


LEGISLATIVE ASSEMBLY OF THE NT  
TABLED DOCUMENTS

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Signed:..... 

Liquor Bill 2019

# Exposure Draft Bill 2019

- The rewrite of the *Liquor Act 1978* was a key recommendation of the Riley Review
- The Exposure Draft Bill addresses over 60 recommendations regarding the re-write of the *Liquor Act 1978*
- A number of recommendations have already been dealt with in the *Liquor Act 1978*, and will continue in the Bill, including:
  - establishment of the Liquor Commission
  - the community impact and public interest assessment
  - 48hr suspension power by the Police Commissioner
  - 5 year moratorium on takeaway licences
  - minimum floor price

# Key changes

- Removing confusing and inconsistent provisions in the Act to provide a stronger and more robust regulatory framework
- Modernising the language so it is now consistent with modern practice (for example, redefining '*intoxicated*')
- Recognising the independent Liquor Commission as primary decision-maker under the Act
- Establishing the Director of Licensing
- Updating penalties and offences (Part IIAA of the Criminal Code)
- Granting limited period licences
- Redefining "Controlled Areas"

# Overview of the Liquor Bill – key parts

- Preliminary – Part 1
- Administration – Part 2
- Registrations, licences and authorities – Part 3
- Conditions of licences and authorities – Part 4
- Minimum pricing – Part 5
- Harm Minimisation – Part 6
- Licence and authority compliance – Part 7
- Controlled areas & enforcement powers for controlled areas – Parts 8 and 9
- Addressing anti-social behaviour – Part 10
- Other enforcement powers – Part 11
- Forfeiture and disposition of assets- Part 12
- Further offences and related matters – Part 13
- Miscellaneous, repeal and transitional matters & consequential amendments – Parts 14, 15 and 16

# Preliminary - Part 1 – Purpose (clause 3)

The Purpose of the Liquor Act has been refined to have primary and secondary purposes:

*Primary Purpose - cl 3(1):*

- 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

*Secondary Purposes - cl3(2):*

- To promote and enhance community amenity, social harmony and community wellbeing through responsible sale, supply, service promotion and consumption of liquor;
- Regulate the sale, supply, service, promotion and consumption of liquor to contribute to the responsible development of the liquor industry;
- Facilitate the diversity of licensed premises to the benefit of the community;
- Regulate the sale, supply, service, promotion and consumption of liquor to stimulate the tourism and hospitality industries

*How will the Bill achieve these purposes? - cl3(3)*

- Regulate the sale, supply, service, promotion and consumption of liquor
- Prohibit products and activities that would cause harm in our community
- Provide for the appointment of persons to administer the Act
- Establish offences and processes to enforce compliance

# Preliminary (cont)- interpretation

- **New definition of 'intoxicated' to replace 'drunk' - cl 5:**

*A person is to be taken to be intoxicated if:*

- a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired;  
and*
- b) it is reasonable in the circumstances to believe the impairment results from the person's consumption or use of liquor or a drug.*

- **Application of the Act - cl 6**

New, modernised definition of 'liquor' (eg includes powered alcohol)

# Administration - Part 2

The appointment of, powers and delegations of persons to administer the Act are contained in the following provisions:

- Director of Licensing (established) – cl 9-11
- Inspectors – cl 16-18
- Liquor Commission (primary decision maker) – 19-23
- Changes to Commission hearings- cl 21 following feedback

Standing at hearings – cl 22

# Liquor licences and authorities

Issuing licences and authorities is addressed in Part 3 Division 3.

CI 39 lists exemptions from licence requirements

CI 43 lists authorities attached to licence (alterations were made to the restaurant bar authority following consultation)

## **How does the Bill propose to improve the standardisation of liquor licences?**

- *Standard conditions to apply to all licences*
  - Part 4 – Conditions on licences and authorities includes General Conditions, Conditions relating to licensed premises, operations, and information
- *Preventing “licence creep”*
  - CI 80– ‘An authority cannot be changed into or substituted for another authority, without making an application for the other authority’
  - Variation of licence conditions must be made by application to the Liquor Commission
- *Introduction of ‘authorities’ to apply to licences*
  - The authorities “authorises” the licensee to undertake particular business models (i.e. late night)
  - The Liquor Commission may grant more than one authority to a licence

# Applications process (cl 44-56)

How does the Bill propose to improve the applications process?

- *Prescribing timeframes in the legislation (refer to flowchart)*
- *Strengthening the public notice process*
- *Reducing the scope of material alterations that mean that matters that do not relate to issues relevant to liquor do not have to be subject to applications for material alteration which we narrowed and then narrowed again following consultation*
- *Clarifying standing under the Act*
- *Clarifying the public interest and community impact assessment, with the onus on the applicant to satisfy the requirements*
- *New applications required for substitution, variation of conditions and material alterations*
- *Allows for Liquor Commission to delegate to Director of Licensing*
- *Provides Liquor Commission with discretion to hold public hearings and allows for matters to be dealt with 'on the papers'- cl 21 (2) and (3)*

# Public interest and community impact – clause 45

- The Public Interest and Community Impact assessment must be applied to all decisions to the Commission when considering an application.
- Clause 45 contains the Public Interest and Community Impact assessment, which has been re-structured so it is clearer for all to understand what the applicant must address in their application.
- The onus is still on the applicant under clause 45

# Public interest and community impact – clause 45

## *Clause 45(1)*

(1) The Commission may only issue a licence or an authority if satisfied that:

- a) the applicant is a fit and proper person; and
- b) issuing the licence or authority is in the public interest; and
- c) the licence or authority will not have a significant adverse impact on the community.

# Public interest and community impact – clause 45

## *Clause 45(2) - Determining whether issuing a licence is in the public interest*

To determine whether issuing a licence or an authority is in the public interest, the Commission must consider how it would advance the following objectives:

- a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
- b) ensuring liquor is sold, supplied, served and consumed in a responsible manner on or in licensed premises;
- c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
- d) protecting the safety, health and welfare of people who use licensed premises;
- e) increasing cultural, recreational, employment or tourism benefits for the local community area;
- f) promoting compliance with this Act and other relevant laws and by-laws of the Territory;
- g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
- h) preventing the giving of credit in sales of liquor to people;
- i) preventing practices that encourage irresponsible drinking;
- j) reducing or limiting increases in anti-social behaviour.

# Public interest and community impact – clause 45

## *Clause 45(3) – Matters the Commission must consider*

To determine whether issuing a licence or an authority would have a significant adverse impact on the community, the Commission must consider the following:

- a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
- b) the geographic area that would be affected;
- c) the risk of harm from the excessive or inappropriate consumption of liquor;
- d) the people or community who would be affected;
- e) the effect on culture, recreation, employment and tourism;
- f) the effect on social amenities and public health;
- g) the ratio of existing liquor licences and authorities in the community to the population of the community; and
- h) the effect of the volume of liquor sales on the community;
- i) the community impact assessment guidelines;
- j) any other matter prescribed by regulation.

# Public interest and community impact – clause 45

## *Clause 45(4) – mitigating adverse impact*

The Commission may mitigate a possible adverse impact on the community by issuing a licence or an authority with conditions that limit any of the following:

- a) the kinds of liquor that may be sold;
- b) the manner in which liquor may be sold;
- c) the number or types of containers in which liquor may be sold;
- d) the days and times when liquor may be sold;
- e) the number of persons who may be on or in licensed premises, a part of licensed premises or an adjacent area that is under the control of the licensee;
- f) the nature of entertainment that may be provided on or in licensed premises or in an adjacent area that is under the control of the licensee;
- g) any promotional activities in which drinks are offered on a complimentary basis or at reduced prices.

# Conditions of licences and authorities – Part 4

*How does the Bill propose to standardise licences and provide consistent expectations for the community?*

The Bill proposed to standardise licences across the Territory by:

- General Conditions in relation to licensed premises will be contained in the Bill (Part 4, Division 2 cl 85-106)
- Conditions for each authority will be contained in the Liquor Regulations
- Special conditions granted to the licensee by the Liquor Commission, the Director or the Minister will be published on the venue's licence

The takeaway moratorium continues in the Liquor Bill at clause 80(3)

# Minimum pricing – Part 5

The minimum floor price continues under the draft Bill (referred to as the 'sale price' in the Bill): clauses 113-124

***Complimentary drinks (cl 119) is a new proposed exemption following feedback and consultation***

It is not a contravention of the minimum sale price if a licensee serves two standard drinks free of charge in a day to a patron

# Harm Minimisation - Part 6

- Patron Identification System (BDR) – Division 1, cl 125-128
- Liquor Accords – Division 2, cl 129-132
- Responsible drinking – Division 3, cl 133,
- Enhanced ability to refuse service – cl 136-137 \*
- Harm minimisation audits – cl 146-148\*
- Control of inedible alcohol products – cl 150\* (search, seizure and disposal power)

# Refusing service – clause 136

(1) A licensee and the licensee's employees may refuse to serve liquor to a person if the licensee or employee believes on reasonable grounds that:

- a) the person is registered on the banned drinkers register; or
- b) the person will commit an offence against this Act; or
- c) the person will become intoxicated; or
- d) the person will engage in violent, quarrelsome or disorderly behaviour in, on or in the vicinity of the licensed premises; or
- e) the person has engaged in any conduct specified in paragraph (d) within the last 12 months.

(2) To avoid doubt, a licensee must not use an attribute specified in section 19(1) of the *Anti-Discrimination Act 1992* as a reason to form a belief under subsection (1).

# Harm Minimisation Audits

The Bill introduces a new 'Harm Minimisation Audit' in cl 146-148

- The Harm Minimisation Audit will measure the extent to which a licensee:
  - promotes the purposes of the Act (harm minimisation)
  - complies with Codes of Practice
  - complies with Guidelines
  - protects the safety, health and welfare of patrons
  - prevents access to liquor by children and others prohibited from consuming liquor
  - reduces or limit increases in anti-social behaviour and alcohol related violence

# Inedible substances containing alcohol

Part 6 Division 5 of the Bill sets out how inedible substances are regulated under the Bill

**How does the Bill propose to control the abuse of inedible substances containing alcohol e.g. mouthwash ?**

- *Clause 149* – Prohibits consumption of an inedible substance (for example mouthwash)- cl 149
- Provides powers to Inspectors and Police to seize and destroy the products as if it was liquor - cl150
- Deliberate omission of a criminal offence for cl 149

**What else is being done to control substitution of inedible substances containing alcohol?**

- Joint letter from Chief Executive Officer, DoH and Commissioner of Police
- Factsheets re substitution from Health
- Education from frontline health providers

# Complaints

The complaints process and taking disciplinary action is addressed in cl 157-166

## **How does the Bill propose to improve the complaints process?**

- Prescribing timeframes in the legislation (refer to flowchart)
- Enhanced rejection function to dismiss complaints that on face value are frivolous, trivial, misconceived, have no grounds, does not demonstrate a contravention against the Act or have little chance of a successful find of a breach
- No recommended penalty from the DoL upon referral of the matter to the Liquor Commission (i.e. no finding of 'guilt' before referral to the primary decision maker)
- Removes the current inability for the Commission to take action if a licensee has already received an infringement notice- this is important where variation of conditions may be warranted.

## Licence and authority compliance - Part 7

- Entry, inspection and other powers - cl 141-144
- Investigations and enforceable undertakings - cl 145
- A new record of enforcement and compliance to be published on the Commission's website - cl 156

# Controlled areas & enforcement powers for controlled areas – Parts 8 and 9

## **Alcohol Protected Areas**

- Alcohol Protected Areas remain in cl 167. The Bill now makes reference to the Commonwealth *Stronger Futures in the Northern Territory Act 2012* (SFNT Act) to make it easier to work with the two pieces of legislation.

## **Prohibited public places**

- Riley recommendation 2.12.4 'The present confusing array of restricted areas be abolished and all public space in urban areas will be restricted, with the ability for exemptions to be declared in appropriate cases. Such exemptions may be time limited'.
- The urban areas we have covered are Darwin, Alice Springs, Tennant Creek, Palmerston, Katherine and the Darwin Waterfront as well as any other place gazetted by a local council or added by regulation. In these located we are proposing to replace the former regulated places (sometimes known as the 2km law)
- There is also a provision for exemption by Councils so they may give permission for exemptions on conditions that they determine. These changes align with the Riley Report recommendations.
- Clause 168 prohibits consumption of liquor in these public places
- In addition for remote and regional areas, in order to ensure that we maintain prohibitions not to consume liquor around licenced premises in other smaller towns/roadside inns which would not be covered by the above provisions, we retained a condition t liquor cannot be consumed in a public place within 2km of licenced premises.

## **General Restricted Areas**

- General Restricted Areas continue under cl 169-178
- Commission declares GRAs by Gazette notice

## **Special Restricted Areas**

- Special Restricted Areas continue under cl 179
- The Minister declares SRAs by Gazette notice

## **Restricted premises**

- Restricted premises continue under cl 185
- Director declares restricted premises (residential premises, privately owned land, schools etc) on application

# Addressing anti-social behaviour - Part 10

- High risk areas (previously 'designated areas') – part 9
- Enhanced banning notices (for a period of up to 14 days) – cl 223-225
- Exclusion orders by Court (12 months) – cl 217-222

# Other enforcement powers - Part 11

- Point of sale intervention – cl 246-253
- Emergency powers of Director – cl 254
- Emergency powers of Police – cl 255
- Undercover police operations – cl 259 and reporting cl260

# Part 12 Forfeiture & Disposition of assets

Part 12 - cl 266 - 279

# Part 13 Further offences etc

## Part 13

- Sale of adulterated liquor cl 280, permitted riotous behaviour cl 281, Information offences- cl 283-286, false information ID etc., licence offences -cl 287-288,
- Offences related to children - cl 267-275
- Offences related to inspectors - cl 276-277
- Criminal responsibility of individual for employee or agent etc. - cl 278-279
- Miscellaneous including delivery by post, guidelines, forms, time and regulations - Part 14

# The RBL Framework

The RBL Framework has incorporated feedback received during the consultation period, whilst still retaining the basic elements of the Draft RBL Framework. The RBL Framework has been improved to make it clearer for industry.

Examples of changes:

- Discounts – reduced to 5% (rather than 10% as per the Draft)
- Cap on discounts
- Inclusion of ‘Good Sports’ Program and similar as a discount
- Risk classification of authorities – Casino from ‘Moderate’ to ‘High’ and Special Venture ‘Low’ to ‘Very Low’
- Inclusion of BYO authority – BYO has never been regulated in the NT before

# Transition period

A transition period for liquor licences granted under the *Liquor Act 1978* to transition to the liquor licence authorities under the new Liquor Act is proposed as follows:

- ***Late 2019 - Anticipated commencement of the Liquor Act 2019 and the RBL framework***

Licensing NT will send each licensee correspondence advising the RBL Framework has commenced and requests each licensee to submit a proposal of the authorities that would apply to their licence for Licensing NT's assessment.

- ***1 April 2020 - Deadline for licensees to submit their proposal***

If no proposal comes through from the licensee, the Director of Licensing will make a determination of applicable authorities according to their licence granted under the *Liquor Act 1978*.

- ***1 October 2020 - Notice of anticipated fee***

Licensing NT issues a notice of anticipated fee to be payable on or before 2 January 2020, subject to change if the licensee is found guilty of a breach between the date of notice and 31 December 2020.

- ***2 January 2021 - payment of annual licence fee due***

Non-payment of the licence fee on or before 2 January will result in an automatic suspension of the liquor licence until the fee is paid.