

# FARE submission to the Review of alcohol policies and legislation: Alcohol harm reduction framework

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## About the Foundation for Alcohol Research and Education

The Foundation for Alcohol Research and Education (FARE) is an independent, not-for-profit organisation working to stop the harm caused by alcohol.

Alcohol harm in Australia is significant. More than 5,500 lives are lost every year and more than 157,000 people are hospitalised making alcohol one of our nation's greatest preventive health challenges.

For over 15 years, FARE has been working with communities, governments, health professionals and police across the country to stop alcohol harms by supporting world-leading research, raising public awareness and advocating for changes to alcohol policy.

In that time FARE has helped more than 750 communities and organisations, and backed over 1,400 projects around Australia.

FARE is guided by the World Health Organization's (2010) *Global strategy to reduce the harmful use of alcohol* for stopping alcohol harms through population-based strategies, problem directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email [info@fare.org.au](mailto:info@fare.org.au).

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# Introduction

Alcohol harm in the Northern Territory (NT) is the highest in the country. The devastating effects of alcohol are not limited to the crime and violence on the streets, but impact upon families and communities across the Territory.

The scale and variety of alcohol harm is clearly outlined in the Northern Territory Alcohol Policies and Legislation Review *Issues Paper*. Harm is not limited to the drinker and extends to others, ranging from assaults, drink driving and family violence<sup>a</sup>, to suicide and alcohol-related chronic disease. While alcohol harm is a national issue, the damage and destruction it causes in the NT is unprecedented.

This level of harm is a result of the economic and physical availability of alcohol. For example, there is one licence for every 353 people aged 18 years and above in the Territory,<sup>b</sup> and wine is 1.7 times more affordable in the NT than it was 10 years ago. The availability of alcohol in the NT has resulted in some of the highest consumption rates globally. If the NT was a country, its per capita consumption would place it in the top ten drinking nations in the world.

The high levels of alcohol consumption and associated harm are nothing new to the Territory. Over the last 50 years, governments have introduced a range of measures aimed at addressing these issues. Such measures have varied in approach and include product and opening hour restrictions, voluntary minimum pricing by supermarkets, a targeted levy on alcohol, Alcohol Mandatory Treatment, Alcohol Protection Orders, a Banned Drinker Register, dry areas, and attempts to teach 'responsible drinking' as seen at the Tyeweretye Club in Alice Springs in the 1980s.

While there has been some success in reducing harm, the results have often been short-lived because of the ad hoc nature of the approaches. The premature termination of many policies and programs has stymied opportunities to assess their effectiveness.

The Territory has been subject to countless reviews and inquiries aimed at reducing the burden of alcohol harm. Time and time again these reviews have failed to translate recommendations into action. They have also failed to address the underlying factors required for an effective alcohol harm reduction framework.

Put simply, the NT has been here before.

Territorians have had enough, and it is time for the introduction of well-planned policies that will have a lasting impact.

This review provides the Gunner Government the opportunity to address the fundamental components required for a strong alcohol harm reduction framework. The framework must address four key areas across the health and regulatory systems in the NT. These would address the economic and physical availability of alcohol, develop transparent regulatory structures, implement strong

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<sup>a</sup> Within this submission FARE has used the term family violence to refer to violence between family members (including parents, step-parents or guardians, siblings, cousins, aunts/uncles, and grandparents). It may be perpetrated between adults, by adults on children or by children on parents. While there is no single definition the term family violence encompasses ongoing behaviour to exercise power and control over another person and/or their children. Instances where the term 'family and domestic violence' or 'intimate partner violence' have been used are reflective of the definition given by the original source document or statistic.

<sup>b</sup> Based on the number of licensed premises as at 8 July 2016 and the Northern Territory population of 180,970 aged 18 and over at 30 June 2015 [Australian Bureau of Statistics (2016) 3101.0 - *Australian demographic statistics, Dec 2015*. Population by age and sex tables].

compliance and enforcement mechanisms, and provide services for families and communities dealing with alcohol harm. Action in these areas will provide a strong foundation to reduce alcohol harm.

The Gunner Government has already shown leadership in implementing policies to reduce alcohol harm and continues to demonstrate a keen appetite for long lasting change. It must continue to stand up to those with vested interests who seek to profit from alcohol harm in the Territory. Implementing evidence-based policies that will benefit the health and wellbeing of current and future generations across the Territory is a legacy that would make any Government proud.

Recommendations from the NT Alcohol Policies and Legislation Review's independent Expert Advisory Panel that are consistent with those contained in this submission, would greatly assist the Gunner Government to accomplish lasting change.

## Recommendations

- R1: Introduce a minimum unit price for alcohol set at \$1.50 per standard drink.
- R2: Index the minimum unit price against average ordinary time wages to ensure its effect is not diminished over time.
- R3: The Northern Territory Government advocate that the Commonwealth Government abolish the Wine Equalisation Tax (WET) and apply a volumetric tax for all alcohol products.
- R4: Amend the *Liquor Act* to include and define licence categories.
- R5: Amend the *Liquor Act* to include an annual licence renewal process.
- R6: Introduce a risk-based licensing fee system for all licence types that (as a minimum) offsets the cost of alcohol-related harm borne by government and the community. At a minimum, a system should calculate fees according to licence type, occupancy, trading hours, location, volume of gross liquor sold and number of licences owned by an operator.
- R7: Amend the *Liquor Act* to incorporate and require standard trading hours on Monday to Saturday of 10am-midnight for on-licence premises, and retain 10am-10pm on Sunday. The capacity to apply conditions to licences and reduce trading hours for high risk venues and/or venues in high risk locations should also be retained.
- R8: Introduce designated precincts for late night venues, based on the density of outlets and late trading in these locations. Late night precincts would include:
- on-licence premises trading be able to apply to trade until 2am subject to a risk assessment
  - drink restrictions after midnight
  - ID scanning mandatory for all licensed premises and linked to the Banned Drinker Register to prevent patrons on the register from purchasing and consuming alcohol.
- R9: Amend the *Liquor Act* to incorporate and require standard closing times for all takeaway liquor outlets to be no earlier than 10am and no later than 10pm, including public holidays.
- Retain restrictions in areas where later opening times and earlier closing times for takeaway alcohol are in place and continue to allow the Director-General to apply these conditions on licences where appropriate.
- R10: Amend the *Liquor Act* to:
- incorporate the *Guideline for applying for a takeaway liquor licence*, and
  - require the freeze on new takeaway liquor licences to apply to licence transfers in addition to new takeaway licences.
- R11: Introduce cluster control strategies and establish saturation zones in areas where alcohol harm is significant.
- R12: Introduce a takeaway sales free day each week in locations where a need is identified.

- R13: Call upon the Commonwealth Government to delegate the assessment and implementation of alcohol management plans developed under the *Stronger Futures Northern Territory Act* to the Northern Territory Government.
- R14: Introduce alcohol management plans in areas where a need has been identified and agreed.
- R15: Amend the *Liquor Act* to regulate the online sale and delivery of alcohol.
- R16: Amend the *Liquor Act* to require verification of identity when a delivery is made in person, by an employee or agent of the licensee.
- R17: Amend the *Liquor Act* to require licence details to be displayed on websites providing online alcohol sales and promotions.
- R18: Amend the *Liquor Act* to include specific provisions to restrict or prohibit promotional activity and undesirable liquor products. These provisions should address promotions by both on- and off-licence premises with equal weight and cover a range of mediums that include, but are not limited to, signs, banners, flyers, posters, and newspapers, as well as SMS text messages and those undertaken online and via social media.
- R19: Amend the *Liquor Act* to declare the following as prohibited promotional activity:
- ‘shopper dockets’ (liquor promotion vouchers on the receipts for purchases)
  - harmful price discounting such as the sale of alcohol at half, or less than half, of the usual price, and
  - the display of point of sale promotional materials for liquor (such as ‘happy hours’, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices) on and around licensed premises where minors are likely to be present.
- R20: Ban alcohol advertising on publicly owned assets, such as public buses.
- R21: Amend section 3(1) of the *Liquor Act* to clearly specify that ‘public interest’ is defined as per section 6(2) of the *Liquor Act*.
- R22: Amend section 6 of the *Liquor Act* to:
- clearly identify harm associated with the sale, provision, promotion and consumption of alcohol (including family violence) in the public interest criteria, and
  - require mandatory consideration of this harm in all liquor licensing decisions.
- R23: Strengthen application of harm minimisation by ensuring all liquor licensing decisions are guided by the primary object of the *Liquor Act*, including the specified public interest criteria.
- R24: Introduce a regulatory model that is underpinned by the following key elements:
- Responsibility for regulating liquor licensing should be independent of both political and industry interests.
  - The regulatory model should have a clear objective to reduce harm.
  - The decision-making processes should be transparent, participatory and foster accountability.



- A clear risk model should guide decision-making processes, including delegation of responsibilities.
- R25: Enforce section 26(3) of the *Liquor Act* that requires applicants to demonstrate that the grant of the licence will be in the public interest (as defined in section 6(2)) and will not contribute to further harm. A liquor licence application should not be granted unless the application can produce an appropriate amount of evidence to satisfy section 26(3).
- R26: Amend the *Liquor Act* to require all liquor licence applications (new and requests to permanently or temporarily change licence conditions) to have the same public notice requirements.
- R27: Amend the *Liquor Act* to require notice of an application to be provided to the Northern Territory Police, the Northern Territory Fire and Rescue Service, the Department of Health, the relevant local authority or council and other relevant government bodies.
- R28: Update the Licensing NT webpage to include clear information on the liquor licensing process, including on how the community can make objections and complaints.
- R29: Fund and implement a Community Defenders Office based on the Alcohol Community Action Project (ACAP) pilot to help individuals and communities navigate and interact with the liquor licensing system.
- R30: Publish crime and wholesale supply statistics in geographical classifications aligned with the Australian Statistical Geography Standard (ASGS), at a minimum disaggregation level of SA3.
- R31: Publish wholesale alcohol supply data on a monthly rather than yearly basis.
- R32: Publish Northern Territory health statistics, including hospitalisations and ambulance attendances.
- R33: Implement a trial of the Cardiff model to link Emergency Department data with assault statistics to improve frontline responses to incidents and facilitate stronger policy development and evaluation.
- R34: Ban political donations in the Northern Territory from the alcohol industry and its representatives.
- R35: Impose mandatory penalties for non-compliance with reporting requirements.
- R36: Increase penalties associated with failure to accurately declare political donations.
- R37: Introduce a compliance monitoring system, according to risk associated with licence type, that includes regular unscheduled visits.
- R38: Implement swift and certain sanctions for non-compliance to act as a deterrent and maintain standards in line with the primary object of the *Liquor Act*.
- R39: Amend the *Liquor Act* to expand policing powers to allow senior police officers to suspend licences for up to 72 hours following a suspected breach of the *Liquor Act*.
- R40: Amend the *Liquor Act* to require anyone involved in the sale and service of alcohol and/or employed by a licensed premise, to hold a current RSA certificate from an approved provider.
- R41: Amend the *Liquor Act* to require RSA certificates to be renewed every five years.



- R42: Introduce mandatory ignition interlocks for all high-risk drink driving offences.
- R43: Introduce a boat licence that requires operators to have a blood alcohol limit of less than 0.05 (same as operating a road vehicle).
- R44: Extend the COMMIT program to target drink driving and alcohol-related family violence offences, and model it after the *24/7 Sobriety Program*.
- R45: Develop a comprehensive public education campaign that informs the general public of laws surrounding the supply of alcohol to minors and the associated risks with underage alcohol consumption.
- R46: Support and implement section 42 of the *Alcohol Harm Reduction Bill 2017* to make the intentional supply of alcohol to someone on the Banned Drinker Register an offence.
- R47: Retain Point of Sale Interventions, including Temporary Beat Locations, as needed based on police operational decision-making, once the Banned Drinker Register is reinstated.
- R48: The Northern Territory Government immediately act on the 26 recommendations outlined in the Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorders' final report (February 2015), by funding and implementing actions to prevent, diagnose and manage Fetal Alcohol Spectrum Disorders.
- R49: Establish and fund a Fetal Alcohol Spectrum Disorders clinic in the Northern Territory.
- R50: The Northern Territory Government advocate at a national level for there to be adequate and sustained funding to prevent Fetal Alcohol Spectrum Disorders (FASD) and support those impacted by FASD as part of the new the National FASD Strategy 2018 to 2028.
- R51: Draw upon the findings of the *Evaluation of the Alcohol Mandatory Treatment Program* report in developing and implementing treatment services.
- R52: Fund additional voluntary, evidence-based, culturally safe, alcohol treatment and rehabilitation services, including aftercare, across all regions in the Northern Territory.
- R53: Consider retaining power for mandatory treatment where a clear benefit for an individual can be demonstrated and where alternative treatment options have been exhausted.

# The impact of alcohol on the Northern Territory

Alcohol is causing devastation to the health and wellbeing of individuals, families, and communities across the territory.

## Rates of alcohol consumption in the Northern Territory are among the highest in the world

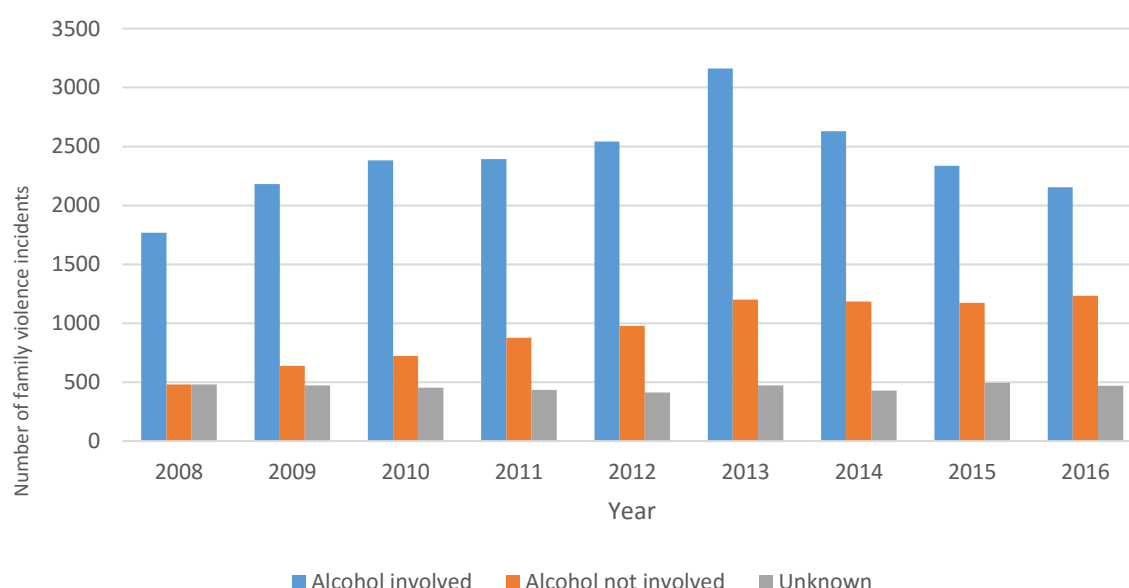
Despite downward trends, the amount of alcohol drunk in the NT remains among the highest in the world. Of people aged 12 years and older, 38.6 per cent consume alcohol at rates that place them at risk of short-term harm, and 28.8 per cent consume alcohol at levels that place them at risk of long-term harm, including chronic disease and illness.<sup>1</sup> These figures are significantly more than the national average for short-term and long-term harm (25.7 per cent and 17.6 per cent respectively).<sup>2</sup>

## High levels of alcohol consumption in the Northern Territory harm both the drinker and others

Harmful alcohol consumption can result in both short and long-term health consequences. In 2015-16, there were 9,124 alcohol-related presentations to NT hospital emergency departments.<sup>3</sup> Alcohol is also one of four modifiable risk factors that contributes to a third of preventable chronic disease.<sup>4</sup> Alcohol is also associated with family violence,<sup>5,6,7</sup> road traffic accidents,<sup>8</sup> child maltreatment and neglect<sup>9</sup>, vandalism and lost productivity in the workplace.<sup>10</sup>

For too long, families have been severely affected by alcohol in the Territory. Alcohol is involved in approximately 50-60 per cent of assaults and 65 per cent of all family violence incidents in the NT.<sup>11,12</sup> Figure 1 highlights alcohol's dominant involvement in family violence incidents across the NT during 2008-16.

**Figure 1: Number of alcohol-related and non-alcohol-related family violence incidents across 2008-16 in the NT**



In addition, alcohol consumption can lead to Fetal Alcohol Spectrum Disorders (FASD), an umbrella term for a range of disabilities resulting from prenatal alcohol exposure.<sup>13</sup>

# Principles for the development of an alcohol harm reduction framework in the Northern Territory

An alcohol harm reduction framework (the framework) should aim to improve the health and wellbeing of all Territorians, regardless of race, gender, socio-economic status and geographic factors. To achieve this and establish a coherent, consistent and enduring set of policies, the following five principles should underpin the framework's development and implementation.

## 1. Policy development processes must be informed by the evidence

Evidence-based measures to reduce alcohol harm should drive alcohol policy development. The high levels of alcohol consumption and associated harm in the NT are part of a complex problem that requires a comprehensive and long-term solution. Evidence must inform each step of the framework's cycle, from problem definition to response identification and implementation, through to policy and program evaluation. Without strong evidence, policies can easily be influenced by political and vested interests, which may not be in the interests of the general population, are unlikely to be effective in achieving the outcomes being sought, and can be costly to the government and the community.<sup>14</sup>

## 2. An alcohol harm reduction framework must take a public health approach that prioritises prevention

Alcohol consumption is a health issue that requires a health focused response. Reducing alcohol consumption will benefit other associated areas such as family violence, non-domestic violence and other crime, road crashes, child maltreatment and community safety and amenity.

A public health approach that prioritises prevention should guide design and implementation of the framework. This approach seeks to improve the health and safety of the whole population and/or groups within the population, and recognises that one's health is affected by a complex interaction between broader social, economic and environmental factors. A public health approach also contributes to reduced health inequalities, and can lead to increased productivity, strengthened social cohesion, and a more sustainable and integrated health system.<sup>15</sup>

## 3. The development of an alcohol harm reduction framework must be open and transparent

Transparency is important in building and maintaining public confidence in the development and implementation of the framework. Transparency enables the community to be informed and to participate in public debate, and can assist with generating support for measures.<sup>16</sup> In addition, transparency facilitates an open and accountable decision-making processes that can counter the influence of vested interests. While building the evidence and ensuring transparency can take time, it leads to a better end-product that is more effective and sustainable.

## 4. Community engagement is necessary to ensure that the health and safety of Territorians is considered at every stage

The views of the NT community must be sought during all stages of the development and implementation of the framework. Individuals, families and communities are affected by alcohol in many ways. The local perspectives they bring can provide valuable insight about the impact of a policy, including possible unintended consequences of a well-intended policy. Community engagement is also

helpful in achieving support for the policies, particularly if the community can see that their voices are being heard and their views taken into consideration.

## **5. An alcohol harm reduction framework must be a strategy aimed at reducing the negative impact on all Territorians**

Alcohol harm is one of the Territory's greatest health challenges. In the NT alcohol-related deaths and hospitalisations of both Aboriginal and Torres Strait Islander communities and other Australians are much higher than elsewhere in Australia. Alcohol harm affects men, women, children, families and communities. A comprehensive framework is required that is non-discriminatory and responds to the needs of all Territorians.

# An approach to an alcohol harm reduction framework

The current policy setting and the lack of any long-term strategy is contributing to high levels of alcohol harm in the NT. The review process provides the opportunity for the Government to establish an approach that will result in a sustained and long-term change. An effective alcohol harm reduction framework must address the following four key areas:

## 1. Address the economic and physical availability of alcohol

The economic and physical availability of alcohol is contributing to increased consumption and risk of alcohol harm. In other words, the cheaper the alcohol, the more available it is, and the more potential for harm. To reduce the burden of alcohol harm, policies must address the price and availability of alcohol in the NT. Addressing the availability of alcohol should not just be limited to trading hours and outlet density, but also capture regulatory controls such as risk-based licensing.

## 2. Develop transparent regulatory structures

For too long the system and structures that regulate alcohol in the NT have been subject to episodic changes in policy and program implementation. To effectively minimise alcohol harm, NT licensing systems and structures must include appropriate safeguards to ensure that regulation is in line with community expectations and consistent with harm minimisation.

## 3. Implement strong compliance and enforcement mechanisms

Weaknesses and inconsistencies in the application and enforcement of liquor legislation undermines efforts to minimise alcohol harm. It is crucial that liquor legislation is enforced. Any legislation is undermined unless swift and certain mechanisms exist to facilitate compliance.

## 4. Provide services for families and communities dealing with alcohol harm

Alcohol and other drug (AOD) services are an important part of any response to alcohol and other drug harm in the community. The NT needs a strong and sustainable AOD sector that can provide the quality and quantity of services needed to support the diverse needs of those experiencing alcohol harm. Funding must be provided for voluntary, evidence-based, culturally safe, alcohol treatment and rehabilitation services, including for people living with Fetal Alcohol Spectrum Disorders (FASD).

# 1. Address the economic and physical availability of alcohol

## 1.1. Price

Alcohol is more affordable in the NT today than it was 20 years ago. This is particularly the case with wine, with Darwin residents able to buy 70 per cent more wine in 2016 compared to 1997. There is strong evidence that shows that lower prices of alcohol are associated with higher levels of consumption. A meta-analysis of 112 peer-reviewed studies on the effects of alcohol price and taxation levels on alcohol consumption found that there was ‘overwhelming evidence of the effects of alcohol pricing on drinking’.

The World Health Organization states that increasing the price of alcohol “is one of the most effective interventions” to prevent alcohol harm based on clear evidence.<sup>17</sup> A key factor for success of price-related policies in reducing alcohol harm is “an effective and efficient system for taxation matched by adequate tax collection and enforcement”.<sup>18</sup>

### 1.1.1. Minimum Unit Price

A minimum price sets a price per standard drink (or unit of pure alcohol) below which alcoholic beverages cannot be sold. It is a regulatory measure that increases the price of the cheapest alcohol products. It can also prevent retailers from using extreme discounting and loss leaders to attract customers into their stores and encourage impulse purchases.

While various NT Governments have taken action over many years to address the problem of cheap alcohol, these actions have either been insufficient or not sustained over time. Very cheap alcohol continues to be available in the NT, through bulk purchase deals, loss leading practices, and other price promotions, including at on-licence venues. A recent scan of prices in Darwin found that consumers were able to purchase alcohol for 54 cents per standard drink, cheaper than the price of bottled water at the time.<sup>a</sup> These cheap prices encourage higher levels of consumption including heavier drinking, occasional drinking, and underage drinking. This results in higher levels of alcohol harm, affecting not just the drinker but their partners, children and communities.<sup>19</sup>

Large warehouse-style outlets associated with supermarket chains are able to discount alcohol even further because of the greater floor space available to them. Their high volume low profit margin business model increases the risk of harm further by enabling sustained low prices.<sup>20</sup> The proposed new Dan Murphy’s store in Darwin would contribute significantly to levels of harm without floor-space and/or pricing restrictions.

### Current situation

In 2010, the NT Government announced a ban on the sale of four and five litre casks from take away outlets across the Territory from 1 January 2011. These products were sold at very cheap prices and

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<sup>a</sup> Based on price of Riverside Landing Shiraz available for \$5.00 per bottle – available on the weekend of 30-31 July 2016 at Woolworths (pers comm) – and the online price of a 750ml bottle of Pump Pure Still Water from Woolworths, viewed on 28 July 2016 at <https://www.woolworths.com.au/Shop/Search/Products?searchTerm=bottled%20water>. Australian shiraz has on average 14 per cent alcohol by volume which provides 8.3 standard drinks per bottle of wine.

were the drink of choice for heavy drinkers.<sup>21</sup> The withdrawal of four and five litre casks was undertaken in light of the success of similar action in regional centres outside of Darwin.<sup>22</sup>

A 20 per cent reduction in pure alcohol sales<sup>23</sup> and a significant reduction in alcohol harm was observed in Alice Springs when four and five litre casks were removed from sale at takeaway outlets in 2006. Protective custody orders halved between October and December 2006, compared to the same period in the previous year, and there was an overall reduction in alcohol-related crime of 12 per cent from October to December 2006.<sup>24</sup>

In the 1990s a levy on alcohol products was introduced as part of a suite of programs in the NT associated with the Living with Alcohol Program. This action increased the price of alcohol and was found to be responsible for a reduction in acute alcohol-attributable death in the NT.<sup>25</sup> A review of alcohol control measures in Central Australia found that both the Living with Alcohol levy and the withdrawal of large volume casks were effective in reducing alcohol consumption.<sup>26</sup>

The People's Alcohol Action Coalition (PAAC) has been advocating for a minimum price for alcohol for many years.<sup>27</sup> The Northern Territory Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorders (the 'Select Committee') added to this call, recommending that a minimum price of at least \$1.30 per standard drink be introduced.<sup>33</sup>

## Future direction

The NT should introduce a minimum unit price in order to effect a significant reduction in alcohol harm. The success of this measure has been demonstrated overseas. A 10 per cent increase in the minimum price of alcohol in two Canadian provinces resulted in a reduction in alcohol consumption across all beverage types. Saskatchewan saw an 8.4 per cent<sup>28</sup> overall reduction in alcohol consumption and British Columbia a 3.4 per cent<sup>29</sup> reduction, with the difference in impact due to differences in the circumstances in which the measures were introduced and in the cost per standard drink in each province.

A minimum unit price is a non-discriminatory policy that would apply to all alcohol products in all locations and would be effective immediately once implemented. FARE has developed a paper that examines the case for a minimum unit price and recommends that the price should be set at \$1.50 per standard drink. The paper recommends that this amount be indexed against wages, so that its effect is not diminished over time.<sup>30</sup> A copy of the paper will be submitted to the review.

## Recommendations

- R1: Introduce a minimum unit price for alcohol set at \$1.50 per standard drink.
- R2: Index the minimum unit price against average ordinary time wages to ensure its effect is not diminished over time.

### 1.1.2. Volumetric tax

A minimum unit price is one of two key policy mechanisms required to address the availability of cheap alcohol in Australia. The second element is the reformation of the alcohol tax system. This would include, primarily, the abolition of the Wine Equalisation Tax (WET) and its replacement with a differentiated volumetric tax. This approach would see all products taxed on the basis of their alcohol content, with differentiated rates for different strength products. It is widely recognised that this approach is superior from both an economic and health perspective. Of the available policy interventions, regulating price through the imposition of volumetric tax on all alcohol products is



considered the most effective means for reducing alcohol harm.<sup>31</sup> This is supported by research within Australia and overseas.<sup>32</sup>

A volumetric tax is a more equitable imposition since it taxes alcohol according to the potential of the particular product to cause harm, and should be applied to all alcohol products, not just beer and spirits. A volumetric tax allows the government to maintain control over price levels and consumption without creating distortions in the market.<sup>33</sup>

It is the most cost-effective measure to reduce alcohol harm, is supported by extensive research, and has been implemented across a range of countries.<sup>34</sup> Ten government reviews and inquiries have recommended overhauling the wine taxation system, including the Henry Review, which determined that reforming the WET was a matter of urgency for the Australian Government.<sup>35</sup> Revenue derived through taxation could be directed to fund services that minimise this harm.

## Current situation

Currently, wine and cider are taxed in Australia on an ad valorem basis (i.e. based on the wholesale value of wine products). This means that less tax is paid on cheaper products regardless of their alcohol content. All other alcohol products are taxed on a volumetric basis, that is, according to the volume of alcohol within the product. The result of this discrepancy is a competitive advantage for wine producers in creating alcohol for the lowest price per unit. The government's ability to raise taxes on wine (to put them at an overall level consistent with other products) would reduce the incentive to produce cheap alcohol (i.e. higher taxes will impact most heavily on more premium products).

## Future direction

While the NT Government does not have the power to change the way that alcohol is taxed, it is able to argue for this change in the Commonwealth sphere. FARE's submission to the Australian Government's *Re:Think tax discussion paper* outlines the argument for a staged approach to taxation reform and the introduction of a volumetric tax for wine.<sup>36</sup>

## Recommendation

R3: The Northern Territory Government advocate that the Commonwealth Government abolish the Wine Equalisation Tax (WET) and apply a volumetric tax for all alcohol products.

## 1.2. Availability

The availability of alcohol contributes to high levels of alcohol harm in the NT. Research has shown that there is a strong association between family violence and the concentration of take-away liquor outlets (or off-premise licences) in an area.<sup>37</sup> Late night trading hours also contribute to other harm including drink driving, assaults and hospital presentations.<sup>38</sup>

Just as increasing the availability of alcohol increases harm, decreasing the availability leads to a decrease in harm. There are a number of ways in which the NT Government can decrease the availability of alcohol such as reducing trading hours and managing the density of liquor licences in an area. Further information on availability measures can be found in the report *Anytime, anyplace, anywhere? Addressing Physical Availability of Alcohol in Australia and the UK*.<sup>39</sup> The report, developed by FARE in conjunction with the Institute for Alcohol Studies (IAS), provides a comparative analysis of policies designed to regulate the availability of alcohol in Australia and the United Kingdom (UK).

### 1.2.1. Risk-based licensing

Venues that sell alcohol should contribute to the costs associated with the administration of liquor legislation, law enforcement, and the provision of public services responding to alcohol harm (including ambulance and police, emergency departments, social workers, and AOD treatment services).

Risk-based licensing is an economic instrument that can be used to determine an appropriate level of regulation through risk and price signals. The higher the risk a premise poses to the community, the higher the licensing fees that premise is required to pay. Under a risk-based licensing system, licence fees are charged annually and are scaled according to risk. A risk weighting is applied on top of base fees, whereby the fee a venue pays escalates based on its potential risk to the community.

Risk-based licensing has already been applied in a number of other jurisdictions, including the Australian Capital Territory (ACT), Queensland, Victoria and New South Wales (NSW). The ACT system calculates licence fees according to risk factors such as venue type, occupancy, trading hours and volume of gross liquor sold (for takeaway liquor outlets). A study by Mathews and Legrand (2013) showed that there have been declines in the absolute number of all offences, including those involving alcohol, since the introduction of risk-based licensing in the ACT.<sup>40</sup>

Risk-based licensing also has the potential to improve responsible business practices with Victoria, Queensland and NSW including past conduct and compliance as potential risk factors. Venues that have breached liquor legislation or are non-compliant with the regulation will see an increase in their fees. For example, in Victoria one or two incidents of non-compliance in the preceding 24 months attracts an additional charge of \$3,792.10, with three or more incidents resulting in a fee increase of \$7,584.06.

### Current situation

The NT's current licensing system is archaic and not price reflective. NT liquor licence fees are almost non-existent and are the lowest in the country. As is stated on page 18 of the *Issues Paper*, "a one off nominal fee of \$200 is payable at the time an application is made – there is no annual fee payable". There is also no requirement to renew a licence.

High risk venues pay the same one off fee as low risk venues, with type, size of venue, trading hours and level of harm impact completely ignored. The one off fee of \$200 does not cover either the considerable costs associated with managing liquor regulatory systems year in year out, nor the costs that arise from harm including policing, hospitalisations and loss of productivity.

There is no incentive to reduce the risks associated with a venue given limited licence fees and arbitrarily assigned licence categories. The NT is the only jurisdiction that does not define licence categories within the *Liquor Act*. Licences are granted and given informal categories for administrative purposes based on the business model described in the application. This creates confusion and uncertainty surrounding the specifics of the application; makes it difficult for communities to understand the details and therefore raise any concerns; results in burdensome data extraction; and makes monitoring and compliance extremely difficult.

There is considerable overlap of licences because informal categories do not include conditions. This results in similar businesses being granted different licences with different conditions or even the same licence with different conditions. For example in the NT liquor licence database, BWS is listed as both a 'Liquor Merchant' and a 'Store' for two similar businesses.<sup>41</sup> Without formal licence categories and definitions there is a lack of transparency, reducing the accountability of the licensee.

## Future direction

The introduction of a risk-based licensing system puts the onus back on the licensee and holds them accountable for the potential level of harm the venue poses to the community. It also incentivises licensees to reduce trading hours. The NT should follow the lead of other jurisdictions and introduce a consistent risk-based licensing system that recovers these costs. In order to do this, the NT must first clearly define liquor licence categories within the *Liquor Act* as is done in all other jurisdictions. The NT should consider developing a model similar to the Western Australia's licence category model where conditions for each licence type are defined and made publicly available.<sup>42, 43</sup> A requirement to renew licences annually should also be introduced.

A model for the NT to consider is the scheme introduced in the ACT in 2010. On-licence premises pay a base fee according to venue type, with additional fees levied for each trading hour beyond midnight and occupancies greater than eighty patrons. As illustrated in Table 1, shorter trading hours and smaller occupancies incur lower fees.<sup>44</sup> The annual licence renewal fees paid by off-licence premises are based on the value of gross liquor purchased for the annual reporting period. For off-premise licensees, renewal fees range from \$532 per annum for less than or equal to \$5,000 gross liquor purchased, to \$27,355 per annum for more than \$7,000,000 gross liquor purchased.<sup>45</sup>

**Table 1. Australian Capital Territory risk-based licensing fee variables**

Licence	Occupancy (pax)	Trading liquor until	Licence fee (per annum)
Nightclub	350	5am	\$25,184
Bar	350	5am	\$16,790
Nightclub	80-150	1am	\$8,394
Restaurant	350	5am	\$8,394
Bar	80-150	1am	\$5,595
Restaurant	80-150	1am	\$2,797

A second model the NT could consider is the Victorian risk-based licensing model. The base annual fee is \$233.36, with increases in cost based on risk weighting (Table 2). Extended trading hours attract increased fees based on the length of extension. Those permitted to trade until 1am are charged an additional \$1,895.98; those trading until 3am pay an additional \$3,791; and those trading past 3am pay an additional \$7,584.06 for the privilege. Takeaway liquor outlets wishing to trade outside standard hours also attract an additional fee (\$5,688.08 in 2016-17). Venue capacity is another risk factor which is applied as a multiplier after all other risk factors have been considered. Venues with a capacity between 201 and 300 (inclusive) are charged 1.25 times the amount they would normally pay. This amount increases incrementally with each additional 100 patrons (by 0.25 basis points or 25 per cent) with the largest capacity group (over 1,300 patrons) being charged four times the amount they would otherwise pay.

**Table 2. Victorian annual base fees by licence type, 2016-17<sup>46,47</sup>**

Licence type	Base fee
Restaurant and café licence	\$233.36
Restricted club licence	\$233.36
Renewable limited licence	\$233.36
BYO permit	\$233.36
Wine and beer producer	\$233.36
Wine and beer producer – with promotional events	\$341.25

General	\$948.06
On-premises	\$948.06
Pre-retail	\$948.06
Full club licence	\$466.57
Full club licence – with gaming machines	\$948.06
Packaged liquor	\$1,895.98

At a minimum, a NT risk-based licensing model should calculate fees according to the following risk factors: licence type, occupancy, trading hours, location and volume of gross liquor sold. The model should also consider the disproportionate representation of large enterprises, such as Woolworths and Coles, owning the vast majority of off-licence premises or liquor outlet chains. As is the case in NSW, the number of licensed venues owned by an operator should also be included as a weighting factor within the risk-based licensing system.

## Recommendations

- R4: Amend the *Liquor Act* to include and define licence categories.
- R5: Amend the *Liquor Act* to include an annual licence renewal process.
- R6: Introduce a risk-based licensing fee system for all licence types that (as a minimum) offsets the cost of alcohol-related harm borne by government and the community. At a minimum, a system should calculate fees according to licence type, occupancy, trading hours, location, volume of gross liquor sold and number of licences owned by an operator.

### 1.2.2. Trading hours

Regulation of trading hours has been identified as a key harm minimisation strategy and should be applied to both on and off-licence premises. It is a cost effective measure that can have significant success in reducing harm.

There is strong evidence to show that an increase in trading hours is associated with an increase in harms<sup>48</sup> and that alcohol-related assaults increase significantly after midnight.<sup>49, 50</sup> The resulting increased availability is associated with an increase in assault,<sup>51, 52</sup> family violence,<sup>53</sup> road crashes,<sup>54</sup> child maltreatment<sup>55</sup> and harmful consumption.<sup>56</sup> Research within Australia and internationally has demonstrated that there is a 16-20 per cent increase in assaults for every additional hour of trading, and conversely, a 20 per cent reduction in assaults associated with every hour of reduced trading.<sup>57, 58</sup>

In 2008, Newcastle, NSW, introduced a 3.30am closing time and 1.30am restricted entry policy (also known as 'one way door' or 'lockout') in on-licence venues in the city's CBD. These policies resulted in a 37 per cent reduction in night-time alcohol-related assaults,<sup>59</sup> and no displacement of harm to adjacent late-night districts.<sup>60</sup> Five years on, the positive effects were sustained with alcohol-related assaults down by 21 per cent per hour on average.<sup>61</sup>

Similar restrictions (1.30am lockouts and 3am last drinks) were introduced in on-licence venues in Sydney's CBD and Kings Cross precincts, and similar success has been observed. An independent evaluation of the restrictions by the NSW Bureau of Crime Statistics and Research (BOCSAR) found that they were associated with a reduction in non-domestic assaults of 32 per cent in Kings Cross and 26 per cent in the Sydney CBD, with little or no displacement of these types of assaults to adjacent areas. In one area, non-domestic assaults were reduced by 40 per cent.<sup>62</sup>

Off-licence premise trading hours also contribute to alcohol availability and associated harms. Research conducted in Switzerland has shown that a reduction in off-licence trading hours in Geneva, combined with a ban on the sale of alcohol from petrol stations and video stores, decreased hospital admissions among adolescents and young adults (with a 25 to 40 per cent reduction, depending on age group).<sup>63</sup> Research from New Zealand found that drinkers purchasing takeaway alcohol after 10pm are twice as likely to drink heavily compared to those buying alcohol before 10pm.<sup>64</sup> New Zealand Police noted that off-licence premises are more likely than on-licences to have offences involving minors.<sup>65</sup>

## Current situation

Trading hours for the sale of takeaway alcohol in the NT are regulated by the *Liquor Regulations* (the Regulations), although the Director-General of Licensing is able to vary these and impose conditions as they deem appropriate. Standard trading hours for takeaway alcohol outlined in the Regulations are:

- Monday to Friday: 10am–10pm
- Saturday and public holidays (except Christmas and Good Friday): 9am–10pm
- Sundays (except store and liquor merchant licences): 10am–10pm<sup>66,67</sup>

In some areas of the NT, takeaway alcohol is only available on certain days and during certain hours such as Elliott, in the Tennant Creek and Barkly area, where takeaway alcohol is not available on Sundays,<sup>68</sup> Alice Springs where takeaway alcohol is available between 2pm – 9pm from Monday to Friday,<sup>69</sup> and Katherine and Mataranka, where takeaway alcohol is only available during the following hours:

- Monday to Friday: 2pm–8pm
- Saturday and public holidays, except Christmas Day and Good Friday: 12 noon–8pm
- Sunday from hotels (all other stores are closed): 2pm–8pm.<sup>70</sup>

In some places, such as Beswick, takeaway alcohol sales are banned completely<sup>71</sup> and in others, such as East Arnhem, you must have a permit.<sup>72</sup>

There are no standard trading hours for venues licensed to sell alcohol for consumption on the premises. Trading hours are determined upon application for a licence. No other state or territory in Australia determines trading hours on a case by case basis.

Some venues trade until 4am and these have a lockout condition from 3am.<sup>73</sup> Clubs are permitted to trade on Christmas Eve until 2am on Christmas Day and can apply to trade later than 2am should they wish to extend trading hours on this day. Hotels and taverns that have a restriction on their licence for Christmas Day trading may open between 12pm and 4pm for lunch and 6pm and 10pm for dinner. These venues can also seek to trade beyond these hours on Christmas Day by applying for a temporary variation on their licence. Clubs, taverns and hotels can apply to extend their New Year's Eve trading hours, with an extension of two hours likely to be granted for premises closing after midnight.<sup>74</sup>

## Future direction

Standard trading hours should be developed for venues that sell alcohol for consumption on the premises. These standard trading hours for on-licence premises should be incorporated in the *Liquor Act*. Standard trading hours set the maximum hours that licensed venues can trade within standard conditions. Actual trading hours will be determined by a mix of factors, including the risk posed by the venue and business conditions.

The benefit of standard trading hours is that they would provide a transparent process that regulates a set of operating conditions which all venues must comply with. Venues wishing to trade outside standard hours should be required to apply for extended trading. The application should demonstrate the need for extended trading hours and that their venue will not contribute to higher levels of harm in the community. Designated late night precincts should be established in areas where there is a high density of on-licence premises trading past midnight, with trading restricted to no later than 2am.

Venues that are approved to trade beyond standard hours should have special conditions applied to reduce the increased risk of harm. Measures such as limits on stockpiling of drinks, a ban on sales of drinks that are designed to be consumed rapidly (e.g. a shot or a shooter), and a ban on high alcohol drinks have been introduced in Queensland and some areas of NSW.<sup>75</sup>

ID scanning should be mandatory for on-licence venues within these designated precincts, with the scanners linked to the Banned Drinker Register.

For takeaway liquor outlets, standard trading hours should be incorporated in the *Liquor Act* to require open no earlier than 10am and close no later than 10pm, including public holidays. Areas in which later opening times and earlier closing times are in place should remain and the Director-General continue to apply these conditions on licences where appropriate.

## Recommendations

- R7: Amend the *Liquor Act* to incorporate and require standard trading hours on Monday to Saturday of 10am-midnight for on-licence premises, and retain 10am-10pm on Sunday. The capacity to apply conditions to licences and reduce trading hours for high risk venues and/or venues in high risk locations should also be retained.
- R8: Introduce designated precincts for late night venues, based on the density of outlets and late trading in these locations. Late night precincts would include:
- on-licence premises trading be able to apply to trade until 2am subject to a risk assessment
  - drink restrictions after midnight
  - ID scanning mandatory for all licensed premises and linked to the Banned Drinker Register to prevent patrons on the register from purchasing and consuming alcohol.
- R9: Amend the *Liquor Act* to incorporate and require standard closing times for all takeaway liquor outlets to be no earlier than 10am and no later than 10pm, including public holidays.
- Retain restrictions in areas where later opening times and earlier closing times for takeaway alcohol are in place and continue to allow the Director-General to apply these conditions on licences where appropriate.

### 1.2.3. Outlet density

The number and density of licensed venues must be considered because the risk of alcohol-related violence and injury increases as the density of liquor outlets increases. Both on-licence and off-licence premises are associated with alcohol harm.

A recent study examining associations between alcohol sold through off-licence premises and the incidence of traumatic injury in surrounding areas, found that a 10 per cent increase in chain outlet density (such as Dan Murphy's and First Choice Liquor) is associated with 35.3 per cent increase in

intentional injuries (including assaults, stabbing and shooting), and a 22 per cent increase in unintentional injuries (including falls, crushes, or being struck by an object).<sup>76</sup>

Research in Melbourne found that there is a strong association between family violence and the concentration of off-licence premises in an area. The study concluded that a ten per cent increase in off-licence liquor outlets is associated with a 3.3 per cent increase in family violence. Increases in family violence were also apparent with the increase in general (pub) licences and on-premise licences.<sup>77</sup> In Western Australia, a study concluded that for every 10,000 additional litres of pure alcohol sold at an off-licence premise, the risk of violence experienced in a residential setting increased by 26 per cent.<sup>78</sup>

A study by the NSW Bureau of Crime Statistics and Research found that “the concentration of hotel licences in a [local government areas, or LGAs], particularly at higher density levels, was strongly predictive of both intimate partner and non-intimate partner assault rates”.<sup>79</sup>

Research from Victoria found that people living in disadvantaged areas in and around Melbourne had access to twice as many takeaway liquor outlets as those in the wealthiest areas. For rural and regional Victoria, there were six times as many takeaway liquor outlets and four times as many pubs and clubs per person.<sup>80</sup> Research also shows that the increased access to alcohol in disadvantaged communities may explain some socio-economic disparities in health outcomes. Disadvantaged communities find it harder to influence planning and zoning decisions. As such, their ability to prevent the continuing proliferation of outlets is hindered.<sup>81</sup>

The World Health Organization has highlighted that neighbourhoods with higher densities of alcohol outlets (both on and off-licence) also have greater child maltreatment problems. These neighbourhoods are also more socially disadvantaged with fewer resources available to support families. This situation can lead to increased stress for families and restrict development of social networks that can prevent child maltreatment.<sup>82</sup>

## Current situation

The number of liquor licences in the NT has grown steadily over the past seven years with 514 active licences in June 2017<sup>83</sup> compared to 488 licences at 2010-2011.<sup>84</sup> In one year alone, 38 new licences were approved.<sup>85</sup> Most are located in Darwin and the surrounding area, with the remainder generally clustered in towns such as Alice Springs, Tennant Creek and Katherine.<sup>60</sup> In 2011, 68 per cent of licensed venues were located in the major urban areas and accounted for 79 per cent of alcohol sales by value.<sup>61</sup>

In October 2016, the NT Government introduced the *Guideline for applying for a takeaway liquor licence* that applies a freeze on new takeaway liquor licences. An application for a takeaway liquor licence will only be considered if the proposed licence meets any of the following criteria:<sup>86</sup>

- a) a takeaway liquor licence for a premise to be located in a new residential or commercial land development in a greenfield site
- b) a takeaway liquor licence for a new hotel allowing for the sale of alcohol to bona fide guests only, for consumption away from the licensed area but within the premises (specifically for the capacity to offer minibar, room service and conference facility options)
- c) a takeaway liquor licence for the sale of local Territory liquor products that are produced at the premises.



The guideline only applies to new takeaway liquor licences, except in the circumstances detailed above. It does not apply to on-licence premises or to transfers of takeaway liquor licences. It also does not prevent a licensee from increasing the size of a takeaway liquor outlet upon transfer of the licence, an action which would lead to an increase in the volume of alcohol available to the community.

## Future direction

The NT Government should amend the *Liquor Act* to incorporate the Guideline and require the freeze on new takeaway liquor licences to also apply to liquor licence transfer applications.

Other measures should be considered to manage the density of liquor outlets. In England and Wales, regulatory bodies have introduced saturation zones where limitations are imposed on the introduction of new licences in areas that already have a high density of existing licences. These operational saturation zones were based on existing outlet density, crime and family violence data.<sup>87,88</sup> Buy-backs could also be initiated in areas deemed to be 'saturated'.

Cluster control strategies have also been introduced overseas. These prohibit new liquor licences for premises within a specified distance of existing licensed premises or other amenities (such as schools, hospitals, churches or places of religious worship). They are also found in Paris and New York. New York has enacted these through their *Alcohol Beverage Control Act*. The legislation includes a '500 foot' (150 metres) rule which prohibits new on-premise licences being issued within a 500 foot radius of three or more existing licences.<sup>89</sup> This has been in place since 1993. In Paris, the *Code de La Sante Publique* (public health legislation) defines protected areas within which new liquor licences are prohibited if they are within 75 metres of a licensed premise of the same category.<sup>90</sup>

An assessment framework would be needed to assess the risk associated with the density of outlets in the NT. This framework should account for the potential impact of outlets on community safety and wellbeing. Use of these guidelines should be mandated in all liquor licence applications to strengthen the decisions and considerations made about outlet density.

## Recommendations

R10: Amend the *Liquor Act* to:

- incorporate the *Guideline for applying for a takeaway liquor licence*, and
- require the freeze on new takeaway liquor licences to apply to licence transfers in addition to new takeaway licences.

R11: Introduce cluster control strategies and establish saturation zones in areas where alcohol harm is significant.

### 1.2.4. Takeaway alcohol sales free days

Takeaway alcohol sales free days have been introduced previously in the NT. In August 1995, Tennant Creek introduced the 'Thirsty Thursday' restrictions for a six-month trial. Alcohol was restricted on Thursdays to coincide with the timing of welfare payments. Initially no takeaway sales were allowed on Thursday, but in November 1995 this was modified to allow takeaway sales from the bottle shop and front bar between 3pm and 9pm on Thursdays.<sup>91</sup> Other measures were also introduced to coincide with the Thursday sales restrictions. These included a restriction on the sale of wine so that it could only be sold with meals from the front bar, a ban on the sale of four and five litre casks of Riesling and Moselle, and a limit being applied to the sale of two litre wine casks to one cask per person per day.<sup>92</sup>

An evaluation of the trial of the Tennant Creek restrictions was conducted by d'Abbs et al (1996) which showed that these restrictions were effective in reducing alcohol-related harm.<sup>93</sup> The total number of incidents attended by police on Thursdays decreased by 55 per cent in phase one and by 13 per cent during phase two (when the Thursday restrictions were relaxed), and alcohol-related presentations to the Tennant Creek hospital emergency department were 34 per cent lower than the same period in 1994-95. While the other measures introduced may have contributed to these declines, the takeaway alcohol sales free day was undeniably important, reflected in the increase in public drunkenness, breaches of the 'Two Kilometre Law'<sup>a</sup> and disturbances when the Thursday restrictions were relaxed.<sup>94</sup>

## Current situation

The Thirsty Thursday measures were introduced on a permanent basis following the trial, however the measures were relaxed over time and the Thursday restrictions on sales removed altogether in July 2006.<sup>95</sup>

## Future direction

The People's Alcohol Action Coalition (PAAC) have called for the introduction of a designated day each week where takeaway alcohol sales are not available, in areas where there is a high risk of alcohol harm within the community. Ideally, these restrictions would be introduced on days linked with social security payments.

## Recommendation

R12: Introduce a takeaway sales free day each week in locations where a need is identified.

### 1.2.5. Alcohol management plans

An alcohol management plan (AMP) is an agreed approach to the sale and consumption of alcohol within a community aimed at reducing alcohol harm and increasing community safety. It provides details of whether alcohol can be sold or consumed within a community and if so, when, where and how.

AMPs can include supply reduction strategies, demand reduction strategies and harm reduction strategies. Supply reduction strategies reduce the availability of alcohol, such as reducing trading hours and placing restrictions on the sale of particular products. Demand and harm reduction strategies include health and education programs, improved service delivery, sport and recreation programs, night patrols and sobering up shelters.

## Current situation

One way in which the NT manages the availability of alcohol is through the establishment of AMPs. AMPs in the NT are required to meet minimum standards under the *Stronger Futures in the Northern Territory Act* (Commonwealth) (SFNT Act). These standards were developed following an extensive consultation process and include demand, supply and harm reduction strategies as well as requirements relating to consultation and engagement, governance, monitoring, reporting and evaluation, and defining geographical boundaries.<sup>96</sup> AMPs developed under the SFNT Act must be agreed upon by the community and the Commonwealth.

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<sup>a</sup> The 'Two Kilometre Law' was introduced to deter public drunkenness in 1983 by the NT Government. This Law made it an offence to consume alcohol in a public place within two kilometres of a licensed premise, or to consume alcohol on unoccupied land without the owner's permission. This Law remains in place today.

The assessment and approval of AMPs against the minimum standards established by the SFNT Act is slow and cumbersome, with just one AMP approved since the SFNT Act was introduced in 2012. In announcing the AMP for the community of Titjikala in May 2014, the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, said that the process was an ‘overly bureaucratic process which seriously disrupted the work communities had already put in towards developing AMPs.’.<sup>97</sup> Furthermore, communities do not have adequate support to participate in this process in a timely manner.

## Future direction

AMPs should continue to be utilised in the NT manage the availability of alcohol in communities where a need has been identified. AMPs can be effective when developed and implemented in conjunction with the community and where they employ a holistic approach to address supply, demand and harm reduction activities. They must have the support of the community, address the community’s specific needs and be adequately resourced to embed harm minimisation strategies within the community. They should be introduced in association with supportive structures designed to build capacity within the community, prevent risky consumption and support people who need assistance to reduce their alcohol consumption. The *Independent review of the effectiveness of the Northern Territory and Commonwealth laws in reducing alcohol-related harm* notes that community driven AMPs are supported in the NT, but there is room for improvement in light of the problems identified in the previous section.

The approval process for assessing AMPs against the minimum standards established by the Australian Government needs to be streamlined to speed up the process, without compromising the integrity of standards. While Minister Scullion has indicated that he has asked his Department to reduce red tape associated with the assessment process,<sup>98</sup> there have been no other AMPs approved since the first one was approved in 2014. Communities need greater support to develop and implement AMPs and to take responsibility for addressing problems with alcohol within the community.<sup>99</sup>

## Recommendations

R13: Call upon the Commonwealth Government to delegate the assessment and implementation of alcohol management plans developed under the *Stronger Futures Northern Territory Act* to the Northern Territory Government.

R14: Introduce alcohol management plans in areas where a need has been identified and agreed.

### 1.2.6. Online purchasing

Advances in technology have contributed to a proliferation of alcohol delivery services in recent years, with online orders estimated to now represent 3.5 per cent of alcohol sold in Australia.<sup>100</sup> In the five years to 2015-16, online beer, wine and liquor sales averaged a staggering 10.9 per cent annual growth. Regulatory systems have not kept pace with changes in this market.<sup>101</sup>

The delivery of alcohol poses a significant risk to all communities and presents a unique set of challenges when compared with traditional models. The current alcohol online purchasing system treats alcoholic products like other online retail services such as clothes or homewares. The ability to purchase alcohol from a computer or smartphone, have it delivered with virtually no proof of identification and left unattended at your door, completely undermines responsible service of alcohol provisions and harm minimisation provisions contained in the *Liquor Act*.

Alcohol delivery services present unique challenges for monitoring and compliance. Without sufficient regulation, the way in which responsible service of alcohol provisions are enforced is left to businesses/licensees. Delivery codes of practice vary with some alcohol delivery services allowing alcohol to be left unattended,<sup>102,103</sup> and others requiring the package to be returned to the licensed venue.<sup>104</sup> An example of the former is Naked Wines, whose website states that “we are happy for the driver to leave your wine in a safe place if you're not home so just be clear in your instructions to avoid going thirsty!”.<sup>105</sup> While alcohol delivery service websites state that it is against the law to sell or supply alcohol to a person under the age of 18 years, actual delivery practices indicate otherwise.

It is important that alcohol delivery services are subject to the same standards as other modes of alcohol supply. This is not currently the case, with IBISWorld suggesting that “unlike many liquor related industries, the Online Beer, Wine and Liquor Sales industry operates under much lower levels of regulatory policy”.<sup>106</sup>

### Current situation

Currently, the NT *Liquor Act* does not include provisions for online purchases or the delivery of alcohol to consumers. While clauses refer to delivery, this is in relation to the delivery to permit holders in general restricted areas (see section 89). The lack of any specific regulation of online sales and delivery to residences in the NT more generally is a major oversight, and requires immediate rectification. Already, several major retailers (including Dan Murphy's<sup>107</sup> and Thirsty Camel<sup>108</sup>) can deliver alcohol to specific locations in the NT, with Thirsty Camel advertising delivery within three hours.<sup>109</sup> Lack of regulation around online purchases, including the delivery of alcohol, is a loophole that major liquor outlets could exploit.

### Future direction

It is important that measures are put in place to ensure the responsible service of alcohol through delivery, including proof of age and refusing sale to intoxicated persons.

Where delivery is made in person (by an employee or agent of the licensee), the same responsible service provisions as for off-premise sales should apply (including ID check and refusal to supply to intoxicated customers). It should be mandatory for an employee or agent of the licensee to verify the identification upon delivery and ensure it matches the purchaser's details. If this cannot be provided, the alcoholic product should be sent back to the supplier. To ensure compliance and support accountability, licensees should also be required to prominently display licence numbers on websites selling or promoting the sale of alcohol.

To achieve some of these outcomes, the NT Government may wish to consider adopting elements of Section 114 of the *Liquor Act 2007* (NSW), outlined below:

*(1) A licensee who sells liquor by taking orders over the telephone or by facsimile or by mail order must cause the licence number to be displayed in any advertisement or information published in writing or electronically in connection with such sales. Maximum penalty: 20 penalty units.*

*(2) A licensee who sells liquor through an internet site must ensure that the licence number is prominently displayed on the site and in any advertisement or information published in writing or electronically in connection with such sales. Maximum penalty: 20 penalty units.*

...

*(4) If delivery of any liquor sold in a manner described in this section is taken by a minor:*

*(a) the delivery is taken to constitute a supply to which section 117 (2) applies, and*

*(b) the licensee, and any person by whom the liquor was delivered on the licensee's behalf, are each taken to have supplied the liquor contrary to section 117 (2).*

...

*(7) A minor must not take delivery of any liquor sold in a manner described in this section unless the minor was ordered or requested by his or her parent or guardian to take delivery of the liquor. Maximum penalty: 20 penalty units.*

*(8) A person must not order or request a minor to take delivery of liquor sold in a manner described in this section. Maximum penalty: 30 penalty units.*

## Recommendations

R15: Amend the *Liquor Act* to regulate the online sale and delivery of alcohol.

R16: Amend the *Liquor Act* to require verification of identity when a delivery is made in person, by an employee or agent of the licensee.

R17: Amend the *Liquor Act* to require licence details to be displayed on websites providing online alcohol sales and promotions.

### 1.3. Promotion and marketing

A number of studies have demonstrated a strong association between exposure to alcohol advertising and promotions, and subsequent consumption. A review of 12 longitudinal studies of more than 38,000 young people has shown that the volume of alcohol advertising they are exposed to influences both the age at which young people start drinking and levels of consumption.<sup>110</sup> A cross-sectional survey of 6,651 school students across four countries found that exposure to online alcohol marketing, and exposure to alcohol-branded sports sponsorship, increased both young adolescents' intention to drink and the odds that they had been drinking in the past 30 days.<sup>111</sup>

Liquor promotions heavily centre on price as an enticement to purchase the product. There is an inverse relationship between the price of alcoholic beverages and levels of consumption and harms.<sup>112</sup> The problem of consumption encouraged by cheap alcohol was tackled in Canada through increases in the minimum alcohol price.<sup>113</sup>

Shopper dockets are liquor promotion vouchers located on supermarket shopping receipts. A prominent theme in shopper docket promotions is "buy some get some free". In 2017, almost one in five (23 per cent) Australian drinkers bought a particular alcohol product because of a shopper docket, an increase from 16 per cent of drinkers in 2015.<sup>114</sup>

Point of Sale promotions (POS) are promotional materials found within or on the exterior of licensed premises at the point where an alcohol purchase is made (for instance, happy hours, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices). They often involve price or volume discounts and have been found to be particularly effective in encouraging the purchase of increased volumes of alcohol.<sup>115,116</sup> POS marketing is becoming more widespread<sup>117</sup> and this is likely to affect overall consumption of underage drinkers, as well as the consumption patterns of harmful drinkers, and regular drinkers.<sup>118</sup>

Takeaway liquor outlets associated with supermarket chains have the ability to take advantage of cross promotions through supermarket catalogues and shopper dockets, and of bulk buying power, which provide economies of scale to drive prices lower. They have been found to use more POS promotions, have a greater focus on price based promotions and require more alcohol purchases to

participate in the promotion than other off-licence premise retailers.<sup>119</sup> Takeaway outlets also employ loss leading tactics to encourage customers into their store, by discounting products significantly, sometimes below cost.

## Current situation

The *Liquor Act* includes broad provisions aimed at regulating the advertising and promotion of alcohol. However, these appear to be aimed at on-licence premises only and there is no scope to ban the supply of products deemed to be undesirable such as alcoholic ice blocks and aerosol containers. As per section 31(4), it is a condition of all licences that a licensee must not take any action or publish, in any media, an advertisement that the Director-General believes will induce irresponsible or excessive consumption of liquor on licensed premises. Such a provision excludes a range of promotions and advertisements given nearly 80 per cent of alcohol consumed in Australia is sold at takeaway liquor outlets,<sup>120</sup> and therefore, not consumed on licensed premises.

Similarly, licensees must abide by a code of conduct or similar mechanism relating to the advertising of liquor. While the NT has a 'responsible promotion of alcohol code of practice'<sup>121</sup> that lists acceptable and unacceptable promotion practices, these practices predominantly relate to promotion and consumption of alcohol on premises.

In addition, the broad nature of the *Liquor Act's* provisions aimed at regulating the advertising and promotion of alcohol makes compliance and enforcement challenging. While it is an offence to contravene licence conditions under section 110, the *Liquor Act* does not include any specific offences relating to the advertising or promotion of alcohol, or the supply of undesirable liquor products. The *Liquor Act* does not provide any clear guidance to licensees on what might constitute an irresponsible promotion or advertisement as this is solely at the discretion of the Director-General.

## Future direction

The Act needs to include specific provisions and/or allow for regulations to be made that restrict or prohibit promotional activity and undesirable liquor products. As a start, such provisions could be modelled on those included in the ACT's *Liquor Act 2010* (sections 137 and 213) and *Liquor Regulations 2010* (section 29), and/or NSW's *Liquor Act 2007* (sections 99-102A) and *Liquor Regulation 2008* (sections 50 and 52).

It is important, however, that any provisions aimed at restricting or prohibiting promotional activity and undesirable liquor products, apply to both on- and off-licences equally. Such provisions must also cover a range of promotion mediums such as signs, banners, flyers, posters, and newspapers, as well as SMS text messages and those undertaken online and via social media (such as Facebook or Instagram).

In addition to the above, the *Liquor Act* must include measures that limit harmful price discounting such as banning shopper docket liquor promotions and prohibiting the promotion and sale of alcohol at half, or less than half, of the usual price. Point of sale promotions that encourage impulse purchases with the intention of 'up-selling' should also be restricted. Ceasing harmful price discounting will reduce risky alcohol consumption and discourage risky practices such as preloading by minimising the price differential between on- and off-licence premises.

A report prepared for the NSW Office of Liquor, Gaming and Racing (OLGR) cautioned that promotions which lead people into buying more alcohol than they had originally intended are likely to increase consumption and that this is particularly the case for young people.<sup>122</sup> The report also notes that shopper dockets and other linkages between liquor and everyday grocery items sends a message to

consumers, particularly children and young people, that alcohol is a normal everyday product. The NSW OLGR conducted a six-month investigation into shopper dockets, concluding that shopper dockets were “likely to encourage the misuse and abuse of liquor”.<sup>123</sup> The agency consequently recommended that shopper dockets promoting discounted alcohol should be banned.<sup>a</sup>

The NT Government also has a role to play in protecting children from exposure to alcohol advertising by removing advertisements from state property such as at bus stations and buses. There should also be controls imposed on the placement of alcohol advertisements in public spaces, specifying types of places and distances from these places where alcohol advertising is not permitted.

Lastly, it is important that the ‘responsible promotion of alcohol code of practice’ is updated to reflect any changes to the *Liquor Act*. Clear guidance is required to facilitate compliance with the *Liquor Act’s* provisions.

## Recommendations

R18: Amend the *Liquor Act* to include specific provisions to restrict or prohibit promotional activity and undesirable liquor products. These provisions should address promotions by both on- and off-licence premises with equal weight and cover a range of mediums that include, but are not limited to, signs, banners, flyers, posters, and newspapers, as well as SMS text messages and those undertaken online and via social media.

R19: Amend the *Liquor Act* to declare the following as prohibited promotional activity:

- ‘shopper dockets’ (liquor promotion vouchers on the receipts for purchases)
- harmful price discounting such as the sale of alcohol at half, or less than half, of the usual price, and
- the display of point of sale promotional materials for liquor (such as ‘happy hours’, free gifts with purchase, prominent signage, competitions, price discounts for bulk purchases, and sale prices) on and around licensed premises where minors are likely to be present.

R20: Ban alcohol advertising on publicly owned assets, such as public buses.

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<sup>a</sup> Regrettably, the Director General of OLGR decided not to support his agency’s recommendations, thus allowing this harmful practice to continue.



## 2. Develop transparent regulatory structures

To effectively minimise alcohol harm, the NT liquor licensing system must include appropriate safeguards to ensure that licensing and liquor control measures are in line with community expectations and policies consistent with harm minimisation. These licensing structures should consist of a strong legislative framework, enforced through a transparent and accountable regulatory model. Both the legislative framework and the regulatory model should embed and facilitate the principle of harm minimisation, and provide appropriate opportunity for community participation.

Accountability is a cornerstone of good governance. Broadly speaking, accountability refers to the need for oversight of public officials' actions and decisions to ensure these meet stated objectives and are in line with community expectations.<sup>124</sup> Governments are accountable to the community for their decisions and the way in which public money is spent. Governments must ensure that information is available to enable the community to determine how they have carried out their responsibilities and the outcomes that have been achieved.

### 2.1. Objectives of the *Liquor Act*

The NT Government has an obligation to protect its citizens against agents of harm. This includes alcohol, which can have wide-reaching, negative impacts on individuals and the wider community.<sup>125</sup> As the *Issues Paper* clearly highlights, alcohol harm in the NT is significant. The Minister for Health, the Hon Natasha Fyles MLA, has described alcohol abuse as “the single biggest social issue that we are facing in the Territory”.<sup>126</sup>

Alcohol is no ordinary commodity and aspects of the physical and social environment that contribute to alcohol harm should be subject to government regulation.<sup>127</sup> As the *Issues Paper* highlights, Australian governments have adopted a harm minimisation approach to addressing alcohol policy and the NT Government is committed to such an approach.

Liquor licensing legislation is one of the key mechanisms available to states and territories that can be used to implement a harm minimisation approach. An example of this may be seen in the case of *Kordister Pty Ltd v Director of Liquor Licensing* ('Kordister') in Victoria.<sup>128</sup> In 2009, an application for reducing trading hours of an off-licence premise was made by police and approved. However, the licensee requested a review of this decision by the Victorian Civil and Administrative Tribunal (VCAT) and as a result of the appeal the decision to reduce trading hours was removed.

The VCAT decision was appealed in the Supreme Court on the grounds that the decision was not upholding the objects of the Act (harm minimisation). It was argued that VCAT had misinterpreted the request, which was to consider if ceasing late-night trading would have contributed to harm minimisation rather than the removal of harm altogether. The Supreme Court found that the decision made by the VCAT was not in line with the principle of harm minimisation, and the decision by the VCAT failed to uphold the primary objects of the Act.

This case provides a clear example of the importance of harm minimisation but also highlights challenges with ensuring its proper application.

#### Current situation

Under section 3 of the *Liquor Act*, the 'objects' are divided into two sections: a primary object and further objects. The primary object of the Act is to regulate the sale, provision, promotion and consumption of liquor:

- a) *so as to minimise the harm associated with the consumption of liquor; and*
- b) *in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.*

*A definition of 'public interest' is provided in section 6(1) of the Liquor Act, which states that when a person (a decision maker) has regard to the objects of this Act in*

- (a) considering or determining an application under this Act in respect of a licence or licensed premises; or*
- (b) determining the conditions of a licence,*

the decision maker must, when taking into account the public interest in the sale, provision, promotion and consumption of liquor, consider any of the criteria specified in subsection (2) that are relevant to the application or conditions.

Section 6(2) outlines the 14 public interest criteria including “harm or ill-health caused to people, or as a group of people, by the consumption of liquor is to be minimised” and “the safety, health and welfare of persons who use licensed premises must not be put at risk”.

## Future direction

Alcohol causes considerable harm within the community and this should be clearly reflected in the laws that govern the sale and supply of alcohol in the NT. To strengthen application of harm minimisation, section 3(1)(b) needs to clearly link to section 6 which outlines the public interest criteria in respect of licence or licenced premises.

Section 6 should also be strengthened to clearly define and require mandatory consideration of, harm associated with the sale, provision, promotion and consumption of liquor. The definition should recognise alcohol’s impact on children and contribution to family violence. To facilitate this, the public interest criteria listed under section 6(2) should be amended to include a clear definition of harm based on South Australian legislation recently introduced to Parliament. The South Australian Liquor Licensing (Liquor Review) Amendment Bill 2016 identifies the harms associated with the supply of alcohol that must be considered in determining how these harms might be minimised. In particular, the Bill identifies:

- (a) the risk of harm to children, vulnerable people and communities (whether to a community as a whole or a group within a community); and*
- (b) the adverse economic, social and cultural effects on communities (whether on a community as a whole or a group within a community); and*
- (c) the adverse effects on a person's health; and*
- (d) alcohol abuse or misuse; and*
- (e) domestic violence or anti-social behaviour, including causing personal injury and property damage.*

Instilling the primacy of harm minimisation supports licensing decisions in the interest of reducing alcohol-related harm, by clearly articulating priorities where a conflict exists between business interests and public health and wellbeing.<sup>129</sup>

## Recommendations

R21: Amend section 3(1) of the *Liquor Act* to clearly specify that ‘public interest’ is defined as per section 6(2) of the *Liquor Act*.

R22: Amend section 6 of the *Liquor Act* to:

- clearly identify harm associated with the sale, provision, promotion and consumption of alcohol (including family violence) in the public interest criteria, and
- require mandatory consideration of this harm in all liquor licensing decisions.

R23: Strengthen application of harm minimisation by ensuring all liquor licensing decisions are guided by the primary object of the *Liquor Act*, including the specified public interest criteria.

## 2.2. Liquor licensing regulatory model

Regulation refers to the extensive variety of legally enforceable instruments that impose mandatory requirements upon business and the community.<sup>130</sup> Effective regulation is the outcome of detailed policy development and thorough regulatory design process.<sup>131</sup> Such processes consider the harm that governments seek to address and design regulation and regulatory operations to achieve that harm reduction goal.<sup>132</sup>

A regulatory framework for alcohol should be consistent with general principles and guidelines for regulatory best practice. The Council of Australian Governments' (COAG) *A guide for ministerial councils and national standard setting bodies*<sup>133</sup> provides principles for regulation as guidance to establish and maintain effective arrangements for all levels of governments. These principles include "Adopting the option that generates the greatest net benefit for the community" and "Consulting effectively with affected key stakeholders at all stages of the regulatory cycle."<sup>134</sup>

Effective regulation of alcohol requires input from a variety of sectors and stakeholders given licensing matters intersect with a range of areas including policing, family and community services, health, justice, land and planning, local government and business interests. Most importantly, an effective regulatory model must facilitate community participation given the burden of dealing with alcohol harm largely falls on local communities.<sup>135</sup>

The term 'communities' is all encompassing and includes both individual community members and public interest groups (either grassroots community action groups or not for profit organisations that represent the public interest through advocacy activities).<sup>136</sup> For reasons that will be outlined further in this submission (*Community participation in liquor licensing matters*), there are a range of barriers that restrict individual community members' and grassroots community action groups' ability to participate in liquor licensing matters. Such barriers often leave not for profit organisations to represent the public interest.<sup>137</sup>

### Current situation

The *Issues Paper* outlines in detail the current model for *Liquor Act* decision-making as well as three other potential models for consideration. To summarise briefly, the current model of Director-General of Licensing replaced the NT Licensing Commission on 1 January 2015. The Director-General is an independent statutory appointment with extensive powers to regulate the NT liquor, private security and gaming industries, as well as other matters through related licensing legislation.

As per the *Licensing (Director-General) Act 2014*, liquor licensing decisions are made by the Director-General or delegated to Licensing NT staff. The Director-General of Licensing Annual Report 2014-15 states that delegation is "working well with most decisions that would have to have been made by the NT Licensing Commission being delegated to various licensing staff".<sup>138</sup>

As per guidelines<sup>139</sup> issued in February 2017, the Director-General may conduct public hearings in certain circumstances, including for valid objections and complaints. The location of such hearings is not clear from these guidelines.

Delegate decisions can be reviewed by the Director-General and are either confirmed or replaced. While Director-General decisions can be reviewed by the NT Civil and Administrative Tribunal (NTCAT), the cost required to lodge an application under the *Liquor Act* is \$400 (as at 22 August 2016).<sup>140</sup> This cost, combined with other fees relating to NTCAT hearings, is likely to be a financial barrier and a deterrent to many people.

## Future directions

To reduce the burden of alcohol harm on NT communities, it is important that the desired regulatory model in the NT is underpinned by the following key elements:

### **Responsibility for regulating liquor licensing should be independent of both political and industry interests**

The desired regulatory model must be truly independent and beyond political and industry interference. Rather than an administrative function that may exist to facilitate a particular political agenda, it must be given the power and respect to act as a quasi-judicial system. Independent regulation of liquor licensing requires a separation of power between those who can make, change and enact laws, and those who have a responsibility to make judgement about such laws.<sup>141</sup>

The need for separation of interests also applies to organisations responsible for administering liquor laws. Licensing NT currently provides administrative support to the Director-General of Licensing. However, the location of Licensing NT within the NT Department of Business creates a clear conflict of interest. While business and industry interests are priority issues for the Department of Business, alcohol regulation extends beyond such interests.

Relocating Licensing NT to an office outside of the Department of Business, such as the Department of the Attorney-General and Justice, would enable liquor regulation to be more connected with, and receive input from, all government departments that are relevant to alcohol policy (i.e. policing, family and community services, health, justice, land and planning, and local government). This in turn would serve to make the operations and decisions of licensing authorities more responsive to community interests as per the objects of the *Liquor Act*.

Given alcohol consumption is first and foremost a health issue, it is important that the desired regulatory model includes a decision-maker who represents the public health sector.

### **The regulatory model should have a clear objective to reduce harm**

To reduce alcohol harm in the NT, the regulatory model should clearly identify this objective. Liquor licensing processes and decisions must embody the primary object of the *Liquor Act* (section 3(1)) and be weighted towards protecting the health and safety of Territorians. It is clear that the risk of harm from the increased supply of liquor in all formats leads to a range of manifest harms. Regulatory decisions ought to transparently settle on the relevant risks, the means of mitigation and be satisfied that such mitigation is effective at not expanding harm in the community.

### **The decision-making processes should be transparent, participatory and foster accountability**

To facilitate transparent decision-making, the desired regulatory model should consist of more than one decision-maker. Having more than one person responsible for decision-making strengthens

decisions through the diversity of perspectives and expertise that each member brings. Collective decision-making also fosters accountability through the inherent checks and balances that exist. It is important that decision-makers are independent from vested interests.

The desired regulatory model should also be designed in such a way that facilitates community participation. In addition to a number of other actions which will be discussed in the following section, public hearings should be held for the purpose of considering applications and objections to liquor licence applications, as well as complaints against licensees. To ensure such hearings are accessible to the community, hearings should be held in a location close to where the liquor licensing matter has originated. At a minimum, there should be the ability to hold hearings in major regional towns.

### **A clear risk model should guide decision-making processes, including the delegation of responsibilities**

A clear risk model, underpinned by harm minimisation, should guide the decision-making process. As Davoren and O'Brien outline, the court in the *Kordister* case identified that assessing the harm from a particular licence is not just dependent on the conduct of a licensee, but a range of other 'social and cultural' (1:para 197) factors connected with the licence, which include but are not limited to:

- *the character of the licensed venue*, such as whether it sells packaged alcohol for off-premises consumption; whether it is a café or restaurant; the patron capacity of the venue; the trading hours of the venue; any conditions on the venue's liquor licence (1:para 24)
- *the geographic location of the venue*, such as its proximity to other licensed venues (1,13) or its position on a pedestrian thoroughfare (1) or on a busy road (11)
- *the occurrence of alcohol-related violence and incidents close to the venue* (14)
- *the vulnerability to alcohol-related harm of persons in the vicinity of the venue*, such as where the proposed venue is close to an Indigenous campsite (11) or to community services for homeless people, people with drug and alcohol problems, or people with mental health problems (11).<sup>142</sup>

Consideration should be given to developing a risk model that incorporates and builds on the factors outlined in the *Kordister* case to guide liquor licensing decision-making processes in the NT.

As the potential for harm increases, the sophistication of decision-making must also increase. While the desired regulatory structure should have some scope to delegate decision-making responsibility to licensing staff/public sector employees, this should only be for very low-risk, routine matters. The ability to delegate should be informed by clear delegation guidelines that are accessible to the public, as well as clear accountability mechanisms between the principal decision-makers and the delegate. Those charged primarily with decision making must sit at the apex of an accountability chain to ensure that delegates' decisions remain evidence-based, robust and in line with guidance issued from time to time by the principle decision maker. In this context, those charged with the principle decision making should lead any government institution created to support them. The NT Government could review The Australian Government Productivity Commission model<sup>143</sup> when developing its liquor licensing regulatory model.

## **Recommendation**

R24: Introduce a regulatory model that is underpinned by the following key elements:

- Responsibility for regulating liquor licensing should be independent of both political and industry interests.
- The regulatory model should have a clear objective to reduce harm.

- The decision-making processes should be transparent, participatory and foster accountability.
- A clear risk model should guide decision-making processes, including delegation of responsibilities.

## 2.3. Community participation in liquor licensing matters

The NT community is affected by alcohol in many ways. As already described in this submission, alcohol harm manifests in a range of different ways, affecting not only the drinker but also others. Alcohol-related family violence and non-family violence is sadly far too common, affecting children, partners, families and communities.

Communities should be able to have a say on how alcohol is made available in their surrounds, whether it be through participating in liquor licensing application processes or making complaints.

However, for a range of reasons, communities' ability to do so is constrained. More than half of Australians feel they do not have enough say in the number of licensed venues in their community.<sup>144</sup>

Community objectors do not necessarily have the capabilities (in terms of time, financial costs, and research capacity) that are needed to meet the burden of proof in licensing matters. This is further compounded by the lack of targeted support for communities to interact with the liquor licensing or planning systems, resulting in unsuccessful objections and complaints, and a lack of engagement with these systems.

Enhancing community awareness, engagement and input in licensing matters is steeped in the principles of participatory governance and serves to make policy decision-making more responsive to local community interests in harm minimisation. To facilitate this, barriers to community participation need to be addressed.

### Current situation

There are no formal provisions in *the Liquor Act* that require liquor licence applicants to consult with key stakeholders prior to submitting an application. However, section 26(3) of *the Liquor Act* states that applicants must demonstrate in the application that the grant of the licence will be in the public interest:

- a) by providing information about any relevant criteria referred to in section 6(2); and
- b) by specifying any other matter relevant to the public interest in the sale, provision, promotion and consumption of liquor.

This public interest requirement is also listed in the 'Grant of liquor licence form'<sup>145</sup> and the 'permanent variation of liquor licence conditions form'<sup>146</sup> as one of a number of 'documents' that need to be lodged with these applications. However, the degree to which applicants satisfy this requirement and the amount of weighting provided to this requirement in liquor licensing decision-making is not clear.

The community may become aware of a liquor licence application through a public notice. Under section 27 of the *Liquor Act*, notice of a liquor licence application must be published in a way specified by the Director-General within 28 days of lodging the application. According to the 'Advertise a liquor licence application' guidelines,<sup>147</sup> details of the proposed liquor licence must be advertised in a local newspaper or any other way specified by the Director-General of Licensing for 30 consecutive days. A

sign (Green Sign)<sup>148</sup> which includes location details and a description of the proposed business must also be displayed at the proposed premise for 30 consecutive days. While not specifically stated in the *Liquor Act* or guidelines, the Director-General of Licensing Annual Report 2015-16 states that the NT Police, the NT Fire and Rescue Service, the Department of Health and the relevant local authority or council are also informed of the application.<sup>149</sup>

Under section 32A, the Director-General determines whether public notice of applications to vary licence conditions should be provided.

The *Liquor Act* includes provisions that enable the community to object to liquor licence applications (section 47F) and make complaints against a licensee (section 68). The community can object to certain liquor licence applications including requests to vary licence conditions, on the basis that it will affect the amenity of the neighbourhood or impact on the health, education, public safety or social conditions in the community. In the case of an inquiry or hearing, objectors can only rely on facts outlined in their objection as the grounds for their objection (section 47H).

Despite the existence of these provisions, there is limited publicly available information on the liquor licensing process, including on how to make objections and complaints. While the internet is the primary mode through which information on such processes can be accessed, online information relating to liquor licensing objections and complaints appears to be confined to Director-General of Licensing Decisions.<sup>150</sup> In addition, while section 68(2)(aa) states that complaints must be made in “the approved form”, it is not clear what this approved form is.

## Future direction

The *Liquor Act* includes provisions that if strengthened and properly enforced, can improve community participation and application of harm minimisation in liquor licence decision-making. As argued in the ‘Objectives of the Act’ section of this submission, section 6 (public interest criteria in respect of licence or licensed premises) should be strengthened to clearly define and require mandatory consideration of, harm associated with the sale, provision, promotion and consumption of liquor.

This in turn would strengthen the implementation of section 26(3) of the *Liquor Act* that requires applicants to demonstrate that the grant of the licence will be in the public interest as defined in section 6(2). A similar requirement exists in Western Australia where the onus is on the applicant to demonstrate that granting a liquor licence is in the public interest (under S.38(2) of the *Liquor Control Act 1988*).<sup>151</sup> As stated by the Western Australian Director General, it should not be sufficient that “applicants merely express opinions about the perceived benefits of their application without an appropriate level of evidence to support those opinions and assertions”.<sup>152</sup> NT liquor licence applications should also require an appropriate amount of evidence to demonstrate that granting a liquor licence is in the public interest and will not contribute to further harm.

Given the primary object of the *Liquor Act*, liquor licensing decisions should be weighted towards protecting the health and safety of the community. Ultimately, a liquor licence application should not be approved if the applicant cannot demonstrate that granting the liquor licence is in the public interest and will not contribute to further harm.

To strengthen public notice requirements and remove ambiguity, the *Liquor Act* and the ‘Advertise a liquor licence application’ guidelines,<sup>153</sup> should be amended to include the requirement for notice of an application to be provided to the NT Police, the NT Fire and Rescue Service, the Department of Health, the relevant local authority or council and other relevant government bodies. Public notice



requirements for new liquor licence applications should also apply to applications to permanently and temporarily amend licence conditions.

To enhance community members' ability to participate in liquor licensing decision-making, the Licensing NT webpage should be updated to include clear information on the liquor licensing process. Among other things, this should outline community members' rights to make objections and complaints, as well as how they can do so. To improve accessibility, the complaints process should not be limited to filling out a form and should include an option to make a complaint online or over the phone.

To further enhance community participation, the development and funding of a Community Defenders Office based on the Alcohol Community Action Project (ACAP) pilot, would help individuals and communities in navigating and interacting with the liquor licensing system.

The ACAP was a pilot project funded by the Australian Rechabite Foundation and administered by FARE. The purpose of ACAP was to assist individuals and organisations in NSW who wanted to interact with the liquor licensing and planning systems to reduce alcohol harm in their community. The pilot project consisted of two key resources: a community adviser and a website. ACAP successfully assisted numerous communities in NSW to lodge objections to liquor-related development applications and liquor licence applications, and provided advice to individuals who were not aware of their rights when dealing with licensing applications. The demand experienced by the ACAP project during the pilot demonstrates the need within the community for such a service.

## Recommendations

- R25: Enforce section 26(3) of the *Liquor Act* that requires applicants to demonstrate that the grant of the licence will be in the public interest (as defined in section 6(2)) and will not contribute to further harm. A liquor licence application should not be granted unless the application can produce an appropriate amount of evidence to satisfy section 26(3).
- R26: Amend the *Liquor Act* to require all liquor licence applications (new and requests to permanently or temporarily change licence conditions) to have the same public notice requirements.
- R27: Amend the *Liquor Act* to require notice of an application to be provided to the Northern Territory Police, the Northern Territory Fire and Rescue Service, the Department of Health, the relevant local authority or council and other relevant government bodies.
- R28: Update the Licensing NT webpage to include clear information on the liquor licensing process, including on how the community can make objections and complaints.
- R29: Fund and implement a Community Defenders Office based on the Alcohol Community Action Project (ACAP) pilot to help individuals and communities navigate and interact with the liquor licensing system.

## 2.4. Data collection

Evidence-based policy is dependent on the availability of high-quality data. For alcohol, this includes data pertaining to the sale and consumption of alcohol, as well as associated harm. It is a basic principle of data that greater detail facilitates stronger, more meaningful analysis. This is balanced against a need to maintain an appropriate level of confidentiality for individuals and businesses, as well as the burden associated with reporting requirements (on both private industry and statutory

bodies). The level of detail in a dataset may be improved with greater specificity or integration. That is, detail may be improved by disaggregating data by more specific geographic region, alcohol consumption level and criminal behaviour. Alternatively, detail may be improved by integrating data with other available sets, such as consumption level by disease classification. These types of improvements open new opportunities for the investigation of issues related to alcohol policy development and evaluation.

## Current situation

There is a variety of data available to inform alcohol policy development and evaluation in the NT. This includes information published by the Australian Bureau of Statistics, such as industry and other economic data, and the Australian Institute of Health and Welfare, including health statistics such as those contained in the National Drug Strategy Household Survey. In addition, the NT Government collects and publishes a number of crucial datasets, including wholesale alcohol supply data<sup>154</sup> and crime statistics.<sup>155</sup>

NT Police crime statistics include a variety of criminal acts to which alcohol contributes. Importantly, assault statistics are published by domestic violence and alcohol involvement. In addition, incidents are reported by calendar month and disaggregated by major urban centre. These include the regions of Darwin, Palmerston, Alice Springs, Katherine, Tennant Creek and Nhulunbuy.

The NT is one of a number of Australian jurisdictions that reports on wholesale alcohol supply. In the NT, registered wholesalers of alcohol are required to provide the Department of Attorney General & Justice with data on the volume of alcohol supplied to licensed retailers by product type. This information is published by calendar year for the same major urban centres for which crime statistics are reported.<sup>156</sup>

Unlike other Australian jurisdictions, the NT does not publish hospitalisations or ambulance attendance data. While this information is sometimes made available indirectly through publications from the Australian Institute of Health and Welfare, this is not provided in sufficient detail and is often difficult to access.

## Future direction

While the NT Government should be commended for current data provisions, this data may be improved by greater geographic specificity. In particular, the availability of this data by regions contained in the Australian Statistical Geography Standard (ASGS) is of fundamental importance to integrating the data with other available sources, such as the census. More disaggregation would provide greater utility, with a minimum level of SA3 considered ideal.

As for crime statistics, the provision of consumption data by more specific geographic region aligned with the ASGS classification, would be ideal. In particular, publication by at least SA3 is recommended. Because wholesalers provide information by specific retailer, these should be combined with the geo-coded Australian Business Register to provide high-resolution geographic information.

As a major contributor to acute and chronic health issues, health statistics are of fundamental importance to evaluating alcohol policy outcomes. Like consumption and crime statistics, higher levels of detail contribute to more powerful analysis and therefore stronger evidence-based policy. For this reason, it is recommended that the NT Government publish data on hospitalisations and ambulance attendances by disease classification. NSW Health provide a good example of rich state-based health statistics reporting.<sup>157</sup>

In addition to improvement of existing provisions and introduction of health statistic reporting, it is recommended that the NT Government participate in trials linking health data with crime data. In particular, the 'Cardiff model' involves Emergency Departments collecting three pieces of information from attending services in the course of assault-related hospital admissions.<sup>158</sup> These include the date/time of assault, the means of assault and the location that it happened.<sup>159</sup> For more information, see Foster et al. (2007).<sup>160</sup> Currently, several universities and hospitals in Victoria, NSW and the ACT are participating in a trial of the scheme.<sup>161</sup> It is recommended that the NT implement a trial of the scheme to allow better coordination of frontline services as well as policy development and evaluation.

## Recommendations

- R30: Publish crime and wholesale supply statistics in geographical classifications aligned with the Australian Statistical Geography Standard (ASGS), at a minimum disaggregation level of SA3.
- R31: Publish wholesale alcohol supply data on a monthly rather than yearly basis.
- R32: Publish Northern Territory health statistics, including hospitalisations and ambulance attendances.
- R33: Implement a trial of the Cardiff model to link Emergency Department data with assault statistics to improve frontline responses to incidents and facilitate stronger policy development and evaluation.

## 2.5. Political donations

There is a prominent conflict between the interests of the alcohol industry and those of the public. It is well recognised in public health literature that the alcohol industry has a vested interest in alcohol policy development and implementation.<sup>162</sup> The financial success of the alcohol industry is dependent upon the consumption of alcohol, that is, the more alcohol consumed, the more money the alcohol industry makes. This is in direct conflict with the evidence-base that consistently demonstrates that alcohol supply reduction measures are most effective in minimising alcohol's harm.

The ability to influence ministerial or government decisions through political donations raises questions of fairness, independence and quality such as whether decisions are made in the public interest or a private or commercial interest. The World Health Organization (WHO) former Director-General Dr Margaret Chan has stated that, "In the view of WHO, the alcohol industry has no role in the formulation of alcohol policies, which must be protected from distortion by commercial or vested interests".<sup>163</sup>

The community is also concerned about the ability of the alcohol industry to influence policy. Over half (55 per cent) of Australians believe that the alcohol industry makes donations to influence government decision making<sup>164</sup> and almost two thirds (72 per cent) believe that political parties should not be able to receive donations from the alcohol industry.<sup>165</sup>

## Current situation

Growing concern about reporting of political donations appear to be well founded. A recent audit of the political disclosure returns for 2012-13 and 2013-14 suggested that the annual returns reported by NT political parties did not accurately represent the donations made to them.<sup>166,167</sup> A follow up review of the 2014-15 financial year found that political parties continued their failure to properly disclose all donations and other financial information to the NT Electoral Commission.<sup>168</sup> A separate review

undertaken by former auditor-general Frank McGuinness also raised concerns over political donations, recommending that the Electoral Act be reviewed in its entirety.<sup>169</sup>

While it is improper for a business to receive special benefit from corporate political donations, there are many examples in which donors and recipients have acknowledged this effect. Former NT Deputy Chief Minister, David Tollner, admitted that donations “open [his] door if you ever need to talk to [him]”. At the same time, he suggested that businesses choosing not to donate often have to wait to get an appointment. “When you become a Minister you find quickly there is a line-up at the door” he said, “you have to start prioritising”.

The alcohol industry recognises the importance of having its business prioritised over others, particularly in the NT where drinkers are more susceptible to its harm. In the days leading up to the August 2012 NT general election, the Australian Hotels Association’s (AHA) national office made political donations that were 14 times more per capita in the NT than in any jurisdiction at any time over the previous decade.<sup>170</sup> The amount of \$300,000 was split between the two major parties and accounted for 90 per cent of the AHA’s total political donations.<sup>171</sup> This made the AHA the largest political donor in the NT in 2012-13.

The Giles Government took an approach to alcohol policy that targeted individuals, rather than evidence-based population-wide policies. In commenting on the donation made by the AHA, the NT Police Association President Vince Kelly stated “No-one I know gives away \$150,000 to someone and doesn’t expect something back in return.”<sup>172</sup> What the industry has achieved in return was evident in the failure of the Giles Government to introduce effective alcohol policy reform and adequately protect Territorians from alcohol harm.

The extent of the liquor industry’s influence in the NT is particularly alarming given that the Territory is home to the highest rates of risky drinking and alcohol harm in the country.<sup>173</sup> Donations have been repeatedly shown to influence political processes. Where it conflicts with the public interest, it is crucial that adequate protection is provided against the prioritisation of industry interests. NT Labor has recognised the harm caused by unscrupulous practices, promising a judicial inquiry into political donations laws.

## Future direction

Other states have moved to ban political donations from industries that have the potential to cause harm. In NSW, for example, donations from the alcohol industry (as well as property developers and the tobacco industry) have been banned. This approach secures a political process that is free from the influence of these industries, reflecting public expectations.

As a secondary safeguard, donations must be declared and made publicly available to ensure ongoing accountability for policy decisions. This is currently required under the *Northern Territory Electoral Act*. Given the large discrepancies uncovered during auditing, penalties associated with non-compliance and the propensity for regulators to use these are evidently insufficient. Despite years of non-compliance, regulators have not applied penalties stipulated under the *Northern Territory Electoral Act*.<sup>174</sup> For this reason, legislation should be strengthened to impose mandatory penalties for non-compliance with reporting obligations. Associated penalties should also be increased to support accurate and timely reporting of political donations.

Favourable conditions for the liquor industry such as reduced regulation, support the proliferation of liquor outlets. Increased outlet density (and the availability of alcohol more generally) is well recognised as contributing to the harm it causes.<sup>175</sup> For these reason, it is imperative that action is taken to stem the flow of corporate donations from the liquor industry to NT parties and thereby

reduce its influence over government policy. This approach is fundamental to ensuring that evidence-based policy is prioritised to reduce the harm caused by alcohol in the NT.

### Recommendations

- R34: Ban political donations in the Northern Territory from the alcohol industry and its representatives.
- R35: Impose mandatory penalties for non-compliance with reporting requirements.
- R36: Increase penalties associated with failure to accurately declare political donations.

### 3. Ensure strong compliance and enforcement mechanisms are in place

Weaknesses and inconsistencies in the application and enforcement of liquor legislation undermines efforts to minimise alcohol harm. While a jurisdiction may have the best liquor legislation in the world, that is, legislation built on the principle of harm minimisation and designed to protect the health and safety of the community, such legislation serves no purpose and left useless if not enforced. Enforcement of liquor legislation is equally as important as the legislation itself.<sup>176</sup>

Those responsible for enforcing liquor legislation in the NT, that is Licensing NT staff and police, must be afforded the power, support and resources, to do their job effectively and enforce liquor legislation. Without the power to impose sanctions, there is little incentive for licensees to comply with liquor legislation. Safeguards around the sale, supply and promotion of alcohol must exist to ensure that licensees operate in a manner that achieves the primary object of the *Liquor Act*, harm minimisation.

#### 3.1. Monitoring and Compliance

The conspicuous presence of police<sup>177</sup> and swift and certain sanctions are effective approaches to deterring contravention of liquor laws and regulations. The ‘swift and certain’ approach follows the argument that:

If punishment is swift and certain, it need not be severe to be efficacious. If punishment is uncertain and delayed, it will not be efficacious even if it is severe.<sup>178</sup>

Swift and certain sanctions create strong and predictable deterrents and penalties for offensive and dangerous conduct by licensees, permit holders, and their staff at licensed premises. Studies have found that there is a close relationship between perceived risk of apprehension and self-willingness to engage in crime.<sup>179</sup> All recommendations in this submission, as well as existing provisions within the legislation, should be supported by effective enforcement and swift penalties for non-compliance.

#### Current situation

Under the *Liquor Act* and Regulations, compliance is enforced by the Director-General. While police are provided some power under the *Liquor Act*, this is limited to general law enforcement matters and do not apply to licensing breaches. Licence suspensions in an emergency or pending an investigation can only be imposed by the Director-General (section 48A).

Licensing NT employs compliance officers that hold appointments as ‘inspectors’ under section 18 of the *Liquor Act*. These compliance officers check venues for compliance with licence conditions and legislation under the *Liquor Act* as well as the *Private Security Act*, *Gaming Machine Act* and *Tobacco Control Act*.

Apart from the existence of compliance officers, it is unclear how the current monitoring and compliance system works. The Director-General of Licensing Annual Report states that during the 2015-16 period there were 1,164 operational visits to licensed premises.<sup>180</sup> The report states that “compliance officers undertake activities based on a risk assessment, compliance history and inspection targets”.<sup>181</sup> However, there is no publicly available information on the frequency of visits per venue, visit notification and risk assessment processes, or the outcome of these activities.

Under the *Liquor Act*, disciplinary action is only administered by the Director-General. In the instance of an emergency, police do not have any power to suspend a liquor licence.

## Future direction

Inspections and compliance visits should be regular, unscheduled and ongoing in order to act as a deterrent and motivator to maintain standards and meet conditions. The NT Government should look to introduce a risk category monitoring system whereby venues receive inspections of varying types and high risk venues are inspected more regularly than low risk venues. This information should be documented and made publicly available.

An example for the NT to consider is the compliance inspection system utilised in Queensland.<sup>182</sup> The number of compliance inspections undertaken are based on the licence type and trading hours. Higher risk venues receive more visits than lower risk venues which can be seen in table 3.

**Table 3: Compliance inspections by risk category, location and number of licensed premises**

Region		High Risk Category --> Low Risk Category					Total Region
		Adult entertainment permit	3-5am	1-3am	Midnight-1am	up to and including midnight	
Brisbane CBD	Number of licensed premises	5	8	22	9	164	208
	Number of compliance inspections	49	104	131	31	110	425
Sunshine Coast	Number of licensed premises	-	-	12	1	117	130
	Number of compliance inspections	-	-	143	21	111	275

Inspection types also vary and comprise of daytime inspections during business hours; targeted inspections for compliance of a particular issue or program; risk assessment inspections for variations to licences or permits; covert inspections where officers do not disclose themselves to the licensee during inspection and critical elements inspections where officers ensure safe environments including investigating/observing issues related to the supply or consumption of liquor by an intoxicated person, the presence of an approved manager on site and whether minors are not on the premise unlawfully.

<sup>183</sup> By providing regular inspections, matters of non-compliance can be acted on in a swift and certain manner.

In other jurisdictions police have the power to implement swift and certain sanctions on licensees pending an investigation of a liquor act breach. The NT Government should introduce a suspension period that may be imposed by senior police officers to allow sufficient time for investigation and enforcement of punitive action in circumstances where businesses have done the wrong thing.

Section 96A of the Victorian *Liquor Control Reform Act 1998* provides authority for a senior police officer to suspend a licence for a period not to exceed 24 hours.<sup>184</sup> This is an important policy measure to allow police to suspend activity where malpractice is suspected, however, it does not appear to be sufficiently long enough to allow time for the matter to be examined more thoroughly. If a police



officer identifies a need to suspend a licence over the weekend, a period of at least 72 hours would be required before this could be investigated in the following week. The need for a period of this length was recently demonstrated in NSW, where police were required to close a venue for 72 hours to allow time for a thorough investigation.<sup>185</sup>

## Recommendations

- R37: Introduce a compliance monitoring system, according to risk associated with licence type, that includes regular unscheduled visits.
- R38: Implement swift and certain sanctions for non-compliance to act as a deterrent and maintain standards in line with the primary object of the *Liquor Act*.
- R39: Amend the *Liquor Act* to expand policing powers to allow senior police officers to suspend licences for up to 72 hours following a suspected breach of the *Liquor Act*.

## 3.2. Responsible Service of Alcohol

The Responsible Service of Alcohol (RSA) is essential to reducing the risk of alcohol harm. In Australia, all persons involved in alcohol service are required to complete RSA training. However, this training is only useful if it is applied fully and consistently by staff. Without appropriate enforcement mechanisms, RSA measures have limited impact on the behaviour of people working in licensed venues and do not reduce alcohol harm.<sup>186</sup> A recent observational study of licensed premises across five Australian cities found that 85 per cent of patrons were being served alcohol until they were heavily intoxicated.<sup>[ii]</sup> This supports the notion that responsible service of alcohol is not taking place. Contributing to this issue is the fact that convictions for selling alcohol to intoxicated patrons are also rare, making up a minority of liquor law breaches.<sup>187</sup>

There are a number of challenges that make it difficult for staff to comply with RSA requirements. These revolve around the environment in which they work and the pressure to serve people quickly. Key barriers to RSA include concern over confrontation with patrons, lack of confidence in being able to identify intoxication, venue management, lack of industry knowledge and experience, the risk of reduced profits for the venue, risk of bar staff losing tips over the evening and a lack of perceived risk associated with compliance in terms of legal action or civil liability.<sup>188</sup>

### Current situation

Like all jurisdictions, the NT policy requires that “any person involved in the service of alcohol in the Northern Territory must have a responsible service of alcohol (RSA) certificate”.<sup>189</sup> However, this is not legislated within the *Liquor Act* or Regulations. RSA is only alluded to in section 6(2) of the *Liquor Act* which refers to the public interest criteria in respect to a licence or licensed premises:

*(h) each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;*

*(j) practices which encourage irresponsible drinking must be prohibited;*

While the NT policy requires staff involved in the service of alcohol to complete RSA training within one month of employment, there are no regulations or guidelines regarding certificate renewal periods or training refreshers.

## Future direction

The *Liquor Act* should be amended to legislate the requirement for anyone involved in the sale and service of alcohol and/or employed by a licensed premise, to hold a current RSA certificate from an approved provider. In line with the primary object of the *Liquor Act*, this should also include security and kitchen staff who may not be directly involved in the service of alcohol but are employees of a licensed premise. Failure to comply with these requirements should constitute an offence under the *Liquor Act*.

In addition, it is important for employees to receive regular and updated RSA training. In line with other jurisdictions, the NT Government should legislate the requirement for RSA certificates to be renewed. For example, NSW requires updated RSA training every five years and Queensland every three years.

Licensees should keep copies of current certificates and have them regularly available for compliance officers. This will also allow them to see which certificates will soon expire and monitor the ongoing training of their staff.

The main issue with RSA is that it is infrequently and inconsistently enforced. Evidence shows that RSA policies are more effective when enforcement is increased.<sup>190</sup> Regular compliance checks would provide a strong incentive for licensees to ensure that all employees have undertaken the required training and maintain responsible service practices. A recent study has also noted that the imposition of licence conditions on beverage types, quantities, and time limitations on beverage sales allowed servers to more easily enforce RSA guidelines.<sup>191</sup>

Research has shown that in areas where enforcement increases, bar staff refuse service more often and alcohol-related injuries decrease.<sup>192</sup> The application of swift and certain sanctions for non-compliance will help resolve these issues and make RSA more effective.

## Recommendations

R40: Amend the *Liquor Act* to require anyone involved in the sale and service of alcohol and/or employed by a licensed premise, to hold a current RSA certificate from an approved provider.

R41: Amend the *Liquor Act* to require RSA certificates to be renewed every five years.

## 3.3. Addressing recidivism for alcohol-related offences

Swift and certain sanctions can be applied not only to breaches of the *Liquor Act* by licensees but to alcohol-related offences such as drink driving. Justice projects that directly target alcohol-related offences through swift and certain punishment have been effective in reducing crime.<sup>193</sup> Furthermore, addressing the person's alcohol use is associated with marked improvements in other life outcomes that are often risk factors for family violence, such as improved financial situation, fewer legal problems, and higher participation in education and the workforce.<sup>194</sup>

Swift and immediate responses improve the perception that a sanction is fair and helps shape behaviour.<sup>195,196</sup> Furthermore, consistency improves the perceived certainty of a sanctioned violation, thereby supporting the behavioural contract and improving compliance.<sup>197,198</sup>

Repeat offences or the rate of recidivism for crime in general is considerably high in the NT. For the 2014-15 period the rate of prisoners returning to prison in the NT was over 57 per cent compared to the national average of 44 per cent. These numbers only represent those who have been sentenced to prison and it is likely that the actual rate of repeat offences is significantly higher.

The NT has the highest rates of alcohol-related family violence and drinking driving offences. Alcohol is associated with approximately 53 per cent of all assaults and 65 per cent of family violence incidents reported to police.<sup>199, 200</sup> Territory drivers are 20 times more likely to return a breath test above the legal limit (0.05 per cent blood alcohol content) than drivers in other Australian jurisdictions and alcohol was a factor in at least 42 per cent of road deaths between 2008-09 and 2012-13.<sup>201, 202</sup>

Alcohol's involvement in incidents is not limited to roads but also extends to the waterways. Alcohol was present in 51 per cent of drowning deaths of people aged 15 and over in the NT during the period 2002-2011.<sup>203</sup>

## Current situation

All motor vehicle licence classes (including provisional, heavy vehicle and public passenger drivers of buses and taxis) must have a blood alcohol concentration of zero per cent, except for full licence car or riders who must remain under 0.05 per cent. Similar to other jurisdictions, if you drive under the influence of alcohol in the NT you may have to pay a fine, have your licence disqualified or go to jail. Penalties vary depending on the offence and prior history.<sup>204</sup>

The court can give an ignition interlock order to be completed after the disqualification period, however this is not mandatory and the offender is required to pay all of the costs including installation, rental and regular, unscheduled services for the lock.<sup>205</sup> If the ignition interlock is not installed, the driver's licence is disqualified for the duration of the interlock order period.

Requirements that apply to motor vehicles do not extend to boats. There is currently no requirement to have a boat licence in the NT nor is there any restriction on blood alcohol limit while operating a boat.

The NT recently started a 12-month trial swift, certain and fair program based in Darwin. *The Northern Territory Compliance Management or Incarceration in the Territory* (COMMIT) program started on 27 June 2016 and aims to reduce crime and drug use while also reducing court and prison expenses.<sup>206</sup> The participant selection criteria includes high-risk offenders, where management is focused on case management and behaviour change; those with a history of alcohol or drug offences, criminogenic risk factors; and those with a history of condition breaking, to engage with the offender early and help reduce the risk of non-compliance.<sup>207</sup> The six-month evaluation is yet to be made available.

## Future direction

Applying swift and certain sanctions to alcohol-related offences could help reduce recidivism. The NT Government should extend the COMMIT program to target drink driving and alcohol-related family violence offences, and model it after the *24/7 Sobriety Program* which started in South Dakota, USA, in 2004. The 24/7 program has been effective not only in reducing driving offences but also saw an overall reduction in crime including a nine per cent reduction in intimate partner violence arrests following program implementation.<sup>208</sup>

The program requires people arrested or convicted for alcohol-related offences to undergo one of the following: submitting to daily random breath tests, wearing a continuous alcohol monitoring bracelet, or having an ignition interlock installed. Immediate, consistent yet modest sanctions were administered for non-compliance. Specifically, an offender who refused or failed a test would be taken into immediate custody and appear before a judge within 24 hours. The program originally targeted repeat drink drivers but has since been modified to include other alcohol-related crimes (including family violence).<sup>209</sup>

Ignition interlock for repeat drink driving offenders has seen a 7 per cent reduction in drink-driving rates.<sup>210</sup> The NT Government should strengthen its interlock program and refer to other jurisdictions. For example in Queensland the ignition interlock is mandatory for high risk drink driving offense. This includes driving under the influence of alcohol with a BAC of 0.15 or higher, two or more drink driving offenses within five years, failure to provide a blood/breathe specimen as well as dangerous or reckless driving while affected by alcohol (e.g. speeding). The interlock is fitted following the completion of the license disqualification period. Interlock periods vary across jurisdictions as is indicated in table 4.<sup>211</sup>

**Table 4: Jurisdictional overview of interlock program duration**

	QLD	NSW	VIC	TAS	WA	SA	ACT	NT
Duration if interlock fitted	12 months	12-48+ months minimum *	6-48+ months minimum *	15+ months*	6 months minimum *	maximum of 3 years*	6 months or end of disqualification period*†	6-36 months
Maximum interlock period	2 years	5 years	remains until complete	remains until complete	remains until complete	remains until complete	remains until complete	3 years

\*Jurisdiction has performance criteria allowing period to be extended for non-compliance

† ACT allows drivers to start on the interlock program once they have completed half their disqualification period as opposed to all other jurisdictions which require completion of the disqualification period.

It is also worth considering a performance-based interlock program where the device can be removed early, following good performance or compliance.

Whilst ignition interlock may not be feasible for all vehicles, drink driving regulations should refer to driving or operating any vehicle whether boat, car, motorbike or bicycle. Maritime safety like road safety should be considered a public health issue. The NT should look at the Queensland maritime safety model as an example and start by implementing boating licences. In Queensland, you are required to carry a boat licence to drive a vessel and must have a blood alcohol limit of less than 0.05 (same as operating a road vehicle) and less than 0.00 for a class 1 commercial vessel.<sup>212</sup>

## Recommendations

- R42: Introduce mandatory ignition interlocks for all high-risk drink driving offences.
- R43: Introduce a boat licence that requires operators to have a blood alcohol limit of less than 0.05 (same as operating a road vehicle).
- R44: Extend the COMMIT program to target drink driving and alcohol-related family violence offences, and model it after the *24/7 Sobriety Program*.

## 3.4. Secondary supply

Underage drinking is associated with a wide range of harms including physical injury, risky sexual behaviour, adverse behavioural patterns and academic failure, as well as long-term physical and mental health conditions.<sup>213,214</sup> Drinking from a young age can also damage the developing brain<sup>215</sup> and increase the risk of experiencing alcohol-related problems later in life.<sup>216</sup> In recognition of this, the National Health and Medical Research Council's (NHMRC) *Australian guidelines on reducing health*

*risks from alcohol consumption* recommend that for persons under the age of 18, not consuming alcohol is the safest option.<sup>217</sup>

According to a survey of Australian school students, 40 per cent of underage drinkers are supplied alcohol by a parent, and 45 per cent of underage drinkers are supplied alcohol by someone else.<sup>218</sup> If someone else bought alcohol for minors, it was most likely to be a friend aged 18 years or over (73 per cent). The survey found that the majority of underage drinking occurred at three main locations: at a party, the family home, or a friend's home. Overall, most (64 per cent) current drinkers reported that they were supervised by an adult when having their last alcoholic drink. Despite this, there is evidence to suggest that even with adult supervision, students will still drink at risky levels (for instance, 32.1 per cent reported this behaviour in a Western Australian school students' survey).<sup>219</sup>

The issue of secondary supply is also relevant to the re-introduction of the Banned Drinker Register (BDR) on 1 September 2017. For the BDR to work effectively, measures need to be implemented to deter the supply of alcohol to those on the BDR.

### Current situation

The *Liquor Act* contains measures relating to the supply of alcohol to minors in a private setting and at a licensed premise. Under section 106C(1) of the *Liquor Act*, it is an offence to sell or supply alcohol to a child in a private setting unless:

- a) the person is a responsible adult for the child; and
- b) the sale or supply is consistent with the responsible supervision of the child.

Regardless of the above, the supply of alcohol to a minor may still be illegal if not accompanied by 'responsible supervision of the child', determined by a range of factors such as whether the adult is drunk and the child's age.

Under section 106CA of the *Liquor Act*, it is an offence to sell or supply alcohol to a child on a licensed premise. It is also an offence to permit someone, or otherwise engage in activity, that results in a child being supplied alcohol on a licensed premise.

In relation to the BDR, under section 42(1) of the Alcohol Harm Reduction Bill 2017, it is an offence to intentionally supply alcohol to a person who is subject to a prohibition mentioned in section 31A(2) of the *Liquor Act*, including a Banned Drinking Order (provided the supplier knew or ought to have known of the prohibition).<sup>220</sup> Under section 42(3) a person found guilty of such an offence is banned from purchasing alcohol for a period of 12 months.

### Future direction

Despite the existence of provisions relating to the supply of alcohol to minors in both a private setting and on licensed premises, there is a lack of public awareness of these provisions in the NT. A comprehensive public education campaign is needed to inform parents, guardians, alcohol servers and adults in general of what their responsibilities are for minors under these laws, and what health and safety risks are associated with underage alcohol consumption.

To deter the intentional supply of alcohol to those on the BDR, section 42 of the Alcohol Harm Reduction Bill 2017 should be implemented to make the intentional supply of alcohol to someone on the BDR an offence.

## Recommendations

- R45: Develop a comprehensive public education campaign that informs the general public of laws surrounding the supply of alcohol to minors and the associated risks with underage alcohol consumption.
- R46: Support and implement section 42 of the *Alcohol Harm Reduction Bill 2017* to make the intentional supply of alcohol to someone on the Banned Drinker Register an offence.

## 3.5. Point of Sale Intervention

The former Country Liberal Party Government introduced Point of Sale Interventions (POSI) as part of a suite of measures aimed at reducing consumption from takeaway sales. Known as Temporary Beat Locations (TBLs), these interventions involve police being stationed outside takeaway liquor outlets to check customer IDs and determine where the alcohol purchased, or to be purchased, will be consumed. The aim is to prevent people from taking alcohol to areas where drinking is prohibited.

TBLs are being used in Alice Springs, Tennant Creek and Katherine and appear to be effective in reducing alcohol consumption and related behaviour.<sup>221</sup> However, criticisms include that they are resource intensive,<sup>222,223</sup> discriminatory, some people simply move elsewhere to source their alcohol, and they divert police away from other activities.<sup>224</sup>

### Current situation

The NT Government has committed to reintroducing the BDR on 1 September 2017. While TBLs are currently still in place, it is not clear whether they will continue operating once the BDR is introduced.

### Future direction

TBLs should be available to be used as needed and determined by NT Police, once the BDR is introduced.

### Recommendation

- R47: Retain Point of Sale Interventions, including Temporary Beat Locations, as needed based on police operational decision-making, once the Banned Drinker Register is reinstated.

## 4. Support services for families and communities dealing with alcohol harm

### 4.1. Fetal Alcohol Spectrum Disorder (FASD)

FASD is an umbrella term for a range of disabilities resulting from prenatal alcohol exposure.<sup>225</sup> The primary disabilities associated with FASD are directly linked to the underlying brain damage caused by prenatal alcohol exposure. This can result in a variety of conditions, including poor memory, difficulties with speech and language, cognitive deficits, difficulty with judgement, reasoning or understanding consequences of actions, as well as social and emotional delays.<sup>226</sup>

The true prevalence of FASD in Australia is difficult to ascertain. Health workers, educators, and communities have indicated that there is a high incidence of FASD in the Territory.<sup>227</sup> In February 2015, the Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorders ('the Select Committee') tabled its final report, *The preventable disability*, including 26 recommendations, to the NT Legislative Assembly. In the final report, the Select Committee stated that prevention of, and treatment for, FASD is, "both a moral and an economic imperative for Government" due to the significant cost of FASD to individuals, families and communities.<sup>228</sup>

Obtaining a diagnosis for FASD early in life is crucial to improving outcomes and quality of life. FASD diagnosis is determined through a multidisciplinary approach undertaken by a range of health professionals including paediatricians, clinical or neuro psychologists, occupational therapists, speech and language therapists, physiotherapists, and social workers. While the Australian Government released the *Australian FASD Diagnostic Instrument and Referral Guide* in May 2016, the existence of only three FASD clinics across Australia limits its implementation and prevents children and adults from accessing the support they need.

#### Current situation

While many Australian states and territories have taken action to prevent, manage and diagnose FASD over the last five years, NT governments have been slow to respond. This is very concerning given the risk of FASD in the NT.

The NT Government funds a number of programs and services which address alcohol consumption and pregnancy to differing extents, however there is no comprehensive approach towards addressing FASD. As part of the 2017-18 NT Budget, the Government announced development of a strategy to identify, prevent and provide the support required for individuals and families affected by FASD.<sup>229</sup>

#### Future directions

The NT Government should immediately act on the recommendations from the Select Committee's 2015 report by funding and implementing actions to prevent, diagnose and manage FASD.

FASD can be prevented through a combination of prenatal screening and brief interventions, such as increasing the price of alcohol and introducing culturally safe health promotion initiatives.<sup>230, 231</sup> Population-wide education programs have been effective in raising awareness about the effects of alcohol consumption during pregnancy and in reducing FASD.<sup>232</sup> FASD's impact can also be limited through early intervention.<sup>233, 234</sup>



To improve rates of diagnoses in the NT, the NT Government should establish and fund a Territory-based FASD clinic consisting of a part-time paediatrician who can implement the *Australian FASD Diagnostic Instrument and Referral Guide* and coordinate access to allied health services needed by the child. This service would also provide opportunities to build capacity for health professionals to diagnose FASD and manage aftercare.

## Recommendations

- R48: The Northern Territory Government immediately act on the 26 recommendations outlined in the Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorders' final report released in February 2015, by funding and implementing actions to prevent, diagnose and manage Fetal Alcohol Spectrum Disorders.
- R49: Establish and fund a Fetal Alcohol Spectrum Disorders clinic in the Northern Territory.
- R50: The Northern Territory Government advocate at a national level for there to be adequate and sustained funding to prevent Fetal Alcohol Spectrum Disorders (FASD) and support those impacted by FASD as part of the new the National FASD Strategy 2018 to 2028.

## 4.2. Treatment

Treatment is an important part of any response to alcohol and other drug harm in the community. It has been proven effective in reducing the demand for alcohol and other drugs through decreasing consumption, improving health, reducing criminal behaviour, improving psychological wellbeing, and participation in the community.<sup>235</sup> AOD treatment has also been shown to be cost effective, providing a return of just over \$7 for every \$1 invested.<sup>236</sup>

Unfortunately, the community sector as a whole is plagued by a struggle to meet demand, with an overwhelming majority (80 per cent) of sector services reporting that they were unable to meet demand. The largest gaps are in areas of the greatest need.<sup>237</sup> Over half (56 per cent) of services delivering AOD treatment are in the community sector. A key factor in insufficient service provision is the lack of adequate and sustained funding.

### Current situation

There are approximately 18 publicly funded AOD treatment services in the NT, a drop from the 22 services identified in 2013-14.<sup>238</sup> These services provide voluntary residential and outreach services to urban, rural and remote locations and offer withdrawal, assessment, rehabilitation and aftercare programs as well as health promotion, education and prevention activities.

Some services also provide treatment under the *Alcohol Mandatory Treatment Act 2013*. In 2013, Alcohol Mandatory Treatment (AMT) was introduced to reduce alcohol-related and anti-social behaviour. While AMT is aimed at adults who are taken into police protective custody three or more times within a two-month period for being intoxicated in public, a disproportionate number of people who are subject to AMT are Aboriginal and Torres Strait Islander.

In April 2017, the *Evaluation of the Alcohol Mandatory Treatment Program* report<sup>239</sup> was released along with the NT Government's (Department of Health) response<sup>240</sup>. While the evaluation was unable to assess long-term benefits to clients, the report did state that "very few people accrue long term benefits from just one episode of residential treatment"(p72).<sup>241</sup> The NT Government broadly supports all 28 recommendations of the evaluation report, and has introduced the Alcohol Harm Reduction Bill 2017 to repeal the *Alcohol Mandatory Treatment Act 2013*.

As part of the 2017-18 NT Budget announcements, \$17.2 million will be provided to establish a health-based harm reduction framework including incentivised treatment options for problem drinkers and specialised treatment beds in both Alice Springs and Darwin.<sup>242</sup>

## Future direction

Voluntary treatment needs to include a range of service delivery options to accommodate the diverse needs of clients and their families in the NT. Sustained funding is required to address treatment service gaps, including primary prevention, alcohol diversion programs, community residential treatment programs, and aftercare programs. The NT Government should draw upon the findings of the *Evaluation of the Alcohol Mandatory Treatment Program* report in developing and implementing treatment services.

Treatment options must be culturally safe and adapted to the particular cultural context and settings.<sup>243</sup> A recent study found that while Aboriginal and Torres Strait Islander people use mainstream AOD services, treatment could be improved by providing access to Aboriginal and Torres Strait Islander staff, peer support groups, and by providing options to integrate the healthcare needs of individuals, families and communities.<sup>244</sup> Cultural safety must be embedded in the NT Government's treatment approach.

The NT Government should consider retaining power for mandatory treatment in limited circumstances, where a clear benefit for an individual can be demonstrated and where alternative treatment options have been exhausted. A decision to use mandatory treatment should be made on a case-by-case basis and must involve the provision of high quality evidence-based treatment, as well as appropriate social and cultural support.

## Recommendations

- R51: Draw upon the findings of the *Evaluation of the Alcohol Mandatory Treatment Program* report in developing and implementing treatment services.
- R52: Fund additional voluntary, evidence-based, culturally safe, alcohol treatment and rehabilitation services, including aftercare, across all regions in the Northern Territory.
- R53: Consider retaining power for mandatory treatment where a clear benefit for an individual can be demonstrated and where alternative treatment options have been exhausted.

# References

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