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**NAAJA Submission**

**Liquor Act Amendment Bill 2018**

**February 2019**

## About NAAJA

The North Australian Aboriginal Justice Agency (NAAJA) provides high quality, culturally appropriate legal aid services to Aboriginal people throughout the Northern Territory. NAAJA was formed in February 2006, bringing together the Aboriginal Legal Services in Darwin (North Australian Aboriginal Legal Aid Service), Katherine (Katherine Regional Aboriginal Legal Aid Service) and Nhulunbuy (Miwatj Aboriginal Legal Service). From 1 January 2018 NAAJA has been providing legal services for the southern region of the Northern Territory formerly provided by CAALAS (Central Australian Aboriginal Legal Aid Service). NAAJA and its earlier bodies have been advocating for the rights of Aboriginal people in the Northern Territory since 1974.

NAAJA serves a positive role contributing to policy and law reform in areas affecting Aboriginal peoples' legal rights and access to justice. NAAJA travels to remote communities across the Northern Territory to provide legal advice and consult with groups to inform submissions. This submission reflects the organisational authority of an Aboriginal-led board and draws on input of staff across the Northern Territory.

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## [1] Executive Summary

NAAJA supports the government's push to modernise the Territory's liquor laws and acknowledges government's leadership in being pro-active and decisive in response to the Riley review, particularly in relation to holding liquor outlets to account and to strengthen the focus on developing and implementing evidence-based practice.

NAAJA re-emphasises the position that alcohol abuse is primarily a health issue and that any links with the criminal justice system must emphasise and place at the centre of the policy a key focus of rehabilitation and therapeutic approaches. The policy framework must also address the root causes of alcohol dependency. We are concerned at the apparent escalation of alcohol policies and laws which appear to focus on criminal justice responses without adequately dealing with the health responses. The evidence for this is the appearance that amendments proposed by the Liquor Amendment Bill 2018 (NT) ('Liquor Amendment Bill') seek to address problems which are already addressed by other aspects of the current *Liquor Act*, and a continued need to adequately resource health responses.

NAAJA supports the government's efforts to increase transparency and improve procedural fairness by providing the opportunity for public hearings to be held during the process of amending liquor licences.

NAAJA stresses that the purpose of point of sale interventions (POSI) – preventing access to liquor for those who are deemed unable to consume it – should not be understood as a punitive measure designed primarily to facilitate the confiscation of liquor after it has been purchased, noting the fact that in these scenarios individuals and families face financial hardship. POSI activities should be focused at the pre-purchase stage or, in the event a purchase is made, with clear direction for the refunding of liquor to the consumer. There appears to be no valid reason and no formal, publicly available response as to why this is not the practice.

NAAJA supports evidence-based policy and recognises that the significant harm of alcohol misuse in Aboriginal communities necessitates a greater focus and attention to addressing alcohol supply measures, amongst other measures. We recognise the POSI arrangements in this context. We disagree that implementation of these arrangements should be done where Aboriginal people are clearly targeted as distinct from an alternative arrangement which could apply to all people. We are concerned that the approach appears to be on greater prohibition of alcohol for Aboriginal people, an increase in policing and criminal justice responses, a lack of pathways for the development of a safe culture of consumption and inadequate attention to health responses including, for example, the lack of availability to conduct foetal alcohol syndrome disorder (FASD) assessments.

NAAJA requests that a number of clauses in the current *Liquor Amendment Bill*, notably Clause 9, be further amended so that their intended purpose is clarified, and where necessary safeguards be inserted to protect against mistreatment. NAAJA is concerned that without adequate safeguards on the exercise of these expanded police powers, the day to day implementation of reforms proposed by the *Liquor Amendment Bill* are at risk of further perpetuating perceptions of systemic racism amongst significant sections of the community. These perceptions are based in fact – Aboriginal and Torres Strait Islander

people are the most incarcerated group of people on the planet,<sup>1</sup> and the Northern Territory currently has the second highest rate of adult Aboriginal incarceration in the country.<sup>2</sup>

NAAJA supports the inclusion of statements of compatibility with human rights in new bills, but is concerned that in its current form the statement of compatibility for this bill does not fully consider the human rights implications for Aboriginal people arising from these proposed reforms, and particularly does not address Aboriginal viewpoints of these human rights including current practices and systemic racism.

## **[2] Submission Background**

The Northern Territory government is currently in the midst of implementing a series of reforms aimed at modernising the Territory's liquor laws, including measures designed to reduce problems arising from the misuse of alcohol, including social issues, alcohol fuelled violence, and health problems.<sup>3</sup>

There has been general support from the public for reforms that are seen as upholding law and order,<sup>4</sup> but a number of other reforms such as those aimed at fostering a responsible service of alcohol environment in the Territory and implementing minimum pricing for alcoholic products have been less popular.<sup>5</sup> NAAJA supports the development and implementation of evidence-based policy and acknowledges leadership in this area by government.

## **[3] Overarching Concerns**

### *[3.1] Criminalisation and Over-Policing*

As with all bills that grant expanded powers to police, the provisions of this bill must be scrutinised to understand their operation when interacting with each other, as well as in the wider context of the Territory's liquor laws to ensure that they operate as intended and cannot be read in a way that was not the intention of the Legislative Assembly.

This bill aims to reduce incidences of alcohol fuelled violence by preventing individuals who should not have access to liquor being able to get access to it. In NAAJA's view, expanded POSI powers should not be used as a punitive regime through which individuals have liquor confiscated after payment, and it should not operate to provide grounds for

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<sup>1</sup> Thalia Anthony and Eileen Baldry, 'FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?', *The Conversation* (Web Site, 6 June 2017) <<http://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>>

<sup>2</sup> Northern Territory Government, *Northern Territory Correctional Services Annual Statistics 2016-17* (Report, 2018) 6.

<sup>3</sup> Department of Attorney-General and Justice (NT), 'Northern Territory Alcohol Harm Minimisation Action Plan 2018-2019' (2018) <<https://alcoholreform.nt.gov.au/?a=485315>>.

<sup>4</sup> John Boffa, 'Much less drunken violence an early Christmas present' *Alice Springs News* (online, 12 December 2018) <<http://www.alicespringsnews.com.au/2018/12/12/much-less-drunken-violence-an-early-christmas-present/>>.

<sup>5</sup> ABC Local, 'Revised NT alcohol plan 'unfairly targets' licensed grocery store owners, representatives say', *ABC News* (online, 21 September 2018) <<https://www.abc.net.au/news/2018-09-20/liquor-sales-alcohol-policy-plan-nt-government-industry/10287484>>.

police to conduct unrelated questioning or searches of individuals where they would have otherwise not had the power to do so.

At a number of points in the Liquor Amendment Bill NAAJA is of the view that new powers are unnecessary from a legal perspective, as existing provisions of the *Liquor Act* already operate effectively to address the concerns behind the introduction of these new provisions. An example of this is in the power to stop cars to conduct point of sale interventions (POSIs). Police and inspectors already have the power to conduct these POSIs before a purchase of liquor is made,<sup>6</sup> and sellers of liquor must comply with their own obligations including checking customers on the banned drinkers register.<sup>7</sup> The power to stop cars to conduct POSIs, and the power to conduct POSIs on people simply 'in possession of liquor' increases the possibility of liquor being confiscated after a person has incurred a financial loss through a purchase when that person could/should have been stopped before this point (or at least be directed to receive a refund if liquor is confiscated).

It is not an inherently negative reality that Aboriginal people are impacted more than others in the enforcement of the NT's liquor laws – there is significant evidence that shows health and social outcomes of many Aboriginal people are detrimentally affected by the presence of alcohol in their communities.<sup>8</sup> NAAJA would like to reiterate its support for the People's Alcohol Action Coalition's position that point of sale interventions (POSIs) are crucial for the effective reduction of problem drinking.<sup>9</sup>

Increasing powers aimed at prohibiting alcohol consumption without offering appropriate services to address demand reduces opportunities and pathways for the development of a responsible and safe culture of alcohol consumption. The dampening down of alcohol consumption aimed at Aboriginal people without doing so for the broader population<sup>10</sup> (many of whom also misuse alcohol), in the absence of pathways for the development of a responsible and safe culture of alcohol consumption, can feed into perceptions that the law unjustly discriminates against Aboriginal people. This can occur despite the best intentions of lawmakers, and can affect relations with police and people's ideas of equality before the law amongst other issues.<sup>11</sup>

The Liquor Amendment Bill's reforms must be carefully considered to understand the effects that expanded police powers are likely to have on people's views of the state and its laws. In the Bill's current form, we are concerned it represents a continued escalation

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<sup>6</sup> *Liquor Act* (NT) ss 101ZK-101ZL.

<sup>7</sup> *Ibid* s 31A.

<sup>8</sup> Mandy Wilson et al, 'The harmful use of alcohol amongst Indigenous Australians' (2010) 10(3) *Australian Indigenous Health Bulletin* 1 <[http://healthbulletin.org.au/wp-content/uploads/2010/06/alcohol\\_review\\_june\\_2010.pdf](http://healthbulletin.org.au/wp-content/uploads/2010/06/alcohol_review_june_2010.pdf)>; Northern Territory Government, *Alcohol Policies and Legislation Review Final Report* (October 2017) 95 <[https://alcoholreform.nt.gov.au/\\_\\_data/assets/pdf\\_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf](https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf)>; Department of Health (NT) 'Northern Territory Alcohol Policies and Legislation Review' (Issues Paper, May 2017) 7 <<https://digitallibrary.health.nt.gov.au/prodjspu/bitstream/10137/1281/1/Northern%20Territory%20Alcohol%20Policies%20and%20Legislation%20Review%20-%20Issues%20Paper.pdf>>.

<sup>9</sup> [http://www.paac.org.au/PAAC\\_Submission\\_to\\_NT\\_Alcohol\\_Review\\_FINAL\\_10.7.17.pdf](http://www.paac.org.au/PAAC_Submission_to_NT_Alcohol_Review_FINAL_10.7.17.pdf) p.6

<sup>10</sup> Matt Garrick, 'Liquor giant Dan Murphy's a step closer to having Northern Territory footprint', *ABC News* (online, 19 January 2019) <<https://www.abc.net.au/news/2019-01-19/dan-murphys-liquor-superstore-application-handed-to-ntcommission/10727720>>.

<sup>11</sup> Sessional Committee on Use and Abuse of Alcohol by the Community, Northern Territory Legislative Assembly, *Measures for Reducing Alcohol Use and Abuse in the Northern Territory* (Report No 2, August 1991) 172&184; Judicial Commission of New South Wales, 'The importance of perception', *Equality before the Law Bench Book* (Web Page, June 2015) <<https://www.judcom.nsw.gov.au/publications/benchbks/equality/section01.html>>.

of criminal justice responses to alcohol misuse in a way that could well feed Aboriginal perceptions of discrimination.

### *[3.2] The Lack of Rehabilitation Services to Address Alcohol Abuse*

The stated aim of the Liquor Amendment Bill is to tackle the problem of alcohol fuelled violence.<sup>12</sup> In order for this goal to be achieved the government must implement laws that reflect the fact that alcohol abuse is primarily a health issue rather than a criminal one.

In the Northern Territory, 38.6 per cent of people aged 12 years and older consume alcohol at rates that place them at risk of short-term harm and 28.8 per cent over consume alcohol at levels that place them at risk of long-term harm, including chronic disease and illness.<sup>13</sup>

Alcohol related emergency department presentations across the Northern Territory made up approximately 10 per cent of all presentations in 2016. In the last quarter of 2015 alone the number of admissions to hospital for specific alcohol-attributed conditions was 242 in the Top End and 282 in Central Australia.<sup>14</sup>

The Northern Territory also had the highest population rates of alcohol-attributable neuropsychiatric diseases, deaths and hospitalisations with rates around 10 times higher than those in any other state or territory.<sup>15</sup> These issues also disproportionately affect Aboriginal people.

The high rate of alcohol consumption has translated into high rates of hospitalisation in the NT at more than twice the national rate,<sup>16</sup> with alcohol related injury rates remaining high at 63 per 100 000 for non-Indigenous and 414 per 100 000 for Indigenous people.<sup>17</sup>

Furthermore, despite being only 30 per cent of the Northern Territory population, Aboriginal people accounted for approximately 90 per cent of all persons locked up under protective custody powers in 2016. For example, the total number of people taken into protective custody from 1 January 2016 to 31 December 2016 was 9,525, and of those 8,594 or 90% were Aboriginal.<sup>18</sup>

The Northern Territory government has consistently expressed an intention to deliver programs aimed at reducing demand for liquor alongside supply-side strategies, with the position reiterated in the government's *Alcohol Harm Minimisation Action Plan 2018-2019*.<sup>19</sup> Despite this, however, NAAJA has received feedback from regional offices that indicates access to rehabilitation services has been significantly restricted to the point it is essentially not an immediate option. By way of example, in the Central Australian region

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<sup>12</sup> Northern Territory, *Parliamentary Debates*, Legislative Assembly, 28 November 2018, 7 (Natasha Fyles, Attorney-General).

<sup>13</sup> Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2013* (2014) 30.

<sup>14</sup> Northern Territory Government, *Alcohol Polices and Legislation Review Final Report* (October 2017) 8.

<sup>15</sup> Caroline Gao, Rowan Ogeil and Belinda Lloyd, Foundation for Alcohol Research and Education (FARE) and Victorian Health Promotion Foundation (VicHealth), *Alcohol's burden of disease in Australia* (July 2014).

<sup>16</sup> Price Waterhouse Coopers Indigenous Consulting and Menzies School of Health Research, Department of Health (NT), *Evaluation of the Alcohol Mandatory Treatment Program* (January 2017) 4.

<sup>17</sup> Department of Health (NT), 2012.

<sup>18</sup> Correspondence from Research and Statistics Unit, Northern Territory Police, Fire and Emergency Services (21 April 2017) in Human Rights Law Centre, *Putting an end to the over-criminalisation of public drinking in the Northern Territory: Submission to the Northern Territory Alcohol Polices and Legislation Review* (21 July 2017) 5.

<sup>19</sup> Department of Attorney-General and Justice (NT), above n 3, 3.

there are a total of only 49 beds available in drug and alcohol rehabilitation centres. These are allocated as follows:

Drug and Alcohol Services Australia (DASA)

Total beds: 21

Beds for Men: 12

Beds for Women: 9

Central Australian Aboriginal Alcohol Programmes Unit (CAAAPU)

Total beds: 28

Beds for Men: 19

Beds for Women: 9

Currently, the waiting time for both rehabilitation centres depends on whether they have beds available at the time of assessment. The demand for appropriate health service responses to the health issue of alcohol abuse in Central Australia (as outlined above) clearly cannot be met by the extremely limited rehabilitation services available.

Feedback from regional offices also question the cultural appropriateness of programs which can be disconnected to family and culture and are in facilities that are not suitable for Aboriginal people for whom connection to kin and country is integral to health.<sup>20</sup> There is little evidence on the ground that access to these services has improved since the most recent round of reforms began.

Further, we do not have an evidence base to properly understand the extent of Foetal Alcohol Spectrum Disorder (FASD) amongst our population and particularly people who are in high contact with the criminal justice system. The Australian Medical Association is calling for FASD to be a recognised disability.<sup>21</sup> In NAAJA's experience where young people before the courts are diagnosed with FASD this significantly changes the identification of appropriate and suitable supports. Because we do not have a clear picture on the number of adult people with FASD including those in contact with the criminal justice system as a result of alcohol-fuelled violence, we are unable to understand what supports are appropriate. A continued escalation of criminal justice responses in the absence of health responses limits our collective capability to deal with this issue.

If the government fails to deliver adequate, culturally appropriate rehabilitation services, and if we as a jurisdiction do not understand the extent of FASD, then our strategy for addressing alcohol abuse will be unable to deliver desired results. The current legislative framework is also unable to operate as intended if there is no access to rehabilitation

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<sup>20</sup> Northern Territory Government, *Alcohol Policies and Legislation Review Final Report* (October 2017) 104&108 <[https://alcoholreform.nt.gov.au/\\_\\_data/assets/pdf\\_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf](https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf)>; North Australian Aboriginal Justice Agency, Submission to Select Committee on a Northern Territory Harm Reduction Strategy for Addictive Behaviours, Northern Territory Legislative Assembly, *Inquiry into a Northern Territory Harm Reduction Strategy for Addictive Behaviours* (September 2018) 2.

<sup>21</sup> See <<https://ama.com.au/media/fasd-should-be-recognised-disability>> and also <<https://www.fasdhub.org.au/fasd-information/managing-fasd/NDIS/>>

programs, as one of the primary means of having a banned drinkers order varied or revoked is through the completion of a ‘therapeutic support program’.<sup>22</sup>

Increasing police powers may provide a stopgap solution to issues of alcohol abuse, but ultimately this leads to significant public expenditure going into the criminal justice system (including prisons) which could otherwise go towards rehabilitation services, cultural strengths programs and early childhood programs across the Territory. Where the expanded powers are unnecessary because they provide solutions to problems already addressed by existing provisions of the *Liquor Act* in ways that do not require the increased police presence, then this problem – the idea that money is being spent ineffectively – is compounded.

#### **[4] Response to the Amendments Proposed by the Liquor Amendment Bill 2018**

##### *[4.1] Introduction*

The explanatory statement for the Liquor Amendment Bill 2018 (NT) indicates four stated purposes:

- (a) amend section 33 of the *Liquor Act* to allow for the Liquor Commission, if it considers it appropriate, to hold public hearings as part of the process for variation of conditions of a licence;
- (b) add the circumstances where a customer appears to have purchased liquor for consumption away from the premises, or has liquor in their possession within the location boundaries already established by section 101ZK(1)(a), to the current two circumstances contained in section 101ZK(1)(b) (the customer appears to be purchasing or intending to purchase liquor for consumption away from the premises) in relation to point-of-sale interventions;
- (c) provide a power for a police officer or inspector to stop a vehicle and give reasonable directions to the driver of the vehicle to assist them in the exercise of powers under section 101ZK; and
- (d) provide for specific powers in the *Liquor Act* for police officers to engage in undercover operations where the police officer and the subject of the investigation are in the Northern Territory, including powers to seize, forfeit and dispose of things related to an offence.

##### *[4.2] Clause 4: Section 19A amended*

This clause amends s 19A of the *Liquor Act* to make it clear that the offence of obstructing an inspector also applies to police officers as if they were inspectors for the purposes of the section.

This amendment does not change the substance of s 19A other than expand its scope so that it applies to police officers as well as inspectors.

Obstruction of an inspector is an offence and the penalty is up to 50 penalty units or imprisonment for 6 months (s 19A). Obstruction includes, in relation to POSI activities,

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<sup>22</sup> *Alcohol Harm Reduction Act 2017* (NT) s 25(1)(a).



requesting a person on the premises 'to answer questions, produce a document or thing kept there under the person's control or give any other assistance the inspector requires to carry out the inspection' (s. 19 (5) (e)).

This effectively provides that a person can potentially commit an offence if they fail to answer questions put to them by POSI. The purpose of this amendment is to extend this to the operations of Police Officers. The proposed amendment combined with other amendments further expand and escalate the criminal justice response to an issue which requires a health based response or, at the least, suitable linkages between these two responses.

#### *[4.3] Clause 5: Section 19B amended*

This clause amends s 19B of the *Liquor Act* to make it clear that the powers granted to inspectors under that section – granting inspectors power to detect non-compliance with licence conditions – can be exercised by police officers as well.

Again, the proposed amendment does not change the substance of s 19B other than to expand its scope so that it applies to police as well as inspectors. NAAJA supports this amendment.

#### *[4.4] Clause 6: Section 33 Amended (Variation of Conditions by Commission)*

This clause amends s 33 of the *Liquor Act* so that a public hearing can be called to consider variations to a liquor licence in the same way that a public hearing may be held under the existing law when a liquor licence is applied for.

It appears that this amendment is increasing transparency, and is therefore a positive amendment. NAAJA supports this amendment.

#### *[4.5] Clause 7: Section 33AAA Inserted*

This clause expands on the previous one by inserting s 33AAA to the *Liquor Act*, setting out matters relevant to the conduct of these public hearings for amendments to licences. NAAJA supports this amendment.

#### *[4.6] Clause 8: Part VIIIIBA Inserted*

This clause represents a fairly significant amendment to the *Liquor Act*. It inserts a whole new part (Part VIIIIBA) to the act to allow police to conduct undercover operations to detect violations of the act. It consists of three main areas:

1. The power to authorise/conduct undercover operations (including the power to seize things related to offences under the *Liquor Act*) as set out in ss 101ZIA-101ZIB.
2. An outline of how items seized under this power must be dealt with (including how they are to be held, how they may be released either by the Commissioner of Police or the Courts, their forfeiture and their disposal), set out in ss 101ZIC-101ZIH.

3. A requirement that an annual report be prepared by the Commissioner for the Minister to table in the Legislative Assembly relating to undercover operations under this new Part, set out in s 101ZII.

To the extent that these powers are to be used to combat problems associated with the on-selling of liquor, NAAJA supports the inclusion of these powers as a means of closing loopholes and ensuring the effective enforcement of the Territory's liquor laws.

NAAJA welcomes the inclusion of s 101ZID(6)(b)(ii) in this part relating to the Commissioner's discretion to release seized items where the applicant knew about the commission of an offence but was not in a position to reasonably prevent its commission. This is seen as a positive step towards recognising the importance of cultural obligations in many Aboriginal communities, increasing access to justice for those caught between their obligations under Aboriginal law and those under the law of the Northern Territory. NAAJA requests that a similar subsection be inserted into s 97(5) of the *Liquor Act* to provide the Commissioner of Police this ground for releasing things seized under the searches and seizures power given in s 95 with respect to restricted areas, in order to serve the interests of justice. The current provisions do not take into account the cultural obligations placed on Aboriginal people that otherwise lead to the borrowing of vehicles and confiscation by Police because alcohol is within this vehicle within a restricted area. The confiscation provisions can result in severe hardship for families and the debt and loss of a vehicle in circumstances where it is not returned has negative, on-flow effects for families.

If these powers are intended to be used against individuals purchasing alcohol for personal consumption NAAJA would express concern, however, as there are public policy concerns raised by the use of undercover operations powers – modelled in part on similar powers contained in the *Misuse of Drugs Act* – to police the sale of liquor as there is scope for these powers to result in the confiscation of liquor from an individual who would have otherwise used it for completely lawful purposes based on the 'reasonable belief' of an undercover police officer. We are concerned if this power is used for the purpose of POSI type operations or if an undercover operation is used for any purpose other than to deal with individuals who purchase alcohol to illegally on-sell.

To the issue of over-policing of Aboriginal people, an expansion of Police powers and activities as it relates to possession of liquor is that it can also expand the risk of misconduct, particularly in circumstances where accountability mechanisms are not robust and where language and other issues such as low levels of trust are relevant.

NAAJA welcomes the annual reporting requirement as a useful means to ensure these new powers are being applied in an appropriate manner, and wonders whether it would be appropriate to include other indicators in this report (as long as they do not give away operational details) to provide the Legislative assembly with an even greater understanding of how this power is used in practice.

NAAJA supports this amendment noting the concerns addressed above.

*[4.7] Clause 9: Section 101ZK Amended (Point of Sale Intervention Powers – Customer)*

This clause contains two amendments to the power granted to police officers inspectors to carry out POSIs.

1. Expand the definition of ‘customer’ for the purposes of conducting POSIs to include people ‘in possession of liquor’.
2. Grant police officers or inspectors the power to require drivers of vehicles to stop, and require the driver or passenger to follow reasonable directions to allow the officer or inspector to conduct a POSI.

Under the first of these amendments a third circumstance is added to the two that currently exist for defining ‘customer’ for the purposes of conducting a POSI, so that if a person is within 20m of a licenced premises (or within 20m of the car park of a licensed premises) a POSI can be conducted where a person is simply ‘in possession of liquor.’ Previously a POSI could only be conducted in situations where a person ‘appears to be purchasing or intending to purchase liquor for consumption away from the premises.’

It is unclear why this proposed amendment is necessary. The proposed amendment lends itself to an apparent escalation of criminal justice responses by expanding the range of interactions between Police and the community as it relates to POSI operations. As this includes people in possession of liquor and also activities between Police and people within cars careful attention needs to be placed on the purpose and scope of the amendments, and how this relates to achieving the objectives of reducing alcohol fuelled violence and the risks associated with over-policing of Aboriginal people.

The proposed amendments are a significant expansion of the power of police officers and inspectors to conduct POSIs. It is conceivable that this change to the law could result in a person being subjected to multiple POSIs for the same purchase of liquor if they happen to be within the 20m radius of a licenced premises as defined by s 101ZK(1)(a). Under this definition a POSI could be conducted where a person is within 20m of an entrance to the premises, an entrance to a building containing the premises, or a driveway or car park for the business.

Under this expanded power a person could be subjected to multiple POSIs relating to the same purchase of alcohol simply by passing within this 20m boundary of different licensed premises. As the power of police officers and inspectors to seize property following a POSI is based only on ‘reasonable grounds’ of suspicion that an alcohol-related offence is likely to occur,<sup>23</sup> a person could pass an initial POSI/s only to fail a subsequent POSI and have their liquor seized.

NAAJA requests that lawmakers clarify the intention behind expanding the definition of customer, and introduce safeguards to prevent the problem of multiple POSIs being conducted for the same purchase of liquor.

The second amendment included in this clause allows for police officers and inspectors to stop vehicles for the purpose of conducting POSIs where the vehicle is within the 20m

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<sup>23</sup> *Liquor Act* (NT) s 101ZK(5).

boundaries discussed above. This power applies whether the person in question is the driver of the vehicle or a passenger.

NAAJA has several concerns related to the operation and necessity of this power.

As vehicles will need to stop to purchase liquor, even at drive through venues, the current POSI powers can still be exercised before the point of sale by police officers and inspectors. Exercising this new power once a vehicle is in the process of leaving a licenced premises increases the opportunity for liquor to be confiscated after the point of purchase. As this amendment appears unnecessary, if the intent is for POSI inspectors or Police to pull a vehicle over for inspection following purchase this activity must be balanced with concerns in relation to the over-criminalisation of a population, particularly as with these laws there are established views amongst Aboriginal communities that Aboriginal people are racially profiled.

It is also conceivable that read in the context of the expanded definition of 'customer', this power could be used to stop vehicles in the street (within the 20m boundary discussed above) whether or not the occupants intended to purchase liquor from the licenced premises, as long as the occupants were in possession of liquor.

Police officers currently already have the power to stop, and if necessary search vehicles under the *Police Administration Act* (NT) and the *Liquor Act* (NT). Importantly, the *PAA* powers require the police officer to suspect the commission of an offence on reasonable grounds. The *Liquor Act* as it currently stands authorises inspectors to stop and search vehicles at random for the purpose of detecting possible offences against either s 75 (General Restricted Area offences) or s 101AE (Special Restricted Area offences), regardless of whether the inspector has a reasonable suspicion of an offence, and regardless of whether the vehicle itself is inside a restricted area at the time of its stop. In NAAJA's experience we are aware these provisions are used regularly and to the point where Aboriginal people are feeling they are targeted including for driving on main streets and not within restricted areas.

Under this proposed amendment to the *Liquor Act*, the vehicle must simply be carrying a person who satisfies the definition of customer as set out in s 101ZK. There is currently no reasonable belief element included in the power to conduct a POSI under s 101ZK, and the amendment does not propose one. With this in mind, by introducing this power to stop vehicles with a lower threshold of suspicion, there is an increased chance that the power will be abused to operate as a pretext for unrelated questioning, vehicle checks, or even to conduct searches if during questioning related to a POSI an officer forms a reasonable suspicion based on evidence that would have otherwise been unavailable to them.

It is unclear as to why an inspector or officer must be given power to conduct a POSI while a potential customer is inside a vehicle prior to entering the liquor outlet (or even the car park of the liquor outlet). If the customer does eventually enter the liquor outlet, the existing Part VIII C authorises a POSI check. The new s 101ZK(7) would authorise an inspector or officer to stop a vehicle that is still 20m away from the liquor outlet's car park, prior to that vehicle even entering the car park, in circumstances where it's entirely possible that the vehicle's occupants may never have entered a liquor outlet.

It is also unclear as to why an inspector or officer must be given power to conduct a POSI after a customer has already left the outlet, and has re-entered a vehicle and commenced

driving away. Inspectors or officers would have had ample opportunity to conduct a POSI during the time that the customer was outside the vehicle (prior to entering the store, inside the store, and after exiting the store).

If the intention of inserting s 101ZK(7) is to allow inspectors or police officers to conduct POSI checks on vehicles (e.g. taxis) which may be used to either supply liquor to people on the BDR or to communities where its consumption is restricted there are already existing powers that may be used to achieve this goal. s 42 of the *Alcohol Harm Reduction Act 2017* (NT), for example, makes it an offence to supply alcohol to a person/s who subject to a prohibition on its consumption under s 31A(2) of the *Liquor Act*. As noted above, there are already broad powers afforded to police officers to stop and if necessary search vehicles to protect against contraventions of breaches such as this.

NAAJA questions the necessity of including this power in the context of the existing powers of police and inspectors, especially considering its potential to be abused; and it requests that the power to conduct POSIs include safeguards to ensure racial profiling is not permitted and that this power is not abused.

#### *[4.8] Clause 10: Section 120ZF Inserted*

This clause amends the *Liquor Act* by inserting s 120ZF into Part XI (miscellaneous) to ensure that a police officer cannot be guilty of an offence under the *Liquor Act* for possession of alcohol if that possession was in pursuit of the execution of the act.

In NAAJA's view this power should only be used for the purpose of Police operations as it relates to targeting on-sellers of alcohol, and not consumers. If it is to be used for Police operations that target consumers this will reflect a practice that is clearly an escalation of a criminal justice response as distinct from a health based response.

### **[5] Response to the 2018 Bill's Statement of Compatibility with Human Rights**

#### *[5.1] Support for the Inclusion of Statements of Compatibility*

NAAJA supports the inclusion of statements of compatibility alongside new bills being introduced to the Legislative Assembly. It is seen as a positive step for the Territory to ensure that legislation meets a certain standard as set out by Australia's international human rights commitments. NAAJA stresses, however, that in order for these statements to be effective they must be seen as genuine attempts to anticipate the human rights implications of new legislation.

In the absence of other human rights protections, the strength of these statements lies in their ability to change institutional thinking so that lawmakers consider human rights compatibility before a bill becomes law.<sup>24</sup> If these statements are to have an effect on legislative drafting they must consider in detail the human rights implications of individual aspects of bills. NAAJA is concerned that the full human rights implications of the Liquor Act Amendment Bill 2018 have not been considered in the context of how it will impact the

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<sup>24</sup> Shawn Rajanayagam, 'Does Parliament Do Enough? Evaluating Statements of Compatibility under the *Human Rights (Parliamentary Scrutiny) Act*' (2015) 38(3) *University of New South Wales Law Journal* 1046, 1054.

human rights of Aboriginal people. Aboriginal perspectives of human rights are relevant and particularly that the Northern Territory has a significant Aboriginal population. It is clear that community feedback in relation to POSI operations serves to racially profile Aboriginal people and NAAJA has received extensive feedback across regions as to the perceptions of harm and mistrust of authority that this situation creates. The community has not received an explanation as to why racial profiling should serve a role in relation to POSI operations.

### *[5.2] Equality before the Law*

There is currently no discussion on how the expanded POSI powers can be expected to engage a person's right to equality before the law. Considering the significant expansion to POSI powers through the new definition of 'customer' and the power to stop vehicles, it appears that it is worth considering how the amendments proposed by clause 9 of the Liquor Amendment Bill will engage people's rights to equality under the law as set out in Articles 14(1) and 26 of the ICCPR.

Aboriginal people are more likely to receive attention under POSI powers as they currently stand. In its present form, clause 9 has no safeguards in place to prevent multiple POSIs being conducted on individuals under the expanded definition of customer, nor are there any protections against the power to stop vehicles being used as a ground for unrelated questioning, vehicle checks or searches. In effect these reforms multiply number of times an individual may be targeted under the Territory's supply-side liquor control laws. This will be particularly problematic in areas where there are already perceptions of police heavy-handedness.

Increased negative contact with the police increases the potential that individuals will perceive systemic discrimination, impacting upon their perceptions of equality before the law with all the associated negative social, criminal, and health outcomes that this has.

### *[5.3] Freedom from Arbitrary or Unlawful Interference*

In discussing the potential for these reforms to engage a person's right to freedom from arbitrary or unlawful interference, the statement of compatibility notes the fact that questioning during a POSI is limited to ascertaining the same information as available during a BDR check, or that which is necessary for detecting potential secondary supply of alcohol into areas where access to alcohol is restricted.

Even if best practice is followed, questioning related to a POSI will almost always require a degree of subjective judgement on the part of the police officer or inspector in question. In this context there will be a risk that a decision is made incorrectly, or along arbitrary lines in accordance with racial stereotypes (whether consciously or unconsciously held). By expanding the definition of customer in s 101ZK in a way that would allow someone to be subjected to multiple POSIs this risk is compounded. Although this would engage concerns as to a person's right to arbitrary or unlawful interference, it is also a concern that could be easily addressed with the inclusion of minor safeguards as discussed above under heading 4.7.