

Submission to Inquiry into how the corporate sector establishes models of best practice to foster better engagement with Aboriginal and Torres Strait Islander consumers

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Danila Dilba[®]
Health Service



About us

This is a joint submission made by the following organisations:

FARE

The Foundation for Alcohol Research and Education (FARE) is the leading not-for-profit organisation working towards an Australia free from alcohol harms. Visit www.fare.org.au for more information.

AMSANT

The Aboriginal Medical Services Alliance Northern Territory (AMSANT) is the peak body for Aboriginal Community Controlled Health Services (ACCHSs) in the Northern Territory. Visit <http://www.amsant.org.au/> for more information.

DDHS

Danila Dilba Health Service (DDHS) is an Aboriginal community-controlled organisation providing culturally-appropriate, comprehensive primary health care and community services to Biluru (Aboriginal and Torres Strait Islander) people in the Yilli Rreung (greater Darwin) region of the Northern Territory. Visit <https://ddhs.org.au/> for more information.

NTCOSS

The Northern Territory Council of Social Service (NTCOSS) is the peak body for the Social and Community Sector in the NT and an advocate for social justice on behalf of people and communities who may be affected by poverty and disadvantage. Visit <https://ntcoss.org.au/> for more information.

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Introduction

The Foundation for Alcohol Research and Education (FARE), Danila Dilba Health Service (DDHS), Aboriginal Medical Services Alliance Northern Territory (AMSANT) and Northern Territory Council of Social Services (NTCOSS) thanks the House of Representatives Standing Committee on Indigenous Affairs for the opportunity to provide input to the *Inquiry into how the corporate sector establishes models of best practice to foster better engagement with Aboriginal and Torres Strait Islander consumers*.

This joint submission from our four organisations outlines a recent case study of corporate sector behaviour that demonstrates disregard for Aboriginal and Torres Strait Islander communities and the lack of corporate responsibility for the many harms created by selling alcohol.

The case study is situated in the context of ongoing historical tension between corporate profit-seeking, government policies aimed at supporting business, and the health and welfare of Aboriginal people in the Northern Territory (NT). For many decades, Aboriginal communities and their leaders across the NT have repeatedly resisted attempts by the alcohol industry to make inroads into their lives. At times, they have lost these battles in spectacular fashion¹, though in the long run the outcome has been that many communities across the NT are today 'dry' by their own decision.¹ In the NT today, the proliferation of dry Aboriginal communities is part of the landscape, and an appreciation of that context is crucial.

For almost five years, Woolworths Group (and their alcohol retail arm Endeavour, which is now its own standalone company) relentlessly fought to build what would have been one of Australia's largest liquor stores, an 1800-square-metre Dan Murphy's, on the doorstep of Bagot community, a dry Aboriginal community in Darwin. In April 2021, Woolworths Group abandoned the proposed development due to sustained criticism and community opposition.

The development was opposed by the Bagot Community, members of the public, and organisations including NTCOSS, DDHS, AMSANT, FARE, the Aboriginal Peak Organisations Northern Territory (APONT), Public Health Association of Australia NT Branch (PHAANT) and Association of Alcohol and Other Drug Agencies NT (AADANT).

As this submission outlines, Woolworths Group (including Endeavour) continually pushed for their Dan Murphy's application to be approved, despite strong opposition, including from First Nations people and organisations who have been working to create stronger, healthier and more resilient communities. At the core of this problem was a failure by Woolworths Group to meaningfully engage with the local community, particularly Aboriginal communities near the proposed location of the development.

Woolworths Group and Endeavour's engagement throughout the application process was narrow and self-serving, focussing on securing liquor license approval, which ultimately disempowered Aboriginal people, their organisations and their leadership. Corporations must go much further, ensuring their engagement contributes to the empowerment, recognition and self-determination of Aboriginal and Torres Strait Islander peoples.

¹ For example, the unsuccessful challenge by Yolngu people from Northeast Arnhem Land in 1970 to the decision to award an alcohol license to the Walkabout Hotel, the result of which was the introduction of alcohol to a large swathe of Arnhem Land. Twenty years later Yolngu unsuccessfully protested against the opening of a liquor outlet in Woolworths' Nhulunbuy store (Wearne B, Grotorex J et al, *Liquor Licensing – issues and options pertaining to the Gove Peninsula*, Wearne Advisors in collaboration with the School of Australian Indigenous Knowledge Systems, Charles Darwin University). The outcome of those losses has been huge health and welfare problems which continue today.

Case study: The Dan Murphy's Darwin development

This case study outlines the behaviour of Woolworths Group and Endeavour during their application for a Dan Murphy's in Darwin, focussing specifically on their lack of meaningful engagement with local Aboriginal communities and organisations. The community response to this failure to engage is also outlined.

This submission concludes with an assessment of how corporations can strive for meaningful engagement.

Initial application

In 2016, Woolworths Group and Endeavour submitted their first application for a Dan Murphy's in Darwin, in the context of a newly appointed NT Government which introduced many policies to reduce alcohol harm, including a moratorium on take away liquor licenses and minimum unit pricing.

As the Woolworths-appointed Panel Review into the application process from 2016 to 2021 ('the Gilbert Review'²) found, at this first application, there was very little community consultation aside from a phone survey of 400 people nearby. Most importantly, the Panel Review noted that leaders of the local Aboriginal and Torres Strait Islander community were not engaged until a later date once the application was well underway, making consultation seem perfunctory. As the Gilbert Review found in their assessment of the purpose of engagement by Endeavour:

"When Endeavour representatives and experts sought to consult with local Aboriginal and Torres Strait Islander communities, these discussions were conducted within the framework of harm minimisation strategies and policies to reduce alcohol-related harm. Put simply, there was never any discussion about whether these communities wanted or needed the store in the first place."

Meanwhile following this initial application, Woolworths Group strongly opposed NT Government regulations that required alcohol retail outlets to have a maximum floor space of 400 square metres, since this threatened their development. They took their opposition to the Federal Court but eventually withdrew this legal action and their application in 2017. Also occurring in 2017 was the landmark Riley Review into alcohol policies in the NT, which the NT Government had commissioned due to the NT having some of the highest rates of alcohol harm in Australia.³

Application rejection and appeals

The second application for a Dan Murphy's in Darwin was submitted in July 2018. Under the newly established NT Liquor Commission (the Commission), Woolworths was required to undertake a *Public interest and community impact assessment*. While Woolworths sent letters to a range of local businesses and organisations, little effort was made to connect with Aboriginal and Torres Strait Islander peoples and organisations in a way that demonstrated a genuine desire to speak with them. Woolworths admitted that its attempts at consultation with local Aboriginal communities was inadequate when developing its application.⁴

During the application process, it was agreed that community input would be sought within a 25 km radius of the development. While several Aboriginal communities and groups were identified by Endeavour at this stage for consultation, it failed to engage with an adequate number of them, as

found by the Gilbert Review. An example is housing management service Yilli Housing who is a significant community stakeholder, but was not contacted about the development until 2020. Similarly, Danila Dilba Health Service did not receive formal communication until May 2020, despite raising objections to the application in 2018.

Serious efforts by Woolworths Group and Endeavour to engage with local communities only occurred after being compelled to do so at the Commission's first Directions Hearing in February 2019. These efforts occurred in the context of a litigious environment where Woolworths' sought to dismiss the expert evidence provided by objectors in order to have their application approved.

The NT Liquor Commission's Decision Notice on the Woolworths' application said:

*"It is most unfortunate that the Applicant did not engage in consulting the local community prior to committing to this site because it would, in our view, have come to the realisation that this was not an appropriate position for any liquor store, let alone one the size of Dan Murphy's."*⁵

The Commission rejected the Dan Murphy's Darwin application in September 2019, noting the "potential for a significant increase in harm due to the use of liquor, over and above that already occurring within the community areas".⁶ The Commission also commented on the disregard shown for Aboriginal and Torres Strait Islander communities affected by the outlet.

After the rejection, Woolworths Group and Endeavour engaged in a drawn-out process to contest the decision – it first appealed to the NT Civil and Administrative Tribunal (NTCAT) and then appealed to the NT Supreme Court in January 2020. Eventually, the NT Government passed legislation that allowed another reconsideration of the proposed development, this time circumventing the Commission and normal consultation processes. The new process allowed just one public servant, the Director of Liquor Licensing, to reconsider the licence application and a new proposal to move the location elsewhere on airport land.

Community opposition and the Gilbert Review

In response to this bypassing of normal process, community opposition to the development increased significantly. A Change.org petition to stop the development achieved over 150,000 signatures, questions were asked at the 2020 Woolworths AGM, and Open Letters from organisations and community leaders to the Woolworth's Chairperson Gordon Cairns were sent asking Woolworths to reconsider the development. Community groups also called for Reconciliation Australia to remove Woolworths from the Reconciliation Action Plan (RAP) program, given their behaviour towards Aboriginal groups during the application process,⁷ likening the impact of Woolworths action on the health and wellbeing of the community, to the wilful and deliberate destruction of Aboriginal and Torres Strait Islander cultural sites at Juukan Gorge,⁸ and the NAIDOC Week Committee suspended discussions with the Woolworths Group regarding an official partnership for NAIDOC Week 2021, pending the findings of the Gilbert Review and the response by Woolworths.⁹

Despite being aware of the overall opposition to the store,¹⁰ Gordon Cairns claimed at the Woolworths' 2020 AGM that "there is no opposition from these Indigenous people to our new location" and that "I'm saying this on behalf of the Indigenous communities that we've been in negotiation with." Aboriginal community-controlled organisations including Danila Dilba and AMSANT immediately expressed concern that Woolworths' statements were misleading and confirmed they do not support the Dan Murphy's outlet.



As AMSANT CEO John Paterson remarked about this behaviour by Woolworths:¹¹

“It’s wedging Aboriginal groups against each other. This is the game that they’re good at, big corporates, they love it, and we’re calling on them to cease it. Take a social conscience in all of this and listen to the Aboriginal leadership here in the Northern Territory and withdraw your application now.”

In December 2020, despite this community opposition, criticism of engagement with local Aboriginal people, and concerns about the process, the Director of Liquor Licensing approved the development.

Two days prior to the Director’s decision, Woolworths suddenly announced via the media that they were commissioning a review into the consultation process for the proposed Dan Murphy’s – without any discussion with communities or consultation about the Terms of Reference. In February 2021, Woolworths then used the media to announce that Woolworths would conduct an “open house” in which people could go to a shopfront to hear about the proposed store and voice their concerns, while the Gilbert Review process was underway.

This use of the media to announce decisions and consultation processes without proper invitation is clearly not best practice when engaging with the community. This headstrong approach by Woolworths and Endeavour Group also reflects an inability to first ask Aboriginal and Torres Strait Islander peoples how they would like to engage.

Abandonment of application

In April 2021, the Gilbert Review finalised its report, clearly stating that the Dan Murphy’s development should not go ahead because local Aboriginal communities were not adequately consulted during this process. Alongside this, the Gilbert Review made a total of 25 recommendations for Woolworths Group and Endeavour to consider.

In response, the Woolworths Group Board abandoned its plans for the Dan Murphy’s development, with Chairperson Gordon Cairns stating:

“The Gilbert Review has made it clear that we did not do enough in this community to live up to the best practice engagement to which we hold ourselves accountable. In particular, we did not do enough stakeholder engagement with a range of Aboriginal and Torres Strait Islander communities and organisations.”¹²

In a formal reflection on the Gilbert Review, Woolworths admitted that it did not consult with its RAP Working Group and its External Indigenous Advisory Panel during decision making on the application, and conceded that it has further work to do to meet its RAP commitments.¹³ The reflection also outlined a number of actions that Woolworths Group commits to in the context of reconciliation with First Nations communities, including culturally safe engagement, wide-ranging meetings of Woolworths senior leaders with Aboriginal and Torres Strait islander communities, and revising their RAP commitments.

In May 2021, Endeavour demerged from Woolworths Group, taking responsibility for their alcohol retail businesses including Dan Murphy’s and BWS. Endeavour’s initial response to the Gilbert Review¹⁴ was smaller in scope to Woolworths Group, but committed to a number of actions including an ESG assessment of current developments, reviewing how reputation and sustainability teams are involved in applications, and ‘bridging the divide’ between Endeavour and public health groups. Endeavour Group has subsequently released its Sustainability Strategy¹⁵ and a document that connects the strategy with learnings from the Gilbert Review.¹⁶ While this document talks about

meaningfully engaging with Aboriginal and Torres Strait Islander communities and related stakeholders, reviewing current applications and revising processes for new store openings, it appears to be targeted at shareholders who are interested in corporate profitability, rather than communities who are concerned about protecting their people from alcohol harm and engaging in good faith on proposals. Furthermore, the focus for meaningful engagement appears to be on mitigation of harm rather than prevention of harm and on investment in undertaking future research but lacks detail on taking action based on available evidence..

Breaking the pattern of corporate failure

Woolworths Group and Endeavour's failure of community engagement in Darwin reflects their history of developing alcohol outlets without adequate consultation, and at times in direct conflict with community wishes. This history includes:

- **Nhulunbuy, NT (1970-present):** The opening of a liquor outlet in this Woolworths store was actively opposed by local Aboriginal groups and their leaders at the time, but their opposition was overridden. This location is particularly important because it was, and remains, a central source of alcohol for the entire Arnhem Land region. The great majority of communities in Arnhem land are dry by their own decision, yet this status is undermined by smuggled alcohol sourced from Nhulunbuy.
- **Nowra, NSW (2012):** A Dan Murphy's application was initially rejected by Shoalhaven Council, but was then appealed by Woolworths who successfully gained approval.¹⁷
- **Lake Haven, NSW (2014-2021):** Woolworths Group and Endeavour have disregarded local community opposition to a Dan Murphy's development, despite the local area of Lake Haven experiencing significantly high levels of alcohol harm.¹⁸ Several community groups objected, including one Aboriginal community controlled health service.
- **Cranbourne East, VIC (2016):** Woolworths Group successfully gained approval to build a Dan Murphy's in a local area with significant rates of alcohol-related family violence.¹⁹
- **Maylands, WA (2018):** A Dan Murphy's application was eventually rejected after five years of community opposition, after multiple appeals initiated by Woolworths. Part of the opposition involved concerns about increased alcohol harms among Aboriginal communities.²⁰
- **Wodonga, VIC (2021-present):** There has been strong community opposition to a Dan Murphy's development in the heart of the city centre, with an online petition of nearly 3,000 signatures being accepted by the local council.²¹
- **Black Rock, VIC (2021):** The local community has objected to the application for a Dan Murphy's licence because of the saturation of liquor licences within the community and the high levels of alcohol harm in the community. Despite these concerns, in August 2021, lawyers for Endeavour Group argued against consideration of the impact of harm on technical grounds, along similar lines used in 2016 in Cranbourne East.

These examples point to a pattern of Woolworths Group and Endeavour using its corporate power to override the wishes of local communities. The repeated incidents also indicate an unwillingness to learn from past failures of engagement. Given this record, there would need to be substantial action to demonstrate that the commitments by Woolworths and Endeavour in the wake of the Gilbert Review are being meaningfully implemented.

Conclusion

Woolworths Group and Endeavour's actions in Darwin represent a significant failure of meaningful engagement with Aboriginal and Torres Strait Islander peoples. From the outset, they did not consult about the impact of the store before making the decision to apply. When they did consult, their consultation was not far reaching enough and narrowly focussed on mitigation of alcohol harms, and not whether the community wanted a store in the first place.

Most importantly, over several years the concerns of Aboriginal, health and community organisations who deal with the consequences of alcohol harm on a daily basis were not given adequate consideration by Woolworths and Endeavour.

They ignored the specific context of the Northern Territory, particularly the many dry Aboriginal communities who have opted for restrictions on alcohol. They ignored the fact that these Aboriginal community-led restrictions on alcohol have been hard fought for and led to reduction in harm, and building an alcohol megastore in Darwin threatened this achievement.

Going forward, corporations such as Woolworths Group and Endeavour must ensure they strive for meaningful engagement with Aboriginal and Torres Strait Islander peoples. This engagement must begin with a recognition of First Nations people's self-determination. The 2017 Uluru Statement from the Heart – which calls for a First Nations Voice to be enshrined in the Australian Constitution – describes self determination as “power over our destiny”. In practice, this means that engagement by corporations cannot be merely consultation, it must involve negotiation, agreement and ultimately empowerment through decision making by First Nations people.

Engagement must also contribute towards the overall goal of reconciliation between Indigenous and non-Indigenous people of Australia. This means acknowledging Australia's colonial history of land dispossession, violence and racism by Europeans – a legacy that continues to this day where Aboriginal and Torres Strait Islander people face significant disadvantage in society. Engagement by corporations must work towards reconciling this significant disadvantage, guided by commitments such as a Reconciliation Action Plan.

Another important aspect of this approach to engagement is ensuring 'cultural safety', whereby there is no assault, challenge or denial of people's cultural identity and experience. As the Gilbert Review highlighted, the consultation process in Darwin led by Woolworths and Endeavour was not conducted in a culturally safe manner for Aboriginal people.

With self-determination, reconciliation and cultural safety in mind, corporations can also look to detailed guidance on engagement with First Nations people from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The UNDRIP was adopted in 2007, and since then the United Nations has developed a 'Business Reference Guide' for corporations seeking to align their activity with the declaration.²² This guide outlines six fundamental actions for corporations to follow:

1. *Adopt and implement a formal policy (whether on a stand-alone basis or within a broader human rights policy) addressing indigenous peoples' rights and committing the business to respect indigenous peoples' rights.*
2. *Conduct human rights due diligence to assess actual or potential adverse impacts on indigenous peoples' rights, integrate findings and take action, track and communicate externally on performance.*
3. *Consult in good faith with indigenous peoples in relation to all matters that may affect them or their rights.*

4. *Commit to obtain (and maintain) the free, prior and informed consent of indigenous peoples for projects that affect their rights, in line with the spirit of the UN Declaration.*
5. *Establish or cooperate through legitimate processes to remediate any adverse impacts on indigenous peoples' rights.*
6. *Establish or cooperate with an effective and culturally appropriate grievance mechanism.*

These six actions provide a clear standard for meaningful corporate engagement with Aboriginal and Torres Strait Islander people. As the Darwin Dan Murphy's case study has highlighted, Woolworths and Endeavour did not meet this higher standard of engagement.

Based on this case study, FARE, DDHS, AMSANT and NTCOSS recommends the following principles to guide corporate engagement with Aboriginal and Torres Strait Islander people, particularly regarding alcohol:

1. **Engage from the outset:** Engagement must start as early as possible, before a decision is made and consultation becomes tokenistic. This means that corporations do not assume a community wants or needs another alcohol outlet.
2. **Engage broadly:** There are many diverse Aboriginal and Torres Strait Islander communities, and simply engaging with one or two groups is insufficient to say that adequate engagement has been conducted. It is also incorrect to assume that one view will be shared by all groups – often there are differing views that will require negotiation. Engagement must begin with identifying all relevant groups, reaching out to them and meaningfully engaging at multiple stages.
3. **Engage continuously:** Engaging at one point in time doesn't mean that engagement can be marked as 'complete'. Instead, engagement should be ongoing, keeping channels of communication open even after a project may have ostensibly 'finished'. This approach means that lasting relationships are formed, instead of one-off engagements.
4. **Alcohol harms must be prevented, not simply mitigated or compensated for:** Alcohol companies such as Endeavour need to recognise that alcohol is a drug that causes harm in the community. Simply offering harm mitigation strategies or trying to offset harms with health service investment does not constitute a complete solution. Instead, community calls for action, such as restrictions on the proliferation of new alcohol outlets, must be listened to.
5. **Solutions are community led:** This principle follows from recognising self-determination and committing to reconciliation. Aboriginal and Torres Strait Islander communities know the most effective solutions to challenges they face, meaning they must be the ones to lead the development and implementation of solutions. Solutions cannot be controlled by corporations or governments.

In closing, an elaboration on the last principle (no.5) in regard to alcohol is important. When alcohol companies engage with Aboriginal and Torres Strait Islander communities, this engagement should start with an acknowledgement that alcohol products cause significant harm to people, especially for the First Nations people of Australia. This is important as best practice engagement by corporations has its limitations in this context of alcohol harm. It must be recognised that preventing and reducing alcohol harm amongst Aboriginal and Torres Strait Islander communities requires community led programs and policies, not corporate led policies. These community-led initiatives in turn need the support of all levels of government in Australia for them to succeed. First Nations people require genuine self-determination and control over alcohol in their communities to prevent alcohol harm.

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