

**LIQUOR AMENDMENT BILL 2018  
SERIAL NO. 74**

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

This Bill amends the *Liquor Act*.

The purpose of this Bill 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.

## **NOTES ON CLAUSES**

### **Clause 1. Short Title**

This is a formal clause, which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Liquor Amendment Act 2018*.

### **Clause 2. Commencement**

This is a formal clause that provides that the commencement of the Act will occur on a day or days fixed by the Administrator by way of a notice published in the Gazette.

### **Clause 3. Act amended**

This clause provides that this Act amends the *Liquor Act*.

### **Clause 4. Section 19A amended**

This clause amends section 19A by inserting a new subsection (2A) to confirm that the offence created by section 19A will to a police officer as if the officer were an inspector exercising powers under section 19 of the *Liquor Act*.

This is a technical amendment to section 19A of the *Liquor Act* to confirm that the offence of obstructing an inspector in section 19A also applies to police officers when exercising powers under section 19 of the *Liquor Act*. It does not change the nature of the offence of obstruction of an inspector.

### **Clause 5. Section 19B amended**

This clause amends section 19B by inserting a new subsection (6) to confirm that the powers created by section 19B will apply to a police officer as if the officer were also an inspector.

This is a technical amendment to section 19B of the *Liquor Act* to confirm that the powers in section 19B are not only granted to inspectors, but also to police officers. It does not change the exercise of those powers, which remain only for those investigations set out in section 19B(4).

**Clause 6. Section 33 amended (Variation of conditions by Commission)**

This clause amends section 33 by inserting 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. Subsection 33(6) is also amended to accommodate altered numbering.

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.

**Clause 7. Section 33AAA inserted**

This clause inserts a new section 33AAA which sets out matters relevant to a public hearing held by the Commission, including the actions that the Commission may take in relation to the hearing. These include publishing notice of the hearing, and inviting and publishing submissions.

The new section also allows the Commission to conduct a public hearing as it considers appropriate.

This clause provides the Commission with the tools to hold public hearings in the most effective manner, recognising that individual hearings and circumstances may have different requirements and that the Commission has its own powers to set its procedure in Division 3, Part 2 of the *Liquor Commission Act 2018*.

**Clause 8. Part VIIIIBA inserted**

This clause inserts a new Part VIIIIBA, which provides for police officers to conduct undercover operations for the purposes of detecting offences against the *Liquor Act*.

A senior officer, a police officer of the rank of Commander or higher may authorise, a police officer below the rank of Commander to acquire, supply or possess liquor in a restricted place (new section 101ZIA). In exercising a power during an undercover operation, an officer may seize things related to an offence against the *Liquor Act* (new section 101ZIB).

New sections 101ZIC to 101ZIH set out the requirements relating to items seized as the part of an undercover operation, including how those items are to be held (new section 101ZIC), when and how seized items may be released (new section 101ZID), when a court may order the release or disposal of a seized item (new section 101ZIE), the procedure for seized items to be forfeited to the Territory (new section 101ZIF), when and how to disposed of seized items (new section 101ZIG), and that police and other property used as part of an undercover operation remains the property of police at the conclusion of the operation (new section 101ZIH).

Lastly, new section 101ZII sets out the annual reporting requirements for the Commissioner of Police relating to undercover operations undertaken and the results of those operations.

These powers are modelled in part on those provided in the *Misuse of Drugs Act* and also in other Parts of the *Liquor Act*. They are intended to establish the necessary authority for police to work undercover and engage in limited illegal activity so as to effectively detect and intercept illegal activity that is contrary to the *Liquor Act*.

**Clause 9. Section 101ZK amended (Point of sale intervention powers – customer)**

This clause amends section 101ZK by replacing subsection 101ZK(1)(b) to clarify that the section will apply to a person who has liquor in their possession within the location boundaries already established by section 101ZK(1)(a). That is in addition 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).

The clause also inserts a new subsection 101ZK(7) which provides a power to stop a vehicle, and require the driver or a passenger to follow the reasonable directions of the police officer or inspector.

The Point of Sale Intervention regime provides police officers and inspectors with the powers necessary to require a person who is appearing to purchase, or apparently intending to purchase, alcohol from the licensed premises to do certain things, including asking the person to provide their name and address, ask them to show identification to identify themselves, and then ask questions about where the alcohol is to be consumed, whether the alcohol is being purchased for themselves or for another person, and whether the other person is prohibited from consuming alcohol.

In some licensed premises (such as drive through bottle shops), people can enter the licenced premises, purchase alcohol and exit the shop before they come to the complete attention of the police officer or inspector. These amendments will allow police officers and inspectors to exercise Point of Sale Intervention powers after a purchase is complete or if a person is observed to have liquor in their possession while still in the immediate vicinity of the licenced premises. Particularly, the police officer or inspector will have the power to stop a car, even when the customer is not the driver in order to ask these questions.

**Clause 10. Section 120ZF inserted**

This clause allows a police officer or inspector to possess liquor in connection with seizing or obtaining liquor in the course of the officer or inspector's duties, or for the purposes of administering the *Liquor Act*.

This is necessary to ensure that police exercising these powers in the course of their duties do not result in them being prosecuted for actions that may themselves be contrary to provisions of the *Liquor Act*.

**Clause 11. Repeal of Act**

This is a standard clause for legislation which consists entirely of amendments to other legislation. It provides that the Act ceases to have effect on the day after it commences. As this is an amending Act, there is no need to retain it on the statute book once the amendments to the *Liquor Act* have been effected.

# 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 2018

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

The Liquor Amendment Bill 2018 (the Bill) amends the *Liquor Act*.

### HUMAN RIGHTS IMPLICATIONS

The Bill engages rights referred to in the International Convention on Civil and Political Rights (ICCPR).

#### **Freedom of movement and choice of residence for lawful residents – Article 12 ICCPR**

Article 12(1) of the ICCPR provides that ‘Everyone within the territory of the State shall, within that territory, have the right to liberty of movement...’.

Elements of the Bill may interfere with the free movement of persons, as police officers and inspectors are empowered to stop vehicles where a customer who appears to be purchasing, intending to purchase, or has purchased liquor for consumption away from the premises is driving in or is a passenger in the vehicle.

Notably, however, Article 12(3) of the ICCPR provides that freedom of movement may be curtailed where it is necessary for the purposes of maintaining ‘... public order [or] public health...and are consistent with...other rights...’.

The power to stop vehicles is specific to instances where a police officer or inspector observes that the customer is purchasing, is about to purchase, or has purchased liquor from a premises and is driving, or is a passenger in, a vehicle.

The purpose for stopping the vehicle is to enable the police officer or inspector to fulfil their functions under section 101ZK of the *Liquor Act* and establish that the customer is not prohibited from possessing liquor or is intending to supply the liquor to a person who is prohibited.

As such, the purpose is one necessary to maintain public order and public health by controlling the supply of liquor to persons and places that are prohibited.

### **Equality before the law – Article 14(1) and 26 ICCPR**

Article 14(1) of the ICCPR provides that all persons shall be equal before courts and tribunals, and Article 26 provides that all persons shall be equal before the law.

The amendment will allow police officers to conduct controlled operations. This will allow a police officer to engage in certain limited, specified activities for the purpose of investigating offences being committed under the *Liquor Act*. It authorises police officers to acquire, supply or possess liquor for that purpose. It therefore raises questions about equality before the law.

While the subject of the amendment is an authorisation to conduct a controlled operation, this is done in accordance with laws that apply equally to all persons and only for a legitimate objective. An authorisation to conduct a controlled operation is issued by a Police Commander in accordance with law for the limited purpose of detecting the commission of offences against the *Liquor Act*.

The controlled operations powers given to police officers under this Bill are no greater than those already given to Northern Territory Police, and are similar to equivalent powers set out in the *Misuse of Drugs Act*. They are to be subject to annual reporting requirements to the Minister.

### **Freedom from arbitrary or unlawful interference – Article 17(1) ICCPR**

Article 17(1) of the ICCPR provides that persons shall not ‘...be subjected to arbitrary or unlawful interference with ...privacy...’.

The information required by the police officer or licensing inspector is limited to information that is currently available to the Banned Drinkers Registry, or necessary for detecting potential secondary supply of alcohol into areas where it is restricted or limited or where laws currently restrict those people from consuming alcohol.

Examples of this include supply of alcohol: to persons on bail conditions; in restricted premises; to persons on sentences with alcohol restriction conditions; and to others who should not be consuming alcohol, such as children. This information is necessary to safeguard the integrity and effective operation and enforcement of other existing legislative frameworks to limit or prohibit alcohol supply and use, and to reduce alcohol related harm.

The provisions in this Bill have been drafted carefully to ensure that they are reasonable, proportionate and necessary to achieve the policy objective of the Bill.

## **CONCLUSION**

This Bill is compatible with human rights as it as it promotes a reduction in alcohol related harm and, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate.