

The Economic Policy Scrutiny Committee
Submissions to its inquiry into the Tobacco Control Legislation
Amendment Bill 2018

Submission from the Director-General of Licensing

Background – Director-General of Licensing

The Director-General of Licensing (Director-General) is appointed under the *Licensing (Director-General) Act 2014* and has a range of responsibilities and duties across a diverse portfolio including gambling, liquor, real estate and tobacco.

With regards to tobacco, the Director-General is currently responsible, under the *Tobacco Control Act (Act)* and accompanying Regulations, for the granting of licences for the sale of tobacco products from liquor licences and other retail outlets. The Director-General has the power to renew, transfer, suspend or cancel a tobacco retail licence. While responsible for granting of all tobacco retail licences, the Director-General only regulates licences issued to liquor licensed venues, with Department of Health officers responsible for regulating retail outlets such as those found in shopping centres etc.

As of 5 September 2018, there were 453 active tobacco retail licences across the Northern Territory.

Tobacco Control Legislation Amendment Bill 2018

The Tobacco Control Legislation Amendment Bill 2018 (Bill) will make a number of amendments to the Act that will impact on the operations of liquor licensees. This will necessitate action by the Director-General to update regulatory practices to ensure licensees are compliant.

With regards to the Terms of Reference under which the Economic Policy Scrutiny Committee is required to operate, the following comments on behalf of the Director-General are provided.

Whether the Assembly should pass the Bill

The Director-General can see no reason why the Assembly should not pass the Bill provided the comments (below) regarding possible amendments to the Bill are noted.

Whether the Assembly should amend the Bill

Bill - New Section 4A – Application to e-cigarettes

The Bill proposes that e-cigarettes, accessories and other devices (prescribed in Regulations) are to be treated the same as existing tobacco products with regards to their uses in public areas. This will require direct action by the Director-General.

Action will be required to be undertaken to ensure all liquor licensees are aware of the amendments regarding e-cigarettes and that they are to be treated the same as normal tobacco products. It is unknown how wide spread the use of e-cigarettes in licensed premises is however licensees will need to ensure all staff are aware that the use of them will be restricted to the designated smoking areas. Licensees will need to ensure their smoking signs are adjusted to include e-cigarettes.

Bill - Section 5/6 – amended Definitions/ amended Section 7 (Smoke-free area)

The Director-General notes the proposed inclusion of the term **entry and boundary area** and, while it does not directly impact on liquor licensed venues, when a special liquor licence application is lodged for a community event, it will be necessary to ensure the applicant is aware of this.

Bill - Section 7 – amended Section 26 (vending machine restrictions)

Under the *Liquor Act*, a licensee may apply for an exemption that permits children to be in certain areas of the premises by themselves (such as in child playrooms), or in the company of a parent or adult guardian during certain hours (normally 10/11am to 10pm). The exemption, granted by the Director-General pursuant to section 106(1)(b), basically allows children to be anywhere on the liquor licence premises during that time. The exception to this exemption is declared gaming areas, to which children are prohibited from entering or remaining during trading hours. This prohibition is established via directions issued by the Director-General pursuant to the *Gaming Machine Act*.

However, the Director-General may also issue a declaration (under s106(1)(a)) that prohibits children from the premises, even if they were accompanied by a parent or guardian, but these tend to be for late hours, generally 10pm to 2/4am the following day. Some licensed premises have both of these declarations allowing for children to be present in during some of the trading hours.

The Bill makes the provision of cigarette vending machines prohibited if children are permitted on licensed premises but does not make this clear in relation to the above available declarations.

The proposed amendments will affect a number of NT licensed venues including the Darwin and Alice Springs casinos where children often accompany adults for meals etc. A number of local clubs and taverns also have these exemptions.

It is understood that there has been some consideration to allowing a licensee to move the vending machine to an area of their premises where children are not permitted, even if accompanied by a parent or guardian, however this would just leave the gaming areas.

There are a number of issues with this option in that not all licensed premises, which may have a vending machine, will also have a gaming area and, further, and more importantly, there is an existing link between gambling and smoking and this is why all Australian jurisdictions have enacted legislation that prevents smoking in gaming areas in pubs, clubs and most casinos.

To move a cigarette vending machine into the gaming area may tempt a smoker, who has just gone in to purchase cigarettes, to play the gaming machines when, under normal circumstances, they may not. Allowing the relocation of cigarette vending machines into declared gaming areas appears to be a retrograde step if this is what is being considered under the proposed amendments.

In any event, should the Bill be passed, it will be necessary for the Director-General to identify all liquor licensed venues that currently have this exemption and either write to the licensee, or physically visit the premises, to see if a cigarette vending machine is used (licensees are not required to advise the Director-General if they have a vending machine on their premises). Depending upon the intent of the proposed changes, the licensee will then have to relocate the vending machine to their gaming area (assuming they have one) or, if that is not the intention, decide on whether they want to remove the machine or have the Director-General revoke their exemption. Follow up action will need to be undertaken to ensure compliance with the new laws.

Bill – Section 8, 9 and 10 – Part 5 amended heading, amended Section 42 and amended Section 42A

The Director-General supports the proposed changes that would prohibit children from selling tobacco products but notes there are no direct actions required to be undertaken as a result.

Bill – Section 11-16 (inc) Amendments to Regulations

The Director-General supports the proposed changes to the Regulations and notes that they are consequential changes from the Act. No direct action will be required except to note appropriate signage at those community events which seek a special liquor licence.

The Director-General supports the amendments proposed by the Bill but does raise the concern that the Bill proposes commencement upon the Administrator publishing a Gazette notice. The actions required to be undertaken by the Director-General in ensuring compliance with the new requirements is going to take some time and it will be necessary that sufficient time is granted otherwise a significant number of liquor licensees could find themselves in breach of the new provisions from the day of assent. At a minimum, the Director-General would prefer a minimum of 30 days from assent until commencement so that the appropriate actions can be undertaken.

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

The legislative provisions regarding smoking in public places, including community events and licensed premises, has been in place for almost a decade and is accepted as the norm by most people.

From a Director-General point of view, and as noted above, the possible impact to patrons of license premises who use these products is unknown and there will no doubt be some resistance (as was the case when the original smoking laws were introduced).

The Director-General, in conjunction with the Department of Health, will be in a position to assist liquor licensees prepare for the changes and address and issues regarding patrons concerns should it reach that level.

The Bill does not appear to infringe on the rights or liberties of existing tobacco product smokers however is going to impact on those that smoke e-cigarettes.

Whether the Bill has sufficient regard to the institution of Parliament

From the perspective of the Director-General, the Bill appears to have appropriate regard for the institution of the Northern Territory Parliament.



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Director-General of Licensing

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