



Australian
Human Rights
Commission

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Harmful use of alcohol in Aboriginal and Torres Strait Islander communities

**AUSTRALIAN HUMAN RIGHTS COMMISSION
SUBMISSION TO THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON INDIGENOUS AFFAIRS**

April 2014

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the House Standing Committee on Indigenous Affairs in its Inquiry into harmful use of alcohol in Aboriginal and Torres Strait Islander communities.
2. Harmful alcohol use is one of the most challenging issues confronting communities across Australia. These challenges are not limited to Aboriginal and Torres Strait Islander communities, but confront every demographic in Australian cities and towns.
3. This submission will briefly address the impact of harmful alcohol abuse in Aboriginal and Torres Strait Islander communities, including the specific impact on children, women, older people and the consequences of Fetal Alcohol Syndrome Disorders.
4. A human rights-based approach to best practice treatment and alcohol management will be summarised, drawing on the Social Justice and Native Title Report 2013.

2 Recommendations

5. The Australian Human Rights Commission recommends that:
 1. A human rights-based approach is adopted to manage harmful alcohol use in Aboriginal and Torres Strait Islander communities, with specific reference to the Declaration on the Rights of Indigenous Peoples. This requires consideration of the four guiding principles of:
 - Self determination
 - Participation in decision making underpinned by free, prior and informed consent
 - Respect for and protection of culture
 - Non-discrimination and equality.
 2. In accordance with the Convention on the Rights of Persons with Disabilities, an approach to the intervention and management of FASD should utilise a social model of disability that incorporates:
 - a. Access to health and medical services including early detection and prevention
 - b. a strong focus on addressing the interactions between the impairment and the environment and attitudinal barriers that are hindering full and effective participation on an equal basis with others.

3 Impact of harmful use of alcohol on Aboriginal and Torres Strait Islander communities

3. Harmful use of alcohol is not unique to Aboriginal and Torres Strait Islander people. Compared to the broader population, a greater percentage of Aboriginal and Torres Strait Islander people do not drink alcohol at all.¹
4. However, Aboriginal and Torres Strait Islander people who do drink are more likely to do so at levels that are risky.²
5. Alcohol is an issue of particular concern in many Aboriginal and Torres Strait Islander communities. It has repercussions across many areas, including health, education, community safety and children's rights. It is a major contributor to many different social and health problems, ranging from social disorder, family breakdown and violence, through to child neglect, loss and diversion of income and high levels of imprisonment.³
6. In terms of health indicators, Aboriginal and Torres Strait Islander people were hospitalized for alcohol related conditions at rates between 1.5 and 7.9 times those of other people in 2008-09.⁴
7. There is also a strong association between alcohol consumption and violence, crime and injury. In the case of assault, 50% are alcohol-related; Aboriginal and Torres Strait Islander men and women, respectively, experience assaults at 33 times the rate of their non-Indigenous counterparts.⁵ Over the ten year period of 1999 to 2009, 71.4 per cent of Aboriginal and Torres Strait Islander homicides involved both the victim and offender having consumed alcohol at the time of the offence, compared with 24.7 per cent of non-Indigenous homicides.⁶
8. Harmful alcohol use impacts on entire communities but often women, children and older people are more vulnerable to the negative consequences such as family violence.

¹ Australian Institute of Health and Welfare, *2010 National Drug Strategy Household Survey report* (2011), p 60. At <http://www.aihw.gov.au/publication-detail/?id=32212254712> (viewed 2 October 2013). Note that some reservations were held over the accuracy of this data given the small sample size.

² Australian Institute of Health and Welfare, *2010 National Drug Strategy Household Survey report* (2011), p 60. At <http://www.aihw.gov.au/publication-detail/?id=32212254712> (viewed 2 October 2013).

³ M Wilson, A Stearne, D Gray and S Saggars, *The harmful use of alcohol amongst Indigenous Australians* (2010). At http://www.healthinonet.ecu.edu.au/alcoholuse_review (viewed 25 September 2013).

⁴ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Canberra: Productivity Commission, (2011).

⁵ Australian Institute of Health and Welfare *2007 National Drug Strategy Household Survey: First Results*, (2008), Canberra: Australian Institute of Health and Welfare.

⁶ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Canberra: Productivity Commission, (2011).

Children and young people

9. Harmful alcohol use impacts severely on Aboriginal and Torres Strait Islander children and young people, with connections between harmful alcohol use and family violence and child protection issues.⁷
10. Aboriginal and Torres Strait Islander children nationally are ten times more likely to be in out of home care than their non-Indigenous counterparts.⁸ While the research on the actual incidence of harmful alcohol use related to substantiated child protection notifications is unclear, it has been estimated that up to 15% of Aboriginal and Torres Strait Islander children live in households where their parents consume alcohol at harmful levels.⁹
11. Aboriginal and Torres Strait Islander children themselves are concerned about the impact of alcohol abuse in their communities. The National Children's Commissioner, Megan Mitchell, conducted a listening tour, called the *Big Banter*, between June and September 2013. She met face-to-face with over 1000 children, and heard from almost 1400 more children through an online survey and reply-paid postcards.
12. One of the concerns raised a number of times by Aboriginal and Torres Strait Islander children was the level of violence and bullying in the community, and some children linked their concerns about this to drugs and alcohol. Some children specifically stated that they would like to live in an environment that is free from drugs, alcohol and smoking.
13. The impacts of harmful alcohol use on children are also evident in Fetal Alcohol Spectrum Disorders, discussed below.

Women

11. Harmful alcohol use is also a key factor in the alarming rate of violence against Aboriginal and Torres Strait Islander women.
 - Aboriginal and Torres Strait Islander women are 45 times more likely than non-Indigenous women to be victims of domestic and family

⁷ Australian Institute of Family Studies. *Child protection and Aboriginal and Torres Strait Islander children* (2013). At <http://www.aifs.gov.au/cfca/pubs/factsheets/a142117/> (viewed at 9 April 2014); *Protecting Children is Everyone's Business: National framework for Protecting Australia's Children 2009-2020*. Annual report to the Council of Australian Governments 2011-12. Commonwealth Government 2013.

⁸ Australian Institute of Health and Welfare, *Child Protection 2011-2012* (2013), p 32. At <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542752> (viewed 9 April 2014).

⁹ V Meredith and R Price-Roberston, *Alcohol Misuse and child maltreatment* (2011) Australian Institute of Family Studies. At <http://www.aifs.gov.au/nch/pubs/sheets/rs27/> (viewed 9 April 2014).

violence¹⁰ and 35 times more likely to be hospitalised as a result of family violence-related assaults than non-Indigenous women.¹¹

- The homicide rates of Aboriginal and Torres Strait Islander women are between 9 and 23 times higher at different times in the life cycle than they are for non-Indigenous women.¹²

12. Alcohol abuse exacerbates domestic and family violence and can contribute to higher levels of incidence and severity of harm:

- A longitudinal analysis of alcohol outlet density found a relationship between alcohol availability and domestic violence.¹³
- An evaluation of the alcohol restrictions in Fitzroy Crossing found a significant reduction in alcohol related crime and violence. Health services reported a 36% reduction in the average number of alcohol related Emergency Department presentations. In Halls Creek local police cite a 48% reduction in the number of arrests, 35% reduction in incidents of domestic violence and a 48% reduction in the number of incidents attended since the restrictions were introduced.¹⁴

Older people

13. Older Aboriginal and Torres Strait Islander people may also be victims of Elder abuse and 'humbugging' where community or family members demand money, often through intimidation. Anecdotally, the Commission is aware that this money is often sought for the purchase of alcohol.

4 Fetal Alcohol Spectrum Disorders

14. Fetal Alcohol Syndrome Disorders (FASD) is a set of disorders that may occur when a mother consumes harmful quantities of alcohol at crucial points during pregnancy. Evidence indicates that FASD may result in a range of impairments including brain injury, birth defects, behavioural and mental health issues.

¹⁰ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2009), p 26. At www.pc.gov.au/gsp/reports/indigenous/keyindicators2009 (viewed 29 March 2012).

¹¹ Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia*, UN Doc. CEDAW/C/AUL/CO/7 (30 July 2010), at para. 40. At: <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm> (viewed 4 August 2012).

¹² Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2009), p 26. At www.pc.gov.au/gsp/reports/indigenous/keyindicators2009 (viewed 29 March 2012).

¹³ M Livingston, 'A longitudinal analysis of alcohol outlet density and domestic violence', *Addiction*, no. 106, 2011, pp. 919–925.

¹⁴ Office of the Coordinator General for Remote Indigenous Services, 'Alcohol Restrictions in Fitzroy Crossing and Halls Creek', at <http://www.cgris.gov.au/site/news.asp?item=89> (viewed 7 April 2014).

15. FASD is an issue across the entire Australian population, especially given the rates of alcohol exposure during pregnancy. For instance, one study of Australian women indicated that 20% of respondents have participated in binge drinking at least once during pregnancy.¹⁵
16. FASD is not just an 'Aboriginal and Torres Strait Islander problem' and we need to be sensitive to ensure that it does not place another stigma on Aboriginal and Torres Strait Islander communities.
17. However, the emerging evidence tells us that the damage to children with FASD potentially represents one of the worst intergenerational impacts of alcohol misuse.
18. Impaired memory and an inability to learn and retain information may limit educational gains and also impact on future employment and opportunities for economic participation. Although research is limited, there also appear to be a concerning number of Aboriginal and Torres Strait Islander people with FASD in the criminal justice system.¹⁶
19. Impaired memory and an inability to learn and retain information may also result in a threat to the preservation of Aboriginal and Torres Strait Islander Peoples' cultures, given their oral traditions of passing down cultural knowledge through stories and ceremony. It is a real possibility that cultural knowledge will be lost as a result of FASD. The majority of cultural knowledge is not part of a written history. Therefore, its continuation is reliant upon the ability of Elders to pass this knowledge on to future generations.
20. Some Aboriginal and Torres Strait Islander communities are proactively tackling the FASD. The ground-breaking work of the Fitzroy Valley Community in the Liliwan Project sets the standard in a community-led collaborative process to address FASD. Appendix B contains a case study of the project from the *Social Justice Report 2010*.

Implications for FASD being declared a disability

21. Many of the issues and difficulties that stand in the way of successful prevention and support programs stems from the lack of understanding of FASD.
22. The Commission notes that FASD is a disability for the purposes of Section 4 of the *Disability Discrimination Act 1993* (Cth). FASD would also come within the definition of 'developmental delay' contained within Section 9 of the *National Disability Insurance Act 2013* (Cth).

¹⁵ L Burns, E Black and E Elliott (eds), *Fetal Alcohol Spectrum Disorders in Australia: An Update*, Intergovernmental Committee on Drugs: Working Party on Fetal Alcohol Spectrum Disorders (2009), p 20.

¹⁶ National Indigenous Drug and Alcohol Committee, *Addressing Fetal Alcohol Spectrum Disorder in Australia* (2012) p 10. At www.nidac.org.au/images/PDFs/NIDACpublications/FASD.pdf (viewed 8 April 2104).

23. The Convention on the Rights of Person with Disabilities (CRPD) does not define disability. Article 1, in describing the purpose of this Convention states:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹⁷

24. In accordance with the CRPD, the Commission urges that a social model of disability be adopted as an appropriate response to FASD. The social model of disability recognises that disability is an evolving concept. The social model of disability takes into account access to health and medical services including early detection and prevention,¹⁸ and it ensures that there is a strong focus on addressing the interactions between the impairment and the environment and attitudinal barriers that are hindering full and effective participation on an equal basis with others.

5 What works in addressing harmful alcohol use in Aboriginal and Torres Strait Islander communities

25. Underpinning all effective interventions should be an understanding that first and foremost alcohol misuse is a health issue of which a primary consideration is the social and emotional wellbeing of the particular community and individuals.¹⁹
26. A summary of evidence indicates that effective interventions to address harmful alcohol use are:
- supported, owned and controlled by affected communities
 - designed and tailored to the specific needs of particular communities and subgroups within them
 - culturally sensitive and appropriate
 - adequately resourced and supported, including to cater for clients with complex needs

¹⁷ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3, Preamble (e) (entered into force 3 May 2008).

¹⁸ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3, Article 25 (b) (entered into force 3 May 2008).

¹⁹ D Gray and E Wilkes, *Reducing alcohol and other drug related harm*, Closing the gap clearinghouse Resource sheet no. 3 (2010). At http://www.aihw.gov.au/closingthegap/documents/resource_sheets/ctgc-rs03.rtf (viewed 22 September 2013).

- provide a mix of broad-based and substance specific services
 - planned and integrated as a suite of interventions.
27. These findings are also echoed in community consultation, for instance the Aboriginal Peak Organisations Northern Territory Grog Summit in 2013.²⁰
28. Appendix A provides a more detailed look at what works in addressing harmful alcohol abuse in discrete Aboriginal and Torres Strait Islander communities.

Family and domestic violence

29. Given the strong connections between harmful use of alcohol and violence, effective intervention also needs to include prevention, intervention, response services and programs to address domestic and family violence. These services need to be culturally secure for Aboriginal and Torres Strait Islander women and men, and involve local Aboriginal and Torres Strait Islander community members in development and service delivery.
30. The Commission notes that the *National Plan to reduce violence against women and their children* recognises everyone's right to live safe and free from violence. The National Plan brings together the efforts of governments across the nation to make a reduction in the levels of violence against women.²¹ The *National Plan* is being implemented in conjunction with the Closing the Gap framework and the Commonwealth's Indigenous Family Safety Program to help reduce family violence. These include priorities to work with communities to develop innovative approaches to address alcohol abuse.²²

6 A human rights-based approach to harmful alcohol use in Aboriginal and Torres Strait Islander communities

31. A human rights-based approach to harmful alcohol use advocates neither for the free flow of alcohol into every community nor the blanket application of alcohol bans.
32. A human rights-based approach requires that communities are empowered to make decisions about the policies adopted to manage alcohol within their community. It also ensures that measures are reasonable, proportionate and

²⁰ Aboriginal Peak Organisations of the Northern Territory, *APO NT Media Communique* At <http://apont.org.au/index.php/central-australian-grog-summit-2013.html> (viewed 7 April 2014).

²¹ The Northern Territory Government is also preparing a domestic violence reduction strategy, which will complement the National Plan.

²² Council of Australian Governments, *National Plan to reduce violence against women and their children 2010-2022* (2011), p7. At <http://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children/national-plan-to-reduce-violence-against-women-and-their-children> (viewed 7 April 2014).

necessary. The combination of these factors will, the evidence tells us,²³ ensure policies have the greatest likelihood of success and will respect and protect the human rights of our communities.

33. The *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration) is a crucial tool in guiding this process. When developing any policy there must be consideration of the four Declaration principles of:
- self-determination
 - participation in decision making underpinned by free, prior and informed consent
 - respect for and protection of culture
 - non-discrimination and equality.
34. The protection of people from alcohol related harm is also supported in a human rights-based approach. As well as the principles underpinning the Declaration, specific articles contain rights which are pertinent to alcohol policy. In particular, Article 7(1) includes the rights to life, physical and mental integrity, liberty and security of person.²⁴ Article 22 of the Declaration is also important in any approach to this issue. It states:
1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
 2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.
35. Appendix A contains a detailed case for human rights-based alcohol policy, drawing on national and international law and case studies on alcohol management in Queensland and the Northern Territory.
36. In considering the application of a human rights-based approach the Commission is concerned about implications of some recent developments in the Northern Territory, in the form of the Alcohol Mandatory Treatment and Alcohol Protection Orders. Both of these measures raise human rights concerns. Alcohol Protection Orders also potentially criminalise harmful alcohol use and may lead to over policing of Aboriginal and Torres Strait Islander people, particularly who are homeless. Both of these measures are examined in detail in Appendix A.

²³ D Gray and E Wilkes, *Reducing alcohol and other drug related harm*, Closing the Gap Clearinghouse Resource Sheet no. 3 (2010). At http://www.aihw.gov.au/closingthegap/documents/resource_sheets/ctgc-rs03.rtf (viewed 22 September 2013).

²⁴ These Declaration rights are strongly supported by *International Convention on the Elimination of All Forms of Racial Discrimination*, 1969, art 5(b); *International Covenant on Civil and Political Rights*, 1966, art 9; *Convention on the Rights of the Child*, 1990.