



Foundation for Alcohol Research & Education

# FARE SUBMISSION: NT LIQUOR AMENDMENT BILL 2020

2 March 2020



**STOPPING  
HARM  
CAUSED BY  
ALCOHOL**

## About the Foundation for Alcohol Research and Education

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 more than a decade, FARE has been working with communities, governments, health professionals and police across the country to stop alcohol harm 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 harm through population-based strategies, problem directed policies, and direct interventions.

If you would like to contribute to FARE's important work, call us on (02) 6122 8600 or email [info@fare.org.au](mailto:info@fare.org.au).

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## Overview

The Foundation for Alcohol Research and Education (FARE) thanks the Committee for the opportunity to make comments on the Liquor Amendment Bill 2020 (the Bill).

FARE strongly urges all committee members to recommend against the passing of this Bill in its current form. This Bill is a blatant attempt to assist Woolworths to open one of Australia's largest bottle shops in an area of high alcohol harm. The mechanism used in this Bill risks undermining both the intent of the new Liquor Act, and the moratorium, by increasing the volume of alcohol sold into Darwin. This, in turn, risks undermining the successes of the alcohol reform program by threatening an unacceptable increase in alcohol harms.

Alcoholic products cause serious harm every day in the territory. The toll can be seen in hospitals, domestic violence shelters, police stations, homes and on the streets. Alcoholic products cost each Territory adult an \$7,577.94 per year (\$3,832.19 in tangible costs, and \$3,745.75 intangible costs per adult, 2015/16 estimation).<sup>1</sup>

FARE is a not for profit organisation working with a range of government and non-government stakeholders in the Northern Territory (NT) to reduce alcohol harm through evidence-based policy. FARE approaches this submission with the primary focus of reducing alcohol harm in the Territory. It should be noted that FARE is currently engaged in ongoing legal action in regards to the proposed Dan Murphy's on the corner of Bagot Road and Osgood Drive.

FARE understands that the Bill seeks to amend section 75(2) of the Liquor Act 2019 (2019 Act) to allow substitution of licensed premises with premises that are yet to be constructed or that are still under construction, remove the like for like provision for substitution applications, and introduce a provision that specifically says that the Liquor Commission has the power to impose conditions when approving an application for substitution of premises, in light of differences in interpretation. The requirement for the substitution to satisfy the public interest and community impact requirements remains.

FARE's primary concern is the removal of s75(2)(a), the 'like for like' provision. Removing this provision will allow undo measures put in place in response to recommendations of the Alcohol policies and legislation review, otherwise known as the Riley Review, and allow licensees to circumvent the moratorium introduced by the Government in 2017. Any small liquor retailer will be able to be replaced by larger stores like Woolworths' chain Dan Murphy's and Coles' First Choice liquor stores.

## FARE's recommendations

FARE does not support the legislation and believes that this legislation should not be rushed through committee. Any amendments to the Liquor Act 2019 (2019 Act) should be made in the 12-month technical review where more thorough consideration can be given.

1. The Committee recommends that the Legislative Amendment Bill 2020 is not passed and that the current provisions in Section 75(2) of the Liquor Act 2019 are retained, to reduce alcohol harm in the Territory.

### **FARE's recommendations should the Bill proceed**

FARE strongly recommends that the 2019 Act is not amended through this extraordinary process, but instead any issues are dealt with during the 12-month review, where stakeholders, government representatives and drafters will be able to deal with the matter in a comprehensive fashion.

The like-for-like measures are particularly important because they maintain the integrity of the moratorium implemented as a key recommendation of the Riley Review.

2. Should the Liquor Amendment Bill 2020 proceed, retain the like-for-like provision.

Should the like-for-like provisions in Section 75(2)(a) be removed from the 2019 Act, other protections must be put in place to ensure that substitutions cannot be used to undermine the moratorium and increase the volume of alcohol sold in the Territory.

One option would be to specifically add a volume ceiling to the legislation, so that no substitution could be allowed unless the licences substituted would equal the same volume. This would mean that multiple licences may be needed to be substituted for the application for one premise. Such action would maintain the integrity of the moratorium.

However, FARE emphasizes that this is an option of last resort to preserve the integrity of the moratorium, and re-emphasises that the preferred course would be for the Bill not to pass.

3. Should the Liquor Amendment Bill 2020 proceed and the like-for-like provision be removed, amend Section 75(2) of the Liquor Act 2019 to protect the moratorium from being undermined, for example by:

*(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 volume of alcohol sold will occur as a result of the substitution; and*

*(b) the substitution satisfies the public interest and community impact requirements.*

*(2A) To avoid doubt, the Commission may, under subsection (2):*

*(a) impose conditions on the substitution; and*

*(b) substitute premises that are not yet constructed or are still under construction.*

# Rationale for FARE's recommendations

## Recommendation 1: The legislation should not proceed

### *The alcohol reform program*

FARE strongly supports the policy and legislative reform program that is successfully reducing the toll of alcohol harm in the Northern Territory. For the period July 2018 to June 2019, the reforms had achieved:

- A 17.3 per cent reduction in NT Emergency Department presentations compared to same period in 2017-18
- A 23 per cent reduction in alcohol-related assaults compared to same period in 2017-18
- 27 per cent reduction in high range drink driving offences, compared to the same period in 2017-18
- A 63 per cent reduction in protective custody episodes in Alice Springs
- Over 17 000 litres of alcoholic beverages marked for illegal secondary supply seized by NT Police.<sup>2</sup>

Reforms such as the banned drinkers register, moratorium on take away liquor licences, independent NT Liquor Commission, Police Auxillary Liquor Inspectors, minimum unit price, and the rewrite of the Liquor Act 1978 (1978 Act) with the move to risk based licensing, are critical to address the drivers of alcohol harm.

No one measure will be effective on its own, which is why this comprehensive program of reforms is so important. Care must also be taken that the reforms are not undermined, as this Act has the potential to do in its current form.

### *The Riley Review*

These reforms arose out of the recommendations in the Final Report of the *Alcohol policies and legislation review*, commonly referred to as the Riley Review after former Chief Justice Trevor Riley who led the review. The comprehensive recommendations from the review were the result of extended evidence gathering and analysis. A key recommendation was the review of the 1978 Act. In light of the extensive changes recommended by the Riley Review, the Government undertook a lengthy consultation process on the review of the 1978 Act to provide all stakeholders interested in the outcome, with the opportunity to have input into the process. These stakeholders included the alcohol industry, health groups, service providers, community-based organisations, and peak bodies. In addition, formal consultations were undertaken on both the Exposure Draft and the Draft Liquor Bill 2019. Having undergone this process, the Government recognised that given the substantial changes to the 1978 Act, it was likely that some adjustments would be needed and announced a technical review of the 2019 Act to be conducted 12 months after it was introduced.

Given the background above and the forecast review of the 2019 Act in 2020, the introduction of this Bill just four months after the 2019 Act was introduced is unexpected and unnecessary.

FARE is also concerned that the mechanism chosen, changing the current Act to allow an ongoing application to be considered under some provisions of the new Act, and at the same time changing the current Act, is clumsy and may lead to unforeseen consequences. We note with some concern section 326 (8) which says "This section has effect despite any law of the Territory or decision of NTCAT or the Supreme Court to the contrary", a quite extraordinary precedent to a minor section in a liquor

act. It raises questions as to what laws or decisions of the Supreme Court the drafters are anticipating may need to be overruled.

All these issues combine to support FARE's contention that this legislation should not be rushed through committee, and if amendments are to be made they should be made in the 12-month review with proper consideration.

## Recommendation 2: Retain the like-for-like provision

### *Moratorium on new liquor licences*

An essential component of the reforms was the moratorium on new take away liquor licenses. The Expert Panel for the Riley Review (the Expert Panel) considered that the Territory was 'over serviced with takeaway liquor outlets' and therefore recommended an immediate moratorium on new licences. The purpose of the moratorium was to allow time for the new alcohol policy and legislative framework to be established and take effect in a market that was at saturation point.

FARE has serious concerns about any moves that would undermine the moratorium. Allowing the substitution of one licence for another that sells, for example, ten times as much alcohol, has a similar effect as approving nine new licences. Nine new licences would be a clear breach of the moratorium, and similarly the substitution for a licence ten times the size would severely compromise the moratorium. For this reason, FARE does not support the removal of s75(2)(a) of the 2019 Act.

### *Substitution*

The Explanatory Statement for the Bill says that the wording in section 75 did not reflect the intent of the 2019 Act, which was to allow liquor licensees to substitute unbuilt premises for an existing premise. It goes on to say that it was also not the intent of the Government to restrict licensees from substituting to something that represented a change in operation of the business.

The removal of the like-for-like provision within the 2019 Act is unwarranted, unwelcome and will have unforeseen consequences both in terms of social harms and future legal challenges to the territory's liquor reforms. This provision was introduced to prevent licensees from changing the fundamental nature of the business for which it received its licence by substituting much bigger outlets for smaller outlets. The question of degree of change was understood by the Expert Panel which noted in its report that the section in the 1978 Act (46A) had been "abused and used to 're-purpose' licences for uses that were not originally intended when they were issued." Removing this provision will allow any small liquor retailer to be replaced by larger stores like Woolworths' chain Dan Murphy's and Coles' First Choice liquor stores.

This risk is real in light of the current application by Woolworths to substitute what will be one of the largest Dan Murphy's stores in Australia for the now closed small BWS store in Stuart Park. If this licence application is approved, the Dan Murphy's store, based on projections, will sell approximately 48 times the volume of alcohol sold at the BWS store and will increase the density of liquor outlets in within a 2km area by 400 per cent.<sup>3</sup> FARE, along with other community partners, has opposed the establishment of this Dan Murphy's in light of the significant risk of harm to the local community and across Darwin.

If the Bill removes legislative barriers preventing small outlets from being turned into Dan Murphy's or other big box outlets, then the NT needs to brace for a slew of similar licence applications. Recently, the licences for the 12 BWS stores in the NT attached to a Woolworths supermarket were varied from

a store licence to become stand-alone take away licences (liquor merchant authorities).<sup>4</sup> Each one of these now has the ability to apply to become a Dan Murphy's under these new provisions.

Even a doubling of the volume of alcohol sold by these stores would lead to a substantial increase in the volume of alcohol available to the community and actively work against the policy reform program introduced by the Government.

#### *The Riley Review on substitution*

The Riley Review gave clear direction for the substitution of licences, including that:

- 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 (Rec 2.5.22)
- 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 (Rec 2.5.25)
- No change to a licence category be made through the substitution process (Rec 2.5.27)
- 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 (Rec 2.5.29)

The Riley Review was very clear in the intent of recommended changes to the substitution provisions within the Liquor Act:

*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<sup>5</sup> (p56)*

To reflect these recommendations the following specific wording was inserted into the new 2019 Act at section 75:

- (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.
- (3) 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.

The legislation is also clear:

- licensees wanting to substitute other premises for the licensed premises must apply for a *new* licence for those new premises, and

- a substitution application could be considered if satisfied that there was no substantial change in the operation of the business and the application satisfies the public interest test.<sup>6</sup>

### Recommendation 3: Safeguards to cap volume

The Riley Review recognised increases in volume as being a determinant of outlet density and therefore an important predictor of alcohol related harm.<sup>7</sup>

Should the government choose to proceed with the legislation, safeguards must be put in place to ensure that substitution is not used to undermine the moratorium. One way would be to provide explicit legislative protection to cap sales volume, so that substitution to other premises does not result in an increase in the volume of alcohol available for sale in the community.

In practical terms this would mean that applicants seeking to substitute a larger premise for an existing licence may need to substitute multiple licences for the one application. For example, in the case of the Woolworths' application for a Dan Murphy's outlet, Woolworths would have to substitute multiple small licences for its one large superstore. With this approach, the Riley Review's concerns about substitution being used as a way to get around the moratorium are addressed, and the integrity of the moratorium is maintained.

Such protection should be in addition to consideration of volume as a determinant of density as part of the *Public interest and community impact assessment*.

There are a number of safeguards that could be considered, however FARE is concerned about the short time frame in which to amend. FARE reiterates that changes of this nature should be carefully considered and not rushed through a truncated committee process.

## Conclusion

FARE believes this Bill will lead to an increase in alcohol harm. The changes proposed in the Bill contradict the clear advice and recommendations of the Riley Review and are not consistent with previous comments and actions by the Government. It is therefore not clear why the Government is proposing these amendments. Territorians want open and transparent Government processes and decision making and the context of the proposed legislation suggests that this process is anything but open and transparent.

The Committee should carefully consider the long-term consequences of recommending the Bill in its current format and the potential for unintended consequences. This Bill will open the door to increases in the availability of alcohol and limit the ability of the Riley Review reforms to keep Territorians safe from alcohol harm.

Thank you again for the opportunity to provide comment on the Liquor Amendment Bill 2020. I would welcome the opportunity to discuss FARE's response in more detail.

## References

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- <sup>2</sup> NT Government (2019) Northern Territory Alcohol Harm Minimisation Action Plan 2018-2019 August 2019 Update viewed on 2 March 2020 at [https://alcoholreform.nt.gov.au/\\_data/assets/pdf\\_file/0011/727706/action-plan-aug-2019-update-web.pdf](https://alcoholreform.nt.gov.au/_data/assets/pdf_file/0011/727706/action-plan-aug-2019-update-web.pdf)
- <sup>3</sup> NT Liquor Commission (2019) Northern Territory Liquor Commission Decision Notice – Woolworths Group Ltd (Reference number LC2019/125) 13 December 2019, viewed on 28 February 2020 at [https://justice.nt.gov.au/\\_data/assets/pdf\\_file/0005/770243/Decision-Notice-Woolworths-Group-Ltd\\_131219.pdf](https://justice.nt.gov.au/_data/assets/pdf_file/0005/770243/Decision-Notice-Woolworths-Group-Ltd_131219.pdf)
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- <sup>6</sup> NT Government *Liquor Act 2019* dated 7 November 2019, Section 75, viewed on 28 February 2020 at <https://legislation.nt.gov.au/en/Legislation/LIQUOR-ACT-2019>
- <sup>7</sup> NT Government (2017) *Alcohol Policies and Legislation Review Final report* page 59, viewed on 28 February 2020 at [https://alcoholreform.nt.gov.au/\\_data/assets/pdf\\_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf](https://alcoholreform.nt.gov.au/_data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf)



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