
STRONGER FUTURES

ALCOHOL REGULATION IN THE NT

by Errin Walker

INTRODUCTION

In July, 2012, the Commonwealth Government introduced the *Stronger Futures in the Northern Territory Act 2012* (Cth) (the 'Stronger Futures Act') ahead of the impending sunset of the Northern Territory Emergency Response ('NTER') in August, 2012. Central to the Act was the continuation of alcohol restrictions introduced under the NTER with the object of reducing alcohol related harm to Aboriginal people in the Northern Territory ('NT').¹ That something must be done to address alcohol related harm in the Territory is relatively uncontroversial; the problem is in finding the right 'something' that is both effective and appropriate to the needs of the Aboriginal communities involved. The Territory has been the subject of extensive alcohol regulation at the Territory level, and since the 2007 NTER, by the Commonwealth. This has resulted in a complex web of disparate alcohol laws. This article will consider the Stronger Futures alcohol laws in light of the last decade of alcohol regulation and assess its prospects for success in tackling the Territory's 'rivers of grog'.²

ALCOHOL RELATED HARM IN THE NT

Empirically, alcohol is a major problem in the Territory, particularly among the Aboriginal community.³ It is associated with higher rates of death, hospitalisation, unemployment, domestic violence and crime, with severe impacts on health, education, employment and housing.⁴ Alcohol is consumed in the NT at a rate one and a half times the Australian average; a level that, were the NT a country, would rank it second in the world for consumption per person.⁵ The total cost of alcohol related harm in the NT is estimated at \$642 million annually.⁶

ALCOHOL REGULATION IN THE NT 2002-2012

There are several ways of classifying types of alcohol regulation. One way is to distinguish between regulation that targets consumers and that which targets suppliers. Strategies targeting consumers include restrictions on alcohol and regulation of behaviour bolstered by criminal penalties, whereas regulation targeting suppliers aims to reduce the availability of alcohol by such measures as

minimum pricing, and restricting hours and products. Another useful way of classifying measures is by reference to their method of creation; that is whether they are externally imposed or initiated by local communities. Applying these two distinctions in the NT helps to clarify where Stronger Futures fits in with existing measures.

NT GOVERNMENT

In the past decade, the NT Government has implemented a large number of measures in response to concerns about alcohol. These measures have overwhelmingly targeted consumers, and culminated in 2011 with the introduction of the toughest alcohol laws in Australia as part of a package called 'Enough is Enough'.⁷ Other reforms to the *Liquor Act 1978* (NT) have included the introduction of dry towns or 'public restricted areas' (where consumption of alcohol in public is prohibited), restricted premises (under which private premises may be declared alcohol free), and 'general restricted areas' (in which it is an offence to introduce, consume, possess or supply alcohol).⁸ More recently this has been complemented by increases in police powers to move people on, issue on the spot fines and dispense with alcohol in public places,⁹ as well as search and enter restricted premises.¹⁰

The Government has also introduced a more limited set of measures that target suppliers. These include tightening up the licensing process, limiting the availability of permits which grant individuals or organisations permission to bring alcohol into restricted areas,¹¹ and introducing supply plans imposed by the licensing commission that can include restrictions on trading hours and the sale of certain products.¹²

A slightly different type of consumer regulation has targeted individual consumers, rather than consumers generally. The Alcohol and Other Drug Tribunal and Substance Misuse Assessment and Referral for Treatment ('SMART') Court have allowed for mandatory treatment orders and alternative sentencing arrangements,¹³ while the Banned Drinker Register prohibited those on the register from purchasing alcohol.¹⁴

NTER

The Commonwealth introduced the NTER in 2007 and it continued to focus on measures targeted at consumers, with the primary reform being the imposition of widespread 'prescribed areas' in which the possession and consumption of alcohol was prohibited, and which were accompanied by signposted ban notices and increased penalties.¹⁵

What most distinguished the measures introduced as part of the NTER was their unilateral imposition. Prior to the NTER over 100 Aboriginal communities had already been declared general restricted areas, all of them by community application.¹⁶ As Professor Dennis Gray has noted, 'Around 80 per cent of the remote communities targeted by the [NTER] have already chosen to be dry'.¹⁷

STRONGER FUTURES

Stronger Futures takes over where the NTER left off, with minor alteration. It continues the NTER prescribed areas, rebranding them 'alcohol protected areas', as well as the tougher penalties for breach. The new measures are to remain in place for the next 10 years.¹⁸ Consistent with amendments to the NTER in 2010, Stronger Futures allows for community-established 'Alcohol Management Plans' that displace government-imposed restrictions in favour of community-controlled regulation.¹⁹ Stronger Futures also modifies NTER laws relating to signposting of alcohol restrictions and offences by requiring community consultation prior to deciding to erect such a sign and in formulating its wording.²⁰ The Act introduced the capacity for an appointed assessor to investigate the activities of a licensed premises believed to be contributing substantially to alcohol related harm through its sales on and off premises.²¹ This measure was positively received. Also, in regard to supply reduction, the Act restricts sales only in alcohol-protected areas.²²

EVALUATION: WHAT IS THE DEBATE ABOUT?

The question remains whether Stronger Futures offers anything different from existing measures that makes it more likely to achieve its objective. The main concerns raised in regard to the legislation are the focus on consumer regulation, criminalisation of individual behaviour, the continuation of externally imposed restrictions, and the lack of broader policy measures to address the multi-causal nature of alcohol related harm such as public health and social welfare.²³

CONSUMER VERSUS SUPPLY

The consensus of international and domestic research is that regulation that combines supply, consumer and

harm reduction strategies is more likely to be effective.²⁴ As noted above, a central feature of the Stronger Futures legislation is that it continues to focus on the regulation of consumers through blanket bans over geographical areas.²⁵ Those bans criminalise individual behaviour, and can result in fines and imprisonments of up to 18 months.²⁶ In their submissions to the Senate Committee on the Stronger Futures Bills, Australians for Native Title and Reconciliation ('ANTaR'), the Australian Human Rights Commission ('AHRC') and Reconciliation Australia feared this would result in the imprisonment of more young Aboriginal people and risk exacerbating existing social problems within Aboriginal communities.²⁷ This is a serious concern as Australian Bureau of Statistics data demonstrates that 82 per cent of NT prisoners in 2011 were Aboriginal or Torres Strait Islander.²⁸ Many argue that bans, as well as inequitably criminalising behaviour that is otherwise lawful, have a displacement effect with unintended consequences. Potential effects include relocating violence and drinking to unseen and unsafe areas such as camps outside community limits, encouraging migration to larger towns where alcohol is available, and a shift by some to illicit drugs.²⁹ On the other hand, some have called for greater enforcement of bans as existing enforcement strategies have not been effective due to an insufficient police presence.³⁰ The Commonwealth Government's own report on the Stronger Futures consultations states that respondents 'wanted to see alcohol and heavy drinking subject to strong regulation'.³¹

A noteworthy aspect of Stronger Futures is the absence of clear, standardised measures restricting supply. It is well established that supply reduction including restricting trading hours, decreasing the number of licensed premises, and price controls and taxation are effective in decreasing alcohol related harm.³² In 2007 the NDRI prepared a report on the substantial impact of restricting takeaway sales, such as limiting opening hours.³³ This is particularly relevant as takeaway sales are responsible for 70 per cent of alcohol sales in the NT.³⁴ Taxation is another supply measure that has previously resulted in a reduction in alcohol related harms, including hospitalisation and death, in the NT under the now terminated 'Living with Alcohol' program alcohol levy.³⁵

COMMUNITY CONTROL AND ABORIGINAL RIGHTS

A major criticism of the NTER, and a common theme among submissions to the Stronger Futures Senate Committee, was the need for any strategy addressing alcohol related harm to be driven by communities rather than imposed by governments. Research and empirical evidence from Australia and abroad suggests that any

measure which is not initiated and supported by Aboriginal communities themselves can be ineffective and can generate additional problems such as disempowerment and marginalisation.³⁶ The community development approach is advocated as more sustainable and suited to the local geographic and cultural needs of communities where it is adequately supported and resourced.³⁷ Indeed, Jenny Macklin MP acknowledged that imposed bans are not a long-term solution, and a move to community plans was desired.³⁸

In this regard, Stronger Futures shifts away from the complete imposition approach of the NTER by permitting 'Community Managed Alcohol Plans' in some circumstances.³⁹ The legislation provides for communities to apply for such a plan. Where their plan is accepted by the Minister, the Government imposed restrictions will cease to apply. A concern is the broad discretion the Minister has to refuse an application,⁴⁰ as well as inadequate resources and support structures to empower communities to develop their own plans.

The other central issue regarding imposed restrictions is their impact on Aboriginal rights, including the *Racial Discrimination Act 1975* (Cth) the UN Declaration of Rights of Indigenous Peoples, and the International Convention on the Elimination of All Forms of Racial Discrimination.⁴¹ The AHRC and ANTaR questioned the legal basis of the coercive measures, arguing the consultation process for Stronger Futures was lacking due to inappropriate meetings, restricted timeframes, and the absence of interpreters.⁴² The AHRC noted 'the consent of the affected group ... is of paramount concern where punitive special measures operate by limiting certain rights of some, or all, of the affected group'.⁴³ The Commonwealth Government reports holding public meetings in nearly 100 local communities and towns, and discussions with individual and groups between June and August, 2011, to gauge the views of Aboriginal people.⁴⁴

CONCLUSION

The Commonwealth Government's objective in its Stronger Futures alcohol laws to address alcohol related harm in Aboriginal communities of the NT has been widely applauded. However, its methodology has been questioned based on its chances of success, potential negative impact on Aboriginal rights, and the potential result; widening the cultural divide. Stronger Futures continues the Territory's history of legal regulation focusing primarily on consumers in local Aboriginal communities. Existing research indicates that the effectiveness of regulatory strategies aimed at reducing

alcohol related harm is improved if they are community controlled and supported, adequately resourced and include harm reduction, supply and consumer regulation. Stronger Futures has the potential to regulate suppliers contributing to alcohol related harm and allows for community managed alcohol plans, but the extent and effect of their application is yet to be determined.

Errin Walker was an intern at the Gilbert + Tobin Centre for Public Law and is a final year Juris Doctor student at the University of New South Wales. Acknowledgement for their significant contributions must go to Sean Brennan (Gilbert + Tobin Centre for Public Law, UNSW) and Leon Terrill (Indigenous Law Centre, UNSW).

- 1 *Stronger Futures in the Northern Territory Act 2012* (Cth) s 7.
- 2 Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Little Children are Sacred* (Final Report, Northern Territory Government, 2007) <http://www.inquirynt.gov.au/pdf/bipacsa_final_report.pdf>. Note that this article does not consider the changes to NT laws currently being considered by the newly elected Country Liberal Government.
- 3 South Australian Centre for Economic Studies, 'Harms from and Costs of Alcohol Consumption in the Northern Territory' (Final Report, South Australian Centre for Economic Studies commissioned by Menzies School of Health Research, 2009).
- 4 Department of the Attorney General and Justice, Northern Territory Government, 'Northern Territory Quarterly Crime Statistics' (June Quarter, 2012) 33; South Australian Centre for Economic Studies, above n 3, 17, 26, 35; For a summary of key statistics see, That's Enough, *Get in the Know* (2012) <<http://thatsenough.com.au/get-in-the-know/>>.
- 5 South Australian Centre for Economic Studies, above n 3, 3.
- 6 *Ibid* (v).
- 7 Delia Lawrie, 'Enough is Enough Alcohol Reforms Passed into Law' (Media Release, 5 May 2011) <<http://newsroom.nt.gov.au/www.newsroom.nt.gov.au/index29b1-2.html?fuseaction=printRelease&ID=8191>>.
- 8 *Liquor Act 1978* (NT) ss 74, 101B.
- 9 *Ibid* ss 75, 89A, 95, 101AE, 120Q.
- 10 *Ibid* pt 8A div 3.
- 11 *Liquor Amendment Act 2002* (NT); *Liquor Amendment Act 2003* (NT) pt III div 2A.
- 12 Northern Territory Licensing Commission, 'Reasons for Decision: Alice Springs liquor Supply Plan' (7 September, 2007) <http://www.nt.gov.au/justice/commission/decisions/060907_Alice_Springs_Liquor_Supply_Plan.pdf>.
- 13 *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act 2011* (NT).
- 14 *Liquor Act* (NT) pt XAB div 3. The newly elected Country Liberal Government has indicated that it intends to remove the banned drinkers register.
- 15 *Northern Territory National Emergency Response Act 2007* (Cth) pt 2 div 2.
- 16 Editors, 'Northern Territory National Emergency Response Act 2007 (Cth)' (2007) 11 *Australian Indigenous Law Review* 80, 81.
- 17 Bronwyn Duncan, 'Restrictions reap rewards' (2011) 9 *Of Substance: The National Magazine on Alcohol, Tobacco and Other Drugs* 18, 18.

- 18 *Stronger Futures in the Northern Territory Act 2012* (Cth) ss 8–9.
- 19 *Ibid* pt 2 div 6.
- 20 *Ibid* s 14.
- 21 *Ibid* s 15.
- 22 *Ibid* ss 12–13.
- 23 See, eg, Australian Human Rights Commission (AHRC), Submission No 351 to Senate Standing Committee of Community Affairs, *Inquiry into Stronger Futures in the Northern Territory Bill 2011 and two related bills*, 6 February 2012; ANTaR, Submission No 454 to Senate Standing Committee of Community Affairs, *Inquiry into Stronger Futures in the Northern Territory Bill 2011 and two related bills*, February 2012.
- 24 Dennis Gray and Edward Wilks, 'Reducing alcohol and other drug related harm' (Resource Sheet No 3, Closing the Gap Clearinghouse, December, 2010) 4.
- 25 *Stronger Futures in the Northern Territory Act 2012* (Cth) pt 2 deals with alcohol.
- 26 *Ibid* pt 2 div 2.
- 27 AHRC, above n 23, 49[299]; ANTaR, above n 23, [67]; Reconciliation Australia, above n 23, 11.
- 28 Australian Bureau of Statistics, 'Prisoners in Australia 2011' (4517.0, 8 December 2011) 37 <[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/7B05CD44A0E2FC8ACA25795F000DBD0F/\\$File/45170_2011.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/7B05CD44A0E2FC8ACA25795F000DBD0F/$File/45170_2011.pdf)>.
- 29 AHRC, above n 23.
- 30 Australian Government, 'Stronger Futures in the Northern Territory: Report on Consultations' (October 2011) 10.
- 31 *Ibid*.
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- 33 NDRI, 'Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes' (2007) 24–25.
- 34 Russell Goldflam, 'Damming the Rivers of Grog' (2010) 15 <<http://www.ns.uca.org.au/wp-content/uploads/2010/10/Damming-the-Rivers-of-Grog-22.pdf>>; Board of Inquiry, above n 2, 166.
- 35 Tanya Chikritzhs, Timothy Stockwell and Richard Pascal, 'The Impact of the Northern Territory's Living with Alcohol Program 1992-2002: Revisiting the Evaluation' (2005) 100 *Addiction* 1625.
- 36 Closing the Gap Clearinghouse, 'Closing the Gap Clearinghouse: Annual Report' (Australian Institute of Health and Welfare, 2011) 4.
- 37 AHRC, above n 23, 42; Gray and Wilks, above n 24, 7; World Health Organisation, 'Global strategy to reduce the harmful use of alcohol' (2010) 12-13.
- 38 Jenny Macklin MP, *Stronger Futures in the Northern Territory Bill 2011*' (Second Reading Speech delivered at Parliament House Canberra, 23 November 2011).
- 39 *Stronger Futures in the Northern Territory Act 2012* (Cth) s 26.
- 40 *Ibid* pt 2 div 6.
- 41 Amnesty International Australia, Submission No 271 to the Senate Standing Committee of Community Affairs, *Inquiry into Stronger Futures in the Northern Territory Bill 2011 and two related bills*, February 2012, 2, 6.
- 42 ANTaR, above n 23, [32]-[35]; AHRC, above n 23, 41.
- 43 AHRC, *Ibid*.
- 44 Australian Government, above n 30, 7–8, 31.

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