



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

Inquiry into the Liquor Amendment Bill 2018

March 2019

Contents

Chair’s Preface	4
Committee Members	6
Committee Secretariat	7
Acknowledgments.....	7
Terms of Reference	8
Recommendations	10
1 Introduction	11
Introduction of the Bill	11
Conduct of the Inquiry	11
Outcome of Committee’s Consideration	11
Report Structure	12
2 Overview of the Bill	13
Background to the Bill	13
Purpose of the Bill	13
3 Examination of the Bill.....	14
Introduction.....	14
Section 19A and 19B Amendments	14
Variations of Liquor Licence Conditions by the Liquor Commission	17
Point of Sale Interventions	17
Expanding the definition of customer	18
Multiple point of sale interventions	21
Stopping a vehicle	22
Undercover Operations	23
Seizure of property during undercover operations	26
Release of property seized during undercover operations	27
Appendix A: Submissions Received	29
Bibliography.....	30

Chair's Preface

This report details the Committee's examination of the Liquor Amendment Bill 2018 and subsequent recommendations. This Bill is one of a series of reforms to the *Liquor Act 1978* (the Act), some of which have been completed, and others are in progress. In addition to these incremental reforms, the government has committed to a complete review and rewrite of the Act.

The individual, family, social and community harms associated with alcohol use across the Territory have been thoroughly researched and are well known. There is no single, simple solution to alcohol-related harms. It is imperative that the government and this Parliament continue to work collaboratively to reduce the alcohol-related harms experienced across our community.

One of the purposes of this Bill is to strengthen the point of sale intervention powers that commenced in June 2018. Following the introduction of these powers, it became apparent that amendments were required to better achieve the objectives of point of sale interventions and limit the opportunities for people to deliberately evade liquor inspectors and police officers in the course of their duties. The amendments will allow interventions to be conducted in certain circumstances after alcohol has been purchased from a licensed premise, including drive through premises.

The Bill also introduces powers for police officers to conduct undercover operations to detect offences against the Act. The selling of alcohol without a liquor licence, known as sly-grogging, and the supply of alcohol into dry communities, grog running, has harmful consequences and often targets our community's most vulnerable people. The undercover operation powers in the Bill, which include seizure and forfeiture powers, are designed to prevent these practices from occurring and act as a deterrent to those who may seek to benefit from such practices.

The Committee has recommended the Assembly pass the Bill and proposed three amendments to clarify provisions and strengthen the Bill. The Committee has further recommended that as part of the complete review and rewrite of the Act, the government review all of the Act's seizure and forfeiture powers to assess their impact, reasonableness and proportionality to the offences they relate to.

On behalf of the Committee, I thank the submitters for their comments on this Bill. I would like to acknowledge the Attorney-General and Minister for Justice and the Department of the Attorney-General and Justice for their work in providing comprehensive answers to questions raised by the Committee. This has greatly assisted the Committee to complete this important piece of work and draft the proposed amendments to the Bill.

I also extend my thanks to the Department of the Legislative Assembly for the assistance provided to the Committee, and to my fellow Committee members for their 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

	Tony Sievers MLA Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Economic Policy Scrutiny
	Chair:	Economic Policy Scrutiny
	Kate Worden MLA Member for Sanderson	
	Party:	Territory Labor
	Parliamentary Position	Government Whip
	Committee Membership	
	Standing:	Public Accounts
	Sessional:	Economic Policy Scrutiny
	Gary Higgins MLA Member for Daly	
	Party:	Country Liberals
	Parliamentary Position:	Leader of the Opposition
	Committee Membership	
	Standing:	House, Standing Orders, Members' Interests
	Sessional:	Economic Policy Scrutiny
	Select:	Northern Territory Harm Reduction Strategy for Addictive Behaviours
	Lawrence Costa MLA Member for Arafura	
	Party:	Territory Labor
	Committee Membership	
	Sessional:	Economic Policy Scrutiny
	Select:	Northern Territory Harm Reduction Strategy for Addictive Behaviours
	Yingiya Mark Guyula MLA Member for Nhulunbuy	
	Party:	Independent
	Committee Membership	
	Sessional:	Economic Policy Scrutiny
On 1 February 2019, Member for Fong Lim, Mr Jeff Collins MLA, was discharged from the Committee and replaced by the Member for Sanderson, Mrs Kate Worden MLA.		

Committee Secretariat

First Clerk Assistant: Russell Keith

Committee Secretary: Jennifer Buckley

Senior Research Officer: Elise Dyer

Administration Assistant: Kim Cowcher

Contact Details: GPO Box 3721 DARWIN NT 0801

Tel: +61 08 8946 1485

Email: EPSC@nt.gov.au

Acknowledgments

The Committee acknowledges the organisations that have made written submissions to this inquiry and the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, for providing comments on issues raised through the inquiry.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area 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) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Liquor Amendment Bill 2018 with the proposed amendments set out in Recommendations 2, 3 and 4.

Recommendation 2

The Committee recommends that subsection 101ZK(5) be amended so that a container in the possession of, but not purchased by, a 'customer' can be seized if the police officer or inspector suspects on reasonable grounds that an alcohol-related offence is likely to occur.

Recommendation 3

The Committee recommends that proposed section 101ZIA be amended by substituting the words 'possess, purchase, sell or otherwise supply' for the words 'acquire, supply and possess'.

Recommendation 4

The Committee recommends that provisions be inserted into the Liquor Amendment Bill 2018 to amend subsections 97(5)(b) and 101AP(5) of the *Liquor Act 1978* to allow the Commissioner of Police to release seized property where the applicant knew about the commission of an offence but was not in a position to reasonably prevent the commission of the offence.

Recommendation 5

The Committee recommends that, as part of the review and rewrite of the *Liquor Act 1978*, the government review the seizure and civil forfeiture powers to assess their impact, reasonableness and proportionality to the offences they relate to.

1 Introduction

Introduction of the Bill

- 1.1 The Liquor Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 28 November 2018. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by 12 March 2019.¹

Conduct of the Inquiry

- 1.2 On 30 November 2018, the Committee called for submissions by 30 January 2019. 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 The Bill and associated explanatory materials were forwarded to Ms Sally Gearin for review of fundamental legislative principles under Sessional Order 13(4)(c)(iii).
- 1.4 As noted in Appendix A, the Committee received two submissions to the inquiry. The Committee also wrote to the Attorney-General seeking clarification of issues raised in the submissions and the legal advice provided by Ms Gearin.

Outcome of Committee's Consideration

- 1.5 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.
- 1.6 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 with the proposed amendments set out in Recommendations 2, 3 and 4.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Liquor Amendment Bill 2018 with the proposed amendments set out in Recommendations 2, 3 and 4.

¹ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Liquor Amendment Bill 2018 (Serial 74), Explanatory Speech, *Debates*, Northern Territory Legislative Assembly, 28 November 2018, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>

Report Structure

- 1.7 Chapter 2 provides an overview of the policy objectives and the purpose of the Bill as contained in the Explanatory Statement.
- 1.8 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

- 2.1 The Northern Territory Government has made a number of amendments to the *Liquor Act 1978* following the release of the *Alcohol Policies and Legislation Review Final Report* (the Riley Review) in October 2017. Of the 220 recommendations in the Riley Review, the government has stated it supports 187 recommendations without amendment or condition, supports in-principle 32 recommendations and does not support one recommendation.²
- 2.2 The reforms already completed include the introduction of point of sale intervention (POSI) powers (commenced June 2018) and minimum floor pricing (commenced October 2018). In addition to the incremental amendments being made to the *Liquor Act 1978*, the government has committed to a complete review and rewrite of the Act which will implement a significant number of the recommendations made in the Riley Review.³

Purpose of the Bill

- 2.3 The purpose of the Bill, as noted in the Explanatory Statement, is to:
- (a) amend section 33 of the *Liquor Act* to allow for the Liquor Commission, if it considers it appropriate, to hold public hearings as part of the process for variation of conditions of a licence;
 - (b) add the circumstances where a customer appears to have purchased liquor for consumption away from the premises, or has liquor in their possession within the location boundaries already established by section 101ZK(1)(a), to the current two circumstances contained in section 101ZK(1)(b) (the customer appears to be purchasing or intending to purchase liquor for consumption away from the premises) in relation to point-of-sale interventions;
 - (c) provide a power for a police officer or inspector to stop a vehicle and give reasonable directions to the driver of the vehicle to assist them in the exercise of powers under section 101ZK; and
 - (d) provide for specific powers in the *Liquor Act* for police officers to engage in undercover operations where the police officer and the subject of the investigation are in the Northern Territory, including powers to seize, forfeit and dispose of things related to an offence.⁴

² Northern Territory Government, *Alcohol Harm Minimisation Action Plan 2018-19*, June 2018 revised edition, p. 2, viewed on 19 February 2019, https://alcoholreform.nt.gov.au/_data/assets/pdf_file/0008/485315/AHMPPlan_2018.pdf

³ Northern Territory Government, *Alcohol Harm Minimisation Action Plan 2018-19*, June 2018 revised edition, p. 2, viewed on 19 February 2019, https://alcoholreform.nt.gov.au/_data/assets/pdf_file/0008/485315/AHMPPlan_2018.pdf

⁴ Explanatory Statement, *Liquor Amendment Bill 2018* (Serial 74), p. 1, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

3 Examination of the Bill

Introduction

- 3.1 The Committee received submissions from the Australian Hotel Association NT Branch (AHA) and the North Australian Aboriginal Justice Agency (NAAJA). Both organisations provided comments on specific provisions within the Bill, which will be discussed in the relevant sections of this report. In addition to this, both organisations expressed broader concerns about the direction of alcohol reform policies.
- 3.2 The Committee's terms of reference require it to examine the Bill that has been referred to it, which sets the scope for what issues the Committee needs to consider. Both submissions raised a number of issues which do not fall within the scope of the Committee's inquiry, and have been briefly summarised below.
- 3.3 Much of the submission from the AHA relates to the insertion of sections 48B and 48C by the *Liquor Amendment (Point of Sale Intervention) Act 2018* (commenced June 2018), which provide the Commissioner of Police with the power to suspend a liquor licence for up to 48 hours, and outline the reporting requirements related to such suspensions. The AHA stated that these amendments did not have sufficient regard to the rights and liberties of individuals and not only reverse the onus of proof, but remove the onus of proof entirely. The AHA requested that the Committee consider recommending amendments to section 48B to require decisions to suspend a liquor licence be made by an independent decision maker, such as the Liquor Commission, with a process that affords natural justice to all parties.⁵ As noted, this does not fall within the remit of the Committee's terms of reference.
- 3.4 NAAJA stated that the amendments proposed in the Bill are a further escalation of criminal justice responses to alcohol abuse, as opposed to responding to alcohol abuse primarily as a health issue. NAAJA also expressed concerns about the risks of racial profiling and perpetuating perceptions of systemic racism and discrimination against Aboriginal people.⁶

Section 19A and 19B Amendments

- 3.5 Section 19A of the Act establishes the offence of obstructing Licensing Inspectors (inspectors), while section 19B provides inspectors with powers to detect non-compliance with licence conditions. The proposed amendments are to clarify that these sections apply to both inspectors and police officers exercising inspector powers under section 19 of the Act. During the explanatory speech, the Attorney-General stated:

The *Liquor Amendment (Minimum Pricing) Act 2018* came into force on 27 August 2018. This gave new enforcement and evidence-gathering powers for liquor inspectors to test whether licensees are engaging in sales below the minimum floor price. However, it was important to limit that information leading directly to a criminal prosecution.

⁵ AHA, Submission No. 1, 2019, p. 3.

⁶ NAAJA, Submission No. 2, p. 14.

Liquor inspectors are able to request to purchase or to purchase alcohol below the floor price from a licensee, or to request to purchase from a retailer who is unlicensed. This is in order to gather evidence of non-compliance so that regulatory action can be taken.

This Bill clarifies a technical interpretation issue by making small amendments to sections 19A and 19B of the Act. This will make it clear that these protections and powers in section 19A and 19B respectively are also extended to police officers.⁷

3.6 In response to written questions from the Committee, the Attorney-General provided additional background information on the introduction of section 19B, stating:

Section 19B was introduced in to the Act in 2018 to assist in the detection of the sale of liquor into the Northern Territory by retailers located outside of the Northern Territory. Part of its function is to enable inspectors to seek to purchase liquor (mostly in an on-line environment) and test whether the sale will comply with the minimum floor price requirements of Part IXA of the Act (Minimum Pricing Obligations). Section 19B(4) of the Act limits the use of the evidence so obtained to only be used by the Liquor Commission in exercising powers under Part III (Licences) or Part IXA of the Act, or to be used by the Director-General or the Liquor Commission in relation to Part VII of the Act (enforcement provisions for licences and Special Licences). While evidence cannot be led in a criminal investigation, it can be used as intelligence to inform further actions which may in turn lead to the gathering of evidence for bringing charges under the Act.⁸

3.7 In regard to the amendment to section 19A, NAAJA stated:

Obstruction of an inspector is an offence and the penalty is up to 50 penalty units or imprisonment for 6 months (s. 19A). Obstruction includes, in relation to POSI activities, requesting a person on the premises 'to answer questions, produce a document or thing kept there under the person's control or give any other assistance the inspector requires to carry out the inspection' (s.19(5)(e)).

This effectively provides that a person can potentially commit an offence if they fail to answer questions put to them by POSI. The purpose of this amendment is to extend this to the operations of Police Officers. The proposed amendment combined with other amendments further expand and escalate the criminal justice response to an issue which requires a health based response or, at the least, suitable linkages between these two responses.⁹

3.8 NAAJA stated that the insertion of subsection 19B(6) grants police officers with the same powers as inspectors in detecting non-compliance with licence conditions and NAAJA support this amendment.¹⁰

3.9 The Committee's independent legal advisor, Ms Gearin, considers that the proposed amendment to section 19B 'creates difficulties in identifying in a specific circumstance the role the police officer is performing, one of police or inspector'¹¹ and noted that this issue was raised by the Attorney-General in the explanatory speech when she stated:

⁷ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Liquor Amendment Bill 2018 (Serial 74), Explanatory Speech, *Debates*, Northern Territory Legislative Assembly, 28 November 2018, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>

⁸ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 5, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

⁹ NAAJA, Submission No. 2, 2019, pp. 8-9.

¹⁰ NAAJA, Submission No. 2, 2019, p. 9.

¹¹ S Gearin, *Review of the Liquor Amendment Bill 2018* (unpublished), 6 January 2019.

Police officers will need to take care when doing this important work to identify whether they are exercising their police powers or licensing inspector powers. This is to ensure evidence can be used appropriately in those investigations.¹²

3.10 Ms Gearin stated:

It is arguable that all of the current inspectors' powers already apply to and in relation to police officers pursuant to s. 19(10) of the current *Liquor Act*. If there is doubt about that, it would perhaps be simpler to amend s. 19(10) to include the proposed 19B powers.¹³

3.11 Ms Gearin also noted that it is unclear whether police officers performing inspector duties will be required to have an identity card referred to in subsection 18(3) and whether these police officers will be required to comply with the directions given by the Director-General of Licensing under subsection 18(2).

3.12 The legal advice further stated:

These issues will create ambiguity for those using and seeking to interpret the section. The exercise of the proposed powers may well have difficulty in a Court unless the police officer has sufficient evidence that they clearly identified them self as an Inspector and produced the identity card.¹⁴

3.13 In response to questions asked by the Committee, the Attorney-General advised:

It is understood that Police officers using a range of powers would necessarily record the use of their powers under those Acts and be accountable for the proper use of such powers in accordance with the ordinary policy and procedures of the Northern Territory Police Force.¹⁵

3.14 The Attorney-General stated that only inspectors, not police officers are subject to directions from the Director-General of Licensing and:

The proposed changes to sections 19A and 19B are to apply those sections to police officers as if they were an inspector, not to appoint the police officers as inspectors. The police officers will not need to be separately appointed by the Minister and they will not have an identity card; they will simply have authority to exercise the powers of inspectors.¹⁶

3.15 Regarding the potential for problems with prosecutions from a lack of clarity on what powers were exercised, the Attorney-General stated:

If there was an occurrence of a lack of clear evidence of the power being exercised by the police officer, the impact would need to be considered on a case by case basis depending on whether it be the Director-General, Liquor Commission or court determining the matter. It may be that a decision will be made to not bring legal proceedings in circumstances where the evidence of the power exercised is not sufficiently clear.

If, which is not agreed, there is the potential for circumstances in a legal proceeding to arise in which it was not clear which power a police officer was exercising at the relevant time, it would ultimately be a matter for the Liquor

¹² Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Liquor Amendment Bill 2018 (Serial 74), Explanatory Speech, *Debates*, Northern Territory Legislative Assembly, 28 November 2018, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>

¹³ S Gearin, *Review of the Liquor Amendment Bill 2018* (unpublished), 6 January 2019.

¹⁴ S Gearin, *Review of the Liquor Amendment Bill 2018* (unpublished), 6 January 2019.

¹⁵ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 5, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

¹⁶ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 7, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

Commission or court to determine whether to admit or exclude that evidence so gathered. The outcome of that consideration may well depend on what other evidence is available to the Liquor Commission or court and the relevant rules as to the admissibility or exclusion of evidence.

In the circumstances, an amendment to clarify this issue would not be supported.¹⁷

3.16 The Committee is satisfied by the Attorney-General's comments.

Variations of Liquor Licence Conditions by the Liquor Commission

3.17 As noted in the Bill's Explanatory Statement, the amendment to section 33 inserts:

a new subsection (1A) which enables the Commission to convene a public hearing, if it considers that it is appropriate, when considering whether to vary the conditions of a licence. Subsection 33(2) is also amended to accommodate a public hearing, if one is held...

The Liquor Commission must convene public hearings to make certain decisions under the *Liquor Act*. Hearings are generally required to be conducted in public, except where the Commission considers a public hearing is likely to cause undue hardship to a person.

An application for the grant of a licence involves a public process as does an application by a licensee for a variation of conditions of a licence. It makes sense to also allow the Liquor Commission to hold a public hearing when varying the conditions of an existing licence.

3.18 Both NAAJA and the AHA expressed support for this amendment stating that it appears to increase transparency in decisions made by the Liquor Commission.¹⁸

Committee's Comments

3.19 The Committee believes that the provisions to enable the Liquor Commission to hold public hearings when considering a variation to liquor licence conditions promotes transparency in decision making and is consistent with the principles of natural justice.

Point of Sale Interventions

3.20 Part VIIIIC of the Act was created by the *Liquor Amendment (Point of Sale Intervention) Act 2018* which established POSI powers, obligations and offences under the Act. Section 101ZK allows police officers and inspectors to exercise POSI powers where a customer is within the 20 metre boundary area of a licensed premise (prescribed by s. 101ZK(1)(a)) and 'the customer appears to be purchasing or intending to purchase liquor for consumption away from the premises.'¹⁹

3.21 The existing POSI powers allow police officers and inspectors to require a customer to state their name and address, where they intend to consume the liquor, whether they intend to provide any of the liquor to another person; show approved

¹⁷ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 6, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

¹⁸ AHA, Submission No. 1, 2019, p. 4; NAAJA, Submission No. 2, 2019, p. 9.

¹⁹ Subsection 101ZK(1)(a), *Liquor Act 1978* (NT)

identification; answer questions to confirm the information provided is accurate and to determine whether the customer is prohibited from consuming liquor at their address or in general (s. 101ZK(2)). If a police officer or inspector suspects on reasonable grounds that an alcohol-related offence is likely to occur, they may seize a container purchased by the customer that they believe contains liquor, and/or prevent the customer from entering or remaining in the premises (s.101ZK(5)).

Expanding the definition of customer

3.22 The proposed amendment to subsection 101ZK(1)(b) expands the definition of 'customer', thereby increasing the POSI powers, by permitting these powers to be exercised on any person in possession of liquor who is within a licensed premise or the prescribed boundary area, irrespective of whether they have, or appear to be intending to, enter the licensed premise to purchase takeaway liquor. This amendment will also allow POSI powers to be exercised after a purchase has been completed.

3.23 The advice provided by Ms Gearin stated the proposed amendment:

expands police powers by adding an additional power for a police officer to require a person to who is in possession of liquor do the things set out in s. 101ZK (2). It permits a police officer to stop a citizen, obtain personal information, require them to produce identification and to be subjected to interrogation for no reason other than being in possession of alcohol and walking within 20 metres of licensed premises. This amendment goes beyond the powers intended by s. 101K to be confined to customers purchasing or intending to purchase liquor for consumption away from licensed premises.

It is an open-ended power permitting a police officer to stop anyone walking within 20 metres of licensed premises to see if they are in possession of liquor. This applies when a person is not a customer, but any person who might be walking past licensed premises carrying their own alcohol on their way to a BYO function, or carrying a bottle of wine as a gift. The citizen might have already gone through the point of sale requirements when they did purchase the alcohol.

No reasonable suspicion that an offence may be or has been committed is necessary for these powers to be exercised.²⁰

3.24 NAAJA stated 'it is unclear why this proposed amendment is necessary. The proposed amendment leads itself to an apparent escalation of criminal justice responses by extending the range of interactions between Police and the community as it relates to POSI operations.'²¹

3.25 During the explanatory speech, the Attorney-General stated that once the POSI powers came into operation in 2018:

it became apparent that when licensed premises, for example, drive-through bottle shops are busy and police officers [or] inspectors are occupied checking a number of individuals, people can enter the licensed premises, purchase alcohol and exit the shop before they fully come to the attention of the police officer or inspector. Some of these people may have entered the bottle shop knowing full

²⁰ S Gearin, *Review of the Liquor Amendment Bill 2018* (unpublished), 6 January 2019.

²¹ NAAJA, Submission No. 2, 2019, p. 11.

well that police officers and inspectors are busy in order to avoid being asked questions.²²

- 3.26 The Committee sought clarification from the Attorney-General on how frequently the situation described has been occurring and whether there is evidence to suggest that, had a POSI been conducted, the purchases would not have been allowed.
- 3.27 The Attorney-General advised that as police regularly exercise these powers and prevent people purchasing liquor, the 'assumption must be that others are evading the point of sale process and making a purchase that would otherwise have been prevented.'²³
- 3.28 The Committee asked what evidence there is to suggest that conducting a POSI on a person who has not entered, and is not intending to enter, a licensed premise will reduce alcohol-related harms. The Committee also asked how the infringement on the rights and liberties of individuals is justified in circumstances where they are not attempting or intending to purchase alcohol from the premises.
- 3.29 The Attorney-General advised that the 'policy intention of the amendment is aimed at customers who have perhaps deliberately evaded the point of sale interventions, completed a purchase, and are in the process of exiting the premises.'²⁴ It 'is not to enable the police officers to ask questions of someone who is simply passing within 20 metres of a licensed premises, unless there is some known fact or circumstance about them which might indicate that an alcohol-related offence was about to occur.'²⁵
- 3.30 The Attorney-General noted that 'it is anticipated that this expanded definition will in the future also have a deterrence effect on those who currently seek to evade the point of sale process.'²⁶
- 3.31 The advice from the Attorney-General stated that expanding the definition of customer will not cause any further infringements on the rights and liberties of individuals than the current Act and:

When the point of sale interventions were introduced into the Act, it was noted that there would be an infringement on human rights. The strict liability offences in this part of the Act are regulatory in nature and are intended to act as a deterrent to behaviour that would compromise the ability of police officers or inspectors to control supply of liquor to persons who should not be permitted to purchase or consume liquor, and the ability of officers and inspectors to obtain accurate information from persons within the vicinity of a licensed premises.²⁷

²² Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Liquor Amendment Bill 2018 (Serial 74), Explanatory Speech, *Debates*, Northern Territory Legislative Assembly, 28 November 2018, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>

²³ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, pp. 8-9, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

²⁴ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 11, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

²⁵ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 11, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

²⁶ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 9, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

²⁷ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 12, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

- 3.32 The Committee is satisfied by the Attorney-General's response.
- 3.33 The Committee notes that the power to seize a container of liquor under subsection 101ZK(5) of the Act is limited to 'a container purchased by the customer', but the amendments in the Bill would expand the power to intervene to any person carrying liquor regardless of whether the liquor had been purchased. To cover the circumstances where liquor brought to within 20 metres of the premises is seized due to suspicion that an alcohol-related offence may be committed, subsection 101ZK(5) would require amendment.

Recommendation 2

The Committee recommends that subsection 101ZK(5) be amended so that a container in the possession of, but not purchased by, a 'customer' can be seized if the police officer or inspector suspects on reasonable grounds that an alcohol-related offence is likely to occur.

- 3.34 NAAJA stated that 'POSI activities should be focused at the pre-purchase stage or, in the event a purchase is made, with clear direction for the refunding of liquor to the consumer. There appears to be no valid reason and no formal, publicly available response as to why this is not the practice.'²⁸
- 3.35 The Committee asked the Attorney-General whether in the event that an intervention is conducted post purchase, the customer is still in the premise and the alcohol is unopened, a refund could be provided to the customer as opposed to the liquor being seized by the police officer or inspector. The Attorney-General advised:

Seizure and destruction of liquor aside, whether a refund would be offered to a customer is a matter for the licensee making the sale and the usual terms and conditions of the Australian Consumer Law. Police officers or liquor inspectors do not have the power to direct a licensee to provide a refund; it is entirely a matter for individual licensees as to whether a refund would be allowed in these circumstances.

As set out above, the point of sale scheme is designed to prevent sales from occurring in which case there is no issue about the provision of refunds. The current provisions set out in section 101ZK contemplate that if the police officer or inspector have a reasonable suspicion that an offence is likely to occur, that is the point at which they may seize the liquor that has actually been purchased and destroy it as soon as is practicable (see section 101ZM(1)). The officer or inspector may also issue a direction to a licensee to not supply alcohol to a person for the remainder of the day.

In circumstances where the intervention occurs post sale then this situation may arise. As noted above it will be a matter for the licensee whether they are willing to offer a refund. Otherwise, in very broad terms, when there is a legitimate seizure by police officer, a person is unlikely to be successful with a civil claim for damages arising from the seizure and destruction of their property. That is the case even where the prosecution might be discontinued or otherwise unsuccessful. Across Australia there is little recognition of any compensation rights in respect of either unsuccessful criminal proceedings or wrongful

²⁸ NAAJA, Submission No. 2, 2019, p. 3.

convictions. It is unlikely that the law regarding civil liability for seizures is likely to be strengthened in the immediate future.²⁹

3.36 The Committee is satisfied by the Attorney-General's response.

Multiple point of sale interventions

3.37 NAAJA and Ms Gearin consider that the proposed amendment creates potential for multiple interventions to be conducted on the same container of alcohol, with NAAJA stating:

It is conceivable that this change to the law could result in a person being subjected to multiple POSIs for the same purchase of liquor if they happen to be within the 20m radius of a licenced premises as defined by s. 101ZK(1)(a). Under this definition a POSI could be conducted where a person is within 20m of an entrance to the premises, an entrance to a building containing the premises, or a driveway or car park for the business.

Under this expanded power a person could be subjected to multiple POSIs relating to the same purchase of alcohol simply by passing within this 20m boundary of different licensed premises. As the power of police officers and inspectors to seize property following a POSI is based only on 'reasonable grounds' of suspicion that an alcohol-related offence is likely to occur, a person could pass an initial POSI/s only to fail a subsequent POSI and have their liquor seized.³⁰

3.38 The Attorney-General advised the Committee:

There is no current intention to amend the Act to prevent multiple point of sale interventions from taking place as clearly there are circumstances in which they will be justified. If an amendment was to be made to put further provisions in place, the provisions would be complex to draft given the foundational points would need to include an awareness of a previous intervention, any material change in facts or knowledge between each intervention and other operational matters.

Operationally, the police advise that there are already safeguards in place to prevent multiple point of sale interventions taking place with the same customer in the same or different locations with the same liquor. It was advised that police officers regularly communicate with each other about the interventions taking place with customers or other relevant matters which they observe. For this reason, namely the sharing of information about customers, and the distances between liquor outlets, the likelihood of a customer being subjected to multiple point of sale interventions for the same liquor item is very low.

There are occasions where, in the view of the police officers, it is necessary to conduct a second point of sale intervention on a particular customer if there is or was observed to be a substantial change in their circumstances. For example, a customer who has successfully passed an initial point of sale intervention may be observed in the vicinity of the licensed premises passing liquor to other people. This may raise a suspicion on reasonable grounds that an alcohol-related offence may be occurring which would enable the police officer to conduct a second point of sale intervention with the customer.

There are also occasions where a customer may pass an initial point of sale intervention but later is observed leaving the licensed premises with what is

²⁹ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 10, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

³⁰ NAAJA, Submission No. 2, 2019, p. 11.

determined to be an excessive quantity of liquor, unlikely to be for personal consumption. A second point of sale intervention may then need to be conducted.

In the event that the police officer engages in unnecessary investigations, then the usual processes for review of police conduct are available which may include a complaint to the Ombudsman.³¹

3.39 The Committee is satisfied by the Attorney-General's response.

Stopping a vehicle

3.40 The Bill proposes to insert new subsection 101ZK(7) which permits a police officer or inspector to stop the driver of a vehicle, where a customer is either the driver or the passenger, to exercise POSI powers. NAAJA raised several concerns regarding the operation and necessity of this power, stating that it increases the opportunity for alcohol to be confiscated after a purchase, and could conceivably be used to stop vehicles in the street (within the 20 metre boundary) where passengers were in possession of alcohol, irrespective of whether the passengers had, or intended to, purchase takeaway alcohol from the licensed premise.

3.41 NAAJA stated that it is unclear why police officers and inspectors must be given the power to conduct a POSI before a customer has entered a licensed takeaway premise and may have no intention to enter, or after the customer has left. NAAJA considers that if the intention of proposed subsection 101ZK(7) is to conduct POSI checks on vehicles such as taxis which may be used to supply alcohol to people on the banned drinker register, or to communities where alcohol is restricted, there are already legislative mechanisms available to police and inspectors to stop and search vehicles. NAAJA requested safeguards be introduced to prevent abuse of powers and racial profiling.

3.42 To explore the concerns raised by NAAJA, the Committee asked the Attorney-General why this amendment is necessary; why existing legislative mechanisms to stop and search vehicles are insufficient to achieve this outcome; and what safeguards will be put in place to prevent the abuse of these powers. The Committee also sought clarification on how the infringement on the rights and liberties of a person who has not purchased alcohol is justified in these circumstances.

3.43 The Attorney-General advised that the provision was to enable point of sale interventions to occur at drive through outlets in the same manner as they would with people walking into a licensed premise, and to allow interventions to occur after the transaction has been completed and the vehicle is in the process of leaving the premises. The existing provisions of the Act do not expressly give police officers or inspectors powers to do this.³²

3.44 The Committee is satisfied by the Attorney-General's response.

³¹ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 12-13, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

³² Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, pp. 13-14, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

3.45 NAAJA further noted that reasonable suspicion of the commission of an offence is not required for some of the existing police and inspector powers to stop and search vehicles. They stated that, in their experience, the regular exercising of stop and search powers have led to Aboriginal people feeling targeted by police. NAAJA considers that the absence of the requirement for reasonable suspicion to undertake point of sale interventions could increase the chance that the:

power will be abused to operate as a pretext for unrelated questioning, vehicle checks, or even to conduct searches if during questioning related to a POSI an officer forms a reasonable suspicion based on evidence that would have otherwise been unavailable to them.³³

3.46 The Attorney-General advised:

The policy intention for the amendment to insert section 101ZK(7) is that the power to stop and give reasonable directions will only occur in the context of section 101ZK of the Act, and only if as set out in subsections (5) and (6), where 'the officer or inspector suspects on reasonable grounds that an alcohol-related offence is likely to occur', will the officer or inspector seize a container or prevent the customer from entering or remaining in the premises.

The amendment gives police officers and inspectors legislative power to stop vehicles only for the purpose of exercising a power under 'this section', being section 101ZK of the Act. Police officers exercising this power are obliged to exercise it responsibly in the same manner as they exercise a wide range of other policing powers. A significant safeguard is in place in the provision, with the limitation of the words 'reasonable direction'.

If the change proposed by NAAJA was made, police officers and inspectors would be unable to stop or give directions to customers in vehicles unless they suspected that an alcohol related offence was likely to occur. That suspicion is not required in order to exercise the point of sale intervention powers for customers on foot. Without the proposed power, a customer trying to avoid the intervention powers could direct the vehicle to keep moving and it is unclear that police officers or inspectors would have the powers to require that vehicle to stop.

It is accepted there may be situations where a vehicle stopped under the proposed amendment may lead to the police officer receiving further information than may not otherwise be available to them. An example may be that a police officer may become aware of domestic violence or a potential breach of a domestic violence order during a routine vehicle stop. In those situations, police are obliged to act on the information received as required by the relevant legislation. It would be expected that the police officer would be cognisant of those duties to act on information received when stopping a vehicle under section 101ZK of the Act.³⁴

3.47 The Committee is satisfied with the Attorney-General's response.

Undercover Operations

3.48 The Bill proposes to insert Part VIIIIBA into the Act which will provide police officers with the power to conduct undercover operations for the purpose of detecting the commission of offences against the Act.

³³ NAAJA, Submission No. 1, 2019, p. 12.

³⁴ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Additional Responses to written questions from the Committee*, p. 2, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

3.49 This Part will allow undercover police officers to acquire, supply or possess liquor at a place or in a manner that would otherwise be an offence under the Act for the purposes of detecting the commission of an offence. In other words, a police officer may break the law relating to the acquisition, supply or possession of liquor, in order to enforce compliance with the law. In the explanatory speech, the Attorney-General stated 'such undercover operations may occur across the Territory, in both restricted and unrestricted areas, bottle shops and residences.'³⁵

3.50 In her advice relating to undercover operations, Ms Gearin noted:

Such powers are usually exercised in relation to terrorism and major crime syndicates, to combat organised crime in drug trafficking. ... The authorisations should only be granted in circumstances where there is a well-founded belief that a major crime will be committed.³⁶

3.51 The Bill's explanatory materials do not provide reasons or justifications for the introduction of undercover powers. Consequently, the Committee sought clarification from the Attorney-General as to why these powers are necessary and questioned whether there had been instances where police operations were unsuccessful because these powers did not exist.

3.52 The Attorney-General advised:

As considered in detail in the Riley Review, the excessive consumption of liquor in the Northern Territory is a significant and pervasive social and economic issue. The harm it does across the community has been well documented and will not be repeated here.

The secondary supply or 'resale' of liquor is an insidious part of that process whether it is done from the back of a car in a suburban street or from a van in a remote 'dry' community. People engage [in] secondary supply by purchasing a quantity of liquor from a licenced premises for example a case of beer or six packs of beer and giving false information to the licensee. The secondary supplier will then locate a group of people who for various reasons are unable to purchase liquor, they may already be inebriated and or be subject to a banned drinker order. The secondary supplier will sell the beer to those persons at highly inflated prices – sometimes at 3 or 4 times the retail price.

The purchasers who are involved in such transactions are often amongst the more vulnerable in the community who find it challenging to give the evidence needed by a court to prove an illegal sale. That challenge can arise from a combination of being inebriated at the time of purchase, cognitive difficulties from long term alcohol abuse or that the purchaser is living in an itinerant or transient situation. In addition to the difficulties in giving evidence, their personal circumstances make them vulnerable to retaliation by those reselling them the liquor or others who want that resale process to continue.

The elements of the offences in the Act can make prosecution difficult. Section 115 of the Act makes it an offence if a person sells liquor without a licence. An important component of the offence is to prove that the person who provides the liquor gains a benefit in return. That requires evidence of the transaction to be available to the court. If the purchaser is inebriated or is otherwise an unreliable

³⁵ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Liquor Amendment Bill 2018 (Serial 74), Explanatory Speech, *Debates*, Northern Territory Legislative Assembly, 28 November 2018, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>

³⁶ S Gearin, *Review of the Liquor Amendment Bill 2018* (unpublished), 6 January 2019.

witness then evidence of the transaction may not reach the relevant standard of proof.

While police officers have their general powers available to them including surveillance, they report that it is difficult to conduct surveillance of these sorts of transactions. Police conducting undercover operations to detect such secondary supplies will be more persuasive and reliable witnesses increasing the likely successful prosecution of such offences.

The offences under the Act can be contrasted with offences relating to the supply of drugs, where there is no need to prove that the person making the supply gained a benefit in return. As liquor is in the majority of circumstances and locations a legal substance available for sale, it is not sufficient to simply provide evidence of the supply or possession of the item.

While generally it is correct to say that undercover operation powers are used for terrorism, organised crime syndicates and drug trafficking, identical undercover powers to those proposed have existed in the Northern Territory since 1990 when section 32 of the *Misuse of Drugs Act 1990* came into force. Initially the power to approve an undercover operation was given to a member of the police force above the rank of Sergeant, and then in June 1992 the rank was raised to that of Commander with an added requirement that the authorisation be done in writing.

Section 101ZIA is modelled on section 32 of the *Misuse of Drugs Act 1990*. It is to be expected that the changes would have a deterrent effect on those engaging in the illegal supply once the community has been made aware that undercover operations are in place.

Without this amendment, it is unclear that undercover operations will be able to be undertaken. Under the *Police (Special Investigative and other Powers) Act 2015* controlled operations may be conducted, if authorised, in relation to a relevant offence being an offence against a law of the Territory punishable by a maximum term of imprisonment of three years or more or as prescribed by regulation.

When the minimum floor price and associated changes were introduced, the penalty was increased for section 115 in order to enforce the floor price, particularly against non-compliant interstate retailers. It had been anticipated that review of the enforcement powers and offences and penalties in the Act would form part of the broader review of the Act. However due to stakeholder concerns, it was considered necessary to make changes to the compliance strategy as part of that process. As a result the penalty for section 115 was raised to three years and the financial penalty raised from 250 to 300 units.

While it is now possible for a covert operation under the *Police (Special Investigative and other Powers) Act 2015* to be instigated for breaches of section 115 of the Act, the requirements are more onerous and are not immediately suited to prosecutions under the Act.³⁷

3.53 The Attorney-General further advised that it was anticipated that these powers would be used to detect secondary supplies and check licensees who are not abiding by the licenses, including the following offences:

- Section 31A – Contravening requirement about identification system
- Section 110 – Breach of licence condition
- Section 115 – Sale of liquor not authorised by licence

³⁷ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, pp. 16-17, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

- Section 116 – Purchase of liquor when sale not authorised by licence.³⁸

3.54 The Committee also asked the Attorney-General about the potential for entrapment, and safeguards against a person being induced to commit a crime in the course of an undercover operation. In response, the Attorney-General outlined the operation of section 138 of the *Evidence (National Uniform Legislation) Act 2011*.³⁹

3.55 In the course of this answer, the Attorney-General noted that the drafting of the Bill would better correspond with the Act if the words ‘possess, purchase, sell or otherwise supply’ were substituted for the words ‘acquire, supply and possess’.⁴⁰ The Committee agrees with the suggested changes.

Recommendation 3

The Committee recommends that proposed section 101ZIA be amended by substituting the words ‘possess, purchase, sell or otherwise supply’ for the words ‘acquire, supply and possess’.

Seizure of property during undercover operations

3.56 Proposed section 101ZIB enables a police officer exercising powers authorised under proposed section 101ZIA to, without a warrant, seize a thing that the officer reasonably believes to be related to an offence against the Act. A ‘thing’ in relation to a relevant offence is defined in section 4 of the Act as a thing ‘that is used in the commission of an offence; or that may be used as evidence in proceedings for the prosecution of an offence.’

3.57 Ms Gearin’s advice raised a number of issues in regard to the broadness of the seizure and holding powers, and the potential infringement of an individual’s rights and liberties, stating:

The only restraint is that an officer must reasonably believe the thing to be related to an offence against this Act. This power allows an officer to seize a motor vehicle, a boat, mobile phone or any other property, including a house. There is no capacity for the owner to have that property returned other than by application to the Commissioner. This process requires a reversal of the onus of proof. The Commissioner’s power of refusal does not require reasons to be given.

The owner of the property is deprived of the right to have the matter determined by a Court for a lengthy period of time. There is no compensation for any losses arising from the seizure, even if ultimately found to be wrongful.⁴¹

3.58 In response to questions regarding the seizure of property during undercover operations, the Attorney-General advised:

The justification for the power set out in proposed new section 101ZIB is that the seizure power proposed is no greater than already exists in the Act, and it is proposed to be applied to a different regulatory function. Inspectors and police

³⁸ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 19, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

³⁹ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 20, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

⁴⁰ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 21, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

⁴¹ S Gearin, *Review of the Liquor Amendment Bill 2018* (unpublished), 6 January 2019.

officers have powers to enter, examine, inspect and seize certain items under the general powers granted in section 19 of the Act. The effect of section 19(10) of the Act is that all powers granted to an inspector may also be carried out by a police officer. ...

The absence of such a specific seizure power directly in relation to undercover operations would prevent police from being able to seize and secure evidence in order to support a prosecution. This will also prevent potential loss or destruction of evidence.⁴²

- 3.59 The Committee is satisfied that the provisions for the seizure of property during undercover operations do not exceed existing seizure provisions within the Act.

Release of property seized during undercover operations

- 3.60 Proposed section 101ZID provides that a person who owns, or has an interest in, a seized thing may apply to the Commissioner of Police to have the thing released. Proposed subsection 101ZID(7) provides that the Commissioner may refuse an application if they decide it is inappropriate to release the thing, having regard to 'the evidential value of the thing for any proceedings for the prosecution of an offence; and any other matters the Commissioner considers relevant in deciding the application.'
- 3.61 Ms Gearin noted that consideration of evidentiary value is a subjective, not a legal test. The ability to refuse an application, taking into consideration any other matters considered relevant, is very broad. Further, there is no requirement for the Commissioner to provide reasons for the refusal.
- 3.62 The Attorney-General advised the Committee that the existing provisions in subsections 97(4) and 101AP(4) of the Act regarding the refusal to release seized property do not require the Commissioner to provide reasons for their decision.
- 3.63 NAAJA welcomed the inclusion of proposed subsection 101ZID(6)(b)(ii) which allows the Commissioner to release a seized thing if they are satisfied that the applicant 'knew about the commission of the offence but was not in a position to reasonably prevent the commission of the offence.' NAAJA viewed this as a positive step towards recognising the importance of cultural obligations in many Aboriginal communities, and the conflict for people caught between their obligations under Aboriginal law and their obligations under Northern Territory law.
- 3.64 Section 95 of the Act provides powers of search and seizure without a warrant in general restricted areas to inspectors who reasonably suspect that an offence has been, or is likely to be, committed. Section 97 details when the Commissioner of Police may release a thing that has been seized under section 95. NAAJA requested that a similar provision be inserted into subsection 97(5) to allow the Commissioner to release a seized thing where a person knew about the commission of an offence but was not in a position to reasonably prevent it.
- 3.65 The Attorney-General advised the Committee that:

⁴² Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, pp. 21-22, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

Both section 97(5)(b) and section 101AP(5) deal with the release of things seized and then held by the Commissioner of Police.

The Committee may be aware that the government i[s] undertaking a larger project to review and amend the Act. These amendments to section 97(5)(b) and section 101AP(5) and any other ancillary changes to include those components in each provision could either be made as part of this Liquor Amendment Bill 2018 or be taken up as part of the larger review and rewrite project.⁴³

Recommendation 4

The Committee recommends that provisions be inserted into the Liquor Amendment Bill 2018 to amend subsections 97(5)(b) and 101AP(5) of the *Liquor Act 1978* to allow the Commissioner of Police to release seized property where the applicant knew about the commission of an offence but was not in a position to reasonably prevent the commission of the offence.

Committee's Comments

3.66 The Bill introduces provisions for the seizure of property during undercover operations and the release and forfeiture of the seized property. There are a number of other seizure and civil forfeiture powers contained in the *Liquor Act 1978*. Seizure powers can be exercised without a warrant and can infringe on a person's property rights. When making legislation, it is important that the impacts of seizure and civil forfeiture are considered, as well as whether the results will be disproportionate to the offence committed. The Committee considers that as part of the planned review and rewrite of the *Liquor Act 1978* in its entirety, the government should review the seizure and forfeiture powers to determine whether they are reasonable and proportionate to the offences they relate to.

Recommendation 5

The Committee recommends that, as part of the review and rewrite of the *Liquor Act 1978*, the government review the seizure and civil forfeiture powers to assess their impact, reasonableness and proportionality to the offences they relate to.

⁴³ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, p. 24, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

Appendix A: Submissions Received

Submissions Received

1. Australian Hotel Association – NT Branch
2. North Australian Aboriginal Justice Agency

Note: Copies of submissions and the Attorney-General's responses to written questions from the Committee are available at: <https://parliament.nt.gov.au/committees/EPSC/74-2018>

Bibliography

Explanatory Statement, Liquor Amendment Bill 2018 (Serial 74),

<https://parliament.nt.gov.au/committees/EPSC/74-2018>

Fyles, N, Attorney-General and Minister for Justice, Liquor Amendment Bill 2018 (Serial 74), Explanatory Speech, Debates, Northern Territory Legislative Assembly, 28 November 2018, <http://www.territorystories.nt.gov.au/jspui/handle/10070/305254>

Fyles, N, Attorney-General and Minister for Justice, *Responses to written questions from the Committee*, <https://parliament.nt.gov.au/committees/EPSC/74-2018>

Gearin, S, *Review of the Liquor Amendment Bill 2018* (unpublished), 6 January 2019.

Legislative Assembly of the Northern Territory, *Thirteenth Assembly Sessional Orders*, as adopted 20 March 2018, viewed on 18 February 2019,

https://parliament.nt.gov.au/_data/assets/pdf_file/0008/492137/13th-Assembly-Sessional-Orders-as-adopted-20-March-2018.pdf

Liquor Act 1978 (NT)

Northern Territory Government, *Alcohol Harm Minimisation Action Plan 2018-19*, June 2018 revised edition, viewed on 19 February 2019,

https://alcoholreform.nt.gov.au/_data/assets/pdf_file/0008/485315/AHMPlan_2018.pdf

Statement of Compatibility with Human Rights, Liquor Amendment Bill 2018 (Serial 74),

<https://parliament.nt.gov.au/committees/EPSC/74-2018>