

Serial 42
Liquor Legislation Amendment (Licensing) Bill 2018
Ms Fyles

A Bill for an Act to amend the *Liquor Act* and the *Liquor Regulations*

NORTHERN TERRITORY OF AUSTRALIA

LIQUOR LEGISLATION AMENDMENT (LICENSING) ACT 2018

Act No. [] of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2018

An Act to amend the *Liquor Act* and the *Liquor Regulations*

[Assented to [] 2018]
[Introduced [] 2018]

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 Legislation Amendment (Licensing) Act 2018*.

2 Commencement

This Act commences on the commencement of the *Liquor Commission Act 2018*.

Part 2 Amendment of Liquor Act

3 Act amended

This Part amends the *Liquor Act*.

4 Section 4 amended (Interpretation)

- (1) Section 4(1)

insert (in alphabetical order)

Commission means the Northern Territory Liquor Commission established by section 5 of the *Liquor Commission Act*.

community impact assessment guidelines, see section 6A(1).

public interest and community impact test, see section 6(2).

- (2) Section 4(1), definition **decision notice**, paragraph (b), after "this Act"

insert

, the *Liquor Commission Act*

5 Section 6 amended (Public interest criteria in respect of licence or licensed premises)

- (1) Section 6 heading

omit

criteria

insert

and community impact test

- (2) Section 6(1)

omit

all words after "the decision maker"

insert

must apply the **public interest and community impact test** set out in subsection (2) as relevant to the application or conditions.

- (3) Section 6(2)

omit

criteria are the following:

insert

public interest and community impact test requires consideration of the following objectives:

- (4) Section 6(2)(c)

omit

not to be

insert

not be

- (5) Section 6(2)(n)

omit

prices.

insert

prices;

- (6) After section 6(2)(n)

insert

(o) any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behaviour.

- (7) Section 6(3)

omit, insert

- (3) The decision maker must:

(a) consider the potential impact on the community in the area that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions of a licence and, in doing so, must have regard to:

(i) the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and

(ii) the cultural, recreational, employment or tourism impacts; and

-
- (iii) the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and
 - (iv) the density of existing liquor licences within the community area; and
 - (v) the volume of alcohol sales within the community area, and any increase in volume within the community area arising from the licence the subject of the application; and
 - (vi) any other prescribed matter; and
- (b) apply the community impact assessment guidelines.
- (4) The applicant in respect of an application being considered in accordance with this section must comply with any requirements set out in the community impact assessment guidelines, and any other requirements specified by the Commission for this section.

6 Sections 6A and 6B inserted

After section 6

insert

6A Community impact assessment guidelines

- (1) The Minister must, by *Gazette* notice, publish guidelines (the **community impact assessment guidelines**) for determining whether or not an application being considered or determined under section 6(1) satisfies the public interest and community impact test.
- (2) The community impact assessment guidelines may provide for:
- (a) matters relevant to an assessment of the likely impacts of an application on the community; and
 - (b) any other matter considered appropriate by the Commission.
- (3) The community impact assessment guidelines may set out requirements that apply for section 6(1) in relation to an application, including requirements that the applicant:
- (a) provide documents, material or other information; and
 - (b) provide information about:
 - (i) the suburb, council area or community area (for remote communities) in which the premises the subject of the application is proposed to be located to allow an

-
- assessment of any social impact on the relevant community; and
- (ii) any cultural, recreational, employment or tourism benefits for the local community area; and
 - (iii) how the proposed additional liquor outlet would benefit the local and broader community; and
- (c) take certain steps or carry out consultation in accordance with the guidelines.
- (4) For subsection (3)(b)(iii), additional services such as accommodation and dining facilities may be identified as benefits to the local and broader community, but the mere addition of the proposed liquor outlet is not taken to be a benefit for that provision.
- (5) The provisions of the community impact assessment guidelines may be of general, limited or varied application:
- (a) according to factors such as:
 - (i) the nature of the relevant application or licence; or
 - (ii) any other specified factor to which the provision is expressed to apply; or
 - (b) as determined by the Commission.

6B Onus on applicant

The applicant in relation to an application that is being considered or determined by the Commission under section 6(1) must satisfy the Commission that the approval of the application meets the public interest and community impact test set out in section 6(2).

7 Section 24 amended (Licences)

- (1) Section 24, before "Subject"

insert

(1)

- (2) Section 24

omit

Director-General

insert

Commission

- (3) Section 24, at the end

insert

- (2) Despite subsection (1), no new takeaway liquor licences may be issued during the moratorium period of 5 years from the commencement of the *Liquor Legislation Amendment (Licensing) Act 2018*.
- (3) A regulation, made before the expiry of the moratorium period, may extend, or further extend, the moratorium period by not more than 12 months at a time.
- (4) In this section:

takeaway liquor licence means a licence that permits the sale of liquor for consumption away from the licensed premises.

8 Section 26 amended (Application for licence)

Section 26(3)

omit

9 Section 26A amended (Disclosure of influential persons or potential beneficiaries)

Section 26A, at the end

insert

Note for section 26A

An affidavit as mentioned in this section is also required by section 32A(1A) when applying for variation of conditions, section 41(1A) when applying for transfer of a licence and section 46A(1A) when applying for substitution of premises.

10 Section 27 amended (Notice of application)

Section 27(3)

omit, insert

- (3) The Director-General must, as soon as reasonably practicable, inform the following that the application has been made:
- (a) the Chief Executive Officer of the Department of Health;

- (b) the Commissioner of Police;
- (c) if the application relates to premises within the area of a shire council or a regional council – the Chief Executive Officer of the council.

11 Section 28 amended (Assessment of applications)

- (1) Before section 28(2)

insert

- (1) The Director-General must refer the application, together with the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application, to the Commission for the Commission to decide whether to grant the application.

- (2) Section 28(2), (3), (3B) and (4)

omit (all references)

Director-General

insert

Commission

- (3) Section 28(3A)

omit

before making a decision on the application

12 Section 32A amended (Variation of conditions on application by licensee)

- (1) After section 32A(1)

insert

- (1A) A licensee who applies under subsection (1) for the variation of conditions must include with the application an affidavit as mentioned in section 26A as if applying for a new licence.

- (2) Section 32A(5)
omit, insert
- (5) The Director-General must, as soon as reasonably practicable, inform the following that the application has been made:
- (a) the Chief Executive Officer of the Department of Health;
 - (b) the Commissioner of Police;
 - (c) if the application relates to premises within the area of a shire council or a regional council – the Chief Executive Officer of the council.
- (3) Section 32A(6)
omit
before making a decision on the application
- (4) After section 32A(6)
insert
- (6AA) The Director-General must refer the application to the Commission for the Commission to decide whether to vary the conditions of the licence.
- (5) Section 32A(6A)
omit
Director-General must consider:
insert
Commission must consider:
- (aa) the affidavit required by subsection (1A); and
- (6) Section 32A(7), (7A), (7B), (8) and (9)
omit
Director-General
insert
Commission

13 Section 33AA amended (Minister's power to determine additional licence conditions)

(1) Section 33AA(3)(b)

omit (all references)

Director-General

insert

Commission

(2) Section 33AA(5), after "Director-General"

insert

or the Commission

14 Section 41 amended (Application for transfer)

(1) After section 41(1)

insert

(1A) A person who applies under subsection (1) for the transfer of a licence must include with the application an affidavit as mentioned in section 26A as if applying for a new licence.

(2) Section 41(2)

omit

, 26A

(3) After section 41(2)

insert

(3) The Director-General must, as soon as reasonably practicable, inform the following that the application has been made:

(a) the Chief Executive Officer of the Department of Health;

(b) the Commissioner of Police;

(c) if the application relates to premises within the area of a shire council or a regional council – the Chief Executive Officer of the council.

15 Section 42 inserted

After section 41

insert

42 Director-General to refer application to Commission

The Director-General must refer an application for transfer of a licence to the Commission for the Commission to decide whether to authorise the transfer.

16 Section 46A amended (Substitution of premises)

(1) After section 46A(1)

insert

(1A) A licensee who applies under subsection (1) for the substitution of new premises must include with the application an affidavit as mentioned in section 26A as if applying for a new licence.

(2) Section 46A(4)

omit, insert

(4) The Director-General must, as soon as reasonably practicable, inform the following that the application has been made:

- (a) the Chief Executive Officer of the Department of Health;
- (b) the Commissioner of Police;
- (c) if the application relates to premises within the area of a shire council or a regional council – the Chief Executive Officer of the council.

(3) Section 46A(5)

omit

before making a decision on the application

(4) After section 46A(5)

insert

(5AA) The Director-General must refer the application to the Commission for the Commission to decide whether to approve or refuse the application.

(5) Section 46A(5A)

omit

Director-General must consider:

insert

Commission must consider:

(aa) the affidavit required by subsection (1A); and

(6) Section 46A(6) and (7)

omit

Director-General

insert

Commission

17 Section 47F amended (Person may object to certain applications)

(1) Section 47F(1)(a)

omit

all words after "application"

insert

under section 26(1) for the grant of a licence;

(2) Section 47F(1)(c)

omit

all words after "application"

insert

under section 46A for the substitution of other premises for the premises specified in a licence;

18 Section 47H amended (Facts specified as constituting objection delimits inquiry etc. in relation to objection)

Section 47H, after "this Act"

insert

, the *Liquor Commission Act*

19 Section 49A amended (Licence may be suspended if drug premises order made)

(1) After section 49A(1)

insert

(1A) The Director-General must refer the application to the Commission for the Commission to decide whether to suspend the licence.

(2) Section 49A(2), (5), (6), (7)(b) and (8)

omit (all references)

Director-General

insert

Commission

(3) Section 49A(3)

omit

all words from "Director-General must" to "fit"

insert

Commission must have regard to the matters the Commission considers appropriate

(4) Section 49A(4)

omit

all words from "Director-General may" to "opinion"

insert

Commission may suspend the licence if the Commission considers

20 Part V inserted

After section 49A

insert

Part V Matters to be determined by Liquor Commission**Division 1 Preliminary matters****50 Director-General must refer certain matters to Commission**

The Director-General must refer the following matters to the Commission for hearing:

- (a) an application under section 26 for the grant of a licence;
- (b) an application under section 32A(1) for variation of the conditions of a licence;
- (c) an application under section 46A for substitution of other premises for the premises specified in a licence;
- (d) an application under section 119 for approval to make a material alteration to licensed premises, including:
 - (i) an alteration that increases the area used for the sale of liquor or the sale and consumption of liquor; and
 - (ii) any other applications where the Director-General considers it to be in the public interest that notice of the application be published;
- (e) a complaint against a licensee where the Director-General considers that disciplinary action should be taken under section 69.

51 Standing to appear at hearing before Commission (other than complaint)

The following persons, organisations and groups have standing to appear at a hearing by the Commission into a matter mentioned in section 50(a), (b), (c) or (d):

- (a) the applicant;
- (b) persons, organisations or groups who have lodged a valid objection in accordance with section 47F;

- (c) persons, organisations or groups who have not lodged a valid objection in accordance with section 47F but who are granted leave by the Commission to appear;
- (d) any other person requested by the Commission under section 120ZE to give specified information or documents to the Commission in relation to the matter.

52 Standing to appear at hearing before Commission – complaint

The following persons, organisations and groups have standing to appear at a hearing by the Commission into a complaint mentioned in section 50(e):

- (a) the licensee;
- (b) an employee of the licensee;
- (c) the complainant;
- (d) any other person requested by the Commission under section 120ZE to give specified information or documents to the Commission in relation to the complaint.

Division 2 Hearings by Commission

53 Procedural matters

- (1) In a hearing under this Part:
 - (a) the Chairperson must:
 - (i) fix the time and place for the hearing; and
 - (ii) give notice of the time and place, together with copies of all documents relating to the hearing that have been lodged with the Director-General, to the parties not less than 7 days before the hearing date; and
 - (b) the Commission:
 - (i) may require a person appearing before it to give evidence on oath; and
 - (ii) must give all parties an opportunity to be heard; and
 - (iii) is not bound by the rules of evidence but may inform itself in the manner it considers appropriate; and

- (iv) may conduct the hearing, or part of the hearing, by use of telephone or online facilities; and
 - (v) may adjourn the hearing from time to time and to another place.
- (2) A hearing must be conducted in public unless the Commission considers that a public hearing is likely to cause undue hardship to a person, in which case the Commission may direct that the hearing, or part of the hearing, is to be conducted in private.
- (3) A party may be represented at a hearing by a legal practitioner, or other person, who may examine witnesses and address the Commission on behalf of the person for whom the practitioner or other person appears.
- (4) A legal practitioner appearing for a party at a hearing has the same protection and immunity as a legal practitioner appearing in a proceeding in the Supreme Court.
- (5) A witness who gives evidence at a hearing has the same protection as a witness giving evidence in a proceeding in the Supreme Court.

21 Section 58 amended (Application for special licence)

- (1) Section 58(1)
- omit*
- shall
- insert*
- must
- (2) Section 58(2)
- omit*
- his
- insert*
- the Director-General's

(3) After section 58(2)

insert

- (3) The Director-General must refer the application to the Commission for the Commission to decide whether to issue, or refuse to issue, the special licence.

22 Section 65 amended (Object of Part)

Section 65(2)

omit, insert

- (2) The object is to be achieved by:
- (a) empowering the Director-General to do any of the following:
- (i) accept and investigate a complaint against a licensee;
 - (ii) dismiss a complaint against a licensee;
 - (iii) issue a formal warning to a licensee;
 - (iv) issue an infringement notice to a licensee;
 - (v) enter into an enforceable undertaking with a licensee;
 - (vi) refer a matter to the Commission; and
- (b) empowering the Commission to do any of the following:
- (i) determine a complaint against a licensee;
 - (ii) take disciplinary action against a licensee.

23 Section 67 amended (Meaning of *complaint*, *disciplinary action* and *ground for complaint or disciplinary action*)

Section 67(3)(l), after "Director-General"

insert

or the Commission

24 Part VII, Division 2 heading amended

Part VII, Division 2 heading, before "**Director-General's**"

insert

Commission and

25 Section 68 amended (Complaints)

- (1) Section 68(3)(b), after "vexatious"
insert
or no grounds exist for the complaint
- (2) Section 68(5)(b)(iii)
omit, insert
(iii) refer the complaint to the Commission for disciplinary action to be taken against the licensee in relation to that ground.
- (3) Section 68(6) and (7)
omit, insert
- (6) If the Director-General takes an action mentioned in subsection (5)(a) or (b)(ia), (i) or (ii), the Director-General must give a report to the Commission about the action taken.
- (7) A referral mentioned in subsection (5)(b)(iii) must include any comment given by the licensee as provided by subsection (4)(b) and the result of the investigation conducted by the Director-General.
- (8) The Director-General must, as soon as practicable after taking an action under subsection (5), notify the complainant of the action taken.

26 Part VII, Division 3 heading amended

Part VII, Division 3 heading

omit

Director-General's

insert

Commission's

27 Section 69 amended (Disciplinary action)

- (1) Section 69(1)
- omit*
- all words from "give" to "proposes"
- insert*
- refer the complaint to the Commission for the Commission to decide whether
- (2) Section 69(2) to (4)
- omit, insert*
- (2) The referral must specify details about:
- (a) the disciplinary action that is recommended; and
 - (b) the ground for the disciplinary action.
- (3) The Director-General must give the licensee details about the referral when referring the matter to the Commission.
- (4) The Commission must:
- (a) conduct a hearing for deciding the complaint; and
 - (b) on completing the hearing – by written notice to the Director-General and licensee:
 - (i) dismiss the complaint; or
 - (ii) uphold the complaint and take specified disciplinary action against the licensee (whether or not it is the disciplinary action recommended by the Director-General in the referral).
- (5) The Commission may take disciplinary action against the licensee only if the Commission is satisfied:
- (a) a ground for taking the disciplinary action exists; and
 - (b) the disciplinary action is appropriate in relation to that ground.

28 Section 79 replaced

Section 79

repeal, insert

79 Director-General to provide report to Commission

- (1) The Director-General must provide a report about the application or proposal to the Commission for the Commission to decide whether to make the declaration.
- (2) The report must include the following received by the Director-General in relation to the application or proposal:
 - (a) submissions made under section 78(2);
 - (b) opinions provided under section 78(3);
 - (c) advice provided under section 78(4).

29 Section 81 amended (Decision on whether to make declaration)

- (1) Section 81(1)

omit

the Director-General

insert

and the report by the Director-General, the Commission

- (2) Section 81(1A) and (2)

omit

Director-General

insert

Commission

- (3) Section 81(3)

omit

referred to in subsection (2)(b) shall

insert

mentioned in subsection (2)(b) must

30 Section 82 amended (Notice of declaration)

(1) Section 82(1)

omit

Director-General shall

insert

Commission must

(2) Section 82(1) and (2)(c)

omit

Director-General

insert

Commission

(3) Section 82(2)

omit

shall

insert

must

31 Section 86CA inserted

After section 86C

insert

86CA Director-General to refer application or proposal to Commission

On completion of the inquiry under section 86C, the Director-General must:

- (a) refer the matter to the Commission for the Commission to decide whether to make a declaration under section 86E(1); and

-
- (b) provide the Commission with a report of the results of the inquiry, including any submissions as mentioned in section 86C(4)(b).

32 Section 86D amended (Matters the Director-General must take into account)

- (1) Section 86D, heading

omit

Director-General

insert

Commission

- (2) Section 86D

omit

Director-General

insert

Commission

- (3) Section 86D(c), after "given to the"

insert

Commission by the

- (4) Section 86D(c)(v)

omit

- (5) After section 86D(c)

insert

(ca) the views of anyone else the Commission considers to have an interest in the area;

- (6) Section 86D(d)

omit

Director-General

insert

Commission

33 Section 119 amended (Approval of material alteration of licensed premises)

(1) Section 119(1)

omit

Director-General's

insert

Commission's

(2) Section 119(6)

omit

before making a decision on the application

(3) After section 119(6)

insert

(6A) The Director-General must refer the application to the Commission for the Commission to decide whether to approve the alterations to the licenced premises.

(4) Section 119(7), (8), (9) and (10)

omit (all references)

Director-General

insert

Commission

34 Section 120ZA replaced

Section 120ZA

repeal, insert

120ZA Meaning of *reviewable decision*

(1) A ***reviewable decision*** is a Commission decision that is specified in the Schedule.

(2) In this section:

Commission decision means a decision specified in the Schedule that is made by the Commission, whether as the original decision maker or on the review under Part 4 of the *Liquor Commission Act* of a Director-General decision.

delegate decision, see section 8(1) of the *Licensing (Director-General) Act*.

Director-General decision means a decision specified in the Schedule that is made by the Director-General, whether as the original decision maker or on the review under Part 3 of the *Licensing (Director-General) Act* of a delegate decision under this Act.

35 Section 120ZB amended (Meaning of *affected person*)

(1) Section 120ZB(1)

omit

mentioned in section 120ZA(a)

(2) section 120ZB(3)

omit

all words after "reviewable decision"

insert

if the person was:

- (a) an affected person under the *Licensing (Director-General) Act* for the decision that was reviewed under Part 3 of that Act; or
- (b) an affected person under the *Liquor Commission Act* for the decision that was reviewed under Part 4 of that Act.

36 Section 120ZE amended (Access to information)

Section 120ZE(4), definition **decision maker**, after "means"

insert

the Commission,

37 Section 123(1) amended (Return of licence, special licence or permit)

Section 123(1), after "Director-General" (*first reference*)

insert

or the Commission

38 Section 127 replaced

Section 127

repeal, insert

127 Commission or Director-General may extend or abridge time

- (1) The Commission or Director-General (as the case may be) may, at their discretion, extend or abridge a time specified by this Act as:
 - (a) a time within which an act or thing must be done; or
 - (b) a time before which an act or thing must not be done.
- (2) The Commission or Director-General may extend time under subsection (1) even if the time prescribed by this Act for the doing of an act or thing has expired.

39 Part XXV inserted

After section 167

insert

Part XXV Transitional matters for Liquor Legislation Amendment (Licensing) Act 2018**168 Definition**

In this Part:

commencement means the commencement of the *Liquor Legislation Amendment (Licensing) Act 2018*.

169 Application pending

- (1) This section applies if the Director-General has, before the commencement, received an application of a type mentioned in section 50(a), (b), (c) or (d), but at the commencement a decision has not been made whether to approve or refuse the application.

- (2) If the Director-General:
- (a) has held a hearing in relation to the matter – the Director-General must determine the application in accordance with this Act as in force immediately before the commencement; or
 - (b) has not held a hearing in relation to the matter – the Director-General must refer the application to the Commission for determination in accordance with this Act as in force after the commencement.

170 Complaint pending

- (1) This section applies if the Director-General has, before the commencement, received a complaint as mentioned in section 50(e), but at the commencement a decision has not been made in accordance with section 68(5) as to what action to take.
- (2) The Director-General must refer the complaint to the Commission for determination.

40 Act further amended

The Schedule has effect.

Part 3 Amendment of Liquor Regulations

41 Regulations amended

This Part amends the *Liquor Regulations*.

42 Part 5 repealed (Policy direction for Director-General)

Part 5

repeal

Part 4 Repeal of Act

43 Repeal of Act

This Act is repealed on the day after it commences.

Schedule Act further amended

section 40

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 29(1), (2) and (3)	Director-General <i>(all references)</i>	Commission
section 30	shall remain	remains
section 31(1) to (3) and (4)(a) and (b)	Director-General <i>(all references)</i>	Commission
section 31(4)(c)	Director-General notice in the <i>Gazette</i>	Commission <i>Gazette</i> notice
section 31(5)	Director-General Director-General's	Commission Commission's
section 31A(5)(e) and (8)	Director-General	Commission
section 33, heading	Director-General	Commission
section 33(1)	Director-General Director-General's	Commission Commission's
sections 33(2) to (4), 33F, 33G(1) to (3), 33H, 40(2) and 43(1) and (2)	Director-General <i>(all references)</i>	Commission
sections 45 and 59(1)	Director-General <i>(first reference)</i>	Commission
section 59(1)(a)	Director-General thinks fit	Commission considers appropriate
sections 59(2) and 59A(3)(b) and (5)	Director-General <i>(all references)</i>	Commission
section 63(1)	Director-General Director-General's	Commission Commission's

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
sections 63(2), 70(1) and (2)(c), 73(2) and 74(1) to (3)	Director-General <i>(all references)</i>	Commission
section 76(1)	shall	must
section 76AA, heading	Director-General	Commission
section 76AA(1)	Director-General Director-General's	Commission Commission's
section 76AA(2)(b)	Director-General's	Commission's
section 76AA(2)(c)	Director-General	Commission
section 83	shall have	has
section 84(1) and (2)	Director-General	Commission
section 85, heading	Director-General	Commission
section 85	Director-General <i>(all references)</i>	Commission
section 86E, heading	Director-General	Commission
sections 86E(1) and (3), 86F(1) and (2)(d) and 86G(1) and (2)	Director-General <i>(all references)</i>	Commission
section 86G(2)(b)	Director-General's	Commission's
sections 101AD(5)(b) and 101AH	Director-General <i>(all references)</i>	Commission
section 120(1)	Director-General <i>(all references)</i> Director-General's	Commission Commission's
section 120(2)	shall be and be	is and is
section 120ZC(2)	<i>Licensing (Director-General) Act</i>	<i>Liquor Commission Act</i>

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
sections 124(1) and (3) and 125A(1) and (3)	Director-General (<i>all references</i>)	Commission
