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[Signature]

Alcohol Harm Reduction Bill 2017

SERIAL NO. 25

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Bill provides for the Alcohol Harm Reduction Act 2017.

The objects of the Act are to provide a framework for prohibitions relating to alcohol, with the enforcement of the prohibitions through the banned drinker register established as an identification system under section 31A of the *Liquor Act*. The measures contained in the framework are intended to reduce the misuse of alcohol and resulting harm by placing adults on the banned drinker register through orders prohibiting purchase, possession or consumption of alcohol and preventing the purchase of takeaway alcohol by persons subject to the prohibitions. Takeaway alcohol constitutes the majority of alcohol purchased in the Northern Territory. The Act is intended to reduce supply of alcohol to persons misusing alcohol who are subject to banned drinker orders.

The Act also repeals the *Alcohol Mandatory Treatment Act* and *Alcohol Protection Orders Act*. Other than enforcement through the banned drinker register of the orders prohibiting purchase, possession or consumption of alcohol, there is no mandatory treatment imposed or offence arising from a breach of the prohibition by the banned drinker. However, it is an offence for a person to supply a person on the banned drinker register with alcohol. The Act is intended to facilitate engagement with therapeutic health measures aimed at addressing misuse of alcohol and harm arising from misuse.

NOTES ON CLAUSES

Part 1 Preliminary matters

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 *Alcohol Harm Reduction Act 2017*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence.

The Act will commence on a day fixed by the Administrator by Gazette notice.

Clause 3. Object

The object of the Act is to reduce harm associated with misuse of alcohol and improve the health, wellbeing and safety of people in the Territory by providing a legislative framework for the:

- (a) making of banned drinker orders which will place a person on the banned drinker register;
- (b) prevention of misuse of alcohol - through the issue of a banned drinker order which prohibits purchase, possession or consumption of alcohol during the period of the order;
- (c) the protection of people who misuse alcohol from severe or serious harm because of the misuse - through issue of a banned drinker order restricting their capacity to obtain and consume alcohol during the period of the order; and
- (d) the protection of people, particularly children, from harm or nuisance occurring as a result of misuse - through reducing the supply and consumption of alcohol to banned adults.

Clause 4. Definitions

This clause defines various words and expressions used in the Act.

For example, some key definitions are:

- *alcohol* which means liquor, as defined in section 4(1) of the *Liquor Act*;
- *banned drinker register* which is defined to mean the identification system established under section 31A(2) of the *Liquor Act*;
- *banned adult* which means an adult who is subject to a BDO; and
- *BDO* which is defined in section 7(1) (see clause 7 below).

Clause 5. Family member

This clause defines family member to include a spouse or de facto partner, or any other relative. A note in the clause refers to definitions of certain domestic relationships set out in section 19A of the *Interpretation Act* as a guide.

The definition also includes a relative in accordance with customary law or tradition including Aboriginal customary law or tradition.

Clause 6. Application of Criminal Code

This is a standard clause that provides that Part IIAA of the Criminal Code applies to an offence against the Act. Part IIAA of the Criminal Code states the general principle of criminal responsibility, establishes general defenses, and deals with burden of proof.

Part 2 Banned Drinker Orders (BDOs)

Division 1 BDO

Clause 7. What is a BDO

This clause defines what a BDO is. A BDO is a banned drinker order, which prohibits a person from purchasing, possessing or consuming alcohol for the period the order is in force. The period an order is in force depends on whether the order was issued by police, the BDR Registrar, is a result of a contravention of a BDO or has been dealt with by a court.

The order comes into force once it is registered with the order being included on the BDR as a prohibition from purchasing takeaway alcohol.

The clause also provides for first police BDO, second police BDO and subsequent police BDO with the relevant periods the BDOs are in force for set out in clause 11.

Clause 8. Notice of BDO

This clause provides that a person who makes a BDO (Police or the BDR Registrar) must take all reasonable steps to give a copy of the BDO to the banned adult, however the BDO comes into force when registered regardless of whether a copy is received (see clauses 7(1)(e) and 9(4)).

Clause 9. Registering BDO

This clause provides that the authority that made the BDO (either Commissioner of Police or the BDR Registrar) must ensure the BDO is registered. The BDO comes into force once the details of the banned adult are registered on the banned drinker register, and this occurs regardless of the banned adult receiving a copy of the BDO.

Division 2 BDO made by police officer

Clause 10. When police may make BDO

This clause provides the circumstances that police may make a BDO for a person. The circumstances where police may make a BDO include where:

- a person is charged with an alcohol-related offence;
- where a person is named as a defendant in a police DVO where the defendant was affected by alcohol at the time the DVO conduct occurred;
- the person is taken into alcohol-related protective custody for a third time in 2 years;
- has received a third alcohol-related infringement notice in 2 years; or
- has a combination of 3 alcohol-related protective custody or alcohol-related infringement notices in 2 years.

The clause defines *alcohol-related protective custody* through reference to apprehension under section 128 of the *Police Administration Act*, which provides for protective custody of a person due to apparent intoxication, and allows for other circumstances prescribed by being taken to a sobering shelter because of apparent intoxication for the person's safety where the person is unable to care for themselves.

The clause also defines the term *alcohol-related infringement notice* to mean an infringement notice issued in relation to specified offences including alcohol-related offences under the *Liquor Act*, *Traffic Act* offences relating to zero alcohol provisions, and offensive behavior offences in the *Summary Offences Act* where the person is believed to be affected by alcohol at the time of the offence.

The clause further defines the term *alcohol-related offence* to mean an offence carrying a penalty of imprisonment of 6 months or more where the person is believed to be affected by alcohol during the commission of the offence, an immediate suspension offence under section 19(1) of the *Traffic Act* which includes high range driving under the influence as well as subsequent low range driving under the influence offences, an offence against section 42(1) of this Act (see clause 42) which provides an offence of secondary supply of alcohol to a person subject to a alcohol prohibition, and an offence that involves alcohol (such as stealing alcohol).

Clause 11. Period of BDO

This clause provides for the period that a police BDO is in force. A first police BDO is in force for 3 months, a second police BDO is in force for 6 months and a third BDO is in force for 12 months.

The period of the BDO is subject to any orders made by a court relating to the relevant BDO (see clause 12) and the issue of a second or subsequent police BDO arising from contravention of a police BDO (see clause 13). Additionally the period of a BDO is subject to orders made by the BDR Registrar to vary or revoke a BDO (see clause 25).

Clause 12. Court orders relating to BDO

This clause provides the court with a general discretionary power to make orders relating to a police BDO in force for a banned adult appearing in court. The court may continue in force for a stated period, may be varied, may be revoked and other conditions as to purchase, possession or consumption of alcohol imposed or any other matter considered relevant (such as requiring the person to be assessed for treatment or attend treatment) may be imposed, or may be revoked entirely.

Clause 13. Consequence of contravention of first or second police BDO

This clause provides that the consequences for contravening a first or second police BDO is that, where a police officer believes on reasonable grounds that a banned adult has contravened a police BDO by purchasing, possessing, or consuming alcohol, a police officer may make a second or subsequent police BDO which extends the time a banned adult is subject to a BDO. As outlined in clause 11 above, the

relevant period of time of a second or subsequent police BDO is 6 or 12 months.

Division 3 BDO made by BDR Registrar – self-application

Clause 14. Self-application for BDO

This clause provides that a person may apply for a BDO to be made for their self, thereby prohibiting them from purchase, possession or consumption of alcohol. The person must apply to the BDR Registrar, with the application lodged with the BDR Registrar, at a police station or other prescribed place, with a request that a BDO be made for 3, 6 or 12 months.

Clause 15. Making BDO

This clause provides that the BDR Registrar must make a BDO for the applicant within 2 business days of receiving the application once satisfied of the identity of the applicant, that the applicant is an adult, is not already banned and consents to the terms of the BDO.

Clause 16. Period of BDO

This clause provides that in making a BDO under section 15 of this Act, that the BDR Registrar must take into account the period of ban requested in clause 14, decide the relevant period, and specify the period of the ban in BDO. The BDO remains in force for the relevant period unless revoked under clause 17 following application by the person the subject of the ban.

Clause 17. Revocation of BDO

This clause provides that a person subject to a BDO made through self-application may request that the BDO is revoked. The request must be made with the BDR Registrar, at a police station or other prescribed location or by a prescribed method, and the BDR Registrar must revoke the BDO as soon as practicable and take reasonable steps to notify that the revocation has occurred.

Division 4 BDO made by Registrar – application by others

Clause 18. Application for BDO

This clause provides that certain people may apply to the BDR Registrar for a BDO to be made for an adult. The persons include police officers, child protection workers, health professionals, a family member or guardian or carer.

The application must be in writing in a form approved by the BDR Registrar, with information specified in the form.

Clause 19. Referral for assessment

This clause provides that an application made by a family member, guardian or carer, or Public Guardian, then the adult must be referred by the BDR Registrar for assessment by a clinician (see clause 20).

The BDR Registrar may refer an adult for assessment by a clinician for other applications (however an assessment by a clinician is not required).

Clause 20. Assessment

This clause provides that if an adult is referred for assessment pursuant to clause 19 then a clinician must take all reasonable steps to assess the adult for a decision to be made by the BDR Registrar pursuant to clause 21. If the clinician is unable to assess the adult within a reasonable time, the clinician must notify the BDR Registrar and the application lapses.

The assessment may be in person or on the information provided or otherwise available. A report must be provided to the BDR Registrar by the clinician on completing the assessment which makes a recommendation as to whether or not a BDO should be made and if there is any recommendation as to appropriate therapeutic support programs.

Clause 21. Making BDO

This clause provides that the BDR Registrar may make a BDO for a person if satisfied that the person is an adult, that the person is misusing or has misused alcohol and the misuse presents a risk to health, safety or wellbeing of the person or other person.

However, the BDR Registrar cannot make a BDO for a person referred by a family member, carer, guardian or Public Guardian unless an assessment has occurred and a report on the assessment received. There is no requirement for assessment by a clinician for a person referred by other persons listed in clause 18 and the BDR Registrar may otherwise make a BDO in accordance with this clause.

If there has been an assessment made under clause 20 the BDR Registrar must consider the clinician's report in making a BDO.

Clause 22. Period of BDO

This clause provides that the BDR Registrar must decide the period the BDO will be in force in accordance with the 3, 6 and 12 month timeframes and specify the period in the BDO. The BDO remains in force for the specified period, unless revoked under clause 25 or extended under clause 23 or 24.

If there has been an assessment under clause the BDR Registrar must consider the clinician's report in setting the period of the BDO.

Clause 23. Extension of BDO by BDR Registrar

This clause provides that the BDR Registrar may extend the BDO of a banned adult for a period determined by the BDR Registrar if it is reasonably believed the person has contravened the BDO or the grounds for the BDO continue to apply. Extensions made by the BDR Registrar must be in accordance with the 3, 6 and 12 month timeframes.

The clause also requires the BDR Registrar to take reasonable steps to notify a banned adult in writing that the BDO has been extended.

Clause 24. Extension of BDO by Police

This clause provides that a Police Officer may extend a BDO made under this division if the adult is charged with an alcohol-related offence, the adult is named as the defendant in a police DVO (alcohol-related), the adult is taken into alcohol-related protective custody or the adult is given an alcohol-related infringement notice. Extensions made by Police must be in accordance with the 3, 6 and 12 month timeframes.

Division 5 General Provisions for BDOs

Clause 25. Variation or revocation of BDO

This clause provides that the BDR Registrar may vary or revoke a BDO if they are satisfied that the banned adult has participated in and completed a therapeutic support program or if there is an obvious administrative error in the BDO. A variation or revocation can be made by application or by the initiative of the BDR Registrar.

Clause 26. Assessment of adults for treatment

This clause provides for an adult to apply to the BDR Registrar to be referred to a clinician for assessment for treatment. A person may also

be referred by the court for assessment. The clinician must take all reasonable steps to assess that adult.

The assessment may be made in person or based on information provided or otherwise available to the clinician. Upon completing the assessment, the clinician must make a report of the assessment to the BDR Registrar that contains a recommendation for a therapeutic support program for the adult.

Part 3 Income Management

Clause 27. Income management order may be made

This clause provides that an income management order may be made by the BDR Registrar to require a banned adult be subject to income management under the Commonwealth *Social Security Administration Act*. Income management restricts the way a person may access welfare benefits thereby limiting the person's ability to purchase alcohol.

The BDR Registrar may require a person to be subject to income management if a BDO of 12 months or more is in force for the person, the person would benefit from the making of an income management order and the person is an eligible welfare payment recipient. Part 3B of the *Social Security Administration Act* provides that an eligible welfare payment recipient is a person or their partner receiving a category H welfare payment.

Clause 28. Period of income management order

This clause provides that an income management order made for a banned adult is in force either whenever it is made or when a BDO comes into force (if made at same time) and remains in force for 12 months.

Clause 29. Variation and revocation of income management order

This clause provides that an application may be made to the BDR Registrar to vary or revoke an income management order by the person subject to income management.

The BDR Registrar may vary the income management order if satisfied it is appropriate to do so having regard to the criteria for making the

order or may revoke the order if satisfied the person no longer meets the criteria.

Clause 30. Notice to Secretary

This clause provides that written notice must be given to the Secretary of the agency administering the *Social Security Administration Act* of the making, variation or revocation of an income management order.

Part 4 Review by Tribunal

Clause 31. Definitions

This clause outlines definitions for the purpose of this Part, including *proceedings* defined as proceedings in the Tribunal. Tribunal is defined in clause 4 as the *Northern Territory Civil and Administrative Tribunal*.

Clause 32. Review by Tribunal

This clause provides the jurisdiction of the Tribunal is review of decisions as specified in Schedule 1.

Schedule 1 also specifies who is an *affected person* for the purpose of a reviewable decision. An affected person may apply to the Tribunal for review of a reviewable decision.

Clause 33. Reasons may be given orally

This clause provides that the Tribunal may give oral reasons decisions and findings of fact to the parties of the proceedings. A party may apply to the Tribunal for reasons in writing and the Tribunal must do so within 28 days of the application. The application for reasons in writing must also be made within 28 days of the reasons being provided orally.

Clause 34. No fees

This clause provides that no fees apply for applications to the Tribunal under this Part.

Part 5 Administration

Division 1 BDR Registrar

Clause 35. BDR Registrar

This clause provides for the BDR Registrar to be the Chief Executive Officer of the administering agency (the Department of Health at the time of the Bill) or a suitably qualified public sector employee appointed by the Chief Executive Officer to be the BDR Registrar.

Clause 36. Functions and powers

This clause provides that the powers and functions of the BDR Registrar are conferred by the Act or under another Act. The BDR Registrar may do all things necessary or convenient for the performance of the BDR Registrar functions.

Clause 37. Delegation

This clause provides that the BDR Registrar may delegate any or all of the BDR Registrar powers and functions to a public sector employee.

Clause 38. Record keeping

This provides that records must be kept in relation to the performance of the BDR Registrar functions by the BDR Registrar and notes the requirements of Part 9 of the *Information Act* in relation to requirements for record keeping. Records that must be included are specified as the number of applications made for a BDO, the number of BDOs made and the number of variations and revocations made.

Division 2 Information sharing

Clause 39. Sharing information

This clause enables a person who applies to the BDR Registrar for a BDO to give the BDR Registrar information about the person to whom the application relates.

The clause also enables a police officer or BDR Registrar to give any information about a BDO in force to an information sharing authority (defined in clause 4), however may only do so if the information relates to the enforcement of the BDO or assist in the provision of a service or function relating to a person subject to a BDO.

Clause 40. Restriction on use or disclosure of information

This clause provides that the information provided to an information sharing authority must not be disclosed or used for another purpose. However the information may be disclosed as part of information that is in a statistical form that does not identify the person or for the purpose of evaluation the effectiveness of the administration of this Act, or is otherwise authorised or required by law.

Clause 41. Interaction with other laws

This clause is a standard clause to make clear that the Division relating to information sharing has effect despite the operation of any other law prohibiting or restricting the disclosure of information.

Part 6 Miscellaneous matters

Clause 42. Offence to supply alcohol to persons subject to prohibition

This clause provides a new offence of supplying alcohol to a person who is subject to a prohibition relating to alcohol referred to in section 31A(2) of the *Liquor Act*. The prohibitions include BDOs, court DVOs, bail conditions relating to alcohol, sentencing orders where alcohol is a condition of the order, and parole orders relating to alcohol.

The offence applies if a person intentionally supplies alcohol (and the person knows it is alcohol supplied) and the person to whom the alcohol is supplied is subject to a prohibition and the person knew or ought to reasonably have known of the prohibition.

The maximum penalty for the offence is 20 penalty units and the person is also subject to a 12 month prohibition from purchasing alcohol from the day the person is found guilty.

The offence provisions do not apply if someone is an authorised seller mentioned in 31A of the *Liquor Act* or if a person is a protected person as defined in section 4 of the *Domestic and Family Violence Act*.

Clause 43. Police power to require breath test

This clause provides the police with a power to require a person to submit to a breath test to determine if there is alcohol in the person's breath. Police may require a person to provide a breath test if the person is in a public place and the police officer believes on reasonable grounds that the person is a banned adult and has been consuming alcohol in contravention of the person's BDO. The clause relies on the

definitions of *breath test* in section 3(1) of the *Traffic Act* and *public place* in section 4(1) of the *Liquor Act*.

Clause 44. Protection from liability

This clause provides a person with civil and criminal protections for an act done or omitted to be done in good faith while exercising a power or performance of a function as the BDR Registrar or as a clinician.

Clause 45. Regulations

This is a standard clause allowing the Administrator to make regulations under the Act.

Part 7 Repeals and transitional matters

Division 1 Repeals

Clause 46. Acts repealed

This clause provides for the repeal of the *Alcohol Mandatory Treatment Act 2013* (No 17 of 2013) and the *Alcohol Protection Orders Act 2013* (No 31 of 2013).

There are no transitional provisions required for the *Alcohol Mandatory Treatment Act 2013*.

Transitional provisions for the *Alcohol Protection Orders Act 2013* are outlined in Division 2 below.

Division 2 Transitional matters

Clause 47. Definitions

This clause defines terms relating to the *Alcohol Protection Orders Act* for the purpose of transitional provisions.

For example, the term APO Act is defined as the *Alcohol Protection Orders Act* in force before repeal.

Clause 48. Alcohol protection orders become BDOs

This clause provides that an alcohol protection order in force at the time of commencement are deemed to be a BDO for the remaining period which it would have been in force if the APO Act had not been repealed.

A first alcohol protection order becomes a first police BDO, a second alcohol protection order becomes a second police BDO, and a later alcohol protection order becomes a subsequent police BDO.

Part 8 Consequential amendments

Division 1 Information Regulations

Clause 49. Regulations amended

This clause provides that the Division amends the Information Regulations.

Clause 50. Regulation 4A repealed

This clause repeals Regulation 4A of the Information Regulations. Regulation 4A refers to the *Alcohol Mandatory Treatment Act 2013* which is repealed in clause 456.

Division 2 Liquor Act

Clause 51. Act amended

This clause provides that the Division amends the *Liquor Act*. The *Liquor Act* regulates the sale, supply, possession and consumption of alcohol in the Northern Territory.

Clause 52. Section 31A amended

This clause amends section 31A(2) of the *Liquor Act* by inserting sub clause (a) to provide that a BDO or court order under this Act is a prohibition relating to liquor which is subject to the provisions of section 31A.

Section 31A of the *Liquor Act* provides for the establishment of an identification system (the BDR) and the requirements for licensees to scan the identification of individuals seeking to purchase takeaway alcohol to establish if the individual is subject to a prohibition relating to liquor.

Division 3 Liquor Regulations

Clause 53. Regulations amended

This clause provides that the Division amends the Liquor Regulations.

Clause 54. Regulation 5B amended

This clause amends Regulation 5B which prescribes additional prohibitions relating to liquor. Regulation 5B(a) relating to orders in the *Sentencing Act* is amended to remove the reference to section 34 of

the *Sentencing Act*. Regulation 5B(b) is amended to insert an additional order (a family responsibility order made under section 140J of the *Youth Justice Act*) that may provide a prohibition relating to liquor. Regulation 5B(e) is added to provide for supervision directions relating to liquor under the *Care and Protection of Children Act* while Regulation 5B(f) provides for a prohibition arising from a ban made on a finding of guilt in relation to secondary supply.

Division 4 Police Administration Act

Clause 55. Act amended

This clause provides that the Division amends the *Police Administration Act*.

Clause 56. Section 4 amended

This clause repeals definitions of *assessment*, *assessment facility* and *senior assessment clinician* as terms related to the *Alcohol Mandatory Treatment Act* repealed in clause 46.

Clause 57. Sections 128A and 128B repealed

This clause repeals sections 128A and 128B of the *Police Administration Act* as the sections relate to the *Alcohol Mandatory Treatment Act* which is repealed in clause 46.

Division 5 Volatile Substance Abuse Prevention Act

Clause 58. Act amended

This clause provides that the Division amends the *Volatile Substance Abuse Prevention Act*.

Clause 59. Section 41D repealed

This clause repeals section 41D in the *Volatile Substance Abuse Prevention Act* as the section relates to the *Alcohol Mandatory Treatment Act* which is repealed in clause 46.

Division 6 Other laws amended

Clause 60. Other laws amended

This clause provides that Schedule 2 amends other laws as mentioned in the schedule. Schedule 2 is described below.

Division 7 Expiry of Part

Clause 61. Expiry of Part

This is a standard clause which provides that this Part and Schedule 2 expire on the day after they commence.

Schedule 1 Reviewable decisions

Clause 32 provides that the jurisdiction for review by the Tribunal is specified in Schedule 1. The decisions that are reviewable decisions for the purposes of clause 30 are the making of a BDO by police under section 10(1)(c) (alcohol-related protective custody) or 10(1)(d) (alcohol-related infringement notice); the making, extension, refusal to vary or revoke a BDO made by the BDR Registrar; and, the making, or refusal to vary or revoke an income management order made by the BDR Registrar.

The affected person for an application is a person for whom a BDO is made, whom is subject to a BDO or subject to income management order.

Schedule 2 Other laws amended

Clause 60 provides that Schedule 2 amends other laws as mentioned in the Schedule. The other laws amended are to remove references to the *Alcohol Mandatory Treatment Act* which is repealed in clause 46. This Schedule amends the *Coroners Act* and *Mental Health and Related Services Act*.