

14 June 2019

Dr Jennifer Buckley  
Committee Secretary  
Economic Policy Scrutiny Committee  
GPO Box 3721  
DARWIN NT 0801

Email: [EPSC@nt.gov.au](mailto:EPSC@nt.gov.au)

Dear Committee Secretary,

### **SUBMISSION RE. LIQUOR BILL 2019**

Retail Drinks Australia (**Retail Drinks**) is pleased to provide the Northern Territory (**NT**) Economic Policy Scrutiny Committee (**the Committee**) with its submission on the *Liquor Bill 2019* (**the Bill**).

### **ABOUT RETAIL DRINKS**

Retail Drinks is an industry body representing all off-premise packaged liquor retailers in Australia with the clear vision and purpose of enhancing its members' freedom to retail responsibly through positive and proactive advocacy. Retail Drinks' members have a long history of collaborative and cooperative relationships with government, consulting on and progressing initiatives to increase leadership in the responsible sale of alcohol.

### **EXECUTIVE SUMMARY & RECOMMENDATIONS**

Whilst Retail Drinks welcomes many of the changes from the Exposure Draft of the Bill, there are still several key concerns in the Final Bill. Retail Drinks particularly wishes to use this submission to draw the Committee's attention to several serious issues with the Final Bill, including the harm minimisation audits framework (*Sections 146 - 148*), the requirement for licensees to provide quarterly alcohol sales and purchases data (*Section 105*), the Bill's provision allowing for all requestees to receive copies of an applicant's community impact and public interest statement (*Section 53(6)*) and the ability for objections to be lodged to the Commission on commercial grounds.

Retail Drinks recommends to the Committee that the following amendments be considered:

- 1) All sections in the Bill related to harm minimisation audits be removed. Should these sections be retained, Section 148(1)(b) of the Act allowing for licensees to receive infringement notices as a result of a harm minimisation audit should be removed. In lieu of these sections should be a separate guideline developed in collaboration between industry, government and community, on reducing alcohol-related harm (which does not trigger infringement notices); and
- 2) The Bill's requirement for licensees to provide quarterly alcohol sales data to the Director of Licensing be removed through the deletion of '*and sales*' from Section 105. Alternatively, the Bill should include a

specific clause identifying that this requirement is only applicable to certain licence categories such as wholesalers.

- 3) That the scope of Section 53(6) of the Bill stating that '*any person*' requesting a copy of an applicant's community impact and public interest statement will have one provided by the Director of Licensing be narrowed to only include appropriate parties (for example, parties that have the ability to lodge an objection under Section 57(4)).
- 4) The Bill be amended to explicitly prevent parties from lodging objections to liquor licence applications on commercial grounds in line with Liquor Acts in other states and territories.

In addition to these recommendations, Retail Drinks made a number of other recommendations in its original [submission](#) to the Exposure Draft which were not addressed in the final Bill. Retail Drinks refers the Committee to the Appendix Section to read the full wording of these recommendations and whether they were addressed.

#### **RECOMMENDATION 1: REMOVAL OF HARM MINIMISATION FRAMEWORK**

Retail Drinks stresses its strong support of the Bill's overarching objective in minimising alcohol-related harm, however believes this can be achieved without imposing unreasonable administrative and compliance burdens on licensees.

Retail Drinks refers specifically to the harm minimisation framework in Part 6, Division 4 of the Bill which does not appear to have been changed at all from the Exposure Draft. Retail Drinks reiterates its position from its original submission that the sections relating to the harm minimisation framework be removed entirely from the Bill.

Rather than including this framework in the Bill, the NT Government should develop a separate, industry-developed guideline on reducing alcohol-related harm which does not trigger any infringement notices or breach consequences.

In making this recommendation, Retail Drinks highlights the following points:

- a) **Creation of an entirely new set of obligations - ultra vires concern:** The harm minimisation framework appears to impose an unfair regulatory burden on licensees far over and above the Act itself whilst simplistically seeking to impose a range of new obligations on licensees with no other underlying provisions. It is essentially an audit not of legal compliance with the Bill, but an audit of a range of new obligations that are not otherwise articulated in the Bill. Retail Drinks argues that it is unreasonable to impose obligations on licensees for alcohol-related harm reduction as they have no control over an individual's behaviour once alcohol products have been removed from their licensed premises.
- b) **Lack of specificity on the nature of harm minimisation audits:** Retail Drinks is also concerned that the Bill does not provide enough specific information as to what the criteria of a harm minimisation audit is nor how it is measured. The Bill also does not include any specific detail as to what constitutes a 'failed' audit. The criteria which is provided under Section 146(1) of the Bill relating to the scope of the audits is exceptionally broad. For instance, Section 146(1)(e) states that a harm minimisation audit measures the extent to which "*employees properly perform their duties*". It is unclear how this relates to harm. Retail

Drinks argues that this provision should read “ensure employees ***involved in the sale and supply of alcohol*** properly perform their duties ***in relation to matters under the Act.***” The lack of specific detail and information provided in these sections of the Bill creates an environment of uncertainty, frustration and confusion for licensees.

- c) ***Ability to issue infringement notices:*** In light of the points raised in Sections 1(a) and 1(b), Retail Drinks strongly objects to the propensity for licensees to be issued with infringement notices as a result of a harm minimisation audit. Retail Drinks argues that licensees should only receive an infringement notice if they are in direct breach of the legislation rather than as a result of a generalised and unspecific harm minimisation audit. The potential for licensees to receive infringement notices from a harm minimisation audit is particularly concerning given the direct financial impact on licensees in that it contributes to the amount paid for liquor licence renewals under the NT Government's risk-based licensing framework. Retail Drinks argues that the ability for licensees to receive infringement notices on the basis of a ‘failed’ audit should be removed, as a minimum, if the sections relating to harm minimisation audits are retained.

**RECOMMENDATION 1: All sections in the Bill related to harm minimisation audits be removed. Should these sections be retained, Section 148(1)(b) of the Act allowing for infringement notices to be issued to licensees as a result of a harm minimisation audit should be removed. In lieu of these sections should be a separate guideline developed in collaboration between industry, government and community on reducing alcohol-related harm (which does not trigger infringement notices).**

## **RECOMMENDATION 2: REMOVAL OF ALCOHOL SALES DATA REPORTING REQUIREMENTS FOR LICENSEES**

Retail Drinks argues that the Bill's new requirement for licensees to provide the Director of Licensing with quarterly alcohol sales data is an unreasonable administrative and financial burden for retailers.

Retail Drinks specifically objects to the inclusion of this requirement on the basis that repeated assurances were received during the consultation process with Licensing and ARIT, that store-level sales data would not be captured under the data collection regulations.

The need to capture licensees as part of alcohol sales data reporting requirements was also not included as part of the recommendations in the Riley Review, on which the provisions in the Bill are largely based.

Retail Drinks recommends to the Committee that alcohol sales data reporting requirements for licensees be removed from the Bill through the deletion of ‘*and sales*’ from Section 105, highlighting the following points:

- a) The Director of Licensing already receives quarterly alcohol sales data from registered wholesalers in the NT as outlined in Section 37 of the Bill. Much of the data provided by licensees in their returns would include information that is already captured by the wholesalers’ returns. Retail Drinks therefore argues that Licensing already has sufficient access to alcohol sales data from wholesalers (both NT and interstate) and that it is not necessary to extend this requirement to licensees.
- b) The requirement is especially problematic from a retail perspective due to the inconsistency of various Point of Sales (PoS) systems. The requirement also imposes a financial burden on individual retailers who would need to upgrade their internal systems should they be required to complete standardised

quarterly reports similar to wholesaler reporting. This financial burden would have a significant impact on retailers, particularly given that they are already absorbing substantial increases in the cost of their licence fees under the NT Government’s risk-based licensing framework.

In addition, Retail Drinks notes that no Australian State or Territory requires the reporting of alcohol sales and purchases data from both wholesaler and retailers. An overview of the relevant reporting requirements in other Australian states and territories can be found in Figure 1 below.

**Figure 1: Overview of State and Territory Regulation Regarding Alcohol Sales Data Requirements**

	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Alcohol sales data reporting requirements?	NO <sup>1</sup>	YES	YES	NO <sup>2</sup>	YES	YES	YES	YES
Who is required to report alcohol sales data?	N/A	Wholesalers & producers report on alcohol sales to licensed premises by alcohol type, volume and dollar value.	Wholesalers, producers & merchants report on alcohol sales to licensed premises by alcohol type and volume.	N/A	Wholesalers and producers report on alcohol sales to licensed premises by alcohol volume and dollar value.	Producers, wholesalers, distributors and online sellers. Does not include retail sales.	Wholesalers report on alcohol sales to licensed premises by alcohol type and volume.	Wholesalers
Frequency	N/A	Annually	Annually	N/A	Annually	Annually	Annually	Quarterly

<sup>1</sup>Whilst not a state-wide regulation, some licensed premises in the King Cross prescribed precinct are required to provide quarterly alcohol sales data requirements to Liquor & Gaming NSW.

<sup>2</sup>The Anderson Review in South Australia has recommended that wholesale alcohol data be collected. The SA Government has accepted this recommendation and will be implementing this requirement pending costing and feasibility studies.

Retail Drinks notes that in New South Wales, quarterly alcohol sales data requirements in the Kings Cross precinct were significantly scaled back as a result of a review by Liquor & Gaming NSW in June 2018. This Review recommended that the NSW Government ‘consider discontinuing the requirement for Kings Cross venues to provide alcohol sales data to L&GNSW’.<sup>1</sup> One of the key findings on which this recommendation was based was that the quarterly alcohol sales data requirement placed ‘a significant cost and administrative burden upon both venues and L&GNSW’.<sup>2</sup>

Given the lack of interjurisdictional precedent and the reasons outlined in 2(a) and (b), Retail Drinks argues the requirement for licensees to provide quarterly alcohol sales data should be removed by deleting ‘and sales’ from Section 105 of the Bill. Retail Drinks would also welcome the inclusion of a specific clause within the Bill identifying that this requirement is only applicable to wholesalers and not other licence types to provide clarity to licensees.

**RECOMMENDATION 2: The Bill’s requirement for licensees to provide quarterly alcohol sales data to the Director of Licensing should be removed through the deletion of ‘and sales’ from Section 105. Alternatively, the**

<sup>1</sup> Liquor & Gaming NSW (2018) [Evaluation of the Kings Cross alcohol sales data requirement](#), p.6.

<sup>2</sup> Ibid.

**Bill should include a specific clause identifying that this requirement is only applicable to certain licence categories such as wholesalers.**

**RECOMMENDATION 3: Provision of Community Impact and Public Interest Statements to all requestees**

Retail Drinks recommends that a specific amendment be made to Section 53(6) of the Bill which states that '*any person*' requesting a copy of an applicant's community impact and public interest statement will be provided with one by the Director of Licensing.

While it is appropriate for certain parties (for example, objectors) to be able to access this information, the current subclause has been drafted too broadly in that it will expose an applicant's commercially sensitive information to a competitor or any other person despite their position in relation to the application (if they request it).

Retail Drinks submits that the clause be amended to narrow its scope to appropriate parties (for example, parties that have the ability to lodge an objection under Section 57(4) of the Bill).

**RECOMMENDATION 3: That the scope of Section 53(6) of the Bill stating that '*any person*' requesting a copy of an applicant's community impact and public interest statement will be provided with one by the Director of Licensing be narrowed to only include appropriate parties (for example, parties that have the ability to lodge an objection under Section 57(4)).**

**RECOMMENDATION 4: Propensity for Objections to Licence Applications on Commercial Grounds**

Finally, Retail Drinks recommends that the Bill be amended to explicitly ensure that objections to a liquor licence on commercial grounds are prevented.

Whilst it is possible for the Commission to respond to a commercial objector by disallowing the objection or attributing little or no weight to it, Retail Drinks is concerned that this may represent a potentially significant amount of time, money and resources wasted on behalf of the applicant and the Commission (for no good reason).

Retail Drinks therefore would argue for the insertion of a specific clause similar to the *Liquor Control Reform Act 1998* in Victoria which explicitly prevents objections to licence applications on commercial grounds. Section 38(3)(b) in the Victorian Act states that:

- (3) *None of the following is a valid reason for an objection under this section—*
  - (b) *that the business of another licensee or permittee (including the objector) may be adversely affected by the grant, variation or relocation.*

Retail Drinks would recommend that a similar or identical clause is adopted in the NT Bill.

**RECOMMENDATION 4: The Bill be amended to explicitly prevent parties from lodging objections to liquor licence applications on commercial grounds in line with the Liquor Acts in other states and territories.**

Retail Drinks once again appreciates the opportunity to provide feedback to the Committee and would be pleased to provide any further assistance if needed throughout the Bill's scrutiny process.

Should there be any matters raised in this submission requiring further discussion or clarification, please contact Retail Drinks CEO Julie Ryan on 0450 302 378 or at [julie.ryan@retaildrinks.org.au](mailto:julie.ryan@retaildrinks.org.au).

Sincerely



**Julie Ryan**  
CEO, Retail Drinks Australia

Section of the Draft Bill	Text	Retail Drinks Comments	Final Bill Introduced to NT Parliament
<p><b>Section 18: Codes of Practice</b></p>	<p><b>18 Codes of practice</b>            (1) The Commission may establish codes of practice to regulate the following matters:            (a) the advertising and promotion of liquor by licensees;            (b) the conduct of business under a licence or an authority;            (c) the operation of licensed premises;            (d) the management of customers, purchasers and patrons by licensees, including the management of their safety;            (e) the establishment of ethical standards and practices for licensees.            (2) The Minister must, by <i>Gazette</i> notice, publish any code of practice established by the Commission.            (3) It is a condition of a licence that the licensee comply with the provisions of any code of practice established by the Commission and published in the <i>Gazette</i>.</p>	<ul style="list-style-type: none"> <li>• Retail Drinks contends that any Codes of Practice established by the Commission should be developed in consultation with major industry stakeholders.</li> <li>• In Retail Drinks' view, the scope of any future Code of Practice in the NT should not extend to the advertising and promotion of liquor by licensees as per Section 18(1)(a), given the subjective nature of the topic and should instead be the subject of industry consulted "guidelines" (with participation by nationally recognized authority on the topic, ABAC).</li> <li>• Retail Drinks is currently in the process of developing a voluntary, industry-wide Code of Conduct governing the online sale and delivery of alcohol. This Code is being developed in close consultation and collaboration with major industry stakeholders in the online alcohol delivery space. The intention of this Code is to provide a robust, best-practice and fit for purpose framework to cover all aspects of sale and delivery of alcohol purchased online. In Retail Drinks' view, it may be appropriate for the NT Government to consider application of this Code to interstate retailers registrations.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• <b>Remove (a) the advertising and promotion of liquor by licensees;</b></li> <li>• <b>The NT Government consider the appropriateness of the use of the Retail Drinks Online Sale and Delivery Code of Conduct</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Section 18(1)(a) in relation to establishing a Code of Conduct regulating the advertising and promotion of liquor by licensees has been retained (<i>see Division 4, Section 20(1) of the Final Act</i>).</li> <li>• <b>CHANGE</b> – Final Act now inserts "<i>The Commission must publish any code of practice it establishes in the way the Commission considers appropriate</i>".</li> <li>• Requirements for the Minister to publish any code of practice established by the Commission by <i>Gazette</i> notice has been removed in the Final Act.</li> </ul>



		<ul style="list-style-type: none"> <li>• <b>All future Codes and Guidelines be established in consultation with industry</b></li> </ul>	
<p><b>Section 34(1)(b): Sale, supply and service of liquor – requirement for licence</b></p>	<p>(1) Subject to section 35, a licence is required for the following:</p> <ul style="list-style-type: none"> <li>(a) to sell liquor in the Territory;</li> <li>(b) to sell liquor from a place outside the Territory for delivery to a person or place in the Territory;</li> <li>(c) to supply or serve liquor on or in premises in the Territory used or occupied for a commercial or business purpose.</li> </ul>	<ul style="list-style-type: none"> <li>• The language used in Section 34(1)(b) in regards to requiring a licence to sell liquor “<i>from a place outside the Territory for delivery to a person or place in the Territory</i>” is inconsistent with Section 36 which states that an interstate retailer licence is not a licence application per se.</li> <li>• It would be better to clarify that a licensee authorized or licensed in another jurisdiction to sell liquor from a place outside the Territory for delivery to a person or place in the Territory are required to <u>register</u> with NT Government and in order to <u>deliver</u> into the Territory must ensure that goods supplied comply with MUP (which we understand to be the main driver for the provision).</li> <li>• Also query whether attempting to regulate this is constitutionally permissible, as it is referring to sales occurring in other Australian states and territories. The trade or commerce element of this transaction occurs outside of the Territory and it is the act of delivery that is trade or commerce in the Territory.</li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>• <b>34(1)(b) should be deleted – the draft Bill already contemplates that this is not a “licence”. Consider application of Code of Practice for Online Sale and Delivery or regulation of delivery itself.</b></li> <li>• <b>Section 36 deals with the registration requirement and accordingly this is not needed in 34.</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Division 2, Clause 38(1)(b)</i>).</li> </ul>



<p><b>Section 35(2)(c):</b></p>	<p>(2) No licence is required for the sale, supply or service of the following substances in the following circumstances:</p> <p>...</p> <p>(c) a bottle of wine sold as part of a gift basket of flowers or food and delivered to a person other than the purchaser;</p>	<ul style="list-style-type: none"> <li>Provisions in Section 35(2)(c) related to gift baskets containing wine bottles places an unreasonable compliance burden and expectation on retailers to ensure that these gift baskets are only delivered to a recipient other than the purchaser. There are significant practical difficulties on behalf of the retailer in ensuring that a gift basket containing wine is sent to a person other than the purchaser. Argument that an individual should not be precluded from purchasing a gift basket containing wine for oneself if they wish to.</li> <li>Retail Drinks argues that all businesses selling a bottle of wine as a component of a gift basket or gift hamper should be exempt from needing a licence regardless of who it is purchased for.</li> </ul> <p><b>Recommendation: Delete “delivered to a person other than the purchaser”.</b></p>	<ul style="list-style-type: none"> <li><b>CHANGE</b> – Retail Drinks’ recommendation accepted.</li> <li>Clause 39(2)(d) of Final Act now reads “<i>one liquor product sold as part of a gift basket of flowers or food</i>”.</li> </ul>
<p><b>Section 35(4)</b></p>	<p>(4) No licence is required for the service to a customer of not more than 2 standard drinks in a day by a business, other than a licensee, prescribed by regulation.</p> <p><i>Example for subsection (4) Serving a glass of wine to a customer at a hair salon.</i></p>	<ul style="list-style-type: none"> <li>Retail Drinks believes that the ‘<i>prescribed by regulation</i>’ wording used in Section 35(4) should be amended. If it is the intention of the NT Government that only those businesses prescribed by the legislation can serve no more than 2 standard drinks without a licence, then the drafting of this Section should be corrected to that effect and include a prescriptive list of those businesses – this is consistent with the manner in which these exemptions are dealt with in other states.</li> </ul> <p><b>Recommendation: Including within the Act the specific businesses intended to be captured by the exemption.</b></p>	<ul style="list-style-type: none"> <li><b>CHANGE</b> – Retail Drinks’ recommendation accepted.</li> <li>Previous wording ‘<i>prescribed by regulation</i>’ contained in 35(4) of Final Draft now deleted from Final Act.</li> <li>Clause 39(2)(c) of Final Act now reads “<i>not more than 2 standard drinks in a day to a customer by a business other than a licensee</i>”.</li> </ul>

<p><b>Section 36(1), (5): Interstate retailer's licence</b></p>	<p>(1) An interstate retailer's licence is required to sell liquor from a place outside the Territory for delivery to a person or location in the Territory.</p> <p>(5) The procedure in this section is not an application for a licence and no application fee or annual fee is payable for an interstate retailer's licence.</p>	<ul style="list-style-type: none"> <li>Consistent with the comments provided in response to Section 34(1)(b), question of whether it is beyond the jurisdiction of the NT Government to mandate interstate licensees obtain an interstate retailer's licence. By virtue of operating in another state or territory, this would logically mean that the licensee is required to comply with the laws of that jurisdiction as opposed to the NT.</li> <li>The relevant trade or commerce element is outside of the Territory. Retail Drinks would recommend the removal or at least amendment of this Section to reflect these legal considerations.</li> <li>If the provisions are to remain, it is noted that the process of obtaining an interstate retailers licence does not actually constitute a licence application per se. Given that the process only involves a business submitting their relevant trading details and information, usage of the term 'interstate retailers licence' is inappropriate. Retail Drinks would recommend that the NT Government replace this with a more appropriate and less confusing term such as 'registration' or 'certificate'.</li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li><b>Concept of interstate retailers licence be deleted, or at least amended to be no more than a registration.</b></li> <li><b>Alternatives include considering application of Code of Practice for Online Sale and Delivery or regulation of delivery itself.</b></li> </ul>	<ul style="list-style-type: none"> <li><b>NO CHANGE</b> – Concept of interstate retailer's licence retained in Final Act (<i>see Division 2, Section 40</i>).</li> <li><b>CHANGE</b> – Section 36(7)(b) from Exposure Draft <i>'is unaffected by a variation, suspension or cancellation of the State or other Territory authorization referred to in paragraph (a)'</i> deleted from Final Act.</li> <li><b>CHANGE</b> – Insertion of <i>Section 103: Change of interstate retailer's licensee's status</i> into Final Act, reads as follows: <ul style="list-style-type: none"> <li><i>(1) An interstate retailer licensee must give the Director written notice of any variation, expiry, suspension or cancellation of the licensee's State or other Territory authorisation referred to in section 40(8)(a).</i></li> <li><i>(2) The notice must be given within 14 days of the change.</i></li> </ul> </li> </ul>
<p><b>Section 39(1)(e, r): Authorities</b></p>	<p>(1) The following authorities for licences are established:</p>	<ul style="list-style-type: none"> <li>Retail Drinks considers it appropriate to merge 'takeaway' and 'grocery store' authorities as specified in this Section</li> </ul>	<p><b>NO CHANGE</b> – Final Bill still contains separate authorities for 'takeaway' and 'grocery store'. (<i>See Division 2, Section 43</i>).</p>

<p><b>attached to licence</b></p>	<p>(e) takeaway authority, which authorises the licensee to sell liquor products to customers for consumption away from the licensed premises;</p> <p>(r) grocery store authority, which authorises the licensee to sell liquor products to customers for consumption away from the licensed premises, which are part of or attached to the licensee's primary business of selling groceries or other non-liquor products;</p>	<p>so that all licensed grocery stores and takeaway business are encompassed under the same authority.</p> <ul style="list-style-type: none"> <li>• If the NT Government proceeds with a separate authority for licensed stores, Retail Drinks would seek further clarity as to what this authority would include and how it would be differentiated from the takeaway authority.</li> <li>• NT Government could still obtain its desired objective of designating that no additional takeaway licences will be provided to any grocery store with a takeaway licence, without having to separate out grocery/store as a separate authority. The Bill does not include separate provisions relating to grocery stores apart from the moratorium on the grant of new licences, and the separation of grocery from other takeaway is inequitable.</li> <li>• Argument from Retail Drinks that all takeaway licences should be treated identically. No reason that a grocery store should have different restrictions compared to takeaway e.g. standard operating hours and advertising restrictions etc.</li> </ul> <p><b>Recommendation: Merge takeaway and grocery store licence into one licence for takeaway</b></p>	<p>Wording is identical however Final Act adds the following additional notes to this Section:</p> <p><i>1 Section 80 limits the issuance of new grocery store authorities.</i> <i>2 Section 80 limits the issuance of new takeaway authorities until at least after 31 August 2023.</i></p>
<p><b>Section 41(2)(a) plus 41(3) Public interest and community impact</b></p>	<p>(2) To determine whether issuing a licence or an authority is in the public interest, the Commission must consider how it would advance the following objectives:</p> <p>(a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;</p>	<ul style="list-style-type: none"> <li>• Retail Drinks notes the provisions which have been included in the Draft Bill as per Section 41 regarding the consideration of public interest and community impact as part of issuing liquor licences. Retail Drinks notes that the considerations included as part of Section 41(3) are reasonably broad ranging in their scope, for instance, 41(3)(d) <i>'the people or community who would be affected'</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Final Bill still contains wording <i>'minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor'</i> (see Division 3, Section 45(2)(a))</li> <li>• <b>CHANGE</b> – Section 45(3)(a) of the Final Bill replaces <i>"in the neighbourhood of the</i></li> </ul>

	<p>(3) To determine whether issuing a licence or an authority would have a significant adverse impact of the community, the Commission must consider the following:</p> <ul style="list-style-type: none"> <li>(a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;</li> <li>(b) the geographic area that would be affected;</li> <li>(c) the risk of harm from the excessive or inappropriate consumption of liquor;</li> <li>(d) the people or community who would be affected;</li> <li>(e) the effect on culture, recreation, employment and tourism;</li> <li>(f) the effect on social amenities and public health;</li> <li>(g) the ratio of existing liquor licences and authorities in the community to the population of the community; and</li> <li>(h) the effect of the volume of liquor sales on the community;</li> <li>(i) the community impact assessment guidelines;</li> <li>(j) any other matter prescribed by regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• Retail Drinks is concerned by the language used in Section 41(2)(a) “<i>minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor</i>”. Wording suggests that all consumption of liquor, regardless of the quantity or frequency involved, is associated with harm or ill-health. In this way, the wording would suggest that low and moderate level liquor consumption is a contributor towards harm or ill-health. This is inconsistent with the language used on 41(3)(c).</li> <li>• Such a statement is misleading in Retail Drinks’ view and would therefore recommend that the NT Government re-word this Section so that it reads “...minimising <u>the risk</u> of harm or ill-health caused to people, or a group of people, by the <u>excessive or inappropriate</u> consumption of liquor.” In addition to more accurately reflecting the nature of harmful alcohol consumption, this amended wording would ensure consistency with Section 41(3)(c) of the Bill which includes these terms.</li> <li>• Retail Drinks notes that under Section 41(3)(g) the Commission is required to consider the “<i>the ratio of existing liquor licences and authorities in the community to the population of the community</i>”. Retail Drinks would seek further detail from the NT Government as to the exact nature of this ratio and how it will be factored into the Commission’s consideration. For instance, Retail Drinks would seek clarification as to how this ratio would apply, including how it is calculated and which geographic areas it would apply to.</li> </ul> <p><b>Recommendation:</b></p>	<p><i>proposed licensed premises” with “<u>in the vicinity of the proposed licensed premises</u>”.</i></p>
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		<ul style="list-style-type: none"> <li>• <b>Amend the language in 41(2)(a) to refer to risk from excessive or inappropriate consumption, consistent with the language in 41(3)(c):</b> "...minimising <u>the risk</u> of harm or ill-health caused to people, or a group of people, by the <u>excessive or inappropriate</u> consumption of liquor."</li> <li>• <b>Engage with industry to provide further clarity on 41(3)(g) and how the ratio will be applied.</b></li> </ul>	
<p><b>Section 46(1)(a): Disclosure of persons of influence and potential beneficiaries</b></p>	<p>(1) An applicant for a licence or an authority must make an affidavit disclosing each person who, if the licence is issued, may:</p> <ul style="list-style-type: none"> <li>(a) be able to influence the applicant; or</li> <li>(b) expect a direct or indirect benefit from the applicant.</li> </ul>	<ul style="list-style-type: none"> <li>• Concern regarding the language used in Section 46(1)(a) referring to persons who "<i>may be able to influence the applicant</i>" or "<i>expect a direct or indirect benefit</i>". Language used in both instances is too broad-ranging in scope and does not sufficiently explain the desired meaning.</li> <li>• Section 41(2) of the <i>Liquor Act 2007</i> in NSW refers to a person holding an interest in the business of a licensed premise if they are entitled to receive: <ul style="list-style-type: none"> <li>(a) <i>any income derived from the business, or any other financial benefit or financial advantage from the carrying on of the business (whether the entitlement arises at law or in equity or otherwise), or</i></li> <li>(b) <i>any rent, profit or other income in connection with the use or occupation of the premises on which the business is to be carried on.</i></li> </ul> </li> <li>• Both the <i>Liquor Act 1992</i> in Queensland and <i>Liquor Licensing Act 1997</i> in South Australia refer to a "<i>direct or indirect pecuniary benefit</i>" rather than "<i>indirect benefit</i>" as is the case with the Draft Bill.</li> <li>• Retail Drinks therefore recommends that the language in Section 46(1)(a) be amendment to include more specificity around what constitutes a "person of influence" and</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Division 3, Clause 50</i>).</li> </ul>

		<p>“indirect benefit”. The liquor legislation in other Australian jurisdictions could be used as a basis for this.</p> <p><b>Recommendation:</b> <b>46(1)(a) needs amendment to include more specificity as to what influence and what benefits, are intended to be captured. Other Australian jurisdictions provide significant guidance on the purpose of the influence test (often referred to as a person in a position of authority) and the necessity of financial or pecuniary elements to the “benefit” test.</b></p>	
<p><b>Section 47(1): Associates of a person</b></p>	<p>(1) For the purpose of determining an application for a licence or an authority, the following are taken to be associates of a person:</p> <ul style="list-style-type: none"> <li>(a) the person's spouse or de facto partner;</li> <li>(b) a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person;</li> <li>(c) a business partner of the person;</li> <li>(d) a body corporate of which the person is an executive officer;</li> <li>(e) if the person is a body corporate: <ul style="list-style-type: none"> <li>(i) an executive officer of the body corporate; and</li> <li>(ii) a person who holds a controlling interest in the body corporate;</li> </ul> </li> <li>(f) a person who, within the 12 months before the application, provided advice to</li> </ul>	<ul style="list-style-type: none"> <li>• Unclear as to exactly how ‘<i>Associates of a person</i>’ impacts the determination of a licence application. The term is not referred to anywhere within the Draft Bill except for Section 47. As such, Retail Drinks is unable to provide feedback unless the relevance of Associates in determining licence applications is clarified.</li> <li>• List of Associates as they are currently defined in the Draft Bill is exceptionally long which Retail Drinks argues is unnecessary. <ul style="list-style-type: none"> <li>○ The definition of ‘associate’ person in Victoria’s <i>Liquor Control Reform Act 1998</i>, for example, is far more concise which Retail Drinks believes is more appropriate: As per the Victorian Liquor Control Reform Act 1998, as ‘associate’ person is defined as someone who: <ul style="list-style-type: none"> <li>(i) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in right of the person or on behalf of any other person) in any business of the first person involving the sale of liquor; and</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Division 3, Clause 51</i>).</li> </ul>

	<p>the person, for a fee or reward, in relation to the sale of liquor; (g) an employee or employer of the person; (h) an officer or employee of a body corporate of which the person is an officer or employee; (i) an employee of an individual who employs the person; (j) a body corporate that is accustomed or under an obligation to act in accordance with the directions, instructions or wishes of the person; (k) a body corporate on whose directions, instructions or wishes the person is accustomed or under an obligation to act; (l) a body corporate in which the person holds a controlling interest; (m) a person disclosed in an affidavit made by the person under section 46; (n) a person who is an associate of a person referred to in paragraphs (a) to (m).</p>	<p>(ii) by virtue of that interest or power, is able or will be able to exercise a significant influence over or with respect to the management or operation of that business; or (b) a person who is or will be a director, whether in right of the person or on behalf of any other person, of any business of the first person involving the sale of liquor; or (c) if the first person is a natural person, a person who is a relative of the first person, other than a relative (i) who is not, and has never been, involved in any business of the first person involving the sale of liquor; (ii) who will not be involved in the business the first person proposes to conduct as a licensee or permittee.</p> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>• <b>Clarity be provided on the intended scope and purpose of the “associate” test; or</b></li> <li>• <b>Section be deleted.</b></li> </ul>	
<p><b>Section 53: Objection to application</b></p>	<p>(1) Subject to this section, a person or body may object to the following applications: (a) an application to issue a licence or an authority; (b) an application to vary the conditions of a licence or an authority;</p>	<ul style="list-style-type: none"> <li>• Retail Drinks notes the significant risk of persons using these provisions for commercial gain, to object to the licence applications of competitor businesses. This can be addressed in a manner similar to other states (see below).</li> <li>• Retail Drinks notes that the Victorian <i>Liquor Control Reform Act 1998</i> specifies the conditions under which objections are <b>not</b> valid Section 38(3)</li> </ul>	<ul style="list-style-type: none"> <li>• <b>CHANGE</b> – Insertion of Section 57(2)(b) into the Final Bill adding that an objection may be raised on the basis that a licensee is “<i>not a fit and proper person</i>”. No definition of “<i>fit and proper person</i>” is provided at the outset of the Bill.</li> </ul>



	<p>(c) an application to substitute other premises for the licensed premises; (d) an application to make a material alteration to licensed premises.</p> <p>(2) An objection may only be made on the ground that issuing the licence or authority, varying the conditions, substituting other premises or making the material alteration would adversely affect:</p> <p>(a) the amenity of the neighbourhood of the licensed premises or proposed licensed premises; or (b) the health, education, public safety or social conditions in the community of the licensed premises or proposed licensed premises.</p>	<ul style="list-style-type: none"> <li>○ <i>None of the following is a valid reason for an objection under this section—</i> <ul style="list-style-type: none"> <li>(a) <i>that the business carried on under the licence would or would not be successful;</i></li> <li>(b) <i>that the business of another licensee or permittee (including the objector) may be adversely affected by the grant, variation or relocation;</i></li> <li>(c) <i>that there is insufficient need or demand to justify the grant, variation or relocation.</i></li> </ul> </li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>● <b>Retail Drinks strongly recommends that the NT Government add provisions to the Draft Bill which clarify the circumstances under which an objection is not valid to ensure that no objections based on commercial reasons are lodged.</b></li> <li>● <b>In doing so, the NT Government provisions could use the provisions included in the Victorian legislation as a point of reference.</b></li> </ul>	<ul style="list-style-type: none"> <li>● <b>CHANGE</b> – Insertion of Section 57(4)(d) into the Final Bill adding to the list of persons able to make an objection “<i>the Member of the Legislative Assembly for the electoral division in which the licensed premises or proposed licensed premises are located</i>”.</li> <li>● <b>CHANGE</b> – Insertion Section 57(7)(a,b,c) into the Final Bill. Wording now reads: <ul style="list-style-type: none"> <li>(7) <i>Except for a body that makes an objection under this section, the Director and Commission must proceed as if each of the following bodies has no objection to the application:</i> <ul style="list-style-type: none"> <li>(a) <i>the Agency administering the Public and Environmental Health Act 2011;</i></li> <li>(b) <i>the Police Force;</i></li> <li>(c) <i>the local council of the local government area in which the licensed premises or proposed licensed premises are located.</i></li> </ul> </li> </ul> </li> <li>● <b>CHANGE</b> – Retail Drinks’ recommendation accepted. Insertion Section 59(b) preventing objections to a licence application on ‘<i>a ground that is responding to new information arising during the determination, inquiry, review or hearing</i>’.</li> </ul>
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<p><b>Section 59(1): Abandonment of licence</b></p>	<p>(1) A licensee is taken to have abandoned the licence if the licensee ceases to operate the licensed premises for more than 6 months without the prior approval of the Director.</p>	<ul style="list-style-type: none"> <li>Proposed timeframe of 6 months is insufficient, particularly if a licensee is forced to close due to previously unforeseen circumstances. Therefore, Retail Drinks argues that this period should be expanded to at least 12 months to enable further flexibility for licensees in the operation of their businesses. Significant financial cost incurred by licensee if they are required to re-apply for the abandoned licence.</li> <li>Regardless of the ultimate timeframe decided upon, the NT Government should include a provision allowing for a discretionary extension period to be granted to a licensee if there are circumstances outside of the licensee's control preventing them from operating their business. Retail Drinks argues that licensees should not be subject to penalties on the basis that they are unable to operate their business for a set time period because of unforeseen circumstances beyond their control.</li> <li>Retail Drinks would propose as an alternative option that if a licensee has already paid their annual licence fee, then the opportunity to consider a licence as 'abandoned' would be at the time of licence renewal. If a licensee fails to renew their licence within the specified renewal period, then it is considered abandoned.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li><b>Increase timeframe from 6 months to 12 months</b></li> <li><b>Include extension period, on application, if circumstances beyond their control impact the period of inactivity.</b></li> </ul>	<ul style="list-style-type: none"> <li><b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>see Division 5, Clause 63</i>).</li> </ul>
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<p><b>Section 63(1): Prescribing fees:</b></p>	<p>The regulations may prescribe fees for applications, licences and authorities based upon factors or criteria specified in the regulations, including the following:</p> <ul style="list-style-type: none"> <li>(a) the type of licence or authority;</li> <li>(b) the revenue earned or expected to be earned from the licence or authority;</li> <li>(c) the volume of liquor or the alcohol content of liquor sold, supplied or served;</li> <li>(d) the nature, size, class or patron capacity of the licensed premises;</li> <li>(e) the hours of operation under the licence or authority;</li> <li>(f) the duration of a licence;</li> <li>(g) the harm reduction measures taken by the licensee;</li> <li>(h) the licensee's compliance record;</li> <li>(i) the possible risks of harm to the community from the licence or authority;</li> <li>(j) any other factors or criteria prescribed by regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• With regard to section 63(1), Retail Drinks will reiterate the arguments made in response to the NT Government's draft RBL framework in January 2019. Retail Drinks will provide a separate submission on risk-based licensing framework.</li> <li>• Retail Drinks objects to the classification of the store and takeaway licence types as 'very high risk' therefore incurring the highest possible base fee of \$2,000 in the final risk-based licensing framework. Base fees attached to the risk classifications have remained the same between the draft and final RBL frameworks, with no explanation provided as to why a 'very high' business type is double the base fee of a 'high risk' business (\$2,000 as opposed to \$1,000) and 20 times higher than a licence type categorised as 'Very Low'.</li> <li>• Retail Drinks argues that there is no evidence provided from the NT Government as to how a licensed retail 'Store' or 'Takeaway' business contributes a greater risk of harm to the community than any other licence type as well as the fact that these categorisations are incongruous with community expectations (suggestion as per the Riley Review that base fees should be '<i>in line with community expectations</i>').</li> <li>• Retail Drinks' submission to the draft framework argued that a Breach should only apply to calculating licence fees for a maximum period of 12 months. The final framework specifies that a breach will be counted as part of the calculation for licence fees for 24 months (from the date of finding of guilt). Retail Drinks argues that this should be lowered to 12 months as per our original feedback.</li> <li>• Discounts for venues' licence fees still includes discounts which are not applicable to takeaway/grocery licences e.g.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act identical to Draft Exposure (<i>see Division 6, Clause 66</i>).</li> <li>• ARIT however are yet to release their response to Retail Drinks' submission on the risk-based licensing framework.</li> </ul>
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		<p>live original local music/entertainment, additional security measures by way of crowd controllers etc. Retail Drinks will argue that discounts should apply across all licence types equally, consistent with the argument put forward in the original submission responding to the draft framework. Further discounts not immediately applicable to grocery/takeaway licences have actually been added as part of the final framework (implementation of 'Good Sports' program).</p> <p><b>Recommendations: Refer to RBL submission.</b></p>	
<p><b>Section 63(2)(b): Prescribing fees:</b></p>	<p>(2) The fees may be: (a) expressed as a formula based on multiple factors and criteria in the regulations; and (b) increased annually by a cost of living index prescribed in the regulations.</p>	<ul style="list-style-type: none"> <li>• Strong objection to the inclusion of CPI indexation on liquor licensing fees. Recommend that Section 63(2)(b) be removed. This provision assumes that retailers will be able to offset the cost of CPI increases as part of their licence fees through increased sales and therefore profits. Retailers are usually unable to pass on CPI increases to customers so have to absorb the cost increases themselves.</li> <li>• Impact on indexation of liquor licensing fees if the Authority separately increases fees.</li> <li>• If CPI is included in the final version of the Bill, there should be an initial freeze to assist licensees with transition period, given the significant costs passed on to retailers as a result of the NT Government's alcohol-reforms, namely the implementation of annual liquor licence fees and risk-based licensing.</li> <li>• Further, if CPI is included then it should be done according to the Darwin consumer price index rather than applying it from 8-capital cities. The CPI index for Darwin was the</li> </ul>	<ul style="list-style-type: none"> <li>• <b>CHANGE</b> – Retail Drinks' recommendation of changing "increased" to "adjusted" in Section 63(2)(b) accepted.</li> <li>• Clause 66(2) of Final Act now reads: 2) The fees may be: (a) expressed as a formula based on multiple factors and criteria in the regulations; and <b>(b) adjusted</b> annually by a cost of living indexation method prescribed in the regulations.</li> </ul>

		<p>lowest amongst all Australian capital cities at 0.2 per cent in the December quarter 2018 compared to 0.5 per cent across all 8 capital cities.<sup>1</sup></p> <ul style="list-style-type: none"> <li>• Fee should reflect wider price changes in the economy, not just increases. It is possible for inflation rates to be positive, static or negative, therefore any adjustments made to fees should be a true and reliable reflection of these indicators.</li> <li>• Given the extreme difficulty involved in a licensee being able to change, sell, modify, or move their licence as per the provisions contained in other Sections of the Draft Bill, Retail Drinks argues that indexing licence fees according to CPI creates significant financial strain on a business and the individual licensee.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• <b>Remove 63(2)(b)</b></li> <li>• <b>If 63(2)(b) is not removed, it should be amended as follows:</b> <ul style="list-style-type: none"> <li>○ <b>Refer to fees being able to be “adjusted” rather than “increased” to account for the possibility of deflation; and</b></li> <li>○ <b>Specifically refer to CPI as the Darwin consumer price index rather than applying it from 8-capital cities</b></li> </ul> </li> </ul>	
<b>Section 66: Decision on transfer</b>	(1) On receipt of an application to transfer a licence, the Commission must consider: (a) the application; and	<ul style="list-style-type: none"> <li>• The wording of the Section 66(1) states the Commission “must” consider the public interest and community impact requirements. This suggests that there is a possibility that the transfer of a licence may be delayed/rejected on the basis of being treated as an entirely new application rather</li> </ul>	<ul style="list-style-type: none"> <li>• <b>CHANGE</b> – Retail Drinks’ recommendation of removing public interest and community impact requirements when transferring existing licences has been accepted in Final Act (see Division 7, Clauses 67, 68). Section</li> </ul>

<sup>1</sup> NT Government (2018) *Consumer price index, December quarter 2018*.

	<p>(b) the public interest and community impact requirements.</p> <p><b>NOTE:</b> Cross Reference: Retail Drinks notes that as per Section 44 of the draft Bill, a licence applicant must:</p> <p><i>(a) provide any information to assess the application required by the Commission, the Director and the community impact assessment guidelines; and</i></p> <p><i>(b) conduct any consultation on the application required by the Commission and the community impact assessment guidelines; and</i></p> <p><i>(c) comply with any other application requirement determined by the Commission.</i></p>	<p>than simply a substitution of the licensee and person of authority managing the licensee.</p> <ul style="list-style-type: none"> <li>• The concept of re-assessing the original application criteria (public interest and community impact requirements) is entirely inconsistent with the right of transfer when these tests have already been met. This is considered a back door method to remove licences and will be strong objected to by industry.</li> <li>• Clarification is sought as to whether additional documentation and information would be required from the person a licence is being transferred to. If public interest and community impact requirements have already been met as a result of the licence application, this would appear to be a duplicative requirement on behalf of the transferee.</li> <li>• For example in NSW, the transfer process for a liquor licence simply involves the completion of a form to be lodged with Liquor &amp; Gaming NSW and then a standard waiting time for this form to be processed.</li> <li>• The impact of the uncertainty of the ability to transfer a licence that comes from the possibility of a full review of the public interest and community impact requirements will significant affect the valuation of businesses who cannot guarantee the trading licence is available with their business.</li> <li>• Arguably, the Commission could grant additional liquor licences in the geographic area of a business and then, subsequently, prevent that business from transferring its licence on the basis that there are adequate licences in the area. The administrative action likely against the Commission would be considerable.</li> </ul>	<p>66(1)(b) deleted as per Retail Drinks' recommendation.</p> <ul style="list-style-type: none"> <li>• Final Act now explicitly states that public interest and community impact requirements are not needed when applying for a transfer of a licence.</li> <li>• Exact wording of this provision is contained in Clause 68 (5) (a,b) <i>(5) The applicant is not required to provide the following:</i> <i>(a) the evidence necessary to satisfy the onus specified in section 47;</i> <i>(b) a summary of the evidence referred to in paragraph (c) that is suitable for publication.</i></li> </ul>
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		<p><b>Recommendations:</b></p> <p><b>It is strongly requested that transfer provisions be brought into alignment with other jurisdictions to be clear that the Commission cannot, effectively, devalue a business and make it impossible to sell due to the uncertainty of the ability to keep the licence attached to that business.</b></p> <p><b><u>EITHER</u> Section 66(1)(b) should be deleted</b> <b><u>OR</u> a new sub-section should be added that indicated 66(1)(b) Does not apply to an application for continuation of the business in substantially the same form (ie a like for like transfer).</b></p>	
<p><b>Section 69: Acting licensee</b></p>	<p>(1) If a licensee is, or expects to be, unable for any reason to conduct the business of the licensee for more than 7 consecutive days, the licensee must:</p> <p>(a) appoint a person to act on behalf of the licensee to conduct the licensee's business during that period; and</p> <p>(b) give written notice to the Director of the full name, address and occupation of the person within 3 days after the date of the appointment.</p>	<ul style="list-style-type: none"> <li>• Retail Drinks considers that the 7-day timeframe as granted under the draft Bill is insufficient and should be increased to at least 21 consecutive days to allow licensees greater flexibility. Retail Drinks would also seek a more explicit interpretation of what it means for a licensee to be “unable for any to conduct the business of the licensee”.</li> <li>• Retail Drinks argues that increasing the specified timeframes as per Section 69 will reduce the administrative and red tape burden placed on licensees in the event that they are unable to conduct their business for whatever reason (illness, family reasons etc).</li> <li>• Retail Drinks also notes that written notice to the Director of Licensing is required within 3 days after their appointment. Retail Drinks believes that, as a matter of practicality, this should be extended to 7 days.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Division 8, Clause 72</i>).</li> </ul>



		<ul style="list-style-type: none"> <li>For reference to other states, Liquor &amp; Gaming NSW has confirmed that a licensee does not have to notify the regulator in regards to an acting licensee unless the incumbent licensee will be unable to conduct their business for a period of 6 weeks or more.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li><b>Increase the period in 69(1) to 21 consecutive days;</b></li> <li><b>Increase the period in 69(1)(b) to 7 days.</b></li> </ul>	
<b>Section 78: Duration of a licence</b>	<p>(1) The term of a licence is to be fixed by the Commission when it issues the licence.</p> <p>(2) A licence remains in force until it expires or is abandoned, surrendered, suspended or cancelled.</p>	<ul style="list-style-type: none"> <li>Retail Drinks expresses concern with Section 78 in that it proposes the concept of fixed period licence as opposed to the current s30 licence which exists in perpetuity until surrendered, suspended or cancelled;</li> <li>Retail Drinks would seek clarification from the NT Govt commentary that a “fixed” term licence would only apply to either event-based or seasonal licence and would not apply to licensed stores or takeaway outlets.</li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li><b>Clarity sought on scope and, potentially, amendments to language of act to reflect this</b></li> </ul>	<ul style="list-style-type: none"> <li><b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see Part 4, Division 1, Clause 81(1)(2)).</li> </ul>
<b>Section 80: Discretionary licence conditions</b>	<p>(1) The Commission may, in accordance with the regulations, make a licence or an authority subject to the conditions the Commission considers necessary or appropriate.</p> <p>(2) Without limiting subsection (1), conditions that may be imposed by the Commission include the following:</p>	<ul style="list-style-type: none"> <li>Provisions included under Section 80 of the Bill grant the Commission a significant degree of scope in imposing ‘discretionary licence conditions’.</li> <li>Certain categories under Section 80 could possibly extend to aspects of the businesses’ operation which are not connected to the sale and supply of liquor; for instance, 80(f) ‘the standard of maintenance and hygiene of the licensed premises’.</li> </ul>	<ul style="list-style-type: none"> <li><b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see Part 4, Division 1, Clause 83).</li> </ul>

	<p>(a) the construction and furnishing of licensed premises;</p> <p>(b) the equipment, facilities and services provided on or in licensed premises;</p> <p>(c) the days and hours when licensed premises may be open and when liquor may be sold, supplied or served;</p> <p>(d) the minimum facilities and services on or in licensed premises;</p> <p>(e) the method of selling, supplying or serving liquor, including the containers for, the quantities of and the types of liquor;</p> <p>(f) the standard of maintenance and hygiene of the licensed premises;</p> <p>(g) the provision of entertainment on or in licensed premises;</p> <p>(h) the provision of food on or in licensed premises;</p> <p>(i) the display and content of signs and notices on or in licensed premises;</p> <p>(j) the persons who may be admitted to licensed premises;</p> <p>(k) the prohibition or restriction of activities on or in licensed premises.</p>	<ul style="list-style-type: none"> <li>• Section 80(k) also provides the Commission with the ability to impose conditions relating to the <i>'prohibition or restriction of activities on or in licensed premises'</i>. The broad wording of this provision could feasibly mean that the Commission has the ability to impose conditions relating to <i>any</i> activities, even if they unrelated to the sale and supply of alcohol.             <ul style="list-style-type: none"> <li>○ Retail Drinks points out the wording of the Liquor Act 2007 in NSW which states under Section 52(1) <i>'The Authority may impose conditions on a licence prohibiting or restricting activities (such as promotions or discounting) that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption)'</i>.</li> </ul> </li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>• <b>Amend Section 80(k) to mirror the language used in the NSW legislation to <i>'the prohibition or restriction of activities on or in licensed premises <u>that could encourage misuse or abuse of liquor (such as binge drinking or excessive consumption)</u>'</i>.</b></li> <li>• <b>Clarify how section 80(f) is not already covered by other sections of 80, with the possibility of deletion or amendment.</b></li> </ul>	
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<p><b>Section 83: Proper Maintenance</b></p>	<p>A licensee must keep the licensed premises and all machinery, equipment, fittings, furniture, furnishings and any other items used in connection with operations under the licence maintained in good order and repair and in a neat and tidy appearance.</p>	<ul style="list-style-type: none"> <li>• This section is incredibly broad and unclear as to how it could be interpreted.</li> <li>• There is a significant risk that subjective interpretation on behalf of licensing inspectors will lead to unfair/inconsistent application of these terms.</li> <li>• The requirement scope being “all” is far too broad given ordinary wear, tear and breakdown from time to time. The propensity for breach/infringement notices here is a significant concern.</li> </ul> <p><b>Recommendation: Retail Drinks believes that Section 83 should be removed from the Draft Act. At the very least, clarification is sought from the NT Government as to what constitutes ‘good order and repair’ and ‘neat and tidy appearance’ as specified in Section 83 of the Bill (including an explicit definition) and a requirement that it relate only to the premises as a whole and not “all”.</b></p>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>see Clause 86</i>).</li> </ul>
<p><b>Section 100: Keeping records of liquor purchases and sales</b></p>	<p>(1) A licensee must keep a written record of information, as prescribed by regulation, regarding the licensee's purchases and sales of liquor under the licence or an authority. (2) The licensee must retain each record for at least 3 years, unless exempted by the Director. (3) A licensee commits an offence if the licensee contravenes subsection (1) or (2). Maximum penalty: 50 penalty units. (4) An offence against subsection (3) is an offence of strict liability.</p>	<ul style="list-style-type: none"> <li>• Retail Drinks strongly objects to the inclusion of the language related to “sales of liquor” in this section on the basis that ARIT and Licensing made repeated assurances to industry that data collection regulation would not extend to store level sales data.</li> <li>• Significant submissions were made to NT Government about the inconsistency of Point of Sale Systems of retail and the administrative burden of any suggestions of standardized reporting similar to wholesale reporting.</li> <li>• If this section is only intended to capture wholesale data (or other specific categories) the it should be amended to</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>see Clause 104</i>).</li> </ul>

		<p>say so, and specifically exclude licensees such as takeaway/store.</p> <ul style="list-style-type: none"> <li>• Retail Drinks also seeks clarification from the NT Government as to what constitutes an acceptable '<i>written record of information</i>' in this instance.</li> <li>• The administrative burden and financial impost on businesses in having to provide alcohol sales data every quarter is unnecessary, particularly given that the Commission already has access to data through wholesalers having to provide their quarterly returns (as per Section 33(1) of the Draft Bill).</li> <li>• The Commission having this data from registered wholesalers, as well as from interstate wholesalers, should already be sufficient. Retail Drinks notes that only wholesalers and producers and not packaged liquor licences are required to provide returns in Western Australia and Victoria. Further to this, no other Australian state or territory requires packaged liquor licensees to report quarterly alcohol sales data. In the ACT, the requirement for off premises licensees who sell liquor by wholesale to report sales data is annual not quarterly. Retail Drinks notes that the previous requirement in NSW for licensees to complete a 'Biennial Liquor Licence Return' was abolished.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• <b>Delete the words "and sales" from section 100(1) OR amend to limit application of section related to sales to specific licence types (wholesale).</b></li> </ul>	
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		<b>It is noted several industry participants maintained records of assurances made around exclusion of sales data and this is a significant issue from a cost and administrative perspective.</b>	
<b>Section 101: Licensee's quarterly return</b>	<p>(1) A licensee must prepare a quarterly return, as prescribed by regulation, regarding the licensee's purchases and sales of liquor under the licence.</p> <p>(2) The return must:</p> <ul style="list-style-type: none"> <li>(a) be in the approved form; and</li> <li>(b) contain the information prescribed by regulation; and</li> <li>(c) be lodged with the Director within 28 days after the end of each quarter.</li> </ul> <p>(3) A licensee commits an offence if the licensee contravenes subsection (1) or (2). Maximum penalty: 50 penalty units.</p> <p>(4) An offence against subsection (3) is an offence of strict liability.</p>	<p>Retail Drinks repeats its arguments in relation to section 100 and its recommendations that "sales" be deleted from this section, or alternatively it be limited to certain licence types.</p> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• <b>Delete the words "and sales" from section 101(1) OR amend to limit application of section related to sales to specific licence types (wholesale).</b></li> </ul> <p><b>It is noted several industry participants maintained records of assurances made around exclusion of sales data and this is a significant issue from a cost and administrative perspective.</b></p>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>see Clause 105</i>).</li> </ul>
<b>Section 102: Producing records and other documents</b>	<p>(1) A licensee must, on request, produce to an inspector:</p> <ul style="list-style-type: none"> <li>(a) any record required to be kept by the licensee under this Act; or</li> <li>(b) any other document relating to the licensee's business.</li> </ul> <p>(2) A licensee commits an offence if the licensee fails to comply with a request under subsection (1). Maximum penalty: 20 penalty units.</p>	<ul style="list-style-type: none"> <li>• As per this section, a licensee is compelled to produce to an inspector on request "<i>any other document relating to the licensee's business</i>". Retail Drinks argues that the wording of this provision is inappropriate given it could be reasonably referring to documents relating to aspects of the licensee's businesses that are completely removed from the sale and supply of alcohol (e.g. leases, bank statements, insurance and utilities bills). Highly sensitive and/or confidential documents such as employee contracts and payslips which are related to the licensee's business could be encompassed by this clause.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>CHANGE</b> – Retail Drinks' recommendation of amending the wording of section 102(1)(b) accepted.</li> <li>• Clause 106(1) of Final Act now reads: <i>(1) A licensee must, on the request of an inspector or a police officer, produce to the inspector or officer:</i> <i>(a) any record required to be kept by the licensee under this Act; or</i></li> </ul>

	<p>(3) An offence against subsection (2) is an offence of strict liability.</p>	<ul style="list-style-type: none"> <li>It is agreed a licensee should be required to produce documents to an inspector directly related to their ability to sell and supply alcohol (e.g. a copy of their liquor licence, RSA certificate etc), however, documents related to other operational aspects of the business and completely irrelevant to the sale and supply of alcohol should not be encompassed by this clause.</li> <li>It is noted that the language is (a) appears to intentionally contemplate the scope of the Act, and yet (b) does not – this is a power that could easily be misused or misinterpreted as giving licence inspections or police powers to interfere in a business beyond the scope of the Act.</li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li><b>Amend section 102(b) to “any document relating to the sale and supply of alcohol in the licensee’s business”.</b></li> </ul>	<p><i>(b) any other document relating <u>to the sale, supply or service of liquor in the course</u> of the licensee’s business.</i></p>
<p><b>Section 106: Variation by Commission</b></p>	<p>(1) The Commission may, on its own initiative, vary the conditions of a licence other than a condition added or varied by the Minister under section 81. (2) Before varying the conditions, the Commission must give the licensee a written notice that: (a) states the proposed variation; and (b) states the reasons for the proposed variation; and</p>	<ul style="list-style-type: none"> <li>From the wording of the draft NT Bill, the Commission would seem to have power to vary any condition they see fit as no specification has been given around this in Section 106.</li> <li>Retail Drinks argues this Section must be re-drafted to provide more specificity as to the circumstances in which licence variations would be considered by the Commission rather than having a blanket clause such as this one in place. Retail Drinks has included similar provisions from other jurisdictions for examples.</li> </ul>	<ul style="list-style-type: none"> <li><b>CHANGE</b> – Retail Drinks’ recommendation accepted. Addition of Section 111 ‘Limit on variation of conditions’ in the Final Act, so that it now reads as follows: <i>The following cannot be varied by the Commission:</i> (a) a condition added by the Minister under section 84; (b) the days on which a licensee is prohibited from selling, supplying or serving liquor;</li> </ul>

	<p>(c) invites the licensee to submit a response to the proposed variation within 28 days after the date of the notice.</p> <p>(3) The Commission may vary the conditions of the licence or authority as proposed in the notice or in another way the Commission considers appropriate after considering:</p> <ul style="list-style-type: none"> <li>(a) any response of the licensee submitted with the 28 day period; and</li> <li>(b) the results of any hearing; and</li> <li>(c) the public interest and community impact requirements.</li> </ul> <p>(4) As soon as practicable after deciding to vary the conditions under subsection (3), the Commission must give a decision notice to the licensee.</p>	<ul style="list-style-type: none"> <li>• Victoria's <i>Liquor Control Reform Act 1998</i>, allows for the Commission to vary a licence or BYO permit of its own accord under Section 58(1) <i>Variation of licence or BYO permit at initiative of Commission</i> <ul style="list-style-type: none"> <li>○ <i>'The Commission, at its own initiative, may vary a licence or BYO permit in accordance with this section'.</i></li> <li>○ The remainder of this section however specifies the individual circumstances in which a variation may be made (e.g. change of licence category, variation of trading hours, perimeter etc).</li> </ul> </li> <li>• In Western Australia's <i>Liquor Control Act 1988</i>, similar powers are granted to the licensing authority to vary licence conditions: <ul style="list-style-type: none"> <li>○ <i>64(1) Subject to this Act, in relation to any licence, or to any permit, the licensing authority may at its discretion impose conditions —</i> <ul style="list-style-type: none"> <li><i>(a) in addition to the conditions specifically imposed by this Act; or</i></li> <li><i>(b) in such a manner as to make more restrictive a condition specifically imposed by this Act, and may vary or cancel any condition previously imposed by the licensing authority, having regard to the tenor of the licence or permit and the circumstances in relation to which the licensing authority intends that it should operate.</i></li> </ul> </li> </ul> </li> </ul> <p><i>(1a) The licensing authority may impose, vary or cancel a condition under subsection (1) —</i></p> <ul style="list-style-type: none"> <li><i>(a) of its own motion; or</i></li> <li><i>(b) on the application of the licensee; or</i></li> <li><i>(c) at the written request of the parties to a liquor accord.</i></li> </ul>	<p><i>(c) the requirements to provide information on liquor purchases and sales to the Director.</i></p>
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		<ul style="list-style-type: none"> <li>○ Section 64(3) however provides a list of circumstances in which variations of conditions may be considered appropriate:</li> </ul> <p>(3) <i>'Without derogating from the generality of the discretion conferred on the licensing authority, the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable in order to...'</i></p> <p><b>Recommendation: Re-draft to provide greater specificity as to the powers of the Commission and the circumstances in which they will be exercised.</b></p>	
<b>Section 112(4)</b>	(4) The minimum sale price is indexed, from 1 July 2019, in accordance with the method set out in the regulations.	<ul style="list-style-type: none"> <li>● Retail Drinks notes that Section 118E of the MUP legislation specifies that the floor price is subject to modification by the Minister, and is subject to indexation, noting that the method and timing of the indexation will be prescribed by Regulations.</li> <li>● It appears as if the draft Regulations do not provide any further information as to the method and timing of the indexation, asides from Section 112(4) which states that it is to be indexed as of 1 July 2019.</li> <li>● The NT Government's MUP website responds to the question in its FAQ section <i>'Will the minimum floor price change over time'</i> with the answer <i>'Details are still being developed but the intention is that indexation will occur once a year'</i>.</li> <li>● Given that Section 112 of the draft Bill on MUP does not specify the method of indexation applying to MUP, Retail Drinks would seek clarification from the NT Government as to how this will occur.</li> </ul>	<ul style="list-style-type: none"> <li>● <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Clause 118(3)</i>).</li> </ul>

		<ul style="list-style-type: none"> <li>• Retail Drinks opposes the indexation of MUP which in practice means that alcohol will have to continue to inflate in price each year assuming that it is still the intention of the NT Government to apply indexation to MUP annually.</li> <li>• Retail Drinks re-states its earlier made objections to MUP which punish low to moderate income responsible drinkers and notes that the continual inflation of alcohol prices exacerbates the financial pressure on this income bracket.</li> </ul> <p><b>Recommendation: Further information required.</b></p>	
<b>Section 112(5)</b>	(5) The Minister must review the minimum sale price every 3 years.	<ul style="list-style-type: none"> <li>• Retail Drinks notes that a Ministerial Review of MUP is required every 3 years under the existing legislation and has also been included in the Draft Bill. As is the case for Section 112(4), a lack of detail is forthcoming as to how this Review process will take place in terms of the method to be used.</li> <li>• For instance, will the Ministerial Review be open to public submissions from interested stakeholders? Further to this, will the findings from the Minister be released publicly?</li> <li>• Asides from the three-year timeline specified in the existing legislation and the Draft Bill, Retail Drinks would seek further clarification from the NT Government as to the method underpinning the Ministerial Review of MUP.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>see Clause 118(4,5)</i>).</li> </ul>

<p><b>Section 113(2): Meaning of sale price</b></p>	<p>(1) The <b>sale price</b> of a liquor product is the amount of money to be paid for the product, including the following:</p> <ul style="list-style-type: none"> <li>(a) any discounts offered or given to the purchaser;</li> <li>(b) any refunds offered or given to the purchaser;</li> <li>(c) any amount to be paid for shipping the product to the purchaser.</li> </ul> <p>(2) For subsection (1), it is immaterial whether a discount or refund is applied at the time of the sale or later, if it is reasonably connected to the sale.</p> <p><i>Example for subsection (2)</i> A licensee sells to a customer a "bundle", consisting of a bottle of spirits and 6 mixers, at a sale price of \$40. The minimum sale price for the bottle of spirits is \$36. The following day, the customer returns the mixers and is given a refund of \$6 (the normal sale price of the mixers). The effective sale price of \$34 for the spirits is below the minimum sale price.</p>	<ul style="list-style-type: none"> <li>• Need to revise Section 113(2) as retailers cannot control refunds issued after the fact and/or customer returns.</li> <li>• The example provided for subsection (2) of Section 113(2) shows how there is potential interference with the right of the customer to receive a refund for goods purchased. Retailers should not be discouraged from providing consumers with refunds that they are entitled to because of fears that they may be in breach of MUP provisions.</li> <li>• In the example provided, the onus would be on the retailer to refuse the refund of \$6 for the mixers, despite the fact that the customer should otherwise be legally entitled to receive it.</li> <li>• Retail Drinks believes that this has the potential to create significant confusion amongst customers and/or staff when issuing refunds which may then lead to unnecessary situations of conflict and/or confrontations.</li> </ul> <p><b>Recommendation – delete section 113(2).</b></p>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Clause 117(2)</i>).</li> </ul>
<p><b>Section 115(1): Sale price manipulation</b></p>	<p>(1) The Commission may impose a condition under subsection (2) if it believes on reasonable grounds that a licensee:</p> <ul style="list-style-type: none"> <li>(a) is bundling two or more liquor products, or liquor products and non-liquor products, in a way that tends to</li> </ul>	<ul style="list-style-type: none"> <li>• With regard to Section 115(1)(a), the language is manifestly inappropriate and is setting all retailers up for breach, because the very act of bundling necessarily makes the products more attractive than as separate purchases – this is the very intention of the concept of bundling.</li> <li>• Retail Drinks argues that a retailer should not be penalised for bundling alcohol products provided that MUP</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Clause 121</i>).</li> </ul>

	<p>make the liquor products more attractive than as separate purchases, similar to reducing the sale price of the liquor products below the minimum sale price; or</p> <p>(b) is selling liquor products with non-liquor products at a price that appears to be below the minimum sale price that would apply if the liquor products were purchased separately from the non-liquor products; or</p> <p>(c) is selling liquor products effectively at a price that is less than the minimum sale price of those liquor products by accepting gift cards, coupons or other tokens of value that can be obtained for a lesser value than the value for which they can be exchanged for liquor.</p>	<p>provisions are not breached in the process of doing so. Retail Drinks therefore argues that the bundling of alcohol products should be permitted under the Draft Bill in this circumstance and that section 115(1)(b) sufficiently addresses the matter making section 115(a) redundant.</p> <ul style="list-style-type: none"> <li>• Concern that the current wording of these provisions in 115(1)(b) and 115(1)(c) may have the effect of penalising retailers who were unintentionally failing to abide by these requirements.</li> <li>• The provisions as set forth in Section 115(1) should be amended so that it is restricted to <i>intentional</i> behaviour by retailers.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• <b>Section 115(1)(a) delete the words “in a way that tends to make the liquor products more attractive than as separate purchases” OR delete in its entirety given section 115(1)(b) sufficiently addresses bundling;</b></li> <li>• <b>Amend section 115(1)(b and (c) as follows:</b> <b>(1) The Commission may impose a condition under subsection (2) if it believes on reasonable grounds that a licensee:</b> <b>(b) is <i>intentionally</i> selling liquor products with non-liquor products at a price that appears to be below the minimum sale price that would apply if the liquor products were purchased separately from the non-liquor products; or</b> <b>(c) is <i>intentionally</i> selling liquor products effectively at a price that is less than the minimum sale price of those liquor products by</b></li> </ul>	
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		<b>accepting gift cards, coupons or other tokens of value that can be obtained for a lesser value than the value for which they can be exchanged for liquor.</b>	
<b>Section 115(3): Sale price manipulation</b>	<p>(3) The Commission may attribute a minimum value to an item sold or offered by a licensee as part of the sale of liquor.</p> <p><i>Example for subsection (3)</i> A customer purchases a carton of ZYX beer and receives a \$5 gift card for free. The beer has a minimum sale price of \$30. The Commission could attribute a minimum value of \$5 to the gift card, with the result that any actual sale price less than \$35 would contravene the minimum price rule.</p>	<ul style="list-style-type: none"> <li>Retail Drinks is concerned that the provisions included in Section 115(3) of the Draft Bill are highly problematic in their lack of detail as to how the powers can be applied (including any suitable restrictions) and require more specificity.</li> <li>In this respect, do the minimum values attributed to an item need to be in line with market value or usual market value? Retail Drinks would argue this is required as a minimum. Otherwise, it is theoretically possible that the Commission could set a minimum value completely out of proportion with the market value which would represent an unreasonable intervention. Retail Drinks believes that granting this ability would result in the Commission possessing a disproportionate degree of power and control over the pricing of items sold by licensees.</li> </ul> <p><b>Recommendation: Re-draft required to create criteria for scope of application of powers.</b></p>	<ul style="list-style-type: none"> <li><b>CHANGE</b> – Slight change to wording in Final Act (see Clause 121) replacing “<i>would contravene the minimum price rule</i>” from Draft to “<i>would be unlawful</i>”.</li> </ul>
<b>Section 116(1): Liquor product not precisely identified.</b>	<p>(1) If a liquor product is not precisely identified in a sale or offer, the minimum sale price is to be determined by reference to the liquor product of the highest alcohol content within the same range of liquor products.</p> <p><i>Example for subsection (1)</i></p>	<ul style="list-style-type: none"> <li>Retail Drinks objects to the provisions in Section 116(1) as there is potential for liquor retailers to be in breach due to inaccurately advertised products on the basis of calculating the alcoholic content of items incorrectly.</li> <li>Further, this section is not required given that labelling regulation in Australia requires the ABV of a product to be listed. Using a reference point of advertising or other</li> </ul>	<ul style="list-style-type: none"> <li><b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see Clause 122(1)).</li> </ul>

	<i>An offer lists a carton of ZYX beer, but ZYX markets two beers with either 4.5% or 7.5% alcohol content. The minimum sale price must be calculated by reference to 7.5% alcohol content, unless the sale identifies the beer as the one with the lower alcohol content – e.g. "ZYX Mid-strength Beer".</i>	products is irrelevant and inappropriate when the ABV of the product is readily ascertainable.  <b>Recommendation: Provision should be deleted or significantly amended to refer to the ABV of the product as ascertained from the label.</b>	
<b>Section 119(3): Establishing identification system</b>	(3) Only the following forms of identification are approved for the identification system: (a) a passport; (b) a licence under the <i>Motor Vehicles Act 1949</i> or under an equivalent Act of a State or other Territory; (c) a licence granted under the <i>Firearms Act 1997</i> ; (d) any other form of identification approved by the Director.	<ul style="list-style-type: none"> <li>Retail Drinks would request clarification from the NT Government as to whether electronic or digital forms of identification are approved for the identification system, given that state governments in NSW and South Australia have recently launched digital driver's licences.</li> <li>Section (119)(3)(b) prescribes that a driver's licence issued either in the NT or elsewhere is an accepted form of identification however it does not specify if it must be a physical version of said licence or if digital is also acceptable.</li> </ul> <b>Recommendation: Clarification sought and should be potentially amended into section.</b>	<ul style="list-style-type: none"> <li><b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (see <i>Section 125(3)</i>).</li> </ul>
<b>Section 123: Entering local liquor accord</b>	(3) A local liquor accord may provide for any thing that might prevent or reduce alcohol-related violence, including the following actions by licensees: (a) ceasing or restricting the sale, supply or service of liquor on or in the licensed premises earlier than otherwise allowed;	<ul style="list-style-type: none"> <li>Retail Drinks supports the robust functioning of local liquor accords, however notes that under Section 123(3)(g) of the Draft Bill, liquor accords may affect the ability of licensees to choose what they charge for liquor products.</li> <li>This provision is not present in other state accords and we would argue is not appropriate here given the already</li> </ul>	<ul style="list-style-type: none"> <li><b>CHANGE</b> – Addition of <i>Section 129(2,3)</i> into Final Act so that it now reads: (2) <i>"The Director, may by written notice, require a licensee to be a party to a local liquor accord"</i> and; (3) <i>"A licensee is taken to be a party to the local liquor accord within 14 days after being given the notice in subsection (2)"</i>.</li> </ul>



	<p>(b) restricting the public's access to the licensed premises;  (c) prohibiting or restricting the use of glass containers;  (d) maintaining a register of incidents of alcohol-related violence;  (e) installing and operating video surveillance or other security systems;  (f) providing a specified number and type of security staff on or in the licensed premises;  (g) charging higher prices for liquor.</p>	<p>overlapping reach of licence conditions and minimum sale provisions.</p> <p><b>Recommendation: delete section 123(3)(g).</b></p>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Section 123(3) in the Draft Exposure (see <i>Section 130(1)(g)</i>).</li> </ul>
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<p><b>Section 127(1): Refusing Service</b></p>	<p>(1) A licensee and the licensee's employees may refuse to serve liquor to a person if the licensee or employee believes on reasonable grounds that:</p> <p>(a) the person is registered on the banned drinkers register; or</p> <p>(b) the person will commit an offence against this Act; or</p> <p>(c) the person will become intoxicated; or</p> <p>(d) the person will engage in violent, quarrelsome or disorderly behaviour in, on or in the vicinity of the licensed premises; or</p> <p>(e) the person has engaged in any conduct specified in paragraph (d) within the last 12 months.</p>	<ul style="list-style-type: none"> <li>• Retail Drinks is supportive of the reasons/circumstances empowering a licensee/employee to refuse service as outlined in the Draft Bill, however would suggest that 127(1)(c) be amended to read <i>"the person is intoxicated or showing signs of intoxication"</i> rather than <i>"will become intoxicated"</i>.             <ul style="list-style-type: none"> <li>○ Question though of whether or not this list is comprehensive enough.</li> <li>○ Could possibly be expanded to include other instances e.g. where an individual licensee has a reasonable belief that alcohol is being purchased for secondary supply purposes.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>CHANGE</b> – <i>'Refusing Service'</i> now reads as <i>'Power to Refuse Service'</i> in Final Act (see <i>Clause 136</i>).</li> <li>• <b>CHANGE</b> – Section 127(1)(a) including <i>'the person is registered on the banned drinkers register'</i> as a grounds for refusal of service has been deleted from the Final Act. Clause 136 now reads:             <p><i>(1) A licensee and the licensee's employees may refuse to serve liquor to a person if the licensee or employee believes on reasonable grounds that the person:</i></p> <p><i>(a) will commit an offence against this Act; or</i></p> <p><i>(b) will become intoxicated; or</i></p> <p><i>(c) will engage in violent, quarrelsome or disorderly behaviour on or in the licensed premises, or in the vicinity of those premises; or</i></p> <p><i>(d) has engaged in any conduct specified in paragraph (c) within the last 12 months.</i></p> </li> </ul>
<p><b>Section 136,138: Harm minimisation audit, Action after harm minimisation audit</b></p>	<p>136(1) A <b><i>harm minimisation audit</i></b> is an audit of a licensee's activities, operations and licensed premises to measure the extent to which they:</p> <p>(a) promote the purposes of this Act;</p>	<p>Whilst Retail Drinks understands the objective of the NT Government seeking a variety of ways to reduce the harm from alcohol misuse, any level of collaboration with industry should be that – consultative and collaborative. The proposal of harm minimization audits appears to impose a regulatory burden on licensees far over and above the Act itself, and simplistically seeks to impose a range of new obligations on licensees with no</p>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (See <i>Division 4, 146 – 148</i>).</li> </ul>



	<p>(b) comply with codes of practice established by the Commission under section 18;</p> <p>(c) comply with guidelines made by the Commission under section 287;</p> <p>(d) comply with any local liquor accord to which the licensee is a party;</p> <p>(e) minimise the harm or ill-health caused by the consumption of liquor and avoiding practices that encourage irresponsible drinking;</p> <p>(f) ensure liquor is sold, supplied, served and consumed, in a responsible manner;</p> <p>(g) safeguard public order and safety from any adverse effects of the licence;</p> <p>(h) protect the safety, health and welfare of patrons;</p> <p>(i) prevent access to liquor by children and other persons who are prohibited or restricted from consuming liquor;</p> <p>(j) ensure employees properly perform their duties;</p> <p>(k) prevent the giving of credit in sales of liquor to patrons;</p> <p>(l) reduce or limit increases in anti-social behaviour and alcohol-related violence.</p> <p>138 (1) After considering an audit report, the Director may do any of the following in relation to any matter of non-compliance:</p> <p>(a) give the licensee a formal warning;</p>	<p>underlying other provisions. It is essentially an audit not of legal compliance with the Act, but an audit of a range of new obligations not otherwise articulated in the Act.</p> <ul style="list-style-type: none"> <li>• Retail Drinks has a <b>strong objection</b> to this provision on the basis that it imposes an unfair compliance burden on liquor retailers in that it appears to create “new” obligations for licensees to step into the role of government in promoting the prevention of alcohol-related harm.</li> <li>• Should the NT Government proceed with the concept of a harm minimization audit, Retail Drinks would argue that this should be included as part of a guideline of Code of Practice existing separately to the Draft Bill and without triggering infringement and breach consequences.</li> <li>• If the harm minimization provisions are to remain in the Bill contrary to this suggestion, Retail Drinks argues that the propensity for licensees to be issued with infringement notices stemming from the results of a harm minimisation audit should be removed.</li> <li>• Harm minimisation audit as it is described in the Draft Bill does not provide enough specific details as to how the criteria is measured. The criteria which is provided under Section 136(1) is exceptionally broad in some instances e.g. “ensure employees properly perform their duties” in 136(1)(j). It is unclear how this relates to harm.</li> <li>• Significantly concerning that licensees may receive infringement notices as a result of a harm minimisation audit (Section 138(1)). Retail Drinks argues that licensees should only receive an infringement notice if they are in direct breach of the legislation rather than as a result of this generalised harm minimisation audit process.</li> </ul>	
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	<p>(b) issue an infringement notice; (c) offer the licensee the option of entering into an enforceable undertaking; (d) refer the matter to the Commission for action under Part 7, Division 4</p>	<ul style="list-style-type: none"> <li>• Retail Drinks argues that if the NT Government is to proceed with this harm minimisation audit framework, then a warning should be issued in the first instance in the event that a licensee fails an audit. The current wording of this Section says that a formal warning is an option available at the discretion of the Director but doesn't specify that this warning should be the first course of action followed by escalation to an infringement notice.</li> <li>• Retail Drinks argues that rather than including the harm minimisation audit process as part of the final Bill, the NT Government could work with industry stakeholders to develop an 'industry-led' approach towards harm minimisation representing a robust, fit-for-purpose and best-practice approach which could then be adopted by retailers as a guide to their existing practices.</li> <li>• Retail Drinks notes that the issuing of an infringement notice may have a significant financial impact on licensees in that it contributes to the amount paid for liquor licences as a result of the NT Government's risk-based licensing framework.</li> <li>• Language in Section 136(e) mirrors the language used in Section 3(1) and Section 41(2)(a). Retail Drinks argues for the same reasons that this should be changed to 'minimise the <u>risk of</u> harm or ill-health caused by the <u>excessive or inappropriate</u> consumption of liquor'.</li> <li>• Language in Section 136(j) mirrors the language used in Section 147(1)(j) – should be changed to read "ensure employees <u>involved in the sale and supply of alcohol</u> properly perform their duties.</li> </ul>	
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		<ul style="list-style-type: none"> <li>The language used in 136(l) is also problematic as it cannot be proven that anti-social behaviour and alcohol-related violence can be specifically attributable to any given store. Given the subjectivity of this clause, Retail Drinks would argue that it should be deleted.</li> <li>In light of the search and seizure powers already granted to police and licensing inspectors as per Section 143(1) of the Bill, Retail Drinks argues that the inclusion of the harm minimisation framework is unnecessary. If the police or inspectors have any reason to believe that the licensee is not meeting sufficient standards of harm minimisation, then they would be able to conduct their own investigations as they see fit.</li> </ul> <p><b>Recommendations:</b></p> <p><b>Retail Drinks is strongly of the view that all sections related to harm minimization audits be removed and replaced, if required, with an industry collaborative guideline related to continued efforts to reduce harm.</b></p> <p><b>If the sections are not removed, refer above to numerous amendments needed.</b></p>	
<p><b>Section 143(1): Inspection Powers</b></p>	<p>(1) An inspector or a police officer may, during an inspection, exercise any of the following powers:</p> <p>(a) examine, make an inventory of and take samples of any liquor found or any substance found that the inspector or</p>	<ul style="list-style-type: none"> <li>Retail Drinks is concerned at the excessive and wide-ranging powers granted to inspectors and police officers as per Section 143(1). The specific language used in this Section has the effect of granting unlimited search and seizure powers to police officers which Retail Drinks does not believe are appropriate.</li> </ul>	<ul style="list-style-type: none"> <li><b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>See Clause 153</i>).</li> </ul>

	<p>police officer believes on reasonable grounds to be or to contain alcohol;</p> <p>(b) inspect any book, document or other record;</p> <p>(c) remove any book, document or record for the purpose of having copies made;</p> <p>(d) seize and remove any liquor or container that the inspector or police officer believes on reasonable grounds to be evidence of an offence against this Act;</p> <p>(e) request a licensee or any person on or in licensed premises to answer questions;</p> <p>(f) request a licensee or any person on or in licensed to produce a document or thing under the person's control;</p> <p>(g) request a licensee or any a person on or in licensed premises to give any other reasonable assistance the inspector requires to carry out the inspection.</p>	<ul style="list-style-type: none"> <li>• Retail Drinks does not believe that police officers should be granted powers above and beyond their normal scope, purely on the basis that the premises that they are inspecting is licensed grocery/takeaway store.             <ul style="list-style-type: none"> <li>○ For instance, Section 143(1)(b) and Section 143(1)(c) enable inspectors or police officers to inspect or remove “any book, document or record” from a licensee even if those documents are of no relevance to the licensee’s ability to sell and supply liquor.</li> <li>○ This is the not the case in other jurisdictions. For instance, Victoria’s <i>Liquor Control Reform Act 1998</i> specifies the types of documents which inspectors and police officers are able to demand a licensee produce e.g. plan of premises (Section 101B), licensee barring order (Section 106K), RSA Certificates (Section 108AE), evidence of age documents (Section 127).</li> <li>○ In Western Australia, under Section 154 of the <i>Liquor Control Act 1988</i>, authorised officers are able to:                 <ul style="list-style-type: none"> <li>(f) require the licensee or a manager of the premises to provide any information or assistance reasonably required by the authorised officer <u>relating to any matter within the duties of the licensee or manager</u>; and</li> <li>(g) require any person having possession of records relevant to a subsidy, a business conducted under a licence, or to transactions <u>involving the sale or purchase of liquor, to produce those records for inspection</u>; and</li> <li>(h) require any person who is in a position to provide information <u>relating to a subsidy, or to the sale, purchase or supply of liquor</u> to answer any</li> </ul> </li> </ul> </li> </ul>	
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		<p>question put to that person by the authorised officer on that subject.</p> <p><b>Recommendation: section must be amended to limit the scope of powers to those related to the Act.</b></p>	
<p><b>Section 147(1) (h, i, j): Making a complaint</b></p>	<p>A person may make a complaint against the licensee of any of the following grounds:</p> <ul style="list-style-type: none"> <li>(h) the licensee is not a fit and proper person to hold the licence;</li> <li>(i) the licensee's nominee is not a fit and proper person and the licensee should reasonably know that;</li> <li>(j) an employee of the licensee is not a fit and proper person to be an employee of the licensee and the licensee should reasonably know that;</li> </ul>	<ul style="list-style-type: none"> <li>• Retail Drinks argues that the current scope of the complaint framework is too broad. The proposed complaint framework could be used by other parts of the industry purely with malicious intent, therefore Retail Drinks argues that the scope of the framework should be narrowed to prevent this from occurring.</li> <li>• Problematic in sections 147(h), (i) and (j) referring to a “fit and proper” person in relation to the licensee and appointment of licensee’s nominee and employees. The Draft Bill does not provide an explicit definition of these terms in Section 4. Unreasonable expectation of the licensee to know whether an employee is a fit and proper person particularly given the absence of any proper definition. Owners should have the discretion to hire employees and be the arbiter of whether they are fit to be employees or not rather than the Commission.</li> <li>• Section 147(1)(j) refers to all employees of the licensee rather than just those involved in the sale and supply of alcohol in a business. Argument that this should only be in reference to employees involved in the sale and supply of alcohol as opposed to <i>any</i> employee. Provision too broad in scope and should only apply to RSA persons within the business. Any other employees (e.g. accountants/cleaners) are obviously not relevant for the purposes of the complaints framework.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>See Clause 157</i>).</li> </ul>

		<p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• <b>Include a definition or parameters for classification of “fit and proper person” in section 147(h), (i) and (j); and</b></li> <li>• <b>Limit section 147(j) to those employees involved in the sale and supply of alcohol.</b></li> </ul>	
<p><b>Part 11: Other enforcement powers</b></p>	<p><b>Sections 242: Disclosing Information</b> Despite section 9 of the Information Act 2002 and the operation of any other law of the Territory that prohibits or restricts the disclosure of information, a person may disclose information that is requested or collected under this Division for the purposes of enforcing this Division.</p>	<ul style="list-style-type: none"> <li>• Retail Drinks is concerned that the right to privacy and information (including relevant Commonwealth laws and laws in other States/Territories) are to be directly ignored/overridden for the purposes of alcohol consumption.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>See Clause 252</i>).</li> </ul>
<p><b>Section 152 Disciplinary Action</b></p>	<p>(1) The Commission may take disciplinary action against the licensee only if the Commission is satisfied:          (a) a ground for taking the disciplinary action exists; and          (b) the disciplinary action is appropriate in relation to that ground.          (2) The Commission may take any of the following disciplinary actions against a licensee:</p>	<ul style="list-style-type: none"> <li>• Retail Drinks is concerned that the provision contained in Section 152(1)(a) is too broad and doesn't refer to any examples of what may constitute adequate 'grounds' for the Commission taking disciplinary action against a licensee.</li> <li>• Examples from other jurisdictions are included:</li> <li>• Retail Drinks notes that Tasmanian Liquor Act specifies grounds for disciplinary action under Section 99 of <i>Liquor Licensing Act 1990</i>.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>See Clause 162</i>).</li> </ul>

	<p>(a) vary the conditions of a licensee's licence or impose additional conditions on the licence;</p> <p>(b) suspend a licence;</p> <p>(c) cancel a licence;</p> <p>(d) impose a monetary penalty on a licensee in accordance with section 154;</p> <p>(e) direct a licensee to take, or refrain from taking, a specific action;</p> <p>(f) disqualify a person from holding a licence for a specified period.</p>	<p>(a) the licensee or permit holder has contravened a provision of this Act;</p> <p>(b) the licensee or permit holder has contravened a condition to which the licence or permit is subject;</p> <p>(c) the licensee or permit holder is no longer qualified to hold a liquor licence or liquor permit;</p> <p>(d) failure to comply with a written notice under section 40;</p> <p>(e) the licensee or permit holder has been convicted of an offence, either in Tasmania or elsewhere, and the Commissioner is satisfied that it is not in the public interest that the licensee or permit holder continues to hold a liquor licence or liquor permit;</p> <p>(f) the licensee or permit holder is serving a term of imprisonment;</p> <p>(g) the licensee or permit holder has failed to discharge financial obligations or debts owing to the Crown under this Act;</p> <p>(h) the licence or permit was obtained by means of a false or misleading statement or by a failure to disclose relevant information;</p> <p>(i) the sale of liquor on the licensed premises or permit premises –</p> <p style="padding-left: 40px;">(i) is causing undue annoyance or disturbance to –</p> <p style="padding-left: 80px;">(A) people living or working in the neighbourhood of the premises; or</p> <p style="padding-left: 80px;">(B) customers or clients of any business in the neighbourhood of the premises; or</p> <p style="padding-left: 80px;">(C) people conducting or attending religious services or attending a school in the neighbourhood of the premises; or</p>	
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		<p>(D) people lawfully on the premises; or (ii) is causing the occurrence of disorderly conduct</p> <p>–</p> <p>(A) in the premises; or (B) in the neighbourhood of the premises;</p> <p>(j) an associate of the licensee or permit holder who is a natural person with any influence over the management of the business carried on under the licence or permit is not, or is no longer, a fit and proper person to be an associate of a licensee or permit holder;</p> <p>(k) the licensee or permit holder can no longer exercise effective control over the sale or consumption of liquor on all or any part of the licensed premises or permit premises;</p> <p>(l) the licensee or permit holder is no longer using or intending to use the licensed premises or permit premises for all or any of the activities authorized by the licence or permit;</p> <p>(m) in the case of a club licence –</p> <p>(i) the rules or constitution of the club have been changed without the Commissioner's approval; or</p> <p>(ii) the rules or constitution of the club are not being observed; or</p> <p>(iii) the club has failed to comply with, or has contravened, any applicable regulations or conditions specified in the licence; or</p> <p>(iv) the principal activity of the club is the sale or consumption of liquor –</p> <p>and, as a result, in the Commissioner's opinion it is inappropriate that liquor should continue to be sold on the club's premises;</p>	
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		<p>(n) the area of the licensed premises or permit premises has been altered without the Commissioner's approval.</p> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• <b>Amend section 152 to specify the circumstances under which grounds for disciplinary action can be taken against a licensee.</b></li> <li>• <b>Amend to give clarity as to the exact circumstances in which a liquor licence would be suspended as opposed to cancelled. In Retail Drinks' view, given the significant added financial costs involved in re-applying for a liquor licence, licence cancellation should be a last resort option against a licensee and should only occur once all other disciplinary avenues have been exhausted.</b></li> </ul>	
<p><b>Section 176: Power to declare restricted premises</b></p>	<p>The Director may, on application, declare any of following to be restricted premises:</p> <ul style="list-style-type: none"> <li>(a) residential premises;</li> <li>(b) privately owned land and any building or structure on the land, including any part of the land, building or structure that is open to and used by the public;</li> <li>(c) Crown land that is leased or occupied under a licence or agreement;</li> <li>(d) a retail shopping centre as defined in section 5 of the <i>Business Tenancies (Fair Dealings) Act 2003</i>;</li> </ul>	<ul style="list-style-type: none"> <li>• Retail Drinks would seek clarification as to the valid exceptions to Section 176. For instance, in regards to Section 176(d), a licensee who is located within a retail shopping centre would technically be captured by this clause.</li> <li>• Retail Drinks notes that as per Section 152P(1) of the <i>Liquor Control Act 1988</i> in WA, retail shopping centres are not mentioned as possible restricted premises: <ul style="list-style-type: none"> <li>○ <i>The Director may, by notice in writing, declare any of, or any part of, the following to be liquor restricted premises —</i> <ul style="list-style-type: none"> <li>(a) residential premises;</li> <li>(b) non-residential private premises, even if all or part of the premises is open to the public;</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b> – Wording in Final Act is identical to Draft Exposure (<i>See Clause 185</i>).</li> </ul>

	<p>(e) a church or other building owned by a religious body and used for public worship;</p> <p>(f) a hospital or other premises providing health services;</p> <p>(g) a school or other educational premises;</p> <p>(h) any land, premises or other place prescribed by regulation</p>	<p><i>(c) Crown land that is occupied by a person who has a right to exclusive possession of the land.</i></p> <ul style="list-style-type: none"> <li>Section 152P(2) of the <i>Liquor Control Act 1988</i> in WA also specifies that: <i>A declaration may be made so as to declare premises to be a liquor restricted premises —</i> <i>(a) at all times; or</i> <i>(b) only during such periods as are specified in the declaration.</i></li> </ul> <p><b>Recommendation: Clarification be provided as to the valid exceptions to section 176. Consider provisions similar to WA.</b></p>	
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