

Serial 102
Licensing (Director-General) Bill 2014
Mr Giles

A Bill for an Act to establish the office of the Director-General of Licensing,
and for related purposes

NORTHERN TERRITORY OF AUSTRALIA
LICENSING (DIRECTOR-GENERAL) ACT 2014

Act No. [] of 2014

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2014

An Act to establish the office of the Director-General of Licensing, and for related purposes

[Assented to [] 2014]
[Second reading [] 2014]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Licensing (Director-General) Act 2014*.

2 Commencement

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

3 Definitions

In this Act:

affected person, see section 9.

delegate decision, see section 8.

Director-General means the person holding or occupying the office of Director-General of Licensing established by section 5.

4 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 4

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Director-General of Licensing

5 Office of Director-General of Licensing

- (1) There is to be a Director-General of Licensing.
- (2) The Minister must, by *Gazette* notice, appoint a person to be the Director-General of Licensing.

6 Powers and functions

- (1) The Director-General has the functions conferred on the Director-General under this or any other Act.
- (2) The Director-General has the powers necessary to perform the Director-General's functions.

7 Delegation

- (1) The Director-General may delegate any of the Director-General's powers and functions under this or any other Act to a public sector employee.
- (2) However, the Director-General may not delegate any of the Director-General's powers or functions under Part 3 in relation to a review of a delegate decision to a person who was involved in the making of the delegate decision.
- (3) This section applies subject to any inconsistency with another Act.

Part 3 Review of delegate decisions

8 Meaning of *delegate decision*

- (1) A ***delegate decision*** is a decision, under any Act, of the Director-General that is made by a delegate of the Director-General.

(2) However, the following are not delegate decisions:

- (a) a decision under this Part;
- (b) a decision under another Act that is declared by that Act not to be a delegate decision for this Act.

9 Meaning of *affected person*

A person is an ***affected person*** for a delegate decision if any of the following apply:

- (a) the person is declared under the Act under which the delegate decision is made to be an affected person for the decision;
- (b) for a decision that relates to disciplinary action relating to a licence – the person is the licensee;
- (c) for a decision that was made in relation to an application – the person is the applicant;
- (d) the person made a submission, complaint or objection (however described) during the process that resulted in the decision being made.

10 Notice of delegate decision

(1) As soon as practicable after making a delegate decision, a delegate of the Director-General must give written notice of the decision to each affected person.

(2) The notice must state the following:

- (a) the delegate decision and the reasons for it;
- (b) that the affected person may apply for a review of the decision under section 11;
- (c) the period allowed for applying for a review.

11 Application for review

(1) An affected person for a delegate decision may apply to the Director-General for a review of the decision.

(2) The application must be made:

- (a) within 28 days after written notice of the delegate decision is given to the affected person; or

- (b) if the Director-General extends the time allowed for making an application – within the additional time that the Director-General allows.
- (3) The application must:
- (a) be in the form approved by the Director-General; and
 - (b) be accompanied by the prescribed fee; and
 - (c) state the grounds on which it is made and the facts relied on to establish the grounds.

12 Effect of application on delegate decision

- (1) The making of the application does not stay the operation of the delegate decision.
- (2) However, the Director-General may stay the operation of the delegate decision pending completion of the review.

13 Director-General to consider application

- (1) On receipt of the application, the Director-General must review the delegate decision.
- (2) However, if satisfied the application is frivolous or vexatious, the Director-General may reject the application without reviewing the delegate decision.

14 Conducting and deciding review

- (1) In reviewing the delegate decision, the Director-General must:
 - (a) take into account any matter that the Act under which the delegate decision was made requires the Director-General to take into account in reviewing the decision; and
 - (b) follow the procedures for review determined by the Director-General; and
 - (c) comply with the rules of natural justice.
- (2) After reviewing the delegate decision, the Director-General must:
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute a new decision.

15 Notice of decision on review

- (1) As soon as practicable after making a decision under section 14, the Director-General must give written notice of the decision to the following persons:
- (a) the applicant for the review;
 - (b) each person who has a right to apply for a review of, or to appeal, the decision under the Act under which the delegate decision was made.
- (2) The notice must state the following:
- (a) the Director-General's decision and the reasons for it;
 - (b) details of any right the person has, under the Act under which the delegate decision was made, to apply for a review of, or to appeal, the Director-General's decision.

16 Inconsistency with another Act

This Part applies subject to any inconsistency with another Act.

Part 4 Miscellaneous matters**17 Confidentiality of information**

- (1) A person commits an offence if the person:
- (a) obtains information in the course of performing functions connected with the administration of this Act; and
 - (b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if:
- (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public.

(3) A person commits an offence if the person:

(a) obtains information while exercising a power or performing a function as the Director-General or a delegate of the Director-General under a related Act; and

(b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(4) Subsection (3) does not apply if:

(a) the person discloses the information:

(i) in the exercise of a power or performance of a function under a related Act; or

(ii) with the consent of the person to whom the information relates; or

(iii) for legal proceedings arising out of the operation of a related Act; or

(b) the information is otherwise available to the public.

(5) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

related Act, for a person, means any Act, other than this Act, under which the person exercises powers or performs functions as an office holder.

Note for section 17

In addition to the circumstances mentioned in subsections (2) and (4), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

18 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function, under this or any other Act, as:
 - (a) the Director-General; or
 - (b) a delegate of the Director-General.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

exercise, see section 17(5).

performance, see section 17(5).

19 Annual report

- (1) The Director-General must, within 3 months after the end of each financial year, give the Minister a report on:
 - (a) the operation of this Act during that year; and
 - (b) the exercise of powers and performance of functions during that year by the Director-General.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving the report.

20 Approved forms

- (1) The Director-General may approve forms for this Act.
- (2) The Director-General must publicise an approved form in a way decided by the Director-General (for example, on the Internet).

21 Regulations

The Administrator may make regulations under this Act.

Part 5 Repeals and transitional matters

Division 1 Repeals

22 Repeals

The following Acts are repealed:

- (a) *Northern Territory Licensing Commission Act 1999* (Act No. 67 of 1999);
- (b) *Northern Territory Licensing Commission Amendment Act 2001* (Act No. 6 of 2001).

Division 2 Transitional matters for Licensing (Director-General) Act 2014

Note for Division 2

The Acts amended by the Licensing (Repeals and Consequential Amendments) Act 2014 contain further transitional provisions in relation to matters arising under those Acts.

23 Definitions

In this Division:

commencement means the commencement of section 22.

NTLC Act means the *Northern Territory Licensing Commission Act* as in force immediately before the commencement.

transitional provisions in the Acts means the following:

- (a) this Division;
- (b) a provision of an Act that was amended by the *Licensing (Repeals and Consequential Amendments) Act 2014* that provides for transitional matters in relation to that Act.

24 Annual report

- (1) The Director-General must include in an annual report under section 19 information on any exercise of a power, or performance of a function, by an NTLC entity under any Act, including the transitional provisions in the Acts, during the financial year to which the report relates.

- (2) In addition, if, before the commencement, the Commission had not reported to the Minister under section 21 of the NTLC Act on the financial year immediately preceding the commencement:
- (a) the Director-General must, within 3 months after the commencement, give the Minister a report on the matters and including the information mentioned in section 21 of the NTLC Act; and
 - (b) the Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving the report.
- (3) In this section:

Commission means the Commission as defined in section 3 of the NTLC Act).

NTLC entity means the Commission, Chairman, Director or a Deputy Director (each as defined in section 3 of the NTLC Act).

25 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature because of the enactment of this Act or the *Licensing (Repeals and Consequential Amendments) Act 2014*.
- (2) The regulation may modify the transitional provisions in the Acts if, in the Administrator's opinion, it is necessary to do so in order to adequately or appropriately deal with the matter.
- (3) The regulation may have retrospective operation to a day not earlier than the commencement.
- (4) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (5) This section, and each regulation made under it, expires 1 year after the commencement.