

NORTHERN TERRITORY LIQUOR COMMISSION

Decision Notice

MATTER: APPLICATION FOR A LICENCE

REFERENCE NUMBER: 2019/052

PREMISES: **Hair Dude**
3/14 Knuckey Street
DARWIN NT 0800

APPLICANT: Hair Dude Pty Ltd

NOMINEE: Mr Gary Strachan

OBJECTOR/S: Nil

LEGISLATION: Section 26, Part IV and V of the *Liquor Act 1978*

HEARD BEFORE: Mr Richard Coates (Chairperson)
Mr Kenton Winsley (Health Member)
Ms Amy Corcoran (Community Member)

DATE OF HEARING: 21 May 2019

DATE OF DECISION: 3 June 2019

Decision

1. For the reasons set out below and in accordance with section 29 of the *Liquor Act 1978* (**the Act**) the Commission has determined to issue a licence to Hair Dude Pty Ltd (**the Applicant**) authorising the sale of liquor for consumption on or at the premises located at Unit 3, 14 Knuckey Street in Darwin known as 'Hair Dude' (**the Premises**).
2. In accordance with section 31 of the Act, the licence shall be subject to the specific conditions (in addition to those general conditions of all such licences) that:
 - a. The liquor shall be sold pursuant to "On – Authority" liquor licence authorising the sale of liquor for consumption on or at the premises for the hours:
 - i. 1000 hours to 2000 hours Monday to Sunday;

Exception

No trade on Good Friday and Christmas Day.

- b. The licence shall be subject to and inclusive of such additional conditions as may at any time be:
 - i. Requested in writing by the Licensee;
 - ii. Approved by the Liquor Commission, as the case may require, or imposed by the Liquor Commission as a condition of the granting of such a request by a Licensee; and
 - iii. Notified in writing by the Director-General to the Licensee.
 - c. The licence shall be inclusive of those conditions set out at the conclusion of these reasons in addition to the general conditions included in an “On – Authority” liquor licence.
3. The licence will be issued immediately following the publication of this decision notice and in accordance with section 31(1) of the Act is subject to the Applicant supplying in respect to the Premises all the necessary statutory approvals in writing, including the issue of a certificate of occupancy under the *Building Act 1993*, to the satisfaction of the Director-General of Licensing.

Reasons

Background

4. On 30 January 2019 an application was lodged by Gary Strachan on behalf of Hair Dude Pty Ltd (**the Applicant**), seeking a liquor licence for premises known as Hair Dude located at 3/14 Knuckey Street, Darwin (**the Premises**).
5. The application was considered incomplete until further documentation was received from the Applicant by email on 2 March 2019.
6. The primary business conducted at the Premises is hairdressing. The Applicant is seeking an “On - Authority” liquor licence so that customers can consume liquor on the Premises while waiting for, or during, a haircut.
7. The Applicant seeks to be able to sell beer, wine and spirits on the following conditions:
 - a. Liquor trading hours of 10.00 hours to 20.00 hours Monday to Sunday;
 - b. No sale of liquor on public holidays;
 - c. Sale and consumption of liquor not ancillary to a meal;
 - d. Sale and consumption for customers getting a haircut only.

8. On 22 April 2019 pursuant to sections 28(1) and 50(a) of the Act, the Director-General referred this application to the Commission to be determined by way of a public hearing whether to issue a licence subject to any conditions or to refuse the application. The application was listed for a hearing on 21 May 2019.
9. The Applicant 'Hair Dude Pty Ltd' is currently registered with ASIC. A review of the ASIC records shows that Mr Gary Strachan is the sole director and secretary. The company has 1 share which is fully owned by Gary Strachan.
10. The business name, Hair Dude, is registered with ASIC against the Applicant.
11. Gary Strachan is also the proposed nominee. In support of this application, Mr Strachan has provided:
 - a. National Police Certificate
 - b. Photographic identification by way of copy of passport and driver licence
 - c. Resume
 - d. Two professional references
 - e. Two personal references
 - f. Copy of RSA Certificate
12. The Applicant has also provided the following documents in support of the application:
 - a. Community Impact Assessment pursuant to Section 6A of the Act
 - b. Public Interest Criteria pursuant to Section 6.2 of the Act
 - c. Financial reports
 - d. Business Plan
 - e. Site plans
 - f. Letter from landlord agreeing to the Applicant holding a liquor licence at the Premises
 - g. Copy of Lease
 - h. Copy of Registration of a Food Business
 - i. Copy of Registration of a Hairdressing Business
 - j. Extracts from NT Planning Scheme indicating DCA approval for the Premises.
13. The Applicant has no previous history held at Licensing NT. Mr Strachan has not previously been involved with another liquor licence in the Northern Territory.

Disclosure of influential persons or potential beneficiaries

14. The Commission notes that section 26A(1) of the Act requires applicants to make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted. Mr Strachan on behalf of the Applicant, states there is no such person.
15. The Act prescribes that upon the application being filed, together with the affidavit under section 26A, there must be investigations conducted by the Director-General in relation to the application. The Commission has received no information to indicate there have been any adverse matters discovered as a result of the investigation by the Director-General.

Advertising and Objections

16. Details of the application were advertised in the Northern Territory News on Wednesday 6 March 2019 and Saturday 9 March 2019 as well as having signage displayed at the premises for a period of 30 days. The objection period expired on 8 April 2019.
17. There were no objections received from the public.
18. Section 27(3) of the Act requires that the Director-General must inform:
 - a. the Chief Executive Officer of the Department of Health (**DOH**);
 - b. the Commissioner of Police (**NT Police**); and
 - c. if the application relates to premises within the area of a shire council or a regional council - the Chief Executive Officer of the council.
19. That occurred with respect to this application and the following responses were received:
 - a. The DOH advised it had “no adverse comment”.
 - b. The NT Police stated it had “no objection”.
 - c. The City of Darwin advised that it had “not identified any grounds for objection”.
20. The Commission notes that the application was also forwarded to the Northern Territory Fire and Rescue Service (**NTFRS**) for comment. NTFRS replied via email dated 13 March 2019 that they were unable to support the application due to outstanding building reports and alterations not being signed off and new occupancy certificates issued.
21. The comments of the NTFRS were forwarded to the Applicant seeking a response. The Applicant replied stating that the works had been completed and he intended to book the certifier and fire department as soon as possible to provide the required certification and provide it to the Director-General. At the time of the hearing these documents had still not been submitted.

Public Hearing

22. Pursuant to section 50 of the Act, the Director-General must refer *inter alia* applications under sections 26 of the Act to the Commission. Therefore these applications must be heard and determined by this Commission.
23. As earlier noted, on 22 April 2019 the Director General referred this application to the Commission. Pursuant to section 53 of the Act, the Chairperson of the Commission must fix the time and place for hearing and give notice to the relevant parties not less than 7 days before the hearing date. The hearing was fixed for 10.00am on 21 May 2019 and notice sent to the Applicant on 2 May 2019 advising of the hearing scheduled to take place.
24. Pursuant to section 53 of the Act; the Commission is not bound by the rules of evidence and may inform itself in the manner it considers appropriate and conduct the hearing, or part of the hearing, by use of telephone or online facilities. A hearing must also be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person. No such submission has been made to this Commission and there is no evidence to suggest any such hardship.
25. The public hearing commenced at 10:00am on 21 May 2019. Mr Strachan attended in person on behalf of the Applicant. Mr Jeff Verinder as representative for the Director-General was also present to provide information and assistance to the Commission during the course of the hearing. The Commission thanked them for their assistance.

Assessment of the Application

26. As earlier noted, there were no objections to this application. This is despite the fact that the applicant undertook its obligations with respect to public advertisement and consultation in accordance with the ordinary notice provisions required under the Act. The objection process is specifically provided for under the Act at section 47F. That section clearly identifies those persons *who* may make an objection, the specific *kinds* of applications that may be objected to, the *grounds* upon which an objection can be made and *how* the objection is to be made.
27. It is important however to recall at all times that the Act makes clear under section 6B that it is the Applicant who bears the onus of satisfying the Commission that the approval of the application meets the public interest and community impact test. Even if there are no objections, the Applicant must still satisfy this Commission of those matters.
28. As is clear from section 6(1) of the Act; when considering or determining an application under the Act in respect of a licence, this Commission **must** apply the public interest and community impact test as relevant to the application. Section 6(2) of the Act provides that:

“For subsection (1), the public interest and community impact test requires consideration of the following objectives:

- a. harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
- b. liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
- c. public order and safety must not be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
- d. the safety, health and welfare of persons who use licensed premises must not be put at risk;
- e. noise emanations from licensed premises must not be excessive;
- f. business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
- g. a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including:
 - i. by-laws made under the *Local Government Act 2015*; and
 - ii. provisions of or under the *Planning Act 1999*;
- h. each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
- i. the use of credit in the sale of liquor must be controlled;
- j. practices which encourage irresponsible drinking must be prohibited;
- k. it may be necessary or desirable to limit any of the following:
 - i. the kinds of liquor that may be sold;
 - ii. the manner in which liquor may be sold;
 - iii. the containers, or number or types of containers, in which liquor may be sold;
 - iv. the days on which and the times at which liquor may be sold;

- l. it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
- m. it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
- n. it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices;
- o. any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.”

29. In addition, pursuant to section 6(3), the Commission must:

- a. consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:
 - i. the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and
 - ii. the cultural, recreational, employment or tourism impacts; and
 - iii. the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - iv. the density of existing liquor licences within the community area; and
 - v. the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - vi. any other prescribed matter; and
- b. apply the community impact assessment guidelines.”

30. On 6 March 2018, pursuant to section 6A of the Act, the Minister by Gazette notice published community impact assessment guidelines for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test. Relevantly those guidelines are stated to

“... set out those matters that will be considered by the Commission when assessing the community impact of the application against the criteria set out in section 6A(1) of the Liquor Act”.

31. Those matters are identified as follows:

Criteria	Matters to be considered
<p>The potential harm or health impact that may be caused to people, or any group of people within the local community area, due to the availability and accessibility of an additional liquor outlet.</p>	<p>Are there any 'at-risk' groups or sub-communities within the locality? This may include –</p> <ul style="list-style-type: none"> • children and young people; • Aboriginal people normally resident within the locality and those Aboriginal people that might be likely to travel to the locality from a dry community; • migrant groups from non-English speaking countries; • people in low socio-economic areas; and/or • communities that experience high tourist/visitor numbers. <p>Are there any community building, facilities and areas within the locality? Such facilities would include:</p> <ul style="list-style-type: none"> • schools and educational institutions; • hospitals, drug and alcohol treatment centres; • accommodation or refuges for young or disadvantaged people; • child care centres; • recreational areas; • dry areas; and

	<ul style="list-style-type: none"> any other area where young people may congregate or be attracted to. <p>What policies and procedures will the applicant implement to minimise any potential harm or health impacts to these 'at-risk' groups or sub-communities</p>
<p>Information about the location and area in which the premises is proposed to be so as to assess any social impact on the community. This includes information about the density of licensed premises within the community area.</p>	<p>This may include crimes statistics, social profile information and the location of existing licensed premises.</p> <p>This could also include traffic and pedestrian impact and any plans developed to address these potential issues.</p>
<p>Volume</p>	<p>This may include projected sales volumes and marketing analysis, liquor type and customer demographic (where applicable this should be provided for both on and off premises sales).</p> <p>The Commission will consider information available to it about the current alcohol consumption rates for the community area.</p>
<p>Any cultural, recreational, employment or tourism benefits for the local community area.</p>	<p>Will the proposed licensed premises provide economic benefits, cultural, recreational or tourism benefits or any additional employment opportunities and to what level?</p>
<p>Why the grant of a relevant application is in the public interest and how the additional liquor outlet will benefit the local and broader community.</p>	<ul style="list-style-type: none"> What additional services will be provided other than simply an additional outlet for the sale of liquor – this may include accommodation or dining? Will the proposed licensed premises provide additional choices of service or products that are no available in the area?

	<ul style="list-style-type: none"> • Will the proposed premises provide liquor in a manner known to be safe and to minimise adverse impacts? • Will it use existing premises improve or add to existing premises or is it a new premises?
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32. As can be seen from the above, there are a large number of matters that this Commission must consider and that the Applicant must address (and satisfy the Commission of) under the new public interest and community impact test and guidelines. The guidelines do make clear however that:

“... the Commission has the authority to consider a broad range of issues specific to each application and flexibility exists to assess each individual application on its merits”.

33. In addition to those matters, section 28(2) of the Act also provides as follows:

“The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;
- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an

associate of a licensee;

- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager”.

34. Further the Act requires under section 28(3) as follows:

“In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment”.

- 35. The Commission notes there are no such matters prescribed by the Regulations.
- 36. The Applicant made detailed submissions both with respect to public interest and community impact statement.
- 37. Although there are many matters for the Commission to consider, like any application, some of the matters are highly relevant to this application whilst others are not as significant.
- 38. The Commission notes that there is no suggestion, nor any evidence to suggest, that the Applicant is not a fit and proper “person” to hold the licence as sought, nor is there any suggestion or evidence to suggest that any person referred to in the affidavit under section 26A is not a fit and proper person to be an associate of a licensee. The Commission has already noted the contents of that affidavit in these reasons.
- 39. There are no issues of concern in relation to the business reputation and financial stability of the Applicant and the general reputation and character of the secretary and executive officer of the Applicant.
- 40. The Applicant submitted a liquor licence granted in respect to the Premises would be very low risk on the following basis:
 - a. Alcohol would be served to customers of the hair salon only and only in conjunction with that service;
 - b. Customers are primarily male adults and are only in the salon for a very short timeframe being 15 to 20 minutes;
 - c. Alcoholic drinks will not be ‘complimentary’ meaning customers will only consume alcohol if they have decided to purchase it;
 - d. Children are a small part of their clientele and alcohol will not be stored in an area visible to children. There is also a separate area for children within the salon.

MAJORITY DECISION

- 41. Commissioners Coates and Corcoran are satisfied that the application meets the Community Interest and Public Impact tests mandated by sections (6) and (6B) of

the Act and is at the lower end of the scale in terms of risk of alcohol related anti-social behaviour.

42. It is noted by Commissioners Coates and Corcoran that a handful of hairdressing salons have previously been issued liquor licenses in the Northern Territory and in very limited terms. There is no evidence that such liquor licenses have resulted in alcohol fuelled anti-social behaviour and resultant harm.
43. Of significance to this matter is the current Liquor Act Bill 2019 before Parliament which proposes to exempt businesses from obtaining a liquor licence for the “sale, supply or service” of not more than “2 standard drinks in a day to a customer”. The example provided in the Bill is “serving a glass of wine to a customer at a hair salon.”
44. This proposed exemption indicates a public demand for such services and an acknowledgement by the Government that the supply of alcohol in such circumstances does not present a significant risk to public safety and wellbeing.
45. Having heard and considered all of the evidence presented to the Commission and noting there are no objections to the application for a liquor licence, Commissioners Coates and Corcoran finds on balance that there is no evidence to suggest any potential harm or health impact may be caused to people, or any group of people within the local community area, due to the availability and accessibility of liquor as a consequence of the licence sought. It is difficult to reconcile any argument that consuming one beer whilst having a haircut will increase antisocial behaviour in the City or prove attractive to anti-social elements of the community and trigger anti-social behaviour. The minimum cost for a haircut at Hair Dude is \$30 for men and \$40 for women. It is nonsensical that a person with an alcohol problem will expend that amount for a haircut just to buy a beer when they can merely purchase one from a number of take away liquor outlets located in the City from 10.00am.
46. Commissioners Coates and Corcoran are satisfied that the Applicant has in place appropriate measures to ensure liquor is sold in a responsible manner. There is no evidence before the Commission to suggest there is likely to be an impact upon law and order, community safety or public amenity by virtue of this application to warrant it being refused.
47. In all the circumstances Commissioners Coates and Corcoran are satisfied that the conditions we are proposing to impose on the licence will ensure that the provision of liquor at the premises will be supplied in a manner that is ancillary to the primary focus of the business being a hair salon / barber shop.
48. It is as a result of the matters outlined above that Commissioners Coates and Corcoran are, on balance, satisfied that the approval of the application for an “On - Authority” liquor licence meets the public interest and community impact tests. As outlined at the start of this Decision Notice, the licence will include the general conditions of an “On - Authority” liquor licence and will also include the following conditions:

“Appearance	The premises shall at all times have the appearance of and shall trade as a barber shop / hair salon.
Consumption of Liquor	All liquor purchased must be consumed on or at the premises. Alcohol must only be served to bona fide customers of the barber shop / hair salon and in conjunction with those services. A limit of 2 alcoholic beverages per customer.

DISSENTING DECISION

49. The Health Member is not satisfied that the Applicant has satisfied the onus required by Section 6B of the Act and established that the approval of the application would be in the community interest pursuant to Sections 6 and 6B of the Act.

Reasons

50. The Community Impact and Public Interest test is a recommendation from the Alcohol Policies and Legislation Review (commonly referred to as the “Riley Review”)¹. The review recommended that all applications before the licensing authority should be required to address the Community Impact and Public Interest test and not just isolate the requirement to ‘high-risk’ licenses..
51. The Riley Review rationale acknowledged the unique difficulties faced in the Territory with a significantly high number of liquor licences.
52. Even with the proposed changes before the legislators, it would appear irresponsible if the Health Member did not scrutinise the community impact and public interest statement and form a judgement based on the material before the Commission.
53. The Applicant’s community impact and public interest statement relied heavily on ‘hiding’ the alcohol as if to imply this was an adequate measure. The dissatisfaction may be viewed as harsh or ‘nit-picking’ due to the nature of the business, and if a risk scales rating matrix was applied, the apparent risk would potential be between 6-25% with an ‘unlikely to occur’ factor,² however, a reduced risk rating should not negate diligence when applying for a liquor licence.

1 Riley QC, T., Angus, P., Stedman, D., & Matthew (AM), A. (2017). Alcohol Policies and Legislation Review. Darwin: Northern Territory Government.

2 Risk Matrix. (2019). Retrieved from Health.gov.au: <https://www.health.gov.au/internet/publications/publishing.nsf/Content/mental-pubs-n-safety-toc~mental-pubs-n-safety-5~mental-pubs-n-safety-5-7>

54. To simply state that liquor will be stored in a manner that is not visible to this at-risk group is pointless, for example, child or young person would be in the company of an adult who is consuming alcohol, and even so, they are on a licensed premise and no doubt witness the consumption of alcohol.
55. A broader concern must be considered relating to children learning behaviours from adults. Research demonstrates that children learn by imitation, given their parents are the primary influencers, families play a pivotal role in creating a 'family subculture'.³
56. A permissive pro-alcohol society has resulted in the normalisation of drinking in a range of settings and 'cultural blindness' to alcohol harm⁴.
57. The primary objective of the Applicant is to cut style men, ladies, and children hair, granting of this licence becomes another establishment that provides alcohol, which could contribute to the normalisation of alcohol consumption exacerbating cultural blindness.
58. The Health Member does not understand why there needs to be an additional 'child-friendly' establishment that forces children to witness the consumption of alcohol.
59. The Applicant made several claims that 'hiding' the alcohol from public view will reduce the harm to at-risk groups. The selling of liquor has already been publicly announced.
60. The NT News published four (4) articles on this liquor application. 6 March 2019 'Hair Dude tells how to revive the CBD', 13 May 2019 'No beer for you – hair salon to get grog chop', 14 May 2019 'Council backflips on hairdresser alcohol licence', and 22 May 2019 'Salon given green light to serve alcohol' this article actually depicted the Applicant holding what appears to be an alcoholic beverage.
61. The Applicant overused the term 'this risk has been identified as low'; this statement was made several times without any reference to an evidence-based model.
62. The Applicant 'copied & pasted' statistical data without any commentary or appropriate referencing. Ill-consideration was given to the importance of statistical data and to submit information about the number of dwellings with or without the internet, for example, is of no importance.
63. The Northern Territory is trying to focus on addressing the high level of alcohol consumption and alcohol-related harm; this also means addressing the availability and a high number of alcohol licences⁵.

³ Foster, J., Bryant, L., & Brown, K. (2017). *"Like Sugar For Adults" - The Effect Of Non-Dependent Parental Drinking On Children & Families*". London: The Institute of Alcohol Studies.

⁴ *ibid*

⁵ Riley QC, T., Angus, P., Stedman, D., & Matthew (AM), A. (2017). *Alcohol Policies and Legislation Review*. Darwin: Northern Territory Government.

64. Deciding against this application could be a view, as somewhat, pointless considering the proposed amendments currently before the Parliament. Section 35 of the Liquor Bill 2019 suggest that ‘No licence is required for the service to a customer of not more than two standard drinks in a day by a business, other than a licensee, prescribed by regulation. Example, serving a glass of wine to a customer at a hair salon. Permitted under law, future applicants appear to be exempt from the community impact and the public interest test.
65. The decision not to agree with the application may seem unproductive, for reasons above, but there is strong evidence that validates policies restricting the availability and accessibility of alcohol do work at reducing alcohol-related-harm. Studies also suggest the reluctance to implement evidence-based-research are politically unpalatable on several fronts⁶.

Notice of Rights:

66. Section 120ZA of the Act provides that a reviewable decision is a Commission decision that is specified in the Schedule to the Act. A decision to issue a licence pursuant to section 29 of the Act is specified in the Schedule and is a reviewable decision.
67. Section 120ZC of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal. Any application for review of this decision must be lodged within 28 days of the date of this decision.
68. For the purpose of this decision, and in accordance with section 120ZB(1)(b) and (c) of the Act, the affected person is the Applicant.



RICHARD COATES
Presiding Member
Chairperson

⁶ Pennay, A., Lubman, D., & Frel, M. (2014, June). Alcohol: Prevention, Policy and Primary Care Responses. *Australian Family Physician*, 43(6), 357, 359.