

## 13. Alcohol

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### Summary

13.1 Aboriginal and Torres Strait Islander people are less likely to drink alcohol than non-Indigenous people, but those who do drink, are more likely to drink at harmful levels.<sup>1</sup> This chapter concerns the harmful use of alcohol in Aboriginal and Torres Strait Islander communities and the links between alcohol, offending and incarceration.

13.2 While liquor licensing laws fall within state and territory jurisdictions, the Terms of Reference ask the ALRC to have regard to laws that may contribute to the rate of Aboriginal and Torres Strait Islander peoples' offending including, for example, laws that regulate the availability of alcohol.

13.3 The chapter outlines a range of responses that have been adopted to address alcohol-related offending, including liquor accords, restrictions on the sale of alcohol, banned drinkers registers and mandatory treatment programs.

13.4 The ALRC makes two recommendations. Firstly, that all initiatives to reduce the harmful effects of alcohol in Aboriginal and Torres Strait Islander communities should be developed with, and led by, these communities to meet their particular needs. Secondly, that Commonwealth, state and territory governments should enable and provide support to Aboriginal and Torres Strait Islander communities, that wish to address alcohol misuse, to develop and implement local liquor accords; and/or develop plans to prevent the sale of full strength alcohol or reduce the availability of particular alcohol ranges or products within their communities.

13.5 Other substance abuse issues may also contribute to incarceration, including the use and availability of illicit and non-illicit drugs, and the use of inhalants. However, these substances are not included in the Terms of Reference and have therefore not been the subject of inquiry.

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1 Australian Institute of Health and Welfare, *National Drug Strategy Household Survey Detailed Report 2010* (2011).

13.6 During the consultation process, the ALRC was made aware of other issues linked to the consumption of alcohol, for example the introduction of Cashless Debit Cards in communities and volumetric taxation of alcohol. The ALRC considers that both these issues fall outside of the scope of the Terms of Reference for this Inquiry.

## Alcohol and offending

13.7 The over-consumption of alcohol is associated with: health conditions including liver disease, diabetes, cardiovascular disease, and some cancers; accidents and injury; and harms to family and community.<sup>2</sup>

13.8 A number of prior inquiries have also identified widespread problems relating to the harmful use of alcohol and the links between alcohol and offending. For example, the 2013 National Drug Strategy Household Survey found that, while many drinkers in the Australian community consume alcohol responsibly, there is a substantial proportion of drinkers who consume alcohol at levels considered to increase the risk of alcohol-related harm.<sup>3</sup> The Productivity Commission's 2016 Report into Indicators of Indigenous Disadvantage stated that excessive alcohol consumption increases an individual's risk of death, disease and injury. Alcohol also contributes to family and community related problems, such as child abuse and neglect, work or financial problems, family breakdown, and violence and crime.<sup>4</sup>

13.9 The National Drug Strategy 2010–2015 noted that 'excessive consumption of alcohol is a major cause of health and social harms' and that,

[s]hort episodes of heavy alcohol consumption are a major cause of road and other accidents, domestic and public violence, and crime. Long-term heavy drinking is a major risk factor for chronic disease, including liver disease and brain damage, and contributes to family breakdown and broader social dysfunction.<sup>5</sup>

13.10 With respect to Aboriginal and Torres Strait Islander peoples, the National Aboriginal and Torres Strait Islander Health Survey 2004–05 reported that, overall, fewer Aboriginal people drink alcohol than non-Indigenous people.<sup>6</sup> However, later inquiries have identified the harmful effects of alcohol in Aboriginal and Torres Strait Islander communities.<sup>7</sup>

2 National Health and Medical Research Council, *Australian Guidelines to Reduce Health Risks from Drinking Alcohol* (2009).

3 Australian Institute of Health and Welfare, *National Drug Strategy Household Survey Detailed Report* (2013) 40.

4 Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016—Report* (2016).

5 Ministerial Council on Drug Strategy, *National Drug Strategy 2010–2015: A Framework for Action on Alcohol, Tobacco and Other Drugs* (2011) 2.

6 Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey, 2004–05, Cat No 4715.0* (2006) tables 6, 17; Australian Bureau of Statistics, *National Health Survey: Summary of Results, 2004–05, Cat No 4364.0* (2006) table 17.

7 House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Alcohol, Hurting People and Harming Communities: Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2015).

13.11 In 2015, the House of Representatives Standing Committee on Indigenous Affairs conducted an inquiry into the harmful use of alcohol in Aboriginal and Torres Strait Islander communities (House of Representatives Alcohol Inquiry). Its Report made 33 recommendations concerning best practice strategies to minimise alcohol misuse and alcohol-related harm and best practice alcohol treatments and support.<sup>8</sup>

13.12 Submissions to the House of Representatives Alcohol Inquiry spoke of the harm that alcohol abuse continues to cause Aboriginal communities and its connection to the over-representation of Aboriginal people in the criminal justice system.<sup>9</sup> For example, the Australian Crime Commission noted that alcohol was a factor in 78% of violent offences involving Aboriginal and Torres Strait Islander persons dealt with in the Alice Springs Supreme Court in 2010;<sup>10</sup> and the Northern Territory (NT) Police Association said that 60% of all assaults and 67% of reported domestic violence incidents in the NT involved alcohol.<sup>11</sup>

13.13 The Victorian Aboriginal Controlled Health Organisation (VACCHO) referred to research conducted through a partnership between the Victorian Department of Justice, Monash University and VACCHO, that showed ‘high levels of alcohol and drug use in Victorian Aboriginal people in prison (higher than for non-Aboriginal prisoners) contributing to increasing rates of Aboriginal incarceration’.<sup>12</sup>

13.14 In its submission to this Inquiry, Endeavour Drinks Group<sup>13</sup> suggested there is an oversimplification of the role alcohol plays in Aboriginal and Torres Strait Islander offending. The Group suggested that alcohol itself does not cause violence. Instead, the Group suggested that alcohol abuse in Aboriginal and Torres Strait Islander communities is a symptom of factors such as poverty, unemployment, passive welfare, and the loss of land and culture.<sup>14</sup>

13.15 However, a 2009 review of the Alice Springs Alcohol Management Plan suggested that high levels of alcohol consumption are associated with high levels of alcohol-related harm and low consumption with low levels of harm. Drawing on the

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8 Ibid.

9 See, eg, Central Australian Aboriginal Legal Aid Service, Submission No 56 to House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (April 2014) 2.

10 Australian Crime Commission, Submission No 59 to Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities: Alcohol, Hurting People and Harming Communities* (17 April 2014).

11 Northern Territory Police Association, Submission No 27 to Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities: Alcohol, Hurting People and Harming Communities* (16 April 2014).

12 Victorian Aboriginal Community Controlled Health Organisation, Submission No 33 to House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (March 2014).

13 Endeavour Drinks Group 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. See Endeavour Drinks Group, *Submission 5*.

14 Renate Kreisfeld, James Harrison and Jerry Moller, ‘Injury Deaths amongst Aboriginal Australians’ (1995) 19(1) *Aboriginal and Islander Health Worker Journal* 19, 21.

work of the National Drug Research Institute (2007), the review identified the most effective measures to reduce alcohol-related harm. These included:

- restrictions on the hours and days of sale on licensed premises;
- minimum legal drinking age enforcement for consumption and purchase;
- restrictions on high risk alcohol beverages (eg, cheap cask wine/fortified wine);
- outlet density;
- dry community declarations (when communities request declaration);
- mandatory packages of restrictions for remote and regional areas;
- restrictions on service to intoxicated people when enforced; and
- community-based interventions when enforced.<sup>15</sup>

13.16 While a connection between alcohol abuse and criminal conduct has been identified, criminalising alcohol consumption may not be an appropriate response. The National Congress of Australia's First Peoples (the National Congress) has described such an approach as a 'failed strategy, merely adding to a cycle of escalating rates of incarceration. It hides specific problems in watch-houses, prisons and institutions and provides no remedy. This approach should play no future part in the alcohol policy'.<sup>16</sup>

13.17 The National Congress further argued that alcohol offences should not be seen as a criminal justice issue, but rather as a social and health problem:

The way forward lies in a health and wellbeing approach based on community healing and personal rehabilitation, which addresses the historical and social factors which contribute to an unhealthy social environment and targets resources at those areas affected.<sup>17</sup>

13.18 Similarly, the NT Anti-Discrimination Commission submitted to this Inquiry that 'alcohol misuse must be addressed as a social and health issue rather than criminalised ... On repeated occasions, we have seen the failure to address misuse of alcohol in this way, lead to incarceration of Aboriginal people'.<sup>18</sup>

13.19 The Human Rights Law centre argued that:

[t]he response should be to address alcohol misuse for what it is—a complex health issue requiring health-focused responses within a broader framework of supply, demand and harm reduction—not to criminalise individuals struggling with alcohol addiction and other health and social challenges.<sup>19</sup>

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15 Suzanne MacKeith, Dennis Gray and Tanya Chikritzhs, *Review of Moving Beyond the Restrictions: The Evaluation of the Alice Springs Alcohol Management Plan—A Report Prepared for the Alice Springs People's Alcohol Action Coalition* (2009) 12.

16 National Congress of Australia's First People, Submission No 97 to Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2014) 2.

17 Ibid 3.

18 Northern Territory Anti-Discrimination Commission, *Submission 67*.

19 Human Rights Law Centre, *Submission 68*.

### ***Fetal Alcohol Spectrum Disorder***

13.20 Alcohol consumed during pregnancy has been shown to cause defects in the developing foetus.<sup>20</sup> There is also ‘increasing evidence that early onset of drinking during childhood and the teenage years can have health effects and interrupt the normal development of the brain’.<sup>21</sup>

13.21 Fetal Alcohol Syndrome (FAS) and Fetal Alcohol Spectrum Disorders (FASD) describe a range of conditions that result from prenatal alcohol exposure during pregnancy. FAS and FASD can affect an unborn child exposed to alcohol in utero, with risk increasing as a multiple of the frequency and intensity of alcohol consumption. The effects of FAS and FASD on cognitive functioning and behaviour, first noticed in children, continues through to adulthood.<sup>22</sup>

13.22 Studies of the prevalence of FAS and FASD are limited. According to the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG):

FASD is a community wide problem with prevalence rates of Fetal Alcohol Syndrome (FAS) reported to be between 0.064 and 0.685 per 1,000 live births in Australia. Indigenous women are less likely to consume alcohol than non-Indigenous women but those who do are more likely to consume harmful amounts. FAS is up to 4 times higher in Indigenous Australians: 2.767 to 4.75 per 1,000 live births.<sup>23</sup>

13.23 RANZCOG describes the range of behavioural disabilities associated with FAS and FASD as ‘behavioural disorders (for example, poor impulse control) and developmental delay including impaired language and communication, social and emotional delays. These have lifelong implications such as impaired education, employment and imprisonment’.<sup>24</sup>

13.24 Some research points to FAS and FASD contributing to Aboriginal incarceration rates.<sup>25</sup> However, data on the relationship between imprisonment and FASD is scarce. One Canadian study found that youths with FASD are 19 times more likely to be

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20 Ministerial Council on Drug Strategy, *National Drug Strategy 2010–2015: A Framework for Action on Alcohol, Tobacco and Other Drugs* (2011) 2.

21 Ibid.

22 House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Alcohol, Hurting People and Harming Communities: Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2015) 107.

23 Royal Australian and New Zealand College of Obstetricians and Gynaecologists, Submission No 66 to House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2014); House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Alcohol, Hurting People and Harming Communities: Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2015) 99.

24 Royal Australian and New Zealand College of Obstetricians and Gynaecologists, Submission No 66 to House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2014).

25 Harry Blagg, Tamara Tulich and Zoe Bush, ‘Placing Country at the Centre: Decolonising Justice for Indigenous Young People with Foetal Alcohol Spectrum Disorders (FASD)’ (2015) 19(2) *Australian Indigenous Law Review* 4.

incarcerated than youths without FASD in a given year.<sup>26</sup> There is limited statistical information in Australia about incarcerated persons with FASD:

Limited research has investigated the relationship between FASD and contact with the criminal justice system in Australia. The limited Australian literature, complemented by international research, indicates that FASD should be considered at every stage of the criminal justice system, from offending behaviour, through to court proceedings, as well as throughout incarceration and post-release. There is no Australian estimate of the number of offenders with FASD. Overseas studies of individuals with FASD, however, demonstrate high rates of contact with the criminal justice system.<sup>27</sup>

13.25 The National Indigenous Drug and Alcohol Committee made six specific recommendations directed at FAS and FASD, including: community information campaigns about the effects of consuming alcohol while pregnant; training of health practitioners to increase the earlier diagnosis and to assist in early identification and intervention; and other initiatives to address available support for people with FASD.<sup>28</sup> Other research has suggested that resourcing Indigenous organisations to provide mentoring and family and support services, as well as ‘on-country’ camps that aim to stabilise affected young people while attempting to heal families, may address the social effects of FAS and FASD more appropriately than a criminal justice response.<sup>29</sup>

13.26 The Commonwealth has developed an action plan to reduce the impact of FASD, which aims to improve outcomes for FASD affected infants as well as reducing its incidence in the population.<sup>30</sup>

## A focus on harm reduction

13.27 To respond to harms associated with alcohol abuse and misuse, the Intergovernmental Committee on Drugs developed the National Aboriginal and Torres Strait Islander Peoples’ Drug Strategy 2014–2019 (the Drug Strategy).<sup>31</sup> The Drug Strategy provides a roadmap for work that might be done to minimise the negative effects of alcohol and other drugs (AOD), suggesting that

[i]n order to reduce high levels of harmful AOD use among some segments of the Aboriginal and Torres Strait Islander population it is necessary to: prevent or minimise the uptake of harmful use; provide safe acute care for those who are intoxicated; provide treatment for those who are dependent; support those whose

26 Svetlana Popova et al, ‘Fetal Alcohol Spectrum Disorder Prevalence Estimates in Correctional Systems: A Systematic Literature Review’ (2011) 102(5) *Canadian Journal of Public Health* 336.

27 National Indigenous Drug and Alcohol Committee, *Addressing Fetal Alcohol Spectrum Disorder in Australia* (2012) 10.

28 National Indigenous Drug and Alcohol Committee, Submission No 94 to Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2014) 18–9.

29 Harry Blagg, Tamara Tulich and Zoe Bush, above n 25.

30 Australian Government, *Responding to the Impact of Fetal Alcohol Spectrum Disorders in Australia: A Commonwealth Action Plan* (2013).

31 Intergovernmental Committee on Drugs, *National Aboriginal and Torres Strait Islander Peoples’ Drug Strategy 2014–2019* (2015) 3. The Drug Strategy is a sub-strategy of the National Drug Strategy 2010–2015.

harmful AOD use has left them disabled or cognitively impaired; and support those whose lives are affected by other's harmful AOD use.<sup>32</sup>

13.28 The Drug Strategy adopted a harm minimisation approach, identifying 'three pillars' of reduction focused on demand, supply and harm.<sup>33</sup> In an Aboriginal and Torres Strait Islander context such approaches were described as follows:

Demand reduction strategies aim to reduce the appeal of alcohol, tobacco and other drugs, and drug taking. Prevention and early intervention are key elements of effective demand reduction strategies. Strategies that are effective in this context include preventative strategies such as early intervention, education and health promotion, provision of alternatives to AOD use; community-led initiatives leading to alcohol bans, permits and restrictions on hours of supply.

Supply reduction strategies aim to reduce the availability of alcohol, tobacco and other drugs, and control their use. Strategies that are effective in this context include indirect price controls by banning cheap high alcohol content beverages such as cask wine, restrictions on trading hours, fewer outlets, dry-community declarations and culturally sensitive enforcement of existing laws.

Harm reduction strategies aim to reduce the negative effects of AOD use, without necessarily expecting people who use drugs to stop or reduce their use. Effective harm reduction strategies include: bans on the serving of alcohol in glass containers, night patrols, and sobering-up shelters.<sup>34</sup>

### **Imposition of alcohol controls**

13.29 Some efforts to control supply of alcohol in Aboriginal and Torres Strait Islander communities have involved the imposition of alcohol restrictions without significant community consultation or consent. For example, in 2007, widespread alcohol restrictions on designated areas in the NT were introduced by the *Northern Territory Emergency Response Act 2007* (Cth). These restrictions were continued in 2012 by the *Stronger Futures in the Northern Territory Act 2012* (Cth), and included prohibition of the possession, supply and consumption of alcohol—effectively creating 'dry' communities.<sup>35</sup>

13.30 A 2016 evaluation of these measures found that there was

insufficient data available to the reviewers that would evidence comprehensive and robust links between the Act and changes in key indicators of alcohol related harm over the 2012 to 2015 period. While some positive changes in patterns of consumption have occurred contemporaneously ... it is problematic to attribute such outcomes to the operation of the Act.<sup>36</sup>

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32 Ibid 10.

33 Ibid 5.

34 Ibid 12.

35 Northern Territory Government, *Alcohol Policies and Legislation Review: Final Report* (2017) 73.

36 Department of the Prime Minister and Cabinet (Cth), *Review of the Stronger Futures in the Northern Territory Act (2012)* (2016) ii.

13.31 A 2017 review of alcohol policies and legislation in the NT noted that many stakeholders held the view that

the unilateral decision to ban the supply, possession and consumption of alcohol in Aboriginal communities ... has been discriminatory and detrimental to effective community driven alcohol reduction measures. The approach taken by the NTERA in declaring significantly more communities 'dry' in the manner it did, exacerbated the issues ... relating to people leaving their community, or establishing unsafe drinking areas.<sup>37</sup>

13.32 Another response to alcohol misuse in the NT is the Banned Drinkers Register (BDR), which commenced in September 2017.<sup>38</sup> The BDR identifies people who are banned from purchasing, consuming or possessing alcohol and prevents their purchase of alcohol at a takeaway outlet. A person can be placed on the BDR for reasons including:

- any combination of three alcohol-related protective custodies or alcohol infringement notices in two years
- two low-range drink driving offences or a single mid-range or high-range drink driving offence
- being the defendant on an alcohol-related domestic violence order
- having an alcohol prohibition condition on a court order (including child protection orders), bail or parole order
- by decision of the BDR Registrar after being referred by an authorised person such as a doctor, nurse or child protection worker, or a family member or carer
- self-referral for any reason.<sup>39</sup>

13.33 Stakeholders to this Inquiry held mixed views about the appropriateness and efficacy of the BDR. NATSILS submitted that the BDR will disproportionately impact upon Aboriginal and Torres Strait Islander peoples. It preferred that harmful consumption of alcohol be addressed through rehabilitative programs focusing on positive health outcomes rather than through 'the implementation of punitive regimes'.<sup>40</sup>

13.34 The Central Australian Aboriginal Congress supported the BDR, but cautioned that a 'high quality expert evaluation' of the BDR and other alcohol measures in the NT was warranted.<sup>41</sup>

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37 Northern Territory Government, above n 35, 74.

38 Northern Territory Government, *Banned Drinker Register Frequently Asked Questions* (2017).

39 Ibid.

40 National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*.

41 Central Australian Aboriginal Congress, *Submission 37*.



### Community-driven solutions

**Recommendation 13-1** All initiatives to reduce the harmful effects of alcohol in Aboriginal and Torres Strait Islander communities should be developed with, and led by, these communities to meet their particular needs.

**Recommendation 13-2** Commonwealth, state and territory governments should enable and provide support to Aboriginal and Torres Strait Islander communities that wish to address alcohol misuse to:

- develop and implement local liquor accords; and/or
- develop plans to prevent the sale of full strength alcohol or reduce the availability of particular alcohol ranges or products within their communities.

13.35 The ALRC recommends that any initiative to reduce the harmful effects of alcohol in Aboriginal and Torres Strait Islander communities should be developed with, and led by, those communities. Many stakeholders to this Inquiry supported this approach. National Aboriginal and Torres Strait Islander Legal Services submitted that law reform designed to address the link between alcohol abuse and offending,

must be based on ground up rather than top down models of community engagement. Accordingly, the development and implementation of liquor accords and other law reforms must be supported by community members, community sector organisations, social service providers and other key stakeholders.<sup>42</sup>

13.36 The Australian Human Rights Commission (AHRC) cautioned that ‘successes achieved and processes implemented by a community may not be appropriate to mirror in other communities, as a “one size fits all” approach is known to be ineffective’.<sup>43</sup> The AHRC emphasised the importance of governments appropriately engaging and liaising with Aboriginal and Torres Strait Islander communities in order to identify their needs and priorities on a case-by-case basis.<sup>44</sup>

13.37 The NT Legal Aid Commission similarly submitted that ‘a sound evidence base, combined with the meaningful participation by Aboriginal people, communities and organisations in the identification and implementation of solutions is crucial to addressing this issue’.<sup>45</sup>

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42 National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*.

43 Australian Human Rights Commission, *Submission 43*.

44 *Ibid.*

45 Northern Territory Legal Aid Commission, *Submission 46*.

13.38 The Human Rights Law Centre also suggested that:

Measures to address alcohol misuse and alcohol-related harm must be non-discriminatory and tailored to suit the needs of specific communities. They must involve the participation of affected communities to ensure that they are culturally appropriate, address community needs and have the greatest chance of success.<sup>46</sup>

13.39 Commenting on programs that reduced harms of alcohol and drug abuse, Mission Australia suggested that the common thread of effective interventions were those with strong community interest, engagement and leadership.<sup>47</sup>

13.40 The need for Aboriginal and Torres Strait Islander leadership in developing initiatives to address alcohol-related harm has been acknowledged in the Drug Strategy, which recommended that ‘development of actions to achieve each outcome should be led by local communities in collaboration with government and non-government sectors’:<sup>48</sup>

Aboriginal and Torres Strait Islander people should be meaningfully included and genuinely consulted regarding the development of solutions to harmful AOD use. Aboriginal and Torres Strait Islander ownership of solutions should occur from inception and planning, right through to implementation and provision, and monitoring and evaluation of any solutions.<sup>49</sup>

13.41 The Drug Strategy identified four priority areas including: building community capacity; developing culturally responsive and appropriate programs; strengthening partnerships between the community, government, law enforcement and health; and establishing meaningful evaluation of programs.<sup>50</sup>

13.42 The Australian Government’s National Drug Strategy 2017–2026 has also emphasised that,

[i]t is critical to ensure that any efforts to reduce the disproportionate harms experienced by Aboriginal and Torres Strait Islander people are culturally responsive and appropriately reflect the broader social, cultural and emotional wellbeing needs of Aboriginal and Torres Strait Islander people. Planning and delivery of services should have strong community engagement including joint planning and evaluation of prevention programs and services provided to Aboriginal and Torres Strait Islander communities taking place at the regional level. Wherever possible, interventions should be based on evidence of what works specifically for Indigenous people.<sup>51</sup>

13.43 The importance of ownership of solutions has been emphasised in a review of what works to reduce harm related to alcohol and other drugs among Indigenous Australians, which argued that despite gaps in our knowledge, ‘there is ample evidence

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46 Human Rights Law Centre, *Submission 68*.

47 Mission Australia, *Submission 53*.

48 Intergovernmental Committee on Drugs, above n 31, 18.

49 *Ibid* 4.

50 *Ibid* 4–5.

51 Ministerial Council on Drug Strategy, *National Drug Strategy 2012–2017: A Framework for Action on Alcohol, Tobacco and Other Drugs* (2017).

to show what can be done to reduce AOD-related harm. What is needed is the commitment to do it—with and not for Indigenous people’.<sup>52</sup>

13.44 Below, the ALRC considers two examples of measures to reduce alcohol-related harm that have been successfully developed and led by Aboriginal and Torres Strait Islander communities: liquor accords, and the ban on full strength alcohol in Fitzroy Crossing.

### ***Liquor accords***

13.45 Liquor accords are a local community response that seeks to address alcohol-related harm within a particular community. The liquor industry—comprised of off-licence retailers commonly referred to as ‘bottle shops’, and on-licence liquor providers, such as hotels and registered clubs—have, in many instances, sought to regulate the sale of liquor to reduce or minimise the harm of alcohol misuse or alcohol abuse. Large liquor industry players—such as Wesfarmers (Coles), having a 33.5% share of the retail liquor market, and Woolworths, having a 40.2% share<sup>53</sup>—have historically joined as members of accords across states and territories.

13.46 A liquor accord, as the NT chapter of the Australian Hoteliers Association (AHA (NT)) has explained, is

a written agreement between licensed venues and other stakeholders, with the purpose of working together to support one another on issue/s of mutual concern. For example a liquor accord may be created to assist in the reduction of alcohol misuse and associated harms within a local community.

Depending on the specific needs and characteristics of the region involved, most liquor accords include members from the local business community, local councils, local police, government departments and other community focused organisations. Voluntary participation by licensees in local area initiatives is allowed for when a stakeholder of a liquor accord and liquor related problems can be addressed with the introduction of practical solutions. Such teamwork aims to ensure that precincts and venues are safe and enjoyable places in which to meet and socialise which will ultimately enhance community life and enjoyment of the local area.<sup>54</sup>

13.47 The AHA (NT) considered that liquor accords were ‘extremely worthwhile’, provided that

all parties come to the table as equals and have a long-term view of the benefits which can flow from an effective liquor accord. This requires a strong commitment from all members (licensees, police, government) who must be able to work together to make

52 Dennis Gray and Edward Wilkes, ‘Reducing Alcohol and Other Drug Related Harm’ (Resource Sheet No 3, Closing the Gap Clearinghouse, 2010) 1, 2. See also Alison Ritter et al, *New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia—Final Report* (UNSW, 2014).

53 Liquor Marketing Group, Submission to the South Australian Attorney-General *Liquor Licensing Discussion Paper* (February 2016) 3.

54 Australian Hoteliers Association Northern Territory, *Liquor Accords* <[www.ahant.com.au](http://www.ahant.com.au)>. The AHA (NT) assists in the development and implementation of Alcohol Management Plans and received funding from the Department of Business to assist industry to develop, maintain and promote liquor accords within the NT.

change happen. It may also present an opportunity for local police and councils to improve their working relationships with industry on issues of common interest.<sup>55</sup>

13.48 The AHRC submitted to this Inquiry that the success of approaches to alcohol management—that included the development and implementation of local liquor accords and plans to prevent sale of full strength alcohol—hinged on those programs being based on priorities identified by the community.<sup>56</sup>

13.49 Liquor accords may raise concerns relating to anti-competitive behaviours. With respect to this, the AHA (NT) said that these could be addressed

by seeking immunity from the competition provisions of the Trade Practices Act through the ‘authorization’ process. There is a clear process to follow which will prevent any legal repercussions for members of an accord. The problem of alcohol abuse within local communities and the need for a range of strategies to address the problems are understood by the ACCC [Australian Competition and Consumer Commission]. Where the ACCC is satisfied that the public benefit from the arrangements between competitors will outweigh any public detriment, it can grant immunity from legal action.<sup>57</sup>

13.50 Liquor and Gaming New South Wales has suggested that some liquor accords have reduced harmful effects of alcohol misuse and abuse:

Successful liquor accord groups generate many benefits for licensees, patrons and the community:

- Less alcohol-related assaults and anti-social behaviour
- Local neighbourhoods that are safer and more welcoming
- Better reputations for licensees
- Improved business environment
- Constructive relationships between licensees, councils, patrons, residents and police
- Stronger compliance
- Less under-age drinking
- More awareness about responsible consumption of alcohol.<sup>58</sup>

13.51 The liquor accord in Norseman, Western Australia, is an example of a liquor accord that has community support and is driven by community priorities:

In the early 2000s members of the Indigenous community in Norseman in Western Australia became increasingly concerned that heavy alcohol consumption was the main cause of chronic health problems in their community. The community, in collaboration with local Health Department officers, worked with individuals and their families to prevent harmful drinking, but were not able to sustain a change to

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Ibid.

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Australian Human Rights Commission, *Submission 43*.

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Australian Hoteliers Association Northern Territory, above n 54.

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Liquor & Gaming NSW, *What Is a Liquor Accord?* Department of Industry NSW <[www.liquorandgaming.nsw.gov.au](http://www.liquorandgaming.nsw.gov.au)>.

low risk drinking, and so decided that a different approach was needed ... The Indigenous community in Norseman is not geographically discrete, rather it is distributed throughout the township. Consequently, the option used by many Indigenous communities, of declaring themselves dry was not available. However, there was clear recognition within the Indigenous community that certain beverages were particularly associated with heavy drinking. In an effort to reduce the amount of alcohol consumed, in particular the packaged liquor most linked to heavy drinking, the community proposed restricting the quantity and the hours of sale of these products.<sup>59</sup>

13.52 An evaluation of the Norseman liquor accord found that the accord had reduced alcohol-related harms:

the Indigenous community was the driving force for introducing the restrictions, in response to the domestic violence, chronic disease and death that was associated with heavy drinking. The reasons given for not allowing sales, other than between midday and 6pm, was to limit the period of drinking so there was break for heavy drinkers to sober up. There was almost universal agreement that the behaviour of drinkers, the amount of alcohol consumed and alcohol-related harms had all changed for the better since the introduction of restrictions ... [and] the benefits for the Norseman community are clear. The restrictions are still in place, have increased social order, are still overwhelmingly supported by the community including the Licensee, and have remained effective in keeping in check those beverages identified from initial community discussions as problematic. These findings indicate that ... an Accord, which is fashioned by key stakeholders, and supported by the whole community, can have a long-term impact on local alcohol problems.<sup>60</sup>

13.53 In its submission to this Inquiry, NATSILS supported community-developed restrictions to reduce alcohol consumption, including restrictions on opening hours, number and density of liquor licences, and a limitation on the type and quantity of takeaway alcohol purchased.<sup>61</sup>

13.54 Similarly, the NT Legal Aid Commission supported ‘evidence-based whole of community measures to reduce the availability of alcohol’, including restricted trading hours.<sup>62</sup>

13.55 The Commissioner for Children and Young People Western Australia suggested it was important that state and territory governments

provide guidance to communities on how to implement alcohol restrictions using the various mechanisms available, and support communities to gather the evidence required to determine harm and to challenge and restrict alcohol supply, including strengthening alcohol accords.<sup>63</sup>

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59 Richard Midford, John McKenzie and Rachel Mayhead, “‘It Fits the Needs of the Community’: Long Term Evaluation of the Norseman Voluntary Liquor Agreement’ (Foundation for Alcohol Research, 2016) 9.

60 Ibid 22–7.

61 National Aboriginal and Torres Strait Islander Legal Services, *Submission 109*.

62 Northern Territory Legal Aid Commission, *Submission 46*.

63 Commissioner for Children and Young People Western Australia, *Submission 16*.

13.56 Legal Aid Western Australia supported measures to control alcohol abuse such as liquor accords and plans to restrict full strength alcohol. They noted that alcohol restrictions had made a significant difference in Halls Creek, where full strength alcohol is only available from the local hotel.<sup>64</sup> They suggested that the seriousness of offending in Halls Creek had substantially reduced, while also acknowledging the assistance of night patrols that support people affected by alcohol to return home or obtain shelter.<sup>65</sup> Legal Aid WA cautioned, however, that the success of these restrictions also required measures to avoid the black market sale of alcohol. It also opposed any restrictions that would only apply to Aboriginal people.<sup>66</sup>

13.57 The Institute of Public Affairs was supportive of liquor accords, while noting the complex nature of alcohol abuse, the inability of the criminal justice system to solve such issues, and the inappropriateness of prohibition. It observed:

the abuse of alcohol is a problem that the criminal justice system can only manage, it cannot solve it. The reasons that people choose to drink are complex and will need to be addressed by communities and individuals from the bottom-up. In remote communities, cooperation between private businesses and civil society may be the best way to manage the supply of alcohol. Accords are a proper exercise of market power, so long as membership is voluntary. However, Indigenous Australians retain the right to purchase alcohol wherever it is legally sold, just as all Australians do. Across-the-board prohibition will not work and is not desirable. Alcohol bans will not address the reasons that people choose to drink.<sup>67</sup>

13.58 In its submission to this Inquiry, the NT Government outlined its commitment to finalising a comprehensive public review of alcohol policies and legislation to address alcohol misuse and its effects on individuals, families and communities throughout the NT. It suggested the review would consider

plans to prevent the sale of full strength alcohol, and accords between liquor retailers and other stakeholders to minimize harm will form part of the NTG's Local Decision Making policy (that is currently under development). This initiative aims to create opportunities for interested communities to exercise a high-degree of local decision making, and where possible to control the delivery of Government services. The Local Decision Making policy initiative will provide an opportunity for government and Aboriginal communities to work together on alcohol issues that impact on Aboriginal peoples' lives.<sup>68</sup>

### ***Fitzroy Crossing ban on full strength alcohol***

13.59 In a 2010 report, the AHRC detailed the implementation of alcohol restrictions in Fitzroy Crossing, noting its community-driven genesis:

In 2007 ... the senior women in the Fitzroy Valley decided to discuss the alcohol issue and look for solutions at their Annual Women's Bush Meeting. The Women's Bush Meeting is auspiced by Marninwarntikura; it is a forum for the women from the

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64 Legal Aid WA, *Submission 33*.

65 Ibid.

66 Ibid.

67 Institute of Public Affairs, *Submission 58*.

68 Northern Territory Government, *Submission 118*. See further Northern Territory Government, above n 35.

four language groups across the Valley. At the 2007 Bush Meeting, discussions about alcohol were led by June Oscar and Emily Carter from Marninwarntikura. The women in attendance agreed it was time to make a stand and take steps to tackle the problem of alcohol in the Fitzroy Valley. While the women did not represent the whole of the Valley, there was a significant section of the community in attendance. Their agreement to take action on alcohol was a starting point and it gave Marninwarntikura a mandate to launch a campaign to restrict the sale of alcohol from the take-away outlet in the Fitzroy Valley. The community-generated nature of this campaign has been fundamental to its ongoing success. The communities themselves were ready for change.<sup>69</sup>

13.60 The Fitzroy Crossing initiative did not seek the complete prohibition on the sale of alcohol or to make Fitzroy Crossing a dry community. Instead, it sought to prevent the sale of full strength alcohol.

13.61 Speaking to SBS about her experiences implementing the ban on full strength alcohol in Fitzroy Crossing, June Oscar AO stated:

We couldn't continue to live in a community that was just being decimated by alcohol. Every aspect of life. Every facet of life was being affected. And in 2005–6 we had 50 deaths in the valley. Many of them were alcohol-related deaths. Our right to a future was important. We had to fight for that future. So the women decided then in July of 2007 enough was enough. We want to pursue restrictions on the sale of full strength alcohol ... Within the first 3 to 6 months we saw the presentations at hospital from 85% alcohol-related injuries drop to 25, 15%.<sup>70</sup>

13.62 The Fitzroy Crossing initiative also allowed members of the Fitzroy Crossing community to design and implement strategies to reduce the prevalence of FASD in the community. The AHRC noted:

In October 2008, just over a year after the alcohol restrictions were brought into the Fitzroy Valley, members of the communities gathered to discuss FASD and other alcohol-related problems ... In November 2008, a draft strategy was developed by the CEO of Marninwarntikura, June Oscar and Dr James Fitzpatrick, a paediatric trainee serving the communities. The strategy was called Overcoming Fetal Alcohol Spectrum Disorders (FASD) and Early Life Trauma (ELT) in the Fitzroy Valley: a community initiative. This strategy is now described locally as the Marulu Project. Marulu is a Bunuba word meaning 'precious, worth nurturing'.<sup>71</sup>

13.63 An evaluation of the effects of alcohol restrictions in Fitzroy Crossing two years following their implementation found continuing health and social benefits for the residents of Fitzroy Crossing and the Fitzroy Valley communities, including:

- reduced severity of domestic violence;
- reduced severity of wounding from general public violence;
- reduced street drinking;
- a quieter town;

69 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010* (2011) 71.

70 SBS, *Fitzroy Crossing—Meet June Oscar* <[www.sbs.com.au/programs/first-contact](http://www.sbs.com.au/programs/first-contact)>.

71 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2010* (2011) 94.

- less litter;
- families purchasing more food and clothing;
- families being more aware of their health and being proactive in regard to their children's health;
- reduced humbug and anti-social behaviour;
- reduced stress for service providers;
- increased effectiveness of services already active in the valley;
- generally better care of children and increased recreational activities; and,
- a reduction in the amount of alcohol being consumed by Fitzroy and Fitzroy Valley residents.<sup>72</sup>

13.64 Another analysis also noted the benefits flowing from the experience in Fitzroy Crossing:

In Fitzroy Crossing and Halls Creek, where the impetus for alcohol restrictions came from strong local women and where responsible serving of alcohol is now being enforced, there has been a noticeable decline (between 20% and 40%) in the number of alcohol-related crimes and alcohol-related admissions to hospitals.<sup>73</sup>

13.65 However, the same analysis also noted that, while

stricter controls on alcohol has made these towns more pleasant places to live ... the restrictions have not addressed the reasons why people are drinking in the first place. Controls on alcohol supply help mitigate the harms that alcohol causes, but they will not solve the alcohol problem.<sup>74</sup>

13.66 Kayla Calladine has also suggested that there are several limitations of alcohol restrictions, including the prevalence of unlawful sales of liquor at highly inflated prices to dry communities, otherwise known as 'sly grogging'. However, she concludes that 'early evidence suggests *prima facie* improvement in living conditions, suggesting that voluntary prohibition regimes contribute to the aims of substantive equality'.<sup>75</sup>

13.67 Concerns also exist that prohibition of alcohol within dry communities has led to the substitution of illicit drugs for alcohol. The Healing Foundation has suggested that '[m]any dry communities now face the scourge of drugs as a substitute for grog, causing many of the same issues such as violence that alcohol did'.<sup>76</sup> Similarly Scott

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<sup>72</sup> University of Notre Dame Australia, *Fitzroy Valley Alcohol Restriction Report: An Evaluation of the Effects of Alcohol Restrictions in Fitzroy Crossing Relating to Measurable Health and Social Outcomes, Community Perceptions and Alcohol Related Behaviours After Two Years* (2010) 10.

<sup>73</sup> Sara Hudson, *Alcohol Restrictions in Indigenous Communities and Frontier Towns* (Centre for Independent Studies, 2011) 20.

<sup>74</sup> Ibid.

<sup>75</sup> Kayla Calladine, 'Liquor Restrictions in Western Australia' (2009) 7(11) *Indigenous Law Bulletin* 23, 27.

<sup>76</sup> Healing Foundation, Submission No 42 to Standing Committee on Indigenous Affairs, Parliament of Australia, *Inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2014) 5.



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McLean Cullen suggested limiting access to alcohol has the effect of creating ‘black market sly grogging or an increase in home brew and the associated health risks’.<sup>77</sup>

13.68 The ALRC accepts that, while community-led initiatives to reduce alcohol consumption are a useful circuit breaker to address alcohol-related harm and offending, such measures do not address the underlying causes of excessive drinking and addiction. Addressing the causes of alcohol abuse will ultimately be the key to reducing alcohol-fuelled offending and subsequent incarceration.

13.69 However, there was much support in consultations and submissions to this Inquiry for initiatives like the one in Fitzroy Crossing, that prohibit the sale of full strength alcohol. To achieve meaningful results in minimising alcohol abuse within Aboriginal and Torres Strait Islander communities, these communities must have ownership of the solutions, be supported to develop local initiatives and be resourced to implement them. The ALRC recommends that state and territory governments facilitate these sorts of initiatives where there is community desire to do so.

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<sup>77</sup> S McLean Cullen, *Submission 64*. See also Aboriginal Legal Service of Western Australia, *Submission 74*.

