

people's alcohol action coalition

PAAC

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Recommendations

That the Legislation Scrutiny Committee:

1. Recommend that the amendments not be passed.
2. Recommend that should the substitution amendment s75(2) be passed, that the 'like for like' provision in s75(2)(a) be retained.
3. Recommend that there be provision for a cap on pure alcohol sales to apply in the event of the grant of a licence through substitution.

Introduction

Thank you for the opportunity to make comments on the Bill for the *Liquor Amendment Act 2020* (the Bill.) The changes to alcohol legislation and policy in the Northern Territory to date under the current Government are to be largely commended as wide-ranging and progressive.

These include the Alcohol Policies and Legislation Review led by the former Chief Justice (the Riley Review); the establishment of the independent Liquor Commission (the Commission); the moratorium on new take-away licences; the re-introduction of a Banned Drinker Register; the legislative implementation of a Minimum Unit Price (MUP), or floor price; and the engagement of Police Auxiliary Liquor Inspectors (PALIs) at bottle shops in Alice Springs, Katherine and Tennant Creek during all opening hours. The *Liquor Act* now includes many welcome provisions aimed at protecting NT residents from alcohol-related

harm, including the community impact and public interest tests. There was extensive community consultation during the Riley Review and with stake-holders on the content of the new *Liquor Act*.

We have already seen significant improvements of which Committee members would be aware, such as reductions in alcohol-related assaults generally, alcohol-related domestic violence assaults, and in alcohol-related Emergency Department presentations. An evaluation of twelve months' operation of the MUP is close to finalisation, reflecting the Government's commitment to the assessment of reform measures.

Liquor Act Amendment Bill 2020

1. Proposed amendments

(a) The Government seeks to amend the *Liquor Act 2019* by means of the passage of the Bill. This follows the rejection by the Liquor Commission (the Commission) of Endeavour Drinks' application to substitute a BWS licence for a Dan Murphy's liquor licence on the grounds that the proposed location was unsuitable due to the likelihood of a significant increase in alcohol-related harm. There ensued a review by the NTCAT, which determined that there could be no 'substitution' of a licence to unbuilt or partly built premises.

(b) The Chief Minister has openly criticised both the Commission and NTCAT decisions, and made clear the Government's intention to 'fix' the legislation to allow the Dan Murphy's store to be established.ⁱ

(c) Section 75 (2)(a) of the *Act* as it stands allows for no significant change in the operation of the business as a result of a substitution.

The proposed amendment to s75(2) would allow the Commission (instead of issuing a new licence), to:

'amend a licence to substitute other premises for the licensed premises if satisfied that the substitution satisfies the public interest and community impact requirements;'

and a new s75 (2A) would allow the Commission to substitute premises that are either not yet constructed or are still under construction, and to impose conditions on the substitution.

(d) The 'like for like' provision in s75 (2) (a) *Liquor Act 2019*, which states no significant change in the operation of the business will occur as a result of the substitution, would be removed.

2. Discussion

(a) In her Explanatory Statement to the Bill, the Attorney-General and Minister for Justice, the Hon. Natasha Fyles, says that the Government's intent is to 'clarify' both that the Commission may substitute premises, and may include premises yet to be built or completed. In our submission this was not the intent of the existing provisions, which are clearly based on the Riley Review's views and recommendations.

(b) We note the following content of the Riley Review Report in relation to substitution:

Page 56: Throughout the review concerns were raised regarding the application of the substitution provisions. Although the intent of the substitution provisions is to enable a business to continue trading where it wishes to move its operations to new premises, the intention of this section has been abused and used to 're-purpose' licences for uses that were not originally intended when they were issued. *Substitution should not be available to remove the need to apply for a new licence or to circumvent moratoriums that may be in place from time to time* (our italics).

2.5.22: Approval for transfer of a liquor licence only be granted within the same licence category and will be subject to appropriate probity, public interest and community impact requirements.

2.5.27: No change to a licence category be made through the substitution process.

2.5.29: An application to vary a licence within the terms and conditions of a category be permitted, however, variation that moves a licence from one category to another not be permitted.

2.5.25: The licensing authority have the discretion to authorise a substitution without the new application process being undertaken where the premises to be substituted is in close proximity to the premises identified in the licence; there is no significant change in the nature of the business; and no other concerns arise.

(c) The removal of the barrier imposed by the NTCAT's interpretation of 'substitution' through the insertion of the new s75 (2A) will smooth the way for Endeavour Drinks to pursue its Dan Murphy's application through a review on the merits by the NTCAT.

If the 'like for like' provision were to be removed, other licensees may consider not only moving, but expanding, or indeed changing the type of business, contrary to the clear direction of the Riley Review.

(d) The proposed removal of the 'like for like' provision in s75(2)(a) of the *Act*, is, in our submission, both unnecessary and repugnant to the intention of the *Act*, and should be rejected. This change indicates that the Government intends to allow licensees the opportunity to circumvent the current moratorium on take-away licences, potentially allowing smaller outlets to be converted into larger ones with the potential for significant increase in the volume of sales, and therefore the amount of alcohol and consequent harm in the community, another matter addressed in some detail by the Riley Review.ⁱⁱ

(e) The five-year moratorium on new take-away licences is in place as a control on the volume of alcohol sold, because the NT already has too many such licences in proportion to its populationⁱⁱⁱ.

(f) The Commission also considered this matter in some detail in the Endeavour Drinks application, finding that if the proposed Dan Murphy's outlet were to be built, it was expected to sell 48 times more pure alcohol than was sold in its last year in the old BWS store, and '4 times the current volume of sales within the 2 km locality and the equivalent of 80% of the current volume of sales within the 5 km radius of the site.'^{iv} Both the Riley Review and the Commission in the Endeavour Drinks decision acknowledged the evidence of increased alcohol-related harm in relation to the volume of sales from take-away outlets.

(g) PAAC argued over many years, with some success, for the introduction of the MUP as a means of reducing consumption by problem drinkers. We also note that the MUP at \$1.30 is below the \$1.50 per standard drink sought by us and also recommended by the Riley Review, and that its success or otherwise, along with that of other reform measures, is yet to be evaluated. We believe it would be imprudent in the interim to allow legislative changes that may well lead to the increased volume of sales and therefore consumption, particularly as we have a significant reduction from 2010 to 2017, based on the data available to the public to date.^v

Further, in its Endeavour Drinks decision, the Commission noted that the data available to it showed a decline in relation to pure alcohol sales from 1,364,697.72 litres to 1,313,475.55 litres, signifying a 3.75% decline in consumption between the 2017 and 2018 calendar years.^{vi}

(h) We acknowledge that the requirement for the Commission to consider the public impact and community assessment remains, and that the amendments would allow for the imposition of conditions. The question of the effect of volume on the community is one element that the Commission must consider: s49 (3) (h).

(i) Notwithstanding this requirement, we submit that this proposed amendment sends a confusing message that the Government, whilst on the one hand committed to reducing alcohol-related harm through the many reforms made to date, including the provision in the *Act* mentioned in (h) above, is, on the other, not sufficiently concerned about the question of the volume of alcohol in the community. This is despite the moratorium, and the potential for attempted abuse as expressed by the Riley Review.

(j) This change would set up an unnecessary additional tension, or contradiction, for the Commission to address, and is not in the interests either of the Government's commitment to transparency, or the harm reduction objects of the *Act*. Rather, it tells the liquor industry that, despite all the effort and consultation that went into updating the *Act*, the legislation can simply be changed in a hurried manner in order to appease, or appeal to, business interests.

(k) Given the above, and the fact that there is to be a technical review of the *Act* twelve months after its commencement, and a review of the objects after three years (s320), we oppose the amendments. In our view they represent an attempt to give the advantage to licensees through hurried and ill-conceived legislative change.

3. Summary

PAAC believes the amendments should be rejected for the reasons set out above. Their passage is likely to lead to additional alcohol-related harm in the NT, which would be contrary to what the Government has attempted to achieve to date with its many reforms. We submit that the Government should allow the comparatively new *Act* to operate without making hasty and potentially damaging changes. The Commission and the NTCAT should be permitted to perform their respective duties with a reasonable degree of certainty and stability, and reviews and evaluations should be conducted in a timely and orderly manner. Transparency and sound process are extremely important as the NT strives for a reasonable level of alcohol consumption, which is still some way off being achieved.

If the legislation is to be altered, the 'like for like' provision should not be removed. If substitution is permitted for unbuilt or incomplete premises, there should be a cap on the volume of sales, in view of the relevant content of the Riley Review and the Commission's deliberations in the Dan Murphy's matter.

2nd March 2020

PAAC

The People's Alcohol Action Coalition (PAAC) is an Alice Springs-based community alcohol reform group. It developed in response to a growing awareness of excessive alcohol use and associated harm in the Central Australian region, and provides a platform for community action to reduce alcohol-related harm.

PAAC aims to work towards reducing the impact of alcohol-related harm through a number of strategies, including: developing constructive reforms to the sale of alcohol; advocating controls on public consumption; advocating responsible service of alcohol; and promoting healthy lifestyles.

Members include social workers, lawyers, medical practitioners, Aboriginal organisations, social service organisations and individuals. Collaborating organisations include the Central Australian Aboriginal Congress, Central Land Council, Aboriginal Medical Service Alliance Northern Territory, Northern Territory Council of Social Services, Central Australian Youth Link Up Service, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (Aboriginal Corporation) and the Public Health Association of Australia NT. PAAC also works in partnership with FARE, the Foundation for Alcohol Research and Education.

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ⁱ <https://www.abc.net.au/news/2019-09-20/dan-murphys-application-rejected-darwin/11533764> ; and

<https://www.ntnews.com.au/news/northern-territory/gunner-vows-to-overrule-ntcats-dan-murphys-rejection/news-story/2f79c672bf47c054df168af4005b8756>

ⁱⁱ https://alcoholreform.nt.gov.au/_data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf at p59

ⁱⁱⁱ Riley Review Report https://alcoholreform.nt.gov.au/_data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf at p50.

^{iv} https://justice.nt.gov.au/_data/assets/pdf_file/0003/731784/Reasons-for-Decision-Darwin-Dan-Murphys-200919.pdf

^v https://justice.nt.gov.au/_data/assets/pdf_file/0008/627695/annual-wholesale-alcohol-supply-report-2010-2017.pdf

^{vi} https://justice.nt.gov.au/_data/assets/pdf_file/0003/731784/Reasons-for-Decision-Darwin-Dan-Murphys-200919.pdf at p66.