# **05. Endeavour Drinks Group**

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Incarceration rates of Aboriginal and Torres Strait Islander peoples

Submission to the Australian Law Reform Commission by Endeavour Drinks Group

**ABOUT ENDEAVOUR DRINKS GROUP**

Endeavour Drinks Group (**EDG**) is part of Woolworths Limited and operates 1,515 packaged liquor outlets in every Australian State and Territory. Some of these outlets (predominantly in Queensland) are operated in association with a joint venture business, Australian Leisure and Hospitality.

Our association with Woolworths means that many of these outlets are co-located with supermarkets in the remotest parts of Australia, in many cases these stores serve a massive catchment area, in the case of Nhulunbuy in East Arnhem Land the next closest major supermarket is 729 kilometres away. Communities in these distant locations have the expectation that basic retail services should be of a similar standard to those offered elsewhere in the country. Retail liquor outlets in locations like this need to tread a very fine line between serving the legitimate needs of the majority of the community who use the products that they sell responsibly, and doing everything they can to prevent harm to vulnerable sections of the population.

EDG attempts to strike that balance by operating our business to the highest standards of responsible service and through the implementation of additional voluntary measures designed in conjunction with local authorities and communities. These measures include but are not limited to numerous ranging, pricing and promotional restrictions in multiple locations, and geographical restrictions on online sales. A list of our voluntary measures is provided at **Annexure 1**.

EDG has a strong record of engagement with local authorities to address alcohol related harms. We were the first business to remove large format cask wines from range; worked with the NT Department of Justice to introduce the first electronic ID system in East Arnhem Land; and introduced the first minimum price scheme in Alice Springs and other remote areas.

The focus of this submission is predominantly on alcohol policy in the Northern Territory. We have concentrated on this jurisdiction because the Indigenous population at 29.8% is significantly higher than any other state or territory, and because it is second only to Western Australia in the rate of Indigenous incarceration. EDG operates 15 licensed outlets in the Northern Territory and over the past 30 years of doing business there we have played a role in the implementation of almost every policy initiative related to the sale of packaged alcohol. The Northern Territory has also implemented the broadest suite of alcohol policy options including some that have been untried in other jurisdictions - such as the introduction of a territory-wide photo-ID system and a hypothecated alcohol levy system.

**RATES OF INCARCERATION OF INDIGENOUS PEOPLE IN AUSTRALIA**

During the decade between 2004 and 2014 the rate of imprisonment for people identifying as Aboriginal and Torres Strait Islander increased by 52%. The overall rate for Australia of 1,857 per 100,000 of population (13 times the rate for the non-Indigenous population) conceals some dramatic variation by jurisdiction, with Western Australia having the highest rate at 3,013 per 100,000 and Tasmania the lowest at 417 per 100,000. All jurisdictions with the exception of Tasmania have shown significant increases in the rate of Indigenous incarceration during this period.

While around 3% of Australians identify as Indigenous, Aboriginal and Torres Strait islanders account for 27% of the prison population.[[1]](#footnote-1)

**THE ROLE OF ALCOHOL IN INDIGENOUS OFFENDING**

The harms resulting from alcohol abuse are not isolated to Indigenous communities. Indigenous people are 1.6 times more likely that non-Indigenous to abstain from drinking alcohol. However those Indigenous people that do drink alcohol are more likely to do so at harmful levels.[[2]](#footnote-2) At the risk of stating the obvious, the over-representation of Indigenous people in custody is a direct result of their over-representation in offending, and particularly so because of the type of offence committed. The single largest cohort of Indigenous prisoners - 34% - are detained as a result of violent offences which are more likely to result in a custodial sentence. This rate is 10% higher than the violent offending rate of non-Indigenous prisoners and almost double the rate of the next most common Indigenous offence category (public order offences).[[3]](#footnote-3)

If available rates by jurisdiction are aggregated and weighted for the Indigenous population, the suggested overall offending rate is 9,496 per 100,000, or almost 1 in 10.4. By comparison, the similarly constructed statistic for the non-Indigenous population suggests an overall alleged offending rate of 1,261 per 100,000 or 1 in 79.5.[[4]](#footnote-4) That alcohol plays a role in Indigenous violent offending is indisputable. Seventy percent of the 237 Indigenous homicides (where both victim and offender were Indigenous) from 1999–2000 to 2004–05 occurred in situations where both victim and offender were drinking.[[5]](#footnote-5) The extent to which that relationship is causal and how alcohol interacts with other causes of violent behaviour is less clear. It does appear however that for Indigenous people, the effects of alcohol misuse on the risk of both victimisation and offending tend to be greater than for non-Indigenous people.

Despite its pharmacological effects on the central nervous system, alcohol does not facilitate aggression in all persons or in all situations.[[6]](#footnote-6)

Although alcohol and violence are commonly portrayed as inter-dependent in Indigenous contexts, it must be emphasised that alcohol itself does not cause violence. This is evident in the fact that there are examples of a) alcohol free Indigenous communities where violence occurs, and b) Indigenous people who drink alcohol but who are not violent. Similarly, Kreisfeld *et al* (1995:21) state that alcohol abuse in relation to Aboriginal injury is a symptom of things such as poverty, unemployment, passive welfare, and the loss of land and culture.

However, he states the effects of alcohol-related injury are often so damaging that alcohol is considered as the only cause of the problem.

*“Without intervention and without healing and recovery from the long-term effects of the underlying longitudinal causes of violence impacting on Aboriginal people as well as the situational and precipitating factors, cycles of inter-generational violence will continue to be perpetuated and alcohol will continue to be used as a way to avoid dealing with these problems.”[[7]](#footnote-7)*

The impact of Fetal Alcohol Spectrum Disorders (FASD) although not widely researched is also emerging as a potential contributing factor to high rates of indigenous offending. The Lililwan Study conducted in the Fitzroy Valley showed the highest prevalence rates of FASD ever recorded in Australia and highlighted the lack of knowledge amongst Indigenous women in remote areas of the consequences of alcohol consumption during pregnancy. The findings point an urgent need for the provision of appropriate information, education and support for indigenous women of child-bearing age particularly in remote areas.

Dealing with alcohol misuse must be a key element of any response to Indigenous violence, given its central role as a risk factor. Responses need to involve programs aimed at reducing problem alcohol use and providing community-level support for those who want to address their alcohol problems. These programs should be developed by or with Indigenous people and communities so that they incorporate Indigenous ways of teaching and learning, and are relevant to the life experiences and circumstances of those taking part in them.

**ALCOHOL POLICY MEASURES**

**Living With Alcohol (LWA) - 1992-2002**

In 1992 Marshall Perron’s Country Liberal Government introduced the LWA programme. The scheme was initially funded by the imposition of a levy on all alcoholic beverages sold in the Northern Territory with an alcohol by volume (**ABV**) content of 3% or higher. If it was fully reflected in retail pricing the LWA Levy would have raised the retail cost of these beverages by about 5 cents per standard drink. This levy acted as a hypothecated tax which was used to fund various programmes and services to address alcohol related harms. The LWA levy was removed in 1997 as a result of a High Court decision. Nevertheless, the programmes and services that were funded by the levy continued to operate until 2002 with replacement funding from the Commonwealth Government.

The LWA is frequently quoted by advocates as an example of the efficacy of economic (price-based) controls on alcohol availability. However an evaluation of the scheme conducted by Chikritzhs et al[[8]](#footnote-8) showed mixed results. The evaluation showed a reduction in acute but not in chronic alcohol attributable deaths. It also makes mention of confounding factors such as the introduction of an additional cask levy and the reduction in the BAC driving limit from .08 to .05. The design of the evaluation makes no mention of any analysis that was conducted on actual retail pricing during the period of the study. It seems to assume that the levy was fully reflected in an increase in the retail price of alcohol during the period it was in place, and more importantly, it assumed that a drop in retail pricing of alcohol occurred when it was removed.

This reflects the difficulty of modelling the efficacy of policy interventions in a dynamic market environment. In other words, the conclusions may be called into question if the assumptions regarding the impact of the levy on actual pricing in the marketplace are incorrect.

It is also unclear from the study whether or to what degree the reductions in alcohol related harm were related to the services supported by the LWA levy or the cost impact (if any) of the Levy itself. It is also possible that macro-economic factors unrelated to the LWA had impacted specifically on rates of alcohol consumption and related harm, as the introduction of the scheme coincided with a period of recession and high unemployment in Australia.

**Controls on availability by means of reduced trading hours, price mechanisms, and bans on certain classes of product - ongoing**

In addition to the major legislative initiatives to control alcohol availability, a multitude of locally focused measures both mandatory and voluntary have been implemented in the Northern Territory and other jurisdictions. These initiatives are usually characterised by two common factors, a focus on controlling the supply of alcohol with little if any attention paid to addressing demand or funding of additional support for those with substance abuse problems, and a lack of any formal evaluation of their effectiveness. The fact that they often overlap also makes any evaluation of “what works” difficult.

The range of policy and intervention options introduced by both the NT and Commonwealth governments in Alice Springs alone in the six year period from 2006 to 2012 is illustrative:

* A new Liquor Supply Plan featuring restrictions on trading hours and cask sales (October 2006)
* Voluntary removal of large format cask wine from sale by EDG (November 2006)
* Voluntary removal of fortified casks and low-price fortified wine by EDG (December 2006)
* Income quarantining as part of the federal intervention (August 2007)
* Register of details of alcohol sales (August 2007)
* Declaration of public restricted areas (August 2007)
* Implementation of ID scanning for purchases of takeaway alcohol (June 2008)
* Voluntary removal of low-price bottled wine (below $7.99) by EDG (November 2010)
* Implementation of Banned Drinker Register (July 2011)
* Removal of Banned Drinkers register (August 2012)
* Implementation of police temporary beat locations (September 2012)

Many of these initiatives were introduced under the umbrella of Alcohol Management Plans. We do not believe that availability restrictions alone are an effective way to control alcohol related harm if they are not supported by other complementary initiatives. In our view, restrictions on the availability of alcohol products and population wide controls should not be used as a substitute for the implementation of a long-term targeted health and education strategies and treatment options to reduce harmful patterns of alcohol consumption.

**Banned Drinker Register: 2011-2012**

The Banned Drinker Register (**BDR**) was the central plank of a broad suite of measures introduced by Paul Henderson’s Territory Labor Government. Prior to the Territory wide introduction of the BDR a number of ID based alcohol permit systems had been trialled in various parts of the Territory (Groote Eylandt, Nhulunbuy, and Alice Springs). The BDR was legislated in March 2011 as part of the Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act (NT) and commenced operation in July of that year.

It created a register of individuals with a history of protective custody or alcohol related offences who had been issued with a Banning Alcohol and Treatment (**BAT**) notice. All packaged alcohol outlets in the Territory were equipped with ID scanners and all persons purchasing take-away alcohol were required to produce valid identification for scanning. The scanners were linked to a police database and an identity match with any person listed on the register attempting to purchase take-away alcohol would result in a refusal of service.

The scheme had a number of issues, the equipment was occasionally prone to failure and was not capable of reading all forms of ID. It did not apply to alcohol consumed on-premise, so that anyone who was subject to a BAT could drink their fill at a hotel bar without providing ID. There were also anecdotal claims (confirmed by our own CCTV evidence) that people on the register were able to obtain alcohol via secondary supply.

The BDR was in place for barely a year before it was scrapped by the incoming Country Liberal Government upon their election in August 2012. As soon as this occurred the 2,500 people on the register, were free to buy take-away alcohol again. The limited time-frame of the scheme’s operation made any kind of robust evaluation of its effectiveness impossible, but to quote Professor Peter D’Abbs from the Menzies School of Health Research:

“*I think there is strong anecdotal evidence that since the BDR was dismantled there has been an increase, both in drunkenness in the towns concerned, public drunkenness, and some of the harms that spin off from that.*”

Our own experience was that the period when the BDR was in place coincided with a reduction of attempts by intoxicated people to purchase alcohol, and a reduction in the incidence of anti-social behaviour in and around our outlets.

**Alcohol Mandatory Treatment (AMT) - 2013-2016**

On 27 June 2013 the Northern Territory Legislative Assembly passed the Alcohol Mandatory Treatment Bill 2013 at the same time the Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act (NT) was repealed bringing a formal end to the BDR which had ceased operating in August 2012 following the election of Terry Mills’ CLP Government .

The new law introduced a system of mandatory orders for persons taken into police protective custody for being drunk in public three or more times in two months. Following a health assessment the Alcohol Mandatory Treatment Tribunal had the power to make any of the following orders:

* a mandatory residential treatment order for up to 3 months
* a community treatment order in a residential or community setting
* a release or exemption order
* an income management order for welfare recipients

At the time of the scheme’s introduction health, legal, and Indigenous groups, argued that the program targeted homeless Indigenous people and criminalised a health issue. There were also significant doubts expressed about the effectiveness of any rehabilitation treatment that was delivered on a non-voluntary basis.

The report found that insufficient complementary investment in assessment and treatment centres meant that "*a number of people who could potentially benefit from treatment were excluded from the process.*" An evaluation of the program was conducted by PwC's Indigenous Consulting and the Menzies School of Health Research[[9]](#footnote-9). According to the report, in 2015/16 the government allocated at least $18 million to deliver forced rehab to 339 people at an average cost per person of $53,915. While there were short-term benefits, the study found that there was no long term impact on hospital presentations for the individuals who entered the programme.

Assessment and mandatory treatment services were initially established in Darwin, Nhulunbuy, Katherine, Tennant Creek, and Alice Springs. The services in Nhulunbuy were discontinued in 2014, and the treatment service in Tennant Creek was discontinued in January 2016. Assessment services remained in Tennant Creek albeit delivered from the hospital, which was also the case in Katherine. Darwin and Alice Springs had standalone assessment centres.

While some people in mandatory treatment were given practical help to get their finances organised or to find accommodation, the report stated problems such as a lack of public housing or difficulties returning to remote communities meant people often ended up homeless again once they finished the mandatory treatment.[[10]](#footnote-10)

**Point of Sale Intervention (POSI) or Temporary Beat Location (TBL) - 2012 - Ongoing**

In September 2012 in response to a perceived increase in public drinking and anti-social behaviour following the scrapping of the BDR the Mills CLP government announced a six month trial of Temporary Beat Locations (later referred to as Point of Sale Intervention or POSI). Initially introduced in Alice Springs and subsequently extended to Tennant Creek and Katherine, the trial involved a highly active and visible police presence at licensed outlets in all three towns. Police were tasked with intercepting intoxicated individuals, checking for outstanding warrants, determining whether individuals were subject to alcohol control orders, and determining the intended place of consumption.

As with most other measures of this nature no formal evaluation of its effectiveness has been undertaken. Former Minister Peter Chandler was quoted as claiming that the introduction of TBL’s in Alice Springs had resulted in a 26.3% reduction in the presence of alcohol in offenders, a 40% reduction in the presence of alcohol in victims and a drop of 32.7% in female assault victims for the quarter 1 March – 30 June 2014 compared with this same quarter in 2013.[[11]](#footnote-11)

The NT Police Association is opposed to TBL/POSI interventions on the basis that it forces police to perform a role that is more properly undertaken by private security guards. While their opposition is to some extent understandable given the routine and tedious nature of the duties involved, it is hard to understand how security guards could perform the same function given the very significant difference between the powers bestowed on police (production of ID, access to information on offenders, confiscation of alcohol etc) and those of guards.

**Community initiated “Dry” areas**

A number of Indigenous communities in remote areas of Queensland, NT and Western Australia have declared their communities 'dry'. These strategies have resulted in some reduction in consumption among drinkers, delay in uptake of alcohol use among young people and reductions in alcohol-related harm measured by injury retrieval rates.[[12]](#footnote-12)

Any comprehensive evaluation of the effectiveness of the declaration of dry areas should be designed in such a way as to measure the impact of confounding factors such as the potential displacement of individuals with serious substance abuse issues to other communities, and the impact of bootlegging and sly grogging activities that inevitably follow the imposition of dry areas.

An evaluation of community initiated take-away alcohol restrictions introduced in Fitzroy Crossing in September 2007 found that the restrictions had been responsible for reductions in alcohol related emergency department presentations, anti-social behaviour, and better care of children. Police reported that domestic violence had actually increased by 23% for the 12 months post restriction but that the severity of incidents had decreased. Unfortunately the pattern of supply restrictions without any corresponding increase in support services resulted in the displacement of some heavy drinkers to towns such as Derby and Broome where full-strength take away alcohol was still available.

The evaluation reported that:

“*Some heavy drinkers are centred in Fitzroy Crossing, and others have scattered and move throughout communities in the Fitzroy Valley. They report to be spending more on the same volume of alcohol that they purchased before the restriction. There has not been an appreciable increase in support services to help these individuals to change their anti-social and self destructive behaviour……...”*

*There continues to be a state of under-investment in the people of the Fitzroy Valley. This gap requires the resourcing of community based organisations operating at the coal face of community development, cultural health, mental health (counselling), education, community safety (Policing) and training, to build on the window of opportunity that the restriction has created*.”[[13]](#footnote-13)

Maintaining the integrity of a dry community is particularly challenging due to the activities of ‘bootleggers’ or ‘sly groggers’ who are able to profiteer by charging exorbitant prices for alcohol due to supply constraints. Only this month, Kununurra police had launched an operation to target the practice in Halls Creek.[[14]](#footnote-14)

**Cashless debit card trials**

In an opinion piece in The Age newspaper published on April 23rd 2004 Noel Pearson addressed the impact of passive welfare payments on substance abuse:

*“The measures taken by Peter Beattie in Queensland to limit the supply of alcohol are a necessary part of the solution. Beattie has had the courage to tackle the hard question that is within the state's policy domain. But if we don't tackle unconditional money supply, our progress will stall. Money to purchase grog and drugs, and idle time to use them, are the key factors that must be confronted, in addition to supply. This is the Commonwealth's policy domain.”*

Endeavour Drinks Group has followed with interest the trial of the cashless welfare card in Ceduna and East Kimberley, despite not having any licensed outlets in the areas covered by the trial. We also note that these trials have received public support from prominent Indigenous leaders such as Ian Trust and Professor Marcia Langton.

We understand that early evaluations of the trials, a series of qualitative research questions answered by an extensive set of community stakeholders, and anecdotal evidence from police and local health workers have indicated that the measures are showing some positive results.

Any robust assessment of the trial would require the availability of longer term data on crime and hospital presentations but early results are sufficiently promising to continue the trials. EDG is currently supporting Broome Shire local government in their efforts to have their LGA included in the trial.

**ALCOHOL POLICY – AN IDEOLOGICAL BATTLEGROUND**

In their evaluation report on the Alcohol Mandatory Treatment programme PWC found that:

“*The AMT was implemented quickly, against the backdrop of a highly charged political and ethical debate*.”; and that, “*as a result of the lack of development time and no initial program logic or theory of change model, the AMT system has evolved over time. Changes, and sometimes tensions, have occurred as services (sic) providers and stakeholders have each interpreted and adapted their roles in the absence of clear objectives and definitions*.”

Unfortunately the comments made by PWC with regard to the AMT have equal relevance to many of the other policy initiatives discussed here.

Many of the initiatives have been ad-hoc and reactive in nature, introduced without clearly articulated objectives and characterised by a lack of engagement with affected community and industry stakeholders during the development and implementation phases. Despite the complexity and significant cost of the various programmes, most have been implemented without a proper programme management framework or any significant monitoring, review and evaluation mechanisms. Most initiatives are focused on control of supply and availability, there have been insufficient resources allocated to demand reduction initiatives and rehabilitation services.

Despite the Northern Territory being one of a number of jurisdictions that collect wholesale alcohol sales data, and the ready availability of crime and health data, successive NT governments both Labor and CLP have failed to establish any sets of longitudinal data measurements across a range of indicators to track the effectiveness of the alcohol policy measures that they have implemented.

The introduction, scrapping and pending resurrection of the BDR is an unfortunate case study in how the politicisation of alcohol policy has led to a significant waste of limited resources and missed opportunities to address the effects of harmful alcohol consumption. The BDR operated for only 14 months, however the incoming CLP government’s opposition to the system on ideological grounds led to it being discontinued before any attempt had been made to properly evaluate its effectiveness.

The current government was equally quick to abolish the AMT programme and has committed to reintroducing the BDR, but once again there is no clear statement of purpose, proper program management framework or any clear articulation of an evaluation mechanism or “what success looks like”. The timing and execution seems to be geared more around the visible fulfilment of an election commitment then it is about setting the program up for success.

The introduction of other alcohol policy initiatives “on the run” and without any proper evidentiary base is also an indication that politicians have not taken heed of the lessons of the last three decades. Alcohol policy has become a political battleground, seemingly focussed on supply controls that attempt to address the *visible* consequences of alcohol abuse such as public drinking and anti-social behaviour, with little attention to the underlying causes of substance abuse or the resourcing of suitable support and treatment facilities for people with serious substance abuse issues.

Management of the supply of alcohol and controls to limit access to it by vulnerable members of the community are an essential part of any strategy to address substance abuse, but they are only part of the solution. Policy that is solely focused on supply control, and ignores the other causes of Indigenous disadvantage that lead people to a life marred by the abuse of psychoactive drugs fails those people and the communities that suffer the damage caused by their addictions.

The interactions with the justice system that lead to unacceptably high rates of incarceration of our First Peoples will continue until all levels of government, Commonwealth, State, Territory and Local can set aside political differences and agree on long-term (beyond the next election cycle) support and treatment strategies. These strategies should be informed by unbiased research and developed in conjunction with Indigenous people and communities so that they incorporate Indigenous ways of teaching and learning, and to ensure that they are relevant to the life experiences and circumstances of those taking part in them.

**COLLABORATIVE SOLUTIONS**

Since 2013 EDG has had a continuing partnership with Jawun. Jawun is an organisation works to build the capacity of Indigenous people, communities and organisations by utilising the skills of secondees from corporate business partners. The Jawun model strives to build programs that promote self-reliance, entrepreneurial activity and business planning among Indigenous people. In order to achieve this, they have forged partnerships between corporate, government, philanthropic and Indigenous Australia.[[15]](#footnote-15) EDG is a partner to Jawun providing secondees for projects designed to build capability and economic independence in Indigenous organisations and communities.

Through our partnership with Jawun we have witnessed a number collaborative programs that have brought significant, positive, change to the lives of Indigenous people. One such example is The Glen Alcohol and Other Drug Rehabilitation Centre for Men on the NSW Central Coast. The Glen Centre is run by the Ngaimpe Aboriginal Corporation. A founding motivation for Ngaimpe was to alleviate the suffering of Indigenous people caused by alcohol and drug abuse. Ngaimpe’s objective was to get men out of the criminal justice system and into treatment for their addiction to break the cycle of reoffending.[[16]](#footnote-16) Central to the success of The Glen Centre over the last 20 years is the model whereby an Indigenous organisation has taken ownership of the problem of substance abuse and developed culturally appropriate strategies to deal with the problem.

Another example of the success of this type of collaboration is the Clean Slate Without Prejudice (CSWP) Program run by the Tribal Warrior Aboriginal Corporation and Local Police in Redfern. The CSWP program is a Routine & Boxing program for kids in Redfern, launched in 2009 by the Redfern local Koori community in partnership with the Police. Local Elders, Shane Phillips, local Men’s group chairman Mark Spinks and mentors joined with Redfern Local Area Commander Luke Freudenstein to create this unique program.[[17]](#footnote-17) Between 2008, the year before Clean Slate Without Prejudice was set up, and 2014, the last year for which statistics are available, robberies fell 73 per cent, assaults on police were down 57 per cent, and break-and-enters almost halved.

Evidence from the Police suggests the program has been successful in reducing rates of recidivism in local Indigenous youths. If you have not already viewed it, we encourage you take the time to view the short CSWP video which can be found at: <https://youtu.be/HCZMe0W5C3o>

The experience that we have gained with The Glen, Tribal Warrior and other Jawun Indigenous partner organisations has shaped our belief that in order to develop policy that will effect lasting, generational change with Indigenous people, strategies must be developed in close consultation with those Indigenous people and communities.

Building strategies that are driven by and with Indigenous people, leads to a community based approach that develops solutions that appropriately address local problems. Policy solutions developed in isolation without the involvement of Indigenous people are bound to fail. The power to affect change in Indigenous communities needs to be taken back by Indigenous people. The cultural structure of Indigenous society is such that the words of an elder carry more weight than any law or strategy imposed by a Government.

Please don’t hesitate to contact me if you require any clarification or further information.

Sincerely,

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