

Overview of the Changes to Search, Seizure and Forfeiture under the Liquor Bill 2019

–Parts 10 and 12



The Alcohol Policies and Legislation Review Final Report (the Riley Review) recommended that the *Liquor Act 1978* be re-written to provide a coherent framework for the operation of the liquor industry within harm minimisation principles, and to remove confusing and inconsistent provisions in the current Act. This fact sheet is a quick guide to key changes to the search, seizure and forfeiture powers that have been incorporated into the Liquor Bill 2019 (the Bill). Additional fact sheets on the Bill are also available at alcoholreform.nt.gov.au.

The general powers to search, seize, and forfeit are now limited to the most serious offences focusing on illegal secondary supply of liquor. Secondary supply offences represent a serious challenge to dealing with problem drinking and alcohol-related harm, and the search, seizure, and forfeiture powers in the Bill are important tools to prevent secondary supply.

Why was change needed?

The existing *Liquor Act 1978* has many seizure and forfeiture provisions scattered throughout, as a result of miscellaneous amendments made over time. This makes for powers that are confusing to administer and have some inconsistencies. The provisions in the Bill simplify and modernise procedures for seizure and forfeiture.

What has changed?

The Bill contains one primary set of search, seizure, and forfeiture powers at Parts 10 and 12. These powers provide greater flexibility for Police as to when search and seizure powers are exercised, and they also provide greater safeguards against disproportionate and unfair impacts of the use of search, seizure, and forfeiture powers.

The Commissioner of Police continues to have interim powers to seize and release property, but all ultimate decisions on forfeiture must now be made by the Local Court under clause 272.

The new approach has a focus on vehicles, vessels, and aircraft

Vehicles, vessels, and aircraft are singled out by the Bill as they play a particular role in enabling secondary supply offences.

Vehicles, vessels, and aircraft serve critical functions in remote communities in connecting people to basic goods and services, as well as to important family and cultural events. There are often complex, competing public interest considerations when determining whether forfeiture will assist the community. On the one hand, forfeiture of a transport asset can send a strong message of deterrence and can provide an incentive for the community to actively work together to deny offenders the means of committing secondary supply offences. On the other hand, forfeiting the means by which an extended family may get children to school, or access medical care, is a very serious step.

The new approach enables and requires consideration of these competing factors on a case-by-case basis, in order to remain aligned with the overall objective of making decisions that are in the public interest.

LEGISLATIVE ASSEMBLY OF THE NT TABLED DOCUMENTS

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Tiered approach ensures proportionality

Under clauses 242, 272, 274 and 275 of the Bill, the options available depend on the seriousness of the offence, as indicated by the quantity of liquor involved in the offending.

Standard drinks	Can seize/ tip out grog?	Can seize vehicle?	Can charge?	Can forfeit if guilty?	Can forfeit if not guilty?	Presumption re forfeiture at court
< 2	Y	N	Y	Y	N	Against
2 – 10	Y	Y	Y	Y	N	Against
10 – 50	Y	Y	Y	Y	Y	Neutral
> 50	Y	Y	Y	Y	Y	For

Within this basic framework, Police and the Local Court have the discretion to make adjustments on a case-by-case basis. Under 275(4) the Court must consider:

- whether the presumption is for forfeiture, against forfeiture, or neutral
- the approximate value of the vehicle, vessel or aircraft
- whether forfeiture is a proportionate response to the offence given the value of the vehicle, vessel or aircraft and nature of the offence
- the hardship that forfeiture is likely to cause the person
- the role of the vehicle, vessel or aircraft in the community and the effect that forfeiture is likely to have on the community
- whether the forfeiture offence was engaged in for the purpose of a financial benefit
- the extent to which an owner of the vehicle, vessel or aircraft was unaware of the forfeiture offence, or not reasonable able to prevent the forfeiture offence

Improved flexibility

Police are no longer required to seize and hold a vehicle in order to make a later application for forfeiture. The application under clause 272 can be made in any event, provided that persons with a legal interest in the vehicle have sufficient notice to oppose the application.

Under clause 268, Police can also now release a seized asset on the Commissioner's own initiative or by means of an application by any party affected by the seizure, whether or not that party has a legal interest in the asset. In determining whether to release the asset, Police now can consider a broad

range of factors, including in relation to an owner who may have had involvement in the offending.

The Court can also order temporary forfeiture as per clause 275(1)(d), which is a more nuanced penalty that may be a way of sending a message where permanent forfeiture would be too harsh.

Safeguards to ensure due process

Key safeguards that have been introduced by the Bill include:

- it is no longer possible to seize and forfeit property without laying charges or otherwise applying for court-ordered forfeiture
- property is not to be seized if Police are of the view that the matter should proceed by way of infringement notice or caution
- obligations to identify and notify owners of the property have been introduced
- requirements to release the property to the owner if the court proceedings are abandoned or are not being pursued in a timely manner
- strict time limits that were capable of operating unfairly have been removed
- a limited right to appeal to the Supreme Court on matters of law is now available.

Clause 244(3) of the Bill also provides authority for Police to set up an arrangement with a legal service provider to give notifications of when vehicles are seized and proposed to be forfeited. In practical terms, this may facilitate easier notification of persons with an interest in such a vehicle, as well as ensuring that affected persons receive timely legal advice.

There are new reporting obligations on Police regarding the use of seizure and forfeiture powers under clause 245.

Related search powers

Police have special search powers that target secondary supply. Existing Police powers to conduct random 'spot searches' continue under the Bill. These can be exercised in restricted areas, or in relation to vehicles, vessels, and aircraft that Police reasonably believe are travelling to restricted areas (clause 235). Passengers and cargo bound for restricted areas can also be searched under clause 235 (c) and (d).

Clause 235 does not allow random searches of residential premises, but clause 234 allows Police to search residential premises without warrant if they have a reasonable suspicion that a secondary supply offence has been, is being, or is about to be committed, provided that it would not be reasonably practicable to obtain a warrant to investigate the offence.

Note: As part of parliamentary process, the Liquor Bill 2019 has been submitted to the Economic Policy Scrutiny Committee for review. For further information about the Economic Policy Scrutiny Committee, please visit: <https://parliament.nt.gov.au/committees/EPSC>.