



Danila Dilba
Health Service

GPO Box 2125
Darwin NT 0801

(08) 8942 5400
Fax: (08) 8942 5490
info@danildilba.com.au
www.daniladilba.org.au

Liquor Amendment Bill 2020

**Danila Dilba Health Service
Submission to the Legislation
Scrutiny Committee**

2 March 2020

Contents

| | |
|--|---|
| Executive Summary..... | 3 |
| Recommendation..... | 3 |
| Background | 3 |
| Danila Dilba Primary Health and Alcohol and Other Drug (AOD) treatment services..... | 3 |
| Primary Health Care..... | 3 |
| Background | 3 |
| S 75 amended (substitution of premises)..... | 4 |
| Conclusion..... | 7 |

Executive Summary

1. Danila Dilba Health Service (**DDHS**) opposes this Bill which seeks to undo and undermine important measures introduced in the Liquor Act passed by the Government in October last year, measures supported by the evidence and recommendations made in the Alcohol Policies and Legislation Review of October 2017 (**Riley Review**).
2. This Bill will, whether intended or ill-considered, make it easier for all current or future take-away liquor licence holders to substitute small store licences for large format outlets. The evidence and community-level experience is clear; alcohol related harms will increase if these sorts of substitutions are permitted.

Recommendation

3. DDHS urges the Legislation Scrutiny Committee to recommend the Legislative Assembly not pass the Bill.

Background

Danila Dilba Primary Health and Alcohol and Other Drug (AOD) treatment services

Primary Health Care

4. DDHS is an Aboriginal community controlled comprehensive primary health care service offering a wide range of health and related services to Aboriginal people in the Greater Darwin Region. Comprehensive primary health care encompasses the range of health care generally offered by general practice but extends beyond that to provide:
 - Primary health care clinics for children, youth, women and men
 - Specialist and allied health professionals
 - Health promotion to help people get more control over their health
 - Care coordination for clients with complex health needs
 - Social and emotional wellbeing services
 - Drug and alcohol services
 - Outreach services to clients
 - Support services for young people including young people at Don Dale
 - Family support and strengthening through the Australian Nurse Family Partnership Program.
5. DDHS has also advocated for policy and legal reforms in the liquor industry, providing input into the Riley Review and the Economic Policy Scrutiny Committee's inquiry into the Liquor Bill 2019.

Background

6. DDHS along with other organisations advocating for a public health approach to alcohol harm reduction have supported and endorsed the strategies implemented both prior to and following the Riley Review's final report in 2017. These reforms included the five year moratorium on new take-away liquor outlets, the re-introduction of the banned drinker

register and the minimum unit price, many of which have been the subject of promising early evaluations.

7. These reforms were further incorporated and expanded upon in the new *Liquor Act 2019* which came into force in October 2019 and which also underpinned further measures to reduce the harms of alcohol consumption in our communities. DDHS and other public health and community advocates made submissions to this committee in broad support of these reforms and the reduction in alcohol related harms that they are achieving.
8. In October 2018, DDHS and other leading organisations in health, public health and social services came together to object to an application by Woolworth's Group to substitute a take-away liquor license it owned for a recently closed premises in Stuart Park for the proposed Dan Murphy's on the corner of Bagot Road and Osgood Drive.
9. In June 2019, the Northern Territory Liquor Commission (**Liquor Commission**) conducted a four-day hearing to assess the application under s46A of the previous Liquor Act. Our objecting group provided evidence and input into the Liquor Commission's hearings on the harms that the community would likely suffer if Woolworths were granted the substitution and the proposed Dan Murphy's was constructed.
10. The Liquor Commission made a decision on 20 September 2019 not to allow the substitution of premises to occur on the grounds that the proposed Dan Murphy's would cause an increase in the volume of alcohol consumed in the community area and cause an increase in outlet density in the community area, both of which evidence suggests would increase the harms associated with the increased consumption of alcohol in a community that the Commission identified already suffers acutely from the harms of alcohol consumption.
11. Woolworths Group subsequently appealed the Commission's decision to the NT Civil and Administrative Tribunal (**NTCAT**) which in December 2019 decided that the initial application should not have been permitted on technical grounds; a key reason being that a licence could not be substituted for a premises which had not yet been constructed.
12. Woolworths Group subsequently appealed the NTCAT decision to the Supreme Court where hearings have been delayed in the understanding that the ground is shifting under their feet, with the introduction of the legislation that is the subject of this submission.

S 75 amended (substitution of premises)

Removal of 'Like for Like'

Not supported

13. This section removes the current s75(2)(a) which requires that substitutions can only be approved if the Commission is satisfied that:
 - a) no significant change in the operation of the business will occur as a result of the substitution.
14. This requirement is known as the 'like for like' test and was introduced as part of the new Liquor Act in October 2019. In the context of the current moratorium on new take-away liquor outlets, in place since October 2017, the removal of 'like for like' test will make it easier for take-away liquor licence holders or those organisations which acquire such

licenses, to be able to substitute small store licenses for large format outlet licenses. This amendment is unwarranted and will have unforeseen consequences both in terms of social harms and future legal challenges to the Territory's liquor reforms.

Rationale

15. There is strong evidence to suggest that large format take-away liquor stores do increase the price, availability and therefore consumption of alcohol. The evidence is unequivocal that increased consumption of alcohol, at a community level, causes and exacerbates significant harms. Key associations between alcohol availability and harm are supported by international and domestic research,¹ these include; domestic violence, road and vehicle accidents, child maltreatment, violence and assault and chronic health conditions.
16. The evidence of this link was accepted by the Riley Review and by the Liquor Commission in its determination of Dan Murphy's substitution application. The evidence is summarised henceforth:
 - Larger off-premises outlets have greater capacity to increase the affordability and economic availability of alcohol due to economies of scale, this allows drinkers to increase their alcohol purchases for the same price.²
 - Furthermore cheaper outlets are also more likely to be located in disadvantaged areas where alcohol is often consumed at more risky levels.³
 - In Western Australia, a study found that for every 10,000 additional liters of pure alcohol sold at an off-premise liquor outlet, the risk of violence experienced in a residential setting increased by 26%.⁴
17. The removal of the 'like for like' requirement will make it easier for small bottle shops to be replaced by the country's largest take-away liquor stores like Dan Murphy's. This amendment creates more tension and uncertainty in the legislation and will frustrate the Commission's application of this section. This in turn will leave it vulnerable to appeal, particularly from applicants who have the capacity to aggressively pursue all avenues for legal appeal in order to maximize their corporate interests.
18. The tension arises in the legislation because on the one hand, the Riley Review and the Community Impact Assessment Guidelines require an assessment of the application on the potential impacts on the volume consumed and the density of outlets that would occur as a result of the application. Specifically, density, a term which received significant attention in the Liquor Commission's decision in the Dan Murphy's application, is defined and applied, as per its definition in the Riley Review; to include not merely a count of outlets but also the volume of alcohol put into the community through those outlets.
19. On the other hand, the removal of 'like for like' requirement provides a conflicting message to the Commission about how to interpret and define density, as the Commission will now be able to entertain substitution applications that allow for significant changes in the

¹ The effect of alcohol outlets, sales and trading hours on alcohol-related injuries presenting at emergency departments in Perth, Australia, from 2002 to 2010 (Hobday et al., 2015)

² Ibid.

³ Ibid.

⁴ Liang, W. Chikritzhs, T. (2010). Revealing the link between licensed outlets and violence: Counting venues Versus measuring alcohol availability. *Drug and Alcohol Review* 30: 524-535.

operation of take-away liquor stores. For instance, in the Dan Murphy's case, the Commission noted 'the proposed Dan Murphy's store is projected to sell more than 200 times the amount of alcohol sold by some of the existing liquor stores within [the 2km radius of the site]'. Creating uncertainty and tension in the legislation around the assessment of density will allow for large format liquor stores to be licensed, in turn allowing more alcohol to be purchased at cheaper prices. This will undermine key evidence-based pillars of the alcohol reforms including the moratorium on new take-away licenses and the Minimum Unit Price and result in increased alcohol related harms to our community.

20. We acknowledge that the Minimum Unit Price (MUP) protects the community against an increase in the volume of alcohol that would otherwise be sold below the minimum unit price. It does not, however, protect against large increases in the volume of alcohol that would be sold where competitive forces increase and the price subsequently approaches the MUP. This is particularly relevant for beer products. The Riley Review recommended an MUP of \$1.50 per standard drink, instead a minimum of \$1.30 per standard drink was adopted so as to intentionally exclude almost all Beer products. The Dan Murphy's proposal dedicates almost 30% of its floor space to Beer products, a far higher proportion than Dan Murphy's stores in other jurisdictions. As the Commission determined;
 - 'having regard to... the Applicant's undoubted ability to identify profitable market opportunities, and ...the demonstrated capacity of the Applicant to offer beer for sale at lower prices than is currently available ... Beer will increasingly become a product of choice for problem drinkers as its price approaches the MUP.'⁵
21. This Bill will make it easier for large format takeaway stores to gain licenses placing downward pressure on the prices of alcohol products, particularly Beer. In this case, more beer will be sold at cheaper prices with consequential harms for our communities.
22. It is clear that a multi-pronged approach to alcohol harm is required and that implementation of individual reforms in isolation will not be effective in achieving the significant reduction in per capita consumption required. The government accepted this approach in its response to Riley and committed to an evidence based and comprehensive approach implementing the majority of the Riley recommendations.
23. We also note that the Economic Policy Scrutiny Committee considered the 'like for like' requirement in its previous inquiry into the Liquor Bill 2019 and made no recommendations in that report about amending or removing this provision. We submit, therefore, that unless the evidence has changed, this Committee should also endorse the current provisions and reject the proposed amendment.

Clarification of substitution to premises not yet constructed

24. DDHS does not have a principled objection to the insertion of section (2A) to clarify that premises can be substituted to those which have not yet been constructed subject to the retention of the current 'like for like' requirement. The government's stated intention in relation to this amendment is to remove the technical barrier to allow for merits review of the application and the Liquor Commission's ruling in relation to Dan Murphy's. It is important to keep in mind that the Liquor Commission ruled against the application not on

⁵ Northern Territory Liquor Commission Decision Notice, Application For Substitution Of Premises And Permanent Variation of the Conditions Of Licence, Woolworths Group Ltd, 76.

technical grounds but concluded on significant expert evidence, that the proposal represented too high a risk to be permitted.

25. However, when combined with the amendment to remove the 'like for like' requirement this amendment contributes to a potential to undermine proper consideration of community impact in this and future cases. The 'like for like' provisions offer a degree of protection to the community from significant increases in volume. Without that protection, this amendment adds to the potential for increasing alcohol related harm, opening up more locations as possible large-format take-away stores without proper regard for density and volume.

Conclusion

26. This Bill will undermine key alcohol reform initiatives and put the community at risk of increasing alcohol related harms. DDHS encourages this Committee to recommend to the Legislative Assembly not to pass this Bill in its current form. DDHS encourages the Committee to recommend that Legislative Assembly amend the bill to retain the existing like for like requirements that were passed in October 2019.