

ECONOMIC POLICY SCRUTINY COMMITTEE
RESPONSES BY THE DEPARTMENT OF THE
ATTORNEY-GENERAL AND JUSTICE
TO WRITTEN QUESTIONS FROM THE COMMITTEE
LIQUOR BILL 2019

The Economic Policy Scrutiny Committee has sought responses to questions on the Liquor Bill 2019 (the Bill).

General response:

The Bill represents a re-write of the *Liquor Act 1978* and provides a new framework for the regulation of liquor in the Northern Territory. In working to develop the Bill, significant direction was provided on specific changes as approved by the NT Government's Response to the Alcohol Policies and Legislation Final Review Report (Riley Report), and the overarching policy objectives for alcohol reform, including the Alcohol Harm Minimisation Action Plan 2018-19.

It is important to note that the recommendations in the Riley Report were determined after thorough and extensive consultation including the assessment of submissions from stakeholders and members of the public, and consideration of legislative regimes in other jurisdictions.

The Riley Report recommendation 2.1.1 provided 'that the *Liquor Act* be re-written'.

The Riley Report recommendation 2.1.3 included that amendments 'remove confusing and inconsistent provisions of the *Liquor Act*'. This required extensive change across the *Liquor Act 1978* and work to identify the provisions that were causing confusion and inconsistency. This work was undertaken in consultation with stakeholders.

The general approach to the development of this Bill therefore includes that:

- (a) Where a Riley recommendation was accepted, the Department strived to give effect to it.
- (b) Work was undertaken to address existing inconsistent or confusing provisions in consultation with key stakeholders to determine the issues, with reference to the written submissions made to the Riley Review.
- (c) Where no issues were identified with existing provisions in the *Liquor Act 1978* and advice was that the provisions appeared to be working operationally, the provisions were carried over to the Bill and drafted in a modern or clearer form.
- (d) Consultation was then undertaken on an exposure draft Bill during April 2019 with submissions then considered and amendments made to

the Bill where those submissions were seen as appropriate, necessary and generally consistent with the Riley Review recommendations that were accepted by Government.

The responses to the questions set out below should be read and considered in conjunction with the general approach to the development of the Bill as outlined above.

QUESTIONS & ANSWERS:

Definitions

1. Several submitters have drawn attention to the importance of ensuring a common understanding of what is meant by harm from alcohol misuse and highlight the relevance of clearly defining the concept of harm in order to 'enable assessment of whether the Act is meeting its primary purpose'.

1a. What consideration, if any, has been given to defining the concept of alcohol-related harm?

This issue is currently under consideration by the Department particularly in respect of whether adoption of such a definition should occur, having regard to how the Bill has been drafted with respect of concepts of the public and community impact tests as contained in clause 45. These have largely been formulated to give effect to Riley Report recommendation 2.1.4. We also note that the prescriptive defining of terms does not always achieve the intended outcome.

1b. What effect would defining this concept have on the operation of the Bill?

Please refer to the answer above.

2. The Bill makes numerous references to the need for a licensee or their employee to be a 'fit and proper person' but this term is not defined in the Bill. Retail Drinks has commented that a complaint may be made against a licensee on the grounds that the licensee, their nominee or their employee is not a fit and proper person.

2a. What consideration, if any, has been given to defining the concept of 'fit and proper person'?

The concept of 'fit and proper person' is used in many Acts as a benchmark without the need to be defined.

2b. What effect would defining the concept have on the operation of the Bill?

Defining 'fit and proper person' carries risks of both:

- limiting the definition, resulting in a person who would not have otherwise been considered as fit and proper not falling within the definition and therefore found to meet the requirements for being 'fit and proper' in accordance with the definition; and conversely
- may result in persons not being found to be 'fit and proper' for minor or old matters which would otherwise not be considered to be a limitation on the ability of a person to be a licensee.

Clause 11 – Delegation

3. Clause 11(1) provides for the Director's powers to be delegated to a 'public sector employee'. The term, 'public sector employee' is very broad and there is no provision requiring the Director to be satisfied that the employee holds the required skills, knowledge and experience.

3a. What would the effect on the operation of the Bill of amending this clause to provide for the Director's powers to be delegated to a 'suitably qualified public sector employee'?

No discernible effect is foreseen. The clauses achieves what it is meant to achieve.

Part 2, Division 2 – Assessors – Clauses 12, 14 and 15

In response to questions 4a to 6b below, as noted by the Committee, the provisions of the *Stronger Futures in the Northern Territory Act 2012* (Cth) (Stronger Futures Act) reference to and provide for assessors appointed under the *Liquor Act 1978*.

The provisions have been carried over from the *Liquor Act 1978* only to support operation of the Stronger Futures Act so that the Northern Territory is not undermining overriding Commonwealth legislation. The necessity for assessors in the new Act will be reconsidered if and when the Stronger Futures Act ceases to operate, noting that there are currently no assessors and it appears that there has never been an assessor appointed under the *Liquor Act 1978*.

4. Clause 12 provides for the Minister to appoint an assessor to advise the Director regarding the administration and operation of the Act and to perform any other functions required, however, the type of advice to be provided and the nature of the other functions that may be required are not specified. The Explanatory Statement notes that the *Stronger Futures of (sic) the Northern Territory Act 2012* (Cth) (*Stronger Futures Act*) makes reference to assessors and provides functions for assessors under the Act. The functions described in the *Stronger Futures Act* relate to the appointment of an assessor to conduct an assessment of particular licensed premises in the NT where the Minister (Commonwealth) believes that the sale or consumption of liquor at or near the premises is causing

substantial alcohol-related harm to the community. Section 15(2) of the *Stronger Futures Act* refers to the appointment of an assessor 'within the meaning of the NT *Liquor Act*. However, the *Liquor Act 1978* provides no more information than is provided in this Bill.

4a. Please detail for the Committee the functions the assessor is expected to perform.

Please refer to the answer above.

4b. Are the advisory functions limited to advice about particular licensed premises that may be causing alcohol-related harm to the community as specified in the Stronger Futures Act or is the assessor's role to provide advice more broadly?

Please refer to the answer above.

4c. What is included in the phrase 'any other functions required in the assessor's appointment' as set out in clause 12(2)(b)?

Please refer to the answer above.

4d. Please clarify whether these appointments are intended to be short term to provide a response to particular circumstances or whether they are intended to have a broader remit and be longer term?

Please refer to the answer above.

5. Clause 14 states that the Administrator determines the conditions on which an assessor holds office, including remuneration and expenses.

5a. Please clarify why power is conferred on the Administrator to determine conditions of appointment rather than having these determined by the Minister?

Please refer to the answer above.

6. Clause 15(3) allows the Minister to approve the receipt of advice from an assessor in situations where the assessor has a personal interest in the matter advised on (ss(3)).

6a. Why is it considered appropriate to allow the assessor to provide advice on a matter where there is a potential conflict of interest?

Please refer to the answer above.

6b. What, if any, mechanisms are in place to ensure that the advice provided is not influenced by their personal interest?

Please refer to the answer above.

Part 2, Division 3 – Inspectors – clauses 16-18

7. Please clarify why the Bill does not specify the powers and functions of inspectors in Part 2, Division 3?

As noted in clause 16(2), the duties of inspectors are as required by the Act or as assigned by the Director. For example, clause 151 provides that an inspector must carry their identity card when exercising a power and clause 152 provides the power to enter and inspect a licensed premises.

Clause 23 – Procedure for hearings

8. Hospitality NT recommends that adverse findings from complaints to the Commission only be found if proved beyond reasonable doubt, or alternatively, “to a high degree of probability, that there is acceptable and cogent evidence of sufficient weight to justify the decision”.

8a. How would adopting such standards of proof affect the administration of the Act?

The Liquor Commission is a regulatory authority and is not exercising criminal jurisdiction. The standard of proof of ‘beyond reasonable doubt’ applies to the criminal jurisdiction. In regulatory matters, enforcement is of a disciplinary nature. The evidentiary burden is that of the civil jurisdiction, that of the ‘balance of probability’, rather than the higher standard of ‘beyond reasonable doubt’ required in criminal matters where a person’s liberty may be at stake.

Clause 33 – Application for registration (as a wholesaler)

9. Clause 33 excludes licensees from being registered as wholesalers, with ClubsNT commenting that this would adversely impact on the ability of licensed clubs to support local community groups in one off events through the sale of alcohol at wholesale or discounted prices.

9a. What is the rationale for excluding licensees from registering as a wholesaler and being able to supply community groups with alcohol at wholesale or discounted prices for one off events?

This clause specifically relates to businesses that are only wholesalers and are not licensed to sell alcohol to the public. Licenced premises are entitled to apply for a wholesaler authority, see clause (43)(1)(o), that allows them to sell to other licenced businesses at wholesale prices. The benefits being they can sell below minimum sale price if they wish, it may also assist them lowering their Pure Alcohol Content (PAC) value and by extension their Risk Based Licensing (RBL) fee.

10. As an alternative, Clubs NT have suggested ‘a volumetric trigger that requires a Wholesale authority – e.g. sales exceeding 5,000 litres of bulk alcoholic products’.

10a. What would be the effect on the Bill of determining a licensee's right to sell to community groups at wholesale or discounted prices based on whether or not they meet such a volumetric trigger?

Not applicable. Refer to question 9a.

Clause 43 – Authorities attached to licence

11. Retail Drinks Australia has requested clarification as to why there are separate authorities for 'grocery store' and 'takeaway'. The Committee notes Riley Review Recommendation 2.5.13 which states that 'takeaway liquor only be permitted to be sold from a stand-alone business in which the primary focus of the business is the sale of alcohol'.

11a. Please explain the rationale for treating these as separate authorities rather than having one authority to cover both.

The primary function of a takeaway liquor business is the sale of liquor. The primary function of a grocery store is to sell groceries. The two businesses have different conditions that regulate how liquor is sold by that business and the Bill reflects this through the establishment of two separate authorities.

The Bill allows for grocery stores to continue, while ensuring there is a separation between alcohol and groceries, thereby breaking the nexus between the two and preserving the condition for the sale of alcohol in grocery stores to be ancillary – a key intent of the Riley Review.

11b. Please clarify whether there is an intention to eventually phase out 'grocery store' as an authority and the time-frame for accomplishing this.

Under clause 80(2), no grocery store authority may be created or issued under the new legislation. There are currently 62 grocery store licences in the Northern Territory, and these licences can continue to trade, and can be sold or transferred.

Recommendation 2.5.13 of the Riley Review was replaced by the Expert Advisory Panel with a new position on grocery stores in June 2018. Since the release of the Riley Review in October 2017, Government engaged with a number of key industry stakeholders and found there would be unintended consequences if recommendation 2.5.13 was strictly applied.

Consequently, Mr Trevor Riley QC, Chair, Expert Advisory Panel, met with the Industry Reference Group and with the then Liquor Stores Association Northern Territory to determine if the original recommendations regarding grocery stores required further consideration. In June 2018, following those meetings, Mr Riley confirmed the Expert Advisory Panel's amended position on grocery stores and the recommendation regarding the transition of grocery store licences to stand alone takeaway licences was abandoned. The Riley Review's amended position on grocery stores was publicly released in the NT Government Response to the Alcohol Policies and Legislation Review Final progress report in August 2018.

11c. If the end aim is to remove 'grocery stores' as an Authority under what, if any conditions, will stores selling groceries be able to sell takeaway liquor, for example, will large supermarket chains such as Woolworths and Coles still be able to sell takeaway liquor?

There is no aim to remove the grocery store authority. Refer to answer at 11(b).

Clause 45 – Public interest and community impact

12. Retail Drinks Australia has requested clarification regarding ss(3)(g) of this clause which identifies 'the ratio of existing liquor licences and authorities in the community to the population of the community' as something which the Commission must consider when determining whether the issuing of a licence or an authority would have a significant adverse impact on the community.

12a. Please clarify what is considered to be an acceptable ratio, how this will be determined and which geographic areas it would apply to.

These ratios are to be determined by the independent Northern Territory Liquor Commission on a case-by-case basis.

Clause 46 – Community impact assessment guidelines

13. Hospitality NT recommended that separate community impact assessment guidelines be developed for different licence types to 'make them more fit for purpose for applicants, community, objectors and the Liquor Commission to understand and follow'.

13a. What would be the advantages or disadvantages of developing separate guidelines for different licences?

This issue has been raised in consultation and if the Committee recommends an amendment, the Minister will consider it. Separate guidelines reflecting the type of information required for different types of applications could be beneficial.

13b. Will interested parties have an opportunity to comment on the guidelines before they are implemented?

Key stakeholders may be provided with the opportunity to provide feedback on the development of the guidelines, at the Minister's discretion.

Clause 47 – Onus on applicant

14. NTCOSS and PAAC/FARE commented that applicants have a vested interest in satisfying the Commission that the licence or authority is in the public interest and that evidence they put to the Commission, such as community impact studies, may not be fully independent.

14a. What, if any, safeguards will be put in place to ensure the information provided is accurate?

The safeguard is the independent Northern Territory Liquor Commission who, through submissions from both applicants and opponents as well as their own investigation, will need to satisfy itself as to the accuracy of all claims.

Clause 50 – Disclosure of persons of influence and potential beneficiaries

15. Subsection (1) requires a person applying for a licence or authority to make an affidavit disclosing each person who may be 'able to influence the applicant' or who may expect 'a direct or indirect benefit' from the applicant. Retail Drinks Australia noted that similar clauses in comparable legislation in NSW, Qld and SA are more specific and clearly refer to financial or monetary benefits.

15a. Please clarify the specific intention of clause 50(1), for example, what is meant by 'able to influence the applicant' – ss (1)(a) and what is considered to be an 'indirect benefit'- ss (1)(b).

Clause 50(1) operates in the same manner as the current equivalent provision in the *Liquor Act 1978* and the operation was not raised as problematic during the development of the Bill and review undertaken on the operation of the *Liquor Act 1978*.

15b. What would be the effect on the operation of the Bill or specifying what is meant by, influencing the applicant, and defining 'indirect benefit'?

Legislation which is overly prescriptive can be problematic as it leads to narrow, inflexible application preventing the objects of the Act from being achieved, particularly in situations where a broad range of circumstances may apply such as determining what is 'influencing' or what may constitute 'indirect benefit'.

Clause 51 – Associates of a person

16. This clause lists individuals or entities that are considered to be an associate of a person who is applying for a licence. Retail Drinks Australia noted that the list of associates is extremely broad and is not compiled with respect to whether or not such 'associates' have an interest in the sale of liquor, with this contrasting with comparable Victorian legislation – *Liquor Control Reform Act 1998*. In addition, it has been noted that the inclusion of *remoter lineal ancestor or remoter issue* (ss(1)(b)) incorporates a class of people who have never met the applicant and of whom the applicant has no knowledge.

16a. Please clarify the intended scope and purpose of the ‘associate’ test and how it impacts on the determination of a licence application.

Clause 51 operates in the same manner as the current equivalent provision in the *Liquor Act 1978* and the operation was not raised as problematic during the development of the Bill and review undertaken on the operation of the *Liquor Act 1978*. It is the view of the Department that the clause achieves what it is meant to achieve.

16b. What is the purpose of including ‘remoter lineal ancestor’ and ‘remoter issue’ as a description of an associate?

The description has been replicated from the current equivalent provision in the *Liquor Act 1978*. It is the view of the Department that the clause achieves what it is meant to achieve.

Clause 57 – Objecting to application

17. Several submitters have recommended that clause 57 should also provide for objections to applications for the transferring of a liquor licence. What would be the effect on the operation of the Bill of:

17a. inserting a subsection under clause 57(1) that provides for objections to be made;

The circumstances relating to the making of objections was raised in consultation, all relevant views were considered by Government and a considered policy decision was made. It is not appropriate for the department to comment on or debate why a particular policy decision was made.

17b. inserting a subsection under clause 57(2) to allow for additional grounds for objection including: whether the applicant is considered a fit and proper person to hold a licence; government priorities to reduce alcohol harm; and other factors agreed by the Commission.

It is the view of the Department that the clause achieves what it is meant to achieve.

Clause 63 – Abandonment of licence

18. Retail Drinks Australia has recommended that a licensee who ceases to operate their premises should only be considered to have abandoned the licence after 12 months rather than 6 months. Clause 63 states that this period applies unless prior approval has been sought from the Director.

18a. How likely is it that the Director might grant approval for a longer period and on what grounds would the Director grant such approval?

This is an operational matter and is within the scope of the Director's decision making powers. It is therefore a matter for the Director to determine based on the circumstances. It should be noted that a review process applies to decisions made by the Director.

Clause 68 – Application for transfer

19. Subsection (2) of this clause specifies that clauses 48-54 apply to an application for transfer of a licence. Both NTCOSS and PAAC/FARE have recommended that cl 68(2) be amended to also include cl 55, so that the clause reads: *Subject to this section, the application is to be made as if the proposed transferee is applying for a new licence and sections 48 to 55 apply to the application.*

19a. What would be the effect on the operation of the Bill of making this amendment?

It would most likely add to workload and by extension the timeliness of all applications and complaints being considered by the independent Northern Territory Liquor Commission and the Director of Licensing. Transfers of licence are predominantly about sale of the licenced business and cannot alter the operations of the business or the conditions of the liquor licence without a separate application to do so.

19b. What would be the effect on the operation of the Bill of also requiring that a community impact assessment be provided for applications to transfer a liquor licence in circumstances where such an assessment has not been made within the past five years?

The effect would be considered to be similar as above, likely adding to the workload and by extension the timelines of all applications and complaints being considered by the independent Northern Territory Liquor Commission and the Director of Licensing. Licensing NT operate off a compliance and risk based framework meaning those licensed premises that are problematic will come to the attention of the independent Northern Territory Liquor Commission through other means in the Act. NTG does not see the need to compel well run business and compliant businesses to resubmit a community impact assessment at sale if not necessary.

Risk-based licensing

20. Retail Drinks Australia has objected to a number of clauses related to the risk-based licensing framework and has requested clarification of the process used to determine the category of risk to which an authority is allocated e.g. very low, low, moderate, high, or very high risk. However, both AMSANT and NAAJA have commented that base fees are too modest and should be increased.

20a. Please describe the rational or criteria used to determine the risk category allotted to different authorities and the setting of base fees.

The RBL Framework has undergone two rounds of public consultation, where each authority was listed with a proposed risk classification. Government was clear in its position, based on the evidence in the Riley Review which explicitly set out late night venues and takeaway alcohol as the riskiest operation, the late night authority, takeaway authority and grocery store authority were classified at 'Very High'.

Generally, the risk classifications and correlating base fee for authorities across the board were accepted. As a result of consultation, Government accepted the submissions that the casino authority was not classified appropriately and the risk classification for the casino authority was changed from 'Moderate' to 'High'.

Clause 71 – Substitution of premises

21. Clause 71 (1) states that if a licensee wishes to substitute other premises for the licensed premises they must apply for a new licence for those premises while subsection (2) states that the Commission may, on application of the licensee, amend a licence to substitute other premises, subject to being satisfied with conditions set out in ss (2)(a) and (b). Subsection (3) states that an application to substitute premises is to be made in the same manner as an application to vary conditions for the licence under Part 4, Division 5.

AMSANT, Danila Dilba and PAAC/FARE have commented that the inclusion of ss(3) in clause 71 is confusing, potentially open to misinterpretation and could lead to attempts to circumvent current or future requirements for new applications that do not apply to applications to vary the licence, and have requested that it be removed.

21a. What would be the effect on the operation of the Bill of removing ss (3)?

Clause 71(3) sets out the process for applying for a substitution application in the event the application satisfies the criteria in subclause (2). Removing subclause (3) would make it unclear to an applicant about what application process and relevant timelines would apply.

Clause 72 – Acting licensee

22. Subsection (1) of this clause requires licensees to appoint an acting licensee if they are, or expect to be, unable to conduct their business for more than 7 consecutive days, and to give written notice to the Director providing details about the acting licensee within three days after their appointment. Retail Drinks Australia commented that a longer time frame for meeting both these requirements would be more practical and would reduce the administrative burden associated with this requirement.

22a. What would be the effect on the operation of the Bill of extending the timeframe in clause 72(1)(a) from 7 to 21 days and the timeframe in clause 72(1)(b) from 3 to 7 days?

The current provision in the *Liquor Act 1978* provides that notice must be provided for unavailability “during any period of time”. In practical terms, this could include unavailability for a matter of hours. The clause has amended the current provision to provide licensees with clarity on when notice is required to be provided.

23. Subsection (5) provides that an offence against ss (4) is a strict liability offence, with this relating to a contravention of ss (1). Retail Drinks Australia commented that provision of a strict liability offence in this context does not consider circumstances in which the licensee is injured or incapable of complying – there is no defence of reasonable excuse for breach in this section.

23a. What would be the effect on the operation of the Bill of including a clause that provides that: “it is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse”?

Such a clause would have no effect on the operation of the Bill other than to explicitly provide that a defence of reasonable excuse is available. If the Committee is mindful to recommend such an amendment, the Minister will consider it.

Clause 81 – Duration of licence

24. Retail Drinks Australia commented that under the current Act, ‘A licence remains in force until it is ‘surrendered, suspended or cancelled’ implying that no term is fixed for a licence on application.

24a. What is the rationale for specifying that the term of a licence is to be fixed by the Commission when the licence is issued and does this apply to all licences or only certain types of licences?

The term of licence to be fixed by the independent Northern Territory Liquor Commission coincides with the introduction of the annual liquor licence fee. Licensees with a limited period licences (for example, for the dry season) would pay their annual fee pro rata. The applicability of this provision would be dependent on the application and other factors determined as relevant by the independent Northern Territory Liquor Commission.

Clause 84 – Minister’s power to add or vary conditions

25. The power provided to the Minister to add or vary any condition to a licence or an authority has the potential to create uncertainty within the liquor industry.

25a. What review provisions are available to a licensee for the review of an adverse decision by the Minister under clause 84?

A variation of a condition granted by the Minister under clause 84 may be reviewable by the Supreme Court.

Clause 86 – Proper maintenance

26. Retail Drinks Australia raised concerns regarding the scope of this clause and drew attention to the risk of subjective interpretation by licensing inspectors leading to inconsistent application of terms such as ‘good order and repair’ or ‘neat and tidy’.

26a. A significant part of this clause effectively relates to the quality of ‘housekeeping’, what is the rationale for including this as a condition of licence?

The conditions of licence in Part 4, Division 2 of the Bill reflect standard conditions currently found in licences. The recommendations of the Riley Review included providing clarity and standardising the conditions of licence. Part 4, Division 2 of the Bill does this by recognising that maintaining premises and contents used to operate under the licence is a standard condition found in current licences.

26b. Please clarify how the Department will ensure that the assessment of ‘proper maintenance’ will be conducted consistently.

Licensing inspectors currently consider the conditions of licence that apply to licensed premises, including conditions relating to ‘proper maintenance’.

26c. What level of penalties will apply for infringement of the conditions set out in this clause?

The licence conditions in Part 4, Division 2 of the Bill form part of standard licence conditions currently applying to licensed premises. Clause 290 provides that it is an offence to contravene licence conditions. Infringement offences and penalties will form part of the Regulations and are currently under development.

Clause 104 – Keeping records of liquor purchases and sales and clause 105 – Licensee’s quarterly return

27. Retail Drinks Australia commented that Point of Sale Systems for retail are inconsistent and that requiring retailers to provide sales records in a standardised reporting format would impose a significant administrative burden. They note that no other Australian state or territory is required to provide quarterly alcohol sales data. In addition, Recommendation 2.6.5 of the Riley Review recommends that licensees be required to provide regular returns reporting the volume of alcohol sales at 6-monthly or yearly intervals.

27a. Please provide an overview of what will be prescribed in the Regulations with respect to the 'written record of information' that the licensee must keep with respect to their liquor purchases and sales.

The wording of this regulation is still being drafted.

27b. What is the rationale for requiring quarterly sales returns rather than 6-monthly or yearly returns as recommended by the Riley Review, particularly as the Commission already has access to sales data through wholesalers having to provide quarterly returns?

Clause 105 operates in the same manner as the current equivalent provision in the *Liquor Act 1978* and does have its history in the excise tax before GST came into effect. With the move to collect sales data through wholesalers, if the Committee recommends an amendment, the Minister will consider it.

Clause 108 – Notice of application to vary conditions

28. Hospitality NT commented on the importance of simplifying processes for varying licence conditions when variations are sought to facilitate one-off events and urban activation and CBD vibrancy initiatives. They recommend that an additional amendment be included in cl 108 which provides the Director with the option of exempting an applicant from the public notice requirements if the application is temporary in nature (refer p.17 of Hospitality NT's submission).

28a. What would be the effect on the operation of the Bill of including an amendment to this effect?

This issue has been raised in consultation and if the Committee recommends an amendment, the Minister will consider it.

Clause 118 – Minimum sale price

29. Clause 118(4) states that the Minister must review the minimum sale price every three years.

29a. How will this review be undertaken, will there be public consultation on the review and will the Minister's findings be public released?

The methodology of the three year review is to be determined.

Clause 121 – Sale price manipulation

30. ClubsNT commented that vouchers and points are routinely used to reward club members who participate in activities such as Trivia nights and member draws, and as a form of sponsorship to community sporting and charity groups that use club vouchers for fundraising raffles. They expressed concerns that these practices would be penalised under the Bill, particularly with reference to cl 121(1)(c). They further note that if unable to use vouchers and points, membership in clubs will become immaterial, 'as clubs will become little more than commercial alcohol outlets that will have to compete on the same basis'.

30a. How will cl 121 affect clubs' ability to utilise vouchers and points?

This issue has been raised in consultation and many practical examples have been raised. Examples provided to date by industry demonstrates that the outlay of money spent by the customer to receive enough vouchers and/or points to reimburse on alcohol is always higher than the minimum unit price, i.e. a \$5 annual membership covers 3.8 standard drinks – this covers a free drink on your birthday promotion. Where the value of the alcohol does drop below the minimum unit price, the clause achieves what it is meant to achieve.

30b. Given the support sporting groups and charities receive from the voucher system, has consideration been given to exempting clubs from any subsections in cl 121 that would prevent the ongoing use of the voucher system?

Please see the answer above at 30a.

31. Retail Drinks Australia argued that subsection (1)(a) of cl 121 is inappropriate as the whole purpose of bundling is to make the products more attractive than they would be as separate purchases. They recommend that bundling be permitted provided that Minimum Unit Price provisions are not breached in the process and that ss (1)(a) be removed. They further recommend that the wording of ss (1)(b) and (c) be amended to state 'is intentionally selling liquor products ..' rather than 'is selling liquor products...'.

31a. What would be the effect on the operation of the Bill of removing ss (1)(a) and amending ss (1)(b) and (c) as requested by Retail Drinks Australia?

The view of the Department is that the proposed amendments would constrain the Commission in exercising its powers and functions. Clause 121(1) provides that the Commission may impose a condition under subsection (2) if it is believed on reasonable grounds that a licensee is doing any of the acts listed in subsections (1)(a) to (c). The role of the Commission includes regulating conduct of business under a licence or authority. The conduct listed in subsections (1)(a) to (c) is conduct that can be perceived as contravening the minimum price requirements in clause 118. It is the view of the Department that the clause achieves what it is meant to achieve.

Clause 125 – Establishing identification system

32. Some Australian states have launched digital driver's licences.

32a. Please clarify whether digital licences are currently approved as a form of identification under cl 125(3).

Currently the BDR does not accept digital licences, however, Government continues to investigate methods to improve the capability of the BDR, including technological advances.

Clauses 129 – 132 – Local Liquor Accords

33. Several submitters have raised issues in relation to the operation of liquor accords and have requested clarification of a number of these provisions.

This answer addresses questions 33a-l. The wording of regulations and guidance material to address local liquor accords and their operation under the Bill are still being drafted, however if the Committee recommends an amendment, the Minister will consider it.

33a. What will be the process for agreeing to a local liquor accord?

Please refer to the answer above.

33b. Do all parties to a local liquor accord need to agree to its terms for it to be made? If not, what is the decision-making process? What is the authority for this process?

Please refer to the answer above.

33c. If a licensee is made a party to an accord involuntarily, can they object to any of the accord's terms, or are they bound by them despite not agreeing to them?

Please refer to the answer above.

33d. Are there any limits to the Director's power to vary an accord on the Director's own initiative? If so, what are those limits?

Please refer to the answer above.

33e. If a party to an accord applies for an accord to be varied, do any other parties need to agree to that variation before it is made by the Director?

Please refer to the answer above.

33f. Do parties to an accord need to be consulted before the Director varies an accord, whether on the Director's own initiative or the application of a party to the accord?

Please refer to the answer above.

33g. Does the Director's power to make a licensee a party to an accord (cl 129) and to vary an accord on the Director's own initiative make it possible for the Director to unilaterally impose on any licensees anything that might prevent or reduce alcohol-related harm or violence?

Please refer to the answer above.

33h. Would a failure to comply with such an accord be a criminal offence under clause 290 or any other clause of the Bill?

Please refer to the answer above.

33i. Will there be minimum attendance requirements that need to be met to maintain the proposed discount under the Risk-based Licensing Framework?

Please refer to the answer above.

33j. Can members of the Accord be represented by an Association and, if so, would they still be eligible for a reduction in licence fees?

Please refer to the answer above.

33k. Are there specific requirements for the administration of liquor accords, for example, standardisation of documents, and how will Accords be resourced?

Please refer to the answer above.

33l. What guidelines, if any, are under development in relation to Accords?

Please refer to the answer above.

Clause 134 – Responsible service certificate

34. Cl 134 requires that employees must complete a refresher course on the responsible service of alcohol every three years.

34a. What arrangements have been put in place to ensure that adequate notice is given to licensees to avoid employees being in breach when the proposed Act comes into force?

Licensees are currently required to ensure that employees have undertaken training in responsible service of alcohol as part of the conditions of licence. It is therefore already part of standard practice for employees to have a certificate however the recommendations of the Riley Review included strengthening these requirements through requiring refresher training.

Clauses 135 – Duty to refuse service and 282 – Prohibition of liquor to intoxicated person

35. Both of these clauses require that a licensee or their employee not serve or sell liquor to an intoxicated person. Clause 135 also states they must not serve liquor to a person on the BDR. Clause 135 attracts a maximum penalty of 100 penalty units and cl 282, 200 penalty units.

The existing offences in the *Liquor Act* have been modernised and new offences were included following stakeholder consultation on the exposure draft Liquor Bill. The interaction of the offences in clauses 135 and 282 is currently under consideration by the Department.

If the Committee is minded to make a recommendation, the Minister will consider it.

35a. What is the rationale for including two clauses that both address serving/selling to an intoxicated person?

Please refer to the answer above.

35b. When would a person be charged under clause 135 and when would they be charged under clause 282?

Please refer to the answer above.

35c. Why is the maximum penalty a 100 penalty units in cl 135 and 200 penalty units in cl 282?

Please refer to the answer above.

36. Clause 135 refers to 'serving liquor' while clause 282 refers to 'selling' or 'supplying' liquor.

36a. Please clarify how 'serving' differs from 'selling' or 'supplying' in the context of these two clauses.

The existing offences in the *Liquor Act* have been modernised and new offences were included following stakeholder consultation on the exposure draft Liquor Bill. The interaction of the offences in clauses 135 and 282 is under consideration by the Department.

Clause 136 – Power to refuse service and Clause 137 – No discrimination

37. Retail Drinks Australia queried whether one of the grounds for refusing service in cl 136(1) should be a reasonable belief that the liquor was being purchased for secondary supply purposes.

37a. Please clarify whether a belief that a person is purchasing liquor for secondary supply purposes would be captured under cl 136(a)?

This is correct, as the unauthorised sale of liquor is an offence under clause 41 of the Bill.

38. AMSANT expressed concern that cl 136 would be used prejudicially despite the inclusion of cl 137 and both AMSANT and Danila Dilba requested that it be made an offence under the *Liquor Act* for cl 136 to be applied in a discriminatory matter as this would allow the Director of Licensing or delegate to conduct their own investigations and bring forward their own enforcement actions under the Act.

38a. What would be the effect on the operation of the Bill of to make it an offence under the *Liquor Act* to refuse service on the basis of race?

This is not a provision that we would recommend placing in the Bill as a prohibition is already contained in the *Anti-Discrimination Act 1992* for such conduct. Race is an attribute contained in section 19(2) of the *Anti-Discrimination Act 1992* and licenced premises are an area covered by that Act.

Clause 146 – Harm minimisation audits

39. Retail Drinks Australia has suggested that the following amendments be made to subsections (1) (e), (k) and (m) of cl 146 (as underlined):

- 146(1)(e) – *minimise the risk of harm or ill-health caused by the excessive or inappropriate consumption of liquor.*
- 146(1)(k) - *ensure employees involved in the sale and supply of alcohol properly perform their duties.*
- 146(1)(m) - *reduces or limits increases in anti-social behaviour and alcohol-related violence on the premises.*

39a. What would be the effect on the operation of the Bill of implementing each of these proposed amendments?

The addition of the proposed amendments may limit the scope of the audit which is intended to be a wide ranging audit to assess activities, operations and licensed premises in relation to harm minimisation under the Act. The provision was drafted in reference to the Riley Report recommendation to provide for harm minimisation audits.

Clause 148 – Action after harm minimisation audit

40. Clause 148 provides the Director with four potential actions that can be taken in response to non-compliance with a licensee's obligations under the Act, with action (b) being the issuing of an infringement notice and action (d) being the referral of the matter to the Commission for action under Part 7, Division 4. Retail Drinks Australia has commented that it is inappropriate for licensees to be issued with an infringement notice as a result of a harm minimisation audit and that such notices should only be issued if the licensee is in direct breach of the legislation.

40a. Please clarify under what conditions a licensee can be issued an infringement notice as a result of a harm minimisation audit. Do they have to be in breach of one of their licence conditions before an infringement notice can be issued?

Clause 148 makes provision for action to be taken by the Director following a harm minimisation audit in relation to non-compliance with obligations under the Act. A licensee's obligations under the Act include compliance with licence conditions.

Clause 150 – Control of inedible alcohol products

41. Clause 150 provides that a person may be searched if they contravene ss (1), consumption of an inedible alcohol product in a public place. NT Police commented that this limits their power to act where they have reasonable grounds to suspect a person is about to consume a substance.

41a. What would be the effect on the operation of the Bill of amending cl 150 to include power for an inspector or police officer to search and seize the inedible substance where they have reasonable grounds to suspect that a person is about to consume such a substance?

If the Committee were minded to recommend an amendment, the Minister will consider it.

42. A number of submitters have noted that not all retailers voluntarily implement systems to effectively manage the sale and storage of inedible substances and consequently there is a need for such substances to be regulated through a legislative framework.

42a. What would be the effect on the operation of the Bill of adding a subsection to cl 150 stating that the sale and storage of inedible alcohol products may be prescribed by regulation?

The approach currently taken to alcohol substitution products is community education and retailer engagement. Introducing regulations to try and close every loophole would be an administrative burden, with no additional effectiveness.

Clause 153 – Inspection powers

43. Retail Drinks Australia has objected to the 'wide-ranging' powers granted to police officers and inspectors under cl 153(1), noting that similar sections in comparable Victorian and Western Australian legislation are written in a way that makes it clear that the focus of these powers is limited to obtaining evidence related to alcohol.

43a. What, if any, consideration has been given to comparable legislation in other jurisdictions?

The Bill was developed in line with recommendations made following a review of the *Liquor Act 1978* which included considering legislation in other jurisdictions.

Clause 162 – Disciplinary action

44. Clause 162(1) states that the Commission may take disciplinary action against the licensee if satisfied that a ground for the disciplinary action exists. In contrast with the *Liquor Licensing Act 1990* (Tasmania), the Bill does not specify the grounds for disciplinary action.

44a. What, if any, consideration has been given to comparable legislation in other jurisdictions?

The Bill was developed in line with recommendations made following a review of the *Liquor Act 1978* which included considering legislation in other jurisdictions. In addition, the Liquor Commission was consulted during the development of the Bill.

44b. Please clarify what would be considered to be grounds for disciplinary action.

The grounds for disciplinary action are dependent upon the circumstances of an alleged breach of conditions. As noted above, the Bill was developed in line with the recommendations of the Riley Review which considered legislation from other jurisdictions. The complaints process includes investigation of a complaint, process for the Director to refuse to accept a complaint if no grounds exist, and on investigation it may also be determined that no grounds exist before being referred to the Commission for consideration for disciplinary action.

44c. What would be the effect on the operation of the Bill of specifying the grounds under which disciplinary action can be taken?

As noted above, the grounds for disciplinary action are dependent on the circumstances and must be established before the Commission can take disciplinary action.

Clause 170 – Offence for general restricted area and Clause 180 – Offence related to special restricted areas

45. NT Police commented that the offence set out in cl 170 (1) only comes into play if it occurs inside a GRA or SRA and does not include the transporting or possession of liquor with intent to supply to residents of a GRA or SRA. They state that it is not operationally feasible for police to only detect the offence once an individual has physically entered the boundary of a GRA or SRA. They further note that under the *Stronger Futures in the Northern Territory Act 2012* (Cth) section 75C(1)(a)(ii) or (iii) a person can be charged if the circumstances show that the offender was travelling to an alcohol protected area i.e. at ferry terminals in Darwin bound for alcohol protected areas.

45a. Noting that the Commonwealth Act will ‘sunset’ in 2023, what would be the effect on the operation of the Bill of amending cls 170 and 180 in line with the recommendation from NT Police that these clauses ‘include an offence of “transporting liquor intending to supply” and “possess liquor intending to supply” to mirror section 75C *Stronger Futures in the Northern Territory Act 2012* (Cth)?

The *Stronger Futures in the Northern Territory Act 2012* (Cth) will provide this provision until at least 2023, which is a number of years away.

Any Liquor Act that is in force in the NT will need to be considered in light of what occurs with the *Stronger Futures in the Northern Territory Act 2012* (Cth) closer to that time, which has already been provided for by clause 317 of the Bill.

Clause 317 of the Bill provides that there will be a review of the Act that will commence as soon as possible after the expiration of 3 years from assent, with a report to be tabled in the Legislative Assembly within 12 months after that.

Clause 185 – Power to declare restricted premises

46. This clause includes a retail shopping centre as a premises that can be declared a restricted premises. Retail Drinks Australia expressed concerns that a licensee located within such a shopping centre would be captured by this clause.

46a. Can the Director declare a retail shopping centre to be a restricted premises if a licensee is located in the shopping centre? If so, what notice must the Director provide to the licensee?

Yes, noting that the Director must consult with all owners and occupiers of the place regarding the application under clause 189. Under clause 193, the Director must display a notice outside the place warning the public of the restricted premise within 14 days of making the determination.

Part 9, Division 3 – Banning notices – Clauses 209 and 215

47. Clause 209 (2) sets out the factors that a police officer must consider when determining whether a banning notice is a reasonable way of preventing a person from continuing to commit a banning offence. These factors include the person's apparent state of health, whether the person should be arrested or held in custody pending the hearing of charges relating to the banning offence, and whether the person is capable of comprehending the nature and effect of the notice (ss(2)(c)).

47a. Please clarify the operation of cl 209(2) and the actions police are expected to take where they do not deem a banning notice to be appropriate.

This is an operational matter for Police, where like many other areas they can use their discretion not to take enforcement action.

48. NAAJA commented that some people subjected to a banning notice or exclusion order may have health-related issues that impact on their ability to comply with an order. Clause 215(2) provides for contravention of a banning notice to be a strict liability offence while ss 3) states that it is 'defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse'.

48a. Would a health-related injury, such as an acquired brain injury, or cognitive impairment, constitute a 'reasonable excuse'?

It would depend on the facts of a particular case and probably the extent of the injury/impairment. The clause achieves the intended purpose.

The issue of reasonable excuse would be relevant at the time Police were considering charging an individual, when the Director of Public Prosecutions took carriage of a prosecution and then, if a Court is determining whether such a person had committed this offence, the issue of any reasonable excuse could be assessed by the Court.

Clause 227 – Employee violence or drug use

49. The Anti-Discrimination Commission raised concerns that the Director's power to direct a licensee to limit or restrict the responsibilities and activities of an employee who has been charged or found guilty of an offence involving violence or unlawful drugs, may remove a right an employee has to not be discriminated against on the basis of an irrelevant criminal record at work. In particular, concern was expressed that the clause provides for action to be taken if the individual is charged but not yet found guilty.

49a. What consideration has been given to the rights of an employee under the *Anti-Discrimination Act*?

The rights of the employee were at the forefront of the decision making process when considering this.

Clause 233 – Searching persons

50. NT Police have expressed concern that under cl 233 police will not have the power to search a person's clothing, or property in the person's immediate control, such as a bag they are carrying.

50a. What would be the effect on the operation of the Bill of amending this clause to clarify that an inspector or police officer may search the person's clothing and property in the person's immediate control?

It would cure an operational issue that the Police have raised.

If the Committee were minded to recommend an amendment, the Minister will consider it.

Clause 242 – Limit on seizure of vehicles, vessels and aircraft

51. Before seizing a vehicle, vessel or aircraft, ss (2) requires an inspector or police officer to give consideration to its anticipated future use and whether its seizure or forfeiture will cause hardship to a person or community. NAAJA have commented that seizure often occurs at the time of apprehension and expressed concerns that this would result in police having limited time to properly consider the impact of the seizure.

51a. What processes are police officers or inspectors expected to go through when considering anticipated future use and potential hardship that may be caused by the seizure or forfeiture?

Police processes are an administrative matter for Police. Police are already required to make a similar assessment under the *Stronger Futures in the Northern Territory Act 2012* (Cth). The new test has just been refined to allow Police to take into account the range of ways vehicles are used, owned, and shared in communities.

Clause 243 – Inclusion of section 95A of Liquor Act 1978

52. NAAJA have expressed concerns that the provisions in cl 242(2) are inconsistent with s95A (a) and (b) in the *Stronger Futures in the Northern Territory Act 2012* (Cth). Section 95A requires that an inspector must consider the main use of the vehicle and the hardship that might be caused by seizure of the vehicle in relation to the community as a whole while clause 242(2) of the Bill requires that the impact on persons *and* the community as a whole must be considered.

52a. Where there is inconsistency between the provisions of the Bill and those in the *Stronger Futures in the Northern Territory Act 2012 (Cth)* how will this inconsistency be managed?

If there is any inconsistency between *Stronger Futures in the Northern Territory Act 2012 (Cth)* and the Bill, the Commonwealth provisions will prevail.

In terms of managing enforcement, where an individual could be charged with both a Commonwealth and a Northern Territory offence, the Commonwealth offence should be used.

52b. Which would take precedence, the *Stronger Futures in the Northern Territory Act 2012 (Cth)* or the provisions in the Bill? Does this vary according to the location in which the offence occurs?

If there is any inconsistency between *Stronger Futures in the Northern Territory Act 2012 (Cth)* and the Bill, the Commonwealth provisions will prevail, noting that some of those provisions amend our *Liquor Act 1978*.

If the offence occurs in a location which is not covered by *Stronger Futures in the Northern Territory Act 2012 (Cth)*, then the offences that are available will be those contained in the Liquor Bill.

Clause 244 – Notice of seizure of vehicle, vessel or aircraft

53. Subsections (1) and (2) of this clause require police to take reasonable efforts to identify and notify any person who owns or has an interest in the vehicle, vessel or aircraft. NT Police have requested that this clause be amended to remove the words 'any person who has an interest in the vehicle, vessel or aircraft' and to limit the mandatory requirement to identifying and notifying the owner.

53a. What would be the effect on the operation of the Bill of limiting the mandatory requirement for identification and notification to the owner of the vehicle, vessel or aircraft?

A very large number of persons would not be notified of their legal interest in the vehicle before it faced forfeiture. The registered owner of a vehicle is very often not the only person, and in many cases not even the primary person with an interest in such vehicles, particularly in communities, where vehicles are often registered to the person with the capacity to produce identification or a valid licence at the point of sale, rather than necessarily the person with the legal interest in the property. The motor vehicle registry does not define who is the owner of a vehicle in the way a Torrens title system does, so it does not provide a definitive legal answer to the question of ownership.

53b. Please clarify what the phrase 'an interest in the vehicle, vessel or aircraft' refers to.

Any person with a legal interest in the vehicle, vessel or aircraft.

Clause 247 – Point of sale intervention powers - customer

54. AMSANT expressed concerns that this clause may be applied prejudicially and recommended that it only apply to persons in a licensed premises, not to people on foot or in vehicles within 20 metres of a licensed premises.

54a. What would be the effect on the operation of the Bill of removing 'or within 20 m of' from cl 247(1)(a)?

Removing 'or within 20m of' from clause 247 is likely to jeopardise the safe operation of the provision. This clause is not new and essentially contains provisions that are currently contained in the *Liquor Act 1978*. This provision has been in place since the *Liquor Amendment (Point of Sale Intervention) Act 2019* commenced on 6 June 2018.

Significant work was done with the *Liquor (Point of Sale Intervention) Act* in settling on that provision, particularly the distance from the licenced areas. We needed to ensure that a broad variety of layouts of licensed premises were covered and as the licenced footprint of them is often only the inside of a bottleshop for example, and not the full drive way or the boarder premises, although in some circumstances that varies, the power needed to be extended beyond that footprint for some distance. In settling on 20 metres we tried to ensure that the physical parameters of the point of sale powers meant that Police could work in areas that did not block points of egress to and from the premises and the location of the conversations with patrons was not on driveways of bottleshops which would be unsafe. This is important for Police safety and in terms of Police not obstructing business. In the development of this provision in the *Liquor Amendment (Point of Sale Intervention) Act 2019* we had consulted with Police and also had taken concerns of licensees about not having Police stand in difficult areas of their business into account.

If it was removed in some locations, Police would probably have to stand in doorways or have discussions where either the Police or patrons were standing on driveways in drive through bottle shops

Clause 255 – Police power to suspend licence or authority

55. Hospitality NT commented that the police power to suspend a licence or authority is too broad, and noted that it goes beyond the intention of the Riley Review by including 'breach of the peace' and 'threat to public safety' as factors that can determine whether a licence or authority be suspended.

55a. Do licensees have any right to contest the closure after the event and seek redress if it can be proven that the closure was inappropriate?

Not under the Bill.

Clause 256 – Power to suspend sales at major event

56. NT Police commented that officers at or above the rank of Commander primarily undertake administrative roles during business hours and have recommended that the delegation in cl 256(1)(b) be amended to ‘a police officer “at or above the rank of Senior Sergeant”’.

56a. What would be the effect on the operation of the Bill of implementing this amendment?

If the Committee recommends an amendment, the Minister will consider it.

Part 12, Division 1, Clauses 266-270 - Police management and disposal of seized things and Division 2, clauses 271 – 279 – Forfeiture of Assets

57. NAAJA expressed support for moving decisions on forfeiture from the Police Commissioner to the Local Court but noted that this would increase the demand for legal assistance and, if support for legal assistance is not available, could ‘push people further out of the process’ (p6).

57a. What consideration has been given to the impact that moving decisions on forfeiture from the Police Commissioner to the Local Courts will have on the need for legal advice and how this need might be resourced and managed?

The reforms not only allow existing informal negotiations with Police to obtain the return of vehicles to continue, it broadens the scope of Police discretion to return the vehicles at an early stage. This is anticipated to make it easier to have vehicles returned in appropriate cases, with or without legal advice. The question of forfeiture only goes to the Local Court in the event that there is an unresolvable dispute over whether the vehicle is returned. The reforms ensure due process occurs in the event of such a dispute. The processes in the Bill have been designed to try and combine the court process for criminal proceedings and forfeiture as much as possible, in order to minimise the need for additional complex legal processes. However, given that criminal property forfeiture allows forfeiture to be pursued in a civil as well as a criminal process, there must be civil processes available in the event the informal and criminal processes do not resolve the issue.

It is a policy decision to provide for a civil forfeiture regime in addition to a criminal forfeiture regime, as this has long been a tool for deterring secondary supply of liquor in the Territory, and is a common law enforcement tool in relation to controlling the distribution and supply of illicit substances.

Clause 271 – Forfeiture under Sentencing Act 1995

58. NT Police commented that section 99A of the *Sentencing Act 1995* has no operation unless a person is “found guilty”. Consequently, if a person is charged but found not guilty, section 99A cannot apply.

58a. What would happen to a thing that was seized if the person was charged but found not guilty?

It depends firstly on whether the thing is a vehicle, vessel, or aircraft. If so, the Bill sets out the process. If the quantity of liquor involved in the offence is less than two standard drinks, there can be no forfeiture if there is no guilty verdict. If there is a larger quantity of liquor, Police must decide whether they intend to pursue forfeiture for the vehicle, vessel, or aircraft. This might occur, for example, when it is clear that an offence occurred but the prosecution was not able to prove beyond reasonable doubt which person was responsible – perhaps because they ran away from the vehicle, or it is not clear which person was driving and who knew the liquor was in the vehicle.

If Police decide to pursue forfeiture at this point, the court must look at the question of whether an offence occurred on the balance of probabilities, and then consider a range of discretionary factors in relation to whether forfeiture is appropriate in all the circumstances, as per clause 275 of the Bill. The presumption is for, against, or neutral in relation to forfeiture depending on the quantity of liquor involved. This reflects that the primary purpose of the scheme is to deter secondary supply of liquor, and that the quantity of liquor involved therefore represents a good starting point for proportionality. The presumption can be rebutted in appropriate circumstances by reference to the discretionary factors at clause 275(4).

If the thing is not a vehicle, vessel, or aircraft, it cannot be forfeited if there is no guilty verdict, and then police are required to deal with the property in accordance with usual practices for property seized under the *Police Administration Act*.

Clause 272 – Police application for forfeiture of vehicle, vessel or aircraft

59. Subsection (5)(b) of this clause states that if a person is charged with a forfeiture offence in respect of which the thing was seized but no person is found guilty of a forfeiture offence after all proceedings have ended, then police must lodge their application with the local court on the day proceedings end. NT Police noted that prosecutions in Darwin are conducted by the DPP, not police and, as police are not stationed at court, nor made aware of when proceedings end, then they would be unable to lodge an application for forfeiture.

59a. What would be the effect on the operation of the Bill of amending clause 272 (5)(b) from ‘the day proceedings end’ to ‘24 hours after proceedings have ended’, thus providing police with the time to lodge an application?

It would give Police further time to lodge an application, although there may be some confusion as to the exact time of day proceedings concluded. The

intention behind the short time frame was to ensure, as much as possible, that Police prepared for forfeiture in advance, and vehicles were returned at the end of a criminal proceeding if the offender was found not guilty. However, there can be logistical complications, for example, if a matter is unexpectedly resolved by the prosecution at a mention in Darwin, and the relevant officer in charge does not learn of the finalisation of the proceedings in time to lodge the application. This issue is being given further consideration as to whether there is a procedural solution that can balance these competing considerations.

60. NAAJA commented that cl 272 allows the Police Commissioner to hold a vehicle for 28 days without laying charges or applying for forfeiture and that an application for forfeiture may take weeks or months to determine, with this resulting in a person and/or community being deprived of a vehicle for several months in instances where there may be no guilt. NAAJA recommends a more streamlined process that provides clear legislative direction for the return of a vehicle that is seized.

60a. What consideration, if any, has been given to streamlining the process for returning a vehicle?

The process in the Bill has been designed to keep returning the vehicle as streamlined as possible, while enabling the following: ensuring procedural fairness for persons with a legal interest in the vehicle, ensuring consideration of the wider impacts of forfeiture on persons who may not have a legal interest in the vehicle (eg. children and other family members who use the vehicle to access essential services), and providing a workable tool for Police to deter secondary supply.

Clause 290 – Contravening licence conditions

61. Why does clause 290 make any contravention of a licence a criminal offence? Why should a licensee be subject to a fine and criminal record for failing to keep their premises in a neat and tidy appearance under cl 86?

Clause 290 makes contravention of a licence condition an offence, which is no different to the current provision contained in section 110 of the *Liquor Act 1978*. The current section 110(1) provides that the licensee engages in conduct that results in a contravention of a condition of the licensee's licence.

Licensees are given a licence to sell liquor with specific conditions, and it makes sense that failing to comply with those conditions is an offence. The clause achieves what is intended.

As part of our associated work in relation to Liquor Regulations, we are working on developing the range of offences that can be dealt with by way of an infringement notice, with a view that lower level offences under the *Liquor Act* will be able to be enforced with infringement notices.

Clause 306 – Limitation of time for making complaint

62. NT Police commented that investigations into a complaint made about a licensed premises routinely require more time than the 28 days allowed under cl 306. They further note that the statute of limitation in the *Local Court Criminal Procedure Act 1928* is six months (unless time is specially limited for making the complaint by any statute or law relating to the particular case - s 52).

62a. What is the rationale for reducing the time-frame to 28 days?

The intention was to ensure the streamlined return of vehicles where appropriate in relation to matters of secondary supply, when charges or forfeiture would not be pursued. However, some logistical issues have been identified and they are under consideration, particularly with respect to offences not connected to secondary supply.

62b. What would be the effect on the operation of the Bill of removing cl 306 from the Bill?

The time frames for laying all charges would revert to 6 months. This would mean that vehicles that are seized can be held without charge or further process for up to 6 months, irrespective of the strength of the case. Once charges are laid, that is just the beginning of the court process, so this would make for a lengthy time during which a family would have to manage without a vehicle.

For non-forfeiture offences, removing clause s 306 would simply mean the processes for laying charges for such offences would be consistent with other summary offences.

Clause 307 – Statements of fact in complaint

63. NT Police noted that the term 'statement of fact' has replaced the term 'averment'. The term 'averment' is used in s124A of the *Liquor Act 1978* and appears to be the same as the proposed clause 307 in this Bill. Police note that 'In criminal matters, a statement of facts is the facts tendered or handed up to the court. The term cannot be used interchangeably. Police have concerns that offences will be regularly defended through testing judicial interpretation of the new term and incur unnecessary costs. Judicial interpretation on the term "averment" is well settled law via numerous Court determinations and conform to existing NT legislation, i.e. *Firearms Act 1997* (s 104), *Fisheries Act 1988* (s 44)'. P. 4 – Submission 6.

63a. What is the rationale for replacing 'averment' with the term 'statement of fact' and what would be the effect on the operation of the Bill of replacing 'statement of effect' with 'averment'?

If the Committee were minded to recommend an amendment, the Minister will consider it.

Part 15, Division 2 – Transitional matters

64. AMSANT, Danila Dilba, PAAC/FARE and NAAJA have recommended that any unresolved applications for liquor licenses should lapse from the date the legislation is passed so that all applications from that date are considered under the new legislation. Danila Dilba further commented that some existing and prospective licensees are attempting to lodge applications to substitute existing small premises for large liquor barns. They comment that while these applications would have little likelihood of being granted under the new Act, the transitional arrangements would allow such applications to be considered under the *Liquor Act 1978*.

64a. What is the rationale for providing transitional arrangements that allow unresolved applications to be considered under the *Liquor Act 1978*?

The transitional clauses have been drafted in that way so they come into effect when the Liquor Bill passes Parliament, otherwise they would be retrospective.

Generally speaking, new laws are only made retrospective in very limited circumstances as retrospective laws make an individual or body corporate responsible or subject to laws that were not in place at the time they did a certain thing, in this case lodge applications. So, a retrospective law makes an individual responsible for something, or required to do something in a particular way that they could not have known about at the time or complied with. This does not sit comfortably with rule of law principles. However, in some policy situations, it may be appropriate.

64b. Please provide information on the number of unresolved applications that are likely to exist if and when the Bill is passed.

NT Licensing have provided the following information:

As at 5 July 2019, the Liquor licensing team had 102 outstanding applications being progressed. Of those, 58 require a public hearing before the Liquor Commission where they are in various stages of processing with some already referred and awaiting the setting of a hearing date. A further 3 special licences have also been referred to the Liquor Commission for decision however these do not require a public hearing. The remaining applications will be finalised by way of delegations within Licensing NT.

It is difficult to estimate the number of applications which will remain open at the time the Liquor Bill is likely to commence in or about October, however it is noted that Licensing NT is fielding a significant number of enquiries about obtaining new liquor licences, or seeking permanent variations and material alterations to existing licences, and expects many of these will result in applications to be lodged in the coming months.