

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

LIQUOR BILL 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

OVERVIEW OF THE BILL

The Liquor Bill 2019 (the Bill) provides a Bill for an Act that governs the sale, supply, service, promotion and consumption of liquor and alcohol products through establishing a risk-based licensing framework with a primary purpose of minimising harm associated with consumption and misuse of alcohol.

HUMAN RIGHTS IMPLICATIONS

The Bill engages rights referred to in the International Convention on Civil and Political Rights (ICCPR).

Right to Equality and Non-discrimination: Articles 2, 3, 16 and 26 ICCPR

Articles 2, 3, 16 and 26 of the ICCPR relate to rights of equality and non-discrimination. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Discrimination is prohibited and laws should guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Elements of the Bill may interfere with these rights, as the Bill provides licensees and the licensee's employees with the power to refuse the service of liquor to a person where the licensee or licensee's employees hold a certain belief, such as, the person is registered on the banned drinkers register or the person will become intoxicated.

To make it clear that the power to refuse service or exclude a person is not a power to exclude on the basis of attributes protected through anti-discrimination law, it is expressly stated that a licensee or a licensee's employee must not use an attribute specified in section 19(1) of the *Anti-Discrimination Act 1992* as a reason to form a belief. Furthermore, the grounds by which a person may be refused service ensure the integrity and effective operation and enforcement of other existing legislative frameworks to limit or prohibit liquor supply and use, and to reduce alcohol-related harm.

The Bill also provides requirements for proof of identification for purchase of liquor pursuant to an identification system designed to prevent persons prohibited by law from purchasing liquor. The approved identification specified in the Bill for proof of

identification may discriminate against people in the Northern Territory do not hold a valid driver's licence, passport or firearms licence, especially Aboriginal people who live in remote communities. Limitation on the form of identification required to purchase alcohol would likely have a disproportionate (indirect) discriminatory impact on Aboriginal people.

However, this is mitigated by the power of the Director to approve other forms of identification which ensures that people who do not have a driver's licence, passport or firearms licence are able to lawfully purchase alcohol with other documentation.

Freedom of movement and choice of residence for lawful residents: Article 12 ICCPR

Article 12(1) of the ICCPR provides that 'Everyone within the territory of the State shall, within that territory, have the right to liberty of movement...'

Elements of the Bill may interfere with the free movement of persons, as police officers and inspectors are empowered to conduct searches, and to stop vehicles and to make enquires in relation to purchases of liquor.

Search related powers include being able to search a person without a warrant where there it is reasonably suspected that there is a contravention with a provision of the Act. Inspectors and officers have search powers that relate to public places, restricted areas and restricted premises.

The Bill provides that an inspector or police officer may search a person who the inspector or officer reasonably suspects of consuming an inedible alcohol substance in a public place (for example, mouthwash) or of consuming liquor in a public place.

The search powers are limited to the requirement for the inspector or police officer to form a reasonable suspicion that the person is consuming liquor in a public place.

The Bill allows an inspector or police officer to search a person who the inspector or officer reasonably suspects is committing a serious offence under this Act relating to secondary supply. T

These search powers are limited to the requirement for the inspector or police officer to form a reasonable suspicion that the person has committed, is committing, or is about to commit such an offence. It is also subject to the limitation that it must not be reasonably practicable to seek a warrant. It is also a limitation of this power that it can only be used to enter residential premises without the consent of an occupier of the premises in a general or special restricted area.

The Bill allows an inspector or police officer to search a vehicle, vessel, aircraft, person, or premises at random where the vehicle, vessel, aircraft, person, or premises is in a general restricted area or special restricted area. The clause also allows for random searches outside a restricted area where there is a reasonable suspicion that the vehicle, vessel, aircraft, person is travelling to or from a restricted area, or in the case of premises, that the premises contain goods that are being sent to a restricted area.

The purpose of this power is to detect and prevent the unlawful consumption of liquor in restricted areas, as well as to detect and prevent the unlawful sale and supply of liquor destined for restricted areas. These random search powers are limited in that they are restricted to non-residential premises. Searches of persons are required to be conducted by a person of the same gender.

The Bill provides a power that allows an inspector or police officer to search restricted premises, and any person on or in the restricted premises who is suspected of committing the offence.

The search power is limited by the requirement that the police officer must suspect on reasonable ground that an offence against section 177 is being or is likely to be committed. Searches of persons are required to be conducted by a person of the same gender.

Where a search is conducted, the search must be conducted by someone who is of the same gender as the person being searched. Same gender searches ensure a minimum level of dignity is maintained for the person being searched.

The Bill provides that where an inspector or a police officer suspects on reasonable grounds that an offence against Part 8 relating to controlled areas, is being or is likely to be committed (i.e. the transportation, possession, consumption and/or supply of alcohol controlled area), the inspector or officer may, without a warrant, seize any opened or unopened container that the inspector or officer believes on reasonable grounds contains liquor. After seizing the container, the inspector or police officer must take reasonable steps to determine if the container contains liquor.

This power is to protect the community from alcohol-related harm. The officer must take reasonable steps to determine the contents of the container. The power to seize containers, take reasonable steps to determine the contents of the container and empty the contents (or return the container) is considered proportionate to the policy objective of removing alcohol in controlled areas and minimising alcohol related harm.

The Bill provides inspector or police officer powers of entry to premises or search of persons or premises in controlled areas. These search powers are fettered by the requirement for the inspector or police officer to have a reasonable suspicion that a contravention of the Act has occurred (or is occurring).

These powers allow for the effective detection and enforcement of prohibited alcohol supply and use, and in turn, reduce alcohol related harm. This clause is in the interests of public order, the protection of public health or the protection of the rights and freedoms of others.

Notably, Article 12(3) of the ICCPR provides that freedom of movement may be curtailed where it is necessary for the purposes of maintaining '...public order [or] public health....and are consistent with.....other rights...'

The powers in the Bill are specific to instances where a police officer or inspector observes that a purchase is or is about to occur or has just occurred, or that conduct constituting a contravention of a provision of the Act is or has occurred. The purpose for stopping and searching is to enable the inspector or officer to fulfil functions as prescribed in the Act where there is a reasonable suspicion of a contravention. The powers are provided in the interests of public order, the protection of public health, and the protection of the rights and freedoms of others.

As such, the purpose is one necessary to maintain public order and public health by controlling the supply of liquor to persons and places that are prohibited. The fettered powers are afforded to allow for the effective detection and enforcement of prohibited alcohol supply and use, and in turn, reduce alcohol related harm. These go to the central tenets of the Bill.

Elements of the Bill may also interfere with the free movement of persons, as a licensee and employee of the licensee are required to exclude and remove a person from licensed premises who is into intoxicated, violent, quarrelsome, disorderly or incapable of controlling the person's behaviour. The purpose of this clause is to protect the public, the person as well as the licensee and the licensee's employees.

As such, the purpose of the clause is one necessary to maintain public order and public health by controlling the possession, sale and consumption of liquor to persons to protect the public, the person and licensee and licensee's employees.

'Freedom from arbitrary or unlawful interference with privacy...': Article 17 ICCPR

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. While the UN Human Rights Committee (the Committee) has not defined 'privacy' it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The Committee states that searches of a person's home should be restricted to those necessary to gather evidence and should not amount to harassment. Searches of a person should be carried out in manner consistent with the dignity of the person.

Interests of public order, the protection of public health or the protection of the rights and freedoms of others, can be legitimate objectives in appropriate circumstances in respect of the prohibition on interference with privacy. In any event, limitations on privacy must be authorised by law and must not be arbitrary. The term unlawful means that no interference can take place except as authorised under domestic law. The law should be precise, and not give decision-makers too much discretion in authorising interferences with privacy.

Elements of the Bill that may interfere with this freedom, but in a limited way that is clear and not arbitrary.

The Bill provides that an identification system may be established for the purpose of facilitating licensees to determine whether a person is prohibited (by virtue of this or another Act) from purchasing or consuming alcohol.

The proof of identification required by the licensee for a sale of liquor subject to the identification system is required to ensure the licensee does not provide liquor to a prohibited person. The information is necessary to safeguard the integrity and effective operation and enforcement of other existing legislative frameworks to limit or prohibit liquor supply and use, and to reduce alcohol-related harm. The law is precise and clear in its purpose. The identification system facilitates public order, the protection of public health or the protection of the rights and freedoms of others.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

For the purpose of Article 1 of the ICERD, 'racial discrimination' means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

This does not include special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals may equally enjoy or exercise human rights and fundamental freedoms, so long as such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The Bill ensures the continuation of a scheme which creates substantial liquor restrictions, and provides more intrusive powers to enforce those liquor restrictions.

The restricted or controlled areas targeted by the scheme are primarily Aboriginal communities and public spaces, which will have the effect of impairing the enjoyment and exercise of the rights and freedom of Aboriginal persons to privacy and freedom of movement to a greater degree than non-Aboriginal persons. However, these measures are taken for the sole purpose of securing adequate advancement of those same persons, who are disproportionately affected by alcohol-related harm.

International Convention on Economic, Social and Cultural Rights (ICESCR)

The Bill positively engages a number of rights in the ICESCR in that the Bill provides a scheme that is for the purpose of reducing alcohol-related harm, which in turn improves outcomes for people whose health, safety, and educational outcomes are detrimentally affected by high levels of alcohol consumption.

Relevantly, Article 10(3) of the ICESCR provides that special measures of protection and assistance should be taken on behalf of children and young persons. Article 11 of

the ICESCR provides that everyone has the right to an adequate standard of living 'for himself and his family', including adequate food, clothing and housing. Article 12 of the ICESCR provides that everyone has the right to enjoyment of the highest attainable standard of physical and mental health. Article 13 recognises the right of everyone to education.

In relation to the provisions which enable the seizure and forfeiture of vehicles, these rights are both benefited and limited. The rights are limited because the removal of vehicles, particularly in remote areas where other transport options are limited, can cause difficulties to persons in exercising these rights. However, seizure and forfeiture benefit the exercise of these rights by deterring and preventing alcohol-related harm that impacts on these rights.

In order to manage these competing impacts, the Bill limits the period of time for which a vehicle can be seized, and then requires a court to consider whether forfeiture is appropriate in all the circumstances, taking into account a range of factors that encompass consideration of both positive and negative impacts.

CONCLUSION

The provisions in this Bill have been drafted carefully to ensure that they are reasonable, proportionate and necessary to achieve the policy objective of the Bill. This Bill is compatible with human rights as it promotes a reduction in alcohol related harm and, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate to achieve the overall purpose of harm minimisation.