



## DEPUTY COMMISSIONER OPERATIONS

COMM2019/00010.13 : Your Ref

04:EF19:1642 : Our Ref

Ms Jennifer Buckley  
Committee Secretary  
Economic Policy Scrutiny Committee  
Department of the Legislative Assembly  
GPO Box 3721  
DARWIN NT 0801

Dear Ms Buckley

### LIQUOR BILL 2019

Thank you for the opportunity to provide a submission for the Liquor Bill 2019 (hereafter 'the Bill') that has been referred to the Economic Policy Scrutiny Committee.

The Northern Territory Police Force (NTPF) would like the Committee to consider the following proposal to amend the Liquor Bill 2019:

Issue	Proposed Solution
Clause 150 - Control of inedible alcohol products, does not provide a power for Police to search nor seize the inedible substance in circumstances where an inspector or police officer has reasonable grounds to suspect that a person is about to consume a substance. Police will have to wait until they witness actual consumption before they could seize the container.	Amend clause 150 to include power for police to search and seize the inedible substance where an inspector or police has reasonable grounds to suspect that a person is about to consume a substance.

<p>Clause 170 - Offence General Restricted Area (GRA) &amp; clause 180 Offence Special Restricted Area (SRA), the inclusion of the offence of intending to supply liquor to a person in a GRA or SRA is vital in order for police to operationally achieve the objectives of the Act.</p> <p>Noting the remoteness of many GRAs and SRAs and the associated costs for undertaking remote operations, it is not operationally feasible for police to only be detecting the offence once an individual has physically entered the boundary of the GRA or SRA.</p> <p>Currently, under <i>Northern Territory Act 2012</i> (Cth) section 75C(1)(a)(ii) or (iii) a person can be charged if the circumstances show that the offender was travelling to an alcohol protected area i.e. at ferry terminals in Darwin bound for alcohol protected areas.</p>	<p>Amend clause 170 and 180 to include an offence of “transporting liquor intending to supply” and “possess liquor intending to supply” to mirror section 75C <i>Stronger Futures in the Northern Territory Act 2012</i> (Cth).</p> <p>The Commonwealth Act will sunset in 2023.</p>
<p>Clause 233 – Searching person, Police will not have the power to search a person’s clothing or property in the person’s immediate control (i.e a bag they are carrying) when police suspects on reasonable grounds that a person is contravening section 150 (a person must not consume an inedible substances containing alcohol) or section 168 (a person must not consume liquor in a public place).</p>	<p>Amend clause 233 to provide Police power to search a person’s clothing and property.</p>
<p>Clause 244(1) and (2) - Notice of seizure of vehicle, vessel or aircraft, imposes a mandatory duty on police to take reasonable efforts to identify “any person” with an interest in a seized vehicle, vessel or aircraft and to notify “any person” identified as owning or having an interest” in a seized vehicle. The term “reasonable efforts’ is not defined but it suggests that merely checking the registration of a vehicle and notifying the registered owner will not suffice.</p>	<p>Amend clause 244 by removing the reference to “any person who has an interest in the vehicle, vessel or aircraft”. The mandatory duty will therefore be limited only to make reasonable efforts to identify any person who owns the vehicle, vessel or aircraft.</p>

<p>Clause 256 - Power to suspend sales at major event - requires “a police officer at or above the rank of Commander” to make the order of suspension.</p> <p>Most major events are held on weekends, evening and public holidays. Noting that officers of or above the rank of Commander undertake largely administrative roles during business hours, it will generally be a Senior Sergeant that operationally would be attending to such matters.</p>	<p>Amend the delegation in clause 256 from “at or above the rank of Commander” to “at or above the rank of Senior Sergeant”.</p>
<p>Clause 271 - Forfeiture under <i>Sentencing Act 1995</i> conflicts with section 99A of the <i>Sentencing Act 1995</i>.</p> <p>Clause 271 states that if a person is “charged with an offence where a thing was seized”, section 99A of the <i>Sentencing Act 1995</i> applies.</p> <p>However, section 99A of the <i>Sentencing Act 1995</i> has no operation unless a person is “found guilty”. In the event a person is charged but was found not guilty, section 99A cannot apply. The two provisions appear to conflict with each other.</p>	<p>Amend clause 271 from “charged” to “found guilty”.</p>
<p>Clause 272 - Police application for forfeiture of vehicle, vessel or aircraft, provides that a police officer must lodge the forfeiture application on the day proceedings ends if no person is found guilty. Prosecutions in Darwin are conducted by the DPP and not police.</p> <p>As Police are not stationed at court, nor made aware when proceedings end, Police will be unable to lodge an application for forfeiture.</p>	<p>Amend clause 272 from “the day proceedings ends” to “24 hours after proceedings have ended.”</p> <p>Police ought to be given at least 24 hours after the end of proceedings to lodge an application.</p>

<p>Clause 306 - Limitation of time for making complaint, reduces the current statute of limitation from 6 months to 28 days. Police are precluded from laying charges if 28 days have passed since the commission of the offence. In relation to offences involving a licensed premises, investigation required before a charge is ultimately laid can routinely be more time consuming. For example, CCTV might need to be requested, obtained and reviewed in detail. A number of witnesses may need to be spoken to. Additionally, not all offences will come to the attention of police immediately. This reduction will not allow sufficient time for Police to properly investigate an offence. Police note that many of these offences will not involve the 10 standard drink threshold included in the clause.</p>	<p>Remove clause 306 in its entirety. The statute of limitation will be governed by section 49 of the <i>Local Court Criminal Procedure Act 1928</i> (NT).</p>
<p>Clause 307 - Statement of fact in complaint, introduces new term "statement of fact" to replace the existing term "averment". In criminal matters, a statement of facts is the facts tendered or handed up to the court. The term cannot be used interchangeably. Police have concerns that offences will be regularly defended through testing judicial interpretation of the new term and incur unnecessary costs. Judicial interpretation on term "averment" is well settled law via numerous Court determinations and conform to existing NT legislation, ie <i>Firearms Act 1997</i> (s 104), <i>Fisheries Act 1988</i> (s 44).</p>	<p>Amend clause 307 by replacing the term "a statement of fact" with "an averment".</p>

***Whether the Bill has sufficient regard to the rights and liberties of individuals***

The Bill is compatible with human rights as it promotes a reduction in liquor related harm and, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate to achieve the overall purpose of harm minimisation.

The Bill provides licensees and employees the power to refuse service of liquor to a person, if person subject to banned drinkers register or will become intoxicated.

The Bill includes powers to allow for the effective detection and enforcement of prohibited liquor supply and use, and in turn, reduce liquor related harm. This is in the interests of public order, the protection of public health or the protection of the rights and freedoms of others.

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

The Bill provides appropriate protection of property rights of owners and people with a legal interest in vehicles, vessels and aircraft seized under the Bill.

***Whether the Bill has sufficient regard to the institution of Parliament***

The NTPF will continue to work cooperatively and consistently with the Government and all stakeholders towards implementing the Bill.

Should you have any further enquiries in relation to this submission, please contact Ms Sandy Lau, Director of Law Reform Unit via email [Sandy.Lau@pfes.nt.gov.au](mailto:Sandy.Lau@pfes.nt.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Murphy', written in a cursive style.

Michael Murphy APM  
Deputy Commissioner Operations

19 June 2019