



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legislation Scrutiny Committee

Inquiry into the Liquor Amendment Bill 2020

March 2020

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Chair's Preface

This report details the Committee's findings regarding its examination of the Liquor Amendment Bill 2020. The primary purpose of the Bill is to clarify that the Liquor Commission can approve a substitution of premises where the proposed premises are under construction or yet to be constructed, and to remove the 'like for like' requirement for a substitution of premises.

The Committee received eight submissions to its inquiry. The majority of submitters opposed the intent of the Bill, with only one submitter supporting the Bill. A number of submitters recommended amendments to the Bill. The Committee sought advice from the Department of the Attorney-General and Justice on the amendments proposed by submitters and the impact those amendments would have on the operation of the Bill.

After careful consideration of the evidence received from submitters and the Department's response to written questions, the Committee considers that the Assembly should pass the Bill with no amendments.

On behalf of the Committee, I would like to thank the organisations that made submissions to this inquiry and the Department for their advice on the Bill. I also thank my fellow Committee members for their bipartisan support in the examination of the Bill.

A handwritten signature in black ink that reads "Tony Sievers". The signature is written in a cursive style and is underlined with a single horizontal line.

Tony Sievers MLA

Chair

Committee Members

	Mr Tony Sievers Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Legislation Scrutiny Committee
	Chair:	Legislation Scrutiny Committee
	Ms Sandra Nelson MLA Member for Katherine	
	Party:	Territory Labor
	Parliamentary Position	Acting Deputy Speaker
	Committee Membership	
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	Deputy Chair:	Legislation Scrutiny
	Mr Joel Bowden MLA Member for Johnston	
	Party:	Territory Labor
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	Mrs Lia Finocchiaro MLA Member for Spillett	
	Party:	Country Liberals
	Parliamentary Position:	Leader of the Opposition
	Committee Membership	
	Standing:	Privileges
	Sessional:	Legislation Scrutiny
	Mrs Robyn Lambley MLA Member for Araluen	
	Party:	Independent
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Legislation Scrutiny
Note: Pursuant to Standing Order 181, on Tuesday 10 March Member for Karama, Ms Ngaree Ah Kit MLA was discharged from the Committee and replaced by Member for Johnston, Mr Joel Bowden MLA.		

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Acknowledgements

The Committee acknowledges the organisations that provided written submissions and the Department of the Attorney-General and Justice for providing advice on the Bill.

Terms of Reference

Sessional Order 13

Establishment of Legislation Scrutiny Committee

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints a Legislation Scrutiny Committee.
- (3) The ordinary membership of the scrutiny committee will comprise three Government Members, one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

The Committee's membership will be supplemented by alternate members who may be nominated to participate at meetings and undertake a role on the committee in the place of ordinary committee members. The nomination of alternate committee members will be in writing by the ordinary member to the committee chair.

Alternate Committee members must be from the same category of Members of the Assembly as the ordinary member nominating them such as the same political party or a non-party aligned Member.

- (4) The functions of the scrutiny committee shall be to inquire and report on:
 - (a) any matter referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

- (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
 - (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) The Committee will provide an annual report on its activities to the Assembly.

Adopted 27 November 2019

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Liquor Amendment Bill 2020.

1 Introduction

Introduction of the Bill

1.1 The Liquor Amendment Bill 2020 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 13 February 2020. The Assembly subsequently referred the Bill to the Legislation Scrutiny Committee for inquiry and report by 24 March 2020.¹

Conduct of the Inquiry

1.2 On 13 February 2020 the Committee called for submissions by 2 March 2020. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix 1, the Committee received eight submissions to its inquiry. The Committee wrote to the Attorney-General seeking responses to matters raised in submissions and amendments proposed by submitters. The answers to these questions were published on the Committee's webpage.

Outcome of Committee's Consideration

1.4 Sessional Order 13(4)(c) requires that the Committee after examining the Bill determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Liquor Amendment Bill 2020.

Report Structure

1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

¹ Hon Natasha Fyles, Attorney-General and Minister for Justice, *Draft Daily Hansard*, 13 February 2020, pp. 4-8, <https://www.territorystories.nt.gov.au/jspui/handle/10070/756093>.

1.7 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Purpose of the Bill

- 2.1 The purpose of the Bill is to amend the provisions regarding substitution of premises. As outlined in the Explanatory Statement, the Bill:

amends the *Liquor Act 2019* to clarify that the Liquor Commission may approve substitution of premises despite where the proposed premises are yet to be constructed or are still under constructions, amends the *Liquor Act 2019* to remove the 'like for like' requirement for a substitution of premises application, and clarifies that the Liquor Commission may impose conditions on the grant of approval of a substitution of premises application.²

² *Liquor Amendment Bill 2020 Explanatory Statement*, p. 1, <https://parliament.nt.gov.au/committees/LSC/124-2020>

3 Examination of the Bill

Introduction

- 3.1 Of the eight submissions received, Endeavour Drinks was the only submitter who supported the intent of the Bill and recommended amendments that they considered would ensure the objectives of the Bill and the Government are achieved. The remaining submitters opposed the intent of the Bill and considered that it is contrary to recommendations of the Riley Review.
- 3.2 While the Foundation for Alcohol Research and Education (FARE), Danila Dilba Health Service (DDHS), People's Alcohol and Action Coalition (PAAC) and Amity Community Services emphasised that they do not support the Bill being passed, they recommended amendments as 'an option of last resort'³ if the Bill is to be passed.

Substitution of Premises

- 3.3 The Bill amends section 75 of the *Liquor Act 2019* (the Act) which provides for substitution of premises. Proposed subsection 75(2A) stipulates that a licence holder can apply for a substitution of premises even though the substitute premises are not yet constructed or under construction, which is not currently provided for in the Act. Hospitality NT and Endeavour Drinks support the Act being amended to make it clear that applications to substitute premises can be considered irrespective of whether the substitute premises have been built.
- 3.4 The Bill replaces subsection 75(2) by removing the requirement for the Liquor Commission to be satisfied that 'no signification change in the operation of the business will occur as a result of the substitution'. The removal of this 'like for like' provision was opposed by the majority of submitters, with only Endeavour Drinks supporting this amendment.
- 3.5 Submitters commented that removing the 'like for like' requirement provides an opportunity to circumvent the five year moratorium on new takeaway licences (until 31 August 2023), which is stipulated in subsection 84(3) of the Act, by enabling existing licence holders to substitute for a larger premises and increase the volume of alcohol available for sale; and is contrary to the Riley Review recommendations relating to substitution of premises.
- 3.6 The Northern Territory Council of Social Services noted the 'like-for-like substitution has served as a way to keep the volume of alcohol entering the Territory through liquor stores similar to the volume currently being experienced. It is a key legislative protection to sales volumes being increased.'⁴
- 3.7 FARE, PAAC and DDHS opposed the removal of the 'like for like' provision and recommended that if it is removed, the Bill should be amended to include a provision that caps the volume of alcohol available for sale to ensure there is no overall

³ Foundation for Alcohol Research and Education, Submission No. 7, p. 5.

⁴ Northern Territory Council of Social Services, Submission No. 1, p. 2.

increase in this volume as the result of a substitution of premises. FARE further proposed that if a licence holder was seeking to substitute to larger premises they should be required to substitute multiple premises for a single larger premises so that the cumulative volume of alcohol for sale in the Territory does not increase. FARE considered this would address the Riley Review concerns about substitution being used to circumvent the moratorium and would maintain the integrity of the moratorium.

3.8 The Committee wrote to the Department seeking comments on issues raised by submitters and their recommendations to amend the Bill to prevent an increase in the volume of alcohol available for sale as the result of a substitution of premises.

3.9 The Department advised the Committee that there are existing provisions within the Act that can prevent an increase in the cumulative volume of alcohol available for sale in the Territory:

Section 75 of the *Liquor Act 2019* (the Act) requires the Liquor Commission, when considering an application for substitution of premises, to be satisfied the substitution satisfies the public interest and community impact requirements. Section 49 of the Act sets out the public interest and community impact requirements. Particularly, section 49(3)(h) requires the Commission must consider, when determining whether issuing a licence or authority would have a significant adverse impact on the community, 'the effect of the volume of liquor sales on the community'.

Further, there are discretionary powers for the Liquor Commission, and the Minister, in sections 87 and 88 of the Act, where conditions may be placed on a licence that can include limiting the times when liquor may sold, and the quantities and types of liquor sold.⁵

3.10 FARE recommended the following amendment to proposed subsection 75(2):

- (2) Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that:
 - (a) no significant change in the volume of alcohol sold will occur as a result of the substitution; and
 - (b) the substitution satisfies the public interest and community impact requirements.⁶

3.11 The Committee asked the Department what impact the proposed amendment would have on the operation of the Act and was advised that:

These proposed amendments are not recommended by the Department for the following reasons.

The impact of a provision of this type would likely make substitution of premises harder to obtain; it would require a comparison of sales at the primary licensed premises and an assessment of predicted sales in the proposed premises for substitution. This requirement alone may make it impossible for some licensees who have not traded for some time or otherwise had premises lay dormant (or destroyed), or propose to move to a different location.

⁵ Department of the Attorney-General and Justice, *Response to Written Questions*, p. 1, <https://parliament.nt.gov.au/committees/LSC/124-2020>.

⁶ Foundation for Alcohol Research and Education, Submission No. 7, p. 5.

There would likely also need to be consideration of how 'volume' of alcohol would be measured. That type of assessment could include the level of Pure Alcohol Content, which is currently only reported by wholesalers on a postcode basis, the type of liquor sold and/or quantities of products sold under a particular licence.

It is important to note that the current provisions regarding data collection were subject to significant consultation with industry and the regulator only recently in 2019. Changes to these provisions without providing notice to industry, who had raised concerns about regulatory burden during the original consultations in 2019, would be a matter of concern for the Department.⁷

- 3.12 The Committee also sought advice from the Department on the recommendation by FARE that a licence holder seeking to move to larger premises should be required to substitute multiple licensed premises for a single larger premise. The Department informed the Committee:

These proposed amendments are not recommended by the Department for the following reasons.

This type of proposal is likely to engage legal issues about acquisition of property without just terms, where it would require the holder of more than one licence to surrender additional licences and premises to invest in a single new premises.

It is also expected licensees who own more than one licence would not support a requirement of this type which would involve significant concentration of risk and investment in one location.

For licensees who hold only one licence, it is likely to be difficult for those licensees to identify and then purchase additional licences to substitute to one new larger premises.

Further policy consideration would be required for an outcome such as this to be achieved. It would need to include considerations such as what value is placed on a licence if surrender by the holder is required to substitute to a larger premises, compensation that might be payable for the 'acquisition' of the licence, the threshold test that might apply when valuing a licence (and could include considerations such as location, size, profit, size of customer base, product range, years of operation).

It should also be recognised that a substitution of premises application does not affect only takeaway licensed premises. This type of requirement for multiple licences being used for a significant substitution of premises would have unintended consequences for substitution of premises where the relevant business is a restaurant or public hotel.⁸

Committee's Comments

- 3.13 The Committee is satisfied with the Department's response.

Procedural Amendments

- 3.14 Endeavour Drinks proposed amendments to sections 75, 322, 324 and 326 of the Act which they considered would improve the effectiveness of the Bill in achieving its objectives and ensure there is no ambiguity about the provisions relating to substitution of premises and the Northern Territory Civil and Administrative Tribunal's

⁷ Department of the Attorney-General and Justice, *Response to Written Questions*, p. 2, <https://parliament.nt.gov.au/committees/LSC/124-2020>.

⁸ Department of the Attorney-General and Justice, *Response to Written Questions*, p. 3, <https://parliament.nt.gov.au/committees/LSC/124-2020>.

procedures for reviewing applications made under section 46A of the *Liquor Act 1978* and section 75 of the *Liquor Act 2019*.

3.15 The Committee sought the Department's comments on the proposed amendments and was advised:

These proposed amendments are not recommended by the Department for the following reasons.

The proposed amendments to section 75 appear to clarify that substitution of premises is not limited by the moratorium in section 84(3) on the creating or issuing of new takeaway licences and is considered unnecessary.

The proposed amendments to sections 322 and 324 appear to make provision for circumstances specific to Endeavour Drinks in its application for substitution of premises. The Department understands Endeavour Drinks has a concern about the requirement for transitional arrangements under the Act to convert licences by 1 October 2020. It is also understood that Endeavour Drinks had concerns about possible cancellation of its BWS Stuart Park licence due to the absence of trading for considerable time. The Department has been advised that the Director of Liquor Licensing (the Director) is aware of these issues and has not taken steps to convert the BWS Stuart Park licence in light of current efforts to substitute premises.

The Department notes the process is that by 1 April 2020 a licensee may provide written notice to the Director as to the category of authority for conversion of its existing licence. If a licensee does not submit an application before 1 April 2020, the Director may proceed to convert the licence. The provision was intended not to terminate licences but to provide a mechanism whereby those who do not participate in the conversion process will have their licences converted by the regulator. The circumstances apparently relevant for Endeavour Drinks is that the licence subject to the application for substitution application has not traded for some time, and under section 67 of the Act a licensee is taken to have abandoned the licence if they have ceased to operate the premises for more than 6 months. In these circumstances licensees can obtain approval from the Director.

The proposed amendments to section 326 in the Bill relate to the transitional arrangements that appear to cover circumstances specific to Endeavour Drinks in its previous appearance before the NTCAT where the Liquor Commission decision was not actually reviewed, but declined by the NTCAT on two preliminary points. The Department considers the current wording of the Bill, supported by the accompanying explanatory material, is adequate to understand the policy position that, despite where NTCAT has previously considered an application, the Bill provides that party another opportunity for an application to be considered by NTCAT on the new legislative criteria in section 75.

The Department also refers to the proposed amendments in section 326 including powers and functions of the NTCAT to conduct a rehearing. It is noted those functions and powers of NTCAT (such as confirming, varying, substituting or making a different decision to the Liquor Commission) are already provided for in the *Northern Territory Civil and Administrative Tribunal Act 2014*, and that on a review or rehearing, the NTCAT stands in the shoes of the decision maker (the Liquor Commission), and has all the functions and powers of the Liquor Commission to make the correct decision.

The Department has also identified that the proposed amendments put forward by Endeavour Drinks (Attachment A to the submission dated 2 March 2020), contains a combination of 'marked up' tracked changes text, as well as text that appears to be original wording, but is not contained in the version of the Bill as introduced (for example the new proposed clause 326). This has impacted on the Department's ability to consider the operation of the proposed clauses in the

timeframe provided and responses have been limited to those obvious changes that are presented in 'marked up' tracked changes.⁹

Committee's Comments

3.16 The Committee is satisfied with the Department's response.

Minister's Power to Grant Licences and Authorities

3.17 Endeavour Drinks proposed an amendment to the Act which would provide the Minister with the power to issue a licence and authorities to 'any person on such terms and conditions that the Minister thinks fit'. The drafting of proposed section 60A provides discretionary power to the Minister to grant a licence and authorities in relation to a 'significant development proposal' which is defined as a proposal that, 'in the opinion of the Minister, is of such a nature or scale as to be important to the Northern Territory for economic or social reasons.'¹⁰

3.18 Proposed section 60A provides that when exercising this power the Minister must consider the purposes of the Act in section 3 but 'is not subject to or limited by any of the requirements of Part 3 Division 4, Part 3 Division 5 and section 84'. Proposed subsection 60A(4) further provides:

- (4) For the avoidance of doubt, the Minister may exercise the power under subsection (1) notwithstanding that:
 - (a) there is no application under section 52;
 - (b) the Minister has not notified any person (including any person who may be adversely affected by the issue of the licence and one or more authorities) that the Minister is considering exercising the power under subsection (1);
 - (c) the person in whose favour the Minister proposes to issue the licence and one or more authorities has not satisfied the Minister or any other person of any matter or thing (including any matter or thing specified in Part 3 Division 4);
 - (d) the issue of the licence and one or more authorities may be contrary to any of the limits specified in section 84, including but not limited to the moratorium in section 84(3);
 - (e) the issue of the licence and one or more authorities may be contrary to or inconsistent with a decision of the Director or the Commission whether under this Act or the *Liquor Act 1978*; or
 - (f) the premises proposed to be licensed which are not yet constructed or are still under construction.¹¹

3.19 In their submission, Endeavour Drinks stated:

The proposed powers are only available to be exercised in strictly limited situations where significant development proposals are involved and they require the Minister to consider the purposes of the 2019 Act when exercising this power. Further, the Minister may develop such guidelines as is considered appropriate

⁹ Department of the Attorney-General and Justice, *Response to Written Questions*, pp. 4-5, <https://parliament.nt.gov.au/committees/LSC/124-2020>.

¹⁰ Endeavour Drinks, Submission No. 6, Attachment A, p. 4.

¹¹ Endeavour Drinks, Submission No. 6, Attachment A, p. 4.

to guide his or her exercise of this power. Any exercise of this power would be subject to judicial review. These limitations and mechanisms ensure the necessary protections are in place to ensure the power is exercised appropriately.

This power is needed because, in circumstances of major developments which involve the delivery of significant benefits to the Northern Territory, it may be that the Liquor Commission and/or NTCAT operating under the full regime of the 2019 Act may not be best placed to assess all of the necessary matters involved with major developments in order to determine if a liquor licence should be issued. Major developments are often very sensitive to delays, changes in markets and other matters and opportunities can easily be lost if a Government is not able to act in a timely manner to provide appropriate support to a development that will deliver significant benefits to the Northern Territory.¹²

- 3.20 The amendment proposed by Endeavour Drinks would nullify the licence moratorium established under subsection 84(3) in situations where the Minister decides to exercise this power; removes the requirement to satisfy the public interest and community impact test; allows the Minister to make decisions that are inconsistent with decisions of the Liquor Commission; and removes established procedural requirements such as notifying any person, including those adversely affected, that the Minister is considering granting a licence.

Committee's Comments

- 3.21 The Committee does not consider that it is appropriate to provide the Minister with the power to grant a licence and authorities for significant development proposals unfettered by the procedural requirements of the Act and does not support the amendment proposed by Endeavour Drinks.

¹² Endeavour Drinks, Submission No. 6, p. 5.

Appendix 1: Submissions Received

Submissions Received

1. Northern Territory Council of Social Services
2. Alcohol and Drug Foundation
3. People's Alcohol Action Coalition
4. Danila Dilba Health Service
5. Hospitality NT
6. Endeavour Drinks
7. Foundation for Alcohol Research and Education
8. Amity Community Services

Note

Copies of submissions and the Department's response to written questions are available at:
<https://parliament.nt.gov.au/committees/LSC/124-2020>

Bibliography

Department of the Attorney-General and Justice, *Response to Written Questions*,
<https://parliament.nt.gov.au/committees/LSC/124-2020>.

Liquor Amendment Bill 2020 Explanatory Statement,
<https://parliament.nt.gov.au/committees/LSC/124-2020>.

Hon Natasha Fyles, Attorney-General and Minister for Justice, *Draft Daily Hansard*, 13
February 2020, <https://www.territorystories.nt.gov.au/jspui/handle/10070/756093>.