Dear Review Manager

ALCOHOL POLICIES AND LEGISLATION REVIEW

The Law Society Northern Territory (Society) welcomes the review into Alcohol Policy and Legislation and supports the proposed evidenced based and public health approach.

Executive Summary

The Society supports efforts focused on harm minimisation, demand and supply reduction. The Society considers there needs to be a holistic and balanced approach taken to address the causes of, and harm associated with, alcohol addiction. We acknowledge the significant work around reducing supply addressed in the Issues Paper and don’t intend to repeat those topics here. Key recommendations of this submission include:

- Increasing efforts to encourage a cultural shift
- Bringing back Therapeutic Courts and diversionary schemes
- Removing laws that criminalise drunkenness
- Ensuring a whole of Government health based approach
- Considering a user-pays licencing regulatory framework and risk based licence fees to meet the cost of regulatory oversight
- Ensuring implemented measures are evidence based and able to be fully evaluated.

Cultural Shift

The Society notes the Northern Territory Government has already undertaken reform in relation to alcohol policies and legislation around supply. Responding to alcohol misuse requires a multi-disciplinary, multi-pronged approach. The OECD suggests that combining alcohol policies in a coherent prevention strategy would significantly increase impacts, helping
to reach a critical mass effect, with greater effects changing social norms that drive harmful drinking behaviours\(^1\).

The Society supports initiatives taking a stronger focus on reducing demand as well as supply. Evidence\(^2\) shows that a cultural shift is occurring with people drinking less frequently in 2016 than they were in 2013. This trend includes the Northern Territory. This shows that there is a cultural shift underway, albeit a small one.

The Society supports initiatives that encourage a cultural shift, for example, the current whole of Government advertising campaign\(^3\) currently running in Queensland. Further, the successful cultural shift around smoking should be used as an example of how powerful social pressures can be to change behaviour and is an excellent model to base a shift in alcohol consumption.

Education around the problems causing and flowing from excessive alcohol use is the key to any lasting change. In the interim, methods to contain the problem on a holistic basis are required. We know who is at risk as there are many common factors including poverty, lack of education and isolation amongst them. Longitudinally, those matters need to be addressed. In the short term those obviously affected by alcohol need to be assisted and educated along with immediate relief from their poor social circumstances.

**Recommendation:**

- A strong focus be placed on encouraging a cultural shift in alcohol consumption

**Therapeutic Courts and diversion**

Breaking the cycle of addiction is best addressed through increased collaboration between justice and health systems and greater resourcing for rehabilitation services. Mick Gooda recently stated, "restricting supply is an effective measure to address these problems. But in the same way that people with serious addiction can circumvent restrictions on supply, they will undoubtedly find innovative ways to circumvent limits on their capacity to purchase."\(^4\)

The Society considers courts can play an important role in addressing addiction and focusing on harm minimisation as part of the Territory’s health focused approach to alcohol.

Drug and alcohol courts provide a number of cost-related and social benefits to the community. These benefits include a reduction in use and associated health issues, easing the burden on the health system, reunification of families, babies born free from drug and alcohol addiction to mention a few\(^5\).

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The Attorney-General and Minister for Justice announced that the Government was committed to developing specialist justice responses and best practice diversionary and rehabilitation programs\(^6\). The Attorney went on to say "we recognise that alcohol abuse is a serious and complex problem requiring a multifaceted approach..."We will consider a range of evidence-based alcohol health-focused harm strategies. These will include specialist assessments and detoxification services, comprehensive healthcare, reintegration and transition back into the community, secure and supportive accommodations options"\(^7\).

It is well known that Aboriginal people in the Northern Territory are grossly overrepresented in the justice system. It has been suggested that "alcohol is a factor in up to 90% of all Indigenous contact with the criminal justice system."\(^8\) Therefore serious consideration should be given to increasing the sentencing options available to a court, to provide for greater discretion in sentencing alcohol-fuelled crime. An option which would provide a more tailored approach are diversionary programs which take offenders out of the traditional criminal justice system on the condition that they participate in trauma informed counselling, and therapy aimed at addressing the root cause of their behaviour.

The Society strongly supports the introduction of diversionary schemes such as the successful Alcohol Merit Program\(^9\) running in selected NSW Magistrate Courts. This process takes place before a formal plea is entered and court proceedings are adjourned for assessment. Rather than having a specialist court, there are health teams assigned to participating courts. If suitable, the Magistrate will then impose rehabilitation as a bail condition and the progress is overseen by the Court. In far west NSW 80 per cent of offenders referred to the MERIT program successfully completed it\(^10\), compared with the state average of just 65 per cent. The success of the far west program is thought to come from the inclusion of counselling for alcohol abuse.

The Adult Alcohol, Drug and Other Addiction Court (AODT Court) in New Zealand is a pre-sentence initiative piloted under a five-year Government-funded plan which has been fully evaluated\(^11\). Similar to the Alcohol Merit Program this court operates under general legislation with judicial discretion. The AODT Court is designed to supervise offenders whose offending is driven by their alcohol (and other drug) dependency by providing judicial oversight of their engagement in rehabilitation and treatment programs, prior to sentencing. Importantly, the AODT Court is a cultural competent court, an approach which is lacking in the Northern Territory. On 13 June 2017, funding was announced continuing this approach for another three years\(^12\).

Preliminary analysis suggests the AODT Court reduced the likelihood of reoffending by around 15 per cent in the short-term when measured against matched offenders going through the standard court process\(^13\).

\(^{6}\) Hansard – Attorney General and Minister for Justice Address in reply; 19 October 2016, page 115
\(^{7}\) Ibid- page 116
\(^{10}\) http://www.abc.net.au/news/2016-04-20/high-rate-of-offenders-completing-merit-program-far-west/7340684
\(^{11}\) https://www.justice.govt.nz/about/publication-finder/?Filter Topic=36&Keywords=alcohol
\(^{12}\) Notes from Justice Select Committee and Minister Adams on the Alcohol and Drug Court
\(^{13}\) Media Statement – Minister for Courts NZ 13 June 2017
The *Drug and Specialist Courts Review Final Report* (DSCR Report) was released on 13 June 2017 in Queensland\(^\text{14}\). The DSCR Report undertook a review of best practice in specialists courts, and court diversionary approaches in Australia and overseas, to address issues related to offending. It also conducted a review of best practice in court-based alcohol and other drug interventions in Australia and internationally. The DSCR Report concluded that several systematic reviews and meta-analyses of the effectiveness of therapeutic courts support the view that these courts are effective in reducing reoffending\(^\text{15}\).

The real value of specialist courts is the pathway they represent to integrating tested, innovative approaches across all courts. These include the expertise they foster and insights they offer in ways to resolve conflict, restore lives and hold people to account in constructive and appropriate ways for individual circumstances\(^\text{16}\).

This is because alcohol misuse covers such a broad range including civil matters including care and protection of children cases. When a specialist court and associated programs are well designed and the initiative properly resourced and evaluated, it enjoys community and professional good will. Of course, this approach will only work if there is increased funding for courts, rehabilitation and treatment services.

The Law Council of Australia has previously noted the potential benefits of justice reinvestment. In its submission to the Senate Legal and Constitutional Affairs References Committee on the inquiry into the value of a justice reinvestment approach to criminal justice in Australia, the Law Council noted,

> "Justice reinvestment has been mentioned in a number of reports in recent years as a potential model that Australia could adopt as an alternative means of delivering justice. Indeed, in its report on its inquiry into Access to Justice in 2009, the Senate Legal and Constitutional Affairs References Committee approved justice reinvestment as a “concept to divert funds from incarceration to community-based programs and services that address the underlying causes of crime”, and recommended that “the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system."\(^\text{17}\)

**Recommendation:**

- Reintroduce therapeutic courts and diversionary programs

**Remove Laws that Criminalise Drunkenness**

The Society does not support any approach that criminalises drunkenness. Legislation including paperless arrests (which result in detention for TINES offences), Alcohol Protection

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\(^{15}\) Ibid

\(^{16}\) Judge Jan-Marie Doogue ‘Specialist Courts. Their time and place in the District Court’ Law Talk 905, April 2017


\(^{18}\) Ibid, Recommendation 21
Orders (the breach of which is a criminal offence), the Alcohol Mandatory Treatment scheme and protective custody apprehension\(^{19}\) effectively criminalise alcohol abuse, by subjecting those to whom these measures are applied to apprehension, detention, prosecution and/or penalisation. Alcohol abuse is an addiction and therefore a health problem and measures should have a health focused response.

The Territory urgently needs to develop a legislative scheme to address the needs of cognitively impaired people to avoid disparity around ‘fitness to plea’. Where a person is unfit to plea due to FASD, incarceration must be avoided wherever possible and rehabilitation and community safety should be the primary consideration.

The *Sentencing Act 1995* (NT) should be amended to include a provision that deterrence and punishment are not the primary consideration when sentencing FASD affected defendants; rather a multi-disciplinary approach be taken which leads to community based treatment programs. Recommendations 9, 10, 15 and 16 of the final report ‘The Preventable Disability’ (FASD Report) provided by the Select Committee on Action to Prevent Foetal Alcohol Spectrum Disorder\(^{20}\) support this approach.

Recently, the Western Australia Court of Appeal\(^{21}\) concluded that the sentencing judge erred in finding that there was no viable community-based disposition without directing the making of inquiries which would establish whether that was in fact the case. At paragraph 7 of their joint judgment Martin CJ and Mazza and Mitchell JJA observed,

\begin{quote}
The circumstances of this case demonstrate that the courts of this State must make every possible effort and take every step consistent with the interests of justice to engage the services of governmental and non-governmental agencies to assist offenders to change their living circumstances and behaviour in a way which will reduce the risk of reoffending, particularly in relation to offenders who suffer from cognitive deficits of the kind associated with foetal alcohol spectrum disorder. Without those efforts being made, the repetitive cycle of offending followed by ineffective punishment is likely to continue indefinitely to the detriment of both the relevant offender and to the safety of the community. The circumstances of this case also demonstrate the practical difficulties of providing appropriate support and assistance to offenders who reside in regional and remote parts of our State. As Aboriginal people are over-represented amongst those who have suffered childhood trauma, deprivation and social disadvantage, and amongst those who suffer foetal alcohol spectrum disorder, and amongst those who reside in regional and remote Western Australia, assiduous effort by the courts of this State to engage and facilitate whatever support and services may be available to offenders with these characteristics is an essential component of any effective strategy to reduce disproportionate Aboriginal imprisonment.
\end{quote}

In 2016, the Senate Legal and Constitutional Affairs Committee held an inquiry into the need for a nationally-consistent approach to alcohol fuelled violence. In its submission the Law Council of Australia relevantly recommended\(^{22}\), among other things that:

\(^{19}\) *Prior v Mole [2017] HCA 10*


\(^{21}\) *Churnside v The State of Western Australia [2016] WASCA 146*

\(^{22}\) http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Alcohol_fuelled_violence/Submissions
• Sentencing legislation which prohibits the use of intoxication as a mitigating factor should be repealed
• Consideration should be given to increasing the sentencing options available in court in relation to alcohol fuelled offenders
• Offences which include an aggravated offence based on intoxication should be repealed and no new aggravated offences based on intoxication should be introduced.

The Society considers these recommendations to be relevant to all alcohol related offending.

**Recommendation:**

- Remove laws that criminalise drunkenness
- Consideration should be given to increase the sentencing options available to the courts in relation to alcohol-fuelled offenders

**A Holistic Approach**

Any measures taken needs to have a holistic, whole of government approach which focuses on harm minimisation. This is because alcohol misuse covers such a broad range of legal issues including care and protection of children matters. The Review cannot just focus on reducing supply while there is a lack of broader policy measures to address the multi-causal nature of alcohol related harm, such as public health and welfare.

**Recommendation:**

- Ensure a holistic approach is taken and address multi-causal nature of alcohol related harm

**Licencing and Industry Regulation**

The Society supports a scheme where the costs of alcohol related harm are borne by those who benefit from the system. The Society recommends that harm minimisation be a priority focus of changes to the licensing legislation and licensing conditions.

The NSW Sentencing Council reported on this issue in 2009. Notably the report concluded

> "the response to alcohol related violence, and the steps to reduce its incidence, lie more in the hands of those involved in the liquor industry and in public education, than in the criminal justice system."

The Society agrees with this view and considers that the Northern Territory should follow the lead of other jurisdictions and introduce a risk-based licensing approach such as those

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23 'Sentencing for Alcohol Related Violence' NSW Sentencing Council March 2009
introduced in NSW\textsuperscript{24}. The risk-based licensing system should recover costs associated with administrating the \textit{Liquor Act 1978} (NT) and to pay for the cost of regulatory oversight.

This model is considered best practice regulation. Professional bodies overseeing lawyers and doctors are examples of the effective operation of this regulatory funding model.

The existing Community Benefits Fund Program is a further model of paying for regulatory oversight.

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\item Adopt a risk-based licensing scheme
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\textbf{Evidence Based and Evaluation}

Any measures to be recommended or implemented need to ensure that programs has been fully evaluated or has the requirement for evaluation built in so that the correct data can be collected and analysed.

The evaluation of the Alcohol Mandatory Treatment Program was hampered due to the lack of data and program logic\textsuperscript{25}. We note the FASD Report recommended\textsuperscript{26} that the Government develop an alcohol strategy that provides a mechanism for regular publication of performance data in meeting set targets and to provide mechanisms for review of alcohol management programs in light of their performance.

Recently, the NSW Bureau of Crime Statistics and Research report showed that assaults had increased around Lockout Zones and noted the effects of the lockout laws had not yet fully played out\textsuperscript{27} hence showing the importance of ongoing evaluation of such reforms.

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\item Ensure reforms are evidence based and evaluated often
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The Society looks forward to seeing the outcomes of this review. We thank you for providing us with this opportunity to comment.

\textsuperscript{24} \url{http://www.justice.nsw.gov.au/Pages/media-news/media-releases/2014/liquor-licence-fees.aspx}

\textsuperscript{25} \url{http://digitallibrary.health.nt.gov.au/prodispui/bitstream/10137/1226/1/Alcohol%20Mandatory%20Treatment%20Evaluation%20Report.pdf}

\textsuperscript{26} \url{https://parliament.nt.gov.au/committees/previous-committees/foetal-alcohol-spectrum-disorder - recommendation 15}

Yours faithfully

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