



people's alcohol action coalition



NACCHO
National Aboriginal Community
Controlled Health Organisation

9 June 2022

Hon. Linda Burney MP,
Minister for Indigenous Australians,
Parliament House,
Canberra, ACT

By email: linda.burney.MP@aph.gov.au

NT Liquor Act amendments: Alcohol Protected Areas

Dear Minister,

We are writing to seek your urgent assistance in relation to the Northern Territory Government's (NTG's) recent amendments to the *Liquor Act 2019* and the *Associations Act 2003*, which were passed on 17th May, despite the vocal and determined opposition of numerous organisations.¹

As you would be aware, the *Stronger Futures in the Northern Territory Act 2012* (Cth.) (*Stronger Futures Act*) contains a ten-year sunset provision in s118, which is due to come into effect on or around 16th July this year.

Under the *Stronger Futures Act*, the then Federal Labor Government allowed for the continuation of hundreds of Alcohol Protected Areas (APAs) that had been declared under the earlier *Northern Territory National Emergency Response Act 2007* (Cth.) (NTER). The

2007 legislation had added these APAs, including outstations, town camps and Community Living Areas, to the existing, and mostly larger, more than one hundred long-term, voluntary General Restricted Areas (GRAs).

Note that the GRAs were developed at the request of Aboriginal communities under the NT *Liquor Act 1978*, and pre-date the NTER by decades.

The 2007 changes and the 2012 extension have made it an offence either to take alcohol to, or consume alcohol in, those additional areas – APAs – for fifteen years.

The Howard Government's suspension of the *Racial Discrimination Act 1975* (Cth.) (RDA) of course ended with the *Stronger Futures Act*, and it is important to note that there has not been any legal challenge to these *special measures* since their original implementation in 2007. It is also important to note that the legal advice to the Federal Government in 2012 was that the APA provisions under the *Stronger Futures Act* did not constitute a breach of the RDA. If they had been considered to do so, the then Minister Jenny Macklin would not have proceeded with their introduction.

The APA provisions in the *Stronger Futures Act* were mirrored in the NT's *Liquor Act*. They have offered protection to community residents at risk, including but not only women, children and the elderly.

These provisions have been particularly effective since the NTG provided full-time Police Auxiliary Licensing Inspectors, or PALIs, in 2018, as well as agreeing to implement most other recommendations of the comprehensive Riley Review of alcohol policy and legislation in the NT. That Review was commissioned under the leadership of the then Chief Minister Gunner and the Minister for Alcohol Policy and now Chief Minister Natasha Fyles.ⁱⁱ

The PALIs operate in Alice Springs, Tennant Creek and Katherine to ensure, through the checking of ID, that potential customers have somewhere legally to consume alcohol. This means that residents of GRAs and APAs are refused service. The full-time PALI scheme has been far more effective than the sporadic presence that police were able to provide between 2012 and 2018, and it is arguably the most effective supply reduction measure of the various progressive restrictions introduced in the NT in recent years.

By way of example, in the first full year after the introduction of PALIs and the Minimum Unit Price of \$1.30 per standard drink in October 2018, alcohol-related domestic violence assaults went down from 765 to 515 in Alice Springs. This was a reduction of 250 assaults, or around five fewer a week. Alice Springs Hospital data shows that it is assaults of the severe type which reduced, with alcohol-related admissions to the Intensive Care Unit also declining.

All alcohol-related assaults in Alice Springs dropped from 1219 in the year prior to 721 in the first year after these measures were introduced – a reduction of 498 assaults which is more than one a day. The decline in alcohol-related Emergency Department presentations was even greater, going from 4783 to 2826, a reduction of 1957 presentations. This is more than five fewer per day. Results over-all have been very good,ⁱⁱⁱ aside from COVID-related increases in alcohol consumption and harm. These have occurred throughout Australia.

We are now in a situation where the NTG has suddenly abandoned its generally admirable record on addressing the very high rates of alcohol consumption and severe related harm,

and its vulnerable Aboriginal residents. This has occurred because the NTG says it considers the APAs to be 'racist' and does not accept the concept of positive discrimination. It takes the misguided view that any type of discrimination is wrong. This legislative change has occurred without notice and in the absence of any proper consultation either with communities or with representative agencies such as ourselves. We are convinced that these unexpected, hasty and ill-advised legislative changes will see alcohol flow into many of the APAs, and most likely to nearby GRAs that chose many years ago to adopt a restricted status.

These changes will mean that if an APA's residents either do nothing because they are not aware of what is about to happen (as will inevitably be the case with many) or if they choose to 'opt out' before the middle of July, they will be soon able to purchase take-away alcohol and drink at their community for the first time in fifteen years.

We believe that the entire process is a reversal of what should occur, given that the restrictions have applied since 2007, and, importantly, considering the close proximity of some outstations and homelands to GRA communities. Just two examples of this are Ntaria/Hermannsburg and its numerous outstations, and Arplarra and the nearby Utopia homelands. In a practical sense, it will be well-nigh impossible for PALIs to work out whether a potential bottle shop customer is from a restricted or unrestricted (APA) community, or from a nearby GRA, given that street addresses have virtually no application in remote areas of the Northern Territory. The highly effective PALI scheme will therefore become impossible to administer.

Many of these communities have no permanent clinic or police presence, and it is likely that alcohol will flow in if they either 'opt out' or do nothing. It is simply not possible to consult properly, including with the explanation of relevant data, in the few weeks allowed.

Chief Minister Natasha Fyles, who as Minister for Alcohol Policy has driven many of the reforms, has said repeatedly that the *Stronger Futures Act* provisions are 'racist' and could not be continued. On the other hand, she and the new Attorney-General, Chansey Paech, have both told the media numerous times that the Federal Government has 'washed its hands of' or 'walked away from' the issue. This suggests that the NTG was expecting the provisions to continue. It has certainly decided to accept continuing *Stronger Futures* equivalent funding from the Federal Government, including for assistance with early childhood learning, policing and alcohol reductions services.^{iv}

A related and very serious aspect of this problem is that too many of the people who will soon have access to take-away alcohol are suffering from neuro-cognitive impairments that make standard approaches to treatment ineffective, as outlined in recent research. Such people are also much more likely to be violent when under the influence of alcohol.^v

Funding for standard treatment services will not be able to address the harm that will be caused by open access to take-away alcohol. The Commonwealth investment in the NT through *Stronger Futures* will be completely undermined.

We do not believe the provisions are racist, or 'negative discrimination'; rather, they are in our view positive and beneficial *special measures* in keeping with the High Court's latest definition in *Maloney v R*.^{vi}

in *Maloney*, Crennan J noted that, rather than the consumption of alcohol being a right:

[it is] is the right of Aboriginal persons (on Palm Island), in particular women and children, to a life free of violence, harm and social disorder brought about by alcohol abuse.[178];

and the Court said:

Alcohol abuse and misuse, and the violence, disturbances and public disorder associated with those evils, all detract from the equal enjoyment and exercise of human rights and fundamental freedoms. Minimising those evils and their consequences, particularly the incidence of alcohol-fuelled violence, is essential to equal enjoyment and exercise of rights and freedoms. Those who live in fear of violence cannot exercise their rights. They are not free. And when the violence is spread through a community, the members of that community cannot exercise their rights and freedoms.[107]

Any suggestion that anyone has had their rights eroded due to these provisions is clearly untrue; there is no 'right to drink'. The right to freedom from alcohol-induced violence, exploitation and other harm is what is protected. We also note that *special measures* are intended to continue until they are no longer needed. It is curious that the NTG has apparently not been concerned about the supposedly racist nature of these restrictions until the eleventh hour.

It has had a decade to take legal action against the restrictions if it genuinely considered them to be racist.

We believe the NTG could continue the provisions with reference to *special measures* and exemptions under s57 of its own *Anti-Discrimination Act 1992* whilst proper consultations are undertaken, which would then enable communities through a properly informed choice to 'opt out'. It has chosen not to do so and has declined to provide a copy of any legal advice provided to it on this possibility.

We are convinced that this change in policy will lead to a spike in alcohol-related injury and offending, and increased pressure on health services, women's shelters, police and many other services. It has occurred in the absence of any comprehensive review or evaluation.

Alice Springs, Tennant Creek and Darwin, in particular, are currently experiencing a seemingly unrelenting spate of property-related offending, mainly by youth. The victims include Aboriginal organisations as well as commercial businesses and general community residents. Police are working with Government and non-government agencies, and have made it clear that they cannot arrest their way out of serious social problems. There is no doubt that many of the offenders are from families where adults have alcohol problems. To permit more access to alcohol will undoubtedly add fuel to this fire.

We ask that you extend the current provisions for two years, with communities automatically 'opting in' to continue their 'dry' status until there has been thorough and proper consultation, including with vulnerable community members and relevant service providers. Once proper consultation has occurred communities should be allowed to 'opt out', although we think if the process is not rushed and is properly informed, only a small number of communities, including (very high risk) town camps, will choose this option.

We also note very recent published comments by Neil Westbury,¹⁶ who was a member of the Gilbert Independent Panel into the proposed Dan Murphy's store in Darwin. This was a sorry episode in which the NTG Government failed its residents in relation to alcohol availability through questionable legislative amendments designed to exclude the Liquor Commission and smooth the path for the licence applicant.

We support Mr. Westbury's comments and his call for the Albanese Government to extend the provisions "to enable a transparent and independent review of the impact of current restrictions involving meaningful consultation with communities affected", and to involve Aboriginal peak organisations in discussions of such a review and what should then occur.

We ask that you do what the NTG, for reasons unknown to us, has refused to do, and put the health and well-being of Territorians, and especially Aboriginal Territorians, at the forefront. We would be more than happy to discuss this urgent matter further at your convenience.

Please contact: John Paterson
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Yours sincerely,

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¹ https://www.paac.org.au/LIQUOR_LAWS_JOINT_MEDIA_RELEASE_18.5.22.pdf. Note: other media releases and interviews can be found at: www.paac.org.au and <https://www.amsant.org.au/media-releases/>

² <https://alcoholreview.nt.gov.au/governance?a=453497>

³ Attached: Alcohol-related harm in the Northern Territory (2015-2021) December 2021.

⁴ <https://ministers.pmc.gov.au/wyatt/2022/extension-remote-aboriginal-investment-northern-territory>

⁵ <https://www.tandfonline.com/doi/full/10.1080/13218719.2021.1873204>

⁶ [2013] HCA 28 (19 June 2013) at: [https://www.austlii.edu.au/other/austrlii/au/cases/cth/HCA/2013/28.html?context=1;query=maloney;mask_path=au/cases/cth/HCA](https://www.austlii.edu.au/au/other/austrlii/au/cases/cth/HCA/2013/28.html?context=1;query=maloney;mask_path=au/cases/cth/HCA)

⁷ Neil Westbury: [The Albanese Labor Government needs to act urgently to protect women and children in remote NT communities - Pearls and Irritations \(johnmenadue.com\)](https://www.pearlsandirritations.com/2022/06/01/neil-westbury-the-albanese-labor-government-needs-to-act-urgently-to-protect-women-and-children-in-remote-nt-communities/)