

Serial 205
Liquor and Other Legislation Amendment Bill 2012
Ms Lawrie

A Bill for an Act to amend the *Liquor Act* and other legislation

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2012

An Act to amend the *Liquor Act* and other legislation

[Assented to [] 2012]
[Second reading [] 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Liquor and Other Legislation Amendment Act 2012*.

2 Commencement

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

Part 2 Amendment of Liquor Act

3 Act amended

This Part amends the *Liquor Act*.

4 Section 4 amended

(1) Section 4(1)

insert (in alphabetical order)

exemption certificate, for Part VIII B, means a certificate mentioned in section 101ZF(1).

exemption notice, for Part VIII B, means a notice mentioned in section 101ZE(1) or (2).

public place includes:

- (a) every place to which free access is permitted to the public with the express or tacit consent of the owner or occupier of the place; and
- (b) every place to which the public are admitted on payment of money only; and
- (c) every road, street, footway, court, alley or thoroughfare that the public are allowed to use, even if the road, street, footway, court, alley or thoroughfare is formed on private property.

regulated place, see section 101T.

(2) Section 4(1), definition **contravention notice**, paragraph (b)

omit

101N(1).

insert

101N(1); or

(3) Section 4(1), definition **contravention notice**, after paragraph (b)

insert

- (c) a regulated place contravention notice mentioned in section 101Z(1).

(4) Section 4(1), definition **relevant offence**, paragraph (b)

omit

101AM.

insert

101AM; or

- (5) Section 4(1), definition *relevant offence*, after paragraph (b)

insert

(c) for Part VIII B – see section 101X.

- (6) Section 4(1), definition *specified offence*, paragraph (a), before "121(2)"

insert

101V(1), 101W(1),

- (7) Section 4(1), definition *specified offence*, paragraph (c)

omit

45D, 45K,

5 Section 8 amended

Section 8

omit

(other than an offence against section 75(1) or 101AE(1))

insert

other than an offence against section 75(1), 101AE(1) or 101U(1)

6 Section 51 amended

- (1) Section 51(11), after "means"

insert

any of following

- (2) Section 51(11)(a)

omit

Commission; or

insert

Commission;

- (3) Section 51(11)(b) and (c)

omit

Part IV; or

insert

Part IV;

- (4) Section 51(11)(d)

omit

licence,

insert

licence;

- (5) Section 51(11)

omit

as the case requires.

insert

- (e) a person who has applied for an exemption certificate under section 101ZG(1) or for the cancellation or variation of an exemption certificate under section 101ZI(3);
- (f) a person who has made a representation to the Commission in response to a notice published under section 101ZG(2) relating to an application mentioned in paragraph (e).

7 Part VIII B inserted

After section 101S

insert

Part VIII B Regulated places

Division 1 Consumption of liquor in regulated place

101T Regulated place

- (1) A place is a *regulated place* for the consumption of liquor if the place is within 2 km of licensed premises and is:
 - (a) in a public place; or
 - (b) on private premises from which the lawful occupier is absent at the time of the consumption.
- (2) However, a place that would otherwise be a regulated place because of subsection (1) is not a regulated place for the consumption of liquor during a period when the consumption is permitted or authorised under:
 - (a) a special licence issued for the place; or
 - (b) an exemption certificate issued for the place; or
 - (c) an exemption notice for the place.

Note for section 101T

A place mentioned in subsection (2) is a regulated place during any period when the consumption of liquor is not permitted or authorised under the special licence, exemption certificate or exemption notice.

101U Consumption of liquor at regulated place

- (1) A person commits an offence if the person consumes liquor at a regulated place.
- (2) The penalty for an offence against subsection (1) is the forfeiture of any liquor seized under section 101Y(1)(b).
- (3) Subsections (1) and (2) do not apply if:
 - (a) the regulated place is in a designated area; or
 - (b) the person consuming the liquor is an adult and has the express permission of the following person to consume liquor at the regulated place:
 - (i) in relation to a public place – the owner of the place;

- (ii) in relation to private premises from which the lawful occupier is absent at the time of the consumption – the lawful occupier.

Note for subsection (3)(a)

See section 101W(1) for an offence relating to the consumption of liquor at a regulated place in a designated area.

101V Consumption of liquor at regulated place causing nuisance

- (1) A person commits an offence if the person:
 - (a) consumes liquor at a regulated place; and
 - (b) while consuming the liquor, causes a nuisance to other people.

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

101W Consumption of liquor at regulated place in designated area

- (1) A person commits an offence if the person consumes liquor at a regulated place in a designated area.

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Division 2 Police powers of search, seizure and forfeiture

101X Application

This Division applies to an offence (a *relevant offence*) mentioned in:

- (a) section 101U(1), 101V(1) or 101W(1); and
- (b) section 101ZE(4) if the contravention involves the consumption of liquor.

101Y Search and seizure

- (1) If a police officer believes on reasonable grounds that a relevant offence is being committed by a person, the officer may, without a warrant:
 - (a) search the person; and

- (b) seize any opened or unopened container in the person's possession or immediate vicinity that the officer has reason to believe contains liquor.
- (2) A person may be searched under subsection (1)(a) only by a police officer who is of the same gender as the person.
- (3) A police officer who seizes a container under subsection (1)(b) may immediately:
 - (a) empty the container if it is opened; or
 - (b) destroy the container (including the liquor in it) if it is unopened.
- (4) The police officer must ensure that any opened containers that are not emptied under subsection (3)(a), and any unopened containers that are not destroyed under subsection (3)(b), are taken to a police station, where they must be destroyed.

101Z When contravention notice to be given

- (1) A police officer may give a regulated place contravention notice to a person if the officer:
 - (a) believes on reasonable grounds the person has committed an offence against section 101U(1) (the *alleged offence*); and
 - (b) has seized one or more unopened containers of liquor under section 101Y(1)(b) in relation to the alleged offence.
- (2) The contravention notice must contain the following information:
 - (a) the name of the alleged offender;
 - (b) the date, time and place of the alleged offence;
 - (c) a description of the alleged offence and the circumstances causing the police officer to believe an offence was being committed against section 101U(1);
 - (d) a description of the liquor seized by the police officer including, if possible, the type and quantity;
 - (e) the name and rank of the police officer and the name of the police station to which the officer is attached;
 - (f) a statement that the alleged offender may choose to have the matter dealt with by the court of summary jurisdiction by making an application under section 101ZB(1).

- (3) The police officer in charge of the police station mentioned in the contravention notice must send a copy of the notice to the court of summary jurisdiction.

101ZA Court order if no application under section 101ZB(1)

If the alleged offender served with a contravention notice does not make an application under section 101ZB(1), the court of summary jurisdiction may make an order that the alleged offender committed the alleged offence described in the notice on the date specified in the notice.

101ZB Application to court by alleged offender in contravention notice

- (1) The alleged offender served with a contravention notice may apply to the court of summary jurisdiction for the alleged offence described in the notice to be dealt with by the court.
- (2) The application must be:
 - (a) made no later than 28 days after the date of the alleged offence; and
 - (b) in writing; and
 - (c) accompanied by a copy of the contravention notice.
- (3) On receiving the application, the clerk of the court must:
 - (a) fix a time and date for the court to deal with the matter; and
 - (b) notify the following persons of the time and date:
 - (i) the alleged offender;
 - (ii) the person in charge of the police station mentioned in the contravention notice.
- (4) The date fixed by the clerk of the court must be no earlier than 14 days after the last day the alleged offender is permitted by this section to make the application.

101ZC How court deals with offence alleged in contravention notice

- (1) When the court of summary jurisdiction deals with an alleged offence described in a contravention notice, the notice is taken to be a complaint alleging the person named in the notice committed the offence at the time and place and in the circumstances specified in the notice.

- (2) If the court of summary jurisdiction receives more than one application under section 101ZB(1) and is satisfied the alleged offences described in the accompanying contravention notices arise out of the same facts, the court may:
- (a) try the matters together; and
 - (b) adjourn the hearing of the matters.

101ZD Interest in destroyed liquor

- (1) The interest that a person had in any liquor destroyed because of section 101Y(3) is taken to have become, on the destruction, an interest in an amount of money equal to the liquor's value.
- (2) The interest in the amount is forfeited to the Territory if:
- (a) an order is made under section 101ZA for an offence against section 101U(1) in relation to the liquor; or
 - (b) a court otherwise finds a person guilty of a relevant offence in relation to the liquor.
- (3) If subsection (2) does not apply, a person who has the interest in the amount may seek compensation for the interest in a court of competent jurisdiction.
- (4) Without limiting subsection (3), a court that finds a person not guilty of a relevant offence in relation to the liquor may make an order of compensation for the interest in the amount.

Division 3 Exemption notice and exemption certificate

101ZE Exemption notice

- (1) If the Commission is satisfied that the consumption of liquor should be permitted at a public place within 2 km of licensed premises, the Commission may publish in the *Gazette* an exemption notice for the place.
- (2) If the Minister is satisfied that the consumption of liquor should be permitted at a public place within 2 km of licensed premises:
- (a) the Minister may require the Commission to publish in the *Gazette* an exemption notice for the place; and
 - (b) the Commission must comply with such a requirement.

- (3) An exemption notice:
- (a) must:
 - (i) describe the public place to which the notice relates; and
 - (ii) state that the consumption of liquor is permitted at the place; and
 - (b) may specify any conditions the Commission considers appropriate, including conditions about any of the following:
 - (i) the type of liquor that may be consumed at the place;
 - (ii) the periods when the liquor may be consumed;
 - (iii) the persons who may, or may not, enter the place.
- (4) A person must not contravene a condition of an exemption notice.
- Maximum penalty: 5 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

101ZF Exemption certificate for public place

- (1) The Commission may, on application under section 101ZG(1), issue to a person a certificate authorising the consumption of liquor at a public place within 2 km of licensed premises.
- (2) An exemption certificate:
- (a) must:
 - (i) describe the public place to which it relates; and
 - (ii) state that the consumption of liquor is authorised at the place; and
 - (b) may specify the conditions the Commission considers appropriate, including conditions about any of the following:
 - (i) the type of liquor that may be consumed at the place;
 - (ii) the periods when the liquor may be consumed;
 - (iii) the persons who may, or may not, enter the place.

101ZG Application for exemption certificate

- (1) Any of the following persons may apply to the Commission for an exemption certificate for all or part of a public place within 2 km of licensed premises:
 - (a) an owner of the place;
 - (b) a person responsible for the management of the place.
- (2) The Commission may require the person to publish in one or more specified newspapers a notice stating that the person has applied for an exemption certificate.
- (3) The Commission may also require the person to do any of the following:
 - (a) publish the notice 2 or more times, at intervals specified by the Commission;
 - (b) give notice in a particular form;
 - (c) include particular information in the notice.
- (4) In considering the application, the Commission must take into account the following matters:
 - (a) the general nature of the use of the public place specified in the application;
 - (b) provision made for the disposal of litter at the public place;
 - (c) any representations received in response to a notice published under this section.

101ZH Hearing relating to application for exemption certificate

- (1) The Commission may conduct a hearing relating to an application for an exemption certificate if the Commission considers it appropriate to do so.
- (2) The Commission must conduct a hearing relating to an application for an exemption certificate if required to do so by the Minister.

101ZI Variation, suspension or cancellation of exemption certificate

- (1) The Commission may vary, suspend or cancel an exemption certificate if the Commission is satisfied the person who holds the certificate has:
 - (a) contravened a condition of the certificate; or

-
- (b) allowed the consumption of liquor permitted under the certificate to cause a nuisance to people using the public place to which the certificate relates.
- (2) A variation, suspension or cancellation under subsection (1) must be by written notice to the person who holds the exemption certificate.
- (3) A person who holds an exemption certificate may apply to the Commission for:
- (a) the cancellation of the certificate; or
- (b) the variation of any conditions specified in the certificate.
- (4) Section 101ZG applies (with the necessary changes) in relation to an application under subsection (3) as if the application were for the issue of an exemption certificate.

8 Part XVIII inserted

After section 145

insert

Part XVIII Transitional matters for Liquor and Other Legislation Amendment Act 2012

146 Definitions

In this Part:

amending Act means the *Liquor and Other Legislation Amendment Act 2012*.

commencement day means the day on which the amending Act commences.

repealed, in relation to a specified section, means that section of the *Summary Offences Act* as in force immediately before the commencement day.

147 Continuation of exemptions under repealed provisions

- (1) A Certificate of Exemption issued under repealed section 45E(1) and in force immediately before the commencement day continues in force, and has effect, as if it were an exemption certificate issued under section 101ZF(1).

- (2) A declaration of an exempt area in force under repealed section 45EA(1) immediately before the commencement day continues in force, and has effect, as if it were an exemption notice published under section 101ZE(1) or (2)(b).
- (3) However, if a person is alleged to have committed an offence against repealed section 45EA(2) but was not charged with the offence before the commencement day:
 - (a) Part VIII B does not apply in relation to the person; and
 - (b) the person may be charged and dealt with as if Part VIA of the *Summary Offences Act* had not been repealed.

148 Applications and hearing relating to Certificate of Exemption

If immediately before the commencement day the Commission was considering an application made under repealed section 45E(1) or (6), the Commission must continue dealing with the application as if it had been made under section 101ZG(1) or 101ZI(3) respectively.

9 Act further amended

The Schedule has effect.

Part 3 Amendment of Liquor Regulations

10 Regulations amended

This Part amends the *Liquor Regulations*.

11 Schedule 2, Part 1 amended

Schedule 2, Part 1, after "section 101L(1) 1"

insert

section 101V(1)	0.5
section 101W(1)	0.5
section 101ZE(4)	0.5

Part 4 Amendment of Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act

12 Act amended

This Part amends the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act*.

13 Section 3 amended

Section 3(3)(d) and (e), after "are"

insert

, or are reasonably believed to be,

14 Section 4 amended

(1) Section 4

insert (in alphabetical order)

eligible welfare payment recipient, see section 45B.

income management means the income management regime under Part 3B of the Social Security Administration Act.

Secretary means the Secretary under the Social Security Administration Act.

Social Security Administration Act means the *Social Security (Administration) Act 1999* (Cth).

(2) Section 4, definition *treatment provider*, after "intervention"

insert

(other than income management)

15 Section 9 amended

(1) Section 9(4), definition *alcohol-related infringement notice*, paragraph (a), after "101L(1),"

insert

101V(1), 101W(1), 101ZE(4),

- (2) Section 9(4), definition *alcohol-related infringement notice*, paragraph (c)

omit

- (3) Section 9(4), definition *alcohol-related offence*, paragraph (b)

omit

the police officer making the arrest

insert

a police officer attending at the scene of the offence

16 Section 26 amended

After section 26(2)

insert

- (3) A GAP order must state:
- (a) the period the order remains in force; and
 - (b) the relevant details to enable the banned person to arrange an assessment; and
 - (c) the matters mentioned in section 30; and
 - (d) any other matter the Tribunal considers appropriate.

17 Section 28 amended

- (1) Section 28(1)

omit

(1)

- (2) Section 28(2)

omit

18 Section 30 amended

Section 30

omit

may make a further GAP order.

insert

may:

- (a) make a further GAP order; or
- (b) conduct a hearing to decide whether to make a BADT order for the person.

19 Section 31 amended

(1) Section 31(1)

omit

that states prohibitions or requirements (or both)

(2) Section 31(1)(a)

omit

substance (a

insert

substance or a banned person mentioned in section 30(b) (each of whom is a

(3) Section 31(4)

omit, insert

(4) A BADT order must state one or both of the following:

- (a) the banned person is prohibited from purchasing, possessing or consuming alcohol;
- (b) the banned person is prohibited from purchasing, possessing, consuming or using another substance, as specified in the order.

(4) Section 31(5)(b)

omit, insert

- (b) if the person is an eligible welfare payment recipient – the person is required to be subject to income management.

20 Section 33 amended

Section 33(4)

omit, insert

- (4) If the hearing relates to a person at risk who has been assessed to be misusing a substance, the notice must be accompanied by a copy of the assessment report.
- (5) However, subsection (4) does not apply if the Tribunal considers that a person's access to the report may:
 - (a) cause serious harm to the health of the person at risk; or
 - (b) put at risk the safety of other people.

21 Section 34 amended

(1) Section 34(2)(b)(i)

omit, insert

- (i) if the person at risk has been assessed to be misusing a substance – a clinician;

(2) After section 34(3)

insert

- (4) Despite the requirement for the attendance of the person at risk or voluntary applicant, the Tribunal may decide to conduct the hearing in the absence of that person.

Note for subsection (4)

See also sections 36(5) and 59(3).

22 Section 35 amended

Section 35(1)

omit, insert

- (1) In deciding whether to make a BADT order for a person at risk, the Tribunal must have regard to the following matters:
 - (a) if the person has been assessed to be misusing a substance – the assessment report about the person;

- (b) if the person is a banned person mentioned in section 30(b):
 - (i) all of the information the Tribunal considered before deciding to request a clinician to make an assessment of the person; and
 - (ii) any further information obtained by the Tribunal;
- (c) the current circumstances of the person;
- (d) whether a BADT order will achieve one or more of the objectives mentioned in section 31(2).

23 Section 36 amended

After section 36(6)

insert

- (7) If the BADT order includes a statement that the banned person is required to be subject to income management, the Tribunal must give the Secretary:
 - (a) a notice requiring the person to be subject to income management, as mentioned in section 45C; and
 - (b) a copy of the BADT order.

24 Section 43 amended

After section 43(5)

insert

- (6) Despite the requirement for the attendance of a particular person at the hearing, the Tribunal may decide to conduct the hearing in the absence of that person.

Note for subsection (6)

See also sections 36(5) and 59(3).

25 Section 44 amended

(1) Section 44(3)(a)

omit, insert

(a) the following applies:

- (i) in relation to a person who has been assessed to be misusing a substance – there is a further assessment of the person;
- (ii) in relation to a banned person mentioned in section 30(b) – there is an assessment of the person; and

(2) Section 44(4)

omit

all words from "must" to "years."

insert

must:

- (a) in relation to a person who has been assessed to be misusing a substance – order a further assessment of the person at intervals not exceeding 2 years; or
- (b) in relation to a banned person mentioned in section 30(b) – order an assessment of the person within the period the BADT order is in force.

(3) After section 44(6)

insert

- (7) If a variation of the BADT order includes a statement that the banned person is required to be subject to income management, or that the period of income management to which the person is subject is varied, the Tribunal must give the Secretary:
 - (a) a notice requiring the person to be subject to income management, as mentioned in section 45C; and
 - (b) a copy of the order varying the BADT order.

- (8) If a variation or revocation of the BADT order results in a revocation of the requirement that a person is to be subject to income management, the Tribunal must give the Secretary:
- (a) a notice revoking the requirement for the person to be subject to income management, as mentioned in section 45D; and
 - (b) a copy of the order varying or revoking the BADT order.

26 Section 45 amended

After section 45(2)

insert

- (3) Despite subsections (1)(b) and (2)(c), if the decision will affect the income management of the banned person, the Tribunal is not required to give the Secretary an information notice.

27 Part 3, Division 5 inserted

After section 45

insert

Division 5 Notices relating to income management

45A Application of Division

This Division applies if:

- (a) the Tribunal has made, varied or revoked a BADT order in relation to a banned person who is an eligible welfare payment recipient; and
- (b) the order includes, or before being varied or revoked included, a statement that the banned person is required to be subject to income management.

45B Eligible welfare payment recipient

A banned person is an *eligible welfare payment recipient* if, under Part 3B of the Social Security Administration Act:

- (a) the person is an eligible recipient of a category H welfare payment; or
- (b) the person's partner is an eligible recipient of a category H welfare payment.

45C Notice requiring income management

A notice requiring a banned person to be subject to income management must:

- (a) be in the form approved by the Chief Executive Officer; and
- (b) include the following information:
 - (i) the banned person's name;
 - (ii) any other information as specified in the form.

45D Notice revoking requirement for income management

A notice revoking a requirement for a person to be subject to income management must:

- (a) be in the form approved by the Chief Executive Officer; and
- (b) include the following information:
 - (i) the name of the person to whom the notice relates;
 - (ii) the reason why the person is no longer required to be subject to income management;
 - (iii) any other information as specified in the form.

28 Section 57 amended

Section 57(1)

omit

all words after "Act"

insert

except the following:

- (a) a BAT notice;
- (b) an alcohol intervention certificate;
- (c) an income management notice.

29 Section 72 replaced

Section 72

repeal, insert

72 Prohibition on supply of alcohol to particular individuals

(1) A person must not supply alcohol to an individual if the person knows the individual is subject to a prohibition mentioned in section 31A(2) of the *Liquor Act*.

(2) A person who contravenes subsection (1) does not commit an offence.

Note for subsection (2)

Under section 9(2), a police officer who reasonably believes the contravention has occurred must give the person a BAT notice.

(3) In this section:

person does not include a person who is an authorised seller mentioned in section 31A of the *Liquor Act*.

Part 5 Amendment of Summary Offences Act**30 Act amended**

This Part amends the *Summary Offences Act*.

31 Part VIA repealed

Part VIA

repeal

Part 6 Amendment of Summary Offences Regulations**32 Regulations amended**

This Part amends the *Summary Offences Regulations*.

33 Regulation 3 amended

Regulation 3

omit

45EA,

34 Regulation 8 repealed

Regulation 8

repeal

35 Schedule repealed

Schedule

repeal

Schedule Liquor Act further amended

section 9

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 31A(2)	provisions	
Part IX, heading	Obligations	General obligations
Part IX, Divisions 1 and 2, heading	whole heading	
section 120F(3)	whole subsection	
