

# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13<sup>th</sup> Assembly

## ECONOMIC POLICY SCRUTINY COMMITTEE

### Public Hearing Transcript

8.30 am – 2.00 pm, Wednesday, 10 July 2019

Litchfield Room, Level 3, Parliament House

**Members:** Mr Tony Sievers MLA, Member for Brennan  
Ms Kate Worden MLA, Member for Sanderson  
Ms Lia Finocchiaro MLA, Member for Spillett

**Witnesses:** **Hospitality NT**  
Des Crowe: Chief Executive Officer  
Penny Phillips: Treasurer

#### **ClubsNT Inc. and Darwin Northern Suburbs Liquor Accord**

Russell Reid: President ClubsNT and Chair, Darwin Northern Suburbs  
Liquor Accord  
Kent Rowe: Policy Advisor, ClubsNT

#### **Retail Drinks Australia**

Faye Hartley: Board Director  
James Coward: Director, Policy and Communications

#### **Foundation for Alcohol Research and Education and People's Alcohol Action Coalition**

Michael Thorn: Chief Executive Officer (FARE)  
Meredythe Crane: Research Manager (FARE)  
Trish Hepworth: Director, Policy and Research (FARE)  
Vicki Gillick: Policy Coordinator (PAAC)

#### **NT Branch United Voice**

Erina Early: Branch Secretary

#### **Aboriginal Medical Services Alliance Northern Territory**

John Paterson: Chief Executive Officer  
David Cooper: Manager, Research Policy and Advocacy  
Daisy Burgoyne: Policy Officer

#### **Northern Territory Council of Social Services**

Wendy Morton: Executive Director  
Nicola Coalter: Secretary NTCOSS Board and CEO Amity Community  
Services

#### **North Australian Aboriginal Justice Agency**

Clara Mills: Managing Solicitor, Civil Law

**Department of the Attorney-General and Justice**

Bronwyn Haack: Senior Policy Lawyer

Hannah Clee: Senior Policy Lawyer

Candice Maclean: Senior Policy Lawyer

Caroline Heske: Senior Policy Lawyer

**Department of the Chief Minister**

Giovina d'Alessandro: Executive Director, Alcohol Review  
Implementation Team

Ryan Neve: Director of Communications, Alcohol Review  
Implementation Team

The committee convened at 8.30 am.

## LIQUOR BILL 2019

### Hospitality NT

**Mr CHAIR:** Good morning, everyone. On behalf of the committee—Kate Worden, the Member for Sanderson; Lia Finocchiaro, the Member for Spillett; and me—we welcome you here today to this public hearing into the Liquor Bill 2019.

I welcome to the table to give evidence to the committee Mr Des Crowe, Chief Executive Officer at Hospitality NT and Ms Penny Phillips, Treasurer of Hospitality NT.

Thank you for coming before the committee. We appreciate you taking time to speak to the committee today and we look forward to hearing from you both. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee do apply. This is a public hearing and is being webcast through the Assembly's website.

A transcript will be made for the use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private.

For the record, could you please each state your name and the capacity in which you are appearing today. Des, you are welcome to make an opening statement.

**Mr CROWE:** Des Crowe; I am the CEO of Hospitality NT and I am attending today with my Treasurer from Hospitality NT, Penny Phillips, who is also the mine host at the Hotel Darwin.

**Mr CHAIR:** Penny, welcome. Would you like to state your name for the record.

**Ms PHILLIPS:** Penny Phillips; I am the Treasurer from Hospitality NT and I am also manager at Hotel Darwin.

**Mr CHAIR:** Des, just before you start we have a tight schedule today so if you would like to make an opening statement and the key points. We have all read your report and so forth—and any key points—and we have some questions that we would like to go through with you.

**Mr CROWE:** I am hoping to be about 10 minutes in relation to re-emphasise a few points and then go through in terms of any queries you might have or if there is an opportunity to reinforce other points I will.

I acknowledge Larrakia people and the traditional owners in relation to the land on which this inquiry is being held and I wish to pay my respects to the elders past, present and future.

I thank you for the opportunity to come before this committee hearing to present to you. We rely on the written submission that we made, which thankfully you have written. Can I also note that the secretariat pointed out an error in relation to one of the clauses. I think we made reference to clause 245 and it should have been 255 and that is as a result—obviously the exposure bill was 244 and the current draft was 255.

I appreciate the error being noted and I appreciate someone actually reading it.

The common thread for the *Liquor Act* throughout our industry, in terms of regulation, it is across all our memberships—for those of you that are not aware we have a range of members in terms of the accommodation—what we call accommodation division—the pubs, licensed clubs, restaurants, wayside inns, casino and bars—they are the wide range. They are all licensed—most of them are licensed, so the *Liquor Act* is fundamental to regulation on how they carry on the business.

We have had an opportunity to work with the alcohol review implementation team through the Department of the Chief Minister. We have worked with the senior representatives of the Department of the Attorney-General and Justice and this has primarily gone on since November 2017. We are appreciative of the opportunity to have been consulted in relation to it. It is a thankless task but I would like to thank people in the agencies for the way they have conducted the matter and have given us an opportunity to be heard on matters, for the industry reference group to participate and provide feedback on draft recommendations to draft guidelines in relation to the exposure bill. We are currently still going through the act and regulations as we speak.

The feedback from the industry participants is that it has been a good process and well managed through the Chief Minister's department.

In relation to the act itself we support an increase in transparency and independent decision-making. We have seen the transition in recent times under this government to introduce more independent decision-making processes with the return of the Liquor Commission.

We have a balancing act. Our members are forever referring to red tape issues. The difficulty we have here in relation to such a regulatory administration of an industry is the consequential red tape. We appreciate that there is a balancing act. We are watchful of any red tape that is actually created or any administrative burden or unfairness in the administrative burden.

In relation to the committee itself, you need to have regard to the rights and liberties of individuals. The individuals, in this sense in our industry are the employees, the nominees of the licensees are all individuals. There are contractors quite separate from employees that are involved with our industry and also there are the patrons themselves.

We also would say that where the bill makes reference to rights and liberties, in relation to the administrative power, it needs to be sufficiently defined and subject to the appropriate review. You would have read our submission, one of the issues is in relation to the police powers and more specifically it is the police powers in relation to non-emergency matters that we have an issue with. That is quite distinct from police powers in a true emergency.

We would say that the police powers in relation to the non-emergency situations are in fact inconsistent with the principles of natural justice. We would also say that it is inappropriate to delegate some administrative powers to police in these non-emergency situations.

The Parliament of New South Wales has been wrestling with similar issues in relation, over a period of time, to delegations to the police in relation to temporary closures of licensed premises. They have had a longer history in dealing with it and as a consequence of that, they have developed guidelines with respect to dealing with temporary closures of effectively equivalent of our suspensions on non-emergency matters.

You should have a copy of that guideline, I will hand it to the secretariat.

**Mrs WORDEN:** Did this come in with your original submission?

**Mr CROWE:** No. This is something that has come out of discussions earlier this week with colleagues in our New South Wales branch, about how they dealt with it.

We say there is a problem and we see this general approach for these guidelines as being a solution. Put specifically, the police need to be able to make the application, they want to be able to make applications to suspend licensed premises; we get that.

What we say is that there needs to be an independent decision-making to make that decision in relation to those suspensions, in non-emergency matters. We would also say that the licensee has a right to be heard on those non-emergency matters; they are basic principles of natural justice.

From my own personal experience—I have had about 33 years' experience in both the legal field and liquor licensing, primarily in the Northern Territory—I understand, in relation to the police, one of the things that the communities expectation of the police is integrity and their processes and exercise of their powers. That is paramount to the community.

It is important to have confidence in that system. The important thing that I would note is that the confidence comes with transparency in decision-making. Certainly, we have seen this parliament introduce a focus in relation to transparency in decision-making. We would point out that this seems to be inconsistent with that general approach, the current powers, but it is in relation to these non-emergency powers we think there needs to be more transparency.

Historically, we have seen a movement away—and I am talking about from the 1960s, 1970s and 1980s and things you have seen such as the Fitzgerald Inquiry and inquiries held right around Australia—from the regulation of liquor licences by police to independent tribunals, such as the Liquor Commission and also the agency, Licensing NT. That is something that we support.

It should be noted that police and licensees, from my experience, appear to be traditional rivals. They appear to conflict in the nature of the police work and in relation to the way licensees operate their business. From time to time, you will have this stress in the relationship. In particular, this relationship is exacerbated in regional areas. We acknowledge those differences.

Previously, and certainly through into the Riley review, we proposed that they might look at some sort of mediation process as a way of dealing with this issue which constantly arises. From my experience, whether it be Katherine, Nhulunbuy, Alice Springs or Tennant Creek, there is an ongoing issue with turnover with both licensees and police personnel. There is a conflict that occurs.

What we were considering—and again it is not proposed, but it gives you an idea of where we were going in relation to it—the mediation principles would be effectively having a Northern Territory liquor commissioner as a mediator, someone who was aware and understood liquor regulation, that could get the police in the room with the licensees and the management and try to sort it out; see what their differences are and resolve it in that way. From time to time, matters might have to proceed to a more formal complaint process or it might also be a comment such as, ‘We do not think there is anything wrong with the way they are managing their business as such’. You get a clearer indication.

At the moment there is this grey area and effectively the avenue for licensees who have an issue with police in relation to an overbearing policing of them is through the Ombudsman. That does nothing for either party or developing mature and ongoing relationships between police and licensees. Most licensees would not choose to go down the path of putting a formal complaint into the Ombudsman.

I give that to you as a way of background. We saw in New South Wales, when this power came in, that it became a punitive measure by police. They specifically targeted certain licensees. They did not have good relationships. It might not necessarily have anything to do with the management of the business, it might have just been an historical grievance that they may have had. This is why the guidelines were developed and from that, there is more in terms of an independent decision-maker. The police had a better idea of where they stood in relation to dealing with these non-emergency matters.

We do not have an issue with the emergency matters. If there is a riot, it is appropriate that there be a shutdown. It is more in relation to non-emergency matters which might amount to what the police might regard as a continued breach of the *Liquor Act* and it is matters that have not necessarily been reported to the Liquor Commission or gone through the magistrates court.

I have had an opportunity to peruse the Tennant Creek submission. There is a substance issue between what the Tennant Creek people would say, in terms of the hotel, and what the police would say. We are more interested in the process and how someone independent can determine that so there is some confidence to say that either the police are correct or the Tennant Creek Hotel is correct. In that sense, you get a finding independent of the police making a decision based on police evidence, by police, and issuing a power that is only given to police.

That is a safeguard that we are looking for in relation to that.

**Mrs WORDEN:** Mr Crowe, are you open to me asking a question on this now or would you prefer we wait till later when you are finished?

**Mr CROWE:** Yes, that is fine.

**Mrs WORDEN:** I am interested in exploring this a bit more because hypothetically what you are saying sounds reasonable but if police are visiting premises and people are being served who are clearly intoxicated, are you saying under those circumstances—where there is clear harm on an individual which you have already indicated a client is coming in and they are part of the whole train—that you would not deem it as an emergency? I am not saying that, just exploring it with you. It would have to be a riot or something ...

**Mr CROWE:** These matters are normally dealt with by way of complaint.

**Mrs WORDEN:** But if no one is complaining ...

**Mr CROWE:** If you look at the New South Wales scenarios you will see that they have used those powers sparingly but there have been occasions where the nature of the service would have justified it being a case of appropriate warnings been given and a particular style of behaviour. The New South Wales ones might

indicate use of illicit drugs as well in that. If you had some guidance by looking at where they have used it in the New South Wales power, it gives you an idea where they are going.

We have a separate in relation to liquor regulation. The paramount consideration was that Licensing NT were in control and the Liquor Commission under the Riley review. That needs to be established and they are the paramount body to sort it out. At the same time we have given police additional powers and resourcing. You now have a little bit of conflict in terms of the regulation. The police have indicated to us and others that they have not been happy with the way that their complaints have been dealt with through Licensing NT.

Our concern is that the 48B shutdown power is effectively a way to assert the Liquor Commission's power to investigate and look at a complaint in relation to service. That is because the police have said that they have this power but do not need to proceed to going to the magistrates court for a prosecution or go through the Liquor Commission. That is the concern we have.

It is for guidelines to assess. There may be occasions where there might be an event which gives them the right to be deemed an emergency. Our assessment of it—effectively there have been allegations around a number of issues of dealing with what they would think would be either breaches of the *Liquor Act* or behaviour in and around licensed premise which has caused them to use this power. Our concern is that when the Liquor Commission has looked at matters of complaints, they have assessed and said there is no cause to answer.

When there is a possibility that the police are relying on matters which, if put before an independent decision maker, they might not be found. We have great concerns where the police can rely on their own evidence to exercise the power in a non-emergency matter.

**Mrs WORDEN:** It is a fine balance.

**Mr CROWE:** Yes. It is not an easy area but is assisted by more specific guidelines in relation to it.

**Mr CHAIR:** I am just mindful of the time. We have 10 minutes left and I have some questions.

**Mr CROWE:** If I can quickly finish because I did not want to be completely dominated by the police but that is an important one of having the opportunity to attend here today. In terms of the natural justice we would say that the principles need to be entrenched in the *Liquor Act*. That is in our submission.

To date the Liquor Commission has been observing those but we think it should be in the statute itself so that there cannot be any movement in relation to that. We think there are unintended consequences in the new approach in relation to liquor accords which effectively become de facto licence variations—giving a wide power to the director general to vary conditions of a liquor accord.

We have some concerns about the drafting; whether they are sufficient and clear. In terms of standard of proof, we have this issue which, depending on which jurisdiction—in the criminal magistrates courts there is a different standard of proof compared to whether or not it comes through—the criminal standard would apply. Whereas in the Liquor Commission it is more the positive satisfaction one, which is the Briginshaw case application. We think there should be some tidying up to make it clear that it is either the criminal standard in the Liquor Commission or it is the adoption of the positive satisfaction.

We see duplication in noise conditions. You only need one provision in the act to deal with issues around noise. We see duplication in relation to serving and selling or otherwise supplying. Again, that is in our submission.

I am trying to sprint through this. For positive solutions, we would be keen to see the BDR system to be able to deal with restrictions, not just prohibitions, so that it potentially gives the ability for persons to be on a restriction as to what amount they are able to purchase at a takeaway outlet as distinct from being prohibited. We have seen that in other permit systems—I am thinking in terms of the Nhulunbuy, Groote Eylandt one. It has worked very effectively. The act does not currently allow for that. I think we should look to the future in relation to how that might be able to be addressed. I think it is an option.

We have looked at fairness in relation to activation. There is a lot of pressure to activate open spaces in the cities et cetera where they involve liquor licences. We have seen, to date, that it is a lot easier if you do not have a liquor licence—you do not have a bricks and mortar licence—to be able to get a licence than if you do.

I will give you an example. If you do have a bricks and mortar licence, if you want to trade outside that area, there has been a lot of red tape in relation to having to get a formal material alteration and a temporary variation of a licence; whereas it is a lot easier for someone else to come along and just say, 'I want to get a licence'.

We have found quite a few of our members have been disadvantaged in that process. Where it might take four to six months for that process to be dealt with, we think for temporary matters and smaller events, this would encourage our members to be able to assist in activation of spaces, particularly the Darwin CBD for example.

We have the issue in relation to the absurdity about the unregulated two drinks. I am still waiting for an update in relation to that, I do not know whether the committee has been advised further. I cannot see how the current provisions in relation to allowing no licensing for two drinks, it seems contrary to an approach which we have introduced, a risk-based licensing scheme and additional regulation to suddenly have a de-regulation in that space.

I appreciate that some businesses might want to access the provision of alcohol; there may well be a simpler permit approach. Our members were astounded given what we have been doing through in relation to the regulation and administrative burden that has been put on them, through changes over the last few years, to see this one come through. I assume the committee shares my concerns in relation to this; that is probably the matter of the devil will be in the detail as to how that is narrowed down.

The concern in the Riley report saying we have too many licences and we need to put moratoriums on licences. The Riley report, certainly through the panel, is saying the history of the Territory—and the butchers selling alcohol—is over. They were the sort of comments—they are not exact words—that the panel from Riley reinforced as they went around the Territory. To end up with that is completely inconsistent with that review.

Finally, we are all very good at drafting and coming up with a fine model. We will not necessarily be comfortable with everything in it but the important thing is the resourcing thereafter. There is going to be considerable compliance requirements. I have spoken with United Voice. They obviously share some concerns in relation to how staff and employees are going to get across all these changes as such.

It is usual for there to be an education process before any new compliance regime comes in. The WorkSafe area is a classic example where you introduce a new regime, you educate the businesses and the staff before you implement it. Another one would be about the timeliness and staging of RSA refreshers.

If you look through the act, you have criminalised our industry by the nature of many offences, they are criminal offences as such. As a consequence of that, you come back to the rights of the individuals. They need to be properly educated. There was a poor education campaign in relation to the BDR. There was a poor education campaign in relation to minimum unit pricing. We do not want a poor education campaign in relation to the new act. There is an opportunity obviously to get people across what the changes are so it can be properly implemented.

**Mr CHAIR:** Thank you, Des. We have three minutes for questions.

**Mrs FINOCCHIARO:** Has Hospitality NT done any modelling on the additional cost to your retailers as a combination of all of these reforms? So when you put in risk-based licensing, BDR, MUP, harm minimisation audits and all of those different types of things, do you guys have a rough idea depending on the type of business?

**Mr CROWE:** It varies from business to business. For example, the introduction of the BDR, that effectively, from a labour point of view in a reasonably busy hotel drive thru, it is a \$30 000 or \$40 000 additional cost. The government have tried to assist by developing more remote BDR scanners so that would improve the time in processing. That might have reduced that labour cost but there are generally labour costs associated with regulations.

Minimum unit pricing was one where there was a lot of costs involved in the transitional stage. The education side of it, in terms of staff training and time and labour to train the trainers and make sure management are across it is going to be a labour intensive cost.

**Mr CHAIR:** Would you say there are situations where the police and the licensee have a good relationship?

**Mr CROWE:** Yes, we arrange for an assessment in regional areas. We are concerned about what was going on with these police powers and whether or not our licensees were managing their premises in an appropriate way. Through that assessment process, places like Nhulunbuy was seen to be an outlier in the relationship that the police had with the licensees.

Sadly, we have lost one of the major clubs there in the Arnhem Club. I do not believe it is going to be able to trade out of its difficulties. That probably goes to the point of the economic climate that these regulations are introduced in. We have seen the introduction of licence fees which we have indicated we have issue with. The GST has not been taken into account and the federal government collects all the taxes in relation to it.

The NT Government collects all the occupational licence fees. It was interesting to see that teachers have problems with the Ochre Card. Our industry has that issue the whole time. Many of our managers that require the criminal clearances are costs.

**Mr CHAIR:** We have not read through all this yet—the New South Wales model—but do you know how it works on weekends and the timeliness of it? If something has happened on the weekend and you want a mediator in place to make—how does it work?

**Mr CROWE:** In relation to the New South Wales model is that it is aimed at the non-emergency matters which are effectively where the police think there is an accumulation of incidents, want to take action and seek a suspension order.

That is consistently what has been happening in the Territory in relation to how they have used the power to date. It is in relation to those to say that if you are doing it on a Tuesday, you need to put it in by Tuesday. If you are intending to suspend it on a Friday, you need to make the application by Tuesday, apply it and notify the licensee. They have 24 hours to respond and then an order is made.

At the moment the consequences of the half-hour shutdown—the staffing and industrial relations consequences in terms of notification to contractors or any bands that have been booked—if you are closing on a Friday for two days and have something organised on a Saturday. That no longer eventuates so there is frustrations of contracts and there is a real consequence of it.

That guideline sets out and puts some fairness in relation to it. It also teases out the nature of what the police concern is. By allowing the Liquor Commission to do it, they could say that they have received their concerns but why are you not putting in a complaint into us or pursuing this through the magistrates court. That is your option in relation to it rather than a suspension.

**Mr CHAIR:** My final question. You mention in your submission separate community impact assessment guidelines for different services and businesses. Before we had a chat and you mentioned how that works. Could you explain to the committee how that would work?

**Mr CROWE:** In terms of the different community impact statement?

**Mr CHAIR:** Yes.

**Mr CROWE:** If you are going for a licence where there is a high volume of alcohol involved in it then you are going to get all the bells and whistles in relation to a community impact statement. If you are going for a restaurant licence on the lower end of alcohol volume the guidelines would only need to address certain issues which would probably go more to the management of it. It would probably say what the crime statistics are in terms of the area.

Other jurisdictions have different levels of community impact statements depending on the nature of—we have moved to a volume and risk based licence system. It is more in relation to the volume is larger and where you are going to have concerns in terms of community impact statements. There are separate considerations for major events and events occurring outside of bricks and mortar licensed premises. That is a separate issue.

**Mr CHAIR:** On behalf of the committee we thank Mr Crowe and Ms Phillips for coming in today. Thank you for your submission and for answering our questions.

**Mr CROWE:** Thank you, Mr Chair. If there are any further questions that might arise as a result of other presentations we are more than happy to assist further.

**Mr CHAIR:** Thank you.

### **ClubsNT Inc**

**Mr CHAIR:** On behalf of the committee—Lia Finocchiaro, the Member for Spillett; Kate Worden, the Member for Sanderson; and me—we welcome everyone to this public hearing in to the Liquor Bill 2019.

I welcome to the table to give evidence to the committee Mr Russell Reid, President, ClubsNT and Mr Kent Rowe, Policy Adviser, ClubsNT.

Thank you for coming before the committee. We appreciate you taking time to speak to the committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee do apply. This is a public hearing and is being webcast through the Assembly's website.

A transcript will be made for the use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private.

For the record could you please each state your name and the capacity in which you are appearing. Russell or Ken, you are welcome to make an opening statement.

**Mr REID:** Russell Reid, President of ClubsNT.

**Mr ROWE:** Kent Rowe, Policy Advisor of ClubsNT.

**Mr REID:** It may also please the committee to know that I also chair the Darwin Northern Suburbs Liquor Accord and in my spare time I manage the Casuarina All Sports Club.

**Mr CHAIR:** Russell, I am happy for you to make an opening statement—we have all read the submission.

**Mr REID:** I will be brief compared to my learned colleague before me. Wherever you travel throughout the Northern Territory the NT you find evidence of licensed clubs supporting local community. In the Territory licensed clubs are ingrained in our social and sporting DNA, whether it is AFL, rugby, basketball or any other sport. If it is played in the Territory then you can be assured that your child has received the benefit of the local licensed club somewhere along the line.

It does not matter the size of the club or where it is located you can be assured these clubs continue to give back to the local community.

The licensed clubs throughout the Northern Territory represent a membership greater than 132 000 members, employ some 500 workers and invest more than 90 million in wages and support up to 270 community sporting organisations, service clubs and charity organisations throughout the Northern Territory.

ClubsNT thank the opportunity to present our submission and the opportunity to discuss those points with the committee.

**Mr CHAIR:** Thanks Russell. I will open it up to the committee.

**Mrs FINOCCHIARO:** Thank you Mr Reid and Mr Rowe. Could you just expand on temporary variations—currently the practice seems to be quite straightforward and simple. Cazalys and Casuarina you have your normal opening hours and on something like Anzac Day or other special types of occasions you seem to go through a relatively straightforward process of temporary variation for that specific activity.

Could you run us through—and really give us a clear picture of the difference now under the proposed legislation—what hurdles and length of time clubs would have to go through in order to get that temporary variation?

**Mr REID:** It is our understanding that the process now will require a lengthy process that may require a reduced version of community impact statement, although I cannot confirm that. That is a costly process. First, community impact statements from recalling the process on the gaming increase they were about \$19 000 to \$20 000 just for that community impact statement—it would be something similar cost wise ...

**Mrs FINOCCHIARO:** Sorry to interrupt—is that the cost internally having to divert your staffing resources and other resources to preparing those statements or is that because you need to get a consultant or sometimes legal advice or whatever?

**Mr REID:** It is usually a consultant that takes on this process.

**Mrs FINOCCHIARO:** You would have to engage someone to prepare the CIS to then submit with your application ...

**Mr REID:** Yes.

**Mrs FINOCCHIARO:** ... which currently you do not have to do?

**Mr REID:** That is correct. That is how we understand how the bill is written at the moment.

**Mrs WORDEN:** Just to clarify, that is for something like Anzac Day extended hours, change of ...

**Mrs FINOCCHIARO:** Temporary, yes. For one day, typically, or one night perhaps.

**Mr REID:** Yes. The ideal situation would be to have those most common periods built into licensing conditions going forward. That would ease the process and get it over and done with in one application in the first place.

**Mrs FINOCCHIARO:** So if it is Christmas, Anzac Day, Mother's Day, Australia Day...

**Mr REID:** Correct. This was raised in the Riley review where they suggested that New Year's Eve was typically a 2am close—I am paraphrasing—that was their recommendation. It is a common sense approach to those type of events.

**Mrs WORDEN:** So what you are indicating is that perhaps your licence would have those variations built in upfront and you did not have to apply each time.

**Mr REID:** That would be my recommendation for all licensees to have that.

**Mrs WORDEN:** Do you currently have to apply? At the moment if you want a variation, you just apply. Is there a cost associated with that for a one-off?

**Mr REID:** I do not believe there is. It is usually just an application and reason explaining that you are going to have crowd management under control and within two weeks you usually have an approval or questions.

**Mrs WORDEN:** You could easily map out what you forecast to come for the whole calendar year?

**Mr REID:** Yes.

**Mrs FINOCCHIARO:** Of course, clubs are community organisations so the ability to come up with \$20 000 is not as easy.

**Mr REID:** At the end of the day, that just comes out of somebody's sponsorship to a sporting organisation.

**Mrs FINOCCHIARO:** That is right. That is the \$5000 for the cricket club or the \$3000 for the...

**Mr REID:** That is correct.

**Mr CHAIR:** In your submission, you commented that excluding licensees from being registered as wholesalers would adversely impact the ability for licensed clubs to support local community groups through the sale of alcohol at discounted prices for one-off events. Can you expand on how that is going to impact on Clubs NT and so forth?

**Mr REID:** Yes, I can inform the committee that there has been some movement in this area with help from the ARIT team. We understand that during the transitional stage, most licensees will make an application to the Liquor Commission if they are currently doing wholesale activity. If enough evidence is provided, they will be automatically provided with a wholesale authority. There will not be any cost involved during the transition period which is great news.

There still remains some concern for smaller licensees and I am talking about smaller to mid-sized clubs that have takeaway sales over the bar, such as a six-pack at a golf course or other smaller clubs in remote areas that might want to be able to sell takeaway alcohol. We are thankful for the contribution the ARIT team is making on this and we seem to be making some headway.

**Mr CHAIR:** That is good to hear.

**Mrs FINOCCHIARO:** Obviously, it is fine to have legislation and to have very strict rules and all of these things, but if it is virtually impossible to comply with, you have to question the efficacy of it. With the quarterly returns—in your submission you mentioned that was dismantled pre-2000 or around that time. It looks like they are coming back. What is the point of them? Industry will be required to do them. What is it actually going to tell? What is the value of it? I want to know what you see is the value. Then I want to understand what it takes at your end to prepare one of those things.

**Mr REID:** We have been advised that during the transition period, those licensees for clubs will not be required to do a quarterly return however it will affect any new licensed premises or licensed club.

**Mrs FINOCCHIARO:** Sorry, is that just for the transition period or are all clubs being grandfathered and will not ever have to do it unless you are a new club?

**Mr REID:** Correct.

**Mrs FINOCCHIARO:** So existing clubs are grandfathered; you will not have to do the quarterly returns.

**Mr REID:** Correct. There is no doubt that it will be a very large burden on any new club that tries to get a licence. To have to prepare quarterly returns, the information comes from wholesalers but also from retailers because not all venues will buy from wholesalers, they may buy from a large liquor store because they might find the best price at that location. Gathering that information is not something that is normally done through the course of business so it would add a significant burden.

**Mrs FINOCCHIARO:** So a quarterly report lists how much we purchased of each type of alcohol from where? So we got 500 cartons of XXXX from Woolworths and 200 bottles of white wine from someone else. That type of detail?

**Mr REID:** The important thing there is that venues do not usually keep that information. They load invoices into a point of sale system and it will tell you the product and the price. It will not give you a breakdown of how many volumes of pure alcohol or alcohol at that point in time from that purchase. That is information we rely on from the wholesalers.

**Mrs FINOCCHIARO:** Why would government want this information? What benefit is it to them?

**Mr REID:** This is a concern that we have. At the end of the day the data is being collected and there is no policy gained from it, what is the point? That remains a concern.

**Mrs FINOCCHIARO:** It sets new clubs up with a disadvantage because existing clubs are able to operate without that burden but the new ones are.

**Mr REID:** Yes.

**Mr CHAIR:** I am thinking that wholesale data might not necessarily show individually where it is going in some point. In collecting that information, how much is going to individual clubs? Wholesale data comes from the warehouse or spot but individually how much is going into that community.

**Mr REID:** It is a difficult situation. It is quite easy enough for Licensing NT to gather that data through wholesalers. I appreciate that it falls down when so many venues will purchase from another retailer. That data is not captured. I appreciate the difficulty in it.

If the intent is to create a minefield of paperwork for venues for little gain then I seriously question why it is worth it.

**Mrs WORDEN:** The takeaway alcohol one is something that you have raised that perhaps others have not raised in the way that you have in your context. I understand the context because I have seen it operate in smaller clubs for a long time.

The changes are around the primary intent of harm minimisation. Do you accept someone might sit in a bar all evening and drink, then by purchasing takeaway that they could be contributing—so they take a six-pack home—to community harm? Is there an acceptance of that? I am asking that to give you the next bit of what is the alternative from your perspective?

Not all community harm is happening in clubs. In fact, clubs and pubs are probably the spaces where it is not necessarily happening. It is the spill out later or in homes. That is the community harm I guess the liquor bill changes are intended for.

I am wondering what the solutions are and if you have any alternatives? I know it is a bigger question.

**Mrs FINOCCHIARO:** I suppose your question is premised on an assumption that that person is taking the six-pack home to drink it. They could be buying it for a number of reasons.

**Mrs WORDEN:** I am basing it on that because often a person is sitting there, it comes to the end of the evening and they would like to six-pack home because they intend to keep drinking. I think we have all seen it for a long time.

It does not necessarily mean that person is going home to cause community harm however, the intent of the changes—the stuff that we are considering as a committee—are around harm minimisation. It is clear.

I am asking it as a question and if you have any ideas as an alternative to that as a solution.

**Mr ROWE:** Just to speak to the first part of where the harm minimisation stuff comes in. We see the higher volumes are where, globally, the harm comes in. We look at a six-pack at the end of the night as low volume going out the door whereas if they were taking home two cartons or a couple casks of wine, that would elevate that harm minimisation risk, whereas a six-pack might not to that.

The other thing our venues are governed by, is that the people working behind the bars are still governed by RSA, they are still able to sell alcohol at the end of that night. The six-pack still needs to be within that boundaries of RSA service. I would not say that the six-pack would be where that line is, but that line would not be too far away.

**Mrs WORDEN:** You think that it is okay for someone given a six-pack, actually considers well, they have sat here and had 12, that is an extra six, 18 for the night, and we will do that calculation at that time?

**Mr ROWE:** That is part of the RSA. There is a capture for it.

**Mrs WORDEN:** What you are saying is that smaller volumes are not the issue, it is the bigger volume?

**Mr ROWE:** Yes, and we are talking about drive through bottle-os compared to a six-pack over the bar at the end of a night or a few ...

**Mrs WORDEN:** But I guess drive-through bottle shops have the BDR which would be applied to that sale at the end of the night? Obviously BDR applies to take-away sales, not necessarily the 12 they might have had at the bar?

**Mr REID:** Correct.

**Mrs WORDEN:** I am being hypothetical. I am interested in what your response is.

**Mrs FINOCCHIARO:** Could you explain the more unique system which affects clubs with the loyalty points and how that will impact the culture of the club with its activities, different member benefits and things like that?

**Mr REID:** My concern is the culture of clubs being diminished, if the bill is passed the way it is at the moment. Clubs rely almost purely on return business and we do not have the funding capabilities to do shotgun advertising approaches—most of us—we rely on return business. To do that, our best approach is loyalty and to reward members for loyal patronage of the venue. Removing the ability to issue or reward that loyalty would undermine and severely impact the business model of licensed clubs.

**Mrs FINOCCHIARO:** Under the bill, you will not be able to provide vouchers. Could you provide the actual alcohol, instead of a \$20 voucher you could give a bottle of wine?

**Mr REID:** That is not the approach that is taken at the moment. Giving away alcohol needs to at least remain under 50% of the price, that is my understanding.

Going back to the voucher side of things, we quite often give away vouchers for a trivia night or as a form of sponsorship to one of our sporting clubs, they can raffle that off. This legislation would capture and stop that from happening. I think that would be a crying shame.

**Mr CHAIR:** That includes vouchers for meals and such?

**Mr REID:** We cannot differentiate between a patron or member using that voucher for a bar purchase or whether it be for a meal at the bistro.

**Mr CHAIR:** Having a meal would be a good harm minimisation approach?

**Mr REID:** Yes, it very much would.

**Mrs FINOCCHIARO:** Why is it that the differentiation cannot happen, are clubs not set up for it? If this clause was to proceed, one way around it might be for clubs to be able to create a system that would differentiate, but then you are obviously adding cost and administrative burden and all these other things?

**Mr REID:** There is no doubt you are right, that the clubs could spend the extra money to update their systems to ensure that the vouchers are only accepted at the bistro. It would take a fair bit of creative work, most of the venues use point of sale systems which are not unique to the Northern Territory. It would require developers.

**Mrs FINOCCHIARO:** Because you have membership cards, you swipe the card it might be an electronic process?

**Mr REID:** Correct.

**Mr CHAIR:** Russell, you state that licensed clubs, including those trading until 2 am, are much lower risk than venues trading in Darwin's late night entertainment precinct, but under the new risk-based licensing system, they will be subject to the same conditions. How are these clubs different? Do some of these clubs include nightclubs?

**Mr REID:** Not that I am aware of—sorry, my apologies. There is a club that advertises nightclub facilities, but generally all clubs that are currently trading to 2 am remain a low risk to the community and have not been raised by police in the past as a concern.

**Mr CHAIR:** ClubsNT—most of your clubs usually shut at what time?

**Mr REID:** Most of the larger clubs will close around 2 am—that is on a Thursday, Friday, Saturday for example and midnight on the other nights. My point I was making in that particular part of the submission was that the past 2 am seems to be the high risk part of the evenings with consumption of alcohol.

**Mrs FINOCCHIARO:** I want to ask—and it was raised by Hospitality NT as well—this idea that any business can now give two complimentary drinks—your views on that changed?

**Mr REID:** Very concerned. As Hospitality NT mentioned it seems to be a deregulation of the process where venues, clubs and pubs, hotels et cetera are now highly regulated and it seems to be a very odd approach. I am concerned about situations, as I have mentioned in my submission, where pop-up food vans may start giving away two complimentary drinks on the foreshore and only adding to the problems of antisocial behaviour.

**Mrs FINOCCHIARO:** It is not just complimentary they can sell two drinks as well without a licence.

**Mr REID:** Every market stall at Mindil beach ...

**Mrs FINOCCHIARO:** Yes. Like you said Casuarina Shopping Centre. Really, it is giving greater access and normalising alcohol every purchase point. I will buy a new dress and have a drink of wine; I get my hair cut and I have a drink of wine; I get a donut and I have a drink ...

**Mr CHAIR:** It poses the question, would you support what the hospitality would say—a simple permit system for that?

**Mr REID:** I think that may be a sensible proposal. The devil is in the detail.

**Mrs FINOCCHIARO:** Obviously risk base licensing is going to have a huge impact on everyone—like everyone's costs are going up—and then you have this opportunity for businesses to diversify essentially without any cost of regulatory framework.

**Mr REID:** Any costs or any requirement to have personnel trained in responsible service of alcohol.

**Mr CHAIR:** That is it from me. Is there anyone else?

On behalf of the committee Russell and Kent we thank you for coming in and thank you for your submission.

**Mr REID:** I would just quickly like to once again thank the ARIT team for their ongoing work and their ability to work openly and frankly with each other. Thank you very much.

**Mr CHAIR:** Thank you.

### **Retail Drinks Australia**

**Mr CHAIR:** On behalf of the committee—myself, Kate Worden, the Member for Sanderson; and Lia Finocchiaro, the Member for Spillett—we thank you for coming before the committee today and to this public hearing into the Liquor Bill 2019.

I welcome to the table to give evidence to the committee Ms Faye Hartley, Board Director of Retail Drinks Australia; and Mr James Coward, Director of Policy and Communications for Retail Drinks Australia.

Thank you for coming before the committee. We appreciate you taking time to speak to the committee today and we look forward to hearing from you both. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee do apply.

This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private.

For the record could you please each state your name and the capacity in which you are appearing today and then if either one of you would like to make an opening statement that would be great too.

**Ms HARTLEY:** I am a board member of Retail Drinks Australia and I also own Stuart Park Corner Store. I run the Northern Territory Council of Retail Drinks Australia, previously Liquor Stores Association NT.

**Mr COWARD:** I am the Director of Policy and Communications at Retail Drinks Australia.

**Mr CHAIR:** Would either of you like to make an opening statement?

**Mr COWARD:** Yes, thank you Chair. On behalf of Retail Drinks Australia, which I will refer to as Retail Drinks from this point on, I would like to thank the Northern Territory Economic Policy Scrutiny Committee for the opportunity to present evidence at today's public hearing in relation to the Liquor Bill 2019.

By way of background, Retail Drinks is the national industry body representing the interests of all off-licensees in Australia and consists of the previous state and territory Liquor Stores Association entities, including Liquor Stores Association NT which merged into a single, unified body in October 2018. In the Northern Territory, Retail Drinks represents a majority of all packaged liquor licences including both large chain retailers as well as small independent liquor stores, such as the one that Faye owns.

The retail liquor industry makes a significant contribution to economic and employment outcomes and generates a total industry revenue of \$13bn according to a recent IBISWorld report published in May 2019. Despite the forecast growth in the industry across Australia, Retail Drinks would point out that the economic conditions in the Northern Territory combined with the increasing regulatory creep associated with some of the measures contained in this Bill, will make it significantly harder for independent liquor stores to operate and remain profitable into the future.

Before elaborating further on specific sections on the Bill, Retail Drinks would like to stress its strong support of the Bill's overarching objective in terms of minimising the instances of alcohol-related harm. Retail Drinks however believes that this objective can be achieved without imposing unreasonable administrative and compliance burdens on licensees.

Whilst Retail Drinks welcomes several of the changes which were made to the exposure draft of the Bill, there are still several elements of the Bill in its current form which our members remain concerned about. As previously raised in Retail Drinks' written submission, both in response to the exposure draft and during the scrutiny process, we would like to draw the committee's attention to two key sections of the Bill in particular which we believe are most problematic for licensees: that is clauses 146 to 148, which discuss the requirement for harm minimisation audits; and clause 105 of the Bill on the requirement for licensees to provide quarterly alcohol sales data.

We believe that both of these clauses, as they are currently drafted, may result in an unfair administrative and compliance burden being placed on licensees and as such, should be the consideration of amendments.

It is Retail Drinks' view that the inclusion of the harm minimisation audit framework is problematic in that it creates an entirely new set of obligations for licensees which go above and beyond those that are already articulated in the Act.

Retail Drinks would argue that imposing obligations on licensees for alcohol-related harm reduction measures represents an unreasonable burden given that they do not have control over an individual's behaviour once alcohol products have been removed from the licensed premises. Retail Drinks also expresses its concern at the very broad nature of the harm minimisation audits as described in the Bill which does not provide sufficient detail as to the criteria of the audits or the measurement of those audits.

This lack of specific detail creates a considerable degree of uncertainty and confusion amongst licensees, particularly as the Bill leaves open the possibility that they may receive an infringement notice as a result of a failed harm minimisation audit.

In Retail Drinks' view a licensee should only receive an infringement notice if they are in direct breach of the legislation, rather than as a result of an unspecified harm minimisation audit. In addition, Retail Drinks also draws the committee's attention to Section 105 of the Bill which compels licensees to provide NT Licensing with quarterly alcohol sales data.

Retail Drinks believes that there is no imperative for this measure, particularly since it was not included as a recommendation in the Riley review and that Licensing already has sufficient access to alcohol sales data which is provided by wholesalers both in the Northern Territory as well as wholesalers from interstate.

Much of this data which would be provided to licensing from retailers is already captured in that wholesale data, meaning that there is a considerable amount of duplication of this information. Should this requirement proceed, Retail Drinks believes that this will create a significant administrative and red tape burden for licensees due to the fact that many owners have different point of sale systems in place with various levels of sophistication.

The requirement to provide quarterly sales data may also result in a financial burden being placed on licensees as they may have to pay to upgrade their point of sale system in order to comply. This would compound the administrative burden that has already been placed on these licensees.

With respect to both the harm minimisation audit framework and quarterly alcohol sales data requirements, Retail Drinks would urge the committee to consider recommendations which would address the potential administrative and compliance burden that would be placed on licensees.

Whilst the major focus of our submission to the committee and evidence provided at today's hearing is focused on these two key elements, there are a number of other issues affecting the retail liquor industry in the Northern Territory which are being addressed through regulation rather than directly within the Bill.

Retail Drinks is also concerned that by including key issues such as the 25% cap and the external advertising requirements in regulation, means that they are not necessarily subject to the same scrutiny process had they been included in the legislation.

Retail Drinks thanks the committee for the opportunity to appear at this hearing and can provide further evidence on any of the comments raised in our submission.

**Mr CHAIR:** Thank you, Mr Coward. Very good. I will open it up to the members.

**Mrs FINOCCHIARO:** Thank you Mr Coward. I wanted to ask about the harm minimisation framework. When a licensee has a licence there are conditions they need to comply with as part of that licence. That is very clearly understood by the licensee. Is that correct?

**Mr COWARD:** Correct.

**Mrs FINOCCHIARO:** They are set out specifically. When it comes to the harm minimisation audit, this is then another layer of scrutiny over the licensee and has no understanding of the level of detail of it? Is that how it works?

You have your licence and those conditions which are very clear and therefore able to be complied with. Then you have an audit which is conducted by—who would be conducting that audit?

**Mr COWARD:** Licensing has the ability to delegate that to a specific person.

**Mrs FINOCCHIARO:** Yes. So then you have a person coming from licensing to your premises conducting an audit with an entirely different set of criteria. Is that right?

**Mr COWARD:** Yes that is correct. The first thing I would like to emphasise in my response is that the harm minimisation audit framework is an entirely new obligation so we have not seen it yet. We do not know precisely what it entails. The Bill goes into some detail in terms of describing what the requirements of the audit are however, they are vague and unspecific which is a concern we have on behalf on those licensees. They are not entirely sure of what they need to do to comply with the harm minimisation audit.

The other big concern is that they may be subject to infringement notices which the Bill leaves open the possibility for. We have suggested in our submission that perhaps an alternative to including a harm minimisation audit in the Act is to develop an industry guideline, which could be the subject of collaboration between industry and government, as to a best practice in harm minimisation guideline.

**Mrs FINOCCHIARO:** Would that be something like what they have done in New South Wales, this is on short-term closure orders for licensed premises? Something that sets out, so that everyone can clearly understand what the rules are?

**Mr COWARD:** I think the biggest thing to emphasise there is that the licensees would require clarity as to exactly what the harm minimisation audit consists of. At present, the Bill does include various provisions as to what is entailed in that audit. Sometimes it refers to it in a very unspecific way, whether employees 'properly perform their duties', for instance, was one of the criteria mentioned in that section.

We have suggested that the wording could be tightened to say 'performed their duties in connection to the service of alcohol', which would then relate more specifically to their obligations as a licensee, which they are already required to do. We are concerned that the harm minimisation audit framework would essentially impose a layer that goes above and beyond what they are already required to do and, as it stands, they are not certain as to what those requirements would be.

**Mrs FINOCCHIARO:** Can an infringement be issued to the licensee for breach of the audit?

**Mr COWARD:** As it stands, the Bill does allow for that. It does go into a bit of detail as to what the actions are, after a harm minimisation audit. One of the outcomes could be a formal warning, but it also does not specify if there is an escalation of action.

It says that the Director has the ability to follow any one of those four or five different actions. One of them is a warning, potentially it is an infringement notice. We are concerned that the infringement notice will have a direct financial impact in terms of what the licensee has to pay under the risk-based licensing framework. You have a situation where they are being subjected to an audit—which they are not certain about to begin with—and then potentially having to pay significantly increased licensing fees because of the outcome of that audit.

We would welcome clarity in the Act, as to exactly how the harm minimisation audit framework would work, so licensees have a very clear understanding, at the outset of that audit, what they are required to do as opposed to something that is vague and not entirely specific.

**Mr CHAIR:** James, I have the Bill here. Section 146 goes through the scope of the audit and a number of areas. What you are saying is you would like that teased out more?

**Mr COWARD:** Yes. We would like it to be more specific in terms of the exact description. We have included some suggestions in our submission as to how we think that might be achieved.

As I mentioned before, there is a clause that relates to how employees perform their duties. That could reasonably be understood to mean anything in connection with their employment as opposed to their service of alcohol, which is what the harm minimisation would require. We would want all the sections to be specifically linked to harm minimisation and articulated in such a way which leaves the licensee without any doubt in their mind about what they are required to do.

**Mrs FINOCCHIARO:** If we look at section 146(1), as an example. The licensee:

*(g) ensures liquor is sold, supplied, served and consumed in a responsible manner ...*

If your store has complied with its licence and RSA and sold a six-pack of beer to someone and that person leaves your shop, how would you then comply with section 146(1)(g) which would be around consumption in a responsible manner?

**Ms HARTLEY:** We would have no idea. Once they leave our premises, whether by vehicle or walking, we have no idea what happens after that. The compliance in that issue would be difficult for us.

**Mrs FINOCCHIARO:** You could be infringed on it?

**Ms HARTLEY:** Yes. Again, a lot of our small corner stores are beside parks or playgrounds and people who regularly drink in those parks, there is no guarantee that where they have bought that is my store, or anyone's store. This has been proven on a number of issues.

I would also say that stores are responsible. If we see drinking in our parks, we ring the police and tell them that is going on. We are very conscious of harm minimisation and what it causes.

**Mrs FINOCCHIARO:** Even (m) says:

*... reduces or limits increases in anti-social behaviour and alcohol-related violence.*

**Mr COWARD:** It goes back to what the previous witnesses were saying that the devil is in the detail with some of these clauses within the harm minimisation audits and obviously the licensee can do everything in the best of their ability to ensure that the alcohol is sold and supplied in a safe and responsible way but once that is removed from the premise they do not have any control over that once they have taken it home.

**Mr CHAIR:** Acts are usually written fairly broadly and then broken down in to regulations and then operational manuals which is what you are talking about.

**Mrs WORDEN:** I feel like I am going to be the opposing person today but I have a question about the 25%—and Faye, you have been vocal about that and that is great, and I am glad that you are here today, particularly because of that.

Obviously Riley put in 15%, the government is looking at 25%—the concern is that these are corner stores. They are not alcohol outlets, if you like, their business is not alcohol; however, we understand that around Darwin there are a number of stores that you could mistake for alcohol outlets. I can think of three just off the top of my head that actually look like alcohol outlets, so this question also goes to the advertising part as

well, because some of the corner stores currently look like they are liquor outlets. When you go in there is very few offerings besides alcohol.

In terms of that, the intent is to change that landscape—and there are stores that are not like that. Do you have any alternatives other than what is being proposed by government to fix that sort of approach by corner stores that are not necessarily in the same way of thinking as you are?

**Ms HARTLEY:** The government in their current Bill and regulations has had the ability to fix that for a number of years with ancillary to sale, which is how our alcohol has always been. I know the stores that you are probably referring to and I could probably name a few pubs that are in that same category that just sell alcohol willy-nilly and disassociate themselves from the BDR or use their own licence at times has been reported to me.

However, the government has the ability to close them down. If they are not ancillary to sale they can fine them, they can do all of these things that they have been able to do for the last 30 or 40 years. It is not a new thing. When I have spoken with the Minister and ARIT everybody says the same thing. We know these number of stores—why have they not done anything about them in the past?

**Mrs FINOCCHIARO:** It is an issue of enforcement—if successive governments have known there is a problem why is there not an enforcement of ...

**Ms HARTLEY:** Yes. As you are saying, if the alcohol is the predominant factor within that store obviously their sales have to be predominantly alcohol so where is the ancillary to sale and why is that not being upheld?

**Mrs WORDEN:** Can you estimate how much of a percentage of sale it might be in your store?

**Ms HARTLEY:** I can actually tell you exactly what mine is.

**Mrs WORDEN:** I am interested.

**Ms HARTLEY:** Twenty-three per cent.

**Mrs WORDEN:** So you still come under the 25% cap.

**Ms HARTLEY:** I do. Yes. I am unique in as much that I have also had a TattsLotto agency. A lot of the other corner stores do not have that. If I did not have that I would be over. I would probably be between 30% and 35%.

**Mrs WORDEN:** You do not think that is unreasonable 30% to 35% given that you are a corner store?

**Ms HARTLEY:** I am a corner store. I am well-respected within my industry and I am very vocal about people that do not comply. I have a few licensing people that actually come in to my store all the time. I am their local. That is how we survive of being good public servants basically. We serve the public and we provide a safe environment and that is why we get the return business of all our community. That is what keeps us viable against the other bigger pubs and clubs and everywhere else.

**Mrs FINOCCHIARO:** It helps you be able to sell the bread and the milk and those other things.

**Ms HARTLEY:** We have a 'no shoes, no shirt, no ID, no service' policy and we abide by that. Anybody that smells of alcohol does not get served in our store. If I find any staff that do, they are brought into the office and given a strict talking to. However, if someone comes into our store and they comply with the regulation and they buy alcohol and if we see them walk outside and go over to the park, we immediately ring the police. It is the same as if we see anybody in the park that is drinking alcohol and we know it does not come from our store because of the branding, we ring the police. We are constantly talking to the police.

**Mrs WORDEN:** If somebody comes back 10 minutes later and repurchases—are you looking for behaviour like that as well?

**Ms HARTLEY:** Yes. If somebody comes back in half an hour and repurchases, we basically say, 'I am sorry, but I cannot serve you'.

**Mrs WORDEN:** I suspect you are unique.

**Ms HARTLEY:** No, there are a lot of us out there that are genuine about how we run our businesses.

**Mrs FINOCCHIARO:** It is an important question though. If there is provision for enforcement, what is going wrong? Is Licensing not adequately resourced? If people are doing the wrong thing, they should be targeted, and people who are doing the right thing should be able to run their business freely.

**Ms HARTLEY:** Precisely. Going back to the licensing that we are all going to have to pay and they have put us as a risk the same as Discovery Nightclub. Go figure that. They run until all hours of the morning and we all know what happens when they pour out onto the street at night or in the morning. We close at 8 pm. We have the ability to close at 10 pm if we want to but we close at 8 pm because of the current economic climate. It is pointless staying open any later because we just cannot afford the wages and the people coming through the door after they have brought their meals and things for dinner do not come back. In better times in the past we have opened later but currently we do not.

**Mrs WORDEN:** Thank you. I feel a bit 'anti' today but it is good to have an opportunity to ask someone in the industry directly.

**Ms HARTLEY:** They are fair questions. I have worked in Katherine; I have had a store in Katherine—although it did not have a licence—for 10 years and then 13 years in Stuart Park so I have seen it go up in the economic climate and I have seen it crash in the last two years. It is a hard economy and to impose us now with further regulation and more money that we are going to have to spend on licensing, the opportunity to get discounts is minimal. It is going to be hard and for those stores that do not have a point of sale system that I have, they are going to find it very difficult to comply with all of this reporting that we are being asked to do.

**Mr CHAIR:** Would you see any benefits in providing quarterly reports though? Would there be any benefits?

**Ms HARTLEY:** No.

**Mr CHAIR:** None at all?

**Ms HARTLEY:** Licensing and the government have implemented any number of—we would all remember we had to write down if you were going to spend over \$100, had to write down your name, address and where you were going to drink it. The amount of comments for that were hilarious but not one of those pages was collected. None, throughout the industry. There are probably another two in there. Nothing was ever collected.

I have to question quarterly. They get wholesale sales data now and now with the new legislation, if you are bringing alcohol in from interstate, you have to be registered with the Northern Territory Government to do that. They are going to get that as well. They are also going to get consumers like yourself that might buy online, they are going to get that information as well.

They are going to be swamped with information and I do not see the point of quarterly figures when they already get the wholesale figures.

**Mr COWARD:** The benefit of providing quarterly alcohol sales data from the licensees is negated by the fact that the information from the wholesalers is already there. There is no additional benefit to be gained by having duplicative information. If you refer to the submission we have provided, there is no other state or territory which requires it from both the wholesaler and the licensee. There are some states that do not require any alcohol sales data reporting. Some that require it from the wholesalers, Victoria is an example. There is no state or territory which doubles up in having that data coming from both of those sources.

That is of significant concern to the licensees, particularly those that do not have an electronic point of sale system to record that data. As I referred to in my opening statement, there is a financial cost in having to upgrade their systems to comply with that requirement.

**Mrs FINOCCHIARO:** Do you have any information around what the cost is to comply with that provision alone? Either in man hours or upgrading systems.

**Ms HARTLEY:** I recently changed my point of sale system so I can tell you exactly what it cost. It cost \$38 000 for a two-lane system.

**Mrs FINOCCHIARO:** Wow. Will that allow you to report automatically? Is that the benefit of it?

**Mr HARTLEY:** That is the benefit of that. Depending on the detail and how much time I would have to spend. It is all time factoring. In the current economic climate I have gone from being part time in my store back to being full time, working six days a week and 11 hours a day.

**Mrs FINOCCHIARO:** Yes, \$38 000 is a huge investment.

**Mr HARTLEY:** It is. I have had to let go three staff in the last 12 months. That is the economic climate. To ask a small business to invest that money they do not have like I do—like has the TattsLotto to keep me within the categories that I need to be—they are going to find it really difficult. If they had to do it manually it is a nightmare.

**Mr COWARD:** Another point worth raising in relation to that question is that under the current wording of the Bill in 105(2)(a) it says it has to be in an approved form. The licensees are unaware as to exactly what that approved form will look like. It is possible that it will mirror what the wholesalers already have to do but as of this moment, we are not certain as to how the data will be provided and handed over. There is another layer of uncertainty there that the licensees are having to contend with.

**Mr CHAIR:** Great. I do not have anything else. Mrs Worden? Mrs Finocchiaro?

**Mrs FINOCCHIARO:** No.

**Mrs WORDEN:** It is more on a conversational type of vein. Do you accept that some of the corner stores have an increased potential versus—you have made the statement about pubs and clubs but every drink that somebody is having in a pub or club, they can be seen directly how they are being affected. When they come into a corner store or even a bigger retailer—I am not lumping you together because there is a different case and we should be considering them very differently. Do you accept that there is potential for harm in that?

Anybody who has been in the Territory a long time has seen some of the transactions occur in bigger and smaller stores that are contributing to harm. I am interested in your view. Whilst you might be doing exactly the right thing, there are others in the current layout and regime that might not and the potential for harm coming out of small corner stores is there.

**Ms HARTLEY:** It is but in no greater degree than any other place that sells alcohol. If you took alcohol out of corner stores we would all go broke. We all bought our stores and paid money for these stores. We bought them as a mixed business. My business has been operating since the 1950s and 1960s. It has been there a long time.

Katherine, Tennant Creek and Alice Springs with the restrictions that were brought in there. It is the balloon effect. You squeeze down there and we increased our antisocial behaviour up here. It is well documented that there is a lot more antisocial behaviour in Darwin since those legislations and laws have been brought in. That will happen in the same way with taking alcohol from one spot. It just moves it to another.

If you have a look at a lot of the corner stores you will see that we self-regulate. I do not sell two litre casks or fortified wines of any sort. Under the MUP we do not sell anything under \$11, not even \$10 or \$9.50 or whatever you can do. Ours is \$11. We try to be good citizens and try to comply with everything that we can. It is like everything and every industry, there are bad elements.

The complexity of the legislation and what you are doing is just putting an unfair burden on people who are doing the right thing. It makes it harder to operate because we have to find where we are going to be hit with a \$2200 licensing fee. I comply with all the regulations because I have CCTV and all the other things so I can comply but some of the smaller shops that do run a very good business—the mum and dad shops—they do not have all of those things so they are going to be hit with that amount of money and they have to find it from somewhere and it is very difficult.

**Mr CHAIR:** Thank you. We are out of time, Faye and James. We have read your submission.

**Ms HARTLEY:** Thank you for hearing us.

**Mr CHAIR:** If we have any other questions we will certainly come back to you. On behalf of the committee, we thank you for coming in today.

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The committee suspended.

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**Foundation for Alcohol Research and Education  
People's Alcohol Action Coalition**

**Mr CHAIR:** On behalf of the committee, which is myself, Mr Tony Sievers, the Chair; Mrs Worden, the Member for Sanderson; and Mrs Finocchiaro, the Member for Spillelt. We welcome everyone to this public hearing into the Liquor Bill 2019.

We welcome to the teleconference to give evidence to the committee the following representatives from the Foundation for Alcohol Research and Education, Michael Thorn the Chief Executive Officer, Meredythe Crane the Research Manager and Trish Hepworth, Director, Policy and Research. From the People's Alcohol Action Coalition, the PAAC, Ms Vicki Gillick, the Policy Coordinator.

Thank you for coming before the committee, we appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Before we start could you each please state your name for the record and the capacity in which you appearing here today. Thank you. I will hand it over to you, Mr Thorn. Would you like to go first?

**Mr THORN:** Michael Thorn, Chief Executive Officer for the Foundation for Alcohol Research and Education.

**Ms CRANE:** Meredythe Crane, Research Manager at the Foundation for Alcohol Research and Education.

**Ms HEPWORTH:** Trish Hepworth, Director of Policy and Research for the Foundation for Alcohol Research and Education.

**Ms GILLICK:** Vicki Gillick, Policy Coordinator for the People's Alcohol Action Coalition, PAAC, in Alice Springs.

Thank you for inviting us and I am sorry we are not there in person. The phone does not lend itself to disclose much clarity but we will do our best. Thank you for inviting us to have input into this stage of the bill which is a very important one.

PAAC as you probably know because you have read the submission is a long standing Alice Springs based community alcohol reform group and lobby group. It is an advocacy group which was formed in 1995. It provides a platform for community action to try to reduce alcohol-related harm. It is not a prohibitionist group despite sometimes being described in that manner. It accepts that alcohol is part of the community and pushes for responsible drinking, supply reduction and harm minimisation.

FARE is an independent and not-for-profit which works to reduce or stop alcohol-related harm. FARE supports all the research and advocates for evidence based policy as does PAAC.

We all know that the NT has the highest levels of alcohol consumption and alcohol-related harm in the country.

We all know that the NT has the highest levels of alcohol consumption and alcohol-related harm in the country which puts us ahead of the rest in a very unfortunate manner. That costs us very dearly in terms of health, the justice system and other social and economic impacts.

We have started to see some very substantial reductions in alcohol-related harm due to the current commitment to a comprehensive program to address alcohol-related harm including some measures and stages hinted at that exist in Katherine, Tennant Creek and Alice Springs which do not operate in Darwin. The Liquor Bill 2019 and the introduction of risk-based licensing are the biggest reforms still to be completed from the Riley review and we need those to cement the reforms coming from that review and to, as Riley the former Chief Justice said, to rewrite the very messy current *Liquor Act*.

The government is really acting on its responsibility to protect NT residents from alcohol-related harm and violence, child neglect, injury and chronic disease. We can do with a lot less of that in the NT. Just on that, I was very—I know we have raised some issues from others; I was very interested to hear Faye say that it was well documented that the social problems had moved to Darwin because of measures in the other three regional centres. I think there is no documented evidence of that and that is a nonsense argument. I would like to see that documentation.

There are some improvements in alcohol-related emergency presentations in Darwin at the moment and other factors are starting to come out even though they do not have auxiliaries outside the bottle shops, they only have the floor price and some other measures.

How do you want to proceed now?

**Mr CHAIR:** We have read your submission and there are some key things that you want to offer to make the bill better. Do you want to go through those key things?

**Ms GILLICK:** Yes, it is pretty straightforward I think. The bill is long and comprehensive and it will be interesting to see how it works once it is in place of course because that is when you will really find out. We are very keen to have a definition of harm in the bill. The main purpose of the bill of course is to minimise harm associated with the consumption of alcohol. To have an understanding, a broader description of what may include alcohol-related harm would be useful just as a general explanation for the public that we are not just talking about liver disease and car accidents, we are really trying to remind people and the Liquor Commission when they are dealing with such matters, that there are these types of harm. It would sit well with that overarching purpose of the act which is to minimise that harm.

There are some other technical issues in there about the transfer of licence which we had some discussion with ARIT about and we do not think it is very clear. It is not clear that section 55 the fit and proper person test applies to transfer of licences. That is something we would like to see fixed up. Similarly with section 71 reference to form really, but it is slightly confusing and seems superfluous. We would like that clarified. I think we have made it clear and obvious how we would like that clarified.

The inedible substance issue, we are very happy that there has been an attempt to include it and address it. They can be an issue, but we would like to see that it go a bit further, to see some regulation that would allow for a framework.

We do not think that the voluntary actions by the retailers differ greatly, some cooperate some do not—we have seen it in Alice Springs. We have had instances earlier this year, as I think we have mentioned, with methylated spirits. We do not see any reason why we cannot amend the *Medicines, Poisons and Therapeutic Goods Act* to have a similar regulation for methylated spirits. It is actually more of a problem in Alice Springs at the moment than mouthwash. We would be keen to see a little more done on that, at least to allow for regulation of those substances.

We mentioned the issues relating to restraints on community objectives and harm minimisation audits. We support the harm minimisation audit by listening to some of the other representatives, I can see that some of the wording might be clarified. I think they are possibly being a bit disingenuous if they are worried about take-away retailers getting infringement notices about consumption, if it is off the premises.

I cannot see that it would stretch to that. I can see, in relation to employees, how that might work. It is not a system that operates elsewhere, not on my reading of other legislation. Other places do not have the level of alcohol-related harm that we have seen in the Northern Territory—I have seen, I have lived there since 1978. I think desperate times call for different measures.

We have been the lead in the alcohol-related harm, death, injury, disease and traffic accidents to date. I think it would be good to be the lead in other respects. It spot check, while it might be different to what happens in other jurisdictions, it is going to be a way of keeping retailers and licensees on their toes. Yes the wording

probably could be a little clearer in a couple of those sub-clauses, particularly about employees et cetera, but we reject the argument that it should go.

The days of free-for-all in the NT have to go. You cannot get a licence out of a 'weeties' packet, a liquor licence is a privilege, it is not a right. That mentality has to go.

We are concerned about community objectives which might be dealing with, for example, a Woolworths or the Dan Murphy's application, and the resources. In any future review of the act, we would like have it looked at, if it is an issue, with these changes it might not be such an issue. Certainly, there would be a greater onus on the applicant, under this new regime. Community objectives could be in a much weaker position, resource-wise, than a big corporate licensed applicant.

This is something which people will cry retrospectivity I suppose. We would like to see that from the date of the passage of the bill, rather than when it comes into force, that applications which are currently in, would lapse.

This is a way of saying, you need a clean break, you need to start applying the new legislation; otherwise, you are in a position where you are going to be operating under two different versions of an act. We have mentioned a precedent for that, which is a Queensland precedent, so it would come in to force and new applications would be considered.

It would apply when it is on passage and new applications will be considered under the new legislation from the day it comes the day it is passed.

We would not want to see applications going in in that interim period—I do not know how likely that is. We have a moratorium on takeaway licences anyway at the moment but we would not want to see applications going in in an effort to avoid the forth coming act.

**Mr CHAIR:** We have about 10 minutes left so I might open it up to the panel to ask a few questions.

Most of the panel understand but I have a couple of questions, Vicki.

**Ms GILLICK:** Okay, and there are a couple of other things we would want to address.

**Mr CHAIR:** You have recommended and you just spoke about a community defenders office being set up and funded to support the community in relation to licensing matters. How will you see that funded and how would you see that operating and set up?

**Ms GILLICK:** I am not looking at our original submission in front of me at the moment but that would be looking to be publicly funded as are other defenders offices which are not necessarily focused on alcohol. You have environmental defenders office and others set up for other causes—would be publicly funded, maybe from risk-based licensing fees, except they are not going to be a very big revenue raiser, as we know.

We know that money is tight in the Territory for the government but we would argue that this would be a good investment where you would—it would not necessarily have to be just alcohol licences, a community defenders office could deal with other matters potentially—be there as a community resource, a community advocate for other issues, but certainly with alcohol.

We mentioned the sum of money in there—I cannot quite recall—I think it was a few million over a few years which might sound a lot but if you are dealing with liquor applications for example such as Woolworths or Coles the general community should have the right to an informed good advice and be able to respond.

**Ms HEPWORTH:** If we could add in to this—one of the big things about the community defenders office is that it recognises the inherently unfair platform in which all of this operates. What happens when you have somewhere like a Woolworths or a Dan Murphy's—it comes in to make a licensing application they have a vested interest in getting an outcome because they are going to be able to fund all of these application out of the millions of dollars of profit that they will be making in subsequent years. Whereas the community groups, the people who are living in that community the vulnerable communities are suddenly facing up against multi-million dollar legal teams and vast corporate resources with nothing much except the knowledge of the harm and the concerns of their local community.

What the community defenders office tries to do is level that playing field enough so that when things appear before the Liquor Commission we can have quite a balanced discussion about things honestly. Otherwise

we just do not have the resources because the profits from this business do not flow through to the people who potentially are being affected.

**Mr CHAIR:** You have recommended that the requirement to notify a licensee in writing of harm minimisation audit be removed. However, this could have a considerable adverse impact on a licensee's business if, for instance, it occurred without notice at a particularly busy time or when a special event was planned for the venue.

How would you regard a compromise around that?

**Ms GILLICK:** I might pass over to Ms Crane to for a brief answer if we only have a minutes. We had a lot of discussion about this and we came down on the side that if you are having a spot check, what is the point of writing to someone to tell them that you are about to do it?

Ms Crane that is about it, in a nutshell. Is it?

**Ms CRANE:** Yes that is right. The issue is about giving them warning that an audit is going to occurring. If they understand the issues around an event being conducted. The Liquor Commission or NT Licensing is able to arrange their timing so that perhaps it is not going to be at those likely times, like on a Saturday night when there might be an event occurring.

If you are giving the licensee notice of an audit about to occur then you are broadcasting that it is happening and is giving them an opportunity to make all sorts of changes. What the audit should be doing is seeing the venue in its ordinary practice so that you can see whether they are adhering to the requirements under the act and have gauged and embraced harm minimisation activities. If you warn them that you are going to do an audit then anything they might be doing that does not fit under that act could be changed prior to the audit being conducted and therefore the purpose of the audit is lost.

**Mr CHAIR:** I am thinking the spot checks are usually done by the inspectors.

**Mrs WORDEN:** And they give them notification.

**Mr CHAIR:** They give them notification as well. I am not sure they turn up.

**Ms GILLICK:** This is in addition to the powers of licensing staff. It is aimed at checking on the harm minimisation aspect. If that is a satisfactory answer we did want to raise that there are a number of parties, we have been tuning in, who are objecting to doing the quarterly retail returns.

Our (inaudible) of negotiating with the clubs that they will be out of that. That is disappointing. I can see that it is going to make a bit more work for them but we are at the stage where we have major reforms coming in. The government has announced the funding and contracts for evaluation. The industry expresses its keenness to have changes properly evaluated and we argue from an evidence based point of view, both PAAC and FARE.

Collecting the retail as an addition—we are lucky in the NT that at least we have the wholesale figures, some jurisdictions have brought that in in recent years and a lot do not. It is an area where we at least have that although the time lag is pretty shocking when we get them. Hopefully there is work going into that.

To collect the retail quarterly returns and provide those will allow so much more information on not just how much alcohol but where it is going in the community and who is supplying it. We would not get the names of the retailers individually but it will give government—I do not know how they are going to evaluate it now if it is true that the wholesalers do not have to do those retail quarterly returns, how are we going to get the information to thorough and rigorous evaluations?

We are disappointed to hear that ARIT has negotiated that because it leaves out a lot of—I am not having a go at clubs but they are a major player, they might support kid's sports and so on but are a major supplier of liquor in the NT. Cutting them out of those returns is not going to make some of the other outlets very happy and we think it will greatly impinge upon getting that detail.

**Mr CHAIR:** Yes.

**Ms CRANE:** Could we just add one other thing—from the other people we have heard from this morning. We would like to echo the industry concerns about the ability for non-licensed venues to give away up to two

complimentary drinks without a liquor licence. To be honest, it has been heartening to hear the industry talk about the fact that they recognise that giving away or selling alcohol has a lot of responsibilities around it, it is a privilege.

We completely agree that in order to be able to serve people with alcohol, you should have a licence and you should have to go through those restrictions which we have in place and to be able to do without a licence risks undermining the entire harm minimisation program.

**Mr CHAIR:** Thank you.

**Ms GILLICK:** We are still waiting on the details of the risk-based licensing regulations and the grocery cap. We have made submissions on those previously, but we have not included it here because we still do not have the final detail on that.

**Mr CHAIR:** Alright. We might wrap it up there, unless anyone has further questions. We appreciate you have added those points this morning. If you have any other clear points you want to add, we are happy to receive them after this hearing.

**Ms GILLICK:** Thank you for inviting us, again sorry we could not be there in person. We are genuinely very much looking forward to seeing this new legislation, with our suggested alterations where possible.

**Mr CHAIR:** It has been very helpful, thank you for dialling in this morning.

### **NT Branch United Voice**

**Mr CHAIR:** On behalf of the committee, which is myself, Mr Tony Sievers, the Chair; Mrs Worden, the Member for Sanderson; and Mrs Finocchiaro, the Member for Spillett, we welcome everyone to this public hearing into the Liquor Bill 2019.

We welcome Ms Erina Early, Branch Secretary, NT Branch United Voice to give evidence to the committee. Thank you for coming before the committee, we appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website.

A transcript will be made for use of the committee and may be put on the committee's website. If at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Before we start could you each please state your name for the record and the capacity in which you are appearing here today. Thank you.

**Ms EARLY:** Thank you. Branch Secretary of NT Branch United Voice.

First, I would like to thank the committee for permitting me to appear today. As you are aware we did not actually put in a submission, so I really appreciate you allowing me to appear.

I am the Branch Secretary of United Voice Northern Territory and we are the union that represents hospitality workers, specifically the workers who serve and sell alcohol under the legislation. I am actually from hospitality background. I have 18 years in hospitality and I was a licensee in the UK for 10 years as well. I actually understand the pressures of licensees also the reasons why that there is changes to the *Liquor Act*.

I also wish to acknowledge that United Voice NT branch supports the submissions of Hospitality NT—I just wanted that for the record.

As you are probably aware, most workers who are employed to serve or sell liquor in the course of their employment currently are subjected to already 10 ongoing offences under the act and now have been transferred over to the new act—which I am not going to go in that much detail—but clause 128, which was the old section 31A; clause 136, which was the old section 102; clause 138, which was the old section 121; clause 226(2), which was the old section 120Y; clause 251, which was the old section 101ZN; clause 280, which was the old section 103; clause 281, which was the old section 105; clause 284, which was the old

section 106BD; clause 296, which was the old section 106B; and clause 300(2), which was old section 106CA.

The reason I have highlighted those is there is already 10 ongoing offences for workers who sell and serve liquor under the legislation and considering most of these workers are considered unskilled by industry standards and also by the Fair Work Commission which is reflected in advocate wages and conditions in the hospitality and club awards and also as well prevalent to the constant tax and reduction of their penalty rates.

United Voice's concern that these workers have considerable offences under the current act and now with the proposed act expansion of criminal offences that staff are liable for specifically clause 96—the payment for liquor which make a worker liable for a maximum of 100 penalty units and clause 202, employee intentionally sells to an intoxicated person, maximum 200 penalties units—this is in addition to clause 136.

This brings it now to 12 criminal offences that workers are liable under this proposed act and it is pretty significant for poorly paid workers who earn less than 50 000 per year, if they are lucky. Our concern is how can a low paid worker, if they contrive the act, be expected to pay an offence of this nature? If I had my way I would be of the view that no worker should actually have a penalty attached to them because the employer is liable for their actions. Nonetheless, has there been a consideration of the committee for a layered offence structure for individuals and organisations similar to the *Fair Work Act* regulations and other legislations in the Northern Territory? Or you have an individual one which is smaller then you have like an employer or organisation penalty unit.

At the end of the day the employer is liable for their actions. I will give you an example, the UK have different legislation requirements but anything that happened in the UK is that the licensee was responsible—drink spiking—you are responsible. If there is an assault on the premises or if you serve an intoxicated person, you were liable. One of the hardest things that I had to deal with when I was in the UK is when my friend was a licensee and a bomb went off in his pub. He went to prison. Two people were killed but he was liable because he did not provide a safe and secure place for someone to go on their premises.

I am not saying the committee should have something that extreme but in the UK, I was basically liable for everything. I had to make sure my staff were correctly trained and ensure that they knew the legislation as well. We were also quizzed in the UK when we went to go for a licence. You had to know the legislation off by heart and if you did not answer every single question for the judge or the magistrate, you did not get your licence. Interesting how things were done there. It is very important that the employer is liable for the actions of the employee and it should not solely be on the employee.

Has the committee considered that some workers are forced to breach the current act? We know many examples and unfortunately I was trying to get some workers to appear but they were concerned about the consequences of appearing. I am not saying this happens regularly in the Northern Territory, but we have had quite a few examples especially if there is a regular and they bring in a certain income. A licensee knows how much a person brings in for their profits.

Where you have regulars and you know they are going to be spending \$50 or \$100 a day or how much they will spend in a week. We have workers ring us and say that they have been forced to serve a regular because they are intoxicated but you cannot stop them drinking because they always stay a certain time and they are going to leave in an hour and we will lose money if we ask them to leave. They could go elsewhere. That is a concern for us that people can actually be forced to breach the act.

I also wish to highlight a concern similar to the Hospitality NT submission with the current structure and the potential duplication of offences with different thresholds contained in the proposed clauses 136 and 282 with regard to serving an intoxicated person. Clause 136 makes it a strict liability offence so there is no need to prove recklessness to serve an intoxicated person yet this same person could foreseeably be captured by clause 282 when the person intentionally sells or otherwise supplies liquor to a person who is intoxicated.

We are asking that the committee seek confirmation from the department as to when they say it is envisioned that a person will be charged under clause 136 as opposed to clause 282. We see little point in dealing with the subject of service as opposed to sale or supply in a different way in these clauses. We submit it would be better if clause 136 just dealt with selling or supplying someone that is reasonably believed to be on the Banned Drinker Register and clause 282 stood as to regulate the selling or otherwise supplying liquor to an intoxicated person.

If you read the two sections as they currently stand, a worker could be charged under either section with serving liquor to an intoxicated person because that would come within the normal meaning of otherwise

supplies liquor. The only difference then would be that under clause 282 the person might also be on licensed premises but it is hard to imagine circumstances in which a breach of clause 136 may be committed other than on licensed premises.

We also note that 'serve' is not currently defined and should be clarified by returning to sell and otherwise supply in clause 136. We submit that the potential to capture the same activity under two similar offences with different thresholds, burdens of proof and penalties should be considered for amendment.

We also wish to share our concern on the non-emergency powers of the police. We refer to the Hospitality NT submission but also wish to express an additional concern in regard to what happens to the workers in the event of a suspension. If there is a suspension authorised by the Commissioner of Police, the workers' income is at risk as there is no obligation for the employee to pay workers if the licensed premises is closed.

Based on my understanding of the act there is no consideration of this act and could have industrial relation implications, especially for permanent employees. Casuals are different. Lastly, I wanted to for the committee to consider whether the government is looking at a significant education campaign on the final changes to the act.

The committee are required to consider the rights of the individuals impacted by the act, which includes the workers. It includes patrons as well and nominees who mostly are not the owners. They are employees as well. The committee also needs to consider the industrial relation impacts of the workers with the contraventions of the act. It will have serious implications for the workers, their livelihood, job security and the *Fair Work Act*.

The whole thing about this act is ensuring that it protects the workers. I do not feel that this is the case especially with the increased liabilities to the workers.

**Mr CHAIR:** Great. I will open up to the panel for any questions.

**Mrs WORDEN:** In order to get an RSA you need some training and that includes not selling to intoxicated persons. I am playing devil's advocate again today. They are trained to do the right thing but setting aside the pressures of an employer to do the wrong thing that could be demonstrated in a defence, what you are proposing is that those employees get that training and knowingly provide alcohol to an intoxicated person and there are no penalties for that.

Am I right? Is that what you are proposing?

**Ms EARLY:** I would prefer no penalty for the workers but I understand there will be penalties under the act. That is what I was saying about the structured ones so it is a smaller penalty compared to the employer penalty.

**Mrs WORDEN:** So you are not proposing no penalty. Serving alcohol to an intoxicated person knowingly goes against every bit of training that they should have been provided up to that point. It knowingly contravenes legislation, it is breaking the law. You are not proposing no consequences, you are proposing diminished consequences.

**Ms EARLY:** Diminished consequences. As I said my preference would not be to have any penalty but industrially they could lose their job because that is part of their job as well. Even if there was not a penalty under the legislation they could still lose their job because that is a breach of their employment contract where they are not allowed to sell liquor to intoxicated persons.

If that went to the *Fair Work Act* you would not get reinstated or compensation. That would be a serious misconduct. You could lose your job and entitlements like accrued long service leave under the legislation.

In regard to what you are saying about the RSA training. To be honest, for the RSA you can just go online and read it. It is easy to do. You just have to be registered with one of the organisations for RSA and there are hundreds of them which I find odd. We should be promoting local people to provide the RSA. I do not have an issue with online but I am of the view that if you are going to apply for a job where you serve and sell liquor then you should have your RSA before you are employed—like in ECEC you need to have your qualifications.

I did not mention in this but I would like to see a RSA register. So if someone comes in and they are saying they have their RSA, the employer can bring them up and say it is current. It is a bit like how union officials

for right of entry, you bring it up and it says 'Yes, Erina Early has her right of entry and it is valid'. Hospitality workers who sell and serve liquor have a very important job. There are the legal implications in regard to the *Liquor Act* and also as well for the continuance of their employment. Going back to what you were saying, Kate, even if there was not a penalty, there are huge penalties under the *Fair Work Act* as well.

**Mrs FINOCCHIARO:** Could I ask if United Voice was consulted at any point in the development of the bill?

**Ms EARLY:** No.

**Mr CHAIR:** There has been no consultation so far?

**Ms EARLY:** No.

**Mrs WORDEN:** Thank you for putting in a submission.

**Mr CHAIR:** Yes.

**Ms EARLY:** A verbal submission. It is still a submission

**Mr CHAIR:** No further questions from the committee?

Thank you for taking the time to appear before us this morning.

**Ms EARLY:** Thank you for allowing me to appear.

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The committee suspended.

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#### **Aboriginal Medical Services Alliance Northern Territory (AMSANT)**

**Mr CHAIR:** On behalf of the committee, myself; Kate Worden, the Member for Sanderson; and Lia Finocchiaro, the Member for Spillett, we welcome you here today to this public hearing in to the Liquor Bill 2019.

I welcome to the table to give evidence to the committee, Mr John Paterson, Chief Executive Officer of Aboriginal Medical Services Alliance Northern Territory or AMSANT; we also have Mr David Cooper, Manager Research, Policy and Advocacy, Aboriginal Medical Services Alliance Northern Territory; and Ms Daisy Burgoyne, Policy Officer of AMSANT.

Thank you for coming before the committee. We appreciate you taking time to speak to the committee today and we look forward to hearing from you all. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee do apply.

This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private.

For the record could you please each state your name and the capacity in which you are appearing today and then I will open it up for an opening statement from Mr Paterson.

**Mr PATERSON:** John Paterson, Chief Executive Officer, Aboriginal Medical Services Alliance Northern Territory and I will be appearing in that capacity today.

**Mr COOPER:** David Cooper, Manager, Research, Policy and Advocacy with AMSANT and I am appearing in that capacity.

**Ms BURGOYNE:** Daisy Burgoyne, Policy Officer with AMSANT, appearing in that capacity today.

**Mr CHAIR:** Thank you. Mr Paterson, would you like to make an opening statement for the committee.

**Mr PATERSON:** Thank you Mr Chair and committee members firstly for inviting AMSANT to present on this very important issue. I would like to acknowledge the traditional owners of the land on which we are meeting today, the Larrakia people, and their elders past, present and future.

AMSANT is the peak body for Aboriginal community controlled health services in the Northern Territory. AMSANT has been established for 25 years and has a major policy and advocacy role at the Northern Territory and national levels. We are an alliance of 25 members, providing comprehensive primary health care including alcohol-related services from Darwin to some of the most remote regions and communities in the Northern Territory.

Our sector provides care to approximately two-thirds of all primary health care to Aboriginal people in the Northern Territory. AMSANT has had a longstanding commitment to evidence-based alcohol control policies over many years. The NT consumes more alcohol per capita than any jurisdiction in Australia. We also claim the highest rates of alcohol-related hospitalisations.

AMSANT has been very supportive of the Northern Territory Government's alcohol reform agenda that has followed on from the Riley review here in the Northern Territory. The call for an evidence-based, public health approach to harm reduction is long overdue and is already demonstrating substantial reductions in alcohol-related harm.

On the whole, we support the intention of changes to the *Liquor Act* as the next step in the evidence-based reform process. However, we would like to emphasise to the committee today, the importance of responding to alcohol misuse as a health issue rather than a criminal one. This requires carefully ensuring that policing and enforcement powers are situated within a therapeutic framework.

Alcohol dependence is a medical condition that commonly impairs judgement, not just through the direct effect of intoxication but also through acquired brain injury which is very common in people with alcohol dependence.

Aboriginal people in the Northern Territory have high rates of alcohol abuse disorders and alcohol misuse. Contributing factors to this burden include dispossession, intergenerational, past and current trauma, poverty, entrenched socioeconomic disadvantage and the effects of racism and marginalisation. The over-incarceration of Aboriginal people in the Northern Territory feeds into and is a result of this cycle.

We must avoid the potential of overzealous policing of drinking in public spaces, to increase contact of people with alcohol problems and the justice system in a way which is discriminatory, disempowering and cause for further marginalisation. Effective and compassionate policing can support those with alcohol problems in accessing alcohol and other social services but unfortunately policing often results in a cycle of arrest and short term detention which can cause the factors that are driving the alcohol use.

Recommendations one to six of our submission set out our proposed responses to concerns relating to potential over-policing and discrimination. We make recommendations including the amendment to section 137 to make it an offence to refuse service of alcohol on discriminatory grounds and to mandate that courts consider a person's health and wellbeing before making a decision to apply an exclusion order.

We also recommend that all police receive training on the effects of acute and chronic alcohol misuse as well as medical conditions that can be mistaken for the effects of intoxication. We emphasize to the committee that the effective control of alcohol supply has strong evidence for both reducing harm to individuals who drink and those around them, and for improving community safety.

Recommendations seven to 12 of our submission deal with the regulation and licensing of the liquor industry. We suggest that the bill should be further strengthened by ensuring that community impact assessments include an evaluation of risk to the community in addition to benefit and that the government's proposed risk based licensing formula be strengthened by increasing base fees for high risk venues and removing discounting of licence fees altogether.

It is also our position that all political donations from the alcohol industry should be banned, as should all forms of alcohol advertising.

Finally, recommendations 13 and 14 of our submission call for strengthened harm prevention measures including a clear definition of harm and a provision to allow for the regulation of edible substances containing alcohol including mouthwash and essences.

We would be very happy to take questions from the committee. Thank you.

**Mr CHAIR:** Thank you Mr Paterson. I have a few questions but before I go, Mrs Finocchiaro or Mrs Worden?

**Mrs WORDEN:** I could not read this in your submission—it was a good submission—the area that you are exploring around the mental health and physical wellbeing assessments. Do you believe that would increase the number of people excluded or decrease the number of people excluded from accessing alcohol?

It was not clear to me what the intended outcome was for your organisation. I am not sure where it is headed because I am thinking in a practical sense and that is the only way I could think through what you were suggesting. It would allow more people to be excluded for a longer period. Is that the intent? I am not being critical I am just asking a question because it just was not clear to me.

**Mr COOPER:** No, that is not necessarily the intent but it is a statement about the fact that those factors need to be taken in to account and it reflects the issue around a therapeutic approach and addressing all of the needs of people who may be subject to provisions under the legislation. It is not necessarily saying one thing or another in relation to that but trying to ensure that there is proper assessment.

**Mrs FINOCCHIARO:** Was that a question about exclusion orders, Kate?

**Mrs WORDEN:** Yes. In the submission, and John just touched on it, it talks about almost an additional approach where people—it is an additional assessment almost, an overlay where people are ...

**Mrs FINOCCHIARO:** Or whether court consider health ...

**Mrs WORDEN:** Yes. I am wondering if that is a factor then people might actually be allowed a lesser period of exclusion which perhaps would not necessarily be a good outcome, or whether more people might be captured in such a process and there be more prohibition—it is not prohibition it is exclusion—I think the two are slightly confused and I am not sure the Liquor Bill is the right place for it but it is a process that you are suggesting—and I am not saying it is a bad process because I actually think where we are in the landscape of where people are—mental health, physical health—are often big factors. I am wondering where you think that might land?

**Ms BURGOYNE:** We have referred specifically to section 217 and in the subsection (3) which sets out a series of factors that the court has to take in to account when considering whether or not to make an exclusion order. What we are saying is that currently there is no subsection that states that the health of a person should be a factor that is taken in to account when making an exclusion order and the concern is that exclusion orders might be being made for people who may be engaging in particular behaviour, may have drunk and disorderly or whatever, due to a health issue and if the court is not picking that up then that is a real concern.

You are placing an exclusion order on someone restricting their movement without having assessed what is the root cause of that problem and I would suggest that we would hope that if a health concern was picked up through that process then that might be an opportunity to make referrals to seek assistance for that person through that process ...

**Mrs WORDEN:** As against varying perhaps the exclusion but there might be additional orders made around a person's—okay. That is what I was really unclear about.

**Ms BURGOYNE:** That is right.

**Mrs FINOCCHIARO:** I wonder if inserting what you are suggesting in to that would actually achieve that outcome. It is one thing to require a court to look at it, it is another thing to then have that positive response of referral. A court could through subsection (e) and (g) consider those matters but AMSANT's position is it would like it to be in there so that it is absolutely considered.

**Mr COOPER:** Etched in the act. Yes.

**Mr CHAIR:** In the submission you recommend that police receive training on the effects of alcohol misuse and how to identify non-alcohol-related medical conditions, like acquired brain injuries and how to administer brief intervention. Do you have any understanding of what police are currently doing in that space or if they are aware of those things?

**Mr PATERSON:** Personally, I do not but it is something that we are pursuing through the youth justice child protection area to make sure that there is a thorough check assessment done on those youths before hopefully determining sentences and penalties and those other court actions. In that process our member services, Danila Dilba, in Darwin and Congress in Central Australia both working very closely with corrections to ensure that we can provide those services or have a process of assessment in place prior to kids being appropriately dealt with and given appropriate penalties.

A very similar sort of approach and that can be incorporated into their—I do not know how long their police training is but surely we can get a day set aside in their training program and recruitment processes to have somebody—experts—come from either the Aboriginal community controlled sector or the Department of Health specialist services area to come and present and basically give an understanding of some of those things that people look for in terms of behaviour or asking appropriate questions to try to find out and lead to getting other referrals happening for that particular individual. I think there is capacity in that process. We are getting good traction within the youth detention space as I mentioned. I think it can be achieved.

**Mr CHAIR:** I think police training is six months. I used to run some of it many years ago so it was a good process. It may even be a cultural reason.

**Mr PATERSON:** Correct.

**Mr COOPER:** Part of the issue is being aware of what those possible factors might be and then feeling that you may need, as a police officer, to immediately seek an assessment to get the ambulance there or whatever.

**Mr PATERSON:** A case study that was recently undertaken in Western Australia, I think it was, around the number of kids that find themselves in trouble that suffered from FASD for example. All that had been missed because no one was looking for the symptoms by asking some basic questions that could have led to seeking more assessment and treatment on this kid.

**Mrs FINOCCHIARO:** In your submission, AMSANT raised concerns about the potential for discrimination. I was wondering whether this had been something that had come up a lot for AMSANT or whether you were aware of instances that had been filed under the *Anti-Discrimination Act* where people had been discriminated against.

**Mr COOPER:** We certainly hear anecdotal stories of discrimination but not in terms of them proceeding to apply through the act around those things. That is one of the points of the submission as well is that in order to ensure that kind of discrimination does not occur, you need to have the checks and balances in place and better capacity for a process as through the *Anti-Discrimination Act* to be accessible to people often who have very limited English or it is not their first language, support and are generally not confident about undertaking such responses. That is why there is a need to be quite careful to ensure such provisions are in place.

**Mr CHAIR:** In your submission, you recommend that powers for police auxiliaries should not be applied to people on foot or vehicles within 20 metres of a licensed premises. Are there any instances or situations in which you might consider this to be appropriate? Clearly, if a person is intoxicated.

**Ms BURGOYNE:** Again, we were just concerned with the extension of that. We are very aware that the application of PALIs in a number of our centres have had some really positive impacts in reducing harms. We feel like these PALIs have a lesser level of training than a fully qualified police officer does. We had some concerns about the application of those powers extending to any person on foot or in a vehicle within 20 metres of a licensed premises.

We had some concerns about the potential for profiling or discriminatory practises in the application of those powers. I take your point that there might be some instances where that might be a more complex decision, but I still think ultimately my understanding—I think the Riley review made clear the reintroduction of those PALIs was to clearly police people entering and exiting liquor licensed premises and to monitor that purchasing of alcohol. We felt that the extension of those powers is probably going a bit too far.

**Mr COOPER:** I think it is fair to add to that, even in terms of the PALI powers, even though they have been very effective, there have been quite a lot of complaints from Aboriginal people who feel they have been unfairly treated or discriminated against. It is a balancing act, I guess, against what these powers do in terms of preventing potential harm and possible misuse.

**Mrs WORDEN:** It is only people who have purchased alcohol—it is not just anyone within 20 metres? From the information I have received—I think we have spoken about the intention of this particular area—if it is busy and there are a lot of people going in and they have missed someone, they are able to say to someone going out with alcohol, ‘Where do you intend to consume that?’ I think that is the intention.

When it is a busy time and you are trying to juggle between who is going in and out and checking ID, there is an opportunity to say to someone exiting, ‘Hang on a second, where do you intend to consume that?’

I think that is the problem if you take that out—which is what you are suggesting—you then lose the opportunity for everyone. We are not just talking about Indigenous people, we are talking about anyone. There have been some reports, particularly at a busy time, there are more people coming and going who can be asked—particularly if there is an event happening—there is the opportunity to ask those questions beyond the premises—it is not just 100 metres down the road; it is in the vicinity.

**Ms BURGOYNE:** I take that point. To be clear, the legislation does point to someone who is intending to purchase alcohol. It is about how broadly that is applied.

**Mr CHAIR:** A fairness, yes we understand that.

No further questions from the committee?

On behalf of the committee, thank you for taking the time to appear before us this morning. If we have any further questions, we will follow up. Happy NAIDOC Week.

**Mr PATERSON:** Thank you for the opportunity. Happy NAIDOC Week, Chair and members.

### **Northern Territory Council of Social Services**

**Mr CHAIR:** On behalf of the committee, Ms Morton and Ms Coalter thank you for appearing before everyone today in this public hearing into the Liquor Bill 2019. I will introduce our panel members who are Mrs Finocchiaro, the Member for Spillett and Mrs Worden, the Member for Sanderson.

We welcome to the table to give evidence to the committee the Ms Wendy Morton, the Executive Director of NTCOSS and Ms Nicola Coalter, Secretary to the NTCOSS Board and CEO Amity Community Services.

Thank you for coming before the committee, we appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly’s website. A transcript will be made for use of the committee and may be put on the committee’s website.

If at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record could you each please state your name for the record and the capacity in which you are appearing here today. We welcome an opening statement from either of you.

**Ms MORTON:** Wendy Morton, Executive Director of the NT Council of Social Service.

**Ms COALTER:** Nicola Coalter, Secretary on the NTCOSS Board and CEO of Amity Community Services.

**Mr CHAIR:** Welcome. Ms Morton would you like to make an opening statement?

**Ms MORTON:** Thank you for allowing us to appear this morning. I will start by acknowledging that we are on Larrakeyah land. As you all know, NTCOSS is a peak body in the social and community sector in the Northern Territory and an advocate for people who are disadvantaged across the Northern Territory.

We have around 100 members at any one time and that includes small organisations of one or two people right through to large organisations. It includes Aboriginal and non-Aboriginal organisations across the Northern Territory. I point that out in the sense of our member being varied in terms of the kind of work that people do. That goes across things such as homelessness, disability, mental health, alcohol and youth justice.

Every member of ours would talk about the impact of alcohol on the people that they have worked with, whether or not it is their primary work. You might work in the homelessness sector but alcohol is a key factor of that.

I want to emphasize the fact that in all of the work that we do—over the last few years we have been heavily involved in work around out-of-home care and youth justice—alcohol is a really big part of those things. We cannot ever do one without the other. We need to ensure that all the work around alcohol, justice and homelessness all connect.

In saying that, NTCOSS has been supportive of the—one of our election asks was to call for a review of alcohol policy and we are pleased that that was done—recommendations of the Riley review. We congratulate the government on the work so far, they have been particularly brave in some areas of reform such as the minimum price and that is leading that work in Australia.

I want to emphasize a few things that other people have already said and we are just following AMSANT who talked a lot about looking at the health impacts of alcohol and not making it a criminal issue. We support that. That is something, over many years, we have talked about. Criminalising alcohol is just not going to work to change behaviour and we need to have a health approach to people who are consuming alcohol at harmful levels.

In my 14 years at NTCOSS, alcohol submissions would be the thing we have done the most of over that time. In our most recent submissions we have consulted with our broad membership but in particular with the other organisations that have put submissions in including AMSANT, FARE, PAAC and Amity and NAAJA so we would put on record our support for those submissions. In saying that, like any membership organisation, we have organisations that vary in their view of things. That is always challenging but essentially we are supportive of all of the submissions by those organisations.

**Mr CHAIR:** Wendy, clause 57(2) you have recommended be amended to allow an objection to be made in an application on the grounds that it does not meet government priorities and reduce alcohol harm. What sort of criteria would you use to determine that an application would not meet government priorities to reduce alcohol harm? Would this include factors such as the density of licences in the area?

**Ms COALTER:** Density is a really interesting issue. When density comes up it is often only discussed in terms of number of outlets. I think Riley, and others, talked about it but density needs to be considered in relation to the volume of alcohol sold, not just the number of outlets. When we look at this 57(2), objection to transfer of liquor licence, what that is about is it going through the same tests as though it was a new liquor licence.

**Mr CHAIR:** Just going back to the sales data. You would have heard this morning there were people who think that wholesale data is enough data and others think that retail data is more comprehensive and detailed. What are your thoughts on that?

**Ms MORTON:** I support the approach that FARE talked about this morning. We have been incredibly lacking in data and that quarterly data from outlets would be quite meaningful and would also give us more information about location and consumption than what the wholesale data would give.

**Mrs FINOCCHIARO:** Have the NGOs been told that they will be able to receive this data?

**Ms MORTON:** I have not personally inquired about that but I suspect that may well happen.

**Mrs FINOCCHIARO:** I suppose there is an assumption that just because the data is being collected that anyone will actually ever get to see it.

**Ms MORTON:** We are talk all the time about people being asked to collect data that is never used for anything. Whether we as NGOs can access it, certainly I would hope that health is accessing that data in terms of how they are planning their work and their funding approach and anyone doing policy work would be utilising that data.

**Mrs FINOCCHIARO:** Data for data's sake.

**Ms MORTON:** Exactly. One thing that others have talked about and we would support is that we feel like over the last few years, we are finally working more towards an evidence base and the unfortunate thing

sometimes is that some of the data is missing to support some of that work so the more that we can do around collecting that data, the more useful that will be.

**Mr CHAIR:** I also read that you support the community defender's office to be set up. How do you envisage that being set up and funded?

**Ms MORTON:** Primarily, if I look at some of the other ways public interest has been used before and I look at gambling being one of them. We would get these regular phone calls from the person making the application for a gambling licence for us to give an opinion and then our opinion was discounted because we did not have data on that local outlet. It makes me think more and more that we need independence in terms of who is looking at the community in developing that.

FARE gave an example and support, as community organisations being able to get our point across in the same way that big industry does is really difficult and we both have the experience of recently objecting to Dan Murphy's and the resources and impetus on us as a very small organisation sitting around that table competing with an incredibly well-resourced organisation there was a real disparity in that. There was times I was thinking, 'Have we done the right thing?' because where does this go—and then if there is this outcome then this will happen. I think there is a real danger in not acknowledging the inequity of that and having an independent source be resourced to push those things through.

**Ms COALTER:** On that point, I think that is number 47, onus on the applicant—we absolutely support that the financial onus should be on the applicant around this process but when an applicant is left and is heavily resourced to provide both their opinion in the risk and also the benefit what we see in all applications and not just the substitution of the licence for Dan Murphy's, but if we take us back to when the cap was lifted in gambling we saw really well compiled professional reports and our objections weighted very lightly because of the inability to pinpoint number of people in any particular location.

In the absence of community organisations or independent people in the community being able to object, the onus on the applicant to pay for and have an independent community impact assessment done in particular with a developed methodology. For us that would be like an institution, say as Menzies—they are at arm's length but the applicant should definitely be paying for that. With the developed methodology as a key.

**Mr CHAIR:** You have commented that the bill does not introduce any consequences for licensees that fail to adhere to a ban on advertising and it encourages irresponsible consumption of alcohol. What types of consequences would you like to see in place around that sort of stuff?

**Ms COALTER:** I can speak generally to it. I cannot find it in the submission right now. If we think of examples that we thought were done and dusted in the 1990s for things like beer pong and advertising, what we can see in our market place in the moment is these advertisements go on, they are often not picked up because of compliance frameworks and that. If they are, in relation to legislation which I am not highly skilled at, there is these kind of points and things applied, like that there should be some kind of penalty applied which may then have another consequence in relation to that licence at any given time.

**Mrs FINOCCHIARO:** I want to ask about the inedible substances. How does NTCOSS and or Amity envisage this being dealt with—mouth wash, vanilla essence and methylated spirits—how would you rather see that being treated in the bill?

**Ms MORTON:** I will acknowledge that this is one of those where there is really different views, as in most things that we work on. First of all, whenever we leave things and go okay—the industry can voluntarily work out how they manage this. One, we will always have really different outcomes. Alice Springs, for example, is managing something in a really different way to the Top End so that is always problematic.

It often then becomes the onus, for example, in Central Australia, CAYLUS do amazing work but it is this constant work of having to work with retailers about finding a solution and so each time there is a product change you are having to start from the beginning about working with retailers. If we can come up with a consistent approach that takes some of the voluntary nature away and gives a consistency so retailers as well know what the expectation is and that is a good outcome.

There is complexity in different views about if we are product chasing in a sense, moving from one thing to the next. One view which we have expressed is that those products are behind locked cupboards. It is complex when things move from one area to another. Young people move from sniffing petrol to paint to substances and how we manage that. We have real concerns about making voluntary and how that impacts.

**Ms COALTER:** With future proofing legislation, it is probably best not to name any particular substance because trends can come and go. It is about alcohol per volume and the intent of what that product is designed for. When the onus is left on industry, regardless of which industry that is to self-manage, we can see that the self-management might be varied. Then it is left open for confusion for the consumer, retailer and government. There is too much confusion.

Voluntary codes of practice, for example in gambling, have already shown that industry is well resourced to do some things that they choose to do. It can be very attractive to be a voluntary industry implemented code. It can look very attractive but the strength or weight of that is found to be not strong.

When people talk about evidence based it can be confusing because if I belong to one tribe I am going to go and find evidence that supports that. There is lots of evidence that supports lots of different views. When we think about alcohol and no ordinary commodity, there is a lot being done on it. There is no absence of evidence in this space. When we weight evidence it is weighted differently. In relation to effectiveness of voluntary codes, the weight is very low.

**Mrs FINOCCHIARO:** The alternative is that people who bake cakes cannot just go and buy vanilla essence very easily because of the actions of a few who abused the product.

**Ms MORTON:** It came up recently in a conversation I was having with someone in Katherine around mouthwash. You cannot get mouthwash in Katherine that has alcohol in it and this person would buy it when they were elsewhere. I would not have even known there was a difference in mouthwash.

For the majority of people it is not going to be a major issue. There will always be some people—it is a bit like the banned drinkers and showing your licence—for who it is an imposition but there is a broader benefit for the community. It is a universal health measure.

**Ms COALTER:** In relation to that particular product, there are two products and you can bake cakes with both of them but you can only drink one to have a psychoactive substance. That is the extract not the essence. In legislation if we start naming products we are probably not going to future proof it.

**Mr CHAIR:** There was an issue with cannabinoids.

**Mrs FINOCCHIARO:** Are there other jurisdictions that you feel do that well?

**Mrs WORDEN:** Good question.

**Mr COALTER:** The Territory has the potential to lead the way with reforming alcohol and really strong legislation. I am not sure that in this country there are other jurisdictions that do alcohol policy or legislation very well at all.

I would say that best intentions and bits and pieces. This piece of legislation is really old in itself and jurisdictionally in Australia, there are probably lots of old legislation—in a different time, era and cultural context of what alcohol means.

**Ms MORTON:** We recognise that the Territory has the highest proportion of alcohol harm and consumption of alcohol. By its nature it gives us the opportunity to do something different and lead the way.

I am side-tracking but there is also the opportunity for the Commonwealth Government to support reforms in the Territory and across the nation around things such as a volumetric tax. That would assist enormously in all jurisdictions.

**Mr CHAIR:** Are you seeing, experiencing or hearing positive outcomes from the reforms that have been in place?

**Ms MORTON:** Yes. I hear a lot of positivity about it and I think that people feel like we are on the right track particularly treating it primarily as a health issue and that there is intent to try to address it. Looking at it from all the other areas that it impacts on with homelessness and child protection ...

**Ms COALTER:** Domestic and family violence.

**Ms MORTON:** ... there is positivity. Can I just make one other comment around echoing what some other people have said and I am sure that agencies such as NAAJA will expand on is, there is a balancing act all

the way through this but we need to ensure that the reforms that we put forward are non-discriminatory. You asked someone previously about examples where they had seen discrimination.

NTCOSS has several staff in Alice Springs. At the moment, all those staff are non-Aboriginal and they tell me that they never ever get asked for ID if they go to purchase alcohol. There is much more we can do. I see the success that the police outside bottle shops have had, particularly in areas such as reducing domestic and family violence but we need to ensure that the education and regulatory framework that is in place ensures that these things are truly non-discriminatory.

Another example that was given to me, by someone who works for an Aboriginal organisation in Alice Springs, is that when police had nothing to do and there was no one coming into to purchase alcohol, they would then start doing other things such as checking people's registration and outstanding warrants. There is a broader impact when we put this legislation in place and we need to work really hard to ensure that — whether it is the education of police or things like that—those systems are in place for everyone in the Northern Territory.

**Mr CHAIR:** Yes, I agree.

**Mrs WORDEN:** A number of submissions, which were online so there are no secrets about them, have noted that the bill does not actually specify the meaning of the word 'harm'. I think you raised it in your submission as well. However, there is an alternate view that by defining the word 'harm' it will not always necessarily achieve the outcome. Nicola you just stated that just because you can be overly prescriptive in one area and then it makes the bill not contemporary if things change.

Do you think that extends to the inclusion of the word 'harm'? Do we need to define the word? How compelled are you around that; do we really need to define the word harm or is it best left un-prescribed so it could be loosely applied. Not loosely applied, I do not like that phrase. Discretion. In terms of other aspects, things could change and we may find a new harm down the track and if we are prescriptive it may be missed. It is in a lot of submissions and I have not asked that question already but wondered your view in that context.

**Ms COALTER:** In my role at Amity, as well as supporting NTCOSS' submission, I would probably go for a broad definition. I am reading it now and maybe not as prescriptive as what is suggested by NTCOSS but I think the definition of harm innately stays regardless but a broad definition meaning the risk of harm to individuals, families, children and communities. I think that is really important.

Often when we think about harm and we are talking about liquor or gambling or tobacco, we are pointing fingers at the individual and in this act, the responsible sale, service and promotion. That word 'responsible' in itself meaning that it is usually about the individual. That is how we receive it. If we had a bit more of a description around what harm and harm to include, in particular the economic, social and cultural effects.

We have one of the key pieces of research, probably in this country and the world, produced by Menzies which shows the tangible and intangible costs of harm. Therefore, often what is discussed, when we discuss harm, it is individual harm and it is tangible but all those intangible costs I think you would still keep legislation future-proofed and contemporary because alcohol harms have been the same for a long time.

The health; as you said before, that domestic and intimate violence component, I do not think that is going away.

**Mrs WORDEN:** It is very broad.

**Ms COALTER:** Somewhat prescriptive, but broad prescriptive; descriptive instead of prescriptive.

**Mrs WORDEN:** At the moment, harm is stated but it is not actually defined at all?

**Ms COALTER:** The word is not there.

**Ms MORTON:** Just backing up what Nicola said, I think the struggle has sometimes been to have governments, or whoever, recognise that harm goes beyond that individual, the economic cost, the child protection cost for example. We need to ensure that there is something in there.

I also agree, in some sense, about not being too prescriptive, it is the future-proofing if something changes or a new issue comes up, we want to ensure that everyone is thinking of harm as a very broad term and all of the secondary impacts.

**Mr CHAIR:** On behalf of the committee, we thank you for your submission and taking the time to appear before us today.

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The committee suspended.

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### **North Australian Aboriginal Justice Agency**

**Mr CHAIR:** On behalf of the committee—myself; Kate Worden, the Member for Sanderson; and Lia Finocchiaro, the Member for Spillett, we welcome you here today to this public hearing in to the Liquor Bill 2019.

I welcome to the table to give evidence to the committee, Ms Clara Mills, Managing Solicitor, Civil Law at North Australian Aboriginal Justice Agency.

Thank you for coming before the committee. We appreciate you taking time to speak to the committee today and we look forward to hearing from you both. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee do apply.

This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for the use of the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private.

For the record could you please each state your name and the capacity in which you are appearing today and you are welcome to make an opening statement.

**Ms MILLS:** My name is Clara Mills and I am the Civil Law Manager at the North Australian Aboriginal Justice Agency.

NAAJA's submission to the Liquor Bill was prepared by our law and justice department however John Rawnsley was unable to meet with the committee today. On that basis, I note that I may need to take some of the committee's questions on notice.

NAAJA has made three submissions to the liquor amendments. In February and June 2019, we made substantive submissions and in May 2019 we made submissions to the legal policy division in respect of seizure and forfeiture provisions of the act.

As stated in our submissions, NAAJA supports the Northern Territory Government committing to the recommendations of the Riley report and undertaking substantive reform in a challenging policy and political context. We recognise and support the Riley review's commentary about the cultural use of alcohol in the Northern Territory and that these are complex legacy issues which we need to deal with.

NAAJA supports the government's efforts to increase accountability for liquor outlets and increase transparency and improve procedural fairness by providing public hearings for the amendment of liquor licences.

NAAJA reemphasises the position that alcohol abuse is primarily a health issue and that rehabilitation and therapeutic approaches, not criminalisation, must remain the focus.

NAAJA's concerns remain the potential for over-criminalisation of alcohol-related issues, perceptions in the community of discrimination and racial profiling, the properly resourcing health-based responses to cognitive disabilities, including foetal alcohol spectrum disorder, and the potential for unintended impacts on community through vehicle seizures despite proposed reforms.

We say that the current framework, including banning notices, criminalises the health issue. The approach tends more towards custody, more fines and more prison, which exacerbates risk factors for alcohol use.

People who are presently intoxicated are unlikely to comprehend the need to state their name, address and produce ID. Further, Aboriginal people may go by several different names or live in several different dwellings.

Homelessness is an increasing risk factor for alcohol abuse and people may therefore not have a fixed address.

People who are subject to banning notices are likely to have alcohol related health or cognitive issues which impede their ability to comprehend or comply with the order. Further, the penalties attached are extremely harsh and we say disproportionate to the offences for penalties associated with licensees.

We say there is some community support and evidence-based point of sale interventions as a proactive measure and NAAJA's position is that proactive intervention is better achieved through the BDR, if it is implemented effectively.

Whilst NAAJA supports proactive measures, we are concerned that the point of sale scheme is implemented or perceived to be implemented in a discriminatory manner. NAAJA receives numerous complaints about racial profiling and bias, further NAAJA has clients with physical disabilities, such as mobility and hearing, which have made them appear intoxicated and have subsequently received bias.

Consistent with our broader stance, the harsh penalties over-criminalise alcohol reliance in a way that is disproportionate to both the offence and to the regulation of the liquor industry. Perceptions in community of discrimination and racial profiling weaken the mutual respect between Aboriginal people and police and contribute to worse holistic health outcomes, including trauma.

In May 2019, we recommended that the government consult with the community about the forfeiture and seizure provisions of the act and otherwise made substantive recommendations about how to improve some of the worse inequalities in the current system. We note the adoption of some of those recommendations in this current bill. However, since that time, we have put the Liquor Bill and specifically the issue of motor vehicle seizure to our board and our board's express view is my primary purpose for addressing the committee today.

NAAJA's board comprises of Aboriginal elders and leaders from Miwatj region, Groote Eylandt, Larrakia Country, Katherine, the Barkly and Alice Springs. Each of the 16 board directors speaks of authority from the communities they represent.

The board were unanimous in their view that vehicle seizures should be removed in totality from the legislation. Whilst the new bill stipulates that, before seizing a vehicle, the inspector or police officer must consider the anticipated future use and whether its seizure and possible future will cause hardship to a personal community, the board remained concerned that the application of this test remains a consideration and is subjective to the views of the officer, who may not understand the context of how the vehicle is used in the community.

Vehicle seizure amounts to double punishment, it remains procedurally unfair and results in disproportionate consequences for communities. Although facially neutral to race, they disproportionately affect Aboriginal people living in and travelling to restricted areas.

Motor vehicles are rarely owned by a single individual in Aboriginal communities, but rather are used broadly for essential services by many community members, including accessing dialysis, travelling the hundreds of kilometres to purchase fresh and affordable food and taking children to school.

There is also secondary hardship caused by leaving Aboriginal people with often significant loans remaining on vehicles that they can no longer use, contributing to ongoing cycles of poverty.

Finally, vehicle seizure does not appropriately contemplate the cultural responsibilities of many Aboriginal people to respect and comply with the direction of a person in an elder relationship to them. I refer the committee to the case study that NAAJA provided you in May 2019. I have further copies of that case study if you require them today.

We have requested that this case study not be put on the public record because it relates specifically to an individual and may be identifying. If the committee would like to use it, we are happy to obtain the appropriate consents from the client.

We think that this case study provides a clear example of how motor vehicle seizure can cause unintended and substantial hardship. The board would clear that they are tired of alcohol reforms remaining punitive rather than with a public health facing concern. They are particularly concerned that in their experience motor

vehicle seizure does not prevent alcohol from entering community but rather makes access to education, nutrition and healthcare more onerous for other members of the community who use that vehicle.

In conclusion, NAAJA says that alcohol is in part a self-medicating process for unresolved trauma, particularly intergenerational trauma. Increasing police powers in a law and order response just increases contact with the criminal justice system which exacerbates trauma. Cognitive development disorders, acquired brain injuries and the impacts of FASD may impede an individual's ability to comply with directions. The penalties imposed in individuals are disproportionate both to the offences and the penalties imposed on liquor retailers.

The new liquor bill, whilst commended for commencing the implementation of the Riley report, does not in totality align with the evidence base that alcohol related issues require a therapeutic intervention.

**Mr CHAIR:** Thank you. I will open it up to the committee first for any questions.

**Mrs WORDEN:** Whilst we are on vehicles, we may as well start with the vehicle seizures. You have stated the position of NAAJA and that you would like to see them gone. Do you think there is opportunity for having some sort of a review or appeal process as opposed to taking the provisions out that allows for people on those legitimate grounds? Not all grog runners are Aboriginal people, for starters. Not all vehicles are in the same situations that you articulate.

I understand the point you are making and they are legitimate but do you think there is some opportunity for middle ground?

**Ms MILLS:** The position of our board—the Aboriginal voice of our organisation—is that they would prefer to see the provision removed altogether. I refer you to our 2 May 2019 submission with respective seizure of vehicle forfeiture which I can provide to the committee out of session if you do not have a copy. This provides alternatives to the legislation which would provide for mechanisms for review and appeal.

We say at a minimum there should be those mechanisms to allow for circumstances where—as you will see from that case study—we were not able to progress a legitimate need for the vehicle to be returned.

**Mrs WORDEN:** I guess your legitimate need for vehicles owned by somebody else and there was no permission. I get all of that. You will concede that that is a possibility.

**Ms MILLS:** Would it assist the committee if I resubmit our 2 May 2019 submission as to alternatives?

**Mrs WORDEN:** I have the June one.

**Ms MILLS:** This one was provided to Caroline Heske in the law and policy division in direct response to the request for a comment on seizure and forfeiture provisions.

**Mrs WORDEN:** I do not have that in my papers. I would be happy to take a copy if that is okay.

**Ms MILLS:** I can provide a single copy now.

**Mrs WORDEN:** These guys can sort that. Thank you.

Earlier from AMSANT we heard about health considerations during court proceedings for particular orders that health considerations should be in the legislation around that. Do you agree with that? Your submission is a lot around that, but specifically within the legislation that that should be prescribed as a consideration that the court would need to consider in providing an order against someone—a prohibition order.

**Ms MILLS:** A prohibition order should take into consideration their health.

**Mrs WORDEN:** Yes, that is what AMSANT is.

**Ms MILLS:** Concede. Yes.

**Mr CHAIR:** Is there any other health initiatives that you would like to see in place to strengthen?

**Ms MILLS:** I would have to take that one on notice.

**Mrs WORDEN:** I would be interested in that.

**Mr CHAIR:** Clara, you have suggested that the policy and legislative framework should reflect the stages of process incorporating a health assessment and health commission plan with this potentially linking in to the National Disability Insurance Scheme. What point and in what circumstances do you think health assessment should be done and would you recommend that this be initiated by the police or the court or both or someone else?

**Ms MILLS:** It is usual that you would see in a court process and ability for the court to make an order for someone like Patches to do a FASD assessment report and that would be able to provide the court with further context about the health needs of a person in contemplating any penalties, particularly in relation to liquor related offences and their ability to understand how their alcohol use relates to their offending.

It would be interesting for us to explore, and I do not have a firm answer at this point on how you would do that but how to link all of this more closely in to the NDIS scheme. We know that there is significant underspend in the Northern Territory, particularly with respect of disability services of which we say alcohol forms part of disability services, particularly for clients who have FASD or other cognitive functioning.

We do not say the NDIS has always rolled out in a culturally appropriate manner and it will be useful for a way for the courts and for the government to be thinking about how there can be supports put around NDIS so that there is that better information available and so that we are more able to therefore develop policy procedures that link to an evidence base of how a person with a cognitive impairment or FASD can use other services available rather than a criminalised system, for example, better use of NDIS.

**Mr CHAIR:** Clause 209 directs police to consider whether they believe they have reasonable grounds for issuing a banning notice. One of the grounds they are to consider relates to the persons health and another is the capacity to comprehend the meaning of the notice. This appears to indicate that the police must take a person's health in to account before issuing a banning notice.

Can you please comment on the provisions in clause 209(2) and the extent to which they might be effective in introducing a health rather than a punitive approach, at least in respect to banning notices?

**Ms MILLS:** I guess we would say that particularly 209(2) is a very broad power and it may be outside of the expertise of the individual police officer in that moment so we would seek some clarification around how the individual police officer in the moment is meant to contemplate the health of the individual and whether it would be more appropriate for their health or their cognition to be assessed by a medical professional—very difficult in the moment—or some recording as to how their view of the person's health in the moment has informed their decision-making.

**Mr CHAIR:** We have heard about the training of police in other jurisdictions on alcohol and other drugs. That may be a way forward.

**Ms MILLS:** I am not saying that you would in any way take a person into the watch house but you have medical staff based at watch houses so it may be that a person is able to make a call to the medical staff that are available to police to get a secondary opinion. It is about the recording of that evidence so if there is some sort of challenge to the ban based on the medical opinion that the police officer has formed that there is a clear and accurate recording of how that decision was reached and so that is able to be challenged or conceded at a later date.

**Mrs WORDEN:** I am interested in your comments around licence fees, the base fees for licences. You believe they are too low to serve the purpose of the bill. We have obviously received evidence that they are too high from other sectors. You think that an increase will not adversely affect the commercial viability of licences. What sort of level do you think the fees could be set to serve the purposes of the bill without adversely affecting the commercial viability of licences?

**Ms MILLS:** NAAJA is not in a position to comment on the commercial viability of licences. I guess our primary point is that there is an emphasis on this bill around the punitive measures for fines for people who are caught in breach of various parts of the legislation and we would want to see though that it is proportionate to licensees so that punitive measures taken against a consumer of alcohol is in proportion to a licensee who stands to financially benefit from the provision of alcohol.

**Mrs WORDEN:** For some, \$2000 is a fair whack if you are just a corner store and not selling a great deal of alcohol. As an annual fee—at the moment it is only a couple of hundred. It is already a bigger—when you look through the bill, the lower ones are perhaps a restaurant serving a drink with a meal, a hundred dollars

does probably look quite low. It probably only relates to those that are very low risk. Do you think the top end should be higher or the lower end should not be that low?

**Ms MILLS:** You are referring specifically to the risk-based licensing framework?

**Mrs WORDEN:** In your submission you say 'we note the base fee for the licences range between \$100 and \$2000. In our view, the range may not reflect the variations between licensees in terms of the sale of alcohol and is too of a base fee to serve the purposes of the bill.

**Ms MILLS:** NAAJA's position is that we think that higher base fees create a stronger incentive for compliance however in the alternative, we would say that you could increase the breach loadings so it is better able to ensure licensee compliance upon breach rather than at that initial stage.

**Mrs WORDEN:** So, leave the base load as they are but increase the breaches.

**Ms MILLS:** That is right.

**Mrs WORDEN:** Okay, thank you.

**Mr CHAIR:** Clara do you have anything extra to add?

**Ms MILLS:** Nothing, thank you.

**Mr CHAIR:** Thank you for coming before the committee and answering our questions. We thank you for your submission and we will be in touch if we need anything else.

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The committee suspended.

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#### **Department of the Attorney-General and Justice**

##### **Alcohol Review Implementation Team Department of the Chief Minister**

**Mr CHAIR:** Welcome everyone on behalf of the committee, which is myself, Mr Tony Sievers; Mrs Worden, the Member for Sanderson; and Mrs Finocchiaro, the Member for Spillett. We thank you for coming and appearing before the hearing into the Liquor Bill 2019.

I welcome to the table to give evidence to the committee the following representatives from the Department of the Attorney-General and Justice: Ms Bronwyn Haack, Senior Policy Lawyer; Ms Hannah Clee, Senior Policy Lawyer; Ms Caroline Heske, Senior Policy Lawyer; and Candice Maclean, Senior Policy Lawyer. From the Department of the Chief Minister I welcome Giovina D'Alessandro, the Executive Director of the Alcohol Review Implementation Team; and Ryan Neve, Director of Communications.

Thank you for coming before the committee, we appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record could you each please state your name for the record and the capacity in which you appearing here today. We then welcome someone to make an opening statement. Does someone have an opening statement?

**Ms D'ALESSANDRO:** I think our submission stands on its own.

**Mr CHAIR:** We might start with Mr Neve.

**Mr NEVE:** Ryan Neve, Director of Communications in the Department of the Chief Minister.

**Ms D'ALESSANDRO:** Giovina D'Alessandro, Executive Director of the Alcohol Review Implementation Team in the Department of the Chief Minister.

**Ms HAACK:** Bronwyn Haack, Senior Policy Lawyer in the Department of the Attorney-General and Justice.

**Ms CLEE:** Hannah Clee, Senior Policy Lawyer in the Department of the Attorney-General and Justice.

**Ms MACLEAN:** Candice Maclean, Senior Policy Lawyer in the Department of the Attorney-General and Justice.

**Ms HESKE:** Caroline Heske, Senior Policy Lawyer in the Department of the Attorney-General and Justice.

**Mr CHAIR:** Thank you. Do we not have an opening statement?

**Ms CLEE:** If it is an assistance I can give, in the response questions that were given, an outline.

**Mr CHAIR:** That would be great. I am not sure if you have been listening into the broadcast today, we have taken a list of questions. You might want to go through those with us as well.

**Ms HAACK:** The bill represents a rewrite of the *Liquor Act 1978* and provides a new framework for regulation of liquor in the Northern Territory. In working to develop the bill, significant direction was provided on specific changes as approved by the Northern Territory Government's response to the Alcohol Policies and Legislation Review final report.

The overarching policy objectives for alcohol reform includes the Alcohol Harm Minimisation Action Plan 2018-19. It is important to note that the recommendations in the Riley report were determined after a thorough and extensive consultation themselves including the assessment of submissions from stakeholders and members of the public and consideration of legislative regimes in other jurisdictions.

The Riley report recommendation 2.1.1 provides that the *Liquor Act* be rewritten. The Riley report recommendation 2.1.3 included that amendments to remove confusing and inconsistent provisions to the *Liquor Act*. This required extensive change across the *Liquor Act* and work to identify the provisions that were causing confusion and inconsistency issues. This work was undertaken in consultation with stakeholders.

The general approach to the development of the bill therefore includes that where a Riley recommendation was accepted, department's strove to give effect to it. Work was undertaken to address existing inconsistent and confusing provisions in consultation with key stakeholders to determine the issues with reference to the written submissions that were made with the Riley review. Where no issues were identified with existing provisions in the *Liquor Act 1978* and advice was the provisions appeared to be working operationally, the provisions were carried over into this bill and drafted in a more modern or clearer form but in essence, carried forward.

Consultation was then undertaken on an exposure draft bill during April 2019 with submissions then considered and amendments made to the bill where those submissions were seen as appropriate, necessary and generally consistent with the Riley review recommendations that were accepted by government. I think that is pretty much the general approach that we have had in the development of the bill to this stage.

**Mr CHAIR:** Thank you for your quick response to the questions. We got them last night. We thank you for that because we know it is a lot of work.

**Mrs FINOCCHIARO:** With the quarterly reporting, what is the department or government intending to get out of that information? Why do you want it? Who is going to see it? Is it going to be uploaded onto websites? Will NGOs get it? What is the point of it?

**Ms HESKE:** I have heard the comment that has been made today in relation to it. Interestingly, a very similar provision actually exists now and is in the current act.

**Mrs FINOCCHIARO:** In relation to wholesalers?

**Ms HESKE:** No, in relation to quarterly returns.

**Mrs FINOCCHIARO:** Does that not apply to clubs then?

**Mr NEVE:** We'll talk about two quarterly returns. There is the quarterly returns for wholesalers which happens and there is existing provision in the existing act for quarterly returns for sales which, from my advice, has not been enacted. My understanding is that it is a legacy issue from pre-GST.

**Mrs FINOCCHIARO:** So, it is there but it is not enforced.

**Mr NEVE:** It has not been collected other than some times for enforcement or investigative purposes when it has suited the authorities to do so. In regard to the wholesale portion of that, wholesalers already do quarterly reports. It has been presented to us by stakeholders that they are licensed premises but they sell to other licensed premises and therefore their wholesale figures are not reflective of what they actually sell to the consumer.

The position was taken that if they could apply for a wholesale authority, a club licensed to sell and a wholesale authority, if they sell to another licensed premise and they fill out quarterly returns as well, government gets a better dataset of where the alcohol is actually being purchased by the consumer. There might be a large licensed authority that has the purchasing power and smaller businesses buy off them, the data would suggest that they have a high figure and the surrounds do not whereas with a licensed wholesale authority we could get a better idea of where the alcohol is actually being consumed by the purchaser.

The trade-off being that we get the quarterly data and the trade-off for the licensed premises is that they lower their PAC which could affect their RBL fee—Risk Based Licensing; it could lower it because it is about tiers. Those other outlets then have a truer reflection of what they are doing.

There will not be an exemption in that space. It is a business choice, the business, club or licensed premise could choose to get the wholesale figure and do that to lower their fee, but it requires paperwork, or choose not to.

**Mrs FINOCCHIARO:** It is a discretion up to the business in the legislation.

**Mr NEVE:** It is a business choice and rooted firmly in lowering paperwork for business. If they believe it is in their best interest to lower their fee, it is a quarterly report, if they think that is too cumbersome and onerous, they do not have to do that. It is a choice.

**Mrs FINOCCHIARO:** What section is that, one of you would know?

**Mr NEVE:** The specific authority for a wholesaler for a licensed premises I believe is 42(1)(0), I believe we wrote in the answered question. I am happy to be corrected.

**Mrs FINOCCHIARO:** What were the comments around exemptions for clubs? Is there, on top of that, going to be a blanket we need to opt in, or no?

**Mr NEVE:** No, that is choice.

**Mrs FINOCCHIARO:** What kind of licence you have, is it an opt-in or opt-out?

**Mr NEVE:** If you choose to be a wholesale authority and you are a licensed premise, if you choose to be you have to do a quarterly return, but the choice, or the exemption as might have been termed by someone, is that that is the choice. You do not have to do it if you do not choose to be a wholesaler, then you do not have to do the quarterly returns, but it is a business choice.

**Mrs FINOCCHIARO:** If you do choose to do those quarterly returns, it will go in your favour to reduce your Risk Based Licensing fee?

**Mr NEVE:** It could, because it is tiered. It could get you below the next tier down, which could ...

**Mrs FINOCCHIARO:** But if you are already low you cannot go lower?

**Mr NEVE:** Just to correct the record, it is 43(1)(0).

**Mrs FINOCCHIARO:** Thank you.

**Mr CHAIR:** Ryan, are there other benefits affecting that data?

**Mr NEVE:** Yes, absolutely. It will go to understanding where consumption is occurring in the Northern Territory and it starts to give a pattern. The Liquor Commission, health and police can look at this, because it will give an accurate picture of where alcohol is being sold to the consumer, which is the determination not to put too much onerous paperwork on small businesses.

The wholesalers are already doing this. It is about completing that picture, so you combine with what is already happening with the wholesale authority, with the interstate retailers and then this option for these other businesses to make that business choice. We get a much more complete picture of where alcohol is going to the consumer.

**Mrs FINOCCHIARO:** Who will originally have that data, when that information is lodged, who gets that?

**Ms D'ALESSANDRO:** Licensing NT. That is consumption data we wait for every year, where we are trending up. The Territory is generally a little bit higher than the rest of Australia. That is why consumption data is our primary indicator—it is what we are looking for.

**Mrs FINOCCHIARO:** What will it look like? Will it look like; in Malak we sell a lot of alcohol, the northern suburbs or Darwin region. How zoomed in is this information?

**Mr NEVE:** Licensing release their consumption data regionally. I think they were released at the start of this year—the 2017 consumption data. It is generally consistent with the regions we see most NT Government agencies report on—Central Australia, Top End et cetera.

**Mrs FINOCCHIARO:** It will be quite broad. I am trying to ascertain the value of the effort. There is no point collecting data for data's sake. If we will only get data that says we drink three more beers per head in the Top End than in Central Australia, how will that be accessed? It will be published, then Health will look at it.

**Ms D'ALESSANDRO:** This is data we have published since forever, and it is very important. We use it for evaluation; it is a primary indicator of consumption data, which is wholesale data feeding into consumption data, which is key. The Territory's consumption data based on wholesale data, while it is not perfect, is pretty good when you look Australia-wide.

**Mrs FINOCCHIARO:** What kind of decisions are made on that wholesale data?

**Ms D'ALESSANDRO:** When we do an evaluation of an initiative like floor price, all the scientists and boffins will look to consumption data. It breaks down into product type—cask wine, ports and beers.

**Mr NEVE:** Spirits, ciders et cetera.

**Ms D'ALESSANDRO:** Yes. What we would hope to see from an evaluation floor price is cheap, bang for buck product lowering and people going to mid-strength beers. It is key for us.

**Mr CHAIR:** Used for research purposes, evidence base ...

**Ms D'ALESSANDRO:** For sure. It is key to evaluation.

**Ms HESKE:** As an example, when they were looking at floor price one of the things they looked at was when they eliminated four litre cask wine from the Alice Springs area and they were able to track through the data that they gathered through these processes, they could see how that impacted the consumption in that Central region.

**Mr CHAIR:** In relation to harm?

**Ms HESKE:** No, this is just the consumption data. If you want to track harm you have to look at hospital records and other kinds of things, police reports. You could see, for example, about three to six months after the measure came in, of course you still had products sitting on the shelves for a while, you see it all taper down. You also saw beer go up at the same time but then they could look at the total amount of alcohol consumed and see that overall there was a reduction.

**Mr NEVE:** Consumption is one of the five key universal indicators for alcohol-related harm—so it is consumption, alcohol-related assaults, alcohol-related emergency department presentations, road toll and alcohol-related death.

**Mrs FINOCCHIARO:** Why is it opt in then? If this data is that useful why do then businesses get the opportunity to opt in?

**Mr NEVE:** We will capture it one way or the other. This is an opportunity to say to them—while we publicly release regions, and obviously there would be data sets that are granularly there, they are not released but they are there. It reveals a much better avenue of where and how the consumption is occurring. A hypothetical situation might be that they are selling to another licensed premise of a certain nature—let us say it is a sporting club, might help to understand why this is getting a certain level of complaints all the time—it helps inform.

We will still see that regional data, whether they opt in or not, but it just gives us that next layer if we ever needed to for other purposes, but it is not essential at this point for what we need for a top level evaluation but it is an opportunity for both the business to lower their fee as well as us get a better understanding of a more granular level if we ever wanted to go down that path.

**Ms D'ALESSANDRO:** I will clarify the only aspect that is opt in is if an existing licensee wants to continue selling to other licensees then they have to get the wholesaler authority added to their licence which will happen through the transitional arrangements if they want to go that way and then when they get that wholesaler authority they must do the quality reporting.

**Mrs FINOCCHIARO:** With the harm minimisation audit there has been some concern around that. Obviously licensee's understand very clearly the terms of their licence and understand if they breach that, game on, but then with the harm audit there is this level of uncertainty, I suppose you would say, and discretion around what is involved, what is within my control as a licensee and obviously the different types of licences will mean there is different pressure points, and then the discretion of the individual conducting that audit and their decision-making around the criteria. Can you mitigate those concerns?

**Mr CHAIR:** Is there a framework around that? The act clearly goes through the key items ...

**Ms D'ALESSANDRO:** Yes. I can. There is a bit of confusion from licensees and that is for us to explain with a bit more clarity as well. The provision says if there is a breach it is up to the inspector or whether they issue an infringement notice—it is not an infringement notice arising from the harm minimisation audit it is if a breach of an existing licence condition has been found.

**Mrs FINOCCHIARO:** From the audit.

**Ms D'ALESSANDRO:** Yes, and we need to clarify that. We have had some discussions with stakeholders. We were listening today and we picked that up. It is just about clarify that.

**Mrs FINOCCHIARO:** Does it mean the law itself is then not clear?

**Ms HAACK:** I see what you are saying but I see that you would have this concept—you have infringements and offences and then you have this concept of harm minimisation audits recommended by Riley that give an opportunity for licensing to go in and have discussions with people about the issues that might be there and their licensed premises on how they are dealing with them and what they could do to improve and recommendations can be made and the like. Then if you have those people doing that and they see the inspector who sees people under 18 and drunks are being served, that is an offence.

**Mrs FINOCCHIARO:** That would be a breach of their licence.

**Ms D'ALESSANDRO:** Clause 148 says action after harm minimisation audit. It goes to clarify it. It says:

*After considering a harm minimisation audit report, the Director may do any of the following in relation to any non-compliance with a licensee's obligation under this Act.*

**Mrs FINOCCHIARO:** So a licensee's obligations under the act are to their licence condition?

**Ms D’ALESSANDRO:** There are other aspects throughout the legislation which imports those requirements as part of a licensee’s obligations. It is if your signage is not right or you are doing something that is not in accordance with your licence condition about storage and sale of alcohol.

**Ms HAACK:** You can only receive an infringement notice in relation to something that is an offence, not some of these softer things about harm minimisation and what your practices might be that cause some risk.

**Mrs FINOCCHIARO:** If you are a takeaway and have sold and supplied it, how on earth could you know how someone was going to consume it? I am looking at 146(1)(g). This concerns how much of 146 impacts. Licences are so different. If you are at a bar you are serving that person a glass of alcohol and are consuming it in your premises. If you are a takeaway outlet people have taken it away.

How does that impact in the different situations? Can you be fined for doing that?

**Ms HAACK:** I see what you are saying about the issue of on premise licences and the responsibility about consuming in a responsible manner. I would anticipate that if it is that someone’s consumption at home later and the provision—how can a licensee be involved in that? If they are selling liquor and the person is going out with a group of people sitting or standing in the vicinity of the licensed premises and providing it, they should not keep providing liquor in those circumstances once they can see that.

**Mrs FINOCCHIARO:** But it does not say that.

**Ms D’ALESSANDRO:** It is a common sense approach though. Some of these provisions throughout the legislation will apply differently to different licences. Licensing NT knows that. It is a common sense approach for some of these things.

Harm minimisation audits are not intended to be something big and scary or a problem for licensees. It is a continuous improvement, a good conversation...

**Mr CHAIR:** An education and continuous improvement.

**Ms D’ALESSANDRO:** Yes. It is to try to get best practice.

**Mr NEVE:** Licensing’s approach is education, compliance and then enforcement is the last resort. It measures the extent. It might be for that certain type of authority that the extent is not applicable. It could be, but that would licensing’s implementation of how they go forward with the act.

**Mrs FINOCCHIARO:** Who is the decision maker? It has to be the director?

**Ms D’ALESSANDRO:** Yes.

**Mrs FINOCCHIARO:** So whoever the inspector was who went in may have deemed something out of line and they take it to their director and the director has to assess that—whether there is a breach of obligations.

**Mr NEVE:** And do one of the four things.

**Ms D’ALESSANDRO:** That is it. The Director of Licensing is basically the Director-General now. It is just new naming.

**Mr NEVE:** As 148 states, they may give a formal warning or what is appropriate for whatever they see it as in a compliance and common sense context.

**Mrs FINOCCHIARO:** Are there going to be guidelines associated with this reform? Ultimately what we are trying to do is have engagement with this so that everyone is doing the right thing. That is the ultimate goal—that everyone understands what they have to do, best practice and is implementing best practice. To do that, our information has to be clear and everyone has to understand it.

Surely you can categorise the different licence types and give some level of certainty around what additional harm minimisation people can do which are the grounds for which the inspector will audit.

**Ms D’ALESSANDRO:** Definitely. The legislation foresees that. Clause 147(7) says the report must be prepared in accordance with any guidelines issued by the commission. The legislation and framework does

foresee a range of guidelines being made in regard to the act. It is a bit of a moving feast and there are some new aspects in the legislation. It will take a bit of bedding down.

There are open and meaningful discussions with industry and NGO stakeholders about this.

**Mr CHAIR:** Member for Sanderson, you have a question?

**Mrs WORDEN:** Can I presume you heard all of the previous submissions?

**Ms D'ALESSANDRO:** Yes.

**Mrs WORDEN:** Great. There was some discussion about the current non-definition of harm in the legislation. We have seen the response through the minister regarding that. The most recent discussion related to perhaps putting in a loose definition so that the intent is there rather than confining it to legislation that might then become outdated if harm changes in some way. Do you have a response to that comment earlier?

**Ms HAACK:** We have given it a fair bit of consideration. There is a response to it in our formal response.

**Mrs WORDEN:** Just to clarify, the discussion we had and I cannot remember which person it was that came in and talked about it, we asked them specifically about a definition. We asked what value they saw in it if it makes the legislation not contemporary at any point, if you are too descriptive. Their view is that harm is constrained to the individual but what they wanted to be defined in there is that is not just about the individual but it is about the family, workplace and the community. That is what I am asking for your response to.

**Ms HAACK:** I heard those comments. I think in defining harm in the definition section is at this stage not something that we would view favourably or be quick to recommend but there is a strong interplay about the public and community impact tests. If there is consideration in this area and it is under consideration, that perhaps the work to be done or the things to be added might be to the community impact test to add some of the features potentially in there.

**Mrs WORDEN:** Are you talking about the community impact tests upfront when the licence is being applied for?

**Ms D'ALESSANDRO:** All throughout the decision-making. The commission has to take into consideration those factors when making a decision under the act so it is broader. It is all-encompassing into the whole framework of the bill.

**Ms HAACK:** When I saw those written submissions and when I have been listening today, clauses 45 and 46 contain the public interest and community impact test. Looking at the list in the submissions from those organisations, they are picking up on some of the comments so risk of harm from excessive or inappropriate consumption of alcohol, people or community who would be affected, talking about adverse consequences, it might be that some work could be done potentially in that area if the committee is of the view that we need to broaden or we are not covering some issues.

**Mrs WORDEN:** I am concerned about at which point those assessments are made and whether it is at the relevant points that the submission makers, whether it covers that or not. It is something we can consider offline.

**Ms D'ALESSANDRO:** I would draw the committee's attention to clause 3(4) that says a person exercising a power or performing a function under this act, must have regard to the primary and secondary purposes of this act and must exercise the power and perform the function in a way consistent with those purposes.

The purposes are under clause 3. The primary purpose of this act 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.

The secondary purposes are to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of alcohol. It is first and foremost, right up front through everything we do under the act. It was really important and driven home through the Riley review and through consultation and engagement both with industry and the public.

**Mrs WORDEN:** The other area that was consistent in some of the submissions was around the objections being allowed on the transfer of a licence. Is there any view to bringing those to bear before it is settled?

**Mr NEVE:** It is tricky in the respect that transfer is predominantly about sale from one person to another, not about the change of the business nature.

**Mrs WORDEN:** Is it not the fit and proper person test that they are talking about?

**Mr NEVE:** That comes into it in a different context. It is something we have looked at, but it is a tough one, you have to weight that up. For example, if I sell my business to someone and they want to change it dramatically, they have to go through a process to alter their conditions and that is captured that way. If they are still running the business the same way I ran it, there is no change other than the name on the sign.

**Mrs WORDEN:** But you might be a fit and proper person, but the next person might not be?

**Mr NEVE:** It is about the check of the fit and proper person rather than that complete transfer of sale, obligation of ...

**Mrs WORDEN:** Is there an appetite to perhaps have that in there? 'A fit and proper person' is the bit that keeps coming back consistently in all the provisions.

**Ms D'ALESSANDRO:** It is done by the commission as a decision-maker. I would not say that we do not have an appetite for it, I would say the minister would consider a recommendation put to her on it but there are those safeguards in there for checking that fit and proper person.

**Mrs WORDEN:** There is an assumption, as Ryan was saying, that you are transferring one business and it will not change, but essentially that is not necessarily true.

**Ms D'ALESSANDRO:** It is about the licensee about the fit and proper person of the licensee, but the nature of the licence itself should not be changed.

**Mr NEVE:** It is whether it fits in with the check and balance system.

**Mr CHAIR:** Clubs NT stated under clause 409 of the Liquor Bill that patrons of clubs and community clubs will be prohibited from eating and drinking in a designated smoking area, but these conditions have not been imposed on hotels, pubs and restaurants.

Can we clarify whether this is the case, if this is the correct interpretation and why are hotels, pubs and restaurants exempt? Is it the intention of the bill to prohibit drinking in a designated smoking area or is it the intention only to prohibit the eating?

**Ms D'ALESSANDRO:** Just give me a second, this may have been done in error.

**Ms HAACK:** There is an issue.

**Mr NEVE:** We can confirm that we will be amending that.

**Mrs WORDEN:** Which way?

**Mr NEVE:** Be consistent with everyone, clubs will not be excluded at the expense of everyone else.

**Ms HAACK:** Yes, it has been done, it is an error.

**Mrs FINOCCHIARO:** How is enforcement being bolstered? You hear it from everyday Territorians, if there are these rogue players why are we not throwing the book at them, why are you coming after all of us when there are just a few people doing the wrong thing.

Why is enforcement under this legislation any different to existing? Are there additional resources in the enforcement team at licensing? In practical sense, unless you are out there monitoring the behaviour. We already have laws and rules so you cannot do a whole heap of stuff, but there is rumour that it is happening

**Ms D'ALESSANDRO:** I think it is always a great question. I am confident that police and licensing are doing a good job and that resources are being put, there are good results being obtained. I think we will probably limit our knowledge base to what is in the legislation before us in the bill.

**Mrs FINOCCHIARO:** My question is, is there any increased enforcement provisions in this that will markedly change how we ...

**Ms D'ALESSANDRO:** We can definitely talk about the changes which have been made to the offence provisions.

**Ms HAACK:** There has been a reworking of some of the offence provisions. I think a keystone thing which is quite important, and it follows some recommendations by Riley, is about expansion of an infringement process. It is enabled by the bill, but it will be contained in the regulations. It will mean that people, for all but the most serious liquor offences, can receive infringement tickets and we would then expect that the enforcement becomes easier. It does not require whole briefs of evidence to be produced. Licensees will receive a ticket in the way you receive a speeding ticket or the like. There is the ability then to dispute the ticket in court.

That should mean that the enforcement resources that exist have this mechanism of being able to work fast and efficiently. That is also a good thing for industry, rather than retain lawyers and go to court in relation to a minor offence, you receive a ticket and if you think it is fair that you got that ticket you would make a decision to pay or alternatively if you think it was not fair or not accurate, you make the decision to dispute it and retain lawyers then.

**Mrs FINOCCHIARO:** In no way was I having a go at the enforcement team at Licensing. It is a fair question to ask. If we are not going to properly resource initiatives, what is the point of having them? I understand that is not a matter for you. Giovina does not have the keys to the Treasury locker.

**Mrs WORDEN:** I will just add to that because it was put to us this morning that essentially, specifically around corner stores, there are some rogue corner stores, government knows who they are and government has the ability to do something about them. There was general acknowledgement that some of them looked more like liquor stores than corner stores and are probably selling close to 50% if not more in their sales. It was put to us that currently that is a breach anyway and that government could be doing something about that.

If it comes down to resourcing, then I think that Lia's question is really pertinent in that what is going to make the difference? Even if you change the opportunities for doing something then if there is no resourcing behind that, how are you going to do that better?

**Ms D'ALESSANDRO:** I think there is always a really good benefit in having a look at legislation. I think it is important to note that the *Liquor Act* is from 1978, just older than me, so it was outdated, clunky and hard to use for enforcers and licensing inspectors. It took a long time for matters to go through either the Director-General or through the court. We fixed that up. It should be more efficient. We can use our resources in a far more efficient manner.

We also have the alcohol policing unit which is doing a very good proactive job of getting out there as well. Matters have been brought before the court in regard to some of those licensees. Action has been taken. It is self-evident. It will take some time but I am pretty confident that we are on the right track.

**Ms CLEE:** Could I just add to that as well that we also have clarified and expanded that because there has been confusion when police can take a step or whether it is a licensing officer. We have provided some clarity around that with the changes that have been made.

**Mr NEVE:** The complete rewrite will help unlock, as you say Member for Spillett, that will make things a lot easier and we will start to see that compliance and enforcement flow through the whole system. Just one thing we did, was refer to the Stronger Futures legislation in the act because it had not been before. If you were not au fait with both the federal legislation and the NT legislation, you would not know that was where you had to look. Little things like that will help things move through the system. The infringement notice, easier to understand, it will all have an effect that goes down that pathway.

**Ms D'ALESSANDRO:** Our team of lawyers have definitely made the bill more user friendly for people who are very good with legislation and those that pick it up once every couple of years.

**Mr CHAIR:** I just have a question. We have heard from people today about the power to suspend a licence or close a place for a certain amount of time and the short-term closure stuff. Obviously they presented a New South Wales mediation sort of document and how that could work. What are your thoughts on that?

**Mrs WORDEN:** It is specifically around natural justice I think. There were allegations that there is no natural justice in that particular police power.

**Mrs FINOCCHIARO:** This is for non-emergency. They could understand for emergency, there were no issues but in a non-emergency situation, why.

**Mrs WORDEN:** We proposed that a police officer might walk in and see intoxicated people being served et cetera, when you see clear breaches. The view coming back to us basically is that is not an emergency and there is no natural justice in the place being shut down by police.

**Ms D'ALESSANDRO:** I think that the section as it currently stands in the act, and carried over into the bill, is doing what it is meant to do. I know the Commissioner of Police has spoken with industry numerous times to give them some comfort about process. I cannot speak for the Commissioner of Police but I know that the process is that forewarning is given to licensees before that power is used. It is normally in the form of a letter. That is police process now.

That letter might not be given if it is an emergency situation.

**Mrs WORDEN:** We are not talking about the emergencies.

**Ms D'ALESSANDRO:** Forewarning is given is my understanding.

**Mrs WORDEN:** So there is a process?

**Ms D'ALESSANDRO:** That is my understanding.

**Mr CHAIR:** Some others—around the red tape sort of stuff—indicated that if you already owned a premises and wanted to extend out the front for a function or something, that could be harder than someone with a one-off thing for the weekend. Any comments on that?

**Mrs FINOCCHIARO:** It was specifically around activation. For example when we are doing street things and you already own the business and want to move out into the street space as opposed to whoever with their pizza cart also selling grog.

**Ms HAACK:** Hospitality NT has written to use separately about that, raised the issue and given the example of it. It is under consideration. If the committee wanted to make a recommendation? It is certainly under consideration because we could see what they were saying.

**Ms D'ALESSANDRO:** We tried to make it even but there is nothing like letting industry have a play with it and tell you where you have fallen short. That is what they have done. To their credit, they have written to us and let us know.

**Mrs FINOCCHIARO:** Great. Clauses 136 and 282, we have had feedback that they are duplicative but have a different way—people were not sure in what examples would you be done under clause 136 as compared to 282. Could you talk through why there are two sections that are different?

**Ms MACLEAN:** I can speak to that if you like. Clause 282 is a re-modernisation of the current offence in the *Liquor Act* for prohibition of serving a drunk person. I understand that the offence in clause 135 was raised by stakeholders during consultation on the exposure draft. It was included following that period.

We are aware of the issues with those two offences and how they might interact. It is under consideration by the department.

**Mrs FINOCCHIARO:** Great, okay.

**Mr CHAIR:** We have heard that you have consulted a lot of services and agencies. We did hear one entity today that said they were not consulted, United Voice did not have consultation. Have you been in touch with United Voice?

**Mr NEVE:** We spoke with United Voice last week specifically on their submission to the scrutiny committee and the issues they had raised. We reached out to them to talk specifically on that.

**Ms HAACK:** That was two members of ARIT, myself and Ms Maclean. We went to United Voice.

**Mr CHAIR:** The discussions around the key points they raised.

**Mrs WORDEN:** The tiers. Specifically around the tiering of penalties.

**Mr NEVE:** My understanding was the concern around maximum penalty, which from our point of view, is treated for the most extreme of those offences. It could be seen as quite problematic for low wage employees. They are suggesting a tiered approach which on the face of it, you can understand where they are coming from.

It is about taking that on board and seeing what kind of impact it is. Ms Haack would have more on that.

**Ms HAACK:** We had a discussion last week and I feel comforted somewhat by the fact that the *Sentencing Act* provides that a court—I do not know the provision off the top of my head—must take into account someone's financial circumstances before imposing a fine. I would expect that if you are an individual who was an employee on minimal or close to minimum wage and you are expressing that either yourself or through an advocate, that you would receive a different fine.

There were some things spoken about generally that were quite interesting ideas that were not in the Riley recommendations and were not at the outset when we were doing bill development. It came right at the end. There is an indication from our minister that there will be a 12 month technical review and the bill contained a three year review mechanism. Perhaps some of those things can be given consideration if not now, but later.

**Mr CHAIR:** Great. I do not want to take all the questions.

**Mrs WORDEN:** I want to ask a question about seized vehicles. Presuming you have heard the previous discussions about seizure of vehicles, do you believe that the current process in the act could be changed to allow for some of the considerations being put forward by NAAJA?

**Ms HESKE:** I might just clarify because I read NAAJAs submission when it came in and there seem to be some confusion over the way the bill would operate. At the moment the system under the existing *Liquor Act* is that police can seize the vehicle and if no one does anything about that 60 days later it is forfeited to the Territory. The person may not even know it has been seized, that is just the way the provision has been written.

The new process we have still allows you to apply to police to get the vehicle back consistent with the current provisions. Also under the current provisions the police cannot give it back in a range of circumstances. For example, if you are the defendant, even if it is only a very low amount of alcohol, it is a very expensive vehicle, you need it for work police just cannot give it back if you are the defendant.

Under the new system police have a much broader discretion so you can still apply in those cases or say you needed it for medical treatment, there is nothing to stop that. The only time it goes down that more extended court process is if there is a dispute and I would say that is an improvement for a procedural justice over the existing situation where you can just end up out of that process if you do not act quickly enough.

**Mrs FINOCCHIARO:** There is actually a positive obligation on police to go and search out people who may have an interest in the vehicle which is much broader than the owner of the vehicle.

**Ms HESKE:** Yes. I would say perhaps just reading their submission I was under the impression that they now think you have to go to court but really the existing provision is there to negotiate with police at first instance and not only still there but they have been broadened.

In terms of having natural justice and a streamlined process the only other two differences I really noted, one was they probably were more inclined to suggest NTCAT rather than doing it in the local court—and we had a good think about this but the reality is that most of these seizures and proceedings take place in remote communities. The local court already goes there so that is why we have tried to connect it in as much as possible in with the circuit court proceedings that already go to these communities because we felt that would be a streamlined process and then they do not have to hear it all twice. You can potentially have the same magistrate who has heard this evidence then decide the forfeiture question as well if it is not resolved as part of the criminal proceeding.

The other issue they raised was around seizure and the fact that police at first instance can seize a vehicle and perhaps do not know the full circumstances in which that vehicle was needed. That is true but that is one of the issues that is difficult to see how you could improve that at a first instance position. They do need to be able to actually take some action to enforce forfeiture to remove a vehicle and look at the evidence and all that kind of thing.

We have done our best to try to streamline it as much as possible. I do not feel that we could actually make it any more streamlined than it is, but we are certainly open to suggestions.

**Mr CHAIR:** You would have heard about the two drinks issue today. People go to a lot of trouble to get a licence to sell alcohol—it is a privilege and so forth. There has been a suggestion for the two drink—a simple permit system. Has that been discussed?

**Ms HAACK:** That permit is under consideration but we had put in the bill provision for complimentary drinks for licensees because they were saying to us clearly that was what they needed.

**Mrs FINOCCHIARO:** I want to clarify in my own mind—I may have gotten confused on two of the submissions or perhaps everyone is confused. What does the bill actually say in regard to two complimentary and then two that you can sell?

**Ms HAACK:** There is need for businesses that are not licensed.

**Mrs FINOCCHIARO:** You sell something else—you are like a different shop.

**Ms HAACK:** There is provision effectively exempting two standard drinks. There is three provisions in the exemptions. The third one which has attracted a fair bit of comment is the one about for businesses that are not licensees. That provision is under consideration. What we were seeking to do was provide an ability for businesses such as hairdressers or art galleries or the like to provide complimentary drinks.

**Mrs FINOCCHIARO:** Not to sell?

**Ms HAACK:** Not to sell.

**Mrs FINOCCHIARO:** But the bill kind of—there is confusion because it is confusing.

**Ms HAACK:** There is work being done by the department and ARIT around that because there are discussions about what sort of controls or limitations we might put on it. Hospitality NT and other people are saying that non-licensed businesses should not be able to do that. We understand that is a practice that is occurring and it is an attempt to regulate or control what is occurring now.

**Mrs FINOCCHIARO:** So you are revisiting how non-licensed premises giving up to two complimentary drinks and you are also exploring whether non-licensed premises can sell up to two.

**Mr NEVE:** No, selling is off the table.

**Mrs FINOCCHIARO:** I just wanted to clarify that.

**Mr NEVE:** It has its genesis in two issues which is floor price; there is a complimentary drink aspect to the hospitality industry, your meal is late or whatever, that is where the complimentary drink for the licensed premise had its discussion points of acceptance. It is a business practice but it should not be used or be exploited to get out of minimum floor price type provisions.

The whole other discussion point is around those businesses that may use a drink as a—hairdressers are probably the most popular example in the media around getting a haircut and being offered a drink. It is not part of the service, it is just a complimentary thing. It is about defining what you can and cannot do. There is lots of active consideration about what should be considered.

There are submissions around food and beverage being completely off the table, you have to be licensed and there are also common sense approaches but also considering the type of business practices that may offer drinks like an art gallery showing, you buy a new car and you get a bottle of champagne. A lot of that stuff people understand is normal society and probably not in the realms of the alcohol harm world. It is about working our way through that process. Yes, thinking about it.

**Mrs WORDEN:** I am not convinced you need a bottle of beer to have a haircut.

**Ms D’ALESSANDRO:** No, but sometimes it helps.

**Mrs FINOCCHIARO:** But it is a free world. I guess the third step to that, now that seems clearer, is the premises that do not have liquor licences because they do not sell liquor, they allow BYO, they will now have to be licensed in some way, or just registered?

**Mr NEVE:** They will have to obtain an authority but I think in our fact sheets we have maintained that there will be a transition period that is a lot longer than the rest of the process to acknowledge that this is a new market and they have to go through a process. It would land on the lowest risk end of the scale so it would probably be the lowest fee possible, RSA only, those sort of conditions. I think 2022 is the transition period that is giving that extra time for Licensing and the industry to understand what shape that is going to take over time.

**Mrs FINOCCHIARO:** That is quite practical as well. If it is BYO and you are just putting your bottle of wine on your table, are you drinking the whole bottle or are you sharing it with five people at your table or do you have the esky next to you. If there is RSA how can anyone possibly be covered for that if they are not responsible for provisioning the alcohol.

**Mr NEVE:** Business owners understand that there is a responsible service of any alcohol consumed on your premises does not result in alcohol-related harm. I think we have time to work through the precise wording of that provision.

**Ms D’ALESSANDRO:** It was a recommendation of the Riley review.

**Mrs FINOCCHIARO:** So that is a transitional provision in the bill for 2022.

**Ms D’ALESSANDRO:** Yes, it is for later commencement.

**Mr NEVE:** Sorry, I can probably get that express fact sheet to the committee that outlines that specifically.

**Mrs FINOCCHIARO:** Just as long as there is certainty. It is one thing to say do not worry and then it is enacted and everyone goes ‘what, they promised.’

**Ms CLEE:** It is clause 323 which is the relevant clause.

**Mrs FINOCCHIARO:** It is 2021.

**Mr NEVE:** Sorry. My apologies.

**Mrs WORDEN:** Some of the people we have seen today have talked about having more of a health aspect in consideration of both banning and exclusion orders. I think an example was that someone might appear drunk and actually not be drunk, FASD, those sorts of considerations for people who are finding themselves in front of a court.

I am not sure of the provisions in the act, I do not have it in front of me. There was some discussion about whether a health assessment could be added, or some consideration of a person’s health, into the list of considerations that the court might take. You would have heard that commentary earlier by AMSANT.

**Mr CHAIR:** To add to that, training for police in that area. It may still be happening.

**Mrs WORDEN:** I think specifically this was around court considerations, so that some sort of health referral could be made out of that. I take your earlier comment about the harm stuff up the front and the intent of the act, however, there are some very prescriptive things about what could be considered when issuing those orders.

**Ms HAACK:** With the banning notices and exclusion orders, they currently exist. The major shift in them is the period of time, the change we have made. We have kept the exclusion orders, only to be made by the court because they are for periods of 12 months. In the department’s view, a much more significant decision that is being made.

Clause 217, ‘Making exclusion order’, sub-section (3) talks about the factors:

*To determine whether making the exclusion order would be a reasonable way of preventing the person from committing a banning offence in the high risk area, the court must consider each of the following to the extent it is relevant:*

...

(e) *the likely effect of an exclusion order on the person and any victim of the banning offence;*

...

(g) *any other matters the court considers relevant.*

In some ways, you would say that a court is going to consider those sorts of things. But it is true, it is not expressly a health ...

**Mrs WORDEN:** Is it something you would consider? It has come twice to the committee as a submission and maybe earlier submissions as well.

**Ms HAACK:** If there is a recommendation made about, it would certainly be considered by the minister. I think the courts are quite used to dealing with people who have a variety of health and social problems. I have significant confidence in judicial members in relation to that. I do know what you say about express provisions, so it was ensured they would turn their mind to it.

**Mrs WORDEN:** I think the consideration here is that the rewrite of the act may result in an increase of people being considered which is in some ways what it is intended to do. As harm minimisation and health and wellbeing is actually at the forefront of it all, there is probably no harm in having it expressly in there so it does not leave any discretion and if it is left out there is something to call upon for others that are supporting that person.

**Ms CLEE:** These provisions relate to high-risk areas so where there has been a declaration of—currently it is the CBD, Mitchell Street and that CBD area that is a designated area.

**Mr NEVE:** This is about the 48 hours by extending the time—if someone is banned on Friday night and the paperwork is done over the weekend it does not really make it possible so by extending that to two weeks it might increase but then you have those conditions about being banned from the CBD but I have a job at Woolies, can I get an exemption to go to work? Yes, you can. Provisions of that nature.

**Ms D'ALESSANDRO:** You are right, because we are extending the period they might get used for. We will take a recommendation.

**Mr CHAIR:** We also heard from others that were talking about working on it more as a health model than a punitive model and training for police and that area.

**Ms D'ALESSANDRO:** My expertise is definitely in the legislation, but through the development of the reform agenda for government we have worked closely with police. I am pretty sure they do a substantial amount of training in dealing with people who have FASD and the like on its continuum. They would probably take any recommendation about it. It is a continuing and growing area.

**Mr CHAIR:** Thank you for coming before the committee. It has been an enormous amount of work that you have done and we appreciate it. Everyone we spoke to today acknowledge the harms and costs to the NT are very significant.

**Mrs FINOCCHIARO:** You guys landed on 25% for corner stores. How was that arrived at? We heard from Ms Hartley today who explained how her business works and how fortunate she is to have that TAB component. Without that, she would in her view be over 25% in alcohol sales and more into 30-35%. How was 25% arrived at?

**Ms D'ALESSANDRO:** Through significant consultation and engagement with the grocery sector. Remembering that Riley recommended a much lower percentage, 15% I think. Ancillary has always been a conditional or secondary of a grocery licence. ARIT conducted and led a whole range of engagement with grocery stores and this included going out and speaking with each of them and asking them to self-report what their percentage is.

**Mrs FINOCCHIARO:** Was that across the Territory or just in Darwin?

**Ms D’ALESSANDRO:** Right across the Territory. That is how we came to a recommendation of 25%. That would be fair, knowing that there would be some that are above. There is also work continuing now about what that will actually look like in the regulations.

I acknowledge that there will a few stores that are above that amount. That amount was arrived at after a significant and genuine period of engagement.

**Mrs FINOCCHIARO:** In your sum up of the consultation it is that largely people might not be shouting from the rooftops about how wonderful it is, but it is a level they can work with.

**Mr CHAIR:** We heard from someone today saying theirs was at 23%.

**Mrs FINOCCHIARO:** Only with the TAB part.

**Mr NEVE:** There was three main concerns that the stores had which was the separation, the advertising and the ancillary number which was 15% at the beginning. With what we landed on, a vast majority are unaffected, a large number have minor changes to make and a few will have significant changes. The wording of the regulation is what happens if you are above that area, which is what we are working on.

**Mrs WORDEN:** If some have to make vast changes that is the intent.

**Ms HAACK:** They would generally have a current condition that requires it to be ancillary, so potentially in breach.

**Mr NEVE:** There is a key part of the Riley review that specifically wants to break the nexus between what is considered regular groceries and specialised products like alcohol. It is at the heart of the Riley recommendation.

**Mrs FINOCCHIARO:** With the separation—months ago it came up as a huge issue—has there been a more tempered position now?

**Mr NEVE:** Through consultation we have arrived at some wording that industry have said is doable but still achieves the intent, which is again separating the alcohol from regular groceries. It has taken the pathway of physical or visual separation. With the government’s Alcohol Secure Grants program there is a pathway for compliance that is less impactful than people first thought.

**Ms D’ALESSANDRO:** That tempered, mediated or negotiated approach has been a result of really good and genuine engagement with industry. It was helping us say that this is the issue if you try to do it this way and government listening to it. Will everyone love it? No. No one is going to be shouting from the rooftops that we are brilliant. If they do, please put it in the *Hansard*.

**Mrs FINOCCHIARO:** We will let you know.

**Ms D’ALESSANDRO:** I think it is a good outcome.

**Mrs FINOCCHIARO:** A better outcome than where we started.

**Ms D’ALESSANDRO:** Exactly.

**Mr CHAIR:** Thank you for coming before the committee. We appreciate it. As we have heard from most of the submissions they support the bill and they have made recommendations to it. It is an enormous amount of work and most people here today have noticed and advised us of significant changes that are happening in a positive way around alcohol in the community. We acknowledge it is a huge amount of work. Your effort and your input in to it is very much appreciated.

Thank you very much from me and the committee.

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The committee concluded.

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