



**NTCOSS Submission to the
Northern Territory Exposure Draft Liquor Bill**

April 2019

NORTHERN TERRITORY COUNCIL OF SOCIAL SERVICE INC (NTCOSS)

NTCOSS is a peak body for the Northern Territory community sector and is a voice for people affected by social and economic disadvantage and inequality. The community sector in the Northern Territory is made up of community managed, non-government, not for profit organisations who work in social and community service delivery, sector development and advocacy.

The community sector plays a vital role in creating social wellbeing for all Territorians and in building safe and healthy communities by providing services that enable people to access and participate in health services, education, employment, economic development, and family and community life.

NTCOSS represents a service sector with a high level of contact with individuals and their families who are impacted by alcohol use including those working in areas such as domestic violence, homelessness and child protection.

INTRODUCTION

NTCOSS acknowledges and welcomes the progress made on alcohol reform by the Northern Territory Government (NTG) through the implementation of 75 of the 219 endorsed recommendations of the 2017 Riley Review. We are particularly pleased with the following changes:

- Re-establishment of the Independent Liquor Commission;
- Establishment of the Alcohol Reform Implementation Team (ARIT) in the Department of the Chief Minister (DCM)
- Ongoing support for point of sale interventions (POSI's) at liquor outlets through funding commitments for Police Auxiliary Liquor Inspectors (PALI's) in Alice Springs, Tennant Creek and Katherine. **We do however recommend more extensive training of PALI's to implement a more even handed approach to questioning customers to reduce real and perceived incidences of racial discrimination.**
- Re-introduction of the Banned Drinkers' Register;
- Introduction of a minimum floor price for alcohol sales; and
- Introduction of a 5 year moratorium on new takeaway licences.
- Police Commissioner power to suspend licenses for up to 48 hrs (a power that has been used five times to date)

We are heartened by recent statistics demonstrating an NT-wide drop in total annual alcohol related assaults from 4,720 in 2017 to 3,718 in 2018 (a reduction of 21.2%) and the notable decrease in alcohol-related assaults in Alice Springs with 63% fewer incidents in January 2019 compared to January 2018. Downward trends are also apparent in Darwin and Tennant Creek with modest increases in alcohol related assaults in other locations including Katherine and Nhulunbuy. Positively there has also been a 24.5% reduction in the total number of alcohol attributable ED Presentations in NT hospitals in Dec 2018 (compared to Dec 2017).¹

Whilst early signs of the impacts of reforms are very promising there is clearly significant ongoing work needed to implement the full range of recommendations from the Riley Review through the 2019-2019 Action Plan and to make sure initiatives continue to be primarily driven by reduction of alcohol harm and the direct and indirect costs to society. Revised assessments by Menzies School of Health show that "at a population level it is now estimated that the total social cost of alcohol in the NT in

¹ Northern Territory Government, Northern Territory Alcohol Policies and Legislative Reform, 'Data and Evaluation – Key Indicators of Harm Minimisation', <https://alcoholreform.nt.gov.au/data-and-evaluation/assaults> (accessed 17.04.2019)

2015/16 was \$1,386.8 million, with tangible costs of \$701.3 million, and intangible costs of \$685.5 million.”²

We therefore welcome an opportunity to provide comment on the Liquor Act Exposure Draft (2019) as an important step towards providing a more transparent and consistent regulatory environment for both licensees, the general public and police and to make sure that the final legislation is in keeping with evidence-based developments in alcohol policy and legislation in other jurisdictions. Research indicates strongly that “as alcohol becomes more available through commercial or social sources, consumption and alcohol-related problems rise. Conversely, when availability is restricted, alcohol use and associated problems decrease.” Evidence also demonstrates that “consistent enforcement of regulation is a key ingredient of effectiveness.”ⁱ

NTCOSS Comments on the Liquor Act Exposure Draft

1. Definition of ‘intoxicated’

Clause 4 - Interpretation

(3) A person is to be taken to be intoxicated if:

- (a) The person's speech, balance, coordination or behaviour appears to be noticeably impaired; and
- (b) It is reasonable in the circumstances to believe the impairment results from the person's consumption or use of liquor or a drug

NTCOSS accepts that a definition of intoxicated is required to be included in the draft bill and that the definition included in this bill is consistent with other jurisdictions. We are concerned however that attributes of intoxication are not dissimilar to symptoms and physical characteristics of people living with chronic health conditions or disabilities where their condition impairs their speech, balance, coordination or behaviour. In this context we take advice from Dr John Boffa from Central Australian Aboriginal Congress (CAAC) that it is critical that all staff responsible for serving and selling alcohol should be trained to take a precautionary approach if ‘noticeably impaired’ behaviour includes collapse or unconsciousness or if the person is conscious but behaving in a very confused manner. In these instances a precautionary approach would include calling an ambulance immediately. In every other respect the responsibility of staff should be to monitor serves of alcohol sold and consumed by individuals, to watch for early signs of intoxication and avoid make any untrained assumptions about intoxication that could lead to worse health outcomes for the person involved. For example assuming that someone who collapses is intoxicated and not calling an ambulance.

2. Exceptions from license requirement

Part 3, Division 2 – Sale, supply and service of liquor:

s35 – Exceptions from licence requirement

NTCOSS does not support exceptions to the requirement for a liquor license in places or facilities where liquor is being supplied, served or sold. We recognise, however, that the NT’s Liquor Act will not apply in certain cases where the sale, supply, consumption or purchase of alcohol is authorised by other laws in force in the Territory. An example of this is the *Defence Act 1903* (Cwlth), s123A.

We therefore recommend that where the NTG has authority to regulate the sale, supply or service of liquor it is NTCOSS’ view that a license should be required. Reasons include:

² Smith, James; Whetton, Steve; d’Abbs Peter, *The Social and Economic Costs and Harms of Alcohol Consumption in the Northern Territory*, Menzies School of Health, 2019, p 8

- That to do otherwise is not compatible with the goal of putting in place a consistent regulatory environment for the sale and supply of liquor in the NT;
- Exceptions undermine the policy intent and provide the opportunity for further exceptions to be granted by establishing a precedent;
- Provision of free alcohol sends a conflicting message to the community and does not adequately acknowledge the risks and harm that the unregulated supply of alcohol causes;
- Without a liquor licence, there is no ability to monitor whether businesses or service providers are adhering to the requirement of ‘no more than two standard drinks in a day’ and the Responsible Service of Alcohol; and
- There is no mechanism for including the alcohol consumed in the exempted venues in data collected by the NTG;
- The obligation to hold a licence would allow Licensing to monitor the licensee’s premises from time to time in order to assess compliance with any conditions.

With respect to the sale of vanilla essence, NTCOSS supports the position of the People’s Alcohol Action Coalition (PAAAC) and the Foundation for Alcohol Research and Education (FARE), that regulation is needed around the sale and storage of products with high alcohol content such as vanilla essence and mouthwash, particularly where these products have a history of being abused and are, on the whole, easy to access.

While some Alice Springs suppliers have been supported by the Central Australian Youth Link-Up Service (CAYLUS) to take steps to reduce availability by placing products behind the counter or stocking products with no alcohol content the response is voluntary and not consistently applied.

We agree with PAAC and FARE that, “regulations would ideally require these products to be secured in a suitable receptacle; sold only to adults on the production of photo ID; restricted to one container per person per day; and sold in containers no larger than 100 millilitres. Retailers would be required to report any attempts to purchase large amounts, and would have discretion to refuse such purchases, “and that management plan should be required as part of a legislative framework to ensure compliance.”

We agree with PAAC and FARE that “whether or not flavour extracts are exempted from the obligation to hold a liquor licence, we submit that steps must be taken to ensure that, if retailers choose to stock those that contain alcohol, the products are secured and are (especially) not sold to minors.” We endorse the following PAAC and FARE recommendations:

Recommendation: That in all circumstances where the NT has jurisdiction, any business or organisation that sells or serves alcohol is required to obtain a liquor licence.

Recommendation: Flavour extracts should be controlled through a management plan for intoxicating substances using a legislative framework, along with products such as mouthwash and methylated spirits.

3. Risk Based Licensing (RBL)

Part 3 – Division 3 - Fees for Licensing: Key aspects of Risk Based licensing are included in regulations and also appear in the draft bill in relation to:

Clause 39 - authorities

Clause 62 - annual fees for licenses and authorities

Clause 63 - Prescribing fees

NTCOSS previously made a submission to the RBL Framework. In summary, we support the introduction of RBL to the Northern Territory and believe it is an essential step towards bringing the NT into line with other jurisdictions, ensuring licensees have clarity about the risk their business poses in terms of the supply and consumption of alcohol and that consequences for breaches of those obligations are clear and are enforced. Specifically NTCOSS:

- Opposes discounts to licences. We strongly believe that base fees and risk loadings send a strong message to licensees that they are trading in a harmful product. A potential 50% drop in the original base fee or a reduction of 40% in the overall fee through discounts diminishes the impacts of any potential breaches and softens the impact on licensees at a time when strong actions are needed.
- NTCOSS is also concerned that a number of actions linked to discounts may not be linked to any evidence based reduction in alcohol related harm. For example it is not clear how a licensee will implement 'the Good Sports' program or what impact that will have on reducing any harmful impact of their license nor how 'live original local music' specifically is likely to mitigate alcohol related harm or consumption levels. Similarly membership of an Industry Liquor group is arguably less important than adherence to the requirements of legislation and the license in question and should be the benchmark for licensee behaviour rather than any Industry code of conduct.
- Supports the risk elevation of casinos from 'moderate' to 'high'.
- Recommends that additional risk loadings be applied to the calculation of licence fees including:
 - Trading outside standard hours with increases depending on lateness (eg. after 10 pm, 12am, 1am, 2am, 3am etc.) – loadings should increase for later hours as an incentive for licensees to reduce those hours where alcohol consumption is highest rather than earlier in the day or evening.
 - Patron capacity of the licenced venue (in line with other jurisdictions). NTCOSS acknowledges that most licensed venues in the NT do not reach capacity on more than one or two occasions per year however it is our view that if this situation were to change then there should be a regulatory mechanism for applying patron a capacity as a risk loading at a future date.
 - Density of surrounding liquor outlets where harmful activities including assaults, domestic violence are more prevalent.

4. Public Interest and Community Impact

Part 3 Division 3 Clause 41 - Public Interest and Community Impact

NTCOSS supports the inclusion of Public Interest and Community Impact as matters to be addressed in applications for new alcohol licenses or applications for changes to existing licenses. We support the objectives outlined in the draft Bill underpinning the determination of Public Interest and Community Impact as they reflect the purpose of the legislation which is to reduce harm and negative impacts on the community generated by the sale of alcohol. We agree that the onus should be on the applicant to demonstrate that these objectives have been met and that the Commission

will independently test and verify these claims, consider community objections in light of the claims and, if warranted, reject the application or amend the license conditions and authorities accordingly.

5. Objection to Application

Part 3 Division 4 - Clause 53 - Objecting to application

Under current objection processes members of the community or community-based organisations can incur significant legal costs in ‘David versus Goliath’ type license applications where the applicant has the resources to fund high level legal support for their applications and any appeals processes whereas members of the community and community organisations may not. This situation has been highlighted in the Dan Murphy’s liquor license application case in Darwin where legal representation has been costly for community not for profit organisations.

This potential resourcing imbalance needs to be recognised by the Commission in the consideration of applications and appeals processes so as not to deter community members from making objections. It is hoped that under the new regulatory environment including requirements for the applicant to demonstrate public interest and community impact these types of protracted and costly cases will be avoided.

6. Transfer or Substitution of Licenses

Part 3 Division 7 - Transfer of licence

Clause 64 - Transfer of License

(1) A licence is transferable from the licensee to another person in accordance with this Division and the regulations.

Clause 68 - Substitution of Premises

(1) If a licensee wishes to substitute other premises for the licensed premises, the licensee must apply for a new licence for those

NTCOSS recommends that transfer of license should only be considered when the assessed risk (as per prescribed authority) does not exceed the risk of the original license. Otherwise the original licensee should be required to relinquish the license and a new license application or request for transfer of licence be made as per the draft bill.

7. Advertising and Promotion

Part 4 Division 3 - Conditions Related to Operations

Clause 96 - Advertising and Promotions

NTCOSS supports the proposed ban on advertising by licensees that can be construed as encouraging irresponsible or excessive consumption of alcohol. We are concerned however that there is no mention of consequences for licensees who fail to adhere to this ban. Experience tells us that even limited promotion of an event that promotes excessive consumption of alcohol can have the desired effect of focusing attention on the message by creating controversy and social media interest and circulation. NTCOSS believes that consequences need to be strong enough to prevent the licensees from posting inappropriate advertising material in the first place.

8. Minimum Floor Price

Part 5 Division 3 - Minimum pricing for liquor product

Clause 112 - Minimum sale price

(3) The minimum sale price is \$1.30 for each standard drink contained in the liquor product

NTCOSS Supports the minimum floor price on alcohol introduced in August 2018. The NT Government is commended for being the first Australian jurisdiction to introduce this progressive alcohol reform. We are pleased to highlight findings published this week from the Centre for Alcohol Policy and Research (CAPR) that “the NT Government can be confident that their alcohol reforms, including the liquor licence moratorium and the MUP are the correct measures to halt the proliferation of alcohol harm.” This statement comes on the back of CAPR findings that ‘Risky drinkers’ purchase cheap alcohol and “consume more than half of all the alcohol sold in Australia” so addressing the problem of cheap alcohol through a minimum sale price is an effective, high impact strategy.

(2) It is not a contravention of the minimum sale price if a licensee serves one standard drink free of charge as follows: (a) to a patron when the patron first enters the licensed premises; (b) in other circumstances allowed in a code of practice established by the Commission under section 18.

NTCOSS is opposed to exemptions to the minimum floor price including the provision of one free standard drink to patrons or as otherwise determined by the Commission. It is our view that this exemption is not compatible with endeavours to put in place a regulatory environment aimed at consistency around alcohol supply and sends the wrong message to the community. It is also not clear how the provision of free alcohol would be monitored across a range of venues and by whom nor how the data on the amount of alcohol supplied would be included in the overall consumption data base.

9. Harm Minimisation and Responsible drinking

Part 6 Division 3 - Harm Minimisation

Clause 126 - Responsible service certificate

NTCOSS supports all aspects of this clause but invites consideration by the Northern Territory Government of enhancing training provided to service staff to accommodate additional service provision requirements under the new Liquor Act. This may require participation in face to face training similar to previous half day training or modifying and enhancing online training.

Part 6 Division 5 – Sections 139- 140

Division 5: Inedible substances containing alcohol

139 Application

140 Control of inedible alcohol products

The misuse of mouthwash containing up to 26% alcohol peaked in Alice Springs in 2007. At the time the ABC reported a 500 % increase in sales. Since then considerable work has been done between community youth organisation CAYLUS and local retailers to try to restrict access to the product by storing it behind the checkout counter or by locking it away. In recent months a surge in use has

been detected in Darwin since the introduction of the minimum floor price for alcohol was introduced in 2018 although the exact cause and scale is hard to determine.

Rather than rely on unregulated and voluntary actions by retailers NTCOSS believed these high alcohol products require regulation to limit access and ensure retailers a framework that supports them to limit supply, refuse sale and reports suspicious sales.

NTCOSS endorses the recommendation from PAAC and FARE requiring retailers to develop a management plan for these products that ensures that products “not be displayed on the shelves, but kept at the checkout in a secure receptacle; sold only to adults on the production of photo ID; restricted to one container per person per day; and sold in containers no larger than 500 millilitres.”

Retailers may be required to keep a register and to report any suspicious attempts to purchase, and would have discretion to refuse such purchases.

Recommendation: Legislate for the implementation of management plans to secure intoxicating products including mouthwash and methylated spirits, and to restrict their sales in order to reduce their misuse.

ⁱ Alcohol Public Policy Group, *Alcohol: No Ordinary Commodity – a summary of the second edition*, Addiction, 2010, P773