

Explanatory Statement

Liquor Amendment Bill 2020

SERIAL NO. 124

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

EXPLANATORY STATEMENT

GENERAL OUTLINE

This 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.

NOTES ON CLAUSES

Clause 1. Short title

This is a formal clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Liquor Amendment Act 2020*.

Clause 2. Commencement

This clause sets out how this Bill will be commenced. The Bill will commence on the day after which the Administrator's assent is declared.

Clause 3. Act amended

This is a formal clause which provides that amendments are made to the *Liquor Act 2019*.

Clause 4. Section 75 amended (Substitution of premises)

This clause amends section 75(2) to remove the current 'like for like' requirement, namely that there is no significant change of operation of the business will occur in order for the Liquor Commission to approve substitution of premises.

This clause also clarifies that the Liquor Commission may approve the substitution of licensed premises with premises that are yet to be constructed, or that are still under construction.

Despite this clause, to approve substitution of premises, the Liquor Commission must still be satisfied that substitution satisfies the public interest and community impact requirements.

New subsection (2A)(a) also clarifies that the Liquor Commission may impose conditions on a substitution of premises granted under section 75(2). There has been doubt over whether the Liquor Commission had the power to impose conditions when approving an application for substitution of premises. This new provision clarifies that the Liquor Commission may do so.

Clause 5. Section 326 replaced

This clause replaces section 326 to provide that certain applications made under either section 46A of the *Liquor Act 1978* or section 75 of the *Liquor Act 2019* are to be determined under section 75 as amended by this Act. Those applications are:

- those made under section 46A of the *Liquor Act 1978* during the period from 27 February 2018 to 30 September 2019; and
- those made under section 75 of the *Liquor Act 2019* during the period from 1 October 2019 to the commencement of this Act.

New subsection (2) provides that any application that has not been determined by the Liquor Commission before the commencement of this Act is to be determined under section 75 as amended by this Act.

New subsection (3) provides that if a relevant application was determined by the Liquor Commission prior to the commencement of this Act, that application may not be remitted to the Liquor Commission. This includes where the NTCAT or a court would otherwise have the power to remit the application back to the Liquor Commission. The policy intent is that the NTCAT or the court decides to approve or not approve the application on the terms of section 75 as amended by this Act.

New subsection (4) provides that a licensee may apply to NTCAT for a review on the grounds that the application is to be determined in accordance with section 75 as amended by this Act. This ground may be the only ground for the application for review, or this ground may be in addition to other grounds of review.

New subsection (5) provides that a licensee may apply to NTCAT under new subsection (4) even where NTCAT previously refused the application prior to the commencement of this Act.

New subsection (6) provides that an application for review with NTCAT must be made within 28 days after the commencement of this Act. The 28 days begin the day after the commencement of this Act. NTCAT or the Supreme Court may specify a later date that an application may be made under, and a licensee may ask for a later date notwithstanding the fact that the 28 days has already lapsed. When NTCAT or the court is considering to fix a further period or day, the criteria to be applied is the same as other extensions of time to statutory time limits where the provision does not provide explicit criteria. See for example *Hunter Valley Developments Pty Ltd v Cohen, Minister for Home Affairs and Environment* (1984) 3 FCR 344.

New subsection (7) provides that NTCAT may consider new evidence or materials that was not before the Liquor Commission. Under section 46(2)(b) of the *Northern Territory Civil and Administrative Tribunal Act 2014*, NTCAT may consider further evidence it decides to hear in addition to that heard by the original decision maker. The intent of this subsection is to clarify that NTCAT may consider further evidence in addition to that heard by the Liquor Commission. The policy intent is that NTCAT is to decide the matter on the best evidence available to it.

New subsection (8) provides that this section takes precedence over any other law or decision of NTCAT or the Supreme Court to the contrary.

New subsection (9) is a formal provision which provides that the word 'commencement' in this new section means the commencement of section 4 of the Liquor Amendment Act 2020.

Clause 6. Repeal of Act

This is a standard clause that repeals this Act the day after it commences.

Statement of compatibility with human rights

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

Liquor Amendment Bill 2020

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

This 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, 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.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is considered compatible with human rights as it does not raise any human rights issues.