LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Economic Policy Scrutiny Committee

Inquiry into the Liquor Bill 2019

August 2019

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Chair’s Preface

This report details the Committee’s findings regarding its examination of the Liquor Bill 2019. The significant and adverse impact of alcohol misuse in the Northern Territory (NT) has been well documented over a number of decades. In order to address increasing concerns regarding the impact of alcohol misuse, the NT Government set up the Alcohol Policies and Legislation Review (the Riley Review) to undertake an independent review of the NT’s current alcohol policies and legislation. This Bill is the culmination of the legislative reforms initiated by the Government in response to the Riley Review Report. It comprises a complete re-write of the *Liquor Act 1978* and incorporates 70 the Report’s recommendations.

The primary purpose of the Bill is to minimise the harm associated with the consumption of liquor while at the same time recognising that the sale, supply and consumption of liquor is a legitimate social and economic activity. The Bill aims to achieve a balance between these competing interests by providing a regulatory framework that contributes to the responsible development of the liquor industry while at the same time protecting community amenity, social harmony and community wellbeing.

The Committee received 18 submissions to its inquiry, with these providing a cross section of views from legal and community organisations, industry, NT Police, and local government. Submissions received by the Committee reflect the challenges inherent in achieving harm minimisation objectives without placing an unwarranted burden on liquor businesses. Although the majority of submissions supported the Bill in principle, a number of submitters suggested amendments. Community organisations highlighted the need to define the concept of harm and generally sought a stronger approach to the processes governing applications to transfer a licence; the sale and storage of inedible substances containing alcohol; and enabling community objections to applications. Industry submissions reflected two key themes: the constraints on business activities imposed by the Bill due to additional regulatory requirements; and concerns regarding a lack of accountability and transparency with regard to decision making.

The Committee acknowledges the considerable efforts made by the Government to ensure that the framework minimises harm without posing an undue burden on business and notes that an extensive consultation process was undertaken. The Committee has recommended 21 amendments aimed at increasing clarity in provisions that are ambiguous, ensuring the appropriateness of delegations, and strengthening some provisions to enhance harm minimisation objectives or reduce unnecessary burden on business.

On behalf of the Committee, I would like to thank all those who made submissions or appeared before the Committee. The Committee also acknowledges the work of the Department of the Attorney-General and Justice and the Alcohol Review Implementation Team for their advice to the Committee through both written responses and attendance at the public briefing and hearings. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.

Tony Sievers

Mr Tony Sievers MLA
Chair

Committee Members

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	Party:	Territory Labor
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	Sessional:	Economic Policy Scrutiny
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	Standing:	Public Accounts
	Sessional:	Economic Policy Scrutiny
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On 15 July 2019, Member for Nhulunbuy, Mr Yingiya Guyula MLA was discharged from the Committee. On the 16 July 2019 the Member for Fong Lim, Mr Jeff Collins MLA was appointed to the Committee.		

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Acknowledgments

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at the public hearing, and the Department of the Attorney-General and Justice and the Alcohol Review Implementation Team from the Department of the Chief Minister for providing written comments on concerns raised in submissions.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

(1) Standing Order 178 is suspended.

(2) The Assembly appoints the following scrutiny committees:

- (a) The Social Policy Scrutiny Committee
- (b) The Economic Policy Scrutiny Committee

(3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

(4) The functions of the scrutiny committees shall be to inquire and report on:

- (a) any matter within its subject area referred to it:
  - (i) by the Assembly;
  - (ii) by a Minister; or
  - (iii) on its own motion.
- (b) any bill referred to it by the Assembly;
- (c) in relation to any bill referred by the Assembly:
  - (i) whether the Assembly should pass the bill;
  - (ii) whether the Assembly should amend the bill;
  - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
    - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
    - (B) is consistent with principles of natural justice; and
    - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
    - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
    - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
    - (F) provides appropriate protection against self-incrimination; and
    - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(H) does not confer immunity from proceeding or prosecution without adequate justification; and

(I) provides for the compulsory acquisition of property only with fair compensation; and

(J) has sufficient regard to Aboriginal tradition; and

(K) is unambiguous and drafted in a sufficiently clear and precise way.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(C) authorises the amendment of an Act only by another Act.

(5) The Committee will elect a Government Member as Chair.

(6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Liquor Bill 2019 with the proposed amendments set out in Recommendations 2 to 22.

Recommendation 2

The Committee recommends that clause 11(1) be amended to insert “suitably qualified” before the words “public sector employee”.

Recommendation 3

The Committee recommends that clause 39(2)(c) be amended to only allow the provision of complimentary drinks.

Recommendation 4

The Committee recommends that the Department develop separate community impact assessment guidelines tailored to the different types of licence or authority applications.

Recommendation 5

The Committee recommends that clause 51 be reworded to be more precise and contemporary.

Recommendation 6

The Committee recommends that clause 53 be amended so that the Director has the discretion to exempt any application for a community event authority or a special event authority from the public notice requirements.

Recommendation 7

The Committee recommends that the regulations prescribing conditions on time of operation make appropriate standard provisions for annual events, such as New Year’s Eve and ANZAC Day.

Recommendation 8

The Committee recommends that the Bill include a clause separate from clause 55 setting out how an application for a transfer of a licence shall be considered, including:

- That the Director must refer any application that is accepted to the Commission;
- The timeframe for such referral;
- The matters the Commission must consider when considering the application, including the financial stability, general reputation and character of the applicant, and whether the applicant is a fit and proper person.

Recommendation 9

The Committee recommends that clause 72 be amended by inserting a subsection after subsection (5) stating that 'it is a defence to a prosecution for an offence against subsection (4) if the person has a reasonable excuse'.

Recommendation 10

The Committee recommends that clause 86 be amended to remove the phrase 'and in a neat and tidy appearance'.

Recommendation 11

The Committee recommends that clause 105 be amended to:

- minimise the burden on business while meeting the intent of the Riley Review recommendation;
- only apply to licensees who have a wholesale authority.

Recommendation 12

The Committee recommends that the Bill be amended to remove the Director's power to vary an accord on the Director's own initiative and provide minimum consultation requirements for determining and varying accords.

Recommendation 13

The Committee recommends that the Bill be amended to either consolidate clauses 135 and 282 or, if there are reasons for retaining two separate offences, that it be amended to ensure consistency of terminology and penalties.

Recommendation 14

The Committee recommends that clause 147(1)(4) be amended to provide for the Director to give the licensee written notification of a period over which the audit will take place rather than notifying them of a specific date.

Recommendation 15

The Committee recommends that a regulatory framework be developed for the sale and storage of inedible alcohol substances and a clause inserted after clause 150 stating that inedible substances containing more than 1.15% of ethyl alcohol by volume must be stored and sold in accordance with the regulations.

Recommendation 16

The Committee recommends that clause 217 be amended to include an additional subsection under subsection (3) stating that the Court is to consider:

(a) the health of the person; and

(b) the capacity of the person to comprehend the nature and effect of the exclusion order

Recommendation 17

The Committee recommends that clause 233 be amended to provide police with the power to search a person's clothing and property in the person's immediate control.

Recommendation 18

The Committee recommends that clause 272 be amended to make the time by which the application must be lodged the day after proceedings have ended, or otherwise provide a procedural mechanism that appropriately provides for the prompt return of the vehicle.

Recommendation 19

The Committee recommends that the Bill be amended to achieve an appropriate balance between allowing sufficient time for investigation and avoiding prolonged seizure of vehicles when forfeiture is not appropriate.

Recommendation 20

The Committee recommends that clause 307 be amended to replace the term "statement of fact" with the term "averment".

Recommendation 21

The Committee recommends that clause 409, proposed regulation 15D, be amended by removing subsection (b) club authority.

Recommendation 22

The Committee recommends that these issues be addressed as appropriate.

1 Introduction

Introduction of the Bill

1.1 The Liquor Bill (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles, MLA, on Wednesday 15 May 2019. The Assembly subsequently referred the Bill to the Economic Policy Scrutiny Committee for inquiry and report by Tuesday 6 August 2019.[1]

Conduct of the Inquiry

1.2 On 17 May 2019 the Committee called for submissions by 14 June 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix 1, the Committee received 18 submissions to its inquiry. The Committee held a public briefing with the Department of the Attorney-General and Justice on 20 May 2019 and public hearings in Darwin with 23 witnesses on 10 July 2019.

1.4 The Bill and associated explanatory materials were forwarded to Ms Sally Gearin for review of fundamental legislative principles under Sessional Order 13(4)(c).

Outcome of Committee's Consideration

1.5 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals; and

(iv) whether the bill has sufficient regard to the institution of Parliament.

1.6 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendments set out in Recommendations 2 to 22.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Liquor Bill 2019 with the proposed amendments set out in Recommendations 2 to 22.

[1] Hon. Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft – Daily Hansard – Day 5 - 15 May 2019*, p. 1, http://hdl.handle.net/10070/307367.

Report Structure

1.7 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.8 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 The significant and adverse impact of alcohol misuse in the Northern Territory (NT) has been well documented over a number of decades. A 2009 report by the South Australian Centre for Economic Studies estimated the total social cost of alcohol misuse in the NT at $642 million or $4197 per adult compared with a national cost estimate of $943 per adult'[2] while a recent update of this report put the total cost at close to $1.38 billion.[3] However, the non-financial social costs of alcohol misuse are even more serious and diverse, with alcohol misuse contributing to child abuse and neglect, crime rates, domestic violence incidents, Foetal Alcohol Spectrum Disorder and other alcohol-related health conditions.[4]

2.2 In order to address increasing concerns regarding the impact of alcohol misuse, the NT Government set up the *Alcohol Policies and Legislation Review* (the Riley Review) to undertake an independent review of the NT's current alcohol policies and legislation. The primary purpose of the review was to facilitate the development of an integrated Alcohol Harm Reduction Strategy, incorporating both policy and legislation, based on the recommendations of the Review's Expert Advisory panel.

2.3 The findings of the Riley Review were released in October 2017 and included 220 recommendations. In the forward to the final report, Mr Trevor Riley QC, Chair of the Expert Panel, commented that:

> There can be no doubt the people of the Northern Territory of Australia have a problem with alcohol. Whilst it can be readily accepted that many people in the Northern Territory do not drink alcohol at all and most of those who do drink alcohol do so responsibly, the fact remains that we have a strong, entrenched and harmful drinking culture. We have a problem that must be addressed.[5]

2.4 The Government's response to the Riley Review was to unreservedly accept 187 of the recommendations and to support 32 recommendations in-principle. The recommendation to implement a total ban on take away alcohol sales on Sundays was not accepted.[6]

2.5 The Government subsequently set up the Alcohol Review Implementation Team (ARIT) in the Department of the Chief Minister to coordinate the reform programme.

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[2] Whetton S, Hancock J, Chandler N, Stephens N, Karmel C. *Harms from and Costs of Alcohol Consumption in the Northern Territory*. South Australian Centre for Economic Studies, Adelaide, 2009, p. (i), http://www.territorystories.nt.gov.au/jspui/bitstream/10070/222498/1/CostofAlcoholintheNTFinalReportSept2009.pdf.

[3] Hon. Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft – Daily Hansard – Day 5 - 15 May 2019*, p. 1, http://hdl.handle.net/10070/307367.

[4] Northern Territory Government, *Final Report of the Alcohol Policies and Legislation Review*, prepared by T. Riley QC, P. Angus PSM, D. Stedman, 2017, p. 1, https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf.

[5] Northern Territory Government, *Final Report of the Alcohol Policies and Legislation Review*, prepared by T. Riley QC, P. Angus PSM, D. Stedman, 2017, p. 1, https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf.

[6] Northern Territory Government, *Northern Territory Alcohol Harm Minimisation Action Plan 2018-2019*, June 2018 revised edition, p. 2, https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0008/485315/AHMPlan_2018.pdf.

Reforms have occurred progressively since 2017, with legislative reforms including the introduction of point of sale intervention (POSI) powers (commenced June 2018) and minimum floor pricing (commenced October 2018). In addition, the Liquor Amendment Bill 2018 provided for: police auxiliary liquor inspectors to conduct POSI duties; the holding of public hearings by the Liquor Commission; and undercover operations by police.

2.6 This Bill is the culmination of the legislative reforms set in motion by the Riley Review and comprises a complete re-write of the *Liquor Act 1978*, incorporating 70 of the recommendations made in the Riley Review.[7]

Purpose of the Bill

2.7 The Bill provides a comprehensive framework for regulating the sale and supply of liquor in the NT and repeals the *Liquor Act 1978* and replaces it with a new *Liquor Act 2019*. The object of the Bill is two-fold, 'to minimise the harm associated with excessive consumption and misuse of alcohol and to provide a framework for a risk-based licensing regime to regulate [the] sale, service and supply of liquor'.[8]

2.8 As noted in the Explanatory Statement:

> The primary purpose is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.
>
> The secondary purposes are a balance of regulation and facilitation of business, and the protection of community wellbeing and amenity including:
>
> - protecting and enhancing community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor; and
> - regulating the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory.
>
> To achieve these purposes, the Bill provides a framework to:
>
> - regulate the sale, supply, service, promotion and consumption of liquor;
> - prohibit certain products and activities relevant to sale, supply, service, promotion and consumption; and
> - provide for the administration of the Act.[9]

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[7] Hon. Natasha Fyles MLA, Attorney-General and Minister for Justice, *Draft – Daily Hansard – Day 5 - 15 May 2019*, p. 1 and 6, http://hdl.handle.net/10070/307367

[8] Explanatory Statement, *Liquor Bill 2019 (Serial 95),* p. 1, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[9] Explanatory Statement, *Liquor Bill 2019 (Serial 95),* p. 1, https://parliament.nt.gov.au/committees/EPSC/95-2019.

3 Examination of the Bill

Introduction

3.1 A broad range of issues were raised in submissions. Some issues relate to new provisions arising from the Riley Review while others focus on current provisions in the *Liquor Act 1978* which have been carried over to the Bill.

3.2 In scrutinising the Bill, and considering comments made in submissions, the Committee took into account the following advice from the Department of the Attorney-General and Justice (the Department) regarding the general approach to the development of the Bill:

> a) Where a Riley recommendation was accepted, the Department strived to give effect to it.
>
> b) Work was undertaken to address existing inconsistent or confusing provisions in consultation with key stakeholders to determine the issues, with reference to the written submissions made to the Riley Review.
>
> c) Where no issues were identified with existing provisions in the Liquor Act 1978 and advice was that the provisions appeared to be working operationally, the provisions were carried over to the Bill and drafted in a modern or clearer form.
>
> d) Consultation was then undertaken on an exposure draft Bill during April 2019 with submissions then considered and amendments made to the Bill where those submissions were seen as appropriate, necessary and generally consistent with the Riley Review recommendations that were accepted by Government.[10]

3.3 Issues raised in relation to existing provisions that have been carried over have been considered by the Committee in conjunction with the Department's advice as to whether or not the consultation findings indicated that the provisions were working operationally. In general, the Committee has not recommended amendments to existing provisions except where the evidence clearly indicates that the operation of the Bill would be enhanced by such an amendment.

3.4 The Committee's examination of the issues and related clauses has been structured sequentially under the relevant parts of the Bill, with the exception of definitions relating to the concepts of "harm" and "fit and proper person" which are addressed immediately below.

Definitions

Definition of Harm

3.5 A number of submitters[11] recommended that the concept of harm be defined, citing the definition included in s124A(2) of the *Liquor Licensing Act* (SA) as a possible model. The People's Alcohol Action Coalition (PAAC) and the Foundation for Alcohol

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[10] Department of the Attorney-General and Justice, *Responses to Written Questions,* p. 1, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[11] Submission 7- Northern Territory Council of Social Services (NTCOSS), p. 3; Submission 12 - Aboriginal Medical Services Alliance Northern Territory (AMSANT), p. 6; Submission 15 - People's Alcohol Action Coalition (PAAC) and the Foundation for Alcohol Research and Education (FARE) joint submission, p. 4.

Research and Education (FARE) encapsulated the thoughts of several submitters when they explained the value of clearly defining the scope of alcohol-related harm as being an important means of ensuring:

> that there is a common understanding of the harm that results from alcohol misuse, and to enable an assessment to be made of whether the Act is meeting its primary purpose.[12]

3.6 It was deemed important to ensure that the understanding of harm was not limited to the individual, as Vicki Gillick from PAAC commented, it is not just 'about liver disease and car accidents'.[13] Submitters were keen to clarify that a definition of harm should encompass harm to 'individuals, families, children and communities'.[14] At the same time, it was acknowledged by one public hearing witness that the definition needed to be broad in order to avoid the risks associated with overly prescriptive legislation.[15]

3.7 The Committee queried the Department as to why a definition of harm had not been included in the Bill and was advised that:

> This issue is currently under consideration by the Department particularly in respect of whether adoption of such a definition should occur, having regard to how the Bill has been drafted with respect of concepts of the public and community impact tests as contained in clause 45. These have largely been formulated to give effect to Riley Report recommendation 2.1.4. We also note that the prescriptive defining of terms does not always achieve the intended outcome.[16]

Committee's Comments

3.8 The Committee notes the concerns of submitters and the advice provided by the Department. While acknowledging the risks associated with overly prescriptive legislation, the Committee encourages the Department to give consideration to the inclusion of a broad description of alcohol related harm specifying that such harms relate to individuals, families, children and communities.

Definition of Fit and Proper Person

3.9 Retail Drinks Australia recommended that a definition of "fit and proper person" be included, noting that under cl157(h)(i) and (j) not being a fit and proper person constitutes grounds for complaint against a licensee.

3.10 Although Retail Drinks Australia was the only submitter who raised this as an issue, the concept is also used as a criterion in the assessment of applications for licences and authorities and as grounds for objecting to an application, with relevant clauses including: 45(1); 47(3); 55(3)(4); 57(2); and 157(1).

3.11 The requirement that an applicant must be a fit and proper person is one of three conditions with which the Commission must be satisfied before granting a licence or an authority (cl 45(1)) and, when determining whether an applicant is a fit and proper

[12] Submission 15 - PAAC and FARE joint submission, p. 4.
[13] Committee Transcript, Public Hearing, 10 July 2019, p. 20.
[14] Committee Transcript, Public Hearing, 10 July 2019, p. 34.
[15] Committee Transcript, Public Hearing, 10 July 2019, p. 34.
[16] Department of the Attorney-General and Justice, *Responses to Written Questions,* p. 2, https://parliament.nt.gov.au/committees/EPSC/95-2019.

person, the Commission must have regard to any matters prescribed by regulation – cl 55(4).

3.12 The Committee sought clarification from the Department regarding the absence of a definition and was advised that:

> The concept of 'fit and proper person' is used in many Acts as a benchmark without the need to be defined.
>
> Defining 'fit and proper person' carries risks of both:
>
> - limiting the definition, resulting in a person who would not have otherwise been considered as fit and proper not falling within the definition and therefore found to meet the requirements for being 'fit and proper' in accordance with the definition; and conversely
> - may result in persons not being found to be 'fit and proper' for minor or old matters which would otherwise not be considered to be a limitation on the ability of a person to be a licensee.[17]

Committee's comments

3.13 The Committee is satisfied with the Department's advice. The Committee notes that cl 55(4) states that the Commission must have regard to any matters prescribed by regulation when assessing whether an applicant is a fit and proper person to hold a licence and, as these matters can be prescribed in regulation if needed, considers it is not necessary to define the term fit and proper person elsewhere.

Part 2 – Administration

3.14 Clause 11(1) states that the Director may delegate their powers and functions to a public sector employee. This delegation is very broad and does not make any reference to qualifications or appropriateness and could, potentially, result in someone inappropriate being appointed.

3.15 The Committee requested clarification from the Department regarding the effect on the operation of the Bill of amending this clause to provide for the Director's powers to be delegated to a "suitably qualified public sector employee" and was advised that 'No discernible effect is foreseen. The clause achieves what it is meant to'.[18]

Committee's comments

3.16 In line with Sessional Order 13(4)(c)(iii)(C), the Committee is of the view that administrative power should only be delegated in appropriate cases and to appropriate persons and has recommended that the words "suitably qualified" be inserted before the words "public sector employee".

[17] Department of the Attorney-General and Justice, *Responses to Written Questions,* p. 3, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[18] Department of the Attorney-General and Justice, *Responses to Written Questions,* p. 3, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Recommendation 2

The Committee recommends that clause 11(1) be amended to insert "suitably qualified" before the words "public sector employee".

Part 3 Registrations, licences and authorities

3.17 A substantial number of the issues raised in submissions relate to licences and authorities. Key issues raised in Part 3 include: the requirement for licensees to have a wholesale authority if they wish to sell liquor at wholesale prices to other licensees; the public interest and community impact assessment and guidelines; the capacity to object to applications; provisions for applications to transfer a licence; and applications to substitute a premises.

Requirement to hold a wholesale authority in order to sell liquor to other licensees – clauses 32, 33(2) and 43(1)(0)

3.18 Under the Bill, licensees who wish to sell at wholesale prices to other licensees can only do so if they have been granted a wholesale authority. ClubsNT commented that this would adversely affect licensed clubs' ability to support the numerous sporting groups that have a liquor license for the occasional event or trading period. The additional red tape would hinder the ability to discount the sale in support of their local community groups.[19]

3.19 The Department advised the Committee that there are a number of benefits to the new system as it would allow licensees who had a wholesale authority to sell below the minimum sale price and could also assist them to lower 'their Pure Alcohol Content (PAC) value and by extension their Risk Based Licensing (RBL) fee'.[20]

Committee's Comments

3.20 The Committee is satisfied with the Department's advice.

Complimentary Drinks – clause 39 Exceptions from licence requirement

3.21 Clause 39 of the Bill lists exemptions from licence requirements, some of which are present in the current *Liquor Act 1978* (s5) while some are new. Clause 39(2)(c) states that no licence is required to sell, supply or serve not more than two standard drinks in a day to a customer. Both ClubsNT and Hospitality NT expressed concerns that this would allow non-licensed premises to serve alcohol without being obliged to put in place any harm minimisation measures,[21] with ClubsNT commenting that:

> If the outcome of the Liquor Reform is to minimise or mitigate concerns of alcohol fuelled anti-social behaviour, then complimentary drinks should be reserved to licensed premises. Where there are adequate harm minimisation systems in place, such as CCTV, staff trained in Responsible Service of Alcohol, Security, entry identification systems, etc. Alternatively, those businesses wishing to serve

[19] Submission 3 – ClubsNT, p. 3.
[20] Department of the Attorney-General and Justice, *Responses to Written Questions,* p. 5, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[21] Submission 3 – ClubsNT, p. 5; Submission 13 - Hospitality NT, pp. 10-11.

> complimentary drinks should be required to commit to the same harm minimisation strategies.[22]

3.22 Hospitality NT also commented that cl 39 does not specify that the alcohol must be consumed on the premises and that cl 39(2)(c) 'conflicts with the moves being taken to make non licensed restaurants become licensed if they want to allow customers to BYO'.[23]

3.23 The rationale for introducing cl 39(2)(c) was explained by the Department as follows:

> There is provision effectively exempting two standard drinks. There are three provisions in the exemptions. The third one which has attracted a fair bit of comment is the one for businesses that are not licensees. That provision is under consideration. What we were seeking to do was provide an ability for businesses such as hairdressers or art galleries or the like to provide complimentary drinks.
>
> We understand that is a practice that is occurring and it is an attempt to regulate or control what is occurring now.[24]

3.24 Ms Haack further advised that the intention of this clause is to allow non-licensed businesses to serve complimentary drinks but not to sell them.[25]

Committee's comments

3.25 The Committee acknowledges submitters' concerns but considers that a requirement for a non-licensed business to commit to harm minimisation strategies in the same manner as a licensed premises is unwarranted, given that the maximum number of complimentary drinks that can be supplied is two standard drinks.

3.26 The Committee notes that the current wording in cl 39 is ambiguous and would allow non-licensed businesses to sell as well as serve up to two standard drinks and recommends that the wording be amended to resolve this issue.

Recommendation 3

The Committee recommends that clause 39(2)(c) be amended to only allow the provision of complimentary drinks.

Public Interest and Community Impact – clauses 45-47

3.27 The Department held discussions with the chair of the Liquor Commission and stakeholders regarding the efficacy of the existing tests for public interest and community impact and subsequently revised and refined these tests to ensure greater clarity.[26]

3.28 The Northern Territory Council of Social Services (NTCOSS), PAAC, FARE and the Aboriginal Medical Services Alliances NT (AMSANT) expressed concerns regarding cl 47 which places the onus on the applicant to satisfy the Commission that the

[22] Submission 3 – ClubsNT, p. 5.
[23] Submission 13 – Hospitality NT, p. 11.
[24] Committee Transcript, Public Hearing, 10 July 2019, p. 50.
[25] Committee Transcript, Public Hearing, 10 July 2019, p. 50.
[26] Committee Transcript, Public Briefing, 20 May 2019, p. 7.

issuing of a licence or authority is in the public interest and will not have an adverse impact on the community.[27] AMSANT commented that:

> We have some concerns with this provision, given the bias that is likely to be present in evidence provided by the applicant in support of their own application.[28]

3.29 In addition, NTCOSS and AMSANT recommended that cl 46(2)(b) be amended to require the applicant to include information about the risks as well as the benefits that the proposed licence or authority would provide to the local and broader community.[29]

3.30 The Committee sought clarification from the Department regarding the safeguards that are in place to ensure that the evidence provided by the applicant is accurate and was advised that:

> The safeguard is the independent Northern Territory Liquor Commission who, through submissions from both applicants and opponents as well as their own investigation, will need to satisfy itself as to the accuracy of all claims.[30]

3.31 Hospitality NT commented that the process of assessing community impact could be improved if different community impact assessment guidelines were issued for different authorities and licence types.[31] At the public hearing, Mr Crowe from Hospitality NT noted that:

> If you are going for a licence where there is a high volume of alcohol involved in it then you are going to get all the bells and whistles in relation to a community impact statement. If you are going for a restaurant licence on the lower end of alcohol volume the guidelines would only need to address certain issues which would probably go more to the management of it. It would probably say what the crime statistics are in terms of the area.[32]

3.32 The Department advised the Committee that this issue had been raised in consultation and that 'Separate guidelines reflecting the type of information required for different types of applications could be beneficial'.[33]

Committee's comments

3.33 The Committee considers that the provisions in cl 47 provide adequate safeguards with regard to the efficacy of the community impact assessment, noting that the Commission must be satisfied the issuing of the licence or authority is in the public interest and will not have a significant adverse impact on the community.

3.34 The Committee is of the view that there is some merit in the concept of having separate community impact assessment guidelines for different types of applications. An application for a major event authority or a restaurant authority is likely to have substantially different community impacts to an application for a public bar authority.

[27] Submission 7- NTCOSS, p. 4; Submission 12 - AMSANT, p. 4; Submission 15 – PAAC/FARE joint submission, p. 9.
[28] Submission 12 – AMSANT, p. 4.
[29] Submission 7- NTCOSS, p. 4; Submission 12 - AMSANT, p. 4.
[30] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 8, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[31] Submission 13 – Hospitality NT, p. 11.
[32] Committee Transcript, Public Hearing, 10 July 2019, p. 6.
[33] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 7, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Recommendation 4

The Committee recommends that the Department develop separate community impact assessment guidelines tailored to the different types of licence or authority applications.

Disclosure of persons of influence and potential beneficiaries – clause 50

3.35 Clause 50(1) requires an applicant to make an affidavit disclosing each person who may be able to "influence the applicant" or who may "expect a direct or indirect benefit from the applicant".

3.36 Retail Drinks Australia commented that the wording used in this clause is too broad in scope and does not sufficiently explain the desired meaning. They note that similar legislation in New South Wales (NSW), Queensland (Qld) and South Australia (SA) is clearer, with both QLD and SA referring to a "direct or indirect *pecuniary* benefit" rather than a direct or indirect benefit, while NSW clearly defines what it means to hold an interest in the business of a licensed premises in pecuniary terms.

3.37 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of rewording the clause to more precisely indicate what is meant by "influencing the applicant" and what is meant by "indirect benefit". The Department advised that:

> Clause 50(1) operates in the same manner as the current equivalent provision in the Liquor Act 1978 and the operation was not raised as problematic during the development of the Bill and review undertaken on the operation of the Liquor Act 1978.
>
> Legislation which is overly prescriptive can be problematic as it leads to narrow, inflexible application preventing the objects of the Act from being achieved, particularly in situations where a broad range of circumstances may apply such as determining what is 'influencing' or what may constitute 'indirect benefit'.[34]

Committee's comments

3.38 The Committee is satisfied with the Department's advice.

Associates of a person – clause 51

3.39 Clause 51(1) describes the types of persons or entities that are considered to be associates of a person for the purpose of determining an application or authority.

3.40 The Committee considers that the relevance of some of the associates listed in cl 51(1) is doubtful and the lack of specificity makes this clause confusing. As noted in legal advice provided to the Committee, phrases such as "a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person" (cl 51(1)(b)) are 'undefined and could incorporate a class of people who have never met the applicant and of whom the applicant has no knowledge'.[35]

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[34] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 8, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[35] Sally Gearin, *Advice on compliance of Liquor Bill 2019 with Human Rights, Rule of Law and with Sessional Order 13 (4) (c) (iii) and (iv),* p. 4.

3.41 As highlighted by Retail Drinks Australia, Victorian legislation is much more specific and clearly defines an associate as a person who has a relevant financial interest and by virtue of that interest is able to exercise a significant influence over the management or operation of the business.[36] Relatives who have no involvement in the business and who will have no involvement are not included as associates.[37]

3.42 The Committee sought clarification from the Department regarding the intended scope of the “associate” test and the purpose of including “remote lineal ancestor” and “remoter issue” as a description of an associate and was advised that:

> Clause 51 operates in the same manner as the current equivalent provision in the *Liquor Act 1978* and the operation was not raised as problematic during the development of the Bill and review undertaken on the operation of the Liquor Act 1978. It is the view of the Department that the clause achieves what it is meant to achieve.
>
> The description has been replicated from the current equivalent provision in the Liquor Act 1978. It is the view of the Department that the clause achieves what it is meant to achieve.[38]

Committee’s comments

3.43 The Committee acknowledges the Department’s viewpoint that the operation of this clause has not been problematic, however, it considers the clause to be outdated and recommends that it be re-worded to be more precise and contemporary, noting that the *Liquor Control Reform Act 1998* (Vic) provides a possible model.

Recommendation 5

The Committee recommends that clause 51 be reworded to be more precise and contemporary.

Public notice of application - clause 53

3.44 Clubs NT and Hospitality NT raised concerns regarding excessive administrative burdens for some types of special events, either one-off events or annual special events such as New Year’s Eve or ANZAC Day. [39]

3.45 For one-off events, cl 53 of the Bill gives the Director a discretion to exempt an application for a community event authority or special event authority from the public notice requirements when the licence is only for that one-off event. This has the effect of allowing a simplified pathway for an applicant who does not already hold a licence, but denying that option to existing licensees.

3.46 The Committee was not provided with any reason why the Director should not have the same discretion to exempt applications for the same type of authorities for the same type of one-off events for existing licences.

[36] Submission 4 – Retail Drinks Australia, pp. 8-9.
[37] *Liquor Control Reform Act 1998* (Vic), section 3AC.
[38] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 9, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[39] Submission 3 – ClubsNT, p. 3; Submission 13 – Hospitality NT, pp. 16-18.

3.47 The Committee notes that allowing this discretion for all applicants would not prevent the Director from requiring the full public notice requirements when the Director thought this to be appropriate.

Recommendation 6

The Committee recommends that clause 53 be amended so that the Director has the discretion to exempt any application for a community event authority or a special event authority from the public notice requirements.

3.48 Clubs NT suggested that for annual special events, such as New Year's Eve of ANZAC Day:

> the ideal situation would be to have those most common periods built into licensing conditions going forward. That would ease the process and get it over and done with in one application in the first place…
>
> This was raised in the Riley review where they suggested that New Year's Eve was typically a 2am close—I am paraphrasing—that was their recommendation. It is a common sense approach to those types of events.[40]

3.49 Clause 98 provides for regulations to prescribe conditions on time of operation for selling liquor under authorities.

Recommendation 7

The Committee recommends that the regulations prescribing conditions on time of operation make appropriate standard provisions for annual events, such as New Year's Eve and ANZAC Day.

Application for transfer of a liquor licence – clauses 68-70 and 48-54

3.50 Clause 68(2) states that cls 48 to 54 apply to applications to transfer a licence. These clauses include provisions on a range of matters relating to the application process for licences and authorities including disclosure of persons of influence, associates, public notice of application and investigation of applications. However, they do not include provisions relating to the consideration of applications by the Commission.

3.51 NTCOSS, PAAC and FARE recommended that cl 68(2) be amended to specify that cls 48 to 55 apply to applications for transfer.[41] They note that through cl 55(3)(i) the Commission must consider whether the applicant, including their designated nominee, is a fit and proper person to hold a licence. Limiting the clauses that apply to applications to transfer a licence to cls 48-54 means that there is no provision in the Bill to require the Commission to consider whether or not the person to whom a licence is to be transferred is a fit and proper person.

3.52 The Committee sought clarification from the Department regarding the reason for not including cl 55 and was advised that amending cl 68(2) to include cl 55:

> would most likely add to workload and by extension the timeliness of all applications and complaints being considered by the independent Northern Territory Liquor Commission and the Director of Licensing. Transfers of licence are predominantly about sale of the licenced business and cannot alter the

[40] Committee Transcript, Public Hearing, 10 July 2019, p. 10.
[41] Submission 7 – NTCOSS, p. 3; Submission 15 – PAAC/FARE joint submission, p. 5.

operations of the business or the conditions of the liquor licence without a separate application to do so.[42]

3.53 However, the Committee notes that cl 55 provides for a number of crucial steps for the consideration of applications including:

- Requiring the Director to refer any accepted application to the Commission;
- The timeframe in which such a referral must occur;
- The consideration of any objections to the application;
- Requiring the Commission to consider the financial stability and character of the applicant; and
- Empowering the Commission to require further information from the applicant.

3.54 As drafted, the Bill appears to make no provision for these matters in relation to an application to transfer a licence.

Committee's comments

3.55 The Committee acknowledges the Department's position and considers that the timeliness and efficiency of administrative systems related to licensing is important.

3.56 The Committee also considers that an application to transfer a licence should not re-open questions regarding the merits of the licence.

3.57 However, the Committee considers that the financial stability and character of an applicant for a transfer of a licence are relevant considerations for granting the transfer.

3.58 The Committee considers that these issues and other machinery provisions could conveniently be addressed through the inclusion of a clause separate from cl 55 setting out how an application for a transfer shall be considered.

Recommendation 8

The Committee recommends that the Bill include a clause separate from clause 55 setting out how an application for a transfer of a licence shall be considered, including:

- **That the Director must refer any application that is accepted to the Commission;**
- **The timeframe for such referral;**
- **The matters the Commission must consider when considering the application, including the financial stability, general reputation and character of the applicant, and whether the applicant is a fit and proper person.**

[42] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 10, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Objecting to Application – clause 57

3.59 Clause 57 provides for a person or body to make objections to applications for: a licence or an authority; variation of conditions to a licence or authority; substitution of premises; and material alterations to licensed premises.

3.60 NTCOSS, PAAC, FARE and Danila Dilba expressed concerns that cl 57 does not provide for objections to be made to the transfer of a licence.[43]

3.61 The Committee notes that an application to transfer a licence reflects a change in ownership but not in the nature or conditions of the licence. Consequently, the grounds for objection listed in cl 57(2)(a), relating to amenity and social conditions of the community, would not be applicable to a transfer application. However, the grounds for objection in subsection (2)(b), that the applicant is a fit and proper person, would apply.

3.62 The Committee sought clarification from the Department regarding why there are no provisions to allow for an objection to be made to an application for transfer of a licence on the grounds that the person proposing to buy the business is not a fit and proper person and was advised that:

> The circumstances relating to the making of objections was raised in consultation, all relevant views were considered by Government and a considered policy decision was made.[44]

3.63 On seeking further clarification during the public hearing, the Committee was advised that 'there are those safeguards in there for checking that fit and proper person'.[45] However, as noted above, while the Commission must be satisfied that the applicant is a fit and proper person when determining whether to issue a licence or an authority (cl 45(1)(a)), there is currently no provision to require that the Commission consider whether the purchaser of a licensed business is a fit and proper person.

Committee's comments

3.64 The Committee notes submitters' concerns regarding the absence of a provision to enable an objection to be made to an application for transfer. However, it considers that the proposed application of the fit and proper person test to transfers and the proposed insertion of an additional subsection setting out the process for considering an application for a transfer, as set out in Recommendation 8, should to some extent ameliorate these concerns.

3.65 Although there may be merit in allowing a formal objection to be made only on the question of whether an applicant is a fit and proper person, the Committee has insufficient evidence to make a recommendation on this point.

[43] Submission 7 – NTCOSS, p. 4; Submission 15 – PAAC/FARE joint submission, p. 6; Submission 16 – Danila Dilba, p. 6.
[44] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 9, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[45] Committee Transcript, Public Hearing, 10 July 2019, p. 46.

Substitution of premises – clause 71

3.66 Clause 71 explains the process that a licensee must go through if they wish to substitute other premises for their licensed premises.

3.67 AMSANT, Danila Dilba, PAAC and FARE have commented that the inclusion of subsection (3) in cl 71 is confusing, potentially open to misinterpretation and could lead to attempts to circumvent current or future requirements for new applications that do not apply to applications to vary the licence, and have requested that it be removed.[46]

3.68 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of removing subsection (3) and was advised that:

> Clause 71 (3) sets out the process for applying for a substitution application in the event the application satisfies the criteria in subclause (2). Removing subclause (3) would make it unclear to an applicant about what application process and relevant timelines would apply.[47]

Committee's comments

3.69 The Committee is satisfied with the Department's advice. It notes that subsection (2) only allows a licence to be amended where there is no significant change in the operation of a business or where the substitution satisfies the public interest and community impact requirements. The Committee considers that where these requirements are satisfied it would be an inefficient use of resources to require a licensee to apply for a new licence.

Acting licensee – clause 72

3.70 Clause 72(1) requires an acting licensee to be appointed if a licensee is unable to conduct business for more than seven consecutive days and that written notice must be given to the Director of the details of the acting licensee within three days after the date of appointment.

3.71 Retail Drinks Australia raised concerns about the short timelines for notification and recommended that the timeframes be raised to 21 and 7 days respectively.[48]

3.72 The Department advised the Committee that:

> The current provision in the *Liquor Act 1978* provides that notice must be provided for unavailability "during any period of time". In practical terms, this could include unavailability for a matter of hours. The clause has amended the current provision to provide licensees with clarity on when notice is required to be provided.[49]

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[46] Submission 12 – AMSANT, p. 5 ; Submission 15 – PAAC/FARE joint submission, p. 6; Submission 16 – Danila Dilba, p. 6.

[47] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 11, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[48] Submission 4 – Retail Drinks Australia, p. 16.

[49] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 12, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Committee's comments

3.73 The Committee is satisfied with the Department's advice and considers the timeframes to be acceptable.

3.74 The Committee notes that cl 72(4) states that it is an offence if the licensee contravenes subsection (1) and that subsection (5) states that an offence against subsection (4) is an offence of strict liability. The Committee is concerned that no provision has been made for circumstances beyond the licensee's control that may prevent the licensee from meeting the requirements of subsection (1), such as an accident which results in hospitalisation. The Committee therefore recommends that a clause be inserted after subsection (5) to provide for a reasonable excuse.

Recommendation 9

The Committee recommends that clause 72 be amended by inserting a subsection after subsection (5) stating that 'it is a defence to a prosecution for an offence against subsection (4) if the person has a reasonable excuse'.

Part 4 Conditions on licences and authorities

3.75 The requirement for licensees to provide quarterly returns on their purchases and sales, and the current regulatory structure for varying a licence to accommodate one off events, including urban activation and CBD vibrancy initiatives, were both flagged as key issues.

Proper maintenance – clause 86

3.76 Clause 86 requires the licensee to maintain all machinery, equipment, fittings, furniture and furnishings in 'good order and repair and in a neat and tidy appearance' and is one of a number of conditions related to licensed premises covering factors such as fire safety, public health and noise.

3.77 Retail Drinks Australia raised concerns regarding the scope of this clause and drew attention to the risk of subjective interpretation by licensing inspectors, leading to inconsistent application of terms such as "good order and repair" or "neat and tidy". They commented that the wording of the clause does not allow for ordinary wear and tear and occasional breakdown and could result in infringement notices that are not really warranted.[50]

3.78 The Committee notes that machinery and equipment can form a safety hazard and it is therefore appropriate to require that such items be maintained in good order. However, it considers that requiring licensees to maintain such things as fittings, furniture and furnishings "in a neat and tidy appearance" is unnecessary.

3.79 The Committee sought clarification from the Department regarding the rationale for including what is essentially "housekeeping" as a condition of a licence and was advised that:

[50] Submission 4 – Retail Drinks Australia, p. 19.

> The conditions of licence in Part 4, Division 2 of the Bill reflect standard conditions currently found in licences. The recommendations of the Riley Review included providing clarity and standardising the conditions of licence. Part 4, Division 2 of the Bill does this by recognising that maintaining premises and contents used to operate under the licence is a standard condition found in current licences.[51]

3.80 The Committee notes additional advice from the Department that contravention of licence conditions, such as those specified in cl 86 and other clauses under Part 4, Division 2, constitutes an offence under clause 290, with licensees being subject to infringement notices and penalties.[52] Consequently, a licensee could be issued with an infringement notice for failing to keep their premises neat and tidy.

Committee's comments

3.81 The Committee considers that it would be more appropriate to limit the maintenance referred to in cl 86 to matters that affect health and safety and recommends the removal of the reference to "neat and tidy".

Recommendation 10

The Committee recommends that clause 86 be amended to remove the phrase 'and in a neat and tidy appearance'.

Licensees' quarterly returns – clause 105

3.82 Clause 105 requires licensees to submit a quarterly return of their liquor purchases and sales. The clause is the same as the current equivalent provision in the *Liquor Act 1978* (s105). According to Ryan Neve, Director of Communications, Alcohol Review Implementation Team (ARIT), the equivalent clause in the *Liquor Act 1978* has not been enforced, with Mr Neve noting that 'It has not been collected other than some times for enforcement or investigative purposes when it has suited the authorities to do so'.[53]

3.83 Both ClubsNT and Retail Drinks Australia identified the requirement for licensees to provide quarterly sales data as a significant impost on licensees, with both submitters questioning the necessity of collecting such data when it is already available through wholesale suppliers.[54]

3.84 Mr Reid from ClubsNT described the difficulties that clubs would experience in collecting sales data:

> Mr REID: …To have to prepare quarterly returns, the information comes from wholesalers but also from retailers because not all venues will buy from wholesalers, they may buy from a large liquor store because they might find the best price at that location. Gathering that information is not something that is normally done through the course of business so it would add a significant burden.

[51] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 13, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[52] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 13, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[53] Committee Transcript, Public Hearing, 10 July 2019, p. 41.

[54] Submission 4 – Retail Drinks Australia, pp. 20-21; Submission 3 – Clubs NT, p. 4.

> Mrs FINOCCHIARO: So a quarterly report lists how much we purchased of each type of alcohol from where? So we got 500 cartons of XXXX from Woolworths and 200 bottles of white wine from someone else. That type of detail?
>
> Mr REID: The important thing there is that venues do not usually keep that information. They load invoices into a point of sale system and it will tell you the product and the price. It will not give you a breakdown of how many volumes of pure alcohol or alcohol at that point in time from that purchase. That is information we rely on from the wholesalers.[55]

3.85 Similarly, Retail Drinks Australia commented on the financial burden the collection of sales data would place on licensees who 'may have to pay to upgrade their point of sale system in order to comply'[56], with Ms Hartley commenting that she recently changed her point of sale system at a cost of $38,000 for a two-lane system.[57]

3.86 In contrast to industry concerns regarding the collection of sales data, Ms Gillick from PAAC commented that the collection of retail sales data would enhance the capacity to evaluate alcohol reforms, and noted that retail quarterly returns would 'allow so much more information on not just how much alcohol but where it is going in the community and who is supplying it'.[58]

3.87 Staff from ARIT identified a number of reasons for collecting more fine grained consumption data noting that it: is one of five key universal indicators for alcohol-related harm; is required for evidence based research; enables consumption patterns to be identified; and enhances capacity to evaluate initiatives such as floor price and how such initiatives influence consumption patterns.[59]

3.88 ARIT indicated that consideration is currently being given to limiting the requirement to provide quarterly return sales data to those licensees who have a wholesale authority. Licensees with this authority will be able to sell to other licensees and will also have an opportunity to lower their Pure Alcohol Content (PAC) which, in turn, could lower their risk based licensing (RBL) fee.[60]

Committee's comments

3.89 The Committee is of the view that there are considerable benefits to collecting retail sales data but considers there is a need to balance these benefits against the considerable impost this may place on licensees. It also notes that Riley Review Recommendation 2.6.5 states that 'Licensees be required to provide regular returns (six monthly or yearly) reporting the volume of alcohol sales from their premises', not quarterly returns as required under cl 105.[61]

3.90 The Committee notes that cl 105 has been carried over from the *Liquor Act 1978* and that it has rarely been enforced. The Committee is of the view that clause 105 should

[55] Committee Transcript, Public Hearing, 10 July 2019, p. 55.
[56] Committee Transcript, Public Hearing, 10 July 2019, p. 15.
[57] Committee Transcript, Public Hearing, 10 July 2019, p. 17.
[58] Committee Transcript, Public Hearing, 10 July 2019, p. 25,
[59] Committee Transcript, Public Hearing, 10 July 2019, pp. 43-45.
[60] Committee Transcript, Public Hearing, 10 July 2019, p. 43.
[61] Northern Territory Government, *Final Report of the Alcohol Policies and Legislation Review*, prepared by T. Riley QC, P. Angus PSM, D. Stedman, 2017, p. 15, https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf

be amended to minimise the burden on business while also meeting the intent of Riley Review Recommendation 2.6.5.

Recommendation 11

The Committee recommends that clause 105 be amended to:

- **minimise the burden on business while meeting the intent of the Riley Review recommendation;**
- **only apply to licensees who have a wholesale authority.**

Impact of clause 121 on clubs' use of vouchers and loyalty points

3.91 Clause 121 provides for the Commission to impose conditions on a licensee's licence or authority if they reasonably believe that sale price manipulation has occurred through bundling liquor products with other products to make the liquor more attractive or to enable the liquor to be sold below the minimum sale price.

3.92 ClubsNT commented that vouchers and points are routinely used to reward club members who participate in activities such as Trivia nights and member draws, and as a form of sponsorship to community sporting and charity groups that use club vouchers for fundraising raffles.[62] They expressed concerns that these practices would be penalised under the Bill, particularly with reference to cl 121(1)(c). They further note that if unable to use vouchers and points, membership in clubs will become immaterial, 'as clubs will become little more than commercial alcohol outlets that will have to compete on the same basis'. [63]

3.93 They argue that:

> issuing points is not discounting, because the points are not redeemable until the member's next purchase, therefore it is a Reward for Loyalty. Most importantly, the Loyalty Reward is insignificant (1c) and immaterial to the fundamentals of the Liquor Reform.[64]

3.94 The Committee sought clarification from the Department as to how cl 121 will affect clubs' ability to utilise vouchers and points and was advised that:

> This issue has been raised in consultation and many practical examples have been raised. Examples provided to date by industry demonstrates that the outlay of money spent by the customer to receive enough vouchers and/or points to reimburse on alcohol is always higher than the minimum unit price, i.e. a $5 annual membership covers 3.8 standard drinks - this covers a free drink on your birthday promotion. Where the value of the alcohol does drop below the minimum unit price, the clause achieves what it is meant to achieve.[65]

Committee's comments

3.95 The Committee is satisfied with the Department's advice

[62] Submission 3 – ClubsNT, p. 6.
[63] Submission 3 – ClubsNT, p. 6.
[64] Submission 3 – ClubsNT, p. 6.
[65] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 15, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Part 6 - Harm minimisation

3.96 Key issues raised in relation to harm minimisation focused on provisions for: Liquor accords (cl 129-132); Duty to refuse service (cl 135); Power to refuse service (cl 136) and No discrimination (cl 137); the Harm minimisation audit (cls 146-148); and Inedible substances containing alcohol (cls 149 and 150).

Liquor accords – clauses 129-132

3.97 In line with Riley Review Recommendation 2.5.33, clause 129 provides for the Director to require a licensee to be a party to a local liquor accord.[66] Voluntary membership of liquor accords is also encouraged, with licensees who are a member of an accord receiving a 5% discount off of their licence fee.[67]

3.98 Hospitality NT expressed concerns that the proposed provisions for Liquor Accords could result in restrictive new practices determined without reference to the Liquor Commission and commented that:

> Our fear is that with the inclusion of non-licensees in the membership of local Liquor Accords the prospect of mini-Kangaroo Courts being established deciding restrictive new practices is a very real concern and this is all allowed under the Bill before the Commission without any testing of evidence, right to a fair hearing or natural justice. It also erodes the integrity of the Liquor Commission process which has the power to amend and increase license conditions either individually or to a region of licenses – all done with a fair and transparent process which will be usurped through the hijacking of local Liquor Accords.[68]

3.99 Similarly, Retail Drinks Australia considered cl 130(1)(g), which allows a liquor accord to provide for higher prices to be charged for liquor, to be inappropriate 'given the already overlapping reach of licence conditions and minimum sale provisions'.[69]

3.100 The Darwin Northern Suburbs Liquor Accord drew attention to the need to provide clear stipulations regarding the administrative requirements to which liquor accords must adhere under the new Act and the importance of adequately resourcing accords if the administrative burden is likely to increase significantly.[70]

3.101 The Committee sought clarification from the Department regarding issues raised by submitters and the operation of liquor accords under the new provisions in the Bill and was advised that 'the wording of regulations and guidance material to address local liquor accords and their operation under the Bill are still being drafted'.[71]

3.102 The Committee is concerned that the Director's powers to both require licensee's to join accords and to vary the accord is potentially very significant, particularly as there are a number of issues related to decision making processes and the management

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[66] Northern Territory Government, *Final Report of the Alcohol Policies and Legislation Review*, prepared by T. Riley QC, P. Angus PSM, D. Stedman, 2017, p. 14, https://alcoholreform.nt.gov.au/__data/assets/pdf_file/0005/453497/Alcohol-Policies-and-Legislation-Review-Final-Report.pdf

[67] Alcohol Review Implementation Team, Department of the Chief Minister, Northern Territory Government, *Risk based Licensing Framework*, p. 7, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[68] Submission 13 – Hospitality NT, p. 15.

[69] Submission 4 – Retail Drinks Australia, p. 36.

[70] Submission 3 – ClubsNT, p. 2.

[71] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 16, https://parliament.nt.gov.au/committees/EPSC/95-2019.

of accords that are not clearly addressed in the Bill. Issues and concerns regarding the operation of liquor accords that need further clarification include:

- Process for agreeing to a local liquor accord.
- Do all parties to a liquor accord need to agree to its terms for it to be made? If not, what is the decision-making process?
- Can licensees who are made a party to a liquor accord involuntarily object to the accord's terms or are they bound by them regardless?
- Limits, if any, to the Director's power to vary an accord on the Director's own initiative.
- Do all parties need to agree to a variation of an accord before the variation is made by the Director?
- Do parties to an accord need to be consulted before the Director varies an accord, whether on the Director's own initiative or the application of a party to the accord?
- Does the Director's power to make a licensee a party to an accord and to vary an accord on the Director's own initiative make it possible for the Director to unilaterally impose on any licensees anything that might prevent or reduce alcohol-related harm or violence?
- Would a failure to comply with such an accord be a criminal offence under clause 290 or any other clause of the Bill?
- Will there be minimum attendance requirements that need to be met to maintain the proposed discount under the Risk-based Licensing Framework?
- Can members of an accord be represented by an Association and, if so, would they still be eligible for a discount on their licence fees?

Committee's comments

3.103 The Committee supports making provision for accords and notes their potential to facilitate local decision-making on how best to manage alcohol in a local area.

3.104 However, the Committee considers that it is premature to give the Director the power to compel a licensee to be subject to an accord and to vary the accord before the framework for decision-making under the accord has been determined. While the term "accord" connotes mutual consent, the Director's power to force inclusion and unilaterally vary the terms of an accord suggest otherwise.

3.105 In the absence of such a framework, the Director's power to vary an accord, and consequently the licence conditions of those subject to the accord, could unfairly affect some licensees. The Committee is of the view that, at a minimum, any variation to an accord must arise from a consultative process with all members of the Accord.

Recommendation 12

The Committee recommends that the Bill be amended to remove the Director's power to vary an accord on the Director's own initiative and provide minimum consultation requirements for determining and varying accords.

Duty to refuse service – clause 135 and Prohibition of liquor to intoxicated person – clause 282 – inconsistencies in similar provisions.

3.106 Clause 135 states that a licensee and their employees must refuse to serve liquor to a person if they believe on reasonable grounds that the person is intoxicated or is registered on the banned drinkers register. A person who contravenes this provision commits an offence and is subject to a maximum penalty of 100 penalty units; the offence is one of strict liability.

3.107 Clause 282 provides that a person commits an offence if they intentionally sell or otherwise supply liquor to an intoxicated person on or in the licensed premises and the person is reckless in relation to those circumstances. The maximum penalty for this offence is 200 penalty units and strict liability applies to cl 282(1)(a) *the person is a licensee or a licensee's employee*.

3.108 Hospitality NT drew attention to a number of inconsistencies with regard to these two clauses and commented that:

> We have concerns with the current structure and potential duplication of offences with different thresholds contained in Clauses 135 and 282 with regards serving an 'intoxicated' person. Clause 135 makes it a strict liability offence, and so no need to prove recklessness, to serve an intoxicated person yet this same action could foreseeably be captured by Clause 282 when the person "intentionally sells or otherwise supplies" liquor to a person who is intoxicated.[72]

3.109 The Committee notes that there are a number of other inconsistencies such as: the reference to "serving" liquor in cl 135 and "selling or otherwise supplying" in cl 282; and the inclusion of the BDR in cl 135 but only "intoxicated" in cl 282.

3.110 The Committee sought clarification from the Department regarding the reason for including two separate offence provisions for the serving, selling or supplying of liquor to an intoxicated person and was advised that:

> The existing offences in the Liquor Act have been modernised and new offences were included following stakeholder consultation on the exposure draft Liquor Bill. The interaction of the offences in clauses 135 and 282 is currently under consideration by the Department.[73]

Committee's comments

3.111 The Committee notes the Department's advice that the interaction of the offences in cls 135 and 282 is currently being considered. Unless there are sound reasons for retaining two separate offences it recommends that the offence provisions be consolidated. If it is considered necessary to retain both offence provisions it

[72] Submission 13 – Hospitality NT, p. 12.

[73] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 18, https://parliament.nt.gov.au/committees/EPSC/95-2019.

recommends that each clause be re-written to ensure consistency of terminology and penalties.

Recommendation 13

The Committee recommends that the Bill be amended to either consolidate clauses 135 and 282 or, if there are reasons for retaining two separate offences, that it be amended to ensure consistency of terminology and penalties.

Power to refuse service – clause 136 and No discrimination – clause 137

3.112 Clause 136 provides for a licensee or their employees to refuse to serve liquor to a person it they believe, on reasonable grounds, that the person will commit an offence against the Act, will become intoxicated, engage in violent, quarrelsome or disorderly conduct in the licensed premises or has done so in the last 12 months.

3.113 Clause 137 states that ‘a person must not use an attribute specified in section 19(1) of the *Anti-Discrimination Act 1992* as a reason to form a belief under section 135 or 136’.[74]

3.114 AMSANT expressed concern that cl 136 would be used prejudicially despite the inclusion of cl 137. Both AMSANT and Danila Dilba recommended that the Bill be amended to make it an offence for a person to use an attribute specified in section 19(1) of the *Anti-Discrimination Act 1992* as a reason to form a belief under cl 136 or 137.[75]

3.115 AMSANT argued that:

> This would allow the Director of Licensing and his or her delegate to conduct their own investigations and bring forward their own enforcement actions under this Act.[76]

3.116 In addition, including an offence provision in the Bill was considered to be a more effective deterrent to discriminatory conduct than a reference to section 19(1) of the *Anti-Discrimination Act 1992*, noting that:

> The Anti-Discrimination Commission is currently under-resourced and under-staffed such that they are unable to adequately exercise important functions, such as own motion investigations.[77]

3.117 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of making it an offence under the *Liquor Act* to refuse service on the basis of race and was advised that:

> This is not a provision that we would recommend placing in the Bill as a prohibition is already contained in the Anti-Discrimination Act 1992 for such conduct. Race is an attribute contained in section 19(2) of the Anti-Discrimination Act 1992 and licenced premises are an area covered by that Act.[78]

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[74] Liquor Amendment Bill 2019, cl 137.
[75] Submission 12 – AMSANT, p. 2; Submission 16 – Danila Dilba, p. 5.
[76] Submission 12 – AMSANT, p. 2.
[77] Submission 12 – AMSANT, p. 2.
[78] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 19, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Committee's comments

3.118 The Committee is satisfied with the Department's advice.

Harm minimisation audit – clauses 146-148

3.119 The Bill introduces periodic harm minimisation audits, with cls 146 - 148 defining the scope of the audit, describing how an audit will be conducted and setting out the types of action that the Director may take subsequent to receiving a harm minimisation report.

3.120 Retail Drinks Australia considered that:

> The harm minimisation framework appears to impose an unfair regulatory burden on licensees far over and above the Act itself whilst simplistically seeking to impose a range of new obligations on licensees with no other underlying provisions. It is essentially an audit not of legal compliance with the Bill, but an audit of a range of new obligations that are not otherwise articulated in the Bill. Retail Drinks argues that it is unreasonable to impose obligations on licensees for alcohol-related harm reduction as they have no control over an individual's behaviour once alcohol products have been removed from their licensed premises.[79]

3.121 They recommended that the sections relating to the harm minimisation framework be removed from the Bill and that the NT Government work with industry to develop a separate guideline 'on reducing alcohol-related harm which does not trigger any infringement notices or breach consequences'.[80] In the event that these sections are not removed, Retail Drinks Australia recommended that cl 148(1)(b), which provides for the issuing of an infringement notice, be removed.[81]

3.122 The Committee notes that the introduction of harm minimisation audits is in line with Riley Review Recommendation 2.7.7 and that the intent is to provide a mechanism for monitoring the extent to which licensees are complying with their responsibilities and meeting the objects of the Act. In addition, staff from ARIT and the Department have indicated that the purpose of the audit is also to encourage best practice and continuous improvement, with Ms Haack noting that the audits will provide:

> an opportunity for licensing to go in and have discussions with people about the issues that might be there and their licensed premises on how they are dealing with them and what they could do to improve and recommendations can be made and the like.[82]

3.123 PAAC and FARE supported the inclusion of a harm minimisation audit but expressed concerns that notifying licensees in advance will negate the purpose of reviewing how the venue operates on a normal day, as Ms Crane commented:

> If you are giving the licensee notice of an audit about to occur then you are broadcasting that it is happening and is giving them an opportunity to make all sorts of changes. What the audit should be doing is seeing the venue in its ordinary practice so that you can see whether they are adhering to the requirements under the act and have gauged and embraced harm minimisation activities. If you warn them that you are going to do an audit then anything they

[79] Submission 4 – Retail Drinks Australia, p. 2.
[80] Submission 4 – Retail Drinks Australia, p. 2.
[81] Submission 4 – Retail Drinks Australia, p. 3.
[82] Committee Transcript, Public Hearing, 10 July 2019, p. 43.

> might be doing that does not fit under that act could be changed prior to the audit being conducted and therefore the purpose of the audit is lost.[83]

3.124 PAAC and FARE recommended that the requirement for the Director to give a licensee written notice of a pending harm minimisation audit be removed, arguing that:

> Inspections and compliance visits should be regular, unscheduled and ongoing in order to act both as a deterrent and a motivator to maintain standards and meet conditions.[84]

3.125 The Committee considers PAAC and FARE's argument to have merit, however, notes that a completely unscheduled visit could pose considerable disruption and inconvenience to a licensee, particularly if it occurred at a busy time or when an event was being held at the venue.

Committee's comments

3.126 The Committee considers that harm minimisation audits will provide a useful vehicle for monitoring compliance and increasing awareness of how licensees can contribute to reducing harms from alcohol. It notes that while the harm minimisation audit provides a mechanism for identifying non-compliance, actions the Director may take as a result of a harm minimisation audit can only be taken 'in relation to any non-compliance with a licensee's *obligations under this Act*' (cl 148(1)). Consequently, it considers that cl 148(1)(b) should be retained.

3.127 The Committee acknowledges PAAC and FARE's concerns regarding the requirement that the Director provide licensees with written notification of an impending audit. However, given the potential disruption that an unscheduled visit could cause a licensee it recommends that instead of specifying the exact date the written notice specify two dates between which the audit will take place. This would provide the licensee with an opportunity to plan any major event outside of this time-frame.

Recommendation 14

The Committee recommends that clause 147(1)(4) be amended to provide for the Director to give the licensee written notification of a period over which the audit will take place rather than notifying them of a specific date.

Inedible substances containing alcohol – clauses 149 and 150

3.128 These provisions apply to substances such as mouth wash which may contain more than 1.15% of ethyl alcohol by volume and which are not intended to be ingested. Clause 150 states that such substances must not be consumed in any public place and empowers police to conduct a search and to seize and dispose of the substance. There are currently no regulations governing how shops store and sell these substances but some shops, particularly in Alice Springs, are voluntarily restricting their sale by keeping such substances locked up.

[83] Committee Transcript, Public Hearing, 10 July 2019, p. 24.
[84] Submission 15 – PAAC/FARE joint submission, p. 9.

3.129 Although supportive of the new provisions to control the consumption of these substances, a number of submitters have commented on the importance of regulating their sale and storage.[85] PAAC and FARE note that the use of substances such as mouthwash has been problematic in Alice Springs and that 'the consumption of mouthwash has become more sought after in the Darwin area since the introduction of the minimum price on alcohol'.[86] Although the Central Australian Youth Link Up Service (CAYLUS) has been assisting retailers in Alice Springs to self-regulate the sale and storage of these substances, Nicola Coalter commented that the weight of evidence for the success of voluntary codes is very low and that:

> When the onus is left on industry, regardless of which industry that is to self-manage, we can see that the self-management might be varied. Then it is left open for confusion for the consumer, retailer and government. There is too much confusion.[87]

3.130 There was a general consensus among five submitters that the storage and sale of these substances should be regulated through a legislative framework and that methylated spirits also be regulated in this way through the *Medicines, Poisons and Therapeutic Goods Act.*[88] It was envisaged that management of these substances would be prescribed in regulations specifying that substances would:

> not be displayed on the shelves, but kept at the checkout in a secure receptacle; sold only to adults on the production of photo ID; restricted to one container per person per day; and sold in containers no larger than 500 millilitres.[89]

3.131 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of including a provision stating that the sale and storage of inedible alcohol products may be prescribed by regulation and was advised that:

> The approach currently taken to alcohol substitution products is community education and retailer engagement. Introducing regulations to try and close every loophole would be an administrative burden, with no additional effectiveness.[90]

Committee's comments

3.132 Noting the arguments of submitters, and the risk such substances pose to those vulnerable to alcohol misuse, the majority of Members on the Committee considered regulating the sale and storage of inedible substances containing alcohol was justified. However, one Member took the view that this would place too much burden on retailers and inconvenience shoppers. The Committee recommends that a regulatory framework be developed for the sale and storage of inedible substances containing alcohol.

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[85] Submission 7 – NTCOSS, p. 5; Submission 12 – AMSANT, p. ; Submission 15 – PARC/FARE joint submission, p. 7; Submission 16 – Danila Dilba, p. 6; Submission 18 – CAYLUS, p. 1.
[86] Submission 15 – PARC/FARE joint submission, p. 7.
[87] Committee Transcript – Public Hearing, 10 July 2019, p. 35.
[88] Submission 7 – NTCOSS, p. 5; Submission 12 – AMSANT, p. ; Submission 15 – PARC/FARE joint submission, p. 7; Submission 16 – Danila Dilba, p. 6; Submission 18 – CAYLUS, p. 1.
[89] Submission 15 – PARC/FARE joint submission, p. 7.
[90] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 20, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Recommendation 15

The Committee recommends that a regulatory framework be developed for the sale and storage of inedible alcohol substances and a clause inserted after clause 150 stating that inedible substances containing more than 1.15% of ethyl alcohol by volume must be stored and sold in accordance with the regulations.

Part 8 – Controlled areas

Offences for general restricted areas and special restricted areas – clauses 170 and 180

3.133 Clauses 170 and 180 provide that it is an offence for a person to bring in; possess or consume; or sell, supply or serve prohibited liquor in a general or special restricted area.

3.134 NT Police commented that the offence set out in cl 170 (1) only comes into play if it occurs inside a general restricted area (GRA) or a special restricted area (SRA) and does not include the transporting or possession of liquor with intent to supply to residents of a GRA or SRA. They note that due to the remoteness of many GRAs and SRAs, and the costs of undertaking remote operations, it is not operationally feasible for police to only detect the offence once an individual has physically entered the boundary of a GRA or SRA. They further note that under the *Stronger Futures in the Northern Territory Act 2012,* (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.[91]

3.135 NT Police have requested that cls 170 and 180 be amended to include an offence of “transporting liquor intending to supply” and “possess liquor intending to supply” to mirror section 75C Stronger Futures in the Northern Territory Act 2012 (Cth).[92]

3.136 The Committee requested clarification from the Department as to how the *Stronger Futures in the Northern Territory Act 2012* (Cth) interacts with this Bill and the effect on the Bill of amending cls 170 and 180 in line with the recommendation from NT Police and was advised that:

> The Stronger Futures in the Northern Territory Act 2012 (Cth) will provide this provision until at least 2023, which is a number of years away.
>
> Any Liquor Act that is in force in the NT will need to be considered in light of what occurs with the Stronger Futures in the Northern Territory Act 2012 (Cth) closer to that time, which has already been provided for by clause 317 of the Bill.
>
> Clause 317 of the Bill provides that there will be a review of the Act that will commence as soon as possible after the expiration of 3 years from assent, with a report to be tabled in the Legislative Assembly within 12 months after that.[93]

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[91] Submission 6 – Northern Territory Police, p. 2.
[92] Submission 6 – Northern Territory Police, p. 2.
[93] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 22, https://parliament.nt.gov.au/committees/EPSC/95-2019.

Committee's comments

3.137 The Committee notes that the transportation of liquor with an intention to supply liquor within a GRA or SRA will continue to be an offence under the *Stronger Futures in the Northern Territory Act 2012* (Cth) until at least 2023. The Committee is satisfied with the Department's advice that there will be an opportunity to reconsider these clauses when the Act is reviewed as scheduled under cl 317.

Part 9 – Addressing anti-social behaviour

Banning notices – Division 3 and Exclusion notices – Division 4

3.138 Under cl 209, banning notices may be issued by police if it is believed on reasonable grounds that: a person is committing or has committed a banning offence in a high risk area; that the banning offence has or may cause alcohol-related violence in a high risk area; and that banning the person is a reasonable way to prevent the person from continuing to commit the banning offence or from committing another banning offence. The period of time for which a banning order can apply has been increased from 48 hours under the current Act to 14 days in this Bill.

3.139 Clause 217 provides that a court of competent jurisdiction may make an exclusion order for a high risk area on application by the Police Commissioner or a finding of guilt for a banning offence.

3.140 NAAJA expressed concerns that the provisions included in the Bill allow police broad and significant powers and do not adequately take into account health-related issues that may impact on a person's ability to comply with an order. They argue that the policy and legislative framework should take into account the impact of such conditions and:

> reflect a staged process where this person receives a relevant health assessment and clear direction and requirements based on their health-commissioned plan.[94]

3.141 AMSANT expressed similar concerns in relation to exclusion orders. Although they consider it reasonable to apply exclusion orders to a person who repeatedly exhibits violent or threatening behaviour when intoxicated in a public place, they note that:

> some people referred for an exclusion order are vulnerable, in poor health or with acquired brain injury who require a holistic approach rather than one which merely applies restrictions which may be unfairly punitive in their effects. An exclusion period of up to 12 months has the risk of cutting people off from services and social/family activities and can be a significant incursion on people's freedom of movement.[95]

3.142 They recommend that a 'health assessment should be made along with referrals for treatment prior to a Court making the decision to make an exclusion order'.[96]

3.143 The Committee notes that cl 209(2) requires a police officer to consider both the apparent state of health of a person to whom they are considering issuing a banning notice and their capacity to comprehend the nature and effect of the notice. However,

[94] Submission 17 – North Australian Aboriginal Justice Agency (NAAJA), p. 3.
[95] Submission 12 – AMSANT, p. 3.
[96] Submission 12 – AMSANT, p. 3.

cl 217, which sets out what the Court must consider when determining whether to make an exclusion order, does not specifically require the Court to consider either of these factors.

Committee's comments

3.144 The Committee concurs with submitters' views regarding the merits of requiring the Court to specifically consider the health and capacity of a person before determining whether or not to make an exclusion order. Although there may be some potential for health issues to be picked up through cl 217(3)(e) and (g) the Committee considers that including provisions that relate specifically to health and capacity would provide greater certainty that these matters would be considered.

Recommendation 16

The Committee recommends that clause 217 be amended to include an additional subsection under subsection (3) stating that the Court is to consider:

(a) the health of the person; and

(b) the capacity of the person to comprehend the nature and effect of the exclusion order

Employee violence or drug use - clause 227

3.145 This clause requires a licensee to notify the Director if they become aware that an employee is charged with or found guilty of an offence involving violence or unlawful possession of drugs and allows the Director to direct the licensee to restrict the responsibilities and activities of such an employee.

3.146 The Anti-Discrimination Commission raised concerns that the Director's power to direct a licensee to limit or restrict the responsibilities and activities of an employee who has been charged or found guilty of an offence involving violence or unlawful drugs may remove a right an employee has to not be discriminated against on the basis of an irrelevant criminal record at work. In particular, concern was expressed that the clause provides for action to be taken if the individual is charged but not yet found guilty.[97]

Committee's comments

3.147 Section 19(1)(q) of the *Anti-Discrimination Act 1992* states that a person should not discriminate against another person on the grounds of an "irrelevant criminal record". The Committee considers that an offence involving violence or unlawful possession of drugs would be a relevant offence with respect to employment in a licensed venue. Although action can be taken against an employee who has only been charged, there is no requirement to terminate employment. In addition, the limitation and restrictions on the employee's duties only apply until the matter has been dealt with by a court of competent jurisdiction.

[97] Submission 9 – Anti-Discrimination Commission, p. 2.

3.148 The Committee is satisfied that this clause does not infringe on an employee's right to not be discriminated against.

Part 10 – Special search and seizure powers

Searching persons – clause 233

3.149 Clause 233 authorises a police officer or inspector to search without a warrant a person who they suspect on reasonable grounds may be consuming liquor in a public area where such consumption is prohibited or who may be consuming inedible alcohol substances such as mouthwash or vanilla essence.

3.150 NT Police commented that cl 233 limits the search to a person and does not allow the search to extend to a person's clothing, or property such as a handbag that is in the person's immediate control. As such, it limits their ability to find prohibited substances.[98]

3.151 NT Police have recommended that cl 233 be amended to provide police with the power to search a person's clothing and property.

3.152 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of amending the clause in line with the recommendation from NT Police and was advised that it would assist with resolving an operational issue that has been raised by Police.[99]

Committee's comments

3.153 The Committee considers that amending the clause to allow police officers and inspectors to extend their search to the person's clothing, and property in the person's immediate control, would enable the object of the clause to be achieved more effectively.

Recommendation 17

The Committee recommends that clause 233 be amended to provide police with the power to search a person's clothing and property in the person's immediate control.

Part 11 – Other enforcement powers

Police power to suspend licence or authority – clause 255

3.154 The Riley Review recommended that police be given similar powers to suspend a licence as those provided to the licensing authority under section 48A of the *Liquor Act 1978* except that police powers should be limited to suspension for a 48 hour period. This recommendation provides the basis for cl 255 which provides police with the power to suspend a licence or authority if any of the following occurs: an

[98] Submission 6 – NT Police, p. 2

[99] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 24, https://parliament.nt.gov.au/committees/EPSC/95-2019.

emergency or a natural disaster; riotous conduct; a breach of the peace; a threat to public safety.

3.155 ClubsNT, the Tennant Creek Hotel and Hospitality NT expressed a range of concerns regarding the powers granted to police under cl 255.[100] Hospitality NT considered cl 255 to go beyond the intention of Riley Review Recommendation 2.7.4 by including subsections (1) a breach of the peace and (2) a threat to public safety. Hospitality NT noted that these 'are powers not given to the Director or Minister and were not contemplated by the Riley Review'.[101]

3.156 Hospitality NT further commented that:

> The Police power exercised pursuant to Clause 245 [255] is not transparent or accountable. It is NT Police relying on its own evidence with no safeguards or protections from internal bias against licensees with signing off on a 48-hour shut down without any independent review.
>
> Accordingly, it would be fairer if the exercise of the powers by the police was reviewable by a legal member of the Commission on short notice, with any proposed suspension stayed pending that review and preferably with a right for the licensee to be heard.
>
> A Liquor Commissioner can do a preliminary assessment and determine if the matter in question is best addressed by progressing a complaint process rather than a 48-hour shut down.[102]

3.157 All three submitters considered the current provisions to reflect a lack of natural justice, with ClubsNT commenting that shutdowns can occur 'without a hearing, testing of evidence, right of reply or natural justice'.[103]

3.158 Hospitality NT stated that while NT Police had informed them that a party can seek to challenge the suspension of the licence by the Police Commissioner, a review of such a decision or any action for damages has difficulties because:

> - The power is so broad that the Commissioner is unlikely to be acting beyond their power even when it relates to a trivial breach of peace unrelated to the licensed venue
> - Given venues are only given 30 minutes notice it is would be difficult to get legal advice and an injunction without the suspension taking effect. The courts on the balance of convenience are most likely to say that this can be remedied by damages.
> - The actions of the Police Commissioner are protected by the Liquor Act (Clause 25 of the Bill before the Committee) such that a party would need to show that the action by the Police Commissioner was one lacking in good faith.[104]

3.159 The Committee sought clarification from the Department regarding whether licensees have any right to contest the closure after the event and seek redress if it can be

[100] Submission 3 – ClubsNT, p. 5; Submission 5 – Tennant Creek Hotel, pp. 1-2; Submission 13 – Hospitality NT, pp. 5-10.
[101] Submission 13 – Hospitality NT, p. 6.
[102] Submission 13 – Hospitality NT, p. 10.
[103] Submission 3 – ClubsNT, p. 5.
[104] Submission 13 – Hospitality NT, pp. 9-10.

proven that the closure was inappropriate and was advised this is not possible under the Bill.[105]

3.160 The Committee sought further clarification from the Department regarding the extent to which cl 255 is in line with the principles of natural justice and was advised that:

> I think that the section as it currently stands in the Act, and carried over into the Bill, is doing what it is meant to do. I know the Commissioner of Police has spoken with industry numerous times to give them some comfort about process. I cannot speak for the Commissioner of Police but I know that the process is that forewarning is given to licensees before that power is used. It is normally in the form of a letter. That is police process now.
>
> That letter might not be given if it is an emergency situation.[106]

<u>Committee's comments</u>

3.161 The Committee acknowledges the concerns expressed by submitters, however, it considers that the clause adequately reflects Recommendation 2.7.4 of the Riley Review and should be retained in the Bill. The Committee is satisfied with the Department's advice that, in relation to non-emergency circumstances, forewarning is provided to licensees in the form of a letter thereby providing them with an opportunity to resolve any issues that might potentially result in a shut down under clause 255.

Power to suspend sales at major events – clause 256

3.162 Clause 256 provides that a Director or a police officer at or above the rank of Commander may suspend or restrict the sale of liquor at an event being held under a major event authority.

3.163 NT Police commented that officers of or above the rank of Commander generally undertake administrative roles and primarily work during business hours. As most major events are held on weekends, evenings and public holidays they noted that it will generally be a Senior Sergeant who attends to such matters on an operational level.[107] NT Police have recommended that the delegation in cl 256 (1)(b) be amended to read "at or above the rank of Senior Sergeant".[108]

<u>Committee's comments</u>

3.164 The Committee is of the view that suspending sales at a major event, with a suspension or restriction being allowed for up to seven days, could have a significant impact on the event. Consequently, it considers that the level of delegation provided for in the Bill should reflect the potential impact of a suspension and remain at the level of Commander or above.

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[105] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 26, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[106] Committee Transcript, Public Hearing, 10 July 2019, p. 50.
[107] Submission 6 – NT Police, p. 3.
[108] Submission 6 – NT Police, p. 3.

Part 12 – Forfeiture and disposition of assets

Forfeiture under Sentencing Act – clause 271

3.165 Clause 271 states that if a person is charged with an offence in relation to something that was seized the thing must be dealt with under the s99A of the Sentencing Act 1995.

3.166 NT Police commented that:

> section 99A of the Sentencing Act 1995 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.[109]

3.167 In order to rectify this apparent conflict the NT Police have recommended that cl 271 be amended to delete the word “charged” and replace it with the words “found guilty”.[110]

3.168 The Committee understands that this issue is still under consideration by the Department and recommends that the Department consider whether cl 271 needs to be amended to make adequate provision for circumstances where a person was charged with the offence in respect of which a thing was seized but was subsequently found not guilty.

Police application for forfeiture of vehicle, vessel, or aircraft – clause 272

3.169 Clause 272(5)(b) requires that if a person is charged with a forfeiture offence but no person is found guilty after all proceedings have ended then police must lodge their application on the day proceedings end.

3.170 NT Police have noted that police are not stationed at Court where proceedings are conducted and are not made aware of when proceedings end, consequently they will be unable to lodge an application within this timeframe.[111] They have recommended that the phrase “the day proceedings end” be replaced with “24 hours after proceedings have ended”, noting that ‘Police ought to be given at least 24 hours after the end of proceedings to lodge an application’.[112]

3.171 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of amending cl 272 as recommended by NT Police and was advised that:

> It would give Police further time to lodge an application, although there may be some confusion as to the exact time of day proceedings concluded. The intention behind the short time frame was to ensure, as much as possible, that Police prepared for forfeiture in advance, and vehicles were returned at the end of a criminal proceeding if the offender was found not guilty. However, there can be logistical complications, for example, if a matter is unexpectedly resolved by the prosecution at a mention in Darwin, and the relevant officer in charge does not learn of the finalisation of the proceedings in time to lodge the application. This

[109] Submission 6 – NT Police, p. 3.
[110] Submission 6 – NT Police, p. 3.
[111] Submission 6 – NT Police, p. 3.
[112] Submission 6 – NT Police, p. 3.

> issue is being given further consideration as to whether there is a procedural solution that can balance these competing considerations.[113]

Committee's comments

3.172 The Committee understands that the Department is aiming to find a procedural solution that will balance the need to return the vehicle promptly if the offender is not guilty while also allowing police to lodge an application. The Committee recommends that if a procedural solution is not found cl 272 should be amended to allow NT Police sufficient time to lodge an application.

Recommendation 18

The Committee recommends that clause 272 be amended to make the time by which the application must be lodged the day after proceedings have ended, or otherwise provide a procedural mechanism that appropriately provides for the prompt return of the vehicle.

Part 13 - Further offences and related matters

Limitation of time for making complaint – clause 306

3.173 This clause limits the time under which a complaint under s49 of the *Local Court (Criminal Procedure) Act 1928,* in respect of an offence against this Act, can be made to within 28 days after the date on which the matter of the complaint arose, unless the quantity of liquor involved in the offence exceeds 10 standard drinks.

3.174 NT Police commented that this clause would preclude them from laying charges if 28 days have passed since the commission of the offence. They note that:

> 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.[114]

3.175 NT Police requested that cl 306 be removed in its entirety.[115]

3.176 The Committee requested clarification from the Department regarding the reason for reducing the time-frame to 28 days and was advised that:

> The intention was to ensure the streamlined return of vehicles where appropriate in relation to matters of secondary supply, when charges or forfeiture would not be pursued. However, some logistical issues have been identified and they are

[113] Department of the Attorney-General and Justice, *Responses to Written Questions*, pp. 28-29, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[114] Submission 6 – NT Police, p. 4.
[115] Submission 6 – NT Police, p. 4.

> under consideration, particularly with respect to offences not connected to secondary supply.[116]

3.177 The Committee sought clarification regarding the effect on the operation of the Bill if cl 306 were to be removed and was advised that:

> The time frames for laying all charges would revert to 6 months. This would mean that vehicles that are seized can be held without charge or further process for up to 6 months, irrespective of the strength of the case. Once charges are laid, that is just the beginning of the court process, so this would make for a lengthy time during which a family would have to manage without a vehicle.
>
> For non-forfeiture offences, removing clause s 306 would simply mean the processes for laying charges for such offences would be consistent with other summary offences.[117]

Committee's comments

3.178 The Committee notes the desirability of allowing reasonable time for investigation and also avoiding prolonged seizure of vehicles when forfeiture is not appropriate and recommends that the Bill be amended to achieve a balance between these goals.

Recommendation 19

The Committee recommends that the Bill be amended to achieve an appropriate balance between allowing sufficient time for investigation and avoiding prolonged seizure of vehicles when forfeiture is not appropriate.

Statements of fact in complaint – clause 307

3.179 Clause 307 replicates, with some modifications, s124A of the *Liquor Act 1978.* A key change is the replacement of the term "averment" with the phrase "statement of fact".

3.180 NT Police commented that:

> 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 *Firearms Act 1997* (s 104), *Fisheries Act 1988* (s 44).[118]

Committee's comments

3.181 The Committee agrees with the viewpoint put forward by NT Police and recommends that that the term "statement of facts" be replaced with the term "averment".

[116] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 30, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[117] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 30, https://parliament.nt.gov.au/committees/EPSC/95-2019.
[118] Submission 6 – NT Police, p. 4.

Recommendation 20

The Committee recommends that clause 307 be amended to replace the term "statement of fact" with the term "averment".

Part 15, Division 2 – Transitional Matters

3.182 Clause 320 provides that a licence issued under the *Liquor Act 1978* that is valid immediately before commencement continues in effect after commencement. The licence expires on the earlier of the following dates: 1 October 2020 or on conversion of the licence under this Act. Regarding the latter, a person holding a licence issued under the *Liquor Act 1978* may apply to the Director to convert it into a licence with equivalent authorities under this Act.

3.183 Similar transitional provisions apply to the transfer of a licence or the substitution of a licensed premises, with applicants being given the option of having their application progressed under the *Liquor Act 1978* or determined under this Act.

3.184 Licences and authorities issued under cl 320 are not subject to the following:

- public interest and community impact requirements, including any onus on the applicant to satisfy those requirements;
- the giving of public notice of an application;
- the process of making objections to an application.

3.185 A number of submitters have recommended that any unresolved applications for liquor licenses should lapse from the date the legislation is passed so that all applications from that date are considered under the new legislation.[119]

3.186 Danila Dilba, which supported this recommendation, expressed concerns that:

> The NT Government's alcohol policy and legislative reform agenda is currently being undermined by existing and prospective licensees who are attempting to lodge applications or have applications before the Liquor Commission to substitute existing small premises for large liquor barns. These applications have little prospect of being granted under the new Act but for the transitory provisions which allow existing applications to be considered under the old Act.[120]

3.187 PAAC and FARE commented that the Tackling Alcohol-fuelled Violence Legislation Amendment Bill 2015 (Qld) provides a precedent for lapsing unresolved applications from the date the Bill is passed noting that:

> Transitional provisions included in that Bill meant that any applications for late-night extended trading hours for takeaway liquor that were on foot but undecided at 10 November 2015 (the date on which the Bill was introduced to the Queensland Parliament) lapsed, and no new applications were accepted from that date. The transitional provisions also retrospectively prevented appeals from proceeding before the relevant court or tribunal.[121]

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[119] Submission 12 – AMSANT, p. 5; Submission 15 – PAAC/FARE joint submission, p. 10; Submission 16 – Danila Dilba, p. 7; Submission 17 – NAAJA, p. 6.
[120] Submission 16 – Danila Dilba, p. 7.
[121] Submission 15 – PAAC/FARE joint submission, p. 10.

3.188 The Committee sought clarification from the Department regarding the reason for providing transitional arrangements that allow unresolved applications to be considered under the *Liquor Act 1978* and was advised that.

> The transitional clauses have been drafted in that way so they come into effect when the Liquor Bill passes Parliament, otherwise they would be retrospective.
>
> Generally speaking, new laws are only made retrospective in very limited circumstances as retrospective laws make an individual or body corporate responsible or subject to laws that were not in place at the time they did a certain thing, in this case lodge applications. So, a retrospective law makes an individual responsible for something, or required to do something in a particular way that they could not have known about at the time or complied with. This does not sit comfortably with rule of law principles. However, in some policy situations, it may be appropriate.[122]

<u>Committee's comments</u>

3.189 The Committee is satisfied with the Department's advice.

Drafting Issues

3.190 Clause 409 inserts 15D into the Tobacco Control Regulations 2002. Regulation 15D lists seven types of liquor authorities under which it is prohibited to allow the service or consumption of food or drink in an outdoor smoking area.

3.191 Club authorities are included as an authority that cannot serve food or drink in an outdoor smoking area, however, the Committee understands from departmental and ARIT staff that the inclusion of club authorities was an error.[123]

Recommendation 21

The Committee recommends that clause 409, proposed regulation 15D, be amended by removing subsection (b) club authority.

3.192 The Committee has identified a number of minor issues in the Bill as set out below:

- Cl 19(e) – the word "of" is missing
- Cl 31(2)(e) – the use of ">" at the end of the sentence.
- Cl 53(6) – refers to "the summary of evidence referred to in section 48((3)(c)". Although 48(3)(c) refers to the "evidence" it is 48(3)(d) that refers to "a summary of evidence".
- Cl 68(5)(b) - refers to the evidence referred to in "paragraph (c)" but there is no paragraph (c). The same statement made in cl 68(5)(b) is made in cl 48(3)(d) and in that clause there is a relevant paragraph (c) to refer to.
- Cl 151 – "A inspector"
- Cl 222(1) - "An person"

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[122] Department of the Attorney-General and Justice, *Responses to Written Questions*, p. 31, https://parliament.nt.gov.au/committees/EPSC/95-2019.

[123] Committee Transcript, Public Hearing, 10 July 2019, p. 46.

- Cl 247(7)(b) – refers to “subsections (2) to (8)” but (8) doesn’t exist
- Cl 255 - Clause 255 proceeds from subsection (1) to subsection (3) with no subsection (2) in between.
- Cl 278(1)(c) – the word “in” is missing.

Recommendation 22

The Committee recommends that these issues be addressed as appropriate.

Appendix A: Submissions Received, Public Hearings and Briefings

Submissions Received

1. NT Legal Aid Commission
2. Darwin Northern Suburbs Liquor Accord
3. ClubsNT Inc
4. Retail Drinks Australia
5. Tennant Creek Hotel
6. NT Police
7. Northern Territory Council of Social Services
8. Australian Small Business and Family Enterprise Ombudsman
9. Anti-Discrimination Commission
10. Litchfield Council
11. City of Palmerston
12. Aboriginal Medical Services Alliance of the Northern Territory
13. Hospitality NT
14. Alice Springs Town Council
15. Peoples Alcohol Action Coalition and the Foundation for Alcohol Research and Education
16. Danila Dilba Health Service
17. North Australian Aboriginal Justice Agency
18. Central Australian Youth Link Up Service

Public Briefing – Darwin – 20 May 2019

Department of the Attorney-General and Justice

- Bronwyn Haack, Senior Policy Lawyer
- Hannah Clee, Senior Policy Lawyer
- Caroline Heske, Senior Policy Lawyer
- Candice MacLean, Senior Policy Lawyer

Alcohol Review Implementation Team

- Giovina D'Alessandro, Executive Director
- Ryan Neve, Director of Communications

Public Hearing – Darwin – 10 July 2019

Hospitality NT

- Des Crowe, Chief Executive Officer
- Penny Phillips, Treasurer

ClubsNT Inc. and Darwin Northern Suburbs Liquor Accord

- Russell Reid, President
- Kent Rowe, Policy Advisor

Retail Drinks Australia

- Faye Hartley, Board Director
- James Coward, Director, Policy and Communications

Foundation for Alcohol Research (FARE) and Education and People's Alcohol Action Coalition (PAAC)

- Michael Thorn, Chief Executive Officer (FARE)
- Meredythe Crane, Research Manager (FARE)
- Trish Hepworth, Director, Policy and Research (FARE)
- Vicki Gillick, Policy Coordinator (PAAC)

NT Branch United Voice

- Erina Early, Branch Secretary

Aboriginal Medical Services Alliance Northern Territory

- John Paterson, Chief Executive Officer
- David Cooper, Manager, Research Policy and Advocacy
- Daisy Burgoyne, Policy Officer

Northern Territory Council of Social Services

- Wendy Morton, Executive Director
- Nicola Coalter, Secretary NTCOSS Board and CEO Amity Community Services

North Australian Aboriginal Justice Agency

- Clara Mills, Managing Solicitor, Civil Law

Department of the Attorney-General and Justice

- Bronwyn Haack, Senior Policy Lawyer
- Hannah Clee, Senior Policy Lawyer
- Candice Maclean, Senior Policy Lawyer
- Caroline Heske, Senior Policy Lawyer

Department of the Chief Minister

- Giovina d'Alessandro, Executive Director, Alcohol Review Implementation Team
- Ryan Neve, Director of Communications, Alcohol Review Implementation Team

Note: Copies of submissions, hearing and briefing transcripts and tabled papers are available at: https://parliament.nt.gov.au/committees/EPSC/95-2019.

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