14th June 2019

Mr Tony Sievers MLA
Chair, Economic Policy Scrutiny Committee
Northern Territory Legislative Assembly
via email: EPSC@nt.gov.au

Dear Committee Chair,

Re: Liquor Bill 2019

The following submission on the Liquor Bill 2019 is on behalf of the members of the Australian Hotels Association (NT Branch) (ABN: 48 911 463 427 trading as 'Hospitality NT').

Executive Summary

The approach taken by the NT Government on the drafting of the Liquor Bill 2019 has been relatively open and consultative.

We remain significantly concerned about proposed changes, and changes enacted in 2018 where there have not been due considerations about procedural fairness, enshrinement of the standard of proofs, removal of double jeopardy or the removal of multiple offences that capture the same activity.

The 'No Emergency' Police Powers continue to cause significant concern across the industry, and we believe are the most glaring example of where further consideration of natural justice and due process should be considered.

The proposed changes to the way Liquor Accords will operate also do not bode well for transparency and independent decision making.

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Background

The Australian Hotels Association (NT Branch) was established in 1979 and is the leading Territory hospitality industry association representing the rights and interests of its members to Territory, Federal and local governments, other relevant parties and the community.

We currently have over 300 members, associates and sponsors ranging from small regional establishments to 5-star hotels, breweries, beverage suppliers, furnishings and many other diverse complementary businesses.

Unique to the Northern Territory, Hospitality NT membership base incorporates 5 divisions:

- Accommodation Hotel Sector
- Hotel / Tavern Sector
- Wayside Inn Sector
- Club Sector
- Restaurant Sector

Hospitality NT offers its members a unified approach to confronting the issues affecting the hospitality industry in the Northern Territory and it is with the wide industry perspective that we wish to contribute to the public policy debate on the Liquor Bill 2019 currently before the Committee.

Introduction

At the outset, we would like to make clear our support for the re-write of the Liquor Act and acknowledge the significant work undertaken by the Northern Territory Government, Cabinet, the responsible Minister and her Department in arriving at the Bill currently before the Committee.

We have found the commitment to openness, consultation and engagement on this important legislation to be of a high standard and, given the livelihood of our member businesses rely on getting this Act right, it is very much welcomed by our members.

The Riley Review was handed to the NT Government and made public in October 2017. Very shortly after an Industry Reference Group (IRG) consisting of licensees from across the industry was formed by the NT Government to provide advice on the implementation of the Riley Review. IRG membership included members and non-members of Hospitality NT. In February 2018 the NT

Government announced its acceptance of the vast majority of the recommendations of the Riley Review and established the Alcohol Review Implementation Team (ARIT) tasking it with implementing those recommendations. Since that time the IRG has met regularly with ARIT, senior lawyers from the Department of Attorney-General and Justice and at times the Minister and other NT Government representatives including the Commissioner for Police as the new Bill was being developed. We found this engagement very beneficial and increased the understanding of policy makers on how proposed changes would operate 'in the real world.'

We will now focus on the positive aspects of the Liquor Bill and then move to our remaining concerns with the Bill currently before the Committee.

Positives of the Bill

The new Bill is a vastly superior successor to the Liquor Act 1978 in the way it is constructed and the ease at which it can be navigated. That is not a criticism on the current Act per se but rather acknowledgement of the many changes that it has endured over its 40 years of life resulting in an Act which is relatively clunky and disjointed.

In moving to enshrine in legislation many of the important licence conditions that regulate how licensed businesses operate we are generally comfortable with where the Liquor Bill 2019 has landed save for the continuing uncertainty about the regulatory impact and cost impositions on businesses.

There are operational costs to the BDR, to the MUP, to the PALIs, to the RSA changes, to Liquor Accords, to the proposed Harm Minimisation Audits and a plethora of other existing taxes fees and charges which is why rhetoric emanating from the responsible Minister about the need for yet further annual alcohol taxes is met with such strong industry opposition.

We will not know the complete picture until we have had the opportunity to be consulted on the new Regulations, Codes of Practices and Guidelines which will all form enforceable parts of the new legislative framework envisioned by the Government.[1]

[1] As per AGD Legal Policy timetable it is anticipated consultation on the draft Regulations will occur mid-late June

We continue to advocate and support the independent decision-making components of the legislative framework governing liquor in the Northern Territory. We strongly supported the re-introduction of the Liquor Commission in 2018 and will continue to advocate for improvements to transparency, natural justice and independent decision making as recommended in the Riley Review. It is where the NT Government has deviated from the Riley Recommendations our greatest concerns lie.

Our ongoing concerns

Natural Justice

This Liquor Bill 2019 erodes the principles of natural justice and the right to procedural fairness. Section 53(1)(b)(ii) of the current act provides that the Commission "must give all parties an opportunity to be heard". This imports all the common law requirements of natural justice and procedural fairness.

In contrast, Clause 21(4) of the Bill provides that "all parties to the hearing must have an opportunity to be heard in accordance with the rules and procedures" of the Commission.

Clause 21(6) provides that the Commission may make rules and procedures for the conduct of hearings and all parties must comply with those rules and procedures.

As such, the bounds of procedural fairness are flexible and can be set at a lower threshold than those imposed by common law. We believe the retention of common law requirements of natural justice and procedural fairness should be enshrined legislation – this is currently lacking in the Bill.

Standard of Proof

For complaints, generally there are two avenues for disciplinary procedures, through the Courts or through the Commission. If any alleged breach is prosecuted by the police through the criminal courts the relevant standard of proof is "beyond reasonable doubt" (see section 43BS of the Criminal Code).

The Bill before the Committee is silent on the standard of proof in the Commission on complaints. We submit that a complaint alleging a breach of the Act that constitutes a criminal offence (and

for which the Commission can impose as great a penalty as a court) the Commission could not be satisfied that there has been a breach unless it is satisfied beyond reasonable doubt.

We submit that it should not be the intention of the Liquor Act to disadvantage a licensee based on the venue in which the allegation of breach is heard, particularly as in the majority of cases the Commission is empowered to impose even greater penalties (such as licence suspensions or cancellations) than may be imposed by the courts.

We recommend that the standard of proof for breaches to be dealt with by the Commission, to be the same as the Criminal Courts. If, however, the policy is for the Commission to have a lower standard of proof than the Criminal Courts then we suggest something akin to the provision which appears in section 7 of the Serious Sex Offenders Act 2013 (NT): i.e. satisfaction *"to a high degree of probability, that there is acceptable and cogent evidence of sufficient weight to justify the decision"*. This has been considered by the Courts to be akin to an application of the High Court Briginshaw principles and at the very least should be included in the Bill before the Committee, potentially through inclusion of "positively" before "satisfied" in Clause 162(1).

<u>Police Non-Emergency Powers – The Riley Review</u>

The Riley Review recommended the same type of emergency power that the Director General of Licensing currently has be provided to the Police Commissioner, albeit for a more limited 48 hours.

Starting at the bottom of page 63 of the Alcohol Policies and Legislation Review Final Report it says:

> "Section 48A of the Liquor Act currently gives the Director-General the power to suspend a licence for up to seven days, or impose a variation or condition on a licence in an emergency, or pending the investigation of a complaint. In practice this power has been used to suspend the operation of a licence to protect public safety, or to promote social harmony or wellbeing and to avoid death and injury that is connected with the use of alcohol. *Examples include where a suicide has occurred, or a sensitive social or cultural event is being held in a community, such as a funeral.* The Police should also have this

statutory power, for up to 48 hours, in which time a complaint could be made to the Commission and further action taken."[2] (emphasis added)

Police Non-Emergency Powers – What we ended up with

The Commissioner of Police has been given a broader power than the power contemplated by the Riley Report.

Clause 255 Police power to suspend licence or authority

(1) The Commissioner of Police may suspend a licence or an authority if any of the following occurs, or is likely to occur, at or in the vicinity of the licensed premises and the officer considers it appropriate to do so:

(a) an emergency or a natural disaster;

(b) riotous conduct;

(c) a breach of the peace;

(d) a threat to public safety

(3) The Commissioner of Police may also suspend a licence or an authority if;

(a) the licensee, or the licensee's employee or agent, is being investigated for an offence against this Act; and

(b) a police officer investigating the offence believes on reasonable grounds that the offence is likely to continue.

(4) A suspension under this section has effect for a maximum of 48 hours or a shorter period determined by the Commissioner of Police.

(5) The Commissioner of Police must, without delay, give written notice of the suspension to the following:

(a) the licensee

(b) the Minister

(c) the Chairperson;

(d) the Director

(6) The notice must include the period of suspension and reasons for the suspension.

Section 255 (1)(c) and (d) are powers not given to the Director or Minister and were not contemplated by the Riley Report. Coupled with the fact that a breach of peace or a threat to

[2] https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf

public safety could be in the vicinity of the licensed premises and not be related to the activities of the licensed premises.

Police Non-Emergency Powers – the current worrying position

In 2018, the NT Police were using this suspension power as a management tool to impose their will on licensees in situations far beyond the examples cited in the Riley Review when the power was first proposed.

In cases of notices of suspensions and warning notices of suspensions there were no grounds of emergency and the timing of the suspensions were aimed at disrupting businesses during the peak of their weekly trade.

They were premeditated actions that were planned over weeks and not an emergency action.[3] If the suspension notices had been reviewed, then an independent decision maker would have questioned the severity of the proposed action and whether the alternative disciplinary proceedings which afford procedural fairness would not have been more justified.

We know the Police are satisfied with the outcome of this broad power and that they are generally critical of the administrative burden required for disciplinary action under the Liquor Act in the courts and the Liquor Commission.

The concern we have is that there is no such review of the police self-serving evidence, which is passed up the chain of command to action suspension orders without any independent assessment of the evidence and without any procedural fairness to the licensee to be able to test the evidence.

As recent as 2019, Police complaints and Police evidence has been thrown out by the Liquor Commission and the licensee has had no case to answer and, on this point, we adopt the Submission you have received from the Tennant Creek Hotel in its entirety.

[3] In one situation a NT Policeman was overhead in a retail shop telling a colleague they were going to "shut down" a venue that afternoon.

The sanction of a 48-hour suspension is far greater than any legal sanction imposed by the Liquor Commission (or previous Licensing Commission) in the last 20 years. Most sanctions have been monetary with very few severe breaches attracting any form of suspensions.

Police Non-Emergency Powers – other 'Emergency' powers

There is also no need for emergency powers in the event of natural disasters as this situation is already covered by the Emergency Management Act. We also note the separate emergency shut down powers for the Police under the Emergency Management Act which were used recently in Nhulunbuy in association with Tropical Cyclone Trevor.

The Riley Report never recommended anything but similar emergency powers to those of the Director General of Licensing to be used in similar circumstances. What the Police have ended up with are extremely broad powers which become subject to overuse and abuse overtime.

Police Non-Emergency Powers – Increased Sovereign Risk and Abuse of Power

The sovereign risk attached to this broad power has not gone un-noticed by our interstate colleagues and the reputation and risk associated of investing in the Northern Territory has been impacted.

It is not coincidental that since the introduction of this wide Police power we have had an escalation of incidents concerning off-duty police officers on licensed premises and unfortunately in some of those incidents the off-duty police officer has made threats to shutting a venue down. NT Police have also being using the threat of this power to "negotiate" with licensees to get them to agree to restrictions far beyond their licensed obligations.

Phrases like "moral obligation not to serve" have entered the NT Police lexicon which is extremely worrying for licensees adhering to their licence and legal obligations. It is also fraught with subjectivity as one person's "moral obligation" is another's "discriminatory practice" with licensees caught up in the middle. One would've thought that the community's determination of the right balance in competing obligations is best enshrined in the Bill before the Committee and not left to the vagaries of individual police officer interpretation.

For fear of retribution, shut down and the unjust public shaming that has started to become regular practice for alcohol policing in the Northern Territory we do not intend on providing further details of these allegations, with the Committee to assign whatever weight they see fit to this point save for the fact that should there be this sort of 'soft power' being used in the Northern Territory it would be a very grave (and difficult to prove) situation indeed.

Members of the Committee, and of the Legislative Assembly, should also not be fooled into the misbelief that this is a 'last resort' power. We note the language of the Minister has changed in this regard recently but we are of the strong view that Police have tempered their use of this extraordinary power whilst the Liquor Act is open and once the Act is all locked down they will once again start utilising this as a 'first resort' power.

Historically, there has been a conflict issue between Police Officers and venue managers. Particularly in regional towns you see the new superintendent flex their muscles with a heavy-handed approach on existing licensed premises. Given the high turnover of superintendents this issue arises frequently. One option to consider diffusing this behaviour is the introduction of a mediation process between Superintendents and venue managers which could be conducted by a Liquor Commissioner. Under this process a mediator with some understanding of liquor operations and compliance could recommend appropriate improved management practices to both parties and resolve concerns that the NT Police have on the operations of a venue. The mediator would also be able to recommend to the NT Police whether in the circumstances a complaint or prosecution should also be pursued.

<u>Police Non-Emergency Powers – no effective recourse</u>

In response to our concerns the NT Police have commented that it is open to a party to seek to challenge the suspension of the licence by the Police Commissioner. The review of the decision or any action for damages has difficulties because:

- The power is so broad that the Commissioner is unlikely to be acting beyond their power even when it relates to a trivial breach of peace unrelated to the licensed venue
- Given venues are only given 30 minutes notice it is would be difficult to get legal advice and an injunction without the suspension taking effect. The courts on the balance of convenience are most likely to say that this can be remedied by damages.

- The actions of the Police Commissioner are protected by the Liquor Act (Clause 25 of the Bill before the Committee) such that a party would need to show that the action by the Police Commissioner was one lacking in good faith.

Police Non-Emergency Powers – Way forward – Liquor Commission oversight

The NT Government implemented the recommendation of the Riley Review that the NT Liquor Commission be the transparent independent decision maker on matters impacting liquor businesses. It is a tribunal which can robustly test evidence including Police evidence.

The Police power exercised pursuant to Clause 245 is not transparent or accountable. It is NT Police relying on its own evidence with no safeguards or protections from internal bias against licensees with signing off on a 48-hour shut down without any independent review.

Accordingly, it would be fairer if the exercise of the powers by the police was reviewable by a legal member of the Commission on short notice, with any proposed suspension stayed pending that review and preferably with a right for the licensee to be heard.

A Liquor Commissioner can do a preliminary assessment and determine if the matter in question is best addressed by progressing a complaint process rather than a 48-hour shut down.

Deregulating the sale of alcohol in the NT

The NT Government has sought fit to allow all businesses other than licensees the ability to sell, supply or serve not more than 2 standard drinks a day. Clause 39(2)(b) was not contained in the Exposure Draft and the first industry and the public saw it was when it was the legislation was tabled in NT Parliament.

Coming about the time a noisy barber in Darwin CBD was objecting to the fact he had to have a liquor licence (even though other barbers in town have previously gone through the necessary process) we think this may have been inserted without full consideration of the practical implications.

Can every fast food outlet or clothes retailer in Casuarina Shopping Centre now sell a customer two standard drinks and not require a liquor licence? Can suburban Hungry Jack's and KFC's? And

they won't require RSA certificates? Nor have any obligations to adhere to the Banned Drinker Register?

This clause says nothing about requiring the alcohol to be consumed at that business premise so what would stop a home business opening up a 2 Can of XXXX Gold and Popcorn Take Away stall on the boundary of their property adjacent to a footpath and selling that product?

This Clause also conflicts with the moves being taken to make non licensed restaurants become licensed if they want to allow customers to BYO. On this point we note Ms Haack, Senior Policy Lawyer, Department of Attorney-General and Justice's evidence before the Economic Policy Scrutiny Committee heard on 20 May 2019 where on page 17 of the transcript, she explains the justification:

> "You will have to apply after transition for a BYO licence. It is intended that it be a low-cost, low risk sort of thing. It was one of the categories recommended by Riley. *It just seemed incongruous that we would effectively have the provision of liquor without any RSA or the like.* It is the hope to expand through application process and RSA requirements to those kinds of businesses with minimal impost."[4] (emphasis added)

Allowing businesses other than licensees to sell two standard drinks a day to customers without any form of licence or RSA appears just as incongruous as forcing suburban restaurants to become licenced for BYO.

<u>Community Impact Assessment Guidelines</u>

It is accepted that the current CIA Gazetted Guidelines are not as good as they should be, and we understand an updated version is being developed. We advocate that the NT Government consider issuing different CIA Guidelines as envisaged by Clause 46 for different authorities and licence types and in doing so make them simpler and more fit for purpose for applicants, the community, would be objectors and the Liquor Commission to understand and follow.

[4] https://parliament.nt.gov.au/__data/assets/pdf_file/0004/702580/FINAL-Hansard-Transcript-for-PB-on-Liquor-20-May-2019-Copy.pdf

Criminalisation of the Industry

Clause 78 and 290 operate to make every action against liquor accords, codes of practice, guidelines, regulations and the act that is not met by a licensee, or in some cases their staff, criminal offences. This is a very significant change. In going down the path of increasing the criminalisation of the Liquor industry in the Northern Territory it makes considerations about procedural fairness, enshrinement of the standard of proof, removing double jeopardy and the removal of multiple offences that capture the same activity even more important.

We are concerned of the expansion of criminal offences that staff can be held liable for and we encourage the Committee to make further enquiries on this.

Undue or unreasonable noise

We do not believe Clause 89 is necessary and should be removed. To date, the Liquor Commission has relied on the annoyance/disturbance of the old Act section 67(3)(m) to regulate noise issues in, on and near licensed premises. Unreasonable nuisance or disturbance has been dealt with quite well through the existing process and this remains in Clause 157(1)(m).

We see no need to have Clause 89 enshrined in legislation at this time. We also submit that by covering this activity in two different clauses, over time you could see different definitions and conflict arising sound emanating from licensed premises and assessments as to what is "reasonable" for Clause 89 vs what causes "annoyance or disturbance" under 157 (1)(m).

"Serving" vs "Selling or otherwise Supplying"

We have concerns with the current structure and potential duplication of offences with different thresholds contained in Clauses 135 and 282 with regards serving an 'intoxicated' person. Clause 135 makes it a strict liability offence, and so no need to prove recklessness, to serve an intoxicated person yet this same action could foreseeably be captured by Clause 282 when the person "intentionally sells or otherwise supplies" liquor to a person who is intoxicated.

The Committee should seek confirmation from the Department as to when, they say, it is envisaged a person will be charged under Clause 135 as opposed to under Clause 282? We see little point in dealing with the subject of service, as opposed to sale or supply, in a different way in these clauses.

We submit that it would be better if Clause 135 just dealt with “selling or supplying” someone that is reasonably believed to be on the banned drinkers register and Clause 282 stood as is to regulate the “selling or otherwise supplying liquor” to an intoxicated person.

If you read the two sections together as they currently stand, a licensee or employee could be charged under either section with serving liquor to an intoxicated person, because that will come within the normal meaning of "otherwise supplies liquor". The only difference then would be that under Clause 282 the person must also be on licensed premises, but it is hard to imagine circumstances in which a breach of Clause 135 may be committed other than on licensed premises.

We also note that “serve” is not currently defined and should be clarified by returning to “sell or otherwise supply” in Clause 135. We submit that the potential to capture the same activity under two similar offences with different thresholds, burdens of proof and penalties should be considered for amendment.

Patron identification system – a Restricted Drinkers Register

Now that the Banned Drinkers Register has been in for some time and the NT Government has indicated it is here to stay, we continue to advocate for changes to the system to make it better able to achieve its purported public policy outcomes.

It is absurd that a system in this day and age that scans photo identification does not at the same time scan the date of birth details and indicate a ‘check further’ notification to the vendor if the age would equate to someone being under the age of 18. This does not abrogate the responsibility of the vendor to appropriately check the ID of people who look underage, but it really does show what happens when bespoke systems are designed in isolation from practical application and real-world utility.

We also advocate for the extension of the restricted access of alcohol being included in the BDR regime across the Territory. Having the flexibility of not only banning people for alcohol, but also Territory wide restriction on the amount of alcohol that can be purchased by an individual, would add to the tools that seek to reduce social harm associated with problem drinking, remove the

incentive to travel to access easier alcohol and help keep problem drinkers connected to their communities and support networks.

We seek clarification on this Clause 127 as it is unclear when read alongside Subclause 125(2)(a) and the advice that Licensing NT and Inspectors are currently providing to Licensees. The issue is one of the when a 'Sale' is completed and whether there is a restrictive sequence placed on Licensees as part of that 'Sale' Event.

Clause 125(2)(a) envisages a system where the ID is presented and scanned "at the time of purchasing or consuming liquor." Clause 127(2) prohibits the "sell" event until the BDR system has indicated the person is not on the banned list. This issue has been raised in the context of advice indicating that the practice of scanning the BDR and processing EFTPOS at the same time cannot occur even though the "sale" event arguably hasn't concluded and, if the BDR rejects the sale, the EFTPOS transaction is quickly reversed showing no legal record of the "sale" event. In practical terms a "sale" does not occur and yet Licensing NT has been advising Licensees that this would put them in breach of the Act.

That is why we seek clarification in Clause 127 to remove all doubt and were there a willingness to look at this we would suggest a common-sense approach is taken which clarifies that a sale event concludes when the customer receives back their ID, the EFTPOS Card / any change and leaves with the alcohol they have purchased. What is the public policy objective being achieved in mandating the steps in that "sale" process in a way that does not affect the overall objective of not serving people on the BDR yet holds licensees accountable and at risk for 'technical' breaches?

We submit the 'end of sale' should be defined in the Bill before the Committee as occurring when exchange has been finalised, alcohol and ID cards, and credit cards are all back with the purchasers.

<u>Liquor Accords</u>

We have serious concerns with the proposed changes to the Liquor Accord Clauses 129 to 132. The Director of Licensing is given a power to compel licensees into Liquor Accords, then can refuse licensees wanting to leave the Accord, once a licensee is in the Accord they are bound to adhere to all Accord measures and if they don't it is a breach of their licence and an offence.

Added to this environment, the Director of Licensing can arbitrarily amend the Liquor Accord and include any new supply-side restrictions they see fit. This flies in the face of the Riley Review and re-establishment of an independent Commission to regulate alcohol in the Northern Territory.

Many of the previous measures contained in local Liquor Accords have been enshrined in the new legislative framework or been made redundant by the introduction of POSI's and PALI's and the Minimum Unit Price. With the update of the Promotional Code of Practice as envisaged, there will be very little remaining space for Liquor Accords imposing restrictions and they will transition more to education, open local dialogue, suspicious reporting, information sharing and local familiarisation of the ever changing local police, inspectors and council representatives responsible for alcohol initiatives.

Our fear is that with the inclusion of non-licensees in the membership of local Liquor Accords the prospect of mini-Kangaroo Courts being established deciding restrictive new practices is a very real concern and this is all allowed under the Bill before the Commission without any testing of evidence, right to a fair hearing or natural justice. It also erodes the integrity of the Liquor Commission process which has the power to amend and increase license conditions either individually or to a region of licenses – all done with a fair and transparent process which will be usurped through the hijacking of local Liquor Accords.

We submit that the Liquor Accords should go back to being voluntary. Through local Liquor Accords there have been decisions taken universally to restrict supply or amend trading conditions and we do not believe sufficient justification has been outlined to turn these local Liquor Accords into highly politicised kangaroo courts with non-licensee stakeholders providing self-serving evidence and pushing for every greater restrictions without the ability to test their assertions in a fair process and hearing.

<u>Responsible service certificates</u>

We note that with the requirement in Clause 134 to get RSA Refresher training every 3 years there will be an ongoing need for training and education within the industry. We submit that this is part of what Licensing NT should consider as part of their role and they should be provided the necessary resources accordingly.

The Committee may like to seek confirmation from the Department that the 3 year requirement is not going to be 'turned on' overnight as this would make a vast amount of employees and their employers across the Territory suddenly foul of the legislation and instead a delay is implemented so that industry and their staff can properly plan for the transition.

Additionally, it is noted that in Clause 134 the Liquor Commission can approve entities not accredited by Australian Skills and Quality Authority to conduct approved RSA training and RSA Refresher training. This is positive. There are currently problems with international students who have been pitched as part of Darwin's attractiveness that they will be able to find work in the local hospitality industry accessing RSA training as their CRICOS student numbers make them ineligible for the accredited RSA training. Through this Clause we envisage being able to assist Study NT in providing RSA training to future new international students should we be successful in gaining Liquor Commission approval to conduct that training.

<u>Tenure Blind Approach to Activation</u>

A particular issue that we continue to work through with the NT Government that we would like to raise with the Scrutiny Committee is with regard the different regulatory burden and pathways that exist in the Liquor Bill 2019 and current Licensing NT and Liquor Commission practices when it comes to events, activation initiatives and the desire to see greater use of outdoor urban spaces.

On a tenure blind approach the appropriate and regulated urban activation and CBD vibrancy Government is seeking to encourage can be dealt with by aligning the red tape processes of special event authorities, temporary licence variations and temporary material alterations with the Director of Licensing given similar delegated powers by the Liquor Commission to determine all three.

It should not matter who the applicant is, the processes should be aligned. This is currently not the case. As an example, imagine there is a licenced premise next to a laneway:

1. Someone new who is unlicensed can come along and put in a special event authority application for an event for under 500 people and ending before midnight and face a 4 page form, no advertising, director of licensing approval under delegation from the Liquor Commission and the total time for the process is under 28 days. We take no issue with this.

2. If the licenced premise wanted to put on the exact same event they are not able to go through the special event authority process[5] and need to seek a material alteration, the Director of Licensing can decide whether to require advertising or not and currently the Liquor Commission has not delegated any authority to Licensing NT and so it goes to full public hearing with more like 50 or 60 pages of paperwork and at best a two to three month turnaround. In this scenario there are no changes to the Liquor Bill 2019 required – just similar decision-making delegations from the Liquor Commission. Ministerial Guidelines issued in this regard would assist achieving this outcome.
3. If there are any changes to the trading times that licenced premise sought to trade as part of that laneway event, they would need to seek a licence variation. Currently there is no discretion for the Director of Licensing to waive advertising, so this occurs and again the Liquor Commission has not delegated any decision-making power. So like scenario 2 above it is 50-60 pages of paperwork and three months or more, considering the public notice period, for a decision to be made.

Currently, three different pathways for the same event have been created depending on whether it is the licensee in an adjacent licenced premise, the regular hours attached to that licence or whether it is NT Major Events or someone new who is applying for the event. The different pathways impose very different regulatory burdens and timelines on exactly the same event depending on who the applicant is.

We have proposed the following partial solution to ARIT for their consideration. Amending Clause 108 Notice of application to vary conditions – **Insert a new subclause (3)**

3. The Director may exempt an applicant from the public notice requirements of this section if the application is temporary in nature.

Examples for subsection (3)

1. *Trading hour variations seeking alignment with the Rugby World Cup, the Olympics, the Soccer World Cup or other significant sporting events*
2. *Alignment to a local community or private event like a wedding function or festival after party*

This would give the Director of Licensing the discretion to exempt notice periods for temporary variations just like they can for special event authorities and material alteration applications. The

[5] This has been confirmed in correspondence from the Liquor Commission to licensees in October 2018

Director of Licensing would still have the power to enforce public notice periods if they determined appropriate and would bring temporary licence variations into line with special event authority applications and material alteration applications – both of which give the Director of Licensing this discretion.

Following this amendment and commencement of the new Act, we advocate that the Liquor Commission delegate some decision-making powers across all three scenarios to the Director of Licensing and / or a single member of the Liquor Commission and the Minister consider publishing Guidelines to assist in achieving this outcome.

So for instance the Liquor Commission may delegate to the Director of Licensing the authority to deal with one off laneway style events of less than 500 and ending before midnight[6], events that coincide with NTG supported festivals or events or where the NTG or Darwin City Council has indicated support for this application as part of activation initiatives. The Liquor Commission may also delegate to a single member of the Liquor Commission Olympic Game trading time applications in full or for all those seeking addition up to 2 hours with clean compliance history – with those without good compliance facing full Liquor Commission hearing and scrutiny process.

These simple, yet to date not done, practical initiatives would substantially improve flexibility and allow greater alignment with the activation and vibrant CBD agenda and remove unnecessary red tape that is currently hindering these public policies and placing unnecessary red tape on standard New Year's Eve, Anzac Day at Clubs and Overseas sports event trading applications.

Additionally, if supported, we see licence applications linked to festivals and activation series, in conjunction and collaboration with Activate Darwin or NT Major Events or a Local Government initiative, being able to be facilitated with less administrative burden and red tape whilst still providing for the necessary community impact considerations to be taken into account.

[6] Under the Current Liquor Act and arrangements, the Liquor Commission has delegated special events meeting these criteria to the Director-General of Licensing to determine but has not done similar for temporary material alterations or temporary licence variations.

Other matters

There are a range of other issues that we are continuing to work on with the NT Government on through the IRG process.[7] We remain hopeful that where the Government's policy intent can be satisfied with the least amount of intervention and red tape, common sense in policy decision making will prevail.

We again also stress the need for proper resourcing of the Liquor Commission to be able to resolve applications in a timely manner and also for proper resources for educational activities to ensure workers across the Territory are not disadvantaged by the changes. As an example, we understand that the planned changes to introducing industrial manslaughter in the Northern Territory coming in will have significant educational resources as part of that implementation so relevant industries are brought up to speed.

Yet when one considers the increased criminality of the Liquor industry in the Territory and it large and diverse workforce, the Committee should consider recommendations around proper educational resources being committed to by the NT Government.

Conclusion

Hospitality NT supports the NT Government's moves towards a contemporary and modern Liquor Act. The Bill before the Committee is an easier to read and navigate legislation compared to its predecessor. We also strongly support independent decision making and the re-establishment of the Liquor Commission.

We continue to have concerns on aspects of the Bill and the associated processes in NT Government where decision making cannot be shown to be arm's length, there is no independent oversight, natural justice or right to be heard and would welcome any recommendations from the Scrutiny Committee that aims to increase the transparency and good governance in the Bill.

We acknowledge the work done to date and level of engagement with the community and industry that has been undertaken by the NT Government in formulating this Bill.

[7] See Annexure 1 – Outcomes and Action Items from Industry Reference Group Meeting 3rd June 2019

We plan on attending the Committee's public hearing scheduled for Thursday 4th July and would welcome providing further information and submission to the Committee on our continuing concerns at that time.

Yours sincerely,

Des Crowe
Chief Executive Officer
Hospitality NT