-based liquor accord management system, which has proved invaluable for its liquor store managers. The intranet system allows Woolworths' liquor store managers to maintain records of Accord activities and share best practice initiatives with their colleagues across Australia.

42. Since *Dan Murphy's* first store opened in NSW at Green Hills on September 22<sup>nd</sup> 2002, each *Dan Murphy's* store has been the subject of WOW's State "pricing" policy. That policy has been the subject of scrutiny under both the former 1982 Liquor Act and the current Liquor Act. There are now 47 *Dan Murphy's* stores operating in NSW. The majority of those stores either satisfied what was previously known as the "needs" test; or the test of s62F(1)(b) (including the precautionary principle) of the former Act under the social impact assessment requirements; or the s48 test of the current Act. The Authority must be aware that there has not been one complaint made to (directly or indirectly) to the Authority (whether it be through the OLGR inspectors, the Police, Local Councils or private individuals) after the opening of a *Dan Murphy's* store, or any other WOW retail liquor store. Further, since the opening (and continued operation) of any new WOW store there has never been any suggestion that the WOW store has caused an increase of crime or anti-social behaviour in that location or any other amenity type issues. The same discounting policy has been in place since day 1 and still exists today. This clearly supports our conclusions that the volume of alcohol consumed in today's society is not dependent on "price". What price does effect is what type of product is purchased only and where it is purchased.
43. The *needs* ground of objection was removed from the 1982 Liquor Act on 1 August 2004, pursuant to a *National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004* (No 53). This Legislation, coupled with the Trade Practices Act 1974 clearly indicated both State and Federal Government Policy, namely to encourage a free market where the natural forces of competition were allowed to operate. The discounting of liquor was clearly intended and encouraged by Government Policy. The impact of discounting must be considered in the fullness of time; and not by isolated promotions, which are temporary or subjected to media scrutiny because of the apparent success of a promotional gimmick. The normal day-to-day market forces, coupled with the sustainability of a retail liquor business, which in turn is based upon its profitability (the difference between income and expenditure) must mean that the level of discounting should be looked at over a reasonable period of time. Whilst the recent aggressive approach taken by WOW's competitor is not sustainable, it does not mean, for the reasons set out above, that there will be any adverse impact upon the community either in the long or short term. The promotion was intended to get customers into their stores as opposed to others and in particular away from WOW's retail liquor outlets, but there is no evidence to suggest that it introduces new drinkers to alcohol or get existing ones to consume more.

We trust that the above information satisfactorily addresses the concerns raised by the Authority however should you have any additional queries or require additional information from us please do not hesitate to contact the writer.

As previously advised, the writer and our clients are available to attend before the Authority's Members to answer any queries they may have.  
We await your reply.

Yours sincerely  
**BACK SCHWARTZ VAUGHAN**



**TONY SCHWARTZ**

Partner

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**Attachments**

1. Our letter to Dominic Herschel of 2 March 2011 and the Authority's response of 7 October 2011; and
2. The DL Correspondence.



**Back Schwartz Vaughan  
Lawyers**

5 December 2011

Our Ref: TS:TP:21301  
Contact: Tony Schwartz  
Partner: Tony Schwartz

Your Ref:

**PRIVATE AND CONFIDENTIAL**

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Dear Sir

**RE: WOOLWORTHS LIMITED LIQUOR PRICING ISSUES AND OUTSTANDING APPLICATIONS.**

We refer to your letter dated 30 November 2011 (your "Letter") and have been instructed to reply as set out below.

We are particularly mindful of the Authority's position and concerns regarding the satisfaction of the test in s48 of the NSW 2007 Liquor Act (the "Act"). We suggest that in order to address this matter, and alleviate those concerns, that we be given the opportunity to meet and address the members of the Authority preferably on its next meeting on 6 December next, when representatives of our client and the writer will be present to answer any questions that any of the members of the Authority might have.

In the interim however we provide the information below:-

1. We note at the last meeting held by the Authority, namely on 24 November 2011, our client had three (3) *liquor applications* before the Authority for determination (namely Dan Murphy's Wollie Creek, Dan Murphy's Tamworth and BWS – Beer Wine Spirits Quakers Hill).
2. It is our understanding that the review reports for each *liquor application* were completed by the staff at the Office of Liquor, Gaming and Racing ("OLGR") and that nothing remained outstanding with respect to those *liquor applications*.

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3. It is noted however that the Tamworth *liquor application*, which involved the removal of an existing BWS branded store to a nearby location where it will trade under the brand name *Dan Murphy's*, was approved but the remaining two applications at Quakers Hill and Wolli Creek were deferred for the purpose of the Authority considering the effect that *heavily discounted, or very cheap alcohol products are being sold by packaged liquor stores*.
4. Your Letter invites a response regarding what *role, if any, the concerns of liquor pricing should play when the Authority considers the social impact of a new packaged liquor licence*. In doing so we note that the Authority quotes a paper by Liang W and Chikritzhs T: "*Revealing the link between licensed outlets and violence: Counting venues versus measuring alcohol availability*" Drug and Alcohol Review (September 2011) (the "Paper").
5. The above is to be considered in the light of the contents of the last paragraph of your Letter, namely that the Authority will *not be progressing any outstanding applications lodged on behalf of ...[Woolworths]... until ...[Woolworths]... has had an opportunity to consider and respond* to the matters raised within your Letter.
6. It is important to point out to the Authority that the discounting of alcohol products by retailers has been common place in NSW since the introduction of the Trade Practices Act 1974, which ended the previous practice of price fixing in the liquor industry.
7. From the outset, and as the Authority is aware, Woolworths always seeks to co-operate with the Authority's requests. You may recall a *Woolworths Liquor liquor application* at Tura Beach that was approved by the Authority on 31 August 2010 (Application Number 1-565928008). After the decision was made to approve that application, issues were then raised by a local hotel operator and the Authority (through its officer Dominic Herschel) sought the advice of Dr Chikritzhs as to the allegations made. At that time we were asked to respond, which our client did so through our office (see our letter of 2 March 2011). As part of that same response we addressed the Paper that your Letter now refers to. That is to say, we have previously responded to the Paper in respect of the Tura Beach *liquor application*.
8. You may recall that in the Tura Beach *liquor application* that we subsequently received correspondence under your hand (dated 7 October 2011) and which our client accepted as meaning the Authority was satisfied as to the information provided in response to the matters raised by Dr Tania Chikritzhs (including the Paper).
9. Relevantly, the material put before the Authority at that time with respect to the Tura Beach *liquor application* (undercover of our letter dated 2 March 2011) discussed, at length: the issues of competition; the impact of introducing a new store; "pricing"; and the matters raised within the Paper. Our letter of 2 March 2011 therefore responded to Dr Chikritzhs' views, which arose out of the Paper in relation to volumes of alcohol being sold rather than density alone and her focus on



the higher amount of alcohol sold from a takeaway liquor outlet. Our response also addressed her views regarding "pre-loading"; the proportion of sales from a particular type of premises over other premises; and her overall thesis. Additionally, through Attachment 1 to our client's *Statement of Impacts*, our client has previously addressed Dr Chikritzhs' further claims that there has been greater consumption of liquor over time because of the increase in the pure alcohol content of wine (see also paragraph 12 below). In any event it is noted that Dr Chikritzhs' indicates that the violence occurs from beer drinkers and not wine drinkers.

10. As the Authority is aware both the Wolli Creek and Quakers Hills locations are the subject matter of the appropriate planning approvals (eg: at the Wolli Creek store through the Office of the Minister for Planning and at Quakers Hill, as a result of the comprehensive and robust appeal before the Land and Environment Court, where numerous social impact issues were considered and found in favour of the use of the premises as a retail liquor store).
11. The issue of "*pricing*" is considered in all Woolworths' *liquor applications* provided to the Authority. As example in the following ways:
  - The provision of consumption data, which clearly shows that alcohol consumption since 1987 has remained steady if not falling (ie: since 2007) despite the increase of licences issued throughout Australia.
  - Evidence that the liquor market does not expand by the opening of a new packaged liquor licence, even a large one like Dan Murphy's. The *pre-determined* demand for pre-packaged take-away liquor products is re-adjusted amongst the then outlets which in turn compete for market share.
12. As a further example, at page 24 of the *Statement of Impact* in the Wolli Creek *liquor application*, "*pricing*" was raised (not surprisingly) by a local competitor (namely Arncliffe Cellars) and then addressed. Interesting the same issue was not raised by the commercial competitor at Quakers Hill.
13. Despite concerns that binge drinking has increased globally there is no real evidence to support this. In 1960/61, Australians consumed the equivalent of 9.3 litres of pure alcohol per person, climbing to a high of 13.1 litres in 1974/75. Consumption however started to fall in the early 80s hitting a low of 9.8 litres in 1995/96. In 2009/10 it is 10.37 litres which is still a fifth lower than the 1974/75 level<sup>1</sup>. Statistically consumption has remained static, a fact which is published by the Australian Bureau of Statistics. The Australian Government Household Survey, a census level survey commissioned by the Australian Institute of Health and Welfare, found that from 2001 to its most recent survey year:
  - Alcohol consumption remained steady – around 83% of all Australians aged 14 years or over were recent alcohol drinkers
  - Alcohol consumption by young people declined from 66% to 62%.

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<sup>1</sup> Australian Bureau of Statistics

- o The incidence of alcohol-related harm among people aged 14 years or older fell<sup>2</sup>.

The abovementioned consumption patterns have occurred against a background of increasing involvement in the liquor industry by the major supermarket operators and the significant growth in the number of large format stores, which were driven by an increasing customer demand for this type of facility.

14. The much-quoted claim by the Alcohol Education Rehabilitation Foundation (in its research paper *Alcohol's harm to others*) as to the social cost of alcohol has been discounted by Access Economics as "grossly exaggerated" and based on flawed research that "should play no part in informing public policy". The report's own authors have distanced themselves from the figure. Access Economics has concluded that the taxes paid by Australian alcohol producers far outweigh alcohol's actual social costs.
15. Whilst "*prices*" at a Dan Murphy's store fluctuate with specials and the like, in the past it has been suggested by some submitters that bottles of wine are sold at \$1.99 at *Dan Murphy's* stores, and that no other retail liquor store sells products at this price. The cheapest "*cleanskin*" bottle of wine sold on a regular basis at Dan Murphy's stores is \$2.99. This equates to \$15.95 for a 4 litre cask which is not inconsistent with prices in any other retail liquor store in NSW (see paragraph 15 below). It is also significant to the claims by submitters that only [REDACTED] [REDACTED] With respect to RTDs (which are said to be the predominant drink of choice for young persons – being the higher at-risk group for alcohol related harm) the industry average is that 16% of all sales at licensed premises are RTD related, but the rate at [REDACTED] [REDACTED]
16. In comparison to the above, we note Quakers Hill Cellars has advertised *cheap liquor products* (see following two photos) with cask wine at \$10.99 (see photo following page), which is cheaper than the above<sup>3</sup>.

<sup>2</sup> Winemakers' Federation of Australia paper "leadership strategy advocacy support"

<sup>3</sup> [http://www.google.com.au/maps?layer=c&z=17&sl=-33.726277,150.904751&cid=16712858686947852812&panoid=mTU93tEUkrBYbDS6wTgQFA&cbp=13,48.772388146350572,,0,0&ei=eErZTuX3OleriAe27ZX7DQ&sa=X&oi=local\\_result&ct=interior-innerspace-image-link&cd=1&resnum=4&sqi=2&ved=0CAUQ2hQoADAD](http://www.google.com.au/maps?layer=c&z=17&sl=-33.726277,150.904751&cid=16712858686947852812&panoid=mTU93tEUkrBYbDS6wTgQFA&cbp=13,48.772388146350572,,0,0&ei=eErZTuX3OleriAe27ZX7DQ&sa=X&oi=local_result&ct=interior-innerspace-image-link&cd=1&resnum=4&sqi=2&ved=0CAUQ2hQoADAD)



17. The Paper is also flawed for many reasons but it would not be surprising to the Authority that despite the numerous attempts to prevent another liquor store or hotel opening anywhere in Australia Dr Chikritzhs continually fails to provide any evidence that:-

- (a) Increased alcohol related harm has occurred by adding a new retail outlet; and
  - (b) that a new retail liquor outlet introduces new drinkers or causes existing drinkers to drink more than what they would normally otherwise do.
18. What is remarkable is that Dr Chikritzhs has not, at any stage, conducted research whether in fact *cheap liquor already existed within a particular neighbourhood*. In the Paper there is no consideration or comparison given as to what existing retail liquor facilities existed in the trade area of the proposed new outlet or, for example, a comparison of the socio-demographic data and crime statistics subsequent to the introduction of another outlet. Her thesis simply suggests that there is an increase in sales at a particular bottleshop and that this then results in a likely increase in violence. These views are made without any attempt to ascertain whether that increase in violence is directly related to a particular outlet; whether there has been an increase in liquor sales on an overall basis in a particular location; whether there has been a corresponding increase in the population of that location; or whether there was other influencing factors that may have resulted in the increase in the statistics.
19. In the matters before the Authority (namely at Wolli Creek and at Quakers Hill) there are existing outlets and hotels nearby. It is simply unrealistic to suggest that those premises do not sell cheap or discounted liquor (see paragraph 15 above).
20. Whilst it has been a focus in the past on the impact of the increase in density of liquor stores in a particular location, the information data and consequences are not dissimilar to the issue that the Authority now raises with regards to pricing policy. The introduction of a new liquor store means the introduction of a "standard pricing policy" that applies to all our client's stores throughout NSW, in line with the banner in which the store trades.
21. The impact of those stores has been known to the Authority for many years. There is simply no evidence of any concern anywhere in NSW or throughout the whole of Australia, where the introduction of, for example, a Dan Murphy's store has caused some inappropriate, excessive or unacceptable harm. The fact is that the local community embraces a Dan Murphy's store (when it opens) and its benefits and the success of the stores is reflected in its popularity.
22. Therefore the Authority has had a prior awareness of Woolworths' pricing policy, its discounted lines and the like. The Authority would also be aware that there are not any concerns that have flowed by the opening and continued operation of any of its stores.
23. Our clients are of the strong view that nothing new is being introduced or raised by any submitter or research that has not already been previously put before the Authority or addressed. This is so because the whole concept of density and the introduction of a liquor store goes hand in hand with the pricing policy that is

applicable and which arises from the introduction of a new store. None of this has changed.

24. The reason that the submitters to our client's *liquor applications* are often driven by commercial competitors is out of their natural and obvious concern of the impact that it will have upon their sales. This is because when a new retail liquor store opens in a particular trade area, this has the consequence of the pre-determined demand for pre-packaged take away liquor in that trade area being shared amongst the existing outlets which when combined with the new outlet mean on average less is sold individually but when combined with the new outlet they sell about the same.
25. At these two locations (namely Wolli Creek and Quakers Hill) and in most of the locations which are the subject matter of *liquor applications for packaged liquor licences* which are made to the Authority, liquor already exists in the applicable area (whether it is in the local community or at the broader community level). As the Authority is well aware, all existing outlets sell discounted or cheap liquor. That in turn does not mean that liquor patrons consume more. It might mean that they will wait for specials to be introduced and there even be some bulk purchases of their favourite liquor product of choice, but this simply means the purchased items are consumed over a longer period of time. It does not mean that the particular customer is actually consuming more or drinking in some irresponsible way.
26. As set out above, specials may result in some bulk purchases of a particular product but this merely allows the patron to consume it over a longer period of time. It does not mean that they actually consume more liquor than they otherwise would have. Additionally, this ability to make such purchases in this way exists through internet sales already and are available to the public irrespective of the introduction of a new liquor store into their neighbourhood. Again we repeat the data that has been submitted to the Authority and which confirms that the consumption of alcohol has not increased despite the increase in licensed premises.
27. We have provided much evidence to the Authority about the typical customers to our client's stores (see for example paragraph 3.3(k) at page 20 of the *Statement of Impact for Wolli Creek*). Accordingly, our clients are of the view that the matters that are before the Authority can and should proceed to determination and in each case in their favour because of the material that has been provided to the Authority previously.

We respond to the above as a matter of urgency so that we can make arrangements to attend at the Authority's next meeting to answer any questions that its members may have at that time.

Would you therefore kindly consider our request and respond to the above as a matter of urgency. Should you have any queries in the meantime however please do not hesitate to contact the writer.

I await your reply.

Yours faithfully  
**BACK SCHWARTZ VAUGHAN**

A handwritten signature in black ink, appearing to read 'T. Schwartz', written in a cursive style.

**TONY SCHWARTZ**

Partner

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**Back Schwartz Vaughan  
Solicitors and Attorneys**

2 March 2011

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Your Ref:

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Dear Sir

**RE: LIQUOR APPLICATIONS BY WOOLWORTHS LIMITED**

We refer to the exchange of emails between you (on behalf of *Communities NSW*) and the writer of 14 February 2011.

We note your direction, in reply to the clarification sought of your email (and attachments) of 1 January 2011, namely that our client is required to respond to the matters now raised by Dr. Chikritzhs regarding paragraph 3.3.8<sup>1</sup>, where it is included in the material lodged in support of our client's current applications or future ones (the "Direction").

Our client's response is set out below:-

**Introduction:**

1. In summary, paragraph 3.3.8 emphasises the point that the contents of the report<sup>2</sup> supports our client's view and experience that a minor increase in density is unlikely to:-

(a) increase alcohol consumption levels; or

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<sup>1</sup> *Dr Chikritzhs' recent report confirms what has been suspected by the Applicant for some time; that is small changes in density are unlikely to affect alcohol consumption levels or rates of alcohol-related chronic health problems in circumstances where prices are not reduced. There is no evidence that any Woolworths Liquor outlet has resulted in any unreasonable price reductions across a LC or BC, although it is true that they have resulted in increased competition. Competition is expected by the public and is encouraged by State and Federal policy makers. Dr Chikritzhs' research also notes "there is good evidence to suggest that some types of liquor licences contribute disproportionately to alcohol related harms". That is to say there is evidence that the majority of alcohol anti-social behaviour occurs between the hours of 9.00pm and 3.00am Friday and Saturday nights, with most of the anti-social behaviour occurring around areas where there are numerous licensed premises; late night trading premises such as hotels & entertainment venues (see paragraph 10 of Attachment 1). None of these risk factors are present in this case. The latest the Proposed Premises will trade is to 9.00pm Monday to Saturday. The Proposed Premises is not an entertainment venue, is not situated within an entertainment precinct nor is one likely to emerge as a result of the approval of this Application (see paragraph 3.3.7 above).*

<sup>2</sup> Research paper: Michael Livingston, Tanya Chikritzhs & Robin Room (2007) – Changing the density of alcohol outlets to reduce alcohol-related problems. *Drug and Alcohol Review*, 26, (5), pp 557-566 [RJ546]

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(b) the rates of alcohol related chronic health problems

in circumstances where "prices" are not reduced (see page 563 of the report).

2. It is our client's experience (and we are not aware of any evidence to contradict it) that "prices" remain relatively stable when a new *Woolworths* retail liquor store is introduced into a location where pre-packaged take-away liquor service is already available. That is to say, there is no evidence liquor prices decrease at existing retail liquor stores when a new *Woolworths* retail liquor store commences trade nearby.
3. The pricing at *Woolworths Liquor* stores, *BWS – Beer Wine Spirits* ("BWS") stores and at *Dan Murphy's* stores throughout NSW is different depending upon the "brand" of the store. However within each "brand" or store type, no matter where that store is located within the State, the customer will find the majority, if not all, of its liquor products sold at the same price. However, depending on the location of our client's premises, an individual store will match (or perhaps beat but only slightly) local prices, where its "standard NSW price" for that "branded" store is above that of the local competition.
4. Competition amongst liquor retailers is clearly a requirement pursuant to Federal Government Legislation. This position has been adopted and endorsed by the NSW Government both under the 1982 Liquor Act and the 2007 Liquor Act and evidenced by the removal of what was previously known as the "needs test".
5. As to the relevant quote from Dr. Chikritzhs' research that "*there is good evidence to suggest that some types of liquor licences contribute disproportionately to alcohol related harms*" together with the remainder of paragraph 3.3.8, these comments flow from the observations noted at paragraph 1 above. This arises because when considering alcohol related harm, liquor licences need to be distinguished based upon such factors as:-
  - (a) whether liquor is consumed on or off the premises;
  - (b) their trading hours; and
  - (c) the corresponding impact that customers of those premises have in the local community or in the immediate areas of the licensed premises.
6. The main point that our client relies upon is that the conclusions from the report (see footnote 2) which are of concern, are caused by and clearly relate to other types of licensed premises, namely those that can be distinguished from our client's premises. This is because, in the main, anti-social behaviour arises around licensed premises (commonly found in entertainment style precincts) that trade after 9.00pm on Friday and Saturday nights where liquor is consumed on the premises. These types of licensed premises (and their trading hours) must be considered differently to *Woolworths Liquor* stores (for example located next to a supermarket) where those branded stores, along with BWS stores and *Dan Murphy's* stores do not trade past 9.00pm on any night of the week and where those premises are not located within entertainment precincts.



7. Therefore, the potential risk factors that can result in an increase in anti-social behaviour occurring around our client's licensed premises are logically unlikely to occur and have the same impact as those premises which are located within entertainment precincts, trade late into the night, and which are more likely to be the subject matter of alcohol related harm. The Donnelly study<sup>3</sup>, investigates, amongst other things, the relationship between the concentration of licensed premises in a given area and *perceptions* of alcohol-related problems in that locale. The paper suggests that respondents who live closer to liquor outlets or in an area with more liquor outlets are more likely to report problems in their neighbourhood with both drunkenness and property damage. Both these problems are associated with close proximity to hotels (on licences) not packaged liquor licences.
8. At this stage it is relevant to also point out that the report (footnote 2) states (page 562) in respect of amenity type issues, *"at a certain point, a growing bunch of outlets, particularly on-premises outlets such as hotels and bars, becomes fixed in people's mental maps as an entertainment district, and thus starts attracting crowds above and beyond what would be attracted by the same number of outlets on their own. In this situation, there are likely to be large numbers of people circulating from outlet to outlet, creating the potential for additional alcohol-related problems. Thus, it is possible that the amenity effect of outlet density on alcohol-related problems has a critical point – the point at which an area is seen as an entertainment district - after which alcohol-related trouble increases more sharply with extra outlets"*.
9. In general, and whilst Dr. Chikritzhs is highly qualified and is regularly a participant in various jurisdictions in Western Australia, particularly by those opposing applications, we are aware of at least three decisions<sup>4</sup> where the Western Australian Licensing Court acknowledged her evidence, but notwithstanding made it abundantly clear that the applications in question were to be determined on their own merits. As you may be aware, the corresponding Liquor Regulation in Western Australia has similar objects to NSW, namely that it is in the public interest to minimise harm or ill-health. In each case and despite Dr. Chikritzhs' evidence, the new liquor licence or extended trading authorisation were granted.
10. We are also aware of another Western Australian decision<sup>5</sup> where the State Administrative Tribunal expressed (at paragraph 83) in its decision *"even taking the evidence of Dr Chikritzhs into account in respect of the various academic studies on the matter, there is no empirical evidence before this Tribunal to satisfy it that the proposed development will impact in the way submitted by the respondent, particularly when the management proposals outlined by the Applicant [the Applicant in this case is Woolworths] are taken into account"*.
11. In addition, in another jurisdiction, the applicable State licensing authority did not rely on Dr. Chikritzhs' evidence in respect of a particular application. Dr Chikritzhs tendered to the Liquor Licensing Panel Victoria in 2007, a Statement regarding the

<sup>3</sup> *Liquor outlet concentrations and alcohol-related neighbourhood problems - 2006* (Neil Donnelly, Suzanne Poynton, Don Weatherburn, Errol Bamford & Justin Nottage)

<sup>4</sup> (1) *Wongan Liquor vs. Kingsway Holdings Pty Limited and Ors* 2007 WALLC 2, which followed *Subi CleanSkins*; (2) *Doinwell Investments P/L vs. Executive Director Public Health* [2005] WALLC 15; and (3) *The Executive Director, Public Health and Ors vs. Woolworths Limited and Ors* 2002 WASC 108

<sup>5</sup> *State Administration Tribunal – Woolworths Ltd (the Applicant) and City of Joondalup (the Respondent)* [2009] WASAT 41

relationship between the availability of alcohol, alcohol consumption and related harms<sup>6</sup>. In that matter, where the Panel was required to look at harm minimisation aspects of the application, it commented on the literature referred to (by Dr. Chikritzhs) and stated that it was *"equivocal as to the optimal density of licensed premises"*. Further, it was in the Panel's view, that *"there is nothing in the materials which in the public interest requires the application to be refused"*. The Panel relied on a decision of His Honour Judge Bowman in the Nardi case<sup>7</sup> (paragraph 31) that *"whilst I agree a policy of harm minimisation should be anticipatory, and not merely reactive, there is nothing in the literature that persuades me that the opening of this particular outlet in this particular location will create a density of outlets which will have a deleterious affect. Put another way, there is nothing in the granting of a licence to a licensee possessing the qualifications of Woolworths in this particular shopping centre, in this particular area, which causes the ringing of alarm bells to which. (n.b the witness referred to by the Judge was not Dr. Chikritzhs) referred"*.

12. For the reasons set out below the conclusions from the cases noted above are not affected by Dr Chikritzhs' latest research. It is also relevant to point out that the common theme that is relied upon by Dr Chikritzhs is that that there should not be any additional liquor outlets (such as hotels or retail liquor stores) granted anywhere in Australia because the granting of one must lead to alcohol related harm such as anti-social behaviour and adverse amenity type issues principally because more liquor will be sold from the new licensed premises. Similarly, the same can be expected if those types of licensed premises extended their existing trading hours.
13. We are also not aware of any research papers which Dr. Chikritzhs has participated in where either she, or any of her co-authors, have considered what impact there would be on existing retail liquor outlets by the introduction of new retail liquor stores in the same location or within the same trade area of those existing outlets.
14. The models that Dr. Chikritzhs relies upon in her research implicitly assume that an additional liquor outlet does not affect the sales from other outlets – that is the result of competition. She assumes that each outlet generates additional sales on a par with existing outlets leaving the sales at existing outlets at the same level. No evidence is presented by Dr Chikritzhs to support this. On the other hand, information from the Australian Bureau of Statistics<sup>8</sup> suggests that over the past decade, whilst the number of outlets has been increasing, the per capita consumption of alcohol has not changed to the same degree. In that global sense, it would seem that the trend to greater number of outlets is accompanied by the fact that when a new liquor outlet is introduced, existing individual outlets, on average, sell less.
15. As the Authority is aware there have, in recent years, been numerous Woolworths owned retail liquor stores open in NSW including Dan Murphy's stores. The Green

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<sup>6</sup> Statement by Tanya Chikritzhs, Senior Research Fellow at the National Drug Research Institute, Curtin University of Technology – statement submitted to the Liquor Licensing Panel, Victoria in relation to a packaged liquor licence application at 147-153 Bell Street, Preston.

<sup>7</sup> Nardi v. Director of Liquor Licensing (Occupational Business Regulation) [2005] VCAT 323 (25 February 2005)

<sup>8</sup> Catalogue Number 4307.0.55.002 - Apparent Consumption of Alcohol: Extended Time Series, 1944-45 to 2008-09 - see <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4307.0.55.002main+features31944-45+to+2008-09>

Hill's Dan Murphy's store was the first rural store introduced in 2001 and the Hurstville and South Strathfield Dan Murphy's stores were the first metropolitan outlets opened in 2002. We are instructed that at no time has either our client, or our office, been contacted by any person or by any public or private organisation complaining about any form of alcohol related harm arising from the opening of those stores or in fact any stores. If there were a pattern of negative outcomes arising from the introduction of say Dan Murphy's stores, why would researchers on alcohol related matters not use the applicable statistics arising from the introduction of those stores to provide evidence to support their views? Our client's position is that this is very powerful evidence against those who prepare submissions, or comment upon research (be it their own or another persons) that deals with the impact of outlet density in a global sense and not in a specific sense, i.e. rather than conducting a detailed and balanced analysis of the location of the retail liquor store, after taking into account all of the relevant factors within the relevant trade area of those premises.

16. In November 2010 an independent study, commissioned by our client, was prepared by *Data Analysis Australia* with respect to Dr Chikritzhs' research monograph *Predicting alcohol-related harms from licensed outlet density: A feasibility study* of which Dr Chikritzhs was the chief author. We are instructed that Dr Chikritzhs was personally contacted in respect of this study because her monograph was heavily statistical and it made sense for an independent review to be carried out by a statistical team. Dr Chikritzhs refused access to the statistical data for review purposes. We note that the reports addressed in this correspondence are also heavily statistical in nature and that the data has not been provided for review. With this in mind it is difficult for her reports to hold sufficient credibility when the statistical data used for the basis of the outcomes reached are not available for review amongst her peers.

**Summary of Dr Chikritzhs' reply:**

17. Dr Chikritzhs' reply can be summarised as follows:-

- (a) Her abovementioned "quote" is taken out of context (but she does not explain what the actual context is or should be).
- (b) The report from which the "quote" comes from (see footnote 2) has only dealt with licensed outlets, where liquor was sold for consumption on the premises and therefore did not distinguish those types of premises from retail liquor stores. For the reasons set out at paragraphs 6 to 8 above, this is irrelevant to the point our client is making, namely that anti-social behaviour in relation to licensed premises (particularly those in entertainment precincts) is to be distinguished from Woolworths retail liquor stores, particularly when there is no research that specifically identifies, with precision, that anti-social behaviour arises from sales made specifically from retail liquor stores (eg: as opposed to hotels, which can sell liquor for consumption on and off the premises).

- (c) Dr Chikritzhs relies on a Report<sup>9</sup> (hereinafter referred to as the ***“Predicting Alcohol-Related Harms from Licensed Outlet Density Research”***) which distinguishes retail liquor stores (within the subject matter of the research) and draws upon conclusions from a suggested link between *“wholesale purchases of regular strength beer”* and the corresponding impact caused by different types of *liquor licences*. It is not surprising that Dr. Chikritzhs now relies on a subsequent report bearing in mind the Western Australian decisions referred to in paragraphs 9 and 10 above. Dr Chikritzhs states (from data which she does not provide) that there is a connection between hotels/taverns/retail liquor stores and the volume of *“beer sales”* with increased rates of alcohol related harm. Consumption data is not available in NSW at the levels documented by this research and therefore the research cannot be applied to any liquor application in NSW. Our client has commented on these matters further at paragraphs 45 to 52 below.
- (d) Dr Chikritzhs also relies on a Report<sup>10</sup>, which is yet to be reviewed by her peers, alleging that there is a significant impact caused by liquor sales from retail liquor stores, not only at private and public locations but also at other licensed premises (hereinafter referred to as the ***“WA Research”***). It is her view that patrons consume liquor elsewhere before coming to, for example, hotels where they then engage in anti-social behaviour on those premises. Our client has commented on these matters and the WA Research in general at paragraphs 19 to 44 below. For present purposes Dr Chikritzhs completely ignores:-
- (i) the fact that hotels are permitted to sell take-away liquor;
  - (ii) that it is a legal requirement for all licensed premises, which attract those customers who might *“pre-load”*, to take steps both at the point of entry (by having appropriate queuing, identification, security and RSA systems in place) as well as having their staff in the hotel (such as RSA marshals) to prevent instances of excessive intoxication.

It is impossible to determine, from a statistical point of view, what percentage of those persons who are committing offences in or outside, for example a hotel, have in fact been drinking elsewhere beforehand. Bearing in mind all Dr. Chikritzhs' arguments are directly tied to statistical data, her argument must, in those circumstances, carry very little weight because not only does she have no data to support her views but she has ignored the above-mentioned legal requirements in item d(ii) above.

18. Despite the approach taken by Dr Chikritzhs against the introduction of new licensed premises or in relation to increasing the trading hours of existing licensed premises (whether on-site outlets or off-site outlets), the common ground between our client and the extensive body of research (including those under her name) is that each application needs to be addressed on its own specific merits after taking into account all of the local relevant factors such as the socio-

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<sup>9</sup> *Predicting Alcohol-Related Harms from Licensed Outlet Density: A feasibility study, Monograph Series No 28, Authors: Tanya Chikritzhs, Paul Catalano, Richard Pascal - National Drug Law Enforcement Research Fund, an initiative of the National Drug Strategy*

<sup>10</sup> *Western Australia Research: Liang, Wenbin and Chikritzhs, Tanya; National Drug Research Institute, Curtin University - Revealing the link between licensed outlets and violence: counting venues versus measuring alcohol availability.*

economic and demographic nature of the area in question (see comments at paragraphs 51 and 52 as examples).

**Our Comments regarding the WA Research:**

19. It is recognised that the overall sale of pre-packaged take-away liquor in any community is largely governed by market forces in that community, which cannot be manipulated or controlled by individual licensees or retail liquor stores. That is to say there is a *pre-determined demand*<sup>11</sup> for pre-packaged take-away liquor products in any community, which remains relatively stable despite introducing a new retail liquor store nearby.
20. As set out at paragraph 14 above, it is our client's experience<sup>12</sup> the grant of a new packaged liquor licence does not in itself create new drinkers or make existing drinkers consume more. When a new retail liquor store opens, a greater number of outlets is thereby created, but this merely results in the pre-determined demand for pre-packaged take-away liquor being shared amongst existing outlets, which then on average sell less individually, but combined sell about the same.
21. The above is based on evidence provided within our client's *Statement of Impact* and is also based on our client's experience, but this has never been examined by Dr. Chikritzhs. For instance Dr Chikritzhs states (page 15) that "*we observed that the higher the amount of alcohol sold per off-site<sup>13</sup> outlet the greater the risk of reported assault within an LGA. This held for all types of locations*". Whilst this may or may not be true, the study is flawed because it has not firstly explored what the *pre-determined demand* for pre-packaged liquor is within a community and secondly, then determined (by real evidence) that by introducing a new retail liquor store in that location this would then result in the pre-determined demand increasing.
22. Our client acknowledges the fact that some areas have a higher pre-determined demand for pre-packaged take-away liquor when compared to other areas. Further, statistically and logically there is a higher chance of alcohol related crime in an area where the pre-determined demand for liquor in a community is greater in that area when compared to other areas. What our client has however disputed (and where there is no evidence to the contrary) is that the pre-determined demand changes within a particular area when a new *packaged liquor licence* is introduced to an area where liquor service is already available (see comments within Attachment 1 our clients' *Statement of Impact*).
23. The Chikritzhs study has **not** explored whether sales from existing retail liquor stores in the study area would simply decrease when a new retail liquor store opened - she has measured the volume of alcohol sales from existing outlets (at a

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<sup>11</sup> It is acknowledged pre-determined demand can vary from one location to the next and factors such as the characteristics of the population of a community can influence the same. Whilst a pre-determined demand can vary with special occasions such as Christmas, holidays and the like, this variance is still part of the overall pre-determined demand and is not something manipulated or controlled by individual licensees. The pre-determined demand for pre-packaged liquor products is divided into segments (ie market share) and existing liquor outlets merely compete for market share within the pre-determined demand. The pre-determined demand for packaged liquor products remains relatively steady (as evident by the information provided with our client's *Statement of Impact*).

<sup>12</sup> See paragraph 8.3 of Attachment 1 to the Tura Beach *Statement of Impact*.

<sup>13</sup> A reference to an "off-site outlet" is equivalent to a "packaged liquor licence" or a "retail liquor store" in NSW. The terms have been used interchangeably throughout this correspondence

static point in time) compared with assaults in that area. The study has clearly acknowledged, under the heading "limitations" page 21, that *"we have not been able to identify the other individual differences among the outlets themselves, the individuals who patronise them or their movements in time and space"*.

24. Further, Dr Chikritzhs has not examined at all the likely trade area of particular outlets when examining the level of violence in an area and matched that area to the level of violence within that identified specific area - she has only examined the level of violence occurring at a local government area (LGA) or a statistical local area (SLA). A trade area is quite often smaller than an LGA and can often overlap boundaries with another LGA. Other factors should also be examined, for example, where there is a more densely populated area there is statistically speaking always a higher chance that crime will take place in that area, simply because the area is more densely populated. In some instances a trade area is large and can encompass many LGAs. Relevantly persons can travel significant distances, for example, between home and work and may purchase their liquor in one place but consume it in a completely different location. Until the research to be relied upon can ascertain precisely where the liquor was purchased as well as where the liquor was consumed (being the locality for e.g. an incident of alcohol related harm) to insist that there is a relevant correlation between off-premises sales and alcohol related harm caused elsewhere (on its own) means that less weight and significance must be given to it
25. Dr Chikritzhs is of the strong view that competitive pricing practices may increase and in turn enhance access to alcohol and the relative buying power of consumers. Her view implies that customers will purchase more and therefore consume more (page 5). She provides no data to support this view, nor does Dr Chikritzhs take into account that customers may for example purchase more because of the "special" price, however will consume it over a longer period of time (eg: when wine is purchased by the case).
26. Dr Chikritzhs introduces her theme (page 5) that consumption off premises influences the level of harm that occurs at on premises, yet (as set out above) she has not acknowledged anywhere in her paper the fact that hotels sell liquor for consumption off-site, nor the fact that it is an offence to allow intoxicated persons to not only enter a licensed premises but to remain on those premises.
27. Relevantly in her statistics, when she dissects the number of sales made at various licensed outlets (see page 9), no attempt has been made to distinguish between liquor sold from hotels for consumption on premises or off premises, particularly where in Western Australia (as in NSW) there are large numbers of hotels with drive-in or drive-through retail liquor stores or significant "bottleshop" areas on-site.
28. Further, whilst the study alleges *"volume of alcohol sold appeared to have greatest impact on assaults occurring at private residences"* (page 15), the study does not explore the possibility of what violence would occur in the home in any event despite the volume of alcohol sold (see paragraph 8 of Attachment 1 to our *Statement of Impact*, where this issue has been explored by our client). It is relevant here to refer to paragraph 31 below, where Dr Chikritzhs makes much of "pre-loading". It is remarkable that she only refers to persons consuming liquor at home

and other unlicensed locations before attending on-premises (where presumably they become violent). However she does not consider the opposite position. That is persons consuming alcohol at a hotel, nightclub or restaurant and then coming home and causing alcohol related problems. Dr Chikritzhs does not take into account that likelihood anywhere in her research.

29. It is also significant that the study acknowledges (page 15) that *"when controlled for volume of alcohol sales, numbers of off-site outlets did not significantly predict risk of assault (even for private residences)"* and further that the *"higher amount of alcohol sold per off-site outlet the greater the risk of reported assault within an LGA"*. That is to say Dr. Chikritzhs makes a remarkable statement by alleging it does not matter how many off-site outlets there are in a given area as there is no strong correlation between the number of off-site outlets and the level of violence, but there is a strong correlation between the volume of alcohol sold from off-site premises and violence. She cannot accurately determine this by her research at all for the simple fact that Dr. Chikritzhs has not considered the matters outlined at paragraphs 14 and 20 above.
30. Further, the study states (page 15) with respect to on-site premises (such as hotels, nightclubs, restaurants etc) that the *"greater numbers of such premises within an LGA predicted greater levels of assault even when controlled for alcohol sales made by those premises"*. But then Dr Chikritzhs states at page 15 (although not providing the actual data) that *"the volume of alcohol sold by on-site outlets did not significantly predict violence when adjusted for the number of outlets"*. In other words what Dr Chikritzhs is presumably saying is the amount of alcohol sold by on-site premises does not predict violence but the number of on-site premises themselves does. Therefore one can conclude that she is now admitting that if the number of on-premises liquor outlets remain the same but their volume of alcohol is increased that it is unlikely that there would be any increase in violence. Without the benefit of the data that is relied upon, such conclusions highlight the inadequacies of the report.
31. Dr. Chikritzhs also makes much of "pre-loading" and the impact of patrons consuming liquor before attending on-site premises however, as set out above, pre-packaged take away liquor can be purchased from off premises outlets as well as from hotels. However again no data or research to identify those members of the public who participate in that activity is supplied. The types of person who participate in "pre-loading" activities are likely to be different from one area to the next. Dr Chikritzhs has not examined "pre-loading" effects for different types of socio-economic areas or age groups.
32. Whilst there is an element of any community who prefer to drink at home (particularly those under the age of 25) before going out, they do so because they commence their socialising later in the evening and they meet earlier at another location first, such as at a friends house. A new Woolworths retail liquor store is very unlikely to influence their existing socialising patterns. The liquor being consumed at those residential premises may come from a variety of locations including liquor that may have been purchased at a much earlier point in time, whether from off premises outlets or a hotel or the internet. It is also more likely that if a group of young people are gathering at a persons home that they will purchase the liquor on their way, namely from the nearest off-site outlet (whether it be a hotel or retail liquor store) and are very unlikely to make

a special trip to a retail liquor store located within a shopping centre to do so. Further, the purchases are likely to be smaller ones, such as single bottles or a six-pack where the price, whether discounted or otherwise, is likely to be less relevant. None of these common circumstances have been taken into account by Dr. Chikritzhs.

33. The issue taken with Dr. Chikritzhs' position is that it is unsustainable because it is not supported by any solid evidence that: (a) alcohol related harm is caused or increased in a neighbourhood by adding a new retail liquor outlet; and (b) a new retail liquor outlet introduces new drinkers or causes existing drinkers to drink more when compared to what they would normally otherwise do.
34. On the other hand, it is obvious that by introducing a new on-site premises (such as a hotel or nightclub) that you may attract new patrons to the neighbourhood who may wish to experience the new venue and this may in turn cause increase adverse amenity concerns or violence within the neighbourhood (see also paragraph 8 above where Dr Chikritzhs also acknowledges this). Logically if an entertainment precinct has the ability to attract large crowds than statistically speaking there must be a higher likelihood of violence occurring in that neighbourhood as a result.
35. It is very different however to suggest that where there is an existing availability for the public to purchase pre-packaged take-away liquor, that by introducing another retail liquor store into that neighbourhood that somehow existing members of the public are drinking more than what they otherwise would do. That is to say, the opening of a new retail liquor store somehow has the ability to change existing consumer behaviour as to the quantity of alcohol to be purchased and consumed at some time by the public within its trade area.
36. If when one analyses the likely trade area of a new retail liquor store there is a likelihood that persons outside the existing neighbourhood would attend that neighbourhood to purchase their future liquor supplies, the outcome is: (a) they are not consuming the liquor at those new premises; (b) that the same sale that is likely to have occurred elsewhere is now taking place at the new location; and (c) if a customer is attracted by the prices and purchased more on the one trip may mean that they simply will consume those liquor purchases over a greater period of time and have to make less purchases in the future.
37. Whilst in a practical sense that may mean there are, for example, traffic and parking related issues at the new retail liquor store (which are taken into account through the Council development approval process), it also means that there are obvious benefits, such as bringing more people into the neighbourhood who may stay and shop for their other needs in it. It does not mean that anti-social incidents, such as forms of violence, will increase because the retail liquor store is located, for example, next to a supermarket in a shopping centre where there is already liquor service available within or nearby (be it through a hotel or retail liquor store).
38. Finally Dr Chikritzhs says much of the quantity of alcohol that is sold from a specific outlet when compared to the number of outlets. No data whatsoever has been provided to suggest that the introduction of a successful retail liquor outlet (no matter what its size) can be linked to a change in the pre-determined demand for liquor in



that community or an increase in violence in the neighbourhood of those premises or in the neighbourhoods of the trade area of those premises.

39. Dr. Chikritzhs also incorrectly states (page 6) that the Police object to applications involving mega-stores (such as Dan Murphy stores). In NSW the research undertaken on behalf of the Police is very rarely concerned with the source of pre-packaged take-away liquor, but with premises where the consumption occurs on the premises (such as hotels and nightclubs). There has never been a suggestion, in any form of research, or to our knowledge in any public forum, that the Police are more concerned with liquor being consumed inappropriately at, for example, private residences. In contrast their focus of concern (and especially where those premises are late night trading venues) has been directed towards entertainment precincts. These precincts contain a cluster of licensed premises where the liquor is consumed on the premises (such as hotels and nightclubs) and operate as "late night trading" venues. This is the foundation of our submission at paragraph 3.3.8 above (see paragraphs 1 and 6 above), namely that the majority of alcohol related crime occurs between 9.00pm and 3.00am Friday and Saturday<sup>14</sup> at licensed premises that sell liquor for consumption on the premises. This is the principal concern of the Police. Accordingly, these venues are clearly distinguishable by their nature and operation from our client's licensed premises.
40. The limitations within the study are also to be highlighted. Whilst we do not propose to provide a detailed summary of those limitations we point out, as an example only, those remarks at page 21 which state "*this study was also cross-sectional, so it does not have the benefit of examining changes over time and concluding with confidence [our emphasis] whether outlet density changes preceded changes in violence or vice versa*".
41. Lastly, Dr Chikritzhs also rarely uses definitive terminology within her research papers but chooses to use wording such as "suggests" or "may result". Where definitive terminology is not adopted throughout any research paper caution must be taken in the conclusions reached as they are considered the personal views of the author. It is not our intention or aim to discredit Dr Chikritzhs' qualifications or research, however it is important that only the appropriate weight (in the appropriate context) is placed on her research and papers as they relate to NSW. Where her findings cannot be properly applied to the operation of packaged liquor licences in NSW they must be given little weight for present purposes.
42. It is inappropriate for Dr. Chikritzhs to state that the "quote" in paragraph 3.3.8 and the conclusions have been taken out of context, when one considers that the context of all her research is, as set out above, directed towards a finding that increased availability of alcohol leads to an adverse and significant impact upon the welfare and amenity of the public in the relevant community, no matter what circumstances or environment that liquor was purchased in. In other words, if it was up to Dr. Chikritzhs there would never be another liquor outlet opened or trading hours extended anywhere.

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<sup>14</sup> Applicant's own observations, supported by the documented view of the NSW Bureau of Crime Statistics and Research when releasing alcohol related crime statistics for each year together with research completed by others in the area of alcohol related matters.

43. Dr. Chikritzhs, and her colleagues involved in the research that she relies upon, have no interest in the source of the alcohol related harm, namely the reasons as to what might cause persons to drink excessively, thereby causing the corresponding harm, whether it be on other members of the community or themselves, or how those persons actually acquired their liquor or any other substance that they may have consumed. Further, if Dr Chikritzhs was providing a balanced view in her scenario (which we are not saying is true) that there is a potential for additional drinkers and liquor to be sold in the relevant trade area of a new retail liquor store, then there must be an equal potential for those extra sales to be made to persons who drink responsibly and who are not involved in alcohol related harm. The vast majority of the public are responsible consumers of alcohol, which has been acknowledged by the NSW Parliament. Mr Greene<sup>15</sup>, in his *Introduction Speech*, reminded the House that the *"overwhelming majority of the people in this State do the right when it comes to enjoying a drink. They are more than capable of enjoying a drink or two now and then without getting themselves involved in violent situations"*.
44. Further to the above, there is no consideration given to external and natural factors in Dr Chikritzhs' study that might skew their figures and in turn their conclusions, such as persons migrating from one LGA to the next where alcohol related harm occurs. Where there are temporary increases in a population, it is statistically more likely that there would be greater numbers of offences in that area, but this can "skew" statistics" as they are based on resident population only. It may not matter that one LGA or community has more licensed premises than others when you take into account the actual migration of patrons.

**Our Comments regarding the *Predicting Alcohol-Related Harms from Licensed Outlet Density Research*:**

45. This paper highlights the shortcomings in other research by the inability to distinguish between the impact of consumption, the type of outlet, the number of outlets, and the socio demographic factors.
46. At page 17 Dr Chikritzhs states that *"It is important to recognise that the relationship between harm and alcohol availability for licensed premises is highly context-specific and therefore, by the same token, the relationship is likely to vary between countries, cultures and communities where social norms, town planning policies and licensing systems may also vary considerably. Thus, a relationship observed among a US population may not hold true in an Australian context"*.
47. The research suggests that the measurement of density should not be dependant upon the number of licensed premises in a given area measured against the standard norm (ie NSW). It suggests that there is a strong relationship between consumption data (and more so with regular beer consumption) and rates of alcohol related harm. Socio-economic and demographic factors alone accounted for much of the variance in reported assaults however there is a strong correlation between beer sales and assaults. That is to say if beer sales are high in a given area, it is also likely that there are greater rates of assaults.

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<sup>15</sup> Mr Kevin Greene's (Minister for Gaming and Racing and Minister for Sport and Recreation) Introduction Speech to Parliament, introducing the Bill amending the 2007 Liquor Act with the introduction of a 6-hour closure period on licensed premises.

48. As set out above at paragraphs 14 and 20, there is no evidence that the grant of a new packaged liquor licence in itself creates new drinkers or makes existing drinkers consume more. When a new retail liquor store opens, an increase in the number of outlets is thereby created, but this merely results in the pre-determined demand for pre-packaged take-away liquor being shared amongst existing outlets, which then on average sell less individually, but combined sell about the same.
49. As also set out above, our client acknowledges that some areas have a higher pre-determined demand for pre-packaged take-away liquor when compared to other areas. Statistically and logically there must be a higher chance of alcohol related crime in an area where a pre-determined demand for liquor (or in this case beer sales) in a community is greater in that area when compared to other areas. What our client disagrees with (and where there is no evidence to the contrary) is that the pre-determined demand (or in this case beer sales) changes when a new *packaged liquor licence* is introduced to an area where liquor service is already available.
50. With respect to consumption data, this is not available in NSW at the levels documented by this research and therefore the research cannot be applied to any *liquor application* in NSW in any event.
51. The research does however acknowledge that not all communities are the same and not all licensed premises are equal and that the impact of changes to alcohol outlet density may be manifest differently across time and place, such that indicators which exhibit strong associations with outlet density in one area may fail to be significant in another. At page 87 the research acknowledges "*ultimately, however, it should be left to individual communities and their representatives to determine the 'optimal' balance between the apparent benefits brought by the physical availability of alcohol and the subsequent costs to public health, safety and amenity*". We believe this is the aim and purpose of our client's *Statement of Impact*, which obtains the relevant data and information, then analysis it and finally balances the relevant impacts of operating a *packaged liquor licence* at a specific location in specific surroundings.
52. Lastly we highlight that the research also acknowledges at page 83 that "*variations may occur at many levels including but not restricted to: management practices; venue characteristics; patron characteristics; police activity and enforcement; and crucially, levels of alcohol sales*". The nature and extent of the venue and the corresponding patron characteristics are addressed within our *Statement of Impact*. As to Police activity, all licensees at every licensed premises operated by Woolworths are instructed to actively work with the local Police to address any real or perceived concerns in that particular community. Again we emphasise that our client addresses the potential for alcohol related harm as a result of the potential for alcohol sales at all of its licensed premises by the physical steps it takes from the conception stage of a new store through to and including the on-going responsible management of that store, such as:-
  - (a) At the conception and design stage consideration is given to *Crime Prevention through Environmental Design* (CPTED) measures which focus on the planning, design and security measures to be put in place at the store to reduce the likelihood of crime. CPTED principles aim to create the reality (or perception)

that the costs of committing crime are greater than the likely benefits. We have recently introduced these concepts as an attachment to the *Statement of Impact*.

- (b) At the operational stage by engaging, training and supervision of staff and overseeing the opening and responsible on-going management of the new store. This is achieved by implementing working management policies and procedures at the store and by providing regular updates and reminders to staff of their obligations particularly at peak trading periods. The specific policies and procedures to be adopted at each location form an attachment to the *Statement of Impact*.

We note that the Direction is being treated in a global sense, namely with respect to our client's current *liquor applications* or future ones but not in relation to any individual application. Therefore it is our client's position that this correspondence should not be released to any party other than the members and staff of the Authority without our client's prior written consent.

In view of the contents of this correspondence we assume it is not necessary for us to address the subject matter again in any future *liquor applications* unless there is a specific submission that requires an appropriate response (for example as a result of some new research or interpretation of applicable and relevant data). If that is not the case would you please advise us of the Authority's position.

Further, if you or any other member of your Department has a different view (now or in the future) or intends to provide a report to the sitting members of the Authority at any time which may affect our client's future *liquor applications*, we request that the Authority, as a matter of procedural fairness, provide a copy of that report to us so that we can obtain our client's instructions to comment upon it.

We await your reply.

Yours faithfully  
**BACK SCHWARTZ VAUGHAN**



**TONY SCHWARTZ**

Partner

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Casino, Liquor &  
Gaming Control Authority

Our reference LIQP700355220  
Your reference TS:TP:23093

Mr Tony Schwartz  
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SYDNEY NSW 2000

[tschwartz@bsv.com.au](mailto:tschwartz@bsv.com.au)

Dear Mr Schwartz

I am writing in response to your letter of 2 March 2011 concerning the representation of research in application documents lodged on behalf of Woolworths Ltd.

Please accept my apologies for the extended delay in providing this response to you.

The Authority has noted and considered the information in your letter, information supplied by Mr David Allen following the Authority's decision to grant an application for a packaged liquor licence for a Woolworths Liquor outlet at Tura Beach, and information supplied by Associate Professor Tanya Chikritzhs of Curtin University.

The Authority has determined to take no further action in this matter.

Yours sincerely

David Greenhouse  
**Chief Executive**

7 October 2011

12<sup>th</sup> December 2011

Mr Shane Tremble  
National Liquor Licensing and Acquisitions Manager  
Woolworths Liquor Group  
Woolworths Limited  
1 Woolworths Way  
Bella Vista NSW 2183

**ALCOHOL PRICING – CASINO, LIQUOR AND GAMING CONTROL AUTHORITY NSW**

As requested, this letter presents our independent assessment of liquor pricing and consumption in Australia. In particular, a review of trends in the consumption of alcohol and the price of alcohol since the creation of large format store outlets, being Dan Murphy's operated by Woolworths and First Choice Liquor operated by Coles, is presented. The extent of the trade areas served by such large format facilities is also discussed.

**Large Format Liquor Stores**

Large format liquor stores are the large superstores typically operated by Woolworths and Coles. The Woolworths banner, Dan Murphy's, was acquired in 1998, and has increased in store numbers from around 19 in 2003 to over 140 stores currently. The average sized store is around 1,000-1,200 sq.m in size.

The Coles First Choice Liquor format was first opened at Taroonga in Melbourne in May 2005. Coles now operate some 76 stores which are typically around 500-1,000 sq.m in size.

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### Typical Catchment

Large format liquor stores typically achieve sales of over \$10 million or more, attracting customers from a broad region. Sales for these stores are typically at least five to ten times greater than a typical bottle shop of 150 sq.m serving a local neighbourhood.

To record sales of \$10 million or more, large format liquor stores have to attract business across a wide region and across a number of different alcoholic categories, including beer, spirits, but more particularly wine sales.

Research was provided by Woolworths for four Dan Murphy's outlets in Western Australia in relation to a postcode survey of customers in December 2009. [REDACTED]

[REDACTED]

[REDACTED]

The draw of a large format liquor store is like any large format retail facility, attracting customers on an irregular basis to make bulk purchases. This compares with smaller detached bottle shops in local convenience centres, attracting customers from a smaller geographical area purchasing a smaller number of items (one or two bottles of alcohol) at any one time on a more regular basis.

### Australian Liquor Consumption

The Australian Bureau of Statistics (ABS) detail the consumption of alcohol in Australia on a time series basis since 1960/61. Table 1 attached outlines the total per capita consumption of pure alcohol in Australia for beer, wine and spirits and ready to drink items over that time period.

As evidenced in the table, the highest level of per capita consumption of alcohol in Australia was in the 1970s and early 1980s. Since that time, per capita consumption of alcohol has remained relatively stable at around 10-11 litres per person.

Importantly, since the introduction of large format liquor stores operated by the chain supermarkets (1998 for Woolworths and 2005 for Coles), per capita liquor consumption has not changed in any significant terms from 10.10 litres per person in 1998 to 10.25 litres per person in 2010.

Further, in that time frame, consumption of beer has fallen per person, consumption of spirits has increased slightly (but declined in recent years), while consumption of wine has increased.

The above analysis is clear evidence that large format liquor stores have not resulted in substantial further consumption of alcohol in Australia. Further, consumption levels are some 20% below the peak levels in the mid 1970s when Australians were consuming over 13 litres per person annually.

### **Alcohol Price Inflation**

The ABS also present data on Consumer Price Inflation (CPI) in Australia in Catalogue Number 6401. More specifically, the ABS present inflation in relation to alcoholic drinks including for beer, wine and spirits. Table 2 presents data on inflation assumptions for each category from 1990 to 2011. The overall average CPI (inflation rate) is also presented, together with food inflation and non-food inflation, as well as total retail inflation (RPI).

The key points to note include:

- Total alcohol retail price inflation has been in-line with or greater than total retail and consumer price inflation over the past 13 years, since the opening of the Dan Murphy's liquor chain.
- Beer price inflation has been substantially greater than CPI/RPI, as has spirits price inflation.
- The key alcoholic category that has not experienced substantial price increases has been wine. There has been some price deflation over the past five years.



The above analysis, therefore, clearly indicates that the opening of large format liquor stores has not resulted in discounting of liquor prices in key categories such as beer and spirits. There is a possibility that these stores have had some impact on the higher priced wine category, but in general the price of wine has increased. Fluctuation in the price of wine, however, is also closely related to the production of grapes and the glut of grapes in certain years resulting in lower priced wines.

### Summary

Overall, all of the factual evidence produced indicates that the opening of large format liquor stores has not resulted in increased consumption of alcohol on a per capita basis in Australia, or resulted in significant price deflation across any category.

Further, these large format liquor stores provide greater convenience for residents by providing a wide range of goods across all alcoholic categories for people generally up to a 5-10km radius around their sites.

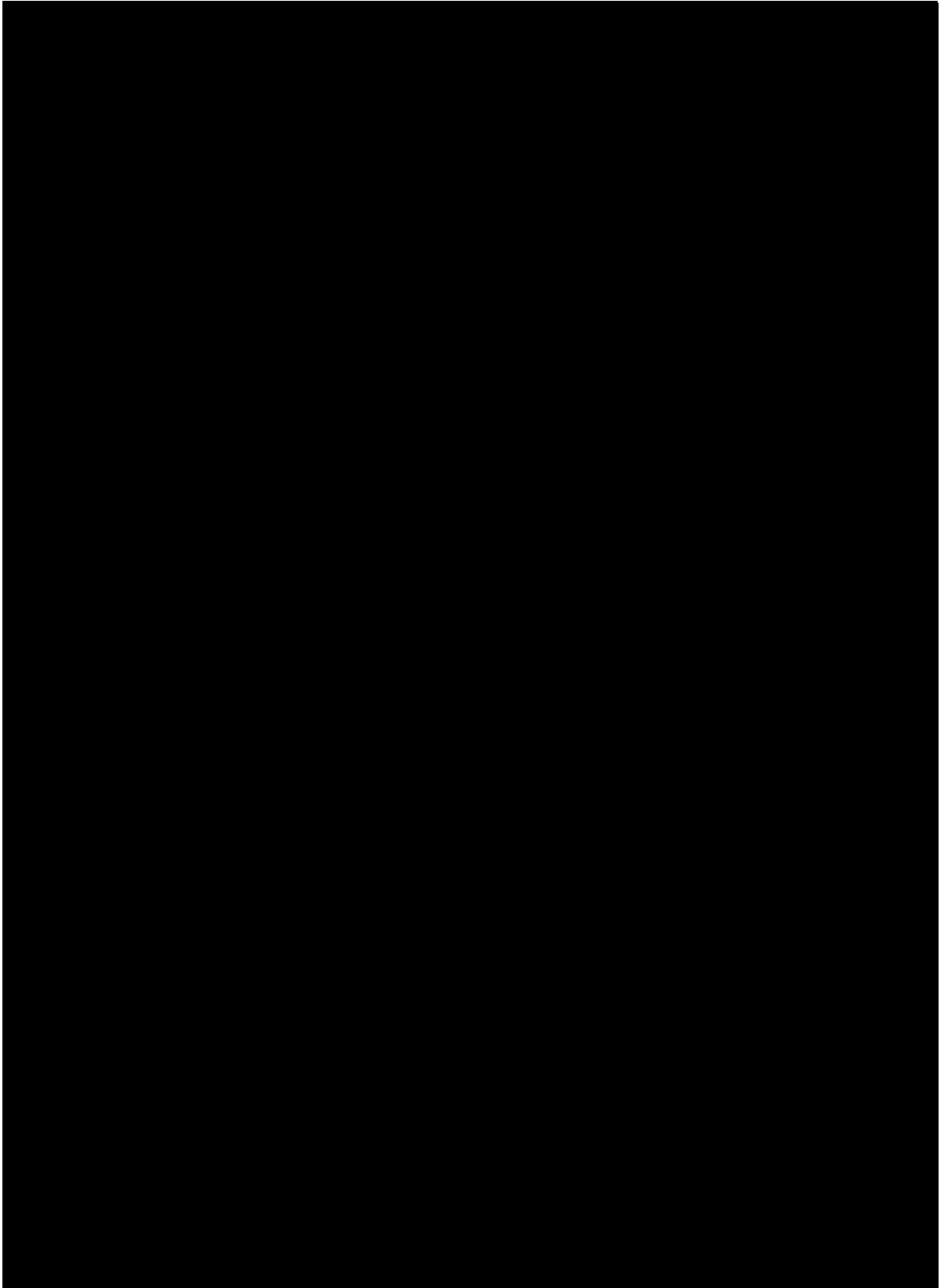
Yours Sincerely



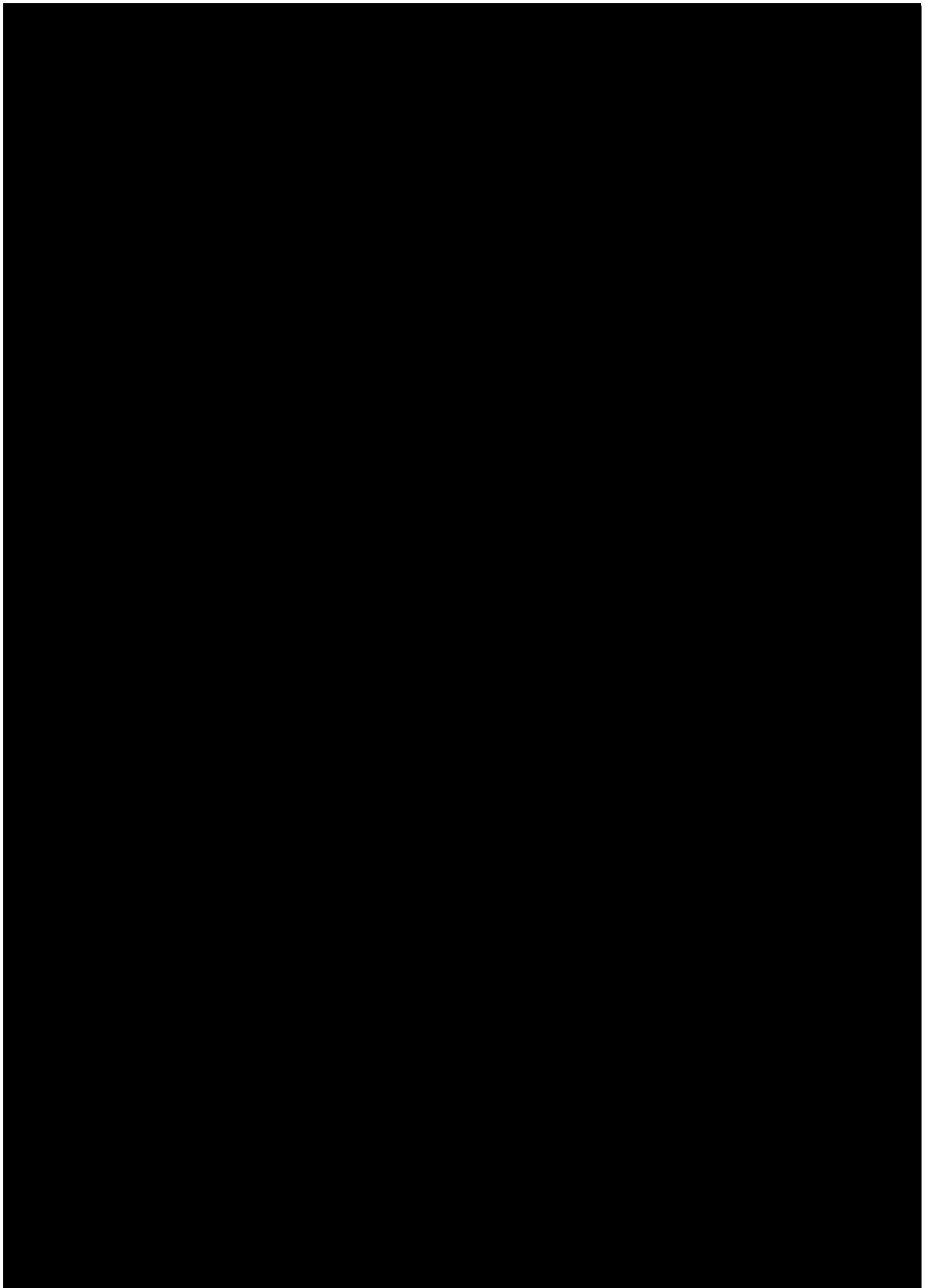
Gavin Duane  
Director

LOCATI<sup>duane</sup>Q

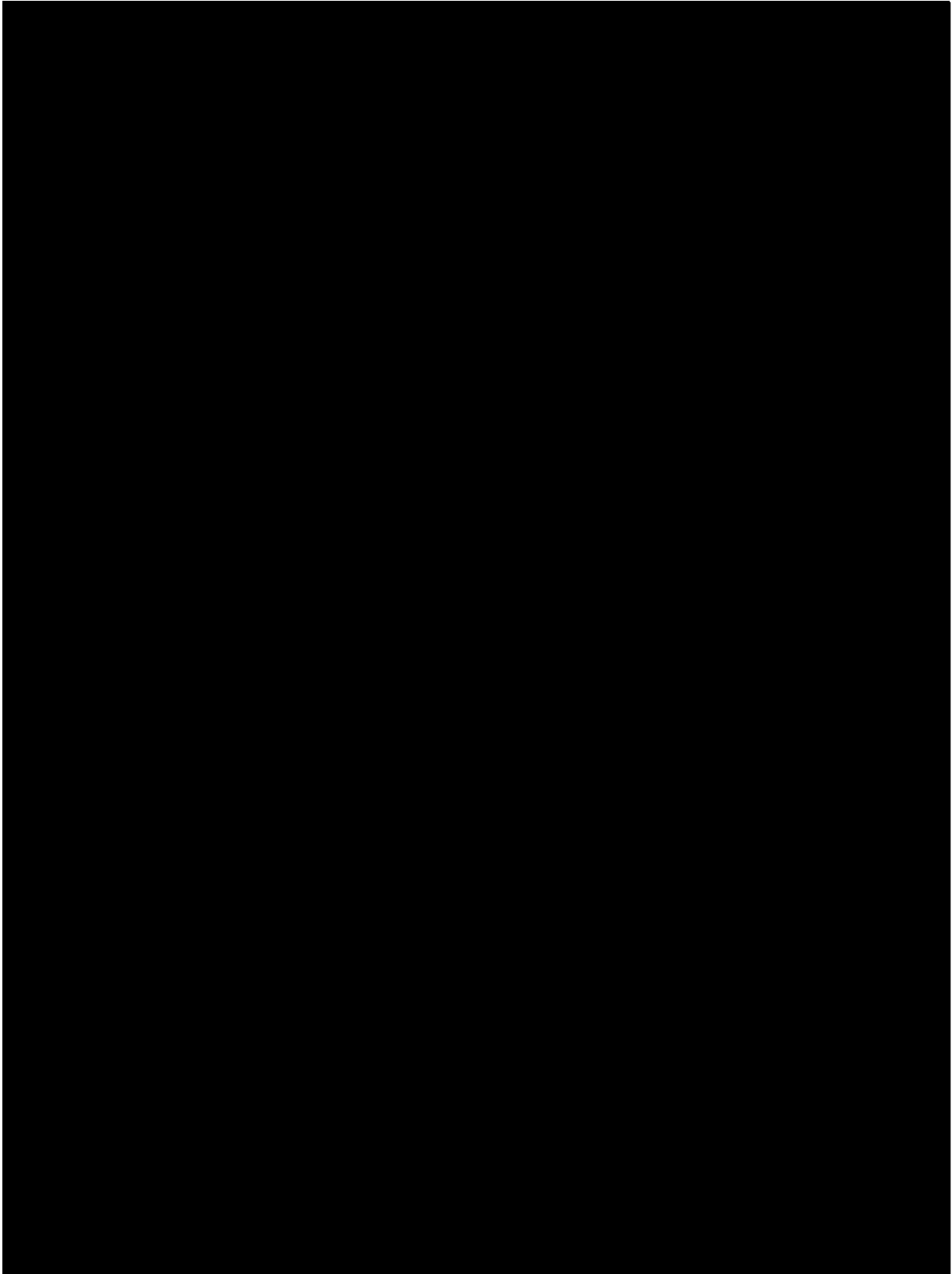
**MAP 1 – DAN MURPHY’S MORLEY**



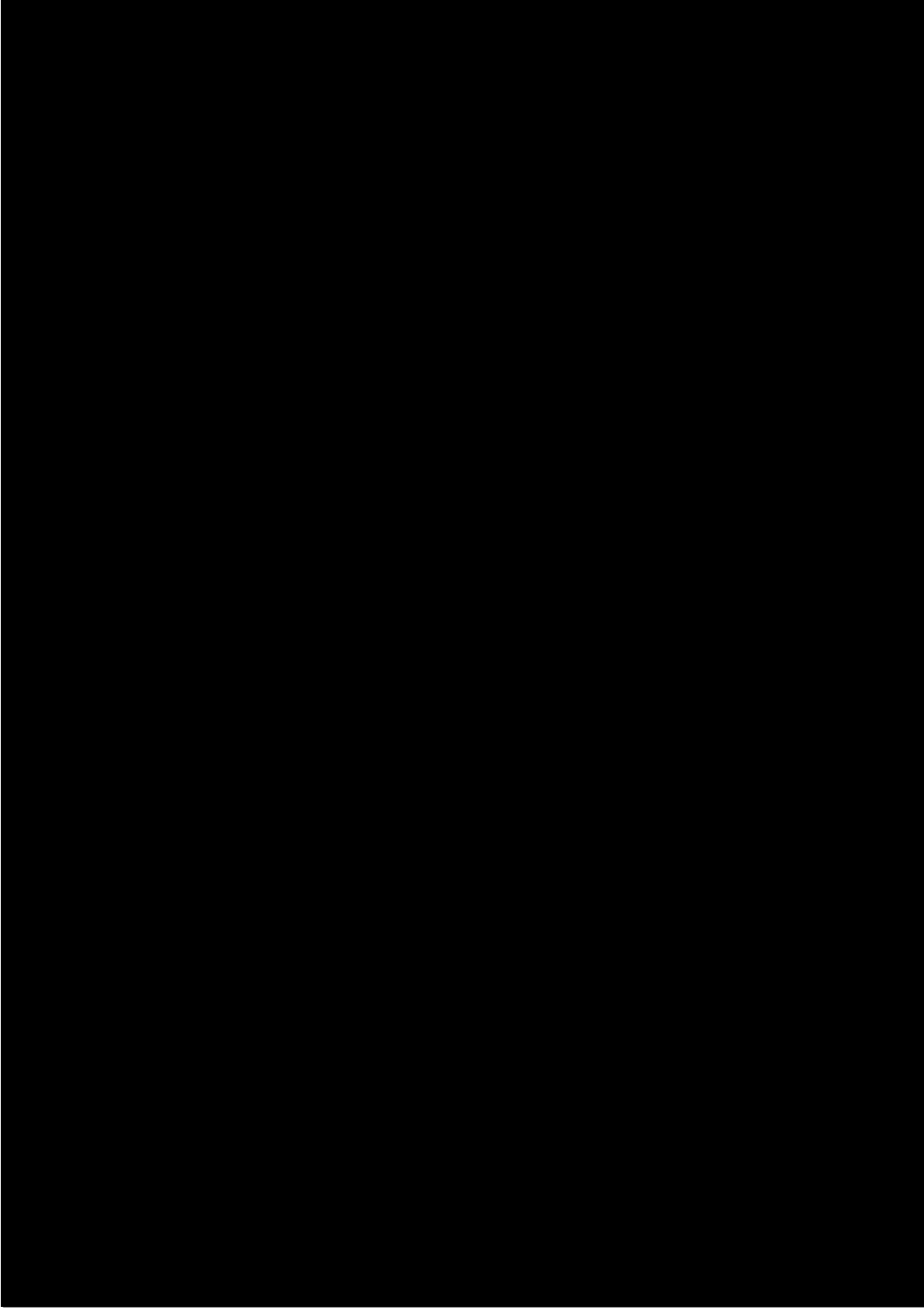
**MAP 2 – DAN MURPHY’S MANDURAH**



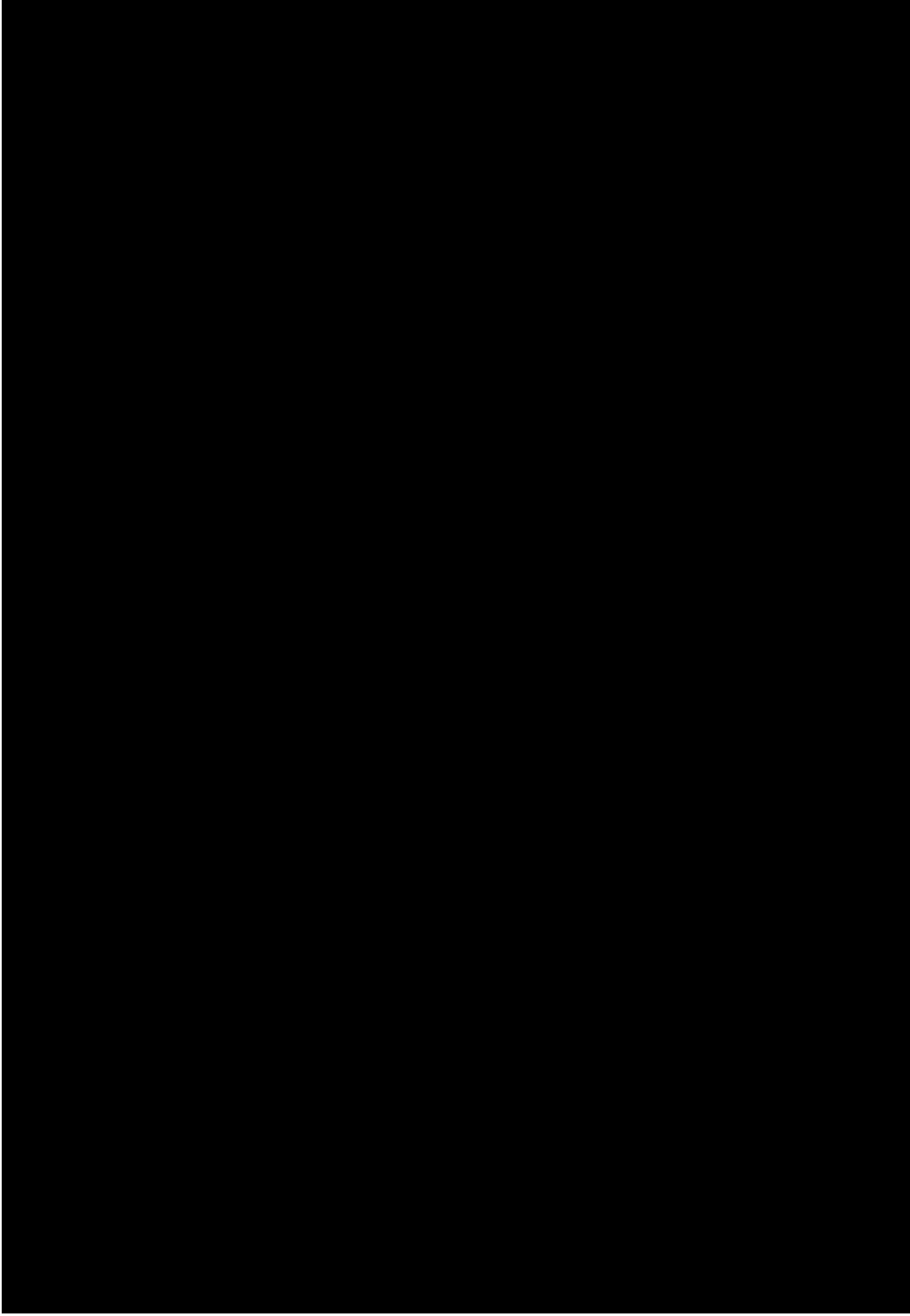
**MAP 3 – DAN MURPHY’S BALGA**



**MAP 4 – DAN MURPHY’S SOUTHERN RIVER**



**MAP 5 – DAN MURPHY’S ALBANY**



**TABLE 1 – PURE ALCOHOL CONSUMPTION PER CAPITA, AUSTRALIA**

Financial Year	Per Capita Consumption of Pure Alcohol (Litres)			Total
	Beer	Wine	Spirits & RTDs	
1960-61	7.06	1.16	1.12	9.34
1961-62	7.03	1.16	1.19	9.38
1962-63	7.09	1.18	1.20	9.47
1963-64	7.32	1.22	1.25	9.79
1964-65	7.54	1.22	1.34	10.10
1965-66	7.52	1.30	1.18	10.00
1966-67	7.69	1.43	1.17	10.29
1967-68	7.92	1.55	1.31	10.78
1968-69	8.15	1.67	1.30	11.12
1969-70	8.35	1.79	1.44	11.58
1970-71	8.43	1.72	1.44	11.59
1971-72	8.36	1.71	1.51	11.58
1972-73	8.59	1.85	1.71	12.15
1973-74	9.18	2.05	1.71	12.94
<b>1974-75</b>	<b>9.22</b>	<b>2.24</b>	<b>1.63</b>	<b>13.09</b>
1975-76	8.98	2.35	1.56	12.89
1976-77	8.96	2.39	1.71	13.06
1977-78	8.77	2.42	1.79	12.98
1978-79	8.47	2.75	1.44	12.66
1979-80	8.52	2.84	1.36	12.72
1980-81	8.29	2.96	1.47	12.72
1981-82	8.21	3.08	1.54	12.83
1982-83	7.73	3.15	1.55	12.43
1983-84	7.45	3.24	1.47	12.16
1984-85	6.79	3.33	1.57	11.69
1985-86	6.82	3.36	1.65	11.83
1986-87	6.55	3.25	1.53	11.33
1987-88	6.62	3.20	1.60	11.42
1988-89	6.62	2.97	1.66	11.25
1989-90	6.52	2.86	1.64	11.02
1990-91	6.29	2.77	1.51	10.57
1991-92	5.82	2.89	1.43	10.14
1992-93	5.51	2.84	1.49	9.84
1993-94	5.49	2.89	1.75	10.13
1994-95	5.44	2.87	1.63	9.94
1995-96	5.30	2.86	1.61	9.77
1996-97	5.28	2.96	1.70	9.94
<b>1997-98</b>	<b>5.19</b>	<b>3.10</b>	<b>1.81</b>	<b>10.10</b>
1998-99	5.08	3.13	1.77	9.98
1999-2000	5.05	3.22	1.65	9.92
2000-01	5.09	3.25	1.81	10.15
2001-02	4.84	3.23	1.87	9.94
2002-03	4.99	3.35	2.01	10.35
2003-04	4.72	3.44	2.06	10.22
<b>2004-05</b>	<b>4.62</b>	<b>3.53</b>	<b>2.16</b>	<b>10.31</b>
2005-06	4.63	3.53	2.15	10.31
2006-07	4.63	3.70	2.23	10.57
2007-08	4.63	3.66	2.26	10.56
2008-09	4.62	3.73	2.04	10.40
<b>2009-10</b>	<b>4.44</b>	<b>3.81</b>	<b>2.00</b>	<b>10.25</b>

Source: ABS Cat. No 43070DO001 Apparent Consumption of Alcohol, Extended Time Series

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**TABLE 2 – ALCOHOL PRICE INFLATION, AUSTRALIA**

Y/E June	CPI Total	Retail Price Inflation			Alcohol Categories			
		Food	Non-Food	Total	Beer	Wine	Spirits	Total
1991	3.4%	4.1%	3.6%	3.9%	7.4%	3.8%	10.8%	7.3%
1992	1.2%	2.6%	1.6%	2.1%	2.5%	1.7%	2.8%	2.5%
1993	1.9%	3.9%	0.9%	2.4%	2.9%	1.4%	2.1%	2.4%
1994	1.7%	2.8%	1.0%	1.9%	3.1%	6.1%	2.2%	3.5%
1995	4.5%	4.9%	1.5%	3.1%	3.9%	4.4%	3.2%	3.9%
1996	3.1%	4.8%	1.7%	3.2%	5.7%	6.6%	4.1%	5.6%
1997	0.3%	2.7%	1.6%	2.1%	0.9%	0.2%	2.8%	1.1%
1998	0.7%	2.2%	0.4%	1.3%	1.0%	3.3%	-1.0%	1.1%
1999	1.1%	3.3%	-0.2%	1.5%	1.9%	0.8%	2.1%	1.6%
2000	3.2%	2.8%	-0.5%	1.2%	3.1%	0.2%	1.6%	2.0%
2001	6.0%	8.1%	4.6%	6.4%	8.3%	7.2%	7.2%	7.8%
2002	2.8%	3.2%	1.1%	2.2%	2.0%	1.0%	2.1%	1.7%
2003	2.7%	4.0%	0.1%	2.1%	3.5%	0.8%	2.9%	2.4%
2004	2.5%	2.9%	-1.0%	1.0%	6.9%	2.4%	2.7%	4.6%
2005	2.5%	2.4%	-0.2%	1.1%	4.4%	1.1%	2.2%	2.9%
2006	4.0%	6.8%	0.3%	3.6%	4.7%	1.4%	3.8%	3.3%
2007	2.1%	2.5%	1.1%	1.8%	4.8%	-1.0%	4.5%	2.7%
2008	4.5%	4.2%	-0.1%	2.0%	5.0%	3.0%	9.2%	5.2%
2009	1.5%	4.8%	1.8%	3.3%	4.3%	-0.7%	9.0%	3.6%
2010	3.1%	3.6%	-0.9%	1.3%	6.1%	1.5%	2.6%	3.9%
2011	3.6%	6.0%	-0.4%	2.8%	1.2%	0.8%	3.2%	1.5%
<b>Average Annual Growth Rate</b>								
1991-1995	2.5%	3.7%	1.7%	2.7%	4.0%	3.5%	4.2%	3.9%
1996-2000	1.7%	3.1%	0.6%	1.9%	2.5%	2.2%	1.9%	2.3%
2001-2005	3.3%	4.1%	0.9%	2.5%	5.0%	2.5%	3.4%	3.9%
2006-2011	3.1%	4.6%	0.3%	2.5%	4.3%	0.8%	5.4%	3.4%
<b>1991-2011</b>	<b>2.7%</b>	<b>3.9%</b>	<b>0.9%</b>	<b>2.4%</b>	<b>4.0%</b>	<b>2.2%</b>	<b>3.8%</b>	<b>3.4%</b>

Source : ABS 6401.0 Consumer Price Index, Australia

