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Commentary

Real or perceived impediments to minimum pricing of alcohol in Australia: Public opinion, the industry and the law

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ABSTRACT

A burgeoning body of empirical evidence demonstrates that increases in the price of alcohol can reduce per capita alcohol consumption and harmful drinking. Taxes on alcohol can be raised to increase prices, but this strategy can be undermined if the industry absorbs the tax increase and cross-subsidises the price of one alcoholic beverage with other products. Such loss-leading strategies are not possible with minimum pricing. We argue that a minimum (or floor) price for alcohol should be used as a *complement* to alcohol taxation. Several jurisdictions have already introduced minimum pricing (e.g., Canada, Ukraine) and others are currently investigating pathways to introduce a floor price (e.g., Scotland). Tasked by the Australian government to examine the public interest case for a minimum price, Australia's peak preventative health agency recommended against setting one at the present time. The agency was concerned that there was insufficient Australian specific modelling evidence to make robust estimates of the net benefits. Nonetheless, its initial judgement was that it would be difficult for a minimum price to produce benefits for Australia at the national level. Whilst modelling evidence is certainly warranted to support the introduction of the policy, the development and uptake of policy is influenced by more than just empirical evidence. This article considers three potential impediments to minimum pricing: public opinion and misunderstandings or misgivings about the operation of a minimum price; the strength of alcohol industry objections and measures to undercut the minimum price through discounts and promotions; and legal obstacles including competition and trade law. The analysis of these factors is situated in an Australian context, but has salience internationally.

Introduction

Government can curb per capita alcohol consumption and reduce harmful drinking by increasing the price of alcohol (Anderson, Chisholm, & Fuhr, 2009; Gallet, 2007; Wagenaar, Tobler, & Komro, 2010). Price control through alcohol taxation has proven the most effective policy response at hand (Babor et al., 2010). A minimum (or floor) price of alcohol, below which alcohol cannot be retailed, can be used as a complement to taxation. Floor prices for alcohol are currently in place in eight of the 10 Canadian provinces, Ukraine, Russia, Uzbekistan, the Republic of Moldova (Carragher & Chalmers, 2011) and some US states (e.g., Connecticut) (Chen, 2010). Scotland recently legislated to implement a minimum price (albeit subject to legal challenges) and the governments of the United Kingdom and the Republic of Ireland are investigating the feasibility of minimum pricing (ANPHA, 2012).

There are multiple ways to establish a minimum price. Minimum unit pricing sets a minimum price for a unit of alcohol, such as Scotland's legislated price of £0.50 for 12 g of alcohol or ethanol (ANPHA, 2012). In Canada, minimum pricing is termed 'social reference pricing'. Typically, Canadian provincial government monopolies set minimum prices per litre of beverage without reference to ethanol content (Stockwell et al., 2013). A minimum price can also be established by banning "below cost" sales of alcohol, where the cost might be defined as the amount of government duties on the alcohol plus VAT, as was proposed for England and Wales in 2011, but not enacted (Carragher & Chalmers, 2011), or the posted bottle price from the wholesaler plus charges for shipping or delivery to the retailer's place of business paid by the retailer, as is the case in Connecticut (Chen, 2010).

Alcohol taxation in Australia is complex and "incoherent" (Henry Review, 2010, p. 436). Alcohol attracts a 10% Goods and Services Tax. On top of this, beer and spirits attract varying rates of tax according to their pure alcohol content by volume and for beer, whether it is sold on keg (draught) or packaged; whereas wine and traditional ciders are taxed as a percentage of wholesale prices,

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on an ad valorem basis. Unmixed spirits, premixed spirits (including alcopops) and flavoured cider attract the highest level of tax (97 cents per standard drink). The effective tax rates per standard drink for some other products are: 32 cents for full strength packaged beer – 4% alcohol by volume (abv); 23 cents for full strength draught beer and 30 cents for mid-strength packaged beer – 3.5% abv. A 4-litre cask of wine (12% abv) selling for $12.99 attracts only 5 cents per standard drink. Spirits (particularly after the alcopops tax increase in 2008) and beer have become more expensive relative to consumer items in general, over the past decade, while wine has become substantially less expensive (Carragher & Chalmers, 2011). Two independent reviews advised the Australian government of the need to reform the alcohol taxation system (Henry Review, 2010; National Preventative Health Taskforce, 2009).

In 2008, the Australian government established a National Preventative Health Taskforce to develop a national preventative health strategy focusing on three areas of critical public health concern: obesity, tobacco, and excessive alcohol consumption. In the context of alcohol consumption, the Taskforce report noted that although the majority of Australians drink in moderation, there is an urgent need to reshape Australia's drinking culture to reduce healthcare and associated costs of excessive consumption, particularly in relation to de-normalising intoxication. In addition to recommending alcohol taxation reform in the form of volumetric taxation, the Taskforce advised that a floor price be established to increase the cheapest prices of alcohol and encourage a "real shift in per capita consumption rather than just product preference" (National Preventative Health Taskforce, 2009, p. 256).

In 2012, the Australian government requested that the Australian National Preventive Health Agency (ANPHA) examine the public interest case for a minimum price. In its Draft Report ANPHA (2012) recommended that a minimum price should *not* be introduced nationally at this time, advising that reform of the alcohol taxation system be re-appraised and minimum pricing be considered only in local circumstances. ANPHA concluded that it was not possible to extrapolate the findings of overseas modelling analyses on minimum pricing to Australia since consumers in different countries display different elasticities. ANPHA (2012, p. 8) explained that it was unable to confidently estimate the costs and benefits because "crucial parameters are missing", making it difficult to predict how consumers might substitute between alcohol products in light of a minimum price and drew attention to the dearth of widely available, affordable sales data. Even so, ANPHA made an initial judgement that it would be unlikely for benefits to outweigh costs at a national level because, unlike the Canadian provinces with minimum prices, Australia has a fully privatised alcohol industry. In Australia the alcohol industry benefits from increased revenue, whereas in Canada the monopoly government suppliers recoup the revenue, allowing government to distribute the revenue to the community.

Evaluations of minimum pricing in two Canadian provinces confirm that population level drinking is significantly reduced by increases in minimum price (Stockwell, Auld, Zhao, & Martin, 2012; Stockwell, Zhao, et al., 2012). Key to establishing a public case, is the question of how minimum pricing impacts harmful alcohol consumption. Harmful alcohol consumption in some regional and remote communities in Australia was successfully restrained by banning the sale of the cheapest forms of alcohol (i.e., 4- and 5-litre wine casks) (National Drug Research Institute, 2007). The most recent in the series of Canadian studies reported that increases in the minimum price of alcohol in British Columbia were associated with reductions in deaths wholly attributable to alcohol in that province (Zhao et al., 2013). The robustness of these findings has been challenged by the UK alcohol industry (e.g., the Wine & Spirits Trade Association, 2013), warranting a response in defence from the authors (Stockwell et al., 2013). A critique of the statistical methods employed in the Zhao et al. (2013) study raises some concerns about the validity of the conclusions (Goldin, 2013).

Proponents of minimum pricing highlight evidence that harmful drinkers tend to seek out the cheapest forms of alcohol (Crawford et al., 2012; Gruenewald, Treno, Nephew, & Ponicki, 1995; Kerr & Greenfield, 2007; Meier, Purshouse, & Brennan, 2010) and people who drink the cheapest alcohol would be more sensitive to the establishment of a floor price because they are unable to maintain consumption without increasing the cost of drinking (Gruenewald, Ponicki, Holder, & Romelsjo, 2006). In relation to general price or tax increases in alcohol, a meta-analysis of nine studies found that heavy drinkers are price responsive (Wagenaar, Salois, & Komro, 2009). In contrast, a more recent working paper found heavy drinkers, or binge drinkers reduced consumption as a result of alcohol price rises in only two of the 18 studies under review. Rather, moderate drinkers adjusted their drinking (Nelson, 2013). To further cloudy the water, a recent Australian empirical study concluded that people continue to binge in the face of price increases by reducing their alcohol consumption between episodes of binging (Byrnes, Shakeshaft, Petrie, & Doran, 2013).

We contend that a minimum price for alcohol and taxation reform are best conceptualised as complements, rather than alternatives. A more rational alcohol taxation system is certainly needed in Australia. But the research community is equivocal on the extent to which tax increases are passed onto consumers (see Carragher & Chalmers, 2011). Large retailers or supermarkets (who sell alcohol most cheaply) can absorb tax increases by cross-subsidising one alcohol product with other alcohol products or food items, even allowing some alcohol products to be sold below cost, in what is often referred to as loss-leading (Rabinovich et al., 2009). Indeed, the UK Treasury found in recent years that alcohol prices in supermarkets did not rise at the same rate as alcohol duties whereas alcohol prices in licensed premises increased at a higher rate (HM Treasury, 2010). The UK and Australian alcohol markets are dominated by supermarkets. Minimum pricing would limit the ability of the alcohol industry to subvert the intent of alcohol taxation reform (Carragher & Chalmers, 2011; National Preventative Health Taskforce, 2009; Webster, 2012).

Yet, the development and uptake of policy is influenced by more than evidence alone. We consider three potential impediments to minimum pricing in Australia. The first potential impediment is public opinion. Dynamic in nature, the strength of the relationship between public opinion and policy uptake is determined by the significance of the policy and the influence of invested parties. Given the prominence of alcohol as an issue and the panoply of vested interests, there is little doubt that policymakers pay attention to public opinion on alcohol control policy (Tobin, Moodie, & Livingstone, 2011). A second impediment is that the alcohol industry – although diverse, and comprising many actors at different stages of the alcohol supply chain – generally opposes public health interventions to increase price or limit availability, and will respond to policy reform intent on increasing "profits and sales, to maintain and enlarge its consumer base" (Zeigler, 2010, p. 254). A third potential constraint is that legislative change is required to introduce minimum pricing, change which may be subject to legal challenge under domestic and international law. While situated within the Australian context, our arguments have salience internationally.

The public opinion–policy linkage

Generally, less intrusive alcohol policies which have little impact on moderate drinkers attract more public support (e.g., warnings labels, educational campaigns) than measures which increase price or restrict physical availability (AIHW, 2011; Giesbrecht &

Greenfield, 1999; Giesbrecht, Ialomiteanu, Anglin, & Adlaf, 2007; Tobin et al., 2011). The more alcohol people consume, both at an individual and population level, the less likely they are to endorse policies that increase price (AIHW, 2011; Macdonald, Stockwell, & Luo, 2011).

There is a relative dearth of empirical research on the general public's beliefs and attitudes towards minimum pricing and their likely response should the policy be implemented. Lonsdale, Hardcastle, and Hagger (2012) published the first empirical study to elicit in-depth data on public views towards minimum pricing and identify conditions under which people may be more likely to endorse the policy. Using focus groups, the authors found that respondents: were sceptical that minimum pricing would be effective in reducing excessive alcohol consumption; were concerned that minimum pricing would exacerbate extant social problems, such as crime and drug use; and disliked the policy for several reasons including its perception of punishing moderate drinkers. The authors note that these beliefs stem in part from a misunderstanding of the policy, including failing to recognise the significance of small reductions at the individual level on consumption at the population level. Lonsdale et al. (2012) found that minimum pricing would be more acceptable if introduced as part of a wider alcohol government strategy. To avoid misunderstanding, the authors suggest that interested policymakers should focus on improving awareness in order to dismiss negative beliefs that the policy will have limited effects, and clearly convey that the policy would have a much lower effect on the pockets of moderate drinkers relative to heavier drinkers and those who consume alcohol to excess. More general survey polls (Banerjee, Squires, & Parkinson, 2010; Health Research Board, 2012; Robson, 2012) and government public consultations have been conducted in the UK (Northern Ireland Department for Social Development, 2013; Scottish Government, 2012); the findings generally mirror those of Lonsdale et al. (2012).

What are the challenges to securing public support for minimum pricing?

It has been argued that public scepticism of minimum pricing stems, at least in part, from a misunderstanding of the way it operates and confusion between minimum pricing and taxation (e.g., Hagger, Lonsdale, Baggott, Penny, & Bowen, 2011; Lonsdale et al., 2012). One of the key differences between taxation reform and minimum pricing relates to the implications for government and industry revenue.

Under minimum pricing, increased revenue benefits alcohol retailers and producers, whereas under alcohol taxation duty increases are returned to the exchequer and can be hypothecated to alcohol harm prevention and treatment strategies. In the case of Scotland, it is predicted that the industry will benefit from an estimated £125m per annum in additional revenue under a £0.50 minimum price and discount ban (Meng, Hill-McManus, & Brennan, 2012). In response, large retailers have argued that forecasts of windfall profits are inflated and fail to consider potential rises in cross-border and internet sales, the black market, and changing market dynamics (Scottish Parliament, 2012). Regardless, this is an inherent challenge to achieving public support for the policy and, according to ANPHA (2012), an impediment to establishing a public interest case.

A further challenge facing policymakers is public concern that minimum pricing will unfairly penalise moderate drinkers and low-income groups. Proponents of minimum pricing point to Scottish modelling estimates which predict that a £0.50 minimum price will increase annual expenditure by only £8.19/annum for moderate drinkers, compared to £55.75/annum for hazardous drinkers and £193.51/annum for harmful drinkers (Meng et al., 2012). In an effort to assuage concerns that minimum pricing will punish the poorest in society, leading health advocates point out that individuals in low socio-economic groups stand to gain the most from reductions in alcohol consumption as they experience higher incidences of alcohol-related harms than their more affluent counterparts consuming equivalent amounts of alcohol (e.g., Bellis et al., 2005; Scottish Government, 2012). Ultimately, universal measures which impact the entire population will face opposition if the general public believe that alcohol harms centre on a small minority and fail to recognise that problems may stem from the social and economic environment implying collective responsibility (Tobin et al., 2011).

On balance, whilst available evidence suggests that public support for minimum pricing is mixed, there are international examples of public health policies where initially low public consensus *increased* post-implementation (e.g., random breath testing [see Harrison, Newman, Baldock, & McLean, 2003]; liquor licensing restrictions in indigenous communities [Gray & Chikritzhs, 2000; Tangentyere Council, 2003]; ban on smoking in the workplace, including restaurants and pubs [Fong et al., 2006]). This may offer some encouragement to policy-makers interested in introducing minimum pricing but fearful of voter backlash. In particular, the inclusion of a sunset clause, so that the legislation could be rescinded if demonstrated to be ineffective within a given time period (cf. Scotland), may prove useful in assuaging public doubts about the policy.

The alcohol industry

The alcohol industry is diverse and fragmented, comprising producers, wholesalers and distributors, as well as retailers selling alcohol in a range of locations, including pubs, night-clubs, restaurants, local bottle shops, supermarkets and large liquor stores (Jernigan, 2009). Alcohol tends to be sold more cheaply in the off-trade sector. Based on 2010 sales data, the £0.50 per standard drink minimum price in Scotland would affect 73% of off-trade sales (Scottish Government, 2012).

In general the alcohol industry, like the public (see above), prefers educational campaigns to pricing or availability controls (Casswell, 2009). These measures are among the least effective in reducing excessive consumption and related harms (Babor et al., 2010). There has been widespread industry opposition to the introduction of minimum pricing in the UK, although rivalries emerged between the off-trade and on-trade sectors, supermarkets and smaller retailers within the off-trade sector, and supermarkets and beer producers and distributors. The on-trade sector supported minimum pricing as a means of curbing the off-trade sector's discounting practices, in view of the controls imposed on irresponsible promotion in bars and clubs by the Licensing (Scotland) Act 2005, which came into effect in September 2009. Unsurprisingly, minimum pricing was also supported by independent and small retailers in the off-trade sector, as a means to constrain supermarket discounting; a practice which small retailers claim reduces competition within the off-trade sector (Holden, Hawkins, & McCambridge, 2012).

In contrast, all nine alcohol industry representative submissions to ANPHA, covering producers, distributors and retailers, expressed their opposition to minimum pricing (ANPHA, 2012). They argued that minimum pricing would not reduce the consumption of the heaviest drinkers and would unfairly impose price rises on people drinking moderately, presenting an additional financial burden on low-income moderate drinkers. Somewhat surprisingly, many of the industry submissions supported alcohol taxation reform over the introduction of minimum pricing. The exception was the Winemakers' Federation of Australia (2008, 2011), which oppose taxation reform on the basis of increased cost to low-income cask wine consumers, especially age pensioners.

The off-trade sector in both the UK and Australia is dominated by supermarkets. Four UK supermarkets (Asda, Morrison's, Tesco, and Sainsbury's) monopolise at least 70% of off-trade sales (Scottish Government, 2012). Similarly in Australia, the off-trade sector accounts for roughly three-quarters of alcohol sales by volume and is dominated by two supermarkets, Coles and Woolworths, operating a range of retail formats, from same-store food and alcohol through to big-box liquor stores (e.g., Dan Murphy's and 1st Choice), which are witnessing growth at the expense of smaller outlets (Euromonitor International, 2012). Supermarkets have substantial buying power and the ability to negotiate lower prices from suppliers and producers compared to smaller retailers. A salient difference between Australia and the UK is that Australian supermarkets also own pubs and bars whereas UK supermarkets do not.

Industry strategic response to the introduction of minimum pricing

Leicester (2011) anticipates that if minimum pricing plans in Scotland go ahead, this will lead to substantial revision of *all* alcohol prices charged by retailers and manufacturers, not just those affected under minimum pricing. Indeed, based on the Canadian experience of social referencing pricing, the Liquor Control Board of Ontario advised the Scottish Parliament that there could be corresponding increases in the prices of more expensive premium products (Robson, 2012).

The Scottish Government (2012), in its business and regulatory impact assessment of the Minimum Pricing Bill, concluded that the constraint on price competition might encourage an increase in non-price competition (advertising or marketing) which may run counter to the aims of the legislation. Indeed, direct marketing increased after the introduction of minimum pricing for tobacco in some states of the USA (Kim & Renaud, 2010). Furthermore, unable to use low-priced alcohol to attract customers into a store, retailers might lower the price of non-alcohol products instead (e.g., CDs, DVDs, books, non-alcoholic beverages, confectionery, and health and beauty products). The concern here is that affordability of alcohol, and hence the per capita level of alcohol consumption, might be left unchanged (Scottish Government, 2012).

Controlling alcohol promotions which undermine the minimum price

An issue not considered to date in the UK or Australian debates is the potential for promotional activities to undermine minimum pricing. Promotional activity intensified following the introduction of minimum pricing of tobacco in the USA (Paek, Reid, Jeong, Choi, & Krugman, 2012). The US based Tobacco Control Legal Consortium (2011) believes it is important to control promotional activity alongside minimum pricing, citing the importance of the US government's Family Smoking Prevention and Tobacco Control Act of 2009 in restricting price promotion activities and explicitly preserving the right of state and local governments to further restrict the sale and distribution of tobacco products.

In Australia, alcohol promotions by licensed premises are regulated under an amalgam of State/Territory liquor licensing laws and codes of practice. Some of these codes are legally enforceable (Australian Capital Territory, New South Wales, South Australia, Victoria), whilst others are voluntary (Western Australia, Queensland), and some States do not have any alcohol promotion guidelines (Tasmania) (Carragher & Chalmers, 2011). Yet, it is unclear how the following forms of promotion should or could be controlled to ensure that minimum pricing was not undermined.

Supermarkets, with their increasingly broad ownership base, have integrated some alcohol promotion into their loyalty schemes. For example, Woolworth's loyalty scheme is linked with the Qantas frequent flyer scheme and frequent flyer points can be redeemed for alcohol. In all states excluding Tasmania, frequent flyer points can also be earned by spending over $30 in one transaction at Woolworths owned liquor stores (http://www.qantas.com.au/fflyer/dyn/partners/liquor). In September 2012 Woolworths offered 500 Qantas frequent flyer points for $30 purchases at the Woolworths-owned liquor store, Beer Wine Spirits (BWS; direct email to customer).

Cross-promotion is a form of marketing promotion whereby customers of one product or service are targeted with the promotion of a related product. Australian supermarkets run a range of cross-promotion loyalty schemes involving alcohol. Recent cross-promotions involving alcohol included the offer to receive a $0.35/litre reduction in the price of Coles fuel by purchasing two items of alcohol from Coles-owned Liquorland (Liquorland, 2012).

The legal issues

Constitutional power to pass minimum pricing legislation

Under Australia's federal system of government, State/Territory (henceforth State) parliaments have the constitutional power to introduce a minimum pricing law that will only apply within the boundaries of the State which passed the law. To achieve a national minimum price, either all States must pass the same minimum pricing law or the Commonwealth government must pass a law to cover the whole of Australia. Both paths have their own difficulties. Achieving legislative uniformity amongst the State parliaments is notoriously difficult (although not impossible as demonstrated by the uniform State gun control laws [Baker & McPhedran, 2007]).

Whereas the States have the power to enact laws on most topics, the Commonwealth parliament can only enact laws about matters expressly provided for in the *Commonwealth Constitution*. The *Commonwealth Constitution* does not include the express power to make laws on alcohol or health. However, the Commonwealth parliament could use its power to make laws with respect to some 'corporations' to impose a minimum price on alcohol sold by corporate retailers. Comparably, without express powers to make laws with respect to tobacco, the Commonwealth parliament used this corporations' power (and several others) to legislate plain packaging of tobacco products (*Tobacco Plain Packaging Act 2011* (Cth)).

Competition law

Any legislative power to pass a minimum pricing law is limited by Australia's National Competition Policy (NCP) which requires that legislation must not restrict competition *unless* it can be demonstrated that: the benefits of the restriction to the community as a whole outweigh the costs and the objectives of the legislation can only be achieved by restricting competition (Competition Principles Agreement, 1995: cl 5(1)).

In the UK, opponents of minimum pricing have argued that the policy undermines competition by restricting a retailer's ability to gain an advantage through pricing. Whether a minimum price has that effect *in fact* depends on the minimum price's exact level and how that price relates to the market. A minimum price of AUD$1.20 per standard drink, for example, would likely only impact a small group of products like cask wine, which is currently priced around 40 cents per standard drink (Richardson & Denniss, 2011).

Even if competition were restricted by a minimum price law, the law would still be valid if the benefits of the minimum price outweigh the costs, and if it can be shown that a minimum price is the only way of achieving the objectives of the legislation, which presumably would be framed as improving public health through reducing alcohol-related harm. It is helpful that there is Canadian

(Stockwell, Auld, et al., 2012; Stockwell, Zhao, et al., 2012; Zhao et al., 2013) and Australian evidence (National Drug Research Institute, 2007) that minimum pricing can deliver significant health benefits by reducing alcohol consumption. Suggestions that other measures be used, such as community and schools education (e.g., Australian Alcoholic Beverage Industries, 2011), are easily countered by robust evidence that price increases are more effective (Babor et al., 2010). Suggestions that alcohol taxation reform is an equally (or more) effective alternative does not take into account that taxes are not always passed onto consumers as a result of loss-leading practices (Carragher & Chalmers, 2011).

Domestic trade law

Another limitation on the power to pass a minimum price law arises from s 92 of the *Commonwealth Constitution* which requires that trade between the Australian States be "absolutely free". Unlike the NCP, s 92 does not prohibit interference with competition per se. It only prohibits laws which: (i) discriminate between *intra*state and *inter*state trade and (ii) protect intrastate trade from interstate competition (Betfair v Racing New South Wales, 2012). A minimum price applied to *all* sales of alcohol, *regardless of the type of alcoholic beverage or the State from which it originated*, would most likely not be seen as discriminatory or protectionist as between States.

However, even a law that interferes with trade is justified if "reasonably necessary" to promote "public welfare" (Betfair v Western Australia, 2008). This parallels the issue arising in EU law regarding Scotland's minimum price. Restrictions on the free movement of goods are prohibited under article 34 of the Treaty on the Functioning of the European Union (hereafter referred to as the Treaty), but can be justified under article 36 of the Treaty if implemented on the grounds of the protection of health, providing such restrictions are not used as a means of arbitrary discrimination or a disguised restriction on trade. Under article 36, it must be shown that the minimum price can reduce alcohol-related harm and that no less restrictive measures are equally effective (Katikireddi & McLean, 2012). These requirements bring into focus the importance of setting a minimum price at the right level. As Nicola Sturgeon (2007–2012 Scottish Cabinet Secretary for Health and Wellbeing) explained, it is critical that minimum price is not set "too low, so that it would be ineffective, or too high so that it would be an unwarranted interference in the freedom of movement of goods" (Scottish Parliament Subordinate Legislation Committee, 2011: Col 209).

Scotland's minimum price is currently under challenge in the European Commission for infringing article 34 (Christie, 2012; European Commission Communication, 2012). The Commission has confirmed that it has "a problem with the compatibility of minimum pricing plans" with the Treaty, as do several other EU members (BBC News, 2012a), although no details of the Commission's view have been made public at the time of writing. Scotland has committed to "consider" the Commission's comments (BBC News, 2012a), and is "confident" that the minimum price law is justified on public health grounds (BBC News, 2012b).

International trade law

Under article III:4 of the World Trade Organisation's *General Agreement on Tariffs and Trade* (GATT), imported products must be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws affecting their internal sale. Australia would be in clear breach of article III:4 if it deliberately set a minimum price at a level which aimed to raise a protective barrier around the Australian alcohol industry. But outside of this situation, a minimum price, which applies to all products regardless of their origin, should be permitted in theory under article III:4. Article XX GATT also offers a general exception for laws if they are "necessary to protect human. . .life or health". This provision raises similar issues to the exception under s 92 of the *Commonwealth Constitution* and article 36 of the European Treaty.

Concluding remarks

According to a 2012 Australia-wide opinion poll, although mostly comfortable with their own level of drinking, three-quarters of the Australians polled would like to see more done to reduce the harms associated with drinking (FARE, 2012). A burgeoning body of empirical research demonstrates that the most effective way to reduce excessive consumption and related harms is by increasing the price of alcohol. In Australia, where cheap wine and cider attract relatively little tax, this requires both alcohol taxation reform and minimum pricing to ensure that tax increases are passed through to retail prices and that the prices of the cheapest alcohol, favoured by people drinking harmfully, increase.

Two major Australian government-commissioned reviews have strongly advised the need to address inconsistencies in the approach to alcohol taxation, by taxing wine and cider on a volumetric basis; a review to guide reform of Australia's taxation system and a review to establish Australia's national preventative health strategy. The government needs no further evidence to proceed with alcohol taxation reform. The extant taxation system is incoherent and complex, and facilitates the production of cheap wine. Introducing minimum pricing would limit the ability of the alcohol industry to absorb the potential impact of taxation reform on prices through discounting, loss-leading, and below cost selling. Taxation reform would also ensure that government, rather than the alcohol industry, benefitted from increased revenue flowing from the price increases. Both approaches have the potential to make a unique and complementary contribution to efforts aimed at reducing excessive consumption and related harms. Together, these policies would create a strong alcohol pricing framework. But, ANPHA did not conceptualise minimum pricing and taxation in this unified way.

The Australian alcohol industry stands united in rejecting minimum pricing and would very likely mount a legal challenge to any minimum pricing law, using one or more of the avenues discussed above. With profit margins at stake, the alcohol industry is likely to continue to shrewdly play on the concerns of the general public, criticising minimum pricing on the grounds that it will have a negative impact on responsible drinkers who can't afford to purchase premium products, and may not impact the consumption of the most harmful drinkers. Although research suggests that harmful alcohol consumption is associated with the cheapest products, the question of how harmful drinking is affected by increases in the price of cheap alcohol warrants further research.

We support and reiterate ANPHA's (2012) calls for state and territory governments to continue, or initiate, collection of wholesale alcohol sales data to facilitate research and subsequently inform evidence-based policy decisions specific to Australia. Currently, this information is collected and analysed by the alcohol industry but access to this data by researchers and policymakers is limited by the industry and costly to obtain. Access to this data is critical for undertaking modelling analyses similar to that conducted in the UK (Hill-McManus et al., 2013; Purshouse, Meier, Brennan, Taylor, & Rafia, 2010); modelling analyses which might be used to rebut any false claims by the industry, inform public opinion and defend reforms against legal challenge.

Homel (2012, p. 1) argues, "(t)he paucity of scientific knowledge is not the main impediment to action." Rather, it is the lack of public approval and political action. There is no denying that low-income Australians drinking moderate amounts of alcohol, including the grey vote, will 'feel the pinch' under minimum pricing. Yet, according to Skog's collectivity of drinking cultures theory, one of the key drivers of an individual's drinking is how people around them drink (Skog, 1985). In contrast, ANPHA's (2012) recommendation that, while not appropriate for national introduction at present, minimum pricing should be considered as a local solution (presumably in rural and remote communities) plays into the alcohol industry's hand by representing the issue as localised and 'someone else's problem'. Government leadership is required to demonstrate to society that *all* drinkers are complicit in producing harmful drinking.

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Conflict of interest statement

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