

NORTHERN TERRITORY OF AUSTRALIA

LIQUOR AMENDMENT ACT 2019

Act No. 5 of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 5 of 2019

An Act to amend the *Liquor Act*

[Assented to 26 March 2019]
[Introduced 28 November 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Liquor Amendment Act 2019*.

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 19A amended

After section 19A(2)

insert

(2A) This section applies in relation to a police officer as if the officer were an inspector.

5 Section 19B amended

After section 19B(5)

insert

- (6) This section applies in relation to a police officer as if the officer were an inspector.

6 Section 33 amended (Variation of conditions by Commission)

- (1) After section 33(1)

insert

- (1A) The Commission may, if the Commission considers it appropriate, convene a public hearing to make a decision under subsection (1).

- (2) Section 33(2), after "conditions,"

insert

but after a public hearing (if convened),

- (3) Section 33(6)

omit

(2)

insert

(1A)

7 Section 33AAA inserted

After section 33, in Part 3, Division 2

insert

33AAA Hearing by Commission for proposed variation of conditions

- (1) Before convening a public hearing under section 33(1A) (if any), the Commission may do any of the following in relation to the hearing:

(a) publish notice of the time and date for the hearing and the proposed variation of the conditions in the way, and within the period, the Commission considers appropriate;

(b) invite any person, organisation or group to make written submissions in relation to the proposed variation of conditions;

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- (c) publish any written submissions received under paragraph (b).
- (2) The Commission may conduct the hearing as the Commission considers appropriate.

8 Section 97 amended (Commissioner of Police may release seized thing)

Section 97(5)(b)

omit, insert

- (b) the applicant:
- (i) did not know or could not reasonably have known about the commission of the offence; or
 - (ii) knew about the commission of the offence but was not in a position to reasonably prevent the commission of the offence.

9 Section 101AP amended (Commissioner of Police may release seized thing)

Section 101AP(5)

omit

all words from "satisfied" to "thing."

insert

satisfied:

- (a) the applicant owns, or has an interest in, the thing; and
- (b) the applicant:
- (i) did not know or could not reasonably have known about the commission of the offence; or
 - (ii) knew about the commission of the offence but was not in a position to reasonably prevent the commission of the offence.

10 Part VIII BA inserted

After section 101ZI

insert

Part VIII BA Undercover operations**101ZIA Undercover operations**

- (1) A police officer below the rank of Commander may, in writing, apply to a senior officer for an authorisation to purchase, sell or otherwise supply, or possess liquor at a place or in a manner that would otherwise be an offence against this Act for the purpose of detecting the commission of an offence against this Act.
- (2) The senior officer may, in writing, grant the authorisation to the applicant subject to any conditions the senior officer considers appropriate.
- (3) A police officer authorised under subsection (2) may purchase, sell or otherwise supply, or possess liquor at a place or in a manner that would otherwise be an offence against this Act for the purpose of detecting the commission of an offence against this Act.
- (4) In this section:

senior officer means a police officer of or above the rank of Commander.

101ZIB Powers of seizure

A police officer, in exercising a power under section 101ZIA for the detection of the commission of an offence against this Act, may, without a warrant, seize a thing that the officer reasonably believes to be related to an offence against this Act.

101ZIC Holding of seized thing

The Commissioner of Police must keep a thing seized under section 101ZIB in the Commissioner's custody until it is otherwise dealt with under this Part.

101ZID Commissioner of Police may release seized thing

- (1) A person who owns, or has an interest in, the thing may apply to the Commissioner of Police for its release.

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- (2) The application must be made within 60 days after the seizure of the thing or that period as extended by the Commissioner.
 - (3) An application may be made only if:
 - (a) the thing has not been forfeited under section 101ZIF; and
 - (b) the applicant is not being charged with an offence to which the thing is related; and
 - (c) if a person has been charged with an offence – the proceedings for the prosecution of the offence, including any appeal, have been completed.
 - (4) The Commissioner must, within 14 days after the application is made:
 - (a) approve the application by releasing the thing to the applicant; or
 - (b) refuse the application.
 - (5) The Commissioner may deal with an application after the time period specified in subsection (4) if proceedings for the prosecution of the offence to which the thing is related are not completed within the time period.
 - (6) The Commissioner may release the thing to the applicant only if the Commissioner is satisfied:
 - (a) the applicant owns, or has an interest in, the thing; and
 - (b) the applicant:
 - (i) did not know or could not reasonably have known about the commission of the offence; or
 - (ii) knew about the commission of the offence but was not in a position to reasonably prevent the commission of the offence.
 - (7) Despite subsection (6), the Commissioner may refuse the application if the Commissioner decides it is inappropriate for the Commissioner to release the thing, having regard to:
 - (a) the evidential value of the thing for any proceedings for the prosecution of an offence; and
 - (b) any other matters the Commissioner considers relevant in deciding the application.

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- (8) The release of the thing under subsection (4)(a) is subject to:
 - (a) any conditions specified by the Commissioner; and
 - (b) any order made under section 101ZIE at a later time.
 - (9) If the Commissioner releases the thing to a person under subsection (4)(a) subject to conditions, the person may make an application to the Local Court for review of the conditions.
 - (10) The Commissioner may extend the period mentioned in subsection (2) more than once, but must do so before the expiry of the period or the period as extended.
 - (11) The Commissioner may invite a person who appears to own, or have an interest in, the thing to make an application under this section.

101ZIE Court may release or dispose of seized thing

- (1) A person who owns, or has an interest in, a thing seized under section 101ZIB may apply to the Local Court for an order under this section if:
 - (a) the thing has not been forfeited under section 101ZIF; and
 - (b) proceedings for the prosecution of the offence, including any appeal, to which the thing is related have ended; and
 - (c) the person:
 - (i) was not the defendant in the proceedings; or
 - (ii) was the defendant in the proceedings but was not convicted in relation to the offence.
- (2) The application must be made within 60 days after the end of the proceedings or that period as extended by the Court.
- (3) The applicant must give notice of the application to the Commissioner of Police.
- (4) The Court may make an order under this section if the Court is satisfied:
 - (a) the applicant owns, or has an interest in, the thing; and
 - (b) the applicant:
 - (i) did not know or could not reasonably have known about the commission of the offence; or

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- (ii) knew about the commission of the offence but was not in a position to reasonably prevent the commission of the offence.
 - (5) An order under this section must:
 - (a) state whether the applicant owns, or has an interest in, the thing; and
 - (b) if the applicant has an interest in the thing – state the nature and value of the interest as at the time of the making of the order; and
 - (c) direct that:
 - (i) the thing be released to the applicant; or
 - (ii) the thing be disposed of in a specified way and, subject to section 101ZIG(1), all or a specified part of the proceeds from the disposal be paid to the applicant and any other specified persons.
 - (6) The Court may extend the period mentioned in subsection (2) more than once, but must do so before the expiry of the period or the period as extended.
 - (7) If an application is made to the Court for an extension of the period mentioned in subsection (2), the Commissioner of Police may make submissions in relation to the application for the extension.

101ZIF Forfeiture of seized thing

- (1) A thing seized under section 101ZIB is forfeited to the Territory if:
 - (a) an application under section 101ZID:
 - (i) was not made within the period mentioned in section 101ZID(2); or
 - (ii) was made and refused; and
 - (b) an application under section 101ZIE:
 - (i) was not made within the period mentioned in section 101ZIE(2); or
 - (ii) was made and refused.
- (2) The Commissioner of Police may dispose of the forfeited thing as the Commissioner considers appropriate.

(3) Any proceeds from the disposal must be paid in the following order of priority:

- (a) first – the expenses for the sale;
- (b) second – the cost of holding and removing the thing;
- (c) third – the Central Holding Authority.

101ZIG Disposal of seized thing subject to disposal order

(1) This section applies if an application under section 101ZIE was made and an order (a **disposal order**) containing a direction mentioned in section 101ZIE(5)(c)(ii) is made for the thing.

(2) The Commissioner of Police must dispose of the thing in accordance with a disposal order.

(3) Any proceeds from the disposal must be paid in the following order of priority:

- (a) first – the expenses for the sale;
- (b) second – the cost of holding and removing the thing;
- (c) third – any payment under the disposal order;
- (d) fourth – the Central Holding Authority.

101ZIH Police property used in investigation

On completion of an investigation under this Part, any thing that is the property of the Commissioner of Police and that is used by a police officer during the investigation continues to be the property of the Commissioner.

101ZII Annual report to Minister in relation to undercover operations

(1) The Commissioner of Police must give a report to the Minister that specifies the following:

- (a) the number of applications for authorisations made under section 101ZIA(1);
- (b) the number of authorisations granted under section 101ZIA(2);
- (c) the number of charges laid for offences under this Act as a result of authorisations granted under section 101ZIA(2).

(2) The report for a financial year must be given to the Minister within 3 months after the end of the financial year.

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- (3) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after the Minister receives the report.

11 Section 101ZK amended (Point of sale intervention powers – customer)

- (1) Section 101ZK(1)(b)

omit, insert

- (b) the customer:

- (i) appears to be purchasing or intending to purchase liquor for consumption away from the premises; or
- (ii) is in possession of liquor.

- (2) Section 101ZK(5)(a)

omit

purchased by

insert

in the possession of

- (3) After section 101ZK(6)

insert

- (7) An officer or inspector may:

- (a) if the customer is the driver or a passenger in a vehicle – require the driver of the vehicle to stop the vehicle; and
- (b) require the driver or passenger to follow any reasonable direction to allow the officer or inspector to exercise a power under this section.

12 Section 120ZF inserted

After section 120ZE

insert

120ZF Possession of liquor by police officer

- (1) Despite anything in this Act, the possession of liquor by a police officer is not an offence in the following circumstances:
 - (a) the liquor was seized or obtained in the course of the officer's duties or the exercise of the officer's powers under this Act or any other law in force in the Territory;
 - (b) the liquor is in the officer's possession as evidence pending the commencement of proceedings for an offence against this Act or any other law in force in the Territory;
 - (c) the liquor is in the officer's possession for a purpose associated with the administration of this Act;
 - (d) the liquor is in the officer's possession for analysis for the purpose of proceedings for an offence against this Act or of any other law in force in the Territory;
 - (e) the liquor is in the officer's possession as an exhibit for qualifying the officer to give evidence in those proceedings.
- (2) If proceedings for an offence against this Act have commenced:
 - (a) a police officer who has obtained liquor must not, only because of a circumstance mentioned in subsection (1), be taken:
 - (i) to be a party to an offence against this Act; or
 - (ii) to be guilty of an offence against this Act; and
 - (b) the evidence of the officer in the proceedings is not to be taken to be the evidence of an accomplice.

13 Repeal of Act

This Act is repealed on the day after it commences.