

NORTHERN TERRITORY OF AUSTRALIA

LIQUOR AMENDMENT (MINIMUM PRICING) ACT 2018

Act No. 16 of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 16 of 2018

An Act to amend the *Liquor Act*

[Assented to 27 August 2018]

[Introduced 9 May 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Liquor Amendment (Minimum Pricing) Act 2018*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Liquor Act*.

4 Section 3 amended (Objects)

After section 3(1)

insert

(1A) In subsection (1), sale, provision and promotion of liquor includes the sale, provision and promotion by retailers external to the Territory, who sell, provide and promote liquor:

- (a) to purchasers who are in the Territory; or
- (b) for delivery to a location within the Territory.

5 Section 4 amended (Interpretation)

(1) Section 4(1)

insert (in alphabetical order)

interstate retailer, see section 30A(1).

interstate retailer licence, see section 30A(2).

liquor product means a particular brand and type of liquor.

Examples for definition liquor product

1 ABCD full-strength beer in cans, usually by the carton.

2 ZYX Shiraz wine, usually by the year and by the bottle.

liquor sale means a transaction involving the sale of one or more liquor products, whether or not other products are included as part of the transaction.

liquor sale offer means an offer to sell liquor:

(a) made to one or more people; or

(b) made to the world.

minimum sale price, see section 118E(1).

product label means a label on, or forming part of, a container of liquor:

(a) that provides information about the alcohol content of the liquor; and

(b) that could reasonably be assumed to be in accordance with the Australia New Zealand Food Standards Code made under the *Food Standards Australia New Zealand Act 1991* (Cth).

sale price, see section 118F.

standard drink, see section 118B.

wholesale sale means the sale of liquor to a licensee for resale to a retail purchaser.

(2) Section 4(1), definition **sell**

omit

includes:

insert

includes (except in Part IXA):

6 Section 19B inserted

After section 19A, in Part II, Division 3

insert

19B Inspector powers to detect non-compliance with licence conditions

- (1) This section applies if an inspector has reasonable grounds to suspect that liquor is being offered for sale, or sold, whether or not authorised by a licence:
 - (a) to prospective purchasers or purchasers who are in the Territory; or
 - (b) where the liquor is to be delivered to a location within the Territory.
- (2) The inspector:
 - (a) may offer or attempt to purchase, or purchase, liquor:
 - (i) in a manner contrary to a condition of the licensee's licence; or
 - (ii) so the sale will take place or takes place without being authorised by a licence; and
 - (b) need not identify themselves as an inspector while doing a thing mentioned in paragraph (a).
- (3) However, the inspector must not do anything additional to encourage a licensee to accept the offer, or sell the liquor.
- (4) Evidence that has been obtained as a result of an inspector exercising powers under subsection (2) may be used in the following ways:
 - (a) by the Commission in exercising powers under Part III or Part IXA;
 - (b) by the Director-General or the Commission in exercising powers under Part VII.

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- (5) Evidence as mentioned in subsection (4):
- (a) is not admissible in a criminal prosecution against a person who offered to sell, or sold, liquor as a result of an inspector exercising powers under subsection (2); but
 - (b) can be used by an inspector or police officer to locate or identify other evidence, which may be used in criminal proceedings.

7 Section 24 amended (Licences)

Section 24(4), definition ***take-away liquor licence***, after "premises"
insert

but does not include an interstate retailer licence

8 Part III, Division 1A inserted

After section 30

insert

Division 1A Interstate retailer licence

30A Interstate retailer entitled to Territory interstate retailer licence

- (1) This section applies in relation to a retailer of liquor (an ***interstate retailer***) who:
- (a) is authorised in a State or another Territory to sell liquor; and
 - (b) does not hold a licence under this Act to sell liquor by retail in the Territory.
- (2) The interstate retailer is entitled to a licence (an ***interstate retailer licence***) to sell liquor by retail:
- (a) to purchasers who are in the Territory; or
 - (b) for delivery to a location within the Territory.
- (3) The Commission must issue an interstate retailer licence to the interstate retailer if:
- (a) the retailer advises the Commission that the retailer intends to sell liquor by retail:
 - (i) to purchasers who are in the Territory; or

-
- (ii) for delivery to a location within the Territory; and
 - (b) the retailer provides the Commission with a copy of the authority under which the retailer is authorised by a State or another Territory to sell liquor in that State or Territory.
 - (4) The procedure mentioned in subsection (3) is not an application under section 26 for a licence and the following sections do not apply in relation to the issue of the interstate retailer licence:
 - (a) sections 6, 6A and 6B;
 - (b) sections 26A to 29.
 - (5) However, sections 6, 6A and 6B apply in relation to any subsequent consideration of a variation of the conditions of an interstate retailer licence.
 - (6) An interstate retailer licence:
 - (a) has the same terms and conditions as the terms and conditions applying under the State or other Territory authorisation mentioned in subsection (1)(a), subject to the following:
 - (i) the interstate retailer licence does not purport to authorise any conduct outside the Territory that would be beyond power to authorise;
 - (ii) the interstate retailer licence authorises the sale of liquor for delivery within the Territory;
 - (iii) the conditions imposed by section 32 in relation to minimum pricing of liquor sales in the Territory apply to the interstate retailer licence;
 - (iv) the interstate retailer licence does not authorise the licensee to operate licensed premises within the Territory unless the terms and conditions of the licence have been varied under this Act to expressly permit such an operation;
 - (v) the interstate retailer licence is subject to any variation of terms and conditions made under section 32A, 33 or 33AA; and
 - (b) is a Territory licence:
 - (i) to which section 30 applies; and

-
- (ii) that is unaffected by a variation, suspension or cancellation of the State or other Territory authorisation mentioned in subsection (1)(a); and

- (c) does not attract the fee mentioned in section 26.

30B Retailer taken to hold licence

An interstate retailer who has satisfied the requirements of section 30A(3) is taken to hold an interstate retailer licence until the time that the Commission issues the retailer with an interstate retailer licence.

30C Identification system does not apply in relation to interstate retailer licence

- (1) The identification system requirements mentioned in section 31A(5) do not apply in relation to a sale of liquor under an interstate retailer licence.
- (2) Subsection (1) is subject to an express variation of conditions of an interstate retailer licence requiring the licensee to comply with the identification system requirements mentioned in section 31A(5).

9 Section 32 inserted

After section 31A

insert

32 Conditions about minimum pricing

- (1) It is a condition of every licence that the licensee must ensure that:
 - (a) no liquor sale offer is made at a price that would be below the minimum sale price:
 - (i) to prospective purchasers who are in the Territory; or
 - (ii) for liquor that is to be delivered to a location within the Territory; and
 - (b) no liquor sale is made at a price below the minimum sale price:
 - (i) to a purchaser who is in the Territory; or
 - (ii) for liquor that is to be delivered to a location within the Territory.

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- (2) It is also a condition of every licence that the licensee complies with the obligations in relation to liquor promotions set out in section 118G.
 - (3) It is also a condition of every licence that the licensee must provide to the Director-General the data mentioned in section 118K as prescribed by regulation.
 - (4) The conditions mentioned in subsections (1) to (3) cannot be varied by the Commission under section 32A or 33.

10 Section 110 amended (Licensee must not contravene licence conditions)

- (1) Section 110, before "A"
insert
- (1)
- (2) Section 110, at the end
insert
- (2) Subsection (1) applies to the conduct of a licensee outside the Territory if the conduct relates to selling liquor:
 - (a) to a purchaser who is in the Territory; or
 - (b) for delivery to a location within the Territory.

11 Sections 115 and 116 replaced

Sections 115 and 116

repeal, insert

115 Sale of liquor not authorised by licence

- (1) A person commits an offence if:
 - (a) the person intentionally sells liquor; and
 - (b) the sale is not authorised by a licence and the person is reckless in relation to that circumstance.

Maximum penalty: 300 penalty units or imprisonment for 3 years.

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- (2) Subsection (1) applies to a sale of liquor for delivery to a location within the Territory, whether the sale takes place wholly or partly outside the Territory.

116 Purchase of liquor when sale not authorised by licence

- (1) A person commits an offence if:
- (a) the person intentionally purchases liquor; and
 - (b) the sale of the liquor is not authorised by a licence and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) does not apply to a licensing inspector who is carrying out duties under this Act.

12 Part IXA inserted

After section 118

insert

Part IXA Minimum pricing obligations

Division 1 Application of Part

118A Application of Part

- (1) This Part, other than Divisions 2 and 4, does not apply to a wholesale sale of liquor, or an offer to sell liquor by wholesale.
- (2) This Part also does not apply to duty-free liquor.

Division 2 Standard drinks in liquor sale

118B Meaning of *standard drink*

- (1) A ***standard drink*** is the volume of a liquor product that contains 10 g of ethyl alcohol when measured at 20°C.
- (2) The following formula is used to calculate the number of standard drinks in a liquor product:

$$SD = V \times ABV \times 0.789$$

where:

SD = the number of standard drinks.

V = volume of the liquor product in litres.

ABV = the alcohol content by volume of the liquor product – as indicated on the product label (expressed as a percentage).

0.789 = the specific gravity of ethyl alcohol.

Example for subsection (2)

A 250 ml glass of wine from a bottle where the product label shows 6% alcohol content would contain 1.18 standard drinks, obtained by multiplying the volume in litres of the sale by the alcohol content, multiplied by 0.789:

$$0.25 \times 6 \times 0.789 = 1.18$$

Note that some product labels will indicate the number of standard drinks contained in the product container.

118C Number of standard drinks in liquor sale or liquor sale offer

- (1) If the product label for a liquor product indicates the number of standard drinks contained in the product container, that number can be used to calculate the number of standard drinks in:
 - (a) a liquor sale, or liquor sale offer of that liquor product; or
 - (b) if multiple liquor products are sold, or offered for sale, in a single liquor sale or liquor sale offer – that component of the liquor sale or liquor sale offer.
- (2) If the liquor product is known precisely, the number of standard drinks in the product may be determined by reference to the product label of an identical product.
- (3) If there is a difference between the number of standard drinks calculated in accordance with section 118B and the number of standard drinks indicated on a product label for the same liquor product, the lower number may be used for calculating the minimum sale price.

118D Mixed sales

If a liquor sale or liquor sale offer is made up of different components (for example, a cocktail drink, or a premixed liquor product), the number of standard drinks contained in the liquor sale or liquor sale offer is the sum of the standard drinks in each component of the liquor that contains alcohol.

Example for section 118D

A margarita cocktail comprises 40 ml tequila, 20 ml orange liqueur, lime juice, salt and ice.

0.040 L tequila at 35% alcohol x 0.789 = 1.1 standard drinks

0.020 L orange liqueur at 40% alcohol x 0.789 = 0.63 standard drinks

lime juice, salt and ice – no alcohol content

total standard drinks = 1.1 + 0.63 = 1.73 standard drinks.

Division 3 Minimum pricing for liquor sale

118E Minimum pricing

- (1) There is a minimum price (the **minimum sale price**) at which a liquor product can be sold, or offered for sale, in the Territory.
- (2) The minimum sale price is \$1.30 per standard drink contained in the liquor product, or – if the Minister, by *Gazette* notice, specifies a higher amount – that amount.
- (3) The minimum sale price is indexed, from 1 July 2019, in accordance with the method set out in the Regulations.
- (4) The Minister must review the minimum sale price at 3 yearly intervals.
- (5) In reviewing the minimum sale price, the Minister must take into account the following:
 - (a) the objective of reduction of harmful consumption of liquor;
 - (b) the objective that the minimum pricing regime should result in minimal impact on moderate consumers;
 - (c) any other matters the Minister considers relevant.

118F Meaning of **sale price**

- (1) For a liquor sale, the **sale price** is the amount of money paid for all products (including products that do not contain alcohol):
 - (a) after the application of any discounts; and

-
- (b) allowing for any refunds that can be reasonably connected to the liquor sale.
- (2) For subsection (1), it is immaterial whether a discount or refund is applied at the time of the sale or later.

Examples for subsection (2)

- 1 *A licensee has a "buy 5, get one free" promotion. The licensee processes a sale of 6 bottles of wine at \$9.50 per bottle as a sale of 6 items, but then refunds the price of one item. The licensee argues that the sale price of \$57 is above the minimum sale price of \$50, but after the discount is taken into account, the effective sale price of \$47.50 is below the minimum sale price.*
 - 2 *A licensee sells to a customer a "bundle" of a bottle of spirits and 6 mixers at a sale price of \$40. The minimum sale price for the bottle of spirits is \$36. The following day, the customer returns the mixers and is given a refund of \$6 (the normal sale price of the mixers). The effective sale price of \$34 for the spirits is below the minimum sale price.*
- (3) The sale price includes any freight charges paid by the customer to the licensee as part of the transaction, but does not include freight charges paid separately by the customer to another party.

118G Promotions

- (1) This section applies if a licensee promotes the sale of liquor by offering a non-liquor item at a discounted rate, or for free, as part of a liquor sale.
- (2) The discounted or giveaway item must be available to a customer if:
- (a) the customer purchases non-liquor products, or a different liquor product; and
 - (b) the price of the products purchased is the same or greater than the price at which the discounted or giveaway item becomes available for the promotion liquor sale.

Example for subsection (2)

A promotion offers a set of shot glasses with every bottle of any brand of whiskey costing \$30 or more. Separately the glasses can be purchased for \$10. If the promotion glasses are offered to purchasers of liquor for free, they must be offered free to all customers who purchase \$30 or more of any product, including non-liquor products.

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- (3) Subsection (2) does not apply if the item being given away as part of the promotion is not available for separate sale.

Example for subsection (3)

A promotion offers a BDF branded whiskey shot glass with every bottle of BDF whiskey. The shot glass is not available for sale separately. In this case, the glass is not required to be offered to customers who purchase products other than BDF whiskey.

118H Power of Commission in relation to sale price manipulation

- (1) This section applies if the Commission believes on reasonable grounds that a licensee:
- (a) is bundling liquor products, or liquor products and other products, in a way that tends to make the liquor products more attractive, similar to reducing the sale price of the liquor products below the minimum sale price; or
 - (b) appears to be selling liquor products at a price that is below the minimum sale price that would apply if the liquor products were purchased separately from non-liquor products; or
 - (c) is effectively selling liquor products at a price that is less than the minimum sale price of those liquor products by accepting gift cards, coupons, or other tokens of value that can be obtained for a lesser value than the value for which they can be exchanged for liquor.

Example for subsection (1)(a)

A licensee sells a liquor product and food items in a single transaction. The food items are discounted so that the sale price is lowered, with the effect that the minimum pricing requirement for the liquor product is circumvented.

Example for subsection (1)(b)

A licensee offers a bottle of wine containing 7.5 standard drinks for \$6 on the proviso that the customer purchases non-liquor products to bring the sale price above the minimum sale price.

Example for subsection (1)(c)

A licensee allows customers to purchase a \$50 gift card for a purchase price of \$25. This card is then accepted by the licensee as payment for 5 bottles of wine priced at \$10 each.

- (2) The Commission may impose any condition it considers appropriate on the licensee's licence, including any one or more of the following:
- (a) a condition that liquor products must be sold in a separate transaction from non-liquor products;

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- (b) a condition that every different liquor product must be the subject of a separate transaction;
 - (c) a condition that the licensee is restricted from engaging in certain kinds of promotions or giveaways;
 - (d) a condition that the licensee must keep specified records in relation to promotions or giveaways;
 - (e) a condition that the licensee is restricted from selling certain non-liquor products below a minimum price as part of a liquor sale or in a manner connected with a liquor sale.
- (3) The Commission may also attribute a minimum value to an item provided to a purchaser as part of a promotion.

Example for subsection (3)

A customer purchases a carton of ABCD beer (which has a minimum sale price of \$30) and receives a \$5 gift card for free. The Commission could attribute a minimum value of \$5 to the gift card, with the result that any actual sale price less than \$35 would breach the conditions of the licence.

- (4) As soon as practicable after deciding to impose a condition as mentioned in subsection (2), the Commission must give a decision notice to the licensee.
- (5) This section does not affect any powers of the Commission under this or any other Act.

118J When liquor product not precisely identified

- (1) This section applies if a liquor product is not precisely identified by a liquor sale offer.

Example for subsection (1)

A liquor sale offer lists a carton of 24 cans of ABCD beer, but ABCD markets several beers of varying alcohol content.

- (2) The minimum sale price is determined by reference to the liquor product of the highest alcohol content within the identified product range.

Example for subsection (2)

If ABCD beer is available with an alcohol content of either 4.5% or 7.5%, the minimum sale price must be calculated by reference to 7.5% alcohol content unless the sale record identifies the ABCD beer sold as being the product with the lower alcohol content – e.g. "ABCD Mid-strength Beer".

- (3) This section does not give rise to a prosecution for an offence against section 110, 118L or 118M.

Division 4 Data to be provided to Director-General

118K Licensee to keep data

- (1) A licensee must keep the data prescribed by regulation in relation to a liquor sale prescribed by regulation.

Note for subsection (1)

Section 32(3) makes it a condition of every licence that the licensee provides the data to the Director-General in the way prescribed by regulation.

- (2) For subsection (1), liquor sale includes:
- (a) a wholesale sale to the licensee; and
 - (b) a wholesale sale by the licensee.

Division 5 Offences

118L Offering liquor below minimum sale price

- (1) A licensee commits an offence if:
- (a) the licensee intentionally offers liquor for sale; and
 - (b) the licensee is reckless in relation to the circumstance that:
 - (i) the offer is made to prospective purchasers who are in the Territory; or
 - (ii) the liquor is to be delivered to a location within the Territory; and
 - (c) the offered price for the liquor (including any freight costs that form part of a prospective transaction) is below the minimum sale price for that liquor sale.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(c).
- (3) For an offence under this section to be committed, it is not necessary that a liquor sale actually takes place.

118M Selling liquor below minimum sale price

- (1) A licensee commits an offence if:
- (a) the licensee intentionally sells liquor; and
 - (b) the licensee is reckless in relation to the circumstance that:

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- (i) the sale is to a purchaser who is in the Territory; or
 - (ii) the liquor is to be delivered to a location within the Territory; and
 - (c) the sale price for the liquor is below the minimum sale price for that liquor sale.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(c).

13 Part XXVI inserted

After section 171

insert

Part XXVI Transitional matters for Liquor Amendment (Minimum Pricing) Act 2018

172 Definition

In this Part:

commencement means the commencement of section 12 of the *Liquor Amendment (Minimum Pricing) Act 2018*.

173 Variation of licence conditions

Section 32 applies in relation to all licences under this Act, including an existing licence in relation to which an application for variation of conditions was made before the commencement and the application has not been determined as at the commencement.

174 Offences

Sections 118L and 118M apply in relation to an offence committed against either section by a person only if all of the conduct constituting the offence occurred after the commencement.

14 Repeal of Act

This Act is repealed on the day after it commences.