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Liquor Bill 2019

Danila Dilba Health Service Submission to the Economic Policy Scrutiny Committee

14 June 2019

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Executive Summary

1. Danila Dilba Health Service (**DDHS**) supports the majority of the clauses in the Liquor Bill 2019. The Minimum Unit Price, the Banned Drinker Register and the introduction of a Risk Based Licensing Framework are key reforms that reduce the harms associated with the excessive consumption and misuse of alcohol in the Northern Territory.
2. DDHS has concerns over clauses in this Bill which grant licensees the discretion to refuse service in a manner which may permit discrimination on the basis of race. These clauses, we submit, do not have sufficient safeguards to ensure that discrimination does not occur and we propose that tougher penalties for contravention exist within this Act.
3. We support the Governments initiatives in this Bill to implement the recommendations of the Alcohol Policies and Legislation Review of October 2017 (**Riley Review**) and commend its approach in leading the nation in key reforms.
4. We call on the government to continue implementing a therapeutic framework for alcohol harm minimisation in partnership with Aboriginal Community Controlled Health Organisations noting the overrepresentation of Aboriginal people in the rates of those drinking above the NHMRC guidelines.

Recommendations

5. DDHS commends the Bill to the Economic Policy Scrutiny Committee and recommends that it pass the legislature subject to the proposed amendments outlined in Part B.

Background

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

Primary Health Care

6. 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.

AOD Treatment Services

7. DDHS' Alcohol and Other Drug service provides;

- clients with education and information on harm minimisation strategies to reduce the harmful impacts of alcohol or drug use;
- basic counselling to clients experiencing problems with AOD use;
- brief interventions to clients about services they can access, which can help in reducing the impacts that alcohol and drugs has on their health;
- referral to other providers, such as rehabilitation and withdrawal services;
- diversion and social inclusion activities to support clients who are disconnected from their families and communities as a result of their substance use disorders;
- advocacy to internal and external services on behalf of clients;
- AOD education to youth and community groups; and
- health promotion across the Darwin and Palmerston region through events and health expo's, promoting the importance of seeing your local community controlled medical service and having regular health checks.

Part A – Support for Harm Minimising provisions in the *Liquor Act*

8. Danila Dilba supports the strategies implemented since the Riley Review and incorporated into this Bill, including the reintroduction of the Banned Drinker Register in September 2017, the funding of 75 Regional Police Auxiliary Liquor Inspectors in March 2018 and the introduction of the Minimum Unit Price in October 2018.
9. DDHS supports the key reforms that are enabled through this Bill, including the Risk Based Licensing Framework. The recent report on the Social and Economic Costs and Harms of Alcohol Consumption in the NT¹ highlighted the total tangible costs to society of alcohol consumption are \$701.3 million per year. The new licensing framework factors in this 'public cost' when granting a 'private right' to a licensee based on the type of licence granted and the evidence of how that particular operation contributes to alcohol involved harms. These are good public measures that identify certain licenses, such as take-away packaged liquor outlets, that pose greater a risk to the community in fueling alcohol related harm.

Powers to control the use of inedible substances containing alcohol

10. DDHS supports the proposed sections 149 and 150 which give police the power to prohibit the consumption of inedible substances containing alcohol in a public place and to search, seize and dispose of those substances.

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

Part B – Recommended Amendments to the Bill

Amendments to strengthen protections against discrimination

Opinion

11. Insert a penalty provision in section 137 which creates an offence under the *Liquor Act 2019* if a person uses an attribute specified in section 19(1) of the *Anti-Discrimination Act 1992* as a reason to form a belief under section 135 or 136.
12. Consider whether section 136 would be held invalid as a result of the operation of sections 9 and 10 of the *Racial Discrimination Act 1975* (Cth).

Rationale

13. Under the Bill, section 136 gives the licensee and their employees a broad discretion to refuse service if they form a belief on reasonable grounds that the person will commit an offence against the Act, will become intoxicated, will engage in violent, quarrelsome or disorderly behaviour on or in the vicinity of the premises or has engaged in such conduct in the last 12 months. Section 137 attempts to remove doubt about the potential of the preceding section being used for discrimination, by referring the purported conduct to the *Anti-Discrimination Act 1992*.
14. The Individuals who are most likely to be discriminated against under s136 are those who will be least likely to seek legal assistance or make a report to the Anti-Discrimination Commission (Allison et al. 2012). This is due to the complex layering of disadvantage and the barriers which prevent these groups from accessing assistance including poor English language skills, lower levels of educational attainment and a lack of understanding about legal systems or rights. Notwithstanding the absence of a representative complaints model proposed by the Commissioner and outlined in the Government's Discussion paper 'Modernisation of the Anti-Discrimination Act', there is no easy pathway or reasonable prospect of discrimination against disempowered Aboriginal or Torres Strait Islander people being held to account.
15. Inserting a penalty provision in this Act would allow the Director of Licensing and her or his delegate to conduct their own investigations and bring forward their own enforcement actions under this Act. We submit that 'non-discriminatory' service is a part of 'responsible service' and that this provision would give effect to that notion. Allowing liquor inspectors who witness discrimination taking place to enforce the no discrimination provision will prevent the new powers in s136 from being used improperly.
16. Regardless of whether section 136 is valid under the Commonwealth legislation, it is clear that the provision has the capacity to be used discriminatorily as recognised by section 137. We ask the Committee members to turn their mind to the operation of this provision within the framework of discriminatory laws and policies in the Northern Territory. A framework with which Aboriginal and Torres Strait Islander people interact with on a daily basis. We ask that the 'real world' applications of this provision be considered, particularly for Aboriginal people from remote and regional communities who visit cities and towns and are at risk of being discriminated against.

Allowing objections to the Transfer of a Liquor Licence

Opinion

17. That the proposed section 57(1) be amended to allow objections to be made against applications to transfer liquor licenses from a licensee to another person or entity.
18. That s57(2) be extended to allow additional grounds for objection including:
 - Whether the application meets the objectives of this Act as they relate to reducing alcohol-related harm.

Rationale

19. We agree with the points raised by FARE and PAAC 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. It is in the interest of the community to achieve greater transparency in 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.

Clarification on applications for substitution of premises

Opinion

20. As outlined in the FARE and PAAC submission, section 71(3) should be removed.

Rationale

21. Section 71 seems to create confusion as to the manner and form that a substitution application should take. Section 71(1) states the licensee must apply for a new licence if a substitution of premises is sought. Section 71(2) allows the Commission, upon application by the licensee, to dispense with the 'new licence' requirement and instead allow for the existing licence to be varied where there is no significant change in the operation of the business and the substitution satisfies the public interest and community impact requirements. Section 71(3), it appears, tries to give effect to s71 (2) as it states that an application to substitute premises is to be made in the manner applicable to an application to vary the conditions of an existing licence.
22. As FARE and PAAC note, Section 71(3) seems to be a superfluous inclusion that is confusing and potentially open to interpretation. To avoid any misunderstanding and 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.

Regulation of inedible substances

Opinion

23. There should be provisions in this legislation which govern the storage and sale of inedible substances containing alcohol including, for example, mouthwash. This power should extend to methylated spirits which is currently regulated under the *Medicines, Poisons and Therapeutic Good Act 2012*.

Rationale

24. There is a belief that measures, including minimum unit pricing and the BDR, have led to a rise in substitution of alcoholic beverages for inedible alternatives such as mouthwash, flavour extracts and methylated spirits amongst consumers with AOD disorders. While the evidence around this substitution is anecdotal and has not been rigorously pursued, it does not detract from the need for a framework which regulates the sale of these harmful product as outlined below.
25. It is clear that not all retailers respond in a uniformly responsible manner when asked to take action to restrict the visibility and quantity of products such as mouthwash and methylated spirits being available on the shelves. While most stores stock and sell these products with restrictions aimed at mitigating harm, such as storage behind the counter, or item limits per customer, there are others who do not.
26. The consumption of methylated spirits has been reported to be a significant problem in central Australia and the decisions of irresponsible store operators to continue to stock these products on the shelves compromises harm minimisation strategies and the broader reform agenda.

Transition arrangements

Opinion

27. That transitory provisions be amended so that any unresolved applications lapse from the date the legislation is passed so that all liquor licence applications from that date are considered under this Act rather than under the old Liquor Act.

Rationale

28. The NT Government's alcohol policy and legislative reform agenda is currently being undermined by existing and prospective licensees who are attempting to lodge applications or have applications before the Liquor Commission to substitute existing small premises for large liquor barns. These applications have little prospect of being granted under the new Act but for the transitory provisions which allow existing applications to be considered under the old Act.
29. We note that FARE and PAAC have cited precedent in Queensland, *The Tackling Alcohol-fuelled Violence Legislation Amendment Bill 2015* (QLD) for such an action. Transitional provisions in that Bill meant that any applications for late-night extended trading hours for takeaway liquor that were on-hand and undecided at 10 November 2015 (the date the legislation was introduced to the Queensland Parliament) lapsed and no new applications were accepted from that date. The transitional provisions also retrospectively prevented appeal proceedings from being considered by the court or tribunal.

Part C – Further Reform

30. The National Drug Strategy 2010-2015 states that harm minimisation strategies need to incorporate harm, supply and demand reduction. As we noted in our submission to the Riley Review in 2017, the Review Terms of Reference did not reflect an appropriate balance

across the three components and appear heavily focused on supply issues. Fortunately, Riley did take a broader view of the harm minimisation strategies and made good recommendations on these issues. Most of the recommendations in this part of the review are yet to be implemented by the Government and we reiterate below our submission on these issues.

Harm Minimisation – Therapeutic Framework

31. A true harm minimisation approach to alcohol policy and legislation must be situated within a therapeutic framework that:
 - recognises both the strengths and disadvantages of the community in dealing with alcohol and its consequences;
 - is based on evidence about the nature and causes of alcohol related harm;
 - offers therapeutic pathways to those experiencing problematic alcohol use rather than punitive approaches that inappropriately criminalise the results of social disadvantage and trauma;
 - offers a range of acceptable and effective treatments to those who wish to reduce alcohol use;
 - incorporates primary health care into the process;
 - improves the safety and well being of people currently involved in risky alcohol use; and
 - regulates supply of alcohol in an evidence based way.

32. Further guidance on the elements of a therapeutic framework are offered by Gray and Wilkes who note that alcohol and drug related harm is a complex, multi-causal phenomenon and that addressing it requires a comprehensive approach, including:
 - address the underlying social determinants
 - prevent or minimise the uptake of harmful use
 - provide safe acute care for those who are intoxicated
 - provide treatment for those who are dependent
 - support those whose harmful AOD use has left them disabled or cognitively impaired
 - support those whose lives are affected by others' harmful AOD use (Gray, 2010).

Demand Reduction

33. The ready availability of a range of alcohol rehabilitation and treatment services for those individuals who recognise that their drinking is having a negative affect is an essential demand reduction measure as a component of a harm minimisation strategy. The existing service system in the NT includes services provided by government, services funded by the NT government and services funded by the Commonwealth Government. The range of services includes:
 - Screening
 - Brief interventions
 - Detoxification and withdrawal services;
 - Residential rehabilitation;
 - Limited community based support;
 - Limited relapse prevention.

34. The major concern from DDHS perspective in relation to treatment and rehabilitation is the undersupply of services and the limited range of options available particularly for Aboriginal people. Notwithstanding the findings of the Demand Study into Alcohol Treatment Services,² our experience as a provider of community based support service in the alcohol and other drug space is that rehabilitation services are in short supply and there are gaps in the continuum of service provision. Our workers report that it is not unusual for a client to wait 2 to 3 months to enter rehabilitation. This poses significant challenges for the client who may relapse or lose motivation to pursue treatment and imposes a large burden on health and other services attempting to support clients during the waiting period. DDHS staff work intensively with clients to support them during a waiting period but the results are mixed.

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²Stephens, D., Clifford, S., Mellor, R., van de Ven, K., Ritter, A., Smith, J.A., D'Abbs, P., Stevens, M., Dyal, D. & Christie, B. (2019). Demand Study for Alcohol Treatment Services in the Northern Territory. Darwin, Menzies School of Health Research.

