

# Submission to the Northern Territory Liquor Bill 2019

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14 JUNE 2019



**fare**

Foundation for Alcohol Research & Education

***people's alcohol action coalition***

## About PAAC

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The People's Alcohol Action Coalition (PAAC) is an Alice Springs-based community alcohol reform group. It was 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. Its formation in late 1995 followed a public rally in response to alcohol problems instigated by the late Dr Charles Perkins, Aboriginal activist and Australian and Torres Strait Islander Commission (ATSIC) Central Zone Commissioner.

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, churches, 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.

## About FARE

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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. Nearly 6,000 lives are lost every year and more than 144,000 people are hospitalised making alcohol one of our nation's greatest preventive health challenges.

For over a decade, 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.

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.

## Introduction

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PAAC and FARE welcome the opportunity to provide comments on the *Draft Liquor Bill 2019*. The Bill is an important component of the suite of reforms that are already reducing the oversized toll that alcohol harm has inflicted upon the Northern Territory (NT) for decades.

It is established that the NT has the highest levels of alcohol consumption in the country, which cost the NT community dearly in terms of health, social and economic impact. The recent report on *The social and economic costs and harms of alcohol consumption in the NT*<sup>1</sup> estimates the impact of alcohol on the Northern Territory in 2015/16 as follows:

- 141.9 net premature deaths
- responsible for between 4.5 per cent and 11 per cent of cases of child abuse and neglect
- attributed to almost 50 per cent of road crash deaths and 20 per cent of serious injury crashes.

The report also provides a 2015/16 estimate for the total social cost of alcohol in the NT at \$1,389 million. This equates to \$7,578 per adult, noting that this figure excludes the costs of alcohol dependence to the dependent drinker and their family.

The NT Government is to be congratulated for recognising its responsibility to protect NT residents from alcohol harm including violence, child neglect, injuries and chronic diseases. The initiation of the thorough Riley review, and the subsequent adoption of 219 of the 220 recommendations of the Review Panel's final report (the Riley report) set a solid and workable framework in which to reduce harm.

The Riley report recommended a comprehensive policy and legislative framework that focusses on the drivers of consumption (price, availability and promotion of alcohol) in recognition of the need to actively drive changes in behaviour. The *Liquor Bill 2019* provides the legislative mechanism to support these recommendations.

Due to the short consultation period, and the impetus to have the legislation passed in a timely manner, FARE and PAAC have concentrated in this submission on a few key issues that must be addressed in order for the new Liquor Act to be properly effective. A wider list of important matters was submitted to the consultation to the Exposure Draft, and our earlier submission is attached. The issues in that submission remain of concern to FARE and PAAC and must be addressed in due course. We also emphasise the need to ensure that the new Liquor Act is reviewed after three years, and have made recommendations aimed at strengthening that review.

We strongly support the passage of the *Liquor Bill 2019*, but with the suggested amendments that follow.

## Priority concerns

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We have identified a number of points where the legislation can be strengthened and improved. Definitions:

- The current *Act* and the *Bill* fail to define the key concept of harm. Defining harm as we propose will aid interpretation and also embed the key principle of harm minimisation in the implementation of the *Act*.

Licence applications:

- That it is made clear that the applicant for the transfer of a liquor licence must be a fit and proper person.
- That community is given the opportunity to have its say and object to an application to transfer a licence.
- The wording in relation to the substitution of a licence is clarified to avoid confusion as to the proper process.

Inedible substances:

- In order to ensure that the Government has the power to address issues if industry proves inadequate to the task, provision should be made to allow for the regulation of inedible substances containing alcohol as defined in the *Bill*.

Review:

- In order to ensure that key areas of concern to the community are reviewed, a number of contentious or concerning provisions should be specifically referenced for future review.

Transitional arrangements:

- Given the NT Government's alcohol policy and legislative reform program aimed at reducing alcohol harm, the *Bill* should commence the liquor licence application requirements expeditiously, so that they come into force when the *Bill* is passed, rather than delay this until the date on which the *Act* in its entirety comes into force.

## Defining the scope of harm from alcohol

The primary purpose of the Liquor Bill 2019 as described under s3 (1) is 'to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.' However, the *Bill* does not contain any description of the scope of this harm. It is important to ensure that there is a common understanding of the harm that results from alcohol misuse, and to enable assessment of whether the *Act* is meeting its primary purpose.

The *South Australia Liquor Licensing Act 1997* (SA Liquor Act) provides an example of how such a description has been incorporated into liquor legislation in other jurisdictions:

s124A (2) For the purposes of determining whether the welfare of a person, a person residing with a person or a family member of a person, is seriously at risk as a result of the consumption of alcohol by the person, a licensee, responsible person or police officer acting under this Division must take into account the fact that harm caused by the excessive or inappropriate consumption of liquor includes—

- a. the risk of harm to children, vulnerable people and communities; and
- b. the adverse effects on a person's health; and
- c. alcohol abuse or misuse; and
- d. domestic violence or anti-social behaviour, including causing personal injury and property damage.

The description of the types of harm that should be considered by the parties mentioned in s124A (2) of the SA Liquor Act provide a good foundation for exploring the types of harm caused by the excessive or inappropriate consumption of liquor. In view of the report on the alcohol-related social and economic costs and harms mentioned above, we submit that it would be prudent to include reference to the social, economic and cultural impact of alcohol in this description.

### **RECOMMENDATION:**

1. The *Bill* be amended to describe harm from alcohol as follows, or similar:

***harm from alcohol, or alcohol harm***, means harm relating to the sale, supply and consumption of alcohol including:

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

### **Application for transfer of a liquor licence**

Section 68(2) deals with the transfer of liquor licences. It states that ss48 to 54 apply to applications to transfer. It neither specifically includes nor excludes s55: Consideration of applications. This section incorporated in s55 (3)(i), a requirement that the applicant, including their designated nominee, is a fit and proper person to hold a licence. Further, s68(2) does not refer to the need for a community impact statement.

PPAC and FARE sought advice from the Alcohol Review Implementation Team (ARIT) within the Department of the Chief Minister, in order to clarify whether s55 applies to an application for the transfer of a licence. ARIT has confirmed that this is the case. However, since the *Bill* does not clearly state that s55 should be applied in relation to an application to transfer a licence, this section should be amended to avoid any doubt.

We also sought advice on the requirement for a community impact assessment. Community impact assessments have been introduced in response to the recommendations contained in the Final Report of the Review of alcohol policies and legislation (Final Report of the Review), to provide the NT Liquor Commission with information about the potential impact on the community should a liquor licence application be granted. The purpose of the assessment in the eyes of the Review Panel is "to satisfy the licensing authority that granting the application will not detract from the safety and well-being of the community and is in the public interest".<sup>2</sup>

ARIT's advice was that the sale of an existing licence did not require an assessment of the public interest under the *Bill*. Our view is that changes in licence ownership present a timely opportunity to consider the ongoing community impact of the licence, in light of the potential for community expectations and environmental conditions to change over time, particularly when it has been some time since an assessment was made, if one was made at all.

### **RECOMMENDATION:**

2. Amend the Liquor Bill 219 to read: 'S68 (2) Subject to this section, the application is to be made as if the proposed transferee is applying for a new licence and sections 48 to 55 apply to the application'.
3. Amend the Liquor Bill to include the requirement for a community impact assessment to be conducted for applications to transfer a liquor licence, where such an assessment has not been made within the past five years.

## Objection to transfer of a liquor licence

Section 57(1) (a) to (d) of the *Liquor Bill 2019* lists the types of applications to which an objection may be made. This section does not include applications to transfer a licence. PAAC and FARE raised concerns over the exclusion of the ability to object to the transfer of a licence in our submission to the Exposure Draft. We made the following recommendations in relation to the Exposure Draft, noting that the clause numbers are from the Exposure Draft:

Rec. 15: Amend s53(1) to allow objections to be made against applications to transfer liquor licences from a licensee to another person or entity.

Rec. 16: Extend s53(2) to allow additional grounds for objection including whether the applicant is considered fit and proper to hold a licence, government priorities to reduce alcohol harm, and other factors agreed by the Commission.

PAAC and FARE maintain that the community should be entitled to object to an application to a transfer, including on the grounds that the prospective transferee is not a fit and proper person. Licensees hold a privileged position. In order for them to fulfil their responsibility to the community to minimise harm from the sale of alcohol, it is important that they are able to demonstrate that they are a fit and proper person.

We acknowledge that the Liquor Commission must also assess this matter. However, in the interest of achieving greater transparency and community involvement in the issue of who may operate a licence, we believe that objections to this category of licence application should be permitted to allow the community to raise any concerns they have over the application.

### RECOMMENDATIONS:

4. Add a new subsection to s57(1) of the *Liquor Bill 2019* to allow objections to be made to applications to transfer a liquor licence from a licensee to another person or entity; and
5. Include a third ground for objection at s57(2)(c) to state "that it does not meet the objectives of this Act as they relate to reducing alcohol-related harm".

## Applications for substitution of premises

Section 71 of the *Bill* refers to the substitution of premises.

Under s71, a licensee who wishes to substitute premises must apply for a new licence and that s71(2) gives the Commission the discretion to amend the licence rather than substitute so long as there is no significant change in the operation of the business, and providing that the public interest and community impact requirements are met.

Section 71(3), however, states that:

An application to substitute premises is to be made in the same manner as an application to vary conditions of the licence under Part 4, Division 5.

It is not clear why this subsection with the reference to an application to vary a licence (see s107) has been included, since s71 says that the applicant must apply for a new licence and therefore would be subject to the requirements for new licences. Section 71(3) appears to be a superfluous inclusion that is confusing and potentially open to misinterpretation. To avoid both this, and any attempts to circumvent any current or future requirements for new applications that do not apply to applications to vary the licence, s71(3) should be removed so as to delete reference to making an application in the same manner as varying conditions. A reference to the form for an application to substitute premises should then be added to the Bill.

## RECOMMENDATION

6. Delete s71(3) from the *NT Liquor Bill 2019* so that the *Bill* now reads:

### 71 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 new premises.
2. Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that:
  - a. no significant change in the operation of the business will occur as a result of the substitution; and
  - b. the substitution satisfies the public interest and community impact requirements.
  - c. the applicant is a fit and proper person to hold a licence.
7. For clarity, add a clause to the *Bill* that sets out the form to be used for an application to substitute premises, as currently exists for variation applications in ss107 and s108.

## Inedible substances containing alcohol

Division 5 *Inedible substances containing alcohol* of the *Bill* includes sections 149 *Application* and 150 *Control of inedible alcohol products*, with mouthwash given as an example. PAAC and FARE maintain that there should be legislative provision to govern the storage and sale of inedible substances containing alcohol.

In our submission on the Exposure Draft, we argued as follows at p33:

‘FARE and PAAC are pleased to see that the problem of drinking mouthwash is addressed to some extent in the Bill, with powers to search, seize and dispose of inedible substances containing alcohol. While we welcome the inclusion of these provisions, we believe that more needs to be done to deal with this problem and to avoid it becoming more significant.

The misuse of mouthwash has been problematic in Central Australia, although at present CAYLUS reports that there is a bigger issue with methylated spirits, the consumption and supply for consumption of which are offences under the *NT Medicines, Poisons and Therapeutic Goods Act 2012*. We understand the consumption of mouthwash has become more sought after in the Darwin area since the introduction of the minimum price on alcohol.

While some retailers respond positively to requests to manage the sale of substances such as mouthwash, there are no relevant legislative provisions.

PAAC and FARE would like to see the sale of intoxicating substances such as mouthwash and methylated spirits regulated through a legislative framework for management plans. This would offer retailers support as well as placing an obligation for compliance on them

Under such a plan, these products would, for example, 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.

Experienced NGOs could be funded to assist retailers to develop a management plan.’

We made the following recommendation:

Rec. 40: 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.

Correspondence from ARIT on 21st May 2019 in response to our submission on the Exposure Draft advised the following:

‘The Bill has retained the provisions regarding inedible substances containing alcohol under clauses 149 and 150, which prohibits their consumption in a public place and gives power to police to seize and destroy the product as if it was liquor under clause 240. These provisions provide a legislative prohibition in addition to on-the-ground health education campaigns regarding the dangers of consuming inedible alcoholic substances and poisons.

Methylated spirits are specifically covered in the Medicines, Poisons and Therapeutic Good Act 2012 in sections 107 and 108. As such, your recommendations regarding the storage of, and management plans for, methylated spirits have been passed onto the Department of Health for consideration.’

In our view this is unsatisfactory. Whilst we appreciate the attempt to address inedible substances in the *Bill* (including the power to search, seize and destroy) we know from long experience in Alice Springs that not all retailers respond in a uniformly responsible manner when asked to take action such as locking up products like mouthwash and methylated spirits. We understand that there has been a similarly varied response in Darwin to recent requests, in particular relation to mouthwash. There are clearly limits to the effectiveness of the voluntary management of these substances.

It is likely that the implementation of the minimum unit price and the BDR will lead to a greater demand by some heavily addicted drinkers for substances such as mouthwash, and possibly methylated spirits, especially in Darwin. Further, the fact that methylated spirits, which has recently been a problem in Alice Springs due to large purchases, comes under different legislation, should not be a deterrent to a scheme for restricting sales.

We seek the inclusion, at the very least, of a provision in the *Liquor Bill 2019* that would allow for the regulation of inedible substances containing alcohol as defined in the *Bill*, and we would like to see the *Medicines, Poisons and Therapeutic Good Act* amended to allow for similar regulation of methylated spirits.

## **RECOMMENDATION:**

8. Amend the Liquor Bill 2019 by adding the following or similar, to allow for the control of inedible substances containing alcohol: “s150 (3): That the sale and storage of inedible substances containing alcohol may be prescribed by regulation.”
9. Recommend that a similar provision be added to the *Medicines, Poisons and Therapeutic Good Act* to allow for similar regulation to prescribe the sale of methylated spirits.

## **Review of Act in relation to community input to licensing matters**

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Section 317 requires that the Minister review the *Act* after three years, to determine whether its policy objectives remain valid and whether the terms of the *Act* remain appropriate for securing those objectives. PAAC and FARE would prefer that the outstanding recommendations from our submission to the *Exposure Draft of the Liquor Bill 2019* be taken up in the *Bill*, however, if that is not possible, we would like to see all recommendations that have not been adopted considered as part of the three-year review of the *Act*. We would like to draw particular attention to the following issues for inclusion in the review.



## Restraints on community objectors

In our submission on the Exposure Draft, we argued the following in relation to restraints on community objectors, at p15:

‘Community objectors do not necessarily have the resources that are needed to meet the burden of proof in licensing matters, in terms of understanding their rights and the processes involved, time, finances, and research capacity. 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.

In recognition of the substantial barriers the community faces in effectively engaging with the licence application process, an independent Community Defender’s Office (CDO), based on the Alcohol Community Action Project (ACAP), should be developed and funded. The CDO should consist of an advisory service and central information service, with staff that have appropriate skills and expertise in alcohol-related planning and licensing systems, including legal skills and an understanding of community needs and expectations. This would help individuals and communities to navigate the liquor licensing system.’

We then made the following recommendations:

Rec. 19: An independent Community Defender’s Office should be established to support communities in licensing matters.

Rec. 20: Develop a fund to support communities engaging with NT Liquor Commission hearings associated with objections, where needed.

PAAC and FARE remain concerned about the significant potential for inequality in resources between licence applicants and objectors, as has been recently seen in the Dan Murphy’s application to transfer and substitute premises.

We note the onus on the applicant in s47(1) to satisfy the Commission that the issuing of a licence or authority is in the public interest and will not have a significant adverse effect on the community. Nevertheless, we are concerned that some applicants will have the resources to commission community impact studies at considerable cost, which may not be fully independent.

## Harm minimisation audits

We also recommended that the requirement for the Director of Licensing to notify licensees in writing of a harm minimisation audit should be removed, on the basis that Inspections and compliance visits should be regular, unscheduled and ongoing in order to act both as a deterrent and a motivator to maintain standards and meet conditions. This requirement has been retained in Division 4 of the Bill, under s147(4).

## RECOMMENDATION:

10. That a provision be added to ensure that when conducting a review of the *Act* under s317, the Minister will be obliged to consider:
  - a. The merits of establishing a process for establishing the community impact assessment which is independent of the applicant;
  - b. The need to provide support for objectors to participate in liquor licence objections in cases where there is substantial inequality of access to resources to participate in the application process, and including the merits of establishing a fund to support the community in such situations; and
  - c. The appropriateness of providing written notification to licensees of an impending harm minimisation audit.

## Transition arrangements

Given the NT Government's alcohol policy and legislative reform program, including the Banned Drinker Register (BDR), Police Auxiliary Liquor Inspectors (PALIs), the moratorium on new takeaway liquor licences, and minimum unit pricing, PAAC and FARE strongly recommend that the *Bill* be amended to state that from the date the *Bill* is passed, any unresolved applications will lapse and all new liquor licence applications will be considered under the new *Act*, rather than from the date on which the *Act* in its entirety comes into force.

The *Tackling Alcohol-fuelled Violence Legislation Amendment Bill 2015 (Qld)* provides a precedent for this argument. Transitional provisions included in that *Bill* meant that any applications for late-night extended trading hours for takeaway liquor that were on foot but undecided at 10 November 2015 (the date on which the *Bill* was introduced to the Queensland Parliament) lapsed, and no new applications were accepted from that date. The transitional provisions also retrospectively prevented appeals from proceeding before the relevant court or tribunal.<sup>3</sup>

## RECOMMENDATION:

11. Introduce a new section under Division 2 *Transitional matters* along the following lines:

Section XXX Consideration of liquor licence applications:

- a. Applications for a new licence or to vary, transfer or substitute a licence will be considered under the new *Act* from the date on which the *Bill* is passed;
- b. If an application for a licence was made or purportedly made prior to the passage of the *Bill*, but had not been resolved, it will be taken to have lapsed upon the passage of the *Bill*; and
- c. No appeal process will be available to applicants whose licence applications have lapsed upon the passage of the *Bill*.

<sup>1</sup> Smith, J., Whetton, S. & d'Abbs, P. (2019). The social and economic costs and harms of alcohol consumption in the NT. Darwin, Menzies School of Health Research.

<sup>2</sup> Riley T (2017) Alcohol Policies and Legislation Review Final Report Northern Territory Government, October 2017

<sup>3</sup> Queensland Government (2015) Tackling Alcohol-fuelled Violence Legislation Amendment Bill 2015

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