

Serial 95  
Liquor Bill 2019  
Ms Fyles

A Bill for an Act to govern the sale, supply, service, promotion and consumption of all forms of liquor and alcohol products for the purpose of minimising their associated harm and for related purposes



NORTHERN TERRITORY OF AUSTRALIA

LIQUOR ACT 2019

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Act No. [ ] of 2019

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. [ ] of 2019

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An Act to govern the sale, supply, service, promotion and consumption of all forms of liquor and alcohol products for the purpose of minimising their associated harm and for related purposes

[Assented to [ ] 2019]  
[Introduced [ ] 2019]

**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 Act 2019*.

### **2                      Commencement**

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

### **3                      Purposes**

- (1) The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.
- (2) The secondary purposes of this Act are:
  - (a) to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor; and

- (b) to regulate the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory; and
  - (c) to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and
  - (d) to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.
- (3) To achieve its purposes this Act:
- (a) regulates the sale, supply, service, promotion and consumption of liquor; and
  - (b) prohibits certain products and activities in relation to the sale, supply, service, promotion and consumption of liquor; and
  - (c) provides for the appointment of persons to administer and enforce compliance with this Act; and
  - (d) establishes offences and processes to enforce compliance with this Act.
- (4) A person exercising a power or performing a function under this Act must have regard to the primary and secondary purposes of this Act and must exercise the power and perform the function in a way consistent with those purposes.

#### 4 Interpretation

- (1) In this Act:

**alcohol-related violence** means the anti-social behaviour, disorder, harm and violence referred to in section 129(1).

**approved form** means a form approved by the Director of Licensing under section 314.

**assessor** means an assessor appointed under section 12.

**authority**, for a licence, means an authority listed in section 43.

**banned person**, for Part 9, see section 205.

**banning notice**, for Part 9, see section 205.

**banning offence**, for Part 9, see section 205.

**Chairperson** means the Chairperson of the Commission.

**child** means a person who is under 18 years of age.

**Commission** means the Northern Territory Liquor Commission established by section 5 of the *Liquor Commission Act 2018*.

**community** includes an individual member and a group of members of a community.

**community impact assessment guidelines** means guidelines issued by the Minister under section 46.

**complaint**, see section 157.

**credit card**, see section 39(5) of Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**customer**, for Part 11, Division 1, see section 246.

**debit card**, see section 39(6) of Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**decision notice**, for a decision, means a written notice setting out the matters required for a notice of decision under section 34 of the *Northern Territory Civil and Administrative Tribunal Act 2014*.

**Director** means the Director of Licensing appointed under section 9.

**disciplinary action** means action taken by the Commission under section 162(2).

**employee**, of a licensee, means a person engaged by the licensee, whether or not under a contract of employment, to perform work in relation to the licence.

**enforceable undertaking** means an undertaking referred to in section 156.

**excluded person**, for Part 9, see section 205.

**exclusion order**, for Part 9, see section 205.

**forfeiture offence** means offence against the following sections:

- (a) section 41;
- (b) section 42;
- (c) section 170;

(d) section 180;

(e) section 291.

**general restricted area** means an area declared to be a general restricted area under section 169.

**guardian**, for Part 13, Division 5, see section 292.

**harm minimisation audit**, see section 146.

**high risk area**, for Part 9, see section 205.

**infringement notice** means an infringement notice, within the meaning of the *Fines and Penalties (Recovery) Act 2001*, issued under the Regulations.

**inspector** means an inspector appointed under section 16.

**interstate retailer's licence** means a licence issued under section 40.

**intoxicated**, see section 5.

**licence** means a licence required under section 38 or 40.

**licensed premises** means the premises licensed under this Act for the sale, supply or service of liquor.

**licensee** means a person who holds a licence.

**liquor** means a substance to which this Act applies under section 6(1).

**liquor related offence**, for Part 11, Division 1, see section 246.

**liquor product** means the form in which liquor is sold to a retail purchaser, as identified by type, brand, name of producer, form of packaging and any other relevant characteristic.

*Examples for definition liquor product*

- 1 ZYX full-strength beer in cans.
- 2 ZYX Shiraz wine in bottles, vintage year.

**local council** means:

- (a) a local government council; or
- (b) a corporation performing the functions of a local government council.

**local liquor accord** means a written code of practice, memorandum of understanding or other arrangement entered into by the Director and licensees under Part 6, Division 2.

**material alteration** means any alteration referred to in section 91(1).

**minimum sale price** means the minimum price for a liquor product specified under section 118.

**permit** means a permit granted under section 198.

**Police Force** means the Police Force established by section 5(1) of the *Police Administration Act 1978*.

**premises** includes the following:

- (a) a building or part of a building;
- (b) a permanent or temporary structure on land;
- (c) land, whether or not there is a building on it;
- (d) a vessel, vehicle or aircraft.

**product label** means a label on, or forming part of, a liquor product that provides information about the alcohol content of the liquor.

**prohibited liquor**, for a general restricted area or a special restricted area, means liquor that is prohibited in that area.

**public interest and community impact requirements** means the public interest and community impact requirements listed in section 45.

**quarter** means the 3-month period ending on the last day of March, June, September or December in any year.

**restricted premises** means a place declared to be restricted premises under section 185.

**reviewable decision** means a decision of the Commission that is reviewable by NTCAT under section 31.

**sale price**, see section 117.

**sell** includes the following:

- (a) offer or expose for sale;
- (b) keep or have in possession for sale;

(c) supply for, or in expectation of, a reward or benefit.

**special restricted area** means an area declared to be a special restricted area under section 179.

**standard drink**, see section 114.

**supply** means to supply without the expectation of a reward or benefit.

**wholesale sale** means the sale of liquor to a person for resale to a consumer or retail purchaser.

*Note for subsection (1)*

*The Interpretation Act contains definitions and other provisions that may be relevant to this Act.*

- (2) Unless the contrary intention appears, a reference in this Act to an employee of a licensee includes a person who provides services to a licensee under a contract.

## 5 **Meaning of *intoxicated***

A person is to be taken to be **intoxicated** if:

- (a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and
- (b) it is reasonable in the circumstances to believe the impairment results from the person's consumption or use of liquor or a drug.

## 6 **Application**

- (1) This Act applies in relation to the following substances (**liquor**):
- (a) a beverage or other substance intended to be ingested, whether liquid, solid or gaseous, that contains more than 1.15% of ethyl alcohol by volume;
  - (b) a substance that is held out to be a beverage or ingestible substance specified in paragraph (a);
  - (c) a substance prescribed by regulation as liquor.
- (2) This Act does not apply in relation to ethyl alcohol used as a medicine or for medicinal purposes by, or under the direction of, a person registered under the Health Practitioner Regulation National Law to practise in the professions of medicine or pharmacy.



- (3) Despite subsection (1), Part 6, Division 5, applies to a substance that:
- (a) contains more than 1.15% of ethyl alcohol by volume; and
  - (b) is not intended to be ingested.
- (4) The following methods are to be used to determine the volume of ethyl alcohol in a substance:
- (a) for liquids and solids – measurement is to be made at 20°C;
  - (b) for gases or vapours – measurement is to be made while the substance is in a liquid state at the highest temperature at which it is a liquid.

## **7 Acquisitions to be on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

## **8 Application of Criminal Code**

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

*Note for section 8*

*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 Administration**

### **Division 1 Director of Licensing**

#### **9 Appointment**

- (1) The Minister must, by instrument, appoint a person to be the Director of Licensing.

- (2) The instrument appointing the Director must be published in the *Gazette*.

## **10 Powers and functions**

- (1) The Director has the following functions:
- (a) to monitor compliance with this Act, conduct investigations and handle complaints and other matters;
  - (b) to issue infringement notices and enforce this Act;
  - (c) to participate in proceedings before the Liquor Commission in relation to licences, authorities, local liquor accords, complaints and compliance;
  - (d) to provide educational and informative materials to wholesalers, licensees and the public regarding the operation of this Act and compliance with its provisions;
  - (e) to maintain the registers of wholesalers and licensees under sections 34 and 60;
  - (f) to supervise inspectors and the performance of their functions;
  - (g) any other functions conferred on the Director under this or any other Act.
- (2) The Director has the powers necessary to perform the Director's functions.

## **11 Delegation**

- (1) Subject to subsection (3), the Director may delegate any of the Director's powers and functions under this Act to a public sector employee.
- (2) The Director's powers and functions related to permits may also be delegated to one or more of the following:
- (a) the chief executive officer of a local council;
  - (b) a police officer who:
    - (i) is in charge of a police station; or
    - (ii) is of or above the rank of Senior Sergeant.
- (3) The review of a decision of the Director's delegate cannot be delegated.

## **Division 2 Assessors**

### **12 Appointment**

- (1) The Minister may, in writing, appoint a person to be an assessor under this Act.
- (2) An assessor has the following functions:
  - (a) to advise the Director, on request, regarding the administration and operation of this Act;
  - (b) to perform any other functions required in the assessor's appointment.

### **13 Terms of appointment**

An assessor holds office for the period specified in the assessor's appointment.

### **14 Conditions of appointment**

An assessor holds office on the conditions, including remuneration and expenses determined by the Administrator.

### **15 Conflicts of interest**

- (1) An assessor must disclose any personal interest the assessor has in any matter in which the assessor is giving or was requested to give advice.
- (2) The disclosure must be made to the Director and the Minister and include:
  - (a) the nature and extent of the personal interest; and
  - (b) how the personal interest relates to the matter referred to in subsection (1).
- (3) If an assessor has a personal interest in a matter, the assessor must not give advice in relation to the matter without the written approval of the Minister.
- (4) For this section, an assessor has a **personal interest** in a matter if the assessor:
  - (a) has a direct or indirect financial interest in the matter; or
  - (b) has a personal, professional, commercial or other relationship with a person or entity and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or

prevent the assessor from exercising independent judgment about the matter.

- (5) Despite subsection (4), an assessor is not considered to have a personal interest if it is an interest shared with the public generally or a section of the public.

### **Division 3 Inspectors**

#### **16 Appointment**

- (1) The Minister may, in writing, appoint a person to be an inspector under this Act.
- (2) An inspector must perform the duties required by this Act and any other duties assigned by the Director.

#### **17 Identity card**

- (1) The Director must give an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must:
  - (a) show a recent photograph of the inspector; and
  - (b) show the card's date of issue and expiry; and
  - (c) be signed by the inspector.
- (3) This section does not prevent the issue of a single identity card to a person for this and another Act.

#### **18 Return of identity card**

- (1) A person who ceases to be an inspector must return the person's identity card to the Director within 21 days after the cessation.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person has a reasonable excuse.

## **Division 4 Liquor Commission**

### **19 Commission decisions**

The Commission is responsible for deciding the following matters:

- (a) an application to issue a licence or an authority;
- (b) an application to vary the conditions of a licence or an authority;
- (c) an application to substitute other premises for the licensed premises;
- (d) an application to approve a material alteration to licensed premises;
- (e) an application to authorise the transfer a licence;
- (f) taking disciplinary action;
- (g) any other matter the Director refers to the Commission.

### **20 Codes of practice**

- (1) The Commission may establish codes of practice to regulate the following matters:
  - (a) the advertising and promotion of liquor by licensees;
  - (b) the conduct of business under a licence or an authority;
  - (c) the operation of licensed premises;
  - (d) the management of customers, purchasers and patrons by licensees, including the management of their safety;
  - (e) the establishment of ethical standards and practices for licensees.
- (2) The Commission must publish any code of practice it establishes in the way the Commission considers appropriate.
- (3) It is a condition of a licence that the licensee comply with the provisions of any code of practice established and published by the Commission.

### **21 Commission hearings**

- (1) The Commission may conduct a hearing in relation to any matter on which it is to make a decision under this Act.

- (2) Any hearing conducted by the Commission under this Act must be conducted in public unless the Commission is of the opinion that it is not appropriate in the circumstances, because:
- (a) a public hearing is likely to cause undue hardship to a person; or
  - (b) commercial-in-confidence information must be protected; or
  - (c) the matter is not controversial; or
  - (d) conducting the hearing in public would not be worthwhile.
- (3) If the Commission is of the opinion that a public hearing is not appropriate in the circumstances, the Commission may direct that the hearing, or part of the hearing, be conducted in private or by way of written submissions only.

## **22 Appearance at hearings**

- (1) The following persons and bodies may appear at a hearing conducted by the Commission regarding a matter referred to in section 19(a), (b), (c), (d) or (e):
- (a) the applicant;
  - (b) a person who or a body that lodged an objection in accordance with section 57;
  - (c) a person who or a body that has not lodged a valid objection in accordance with section 57 but who is granted leave by the Commission to appear;
  - (d) any other person requested by the Commission under section 311 or under section 22 of the *Liquor Commission Act 2018* to give specified information or documents to the Commission in relation to the matter.
- (2) The following may appear at a hearing conducted by the Commission regarding a matter referred to in section 19(f):
- (a) the licensee;
  - (b) any employee of the licensee involved in the matter;
  - (c) any complainant involved in the matter;
  - (d) the Director;

- (e) any other person requested by the Commission under section 311 or the *Liquor Commission Act 2018* to give specified information or documents to the Commission in relation to the matter.

## **23 Procedure for hearings**

- (1) The Chairperson must:
  - (a) fix the time and place for any hearing to be conducted by the Commission; and
  - (b) give notice of the time and place for the hearing to the parties.
- (2) In conducting the hearing, the Commission may:
  - (a) require a person appearing before it to give evidence on oath or affirmation; and
  - (b) require a party to provide copies of any relevant document to any other party; and
  - (c) determine which documents of the Commission or the Director are to be provided to the parties; and
  - (d) conduct the hearing, or part of the hearing, by use of telephone or online facilities; and
  - (e) adjourn the hearing from time to time and to another place.
- (3) The Commission is not bound by the rules of evidence and may inform itself in any manner it considers appropriate.
- (4) All parties to the hearing must have an opportunity to be heard in accordance with the rules and procedures of the Commission.
- (5) A party may be represented at the hearing by another person.
- (6) The Commission may make rules and procedures for the conduct of its hearings and all parties must, during the hearing, comply with those rules and procedures.

## **Division 5 Legal protections**

### **24 Protection at hearing**

- (1) A legal practitioner representing a party at a hearing conducted by the Commission has the same protection and immunity as a legal practitioner appearing in a proceeding in the Supreme Court.

- (2) A witness who gives evidence at a hearing conducted by the Commission has the same protection as a witness giving evidence in a proceeding in the Supreme Court.

## **25 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 Act as any of the following:
- (a) a member of the Commission;
  - (b) the Director;
  - (c) an inspector;
  - (d) an assessor;
  - (e) a police officer.
- (2) Subsection (1)(e) is subject to Part VIIA of the *Police Administration Act 1978* and only affects a police officer's civil liability.
- (3) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (4) 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.

## **Division 6 Review of delegate's decisions**

### **26 Notice of delegate decision**

- (1) As soon as practicable after making a decision, a delegate of the Director must give a written notice of the decision to the person (**affected person**) referred to in section 27(1).
- (2) The notice must state the following:
- (a) the delegate's decision and the reasons for it;
  - (b) the affected person's right to apply for a review of the decision under section 27;
  - (c) the period allowed for applying for a review.



## **27 Application for review**

- (1) The following persons may apply to the Director for a review of a decision made by the Director's delegate:
  - (a) in the case of a decision regarding a licensee or a licensee's licence, authority or licensed premises – the licensee;
  - (b) in the case of a decision regarding an application – the applicant;
  - (c) in the case of a submission, complaint or objection that was the subject of a decision – the person who made the submission, complaint or objection.
- (2) The application for review must be lodged with the Director:
  - (a) within 28 days after written notice of the decision is given to the person; or
  - (b) any later date allowed by the Director.
- (3) The application must:
  - (a) be in the form approved by the Director; and
  - (b) state the grounds for the review and the facts relied on to establish the grounds.

## **28 Effect of application for review**

- (1) An application for review does not stay the operation of the delegate's decision.
- (2) Despite subsection (1), the Director may stay the operation of the delegate's decision pending completion of the review.
- (3) The Director may reject an application for review if satisfied:
  - (a) the application is frivolous or vexatious; or
  - (b) no grounds exist for the application.

## **29 Reviewing delegate's decision**

- (1) Unless the application is rejected under section 28(3), the Director must review the delegate's decision within 28 days after the application is lodged.

- (2) In reviewing the delegate's decision, the Director must:
  - (a) take into account any matter that was required when the decision was made; and
  - (b) follow the procedures for review determined by the Director; and
  - (c) comply with the rules of natural justice.
- (3) After reviewing the delegate decision, the Director must:
  - (a) affirm the decision; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute a new decision.

### **30 Decision notice**

As soon as practicable after making a decision under section 29, the Director must give a decision notice to the following persons:

- (a) the applicant for the review;
- (b) each person listed in section 27(1) who had a right to apply for a review of the decision.

## **Division 7 Review of Commission's decisions**

### **31 Review by NTCAT**

- (1) Any decision of the Commission for which a decision notice is required under this Act is reviewable by NTCAT.
- (2) The following persons may apply to NTCAT for a review of the decision:
  - (a) in all cases – the Director;
  - (b) in the case of a decision regarding a licensee or a licensee's licence, authority or licensed premises – the licensee;
  - (c) in the case of a decision regarding an application – the applicant;
  - (d) in the case of a submission, complaint or objection that was the subject of a decision – the person who made the submission, complaint or objection;

- (e) in the case of a decision of the Commission under Part 4 of the *Liquor Commission Act 2018* – any affected person as defined in section 28 of that Act>
- (3) The *Liquor Commission Act 2018* and this Act are both relevant Acts for the *Northern Territory Civil and Administrative Tribunal Act 2014* for the purposes of a review of a decision under the *Liquor Commission Act 2018*.

## **Part 3 Registrations, licences and authorities**

### **Division 1 Wholesales of liquor**

#### **32 Registration of wholesaler**

A person must not wholesale sell liquor for delivery to a person in the Territory unless the person is registered as a wholesaler of liquor under section 33.

#### **33 Application for registration**

- (1) A person may lodge with the Director an application for registration as a wholesaler of liquor.
- (2) A licensee is not eligible to be registered as a wholesaler under this section.
- (3) A wholesaler may be registered for a period of 1 year, 3 years or 5 years.
- (4) The application must:
  - (a) be in the approved form; and
  - (b) specify the desired registration period; and
  - (c) be accompanied by the prescribed fee.
- (5) The Director may require an applicant to provide documents, information, samples or other things the Director considers relevant to the application.
- (6) After considering the application, the Director must decide whether to:
  - (a) register the applicant as a wholesaler, with or without conditions; or
  - (b) refuse to register the applicant.

- (7) As soon as practicable after making a decision under subsection (6), the Director must give a decision notice to the applicant.
- (8) A wholesaler's registration starts on the date of registration and ends on the expiry of the registration period.
- (9) A wholesaler's registration may be renewed by making a new application for registration.

#### **34 Register of wholesalers**

The Director must keep a register of wholesalers that includes the following information:

- (a) the name and address of the wholesaler;
- (b) the date the wholesaler was registered;
- (c) the period of registration for the wholesaler.

#### **35 Unauthorised wholesaler**

A person commits an offence if:

- (a) the person intentionally sells liquor to a person; and
- (b) the sale is a wholesale sale; and
- (c) the person is not:
  - (i) registered as a wholesaler of liquor under section 33; or
  - (ii) a licensee with a wholesaler's authority; and
- (d) the person is reckless in relation to the circumstance specified in paragraphs (b) and (c).

Maximum penalty: 250 penalty units or imprisonment for 12 months.

#### **36 Keeping records of liquor sales**

- (1) A registered wholesaler must, in accordance with the regulations, keep a written record of information prescribed by regulation in relation to the wholesaler's sales of liquor in the Territory.
- (2) A registered wholesaler must retain each record for at least 3 years, unless exempted by the Director.

- (3) A registered wholesaler commits an offence if the wholesaler contravenes subsection (1) or (2).

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

### **37 Wholesaler's quarterly return**

- (1) Within 28 days after the end of each quarter, a registered wholesaler must lodge with the Director a return for that quarter in accordance with subsection (2).

- (2) The return must:

- (a) be in the approved form; and  
(b) provide the information prescribed by regulation about all sales of liquor made by the registered wholesaler during the quarter.

- (3) A registered wholesaler commits an offence if the registered wholesaler contravenes subsection (1) or (2).

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

## **Division 2 Sale, supply and service of liquor**

### **38 Requirement for licence**

- (1) Subject to section 39, a licence is required for the following:
- (a) to sell liquor in the Territory;
- (b) to sell liquor from a place outside the Territory for delivery to a person or place in the Territory;
- (c) to supply or serve liquor on or in premises in the Territory used or occupied for a commercial or business purpose.
- (2) A licence, other than an interstate retailer's licence, only authorises the licensee to sell, supply or serve liquor in accordance with the particular authority or authorities issued to the licensee in conjunction with the licence.

### 39 Exceptions from licence requirement

- (1) No licence is required for the sale, supply or service of liquor in any of the following places:
  - (a) at a naval, army or air force mess, canteen, camp or post with the authority of the naval, army or air force authorities;
  - (b) at a canteen or other facility established, conducted, maintained or operated in accordance with regulations made under the *Defence Act 1903* (Cth);
  - (c) within the precincts of the Legislative Assembly on the authority of the Speaker of the Legislative Assembly;
  - (d) on board a vessel travelling to or from a port in the Territory on a voyage of not less than 150 km, or while that vessel is berthed or moored in a port in the Territory, with the authority of the master of the vessel;
  - (e) on an aircraft in flight with the authority of the pilot;
  - (f) on a train during a journey with the authority of the train's catering officer;
  - (g) in the Joint Defence Facility Pine Gap Area established under the *Defence (Special Undertakings) Act 1952* (Cth);
  - (h) a place prescribed by regulation.
- (2) No licence is required for the sale, supply or service of the following substances in the following circumstances:
  - (a) not more than 2 standard drinks in a day to a resident in a retirement village or residential care facility by or under the authority of the body responsible for administering the village or facility;
  - (b) not more than 2 standard drinks in a day to a patient in a hospital by or under the authority of the body responsible for administering the hospital;
  - (c) not more than 2 standard drinks in a day to a customer by a business, other than a licensee;
  - (d) one liquor product sold as part of a gift basket of flowers or food;
  - (e) liquor served by an employer to employees and their families and guests;

- (f) flavour extract in containers not exceeding 50 ml;
- (g) a substance in circumstances prescribed by regulation.

*Example for subsection (2)(c)*

*Serving a glass of wine to a customer at a hair salon.*

*Example for subsection (2)(e)*

*A business's annual holiday party.*

*Example for subsection (2)(f)*

*Vanilla extract, which is used for cooking, in a 50 ml bottle.*

- (3) No licence is required for the following transactions:
  - (a) the sale of liquor forfeited under a law of the Territory;
  - (b) the sale of liquor at an auction conducted by a person who holds a licence issued under the *Auctioneers Act 1935*;
  - (c) the wholesale sale of liquor to a licensee by a person who is registered as wholesaler under section 33;
  - (d) the sale of liquor at a duty free shop in accordance with a permission given under section 96A or 96B of the *Customs Act 1901* (Cth);
  - (e) the wholesale sale of flavour extract;
  - (f) a transaction prescribed by regulation.

#### **40 Interstate retailer's licence**

- (1) An interstate retailer's licence is required to sell liquor from a place outside the Territory for delivery to a person or location in the Territory.
- (2) To be eligible for an interstate retailer's licence, the person:
  - (a) must be a retailer authorised under the law of a State or another Territory to sell liquor; and
  - (b) must not hold any other licence under this Act; and
  - (c) must not operate licensed premises in the Territory.
- (3) The Commission must grant an interstate retailer's licence to a person if:
  - (a) the person is eligible under subsection (2); and

- (b) the person informs the Commission that the person intends to sell liquor from a place outside the Territory for delivery to a person or location in the Territory; and
  - (c) the person provides the Commission with a copy of the State or other Territory authorisation under which the retailer sells liquor.
- (4) A person who complies with subsection (3)(a) to (c) is taken to be in compliance with this Division until the Commission determines whether to issue the person with an interstate retailer's licence under subsection (3).
- (5) The procedure in this section is not an application for a licence and no application fee or annual fee is payable for an interstate retailer's licence.
- (6) Sections 45 to 56 do not apply in relation to the issue of an interstate retailer's licence.
- (7) The identification system requirements under Part 6, Division 1, do not apply to an interstate retailer's licence, unless the Commission makes the licence subject to a condition that provides otherwise.
- (8) An interstate retailer's licence:
- (a) is subject to the same terms and conditions that apply to the licensee under the licensee's State or other Territory authorisation to sell liquor; and
  - (b) does not purport to authorise any conduct outside the Territory that would be beyond the power of the Legislative Assembly to authorise.

#### **41 Unauthorised sale of liquor**

- (1) A person commits an offence if:
- (a) the person intentionally sells liquor; and
  - (b) the sale is not exempted from the requirement for a licence under section 39; and
  - (c) the sale is not authorised by a licence and an authority and the person is reckless in relation to that circumstance.

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



- (2) A person commits an offence if:
- (a) the person intentionally sells liquor from a place outside the Territory for delivery to a person or location in the Territory; and
  - (b) the sale is not exempted from the requirement for a licence under section 39; and
  - (c) the sale is not authorised by an interstate retailer's licence and the person is reckless in relation to that circumstance.

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

- (3) To avoid doubt, a sale referred to in subsection (2) includes a sale that takes place wholly or partly outside the Territory.
- (4) Strict liability applies to subsections (1)(b) and (2)(b).

#### **42 Unauthorised supply or service of liquor**

- (1) A person commits an offence if:
- (a) the person intentionally supplies or serves liquor; and
  - (b) the supply or service is on or in premises used or occupied for a commercial or business purpose and the person is reckless in relation to that circumstance; and
  - (c) the supply or service is not exempted from the requirement for a licence under section 39; and
  - (d) the supply or service is not authorised by a licence and an authority and the person is reckless in relation to that circumstance.

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

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

#### **43 Authorities attached to licence**

- (1) The following authorities for licences are established:
- (a) small bar authority, which authorises the licensee to sell liquor for consumption on or in licensed premises with a maximum capacity of 100 patrons, with or without the consumption of food;

- (b) restaurant authority, which authorises the licensee to sell liquor to patrons for consumption on or in the licensed premises with the consumption of food;
- (c) restaurant bar authority, which in conjunction with a restaurant authority authorises the licensee to sell liquor to patrons for consumption on or in the licensed premises without the consumption of food;
- (d) BYO authority, which authorises the licensee to serve liquor brought by a patron for consumption with food provided by the licensee on or in the licensed premises;
- (e) takeaway authority, which authorises the licensee to sell liquor products to customers for consumption away from the licensed premises;
- (f) lodging authority, which authorises the licensee to sell liquor to guests staying at the licensee's accommodations for consumption on or off the licensed premises;
- (g) wayside inn authority, which authorises the licensee to sell liquor to guests staying at the licensee's accommodations and patrons who are not guests for consumption on or in the licensed premises;
- (h) casino authority, which authorises the licensee to sell liquor to patrons in a casino for consumption on or in the licensed premises;
- (i) special venture authority, which authorises the licensee to sell liquor to patrons as an ancillary part of services provided to the patrons by the licensee;
- (j) producers' authority, which authorises the licensee to sell amounts of the liquor prescribed by regulation produced by the licensee to patrons visiting the producer's manufacturing premises for consumption on or off the premises;
- (k) club authority, which authorises the licensee to sell liquor to members of a club operated by the licensee, guests of members and visitors to the club, for consumption on or in the licensed premises and which does authorise the licensee to hold a licence under the *Gaming Control Act 1993*;
- (l) community club authority, which authorises the licensee to sell liquor to members of a club operated by the licensee, guests of members and visitors of the club, for consumption on or in the licensed premises but which does not authorise the licensee to hold a licence under the *Gaming Control Act 1993*;

- (m) catering authority, which authorises the licensee to sell, supply or serve liquor to patrons for consumption, in conjunction with food being catered by the licensee, on or in premises with the consent of the owner or occupier of the premises;
- (n) public bar authority, which authorises the licensee to sell liquor to patrons for consumption on or in the licensed premises;
- (o) wholesale authority, which authorises the licensee with another authority to sell liquor to other licensees;
- (p) major event authority, which authorises the licensee to sell liquor, for consumption on or in licensed premises, to patrons attending a single event that is expected:
  - (i) to have at least 1 500 attendees; or
  - (ii) to have a significant effect on public transport or local amenities; or
  - (iii) to require more than a usual amount of emergency services or police supervision;
- (q) community event authority, which authorises the licensee to sell liquor to patrons at events organised by the licensee on a regular but infrequent basis for consumption on or in the licensed premises;
- (r) grocery store authority, which authorises the licensee to sell liquor products to customers for consumption away from the licensed premises, which are part of, or attached to, the licensee's primary business of selling groceries or other non-liquor items;
- (s) special event authority, which authorises the licensee to sell liquor, for consumption on or in licensed premises, to patrons attending a single event that is reasonably expected to have less than 1 500 attendees;
- (t) late night authority, which in conjunction with a small bar authority or public bar authority authorises the licensee to sell liquor to patrons for consumption on or in the licensed premises during one of the following periods:
  - (i) from 12 midnight to 2 am;
  - (ii) from 12 midnight to 4 am;

- (u) live entertainment authority, which in conjunction with a small bar authority or public bar authority authorises the licensee to provide live entertainment to patrons on or in the licensed premises;
- (v) adult entertainment authority, which in conjunction with a small bar authority or public bar authority authorises the licensee to have employees who work dressed in sexualised clothing or topless;
- (w) adult entertainment R-rated authority, which is an adult entertainment authority that authorises the licensee to also provide strip shows, R-rated entertainment and full nudity on or in the licensed premises;
- (x) adult entertainment explicit authority, which is an adult entertainment authority that authorises the licensee to also provide general and private strip shows, R-rated entertainment, fully nude staff or entertainers, non-sexual contact between entertainers and patrons and voluntary audience participation in the entertainment on or in the licensed premises.

*Notes for subsection (1)*

- 1 Section 80 limits the issuance of new grocery store authorities.
- 2 Section 80 limits the issuance of new takeaway authorities until at least after 31 August 2023.

*Examples for subsection (1)*

- 1 A special event authority could be a dinner cruise and outback safari trip.
  - 2 A producer's authority could be a brewery that sells samples of its beer and limited cartons of its beer to people visiting the brewery.
  - 3 A major event authority could be a large music festival.
  - 4 Special event authority could be a cinema or bowling alley that offers liquor to patrons.
  - 5 Live entertainment could be music bands, DJs, poetry readings.
  - 6 Sexualised clothing could be see-through clothing or lingerie.
- (2) More than one authority may be issued to one licensee and attached to one licence.

## **Division 3 Issuing licences and authorities**

### **44 Commission issues licences and authorities**

The Commission may issue a licence and one or more authorities to an applicant in accordance with this Division.

**45 Public interest and community impact**

- (1) The Commission may only issue a licence or an authority if satisfied that:
  - (a) the applicant is a fit and proper person; and
  - (b) issuing the licence or authority is in the public interest; and
  - (c) the licence or authority will not have a significant adverse impact on the community.
  
- (2) To determine whether issuing a licence or an authority is in the public interest, the Commission must consider how it would advance the following objectives:
  - (a) minimising the harm or ill-health caused to people, or a group of people, by the consumption of liquor;
  - (b) ensuring liquor is sold, supplied, served and consumed on or in licensed premises in a responsible manner;
  - (c) safeguarding public order and safety, particularly when large numbers of people would be attracted to licensed premises or an area adjacent to those premises;
  - (d) protecting the safety, health and welfare of people who use licensed premises;
  - (e) increasing cultural, recreational, employment or tourism benefits for the local community area;
  - (f) promoting compliance with this Act and other relevant laws of the Territory;
  - (g) ensuring each person involved in the business conducted at licensed premises receives training suitable to the person's role in the business;
  - (h) preventing the giving of credit in sales of liquor to people;
  - (i) preventing practices that encourage irresponsible drinking;
  - (j) reducing or limiting increases in anti-social behaviour.

- (3) To determine whether issuing a licence or an authority would have a significant adverse impact on the community, the Commission must consider the following:
- (a) the risk of undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity of the proposed licensed premises or who are using, or travelling to or from, a place of public worship, a hospital or a school;
  - (b) the geographic area that would be affected;
  - (c) the risk of harm from the excessive or inappropriate consumption of liquor;
  - (d) the people or community who would be affected;
  - (e) the effect on culture, recreation, employment and tourism;
  - (f) the effect on social amenities and public health;
  - (g) the ratio of existing liquor licences and authorities in the community to the population of the community;
  - (h) the effect of the volume of liquor sales on the community;
  - (i) the community impact assessment guidelines issued under section 46;
  - (j) any other matter prescribed by regulation.
- (4) The Commission may mitigate a possible adverse impact on the community by issuing a licence or an authority with conditions that limit any of the following:
- (a) the kinds of liquor that may be sold or served;
  - (b) the manner in which liquor may be sold or served;
  - (c) the number or types of containers in which liquor may be sold or served;
  - (d) the days and times when liquor may be sold or served;
  - (e) the number of persons who may be on or in licensed premises, a part of licensed premises or an adjacent area that is under the control of the licensee;
  - (f) the nature of entertainment that may be provided on or in licensed premises or in an adjacent area that is under the control of the licensee;

- (g) any promotional activities in which drinks are offered on a complimentary basis or at reduced prices.

#### **46 Community impact assessment guidelines**

- (1) The Minister must, by *Gazette* notice, issue community impact assessment guidelines to assist in the assessment of the potential impact of issuing a licence or an authority on the community.
- (2) The Minister may, in the community impact assessment guidelines, require an applicant for a licence or an authority to provide documents or other information, including information about:
  - (a) the suburb, local government area or other area in which the proposed licensed premises would be located; and
  - (b) the benefits the proposed licence or authority would provide to the local and broader community; and
  - (c) the process and result of consultation on the application.
- (3) The mere addition of a new licence or licensed premises in a community is not taken to be a benefit to the community.
- (4) The community impact assessment guidelines may have general, limited or varied application.

#### **47 Onus on applicant**

- (1) An applicant for a licence or an authority must satisfy the Commission that issuing the licence or authority:
  - (a) is in the public interest; and
  - (b) will not have a significant adverse impact on the community.
- (2) An applicant must:
  - (a) provide any information to assess the application required by the Commission, the Director and the community impact assessment guidelines; and
  - (b) conduct any consultation on the application required by the Commission and the community impact assessment guidelines; and
  - (c) comply with any other application requirement determined by the Commission.
- (3) A licensee who is applying for an authority is assumed to be a fit and proper person, in the absence of evidence to the contrary.

#### **48 Application for licence and authority**

- (1) Subject to section 49, a person may apply to the Commission for a licence or an authority.
- (2) An application for a licence or an authority must be lodged with the Director in the approved form and manner.
- (3) An application must be accompanied by the following:
  - (a) an affidavit made under section 50;
  - (b) a draft of the notice of the application required under section 53;
  - (c) the evidence necessary to satisfy the onus specified in section 47;
  - (d) a summary of the evidence referred to in paragraph (c) that is suitable for publication;
  - (e) the application fee prescribed by regulation.
- (4) An application may be made by a person who:
  - (a) is building or developing premises; and
  - (b) intends to transfer the licence to another person who will later occupy the premises for the purpose of selling, supplying or serving liquor.

#### **49 Licensing of body corporate**

- (1) The only body corporate that may apply for and hold a licence is a corporation within the meaning of section 57A of the Corporations Act 2001.
- (2) A body corporate that applies for a licence or an authority must designate an individual to be the licensee's nominee, unless the applicant is one referred to in section 48(4).
- (3) For the purposes of an objection under Division 4, the nominee is taken to be a joint applicant for the licence or authority.
- (4) If a licence is issued to a body corporate:
  - (a) the name of the nominee must also be endorsed on the licence; and
  - (b) the body corporate may change the nominee only with the written approval of the Director; and



- (c) the nominee is taken to be a joint licensee with the body corporate of the licensed premises.
- (5) If a nominee is unable or unwilling to manage the business of the licensee, the body corporate must not sell liquor until:
  - (a) the nominee is able or willing to resume conduct of the business of the licensee; or
  - (b) a new nominee is designated by the licensee and approved in writing by the Director.

## **50 Disclosure of persons of influence and potential beneficiaries**

- (1) An applicant for a licence or an authority must make an affidavit disclosing each person who, if the licence is issued, may:
  - (a) be able to influence the applicant; or
  - (b) expect a direct or indirect benefit from the applicant.
- (2) If the applicant is a body corporate, the affidavit must be made by:
  - (a) the principal executive officer of the body corporate; or
  - (b) if that officer does not have knowledge of the relevant facts – another person who has knowledge of the relevant facts and is authorised by the body corporate to make the affidavit.
- (3) Subject to subsections (4) and (5), the affidavit must disclose the following:
  - (a) each person who may, by any lease, agreement or other arrangement, be able to influence any decision made by the applicant in relation to the licence or authority;
  - (b) each person, other than the applicant, who may, by any lease, agreement or other arrangement, expect any direct or indirect benefit from the applicant in relation to the licence or authority;
  - (c) the full name, address and date of birth of any individual disclosed under paragraph (a) or (b);
  - (d) the name of any body corporate disclosed under paragraph (a) or (b), and the full name, address and date of birth of the secretary and each executive officer of the body corporate;

- (e) if an unincorporated body of persons is disclosed under paragraph (a) or (b):
    - (i) the name of the body; and
    - (ii) the full name, address and date of birth of the secretary and each executive officer of the body; and
    - (iii) details of any objectives of the body; and
    - (iv) whether the body is a non-proprietary body or it conducts its business in the same way as a non-proprietary body;
  - (f) the complete particulars of any lease, agreement or other arrangement disclosed under paragraph (a) or (b);
  - (g) if the applicant is a body corporate – the names of all persons who have a substantial holding, within the meaning of section 9 of the Corporations Act 2001 in the body corporate.
- (4) If the applicant is a body corporate, the affidavit need not disclose a person who is a member or shareholder of the body corporate carrying out the duties or exercising the normal rights of the person in that capacity.
- (5) The affidavit does not need not disclose the following:
- (a) a contract, agreement or other arrangement entered into for the purposes of this Act or the regulations that is approved by the Director;
  - (b) any thing exempted from disclosure by the regulations.

*Note for section 50*

*This affidavit is also required by section 68 when applying for transfer of a licence and section 107 when applying for variation of conditions.*

## **51 Associates of a person**

- (1) For the purpose of determining an application for a licence or an authority, the following are taken to be associates of a person:
- (a) the person's spouse or de facto partner;
  - (b) a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person;
  - (c) a business partner of the person;
  - (d) a body corporate of which the person is an executive officer;

- (e) if the person is a body corporate:
    - (i) an executive officer of the body corporate; and
    - (ii) a person who holds a controlling interest in the body corporate;
  - (f) a person who, within the 12 months before the application, provided advice to the person, for a fee or reward, in relation to the sale of liquor;
  - (g) an employee or employer of the person;
  - (h) an officer or employee of a body corporate of which the person is an officer or employee;
  - (i) an employee of an individual who employs the person;
  - (j) a body corporate that is accustomed or under an obligation to act in accordance with the directions, instructions or wishes of the person;
  - (k) a body corporate on whose directions, instructions or wishes the person is accustomed or under an obligation to act;
  - (l) a body corporate in which the person holds a controlling interest;
  - (m) a person disclosed in an affidavit made by the person under section 50;
  - (n) a person who is an associate of a person referred to in paragraphs (a) to (m).
- (2) For subsection (1)(j), a body corporate is taken to be accustomed or under an obligation if its executive officers are accustomed or under an obligation, whether formally or informally.
- (3) For subsection (1)(e)(ii) and (l), a person is taken to hold a controlling interest in a body corporate if that person, alone or together with one or more associates of that person, is in a position to control at least 15% of the voting power in the body corporate or holds interests in at least 15% of the issued shares in the body corporate.

## **52 Acceptance of application**

- (1) Within 21 days of an application being lodged, the Director must:
  - (a) if it complies with the requirements in section 48 – accept the application for consideration; or
  - (b) if it does not comply with the requirements of section 48 – refuse to accept the application; or
  - (c) if specified changes to comply with the requirements in section 48 are made to it within 28 days, or such longer period as the Director allows – accept the application provisionally.
- (2) As soon as practicable after making a decision under subsection (1), the Director must give a decision notice to the applicant.
- (3) An application that is accepted provisionally is to be considered accepted if the specified changes are made to it within the specified time, otherwise it is to be taken as refused.
- (4) Within 14 days of accepting an application, the Director must inform the following that an application has been made and accepted:
  - (a) the Chief Executive Officer of the Agency administering the *Public and Environmental Health Act 2011*;
  - (b) the Commissioner of Police;
  - (c) if the application relates to premises within a local government area – the chief executive officer of the local council.

## **53 Public notice of application**

- (1) Within 14 days of accepting an application, the Director must give the applicant a written notice that:
  - (a) explains the public notice requirements of this section; and
  - (b) gives directions on the content of the public notice; and
  - (c) provides details on any changes that must be made to the draft public notice submitted by the applicant.
- (2) The Director may exempt an applicant from the public notice requirements of this section if the application is for:
  - (a) a licence with only a community event authority; or
  - (b) a licence with only a special event authority.

- (3) Unless exempt under subsection (2), an applicant for a licence or an authority must, in accordance with the directions of the Director:
  - (a) post a notice of the application at the place of the proposed premises; and
  - (b) publish a notice of the application within 28 days of receiving the notice under subsection (1); and
  - (c) publish a second notice of the application within 42 days of receiving the notice under subsection (1); and
  - (d) post such other notices as the Director considers necessary to properly publicise the application.
- (4) Each notice of the application must:
  - (a) clearly identify the location of the proposed licensed premises; and
  - (b) list which authorities are being applied for; and
  - (c) include a detailed description of the business proposed to be conducted; and
  - (d) include a statement that copies of the summary of the evidence referred to in section 48(3)(c) are available from the Director; and
  - (e) contain any other particulars required by the Director.
- (5) The Director may extend the 14-day period referred to in subsection (1) if the Director needs more time.
- (6) The Director must provide a copy of the summary of the evidence referred to in section 48(3)(c) to any person who requests a copy.

#### **54 Investigation of applications**

- (1) The Director may conduct an investigation into an application as the Director considers appropriate.
- (2) If an objection to the application is lodged under section 57, the Director must comply with section 58.
- (3) Any investigation conducted by the Director must be concluded within 90 days after the day the application is accepted.

## **55 Consideration of applications**

- (1) The Director must refer any application accepted by the Director to the Commission.
- (2) The application must be referred at the later of the following:
  - (a) if no objection is made to the application within the time allowed under section 57 – 7 days after the expiry of the time allowed under that section;
  - (b) if an objection to the application is made within the time allowed under section 57 – the expiry of the period allowed for the applicant's response to the complaint under section 58.
- (3) When considering an application for a licence or an authority, the Commission must also consider the following:
  - (a) the applicant's affidavit required by section 50;
  - (b) the results of any investigation conducted into the application under section 54;
  - (c) any objection to the application made under section 57;
  - (d) any response provided by the applicant under section 58;
  - (e) the suitability of the premises to be licensed, having regard to any law of the Territory regulating the sale, supply, service or consumption of liquor or the location, construction or facilities of those premises;
  - (f) if the applicant is an individual – the financial stability, general reputation and character of the applicant;
  - (g) if the applicant is a body corporate:
    - (i) the financial stability and business reputation of the body corporate; and
    - (ii) the general reputation and character of the secretary and executive officers of the body corporate;
  - (h) if the applicant is a federation of unincorporated bodies:
    - (i) the financial stability and business reputation of each constituent body; and
    - (ii) the general reputation and character of the secretary and executive officers of each constituent body;

- (i) whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence;
  - (j) whether each associate of the applicant is a fit and proper person to be an associate of a licensee.
- (4) In assessing whether a person is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by regulation.
- (5) The Commission may require an applicant, including the nominee designated by an applicant, to provide the Commission with the additional documents or information that the Commission considers necessary to make a proper assessment of the application.

## **56 Decision to issue licence or authority**

- (1) After considering the application, the Commission must, in accordance with section 45, decide whether to:
- (a) issue the licence or authority, with or without additional conditions; or
  - (b) refuse to issue the licence or authority.
- (2) The Commission must make a decision under subsection (1) within 28 days after the later of the following:
- (a) if the application was exempted from public notice by the Director under section 53(2) – the day the application was accepted;
  - (b) if no objection is made to the application within the time allowed under section 57 – the day the time allowed under that section expires;
  - (c) if an objection to the application is made within the time allowed under section 57 – the day the period allowed for the applicant's response to the complaint under section 58 expires.
- (3) As soon as practicable after making a decision under subsection (1), the Commission must give a decision notice to:
- (a) the applicant; and
  - (b) each person who lodged an objection to the application under section 57.

- (4) If the Commission refuses to issue a licence or an authority, it may refund the whole or any part of the application fee.
- (5) To avoid doubt, the Commission may issue a licence and an authority in respect of premises that are not yet constructed, or are still under construction, but liquor must not be sold under the licence until:
  - (a) the Commission gives the licensee written approval to do so; or
  - (b) the licence is transferred and a certificate of transfer is issued under section 70.

#### **Division 4      Objection to application**

##### **57      Objecting to application**

- (1) A person or body referred to in subsection (4) may object to the following applications:
  - (a) an application to issue a licence or an authority;
  - (b) an application to vary the conditions of a licence or an authority;
  - (c) an application to substitute other premises for the licensed premises;
  - (d) an application to make a material alteration to licensed premises.
- (2) An objection may be made on only one or both of the following grounds:
  - (a) that issuing the licence or authority, varying the conditions, substituting other premises or making the material alteration would adversely affect:
    - (i) the amenity of the neighbourhood of the licensed premises or proposed licensed premises; or
    - (ii) the health, education, public safety or social conditions in the community of the licensed premises or proposed licensed premises;
  - (b) that the applicant is not a fit and proper person.



- (3) However, an objection to the issuing of a community event authority or a special event authority may also be made on grounds prescribed by regulation.
- (4) Only the following may make an objection:
  - (a) a person residing or working in the neighbourhood of the licensed premises or proposed licensed premises;
  - (b) the owner or occupier of land in the neighbourhood of the licensed premises or proposed licensed premises;
  - (c) a local council of the local government area where the licensed premises or proposed licensed premises are located;
  - (d) the Member of the Legislative Assembly for the electoral division in which the licensed premises or proposed licensed premises are located;
  - (e) a police officer or employee of the Police Force, acting in that capacity;
  - (f) a member or employee of the Northern Territory Fire and Rescue Service, established under the *Fire and Emergency Act 1996*, acting in that capacity;
  - (g) an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;
  - (h) a charity or a community-based organisation or body.
- (5) The objection must:
  - (a) be in writing or in a form approved by the Director that is suitable for someone unable to effectively communicate in writing; and
  - (b) be signed by or on behalf of the person or body making the objection; and
  - (c) set out the grounds of the objection and the facts relied on to support those grounds.
- (6) The objection must be lodged with the Director within 28 days after publication of the last public notice under section 53, 92 or 108.

- (7) Except for a body that makes an objection under this section, the Director and Commission must proceed as if each of the following bodies has no objection to the application:
- (a) the Agency administering the *Public and Environmental Health Act 2011*;
  - (b) the Police Force;
  - (c) the local council of the local government area in which the licensed premises or proposed licensed premises are located.

#### **58 Applicant's right to respond to objection**

- (1) The Director must, within 5 days after the expiry of the 28-day period referred to in section 57(6), give the applicant written notice of:
- (a) the grounds of any objection made to the application; and
  - (b) the applicant's right to respond to the objection under subsection (2).
- (2) The applicant's response must be in writing and lodged with the Director within 14 days after being given the notice referred to in subsection (1).

#### **59 Limit on new grounds**

During the course of any determination, inquiry, review or hearing under this Act or the *Liquor Commission Act 2018*, a person or body making an objection under section 57 must not raise any grounds for the objection that is not:

- (a) a ground specified and relied on in the objection lodged under that section; or
- (b) a ground that is responding to new information arising during the determination, inquiry, review or hearing.

### **Division 5 Related matters**

#### **60 Register of licensees**

The Director must keep a register of licensees that includes the following information:

- (a) the name and address of the licensee;

- (b) the address of the licensed premises and the geographic and population area in which the licensed premises are located;
- (c) the date the licence was issued;
- (d) the authorities issued to the licensee;
- (e) the conditions on the licence or authority.

#### **61 Duplicate licences, authorities and permits**

- (1) The Director may issue a duplicate licence, authority or permit to its holder if satisfied the licence, authority or permit was destroyed, lost or stolen.
- (2) The duplicate may be issued only on application by the holder of the licence, authority or permit and payment of the fee prescribed by regulation.

#### **62 Surrender of licence or authority**

- (1) A licensee may surrender the licence or an authority by returning it to the Director.
- (2) The surrender of a licence or authority has no effect unless accepted by the Director.
- (3) The Director must accept the surrender of a licence or authority if satisfied that the licensee gave all persons who have an interest in the licence at least 14 days notice of the licensee's intention to surrender the licence or authority.
- (4) If the surrender of a licence is accepted, a person who held the licence ceases to be a licensee, but remains liable for:
  - (a) any act or omission done, caused, permitted or made by the person prior to the surrender taking effect; and
  - (b) any liability incurred by the person under this Act prior to the surrender taking effect.

#### **63 Abandonment of licence**

- (1) A licensee is taken to have abandoned the licence if the licensee ceases to operate the licensed premises for more than 6 months without the prior approval of the Director.
- (2) If a licence is abandoned:
  - (a) the abandoned licence has no effect; and

- (b) the Commission may cancel the abandoned licence; and
  - (c) the person who held the abandoned licence has no rights or privileges under it.
- (3) A person who held an abandoned licence remains liable for:
- (a) any act or omission done, caused, permitted or made by the person prior to the abandonment; and
  - (b) any liability incurred by the person under this Act prior to the abandonment.

#### **64 Licence, authority and permit not personal property**

For section 8(1)(k) of the *Personal Property Securities Act 2009* (Cth), each of the following is not personal property for that Act:

- (a) a licence;
- (b) an authority;
- (c) a permit.

*Note for section 64*

*A law of the Commonwealth, a State or a Territory may declare a right, licence or authority granted by or under that law not to be personal property for the Personal Property Securities Act 2009 (Cth).*

### **Division 6 Fees for licences and authorities**

#### **65 Fees for licences and authorities**

- (1) A licensee must pay the annual fees prescribed by regulation in respect of the licence and the authorities held by the licensee.
- (2) Before 1 October each year, the Director must give each licensee a written estimate of the amount of the licensee's annual fee for that year.
- (3) A licensee must pay the annual fee to the Territory on or before the first business day in January of the following year.
- (4) If a licensee fails to pay the annual fee before the 2 January deadline, the licence is automatically suspended until the fee is paid.

## **66 Prescribing fees**

- (1) The regulations may prescribe fees for applications, licences and authorities based upon factors or criteria specified in the regulations, including the following:
  - (a) the type of licence or authority;
  - (b) the revenue earned or expected to be earned from the licence or authority;
  - (c) the volume of liquor or the alcohol content of liquor sold, supplied or served;
  - (d) the nature, size, class or patron capacity of the licensed premises;
  - (e) the hours of operation under the licence or authority;
  - (f) the duration of a licence;
  - (g) the harm reduction measures taken by the licensee;
  - (h) the licensee's compliance record;
  - (i) the possible risks of harm to the community from the licence or authority;
  - (j) any other factors or criteria prescribed by regulation.
- (2) The fees may be:
  - (a) expressed as a formula based on multiple factors and criteria in the regulations; and
  - (b) adjusted annually by a cost of living indexation method prescribed in the regulations.

## **Division 7 Transfer of licence**

### **67 Transfer of licence**

- (1) A licence is transferable from the licensee to another person in accordance with this Division and the regulations.
- (2) The transfer of a licence has no effect unless the transfer is authorised by the Commission.

## **68 Application for transfer**

- (1) The proposed transferee may apply to the Commission to authorise the transfer of the licence.
- (2) Subject to this section, the application is to be made as if the proposed transferee is applying for a new licence and sections 48 to 54 apply to the application.
- (3) An application to transfer a licence must be lodged with the Director in the approved form.
- (4) The application must be accompanied by the following:
  - (a) an affidavit made under section 50;
  - (b) a draft of the notice of the application required under section 53;
  - (c) the application fee prescribed by regulation.
- (5) The applicant is not required to provide the following:
  - (a) the evidence necessary to satisfy the onus specified in section 47;
  - (b) a summary of the evidence referred to in paragraph (c) that is suitable for publication.
- (6) The Director must inform the following of the application, as soon as reasonably practicable after receiving it:
  - (a) the Chief Executive Officer of the Agency administering the *Public and Environmental Health Act 2011*;
  - (b) the Commissioner of Police;
  - (c) if the application relates to premises within a local government area – the chief executive officer of the local council.

## **69 Decision on transfer**

- (1) As soon as reasonably practicable after receiving the application, the Commission must consider it and decide whether to:
  - (a) authorise the transfer of the licence, with or without conditions;  
or
  - (b) refuse to authorise the transfer of the licence.

- (2) If the Commission refuses to authorise the transfer of the licence, the Commission must, as soon as practicable, give a decision notice to:
  - (a) the licensee; and
  - (b) the proposed transferee.

## **70 Certificate of transfer**

- (1) If the Commission authorises the transfer of a licence, the Director must issue a certificate of transfer to the transferee.
- (2) The certificate has the effect of transferring the licence, with all its authorities, privileges and conditions, from the former licensee to the transferee, who becomes the new licensee.
- (3) The former licensee remains liable for any act or omission done, caused, permitted or made prior to the transfer.

## **71 Substitution of premises**

- (1) If a licensee wishes to substitute other premises for the licensed premises, the licensee must apply for a new licence for those new premises.
- (2) Despite subsection (1), instead of issuing a new licence the Commission may, on application by the licensee, amend a licence to substitute other premises for the licensed premises if satisfied that:
  - (a) no significant change in the operation of the business will occur as a result of the substitution; and
  - (b) the substitution satisfies the public interest and community impact requirements.
- (3) An application to substitute premises is to be made in the same manner as an application to vary conditions of the licence under Part 4, Division 5.

## **Division 8      Absence, insolvency or death of licensee**

### **72      Acting licensee**

- (1) If a licensee is, or expects to be, unable for any reason to conduct the business of the licensee for more than 7 consecutive days, the licensee must:
  - (a) appoint a person to act on behalf of the licensee to conduct the licensee's business during that period; and
  - (b) give written notice to the Director of the full name, address and occupation of the person within 3 days after the date of the appointment.
- (2) A person appointed under this section must not act on behalf of a licensee for more than 42 days during any 12-month period, unless the Director otherwise determines.
- (3) If the licensee has not appointed anyone under subsection (1), the Director may appoint a person to act as the licensee to conduct the licensee's business while the licensee is unable to conduct business.
- (4) A licensee commits an offence if the licensee contravenes subsection (1).

Maximum penalty:      50 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.
- (6) A person commits an offence if:
  - (a) the person is appointed under subsection (1) and has knowledge of that circumstance; and
  - (b) the person intentionally acts on behalf of a licensee; and
  - (c) the conduct exceeds 42 days during any 12-month period or any other period determined by the Director and the person is reckless in relation to that circumstance.

Maximum penalty:      50 penalty units.
- (7) The Director must cancel a licence at the expiration of the 42 days referred to in subsection (2) if:
  - (a) a licensee's inability to conduct business under the licence is, or is expected to be, permanent; and



- (b) no application to transfer the licence was made in accordance with section 68 during those 42 days; and
  - (c) no application to substitute the licensed premises was made in accordance with section 71 during those 42 days; and
  - (d) no arrangements satisfactory to the Director are made to conduct the business.
- (8) A person appointed to act on behalf of a licensee has all the rights, powers, authorities, functions, duties and obligations of a licensee under this Act.

### **73 Continuation of licence after death**

- (1) If a licensee dies, the licence continues in force until the earlier of the following:
- (a) the date the licence expires;
  - (b) the date the licence is cancelled under section 76.
- (2) If a licensee dies, the Director may vary the date of expiry of the licence as the Director considers appropriate.

### **74 Conduct of business after death**

- (1) The following persons may, in the approved form, apply to the Director for approval to conduct the business of a deceased licensee:
- (a) the legal representative of a deceased licensee;
  - (b) a member of a deceased licensee's family who has attained 18 years of age;
  - (c) the representative of a person or class of persons claiming an entitlement in the estate of a deceased licensee.
- (2) The Director may, on application under subsection (1), appoint a person to act as the licensee to conduct the deceased licensee's business until the licence expires, is cancelled or is transferred.

### **75 Notice of bankruptcy, etc.**

- (1) A licensee must, in the approved form, notify the Director if the licensee:
- (a) becomes bankrupt; or

- (b) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with the licensee's creditors or makes an assignment of the licensee's property, interest or remuneration for the benefit of licensee's creditors.
- (2) A notice under subsection (1) must be lodged within 7 days after the licensee is declared bankrupt, makes the application or makes the assignment.
- (3) A licensee commits an offence if the licensee contravenes subsection (1) or (2).

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) The trustee, assignee or other person in whom the estate of a licensee becomes vested may, in the approved form, apply to the Director for approval to conduct the business of the licensee.

## **76 Cancellation of licence on death and insolvency**

- (1) The Director may cancel a licence if:
- (a) the licensee dies, becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or makes an assignment of property, interest or remuneration for the benefit of creditors; and
  - (b) the Director is not satisfied that adequate arrangements have been made for the conduct of the business of the licensee.
- (2) The cancellation takes effect on the date specified by the Director in the cancellation.

## **77 Transfer of business**

- (1) The Director may authorise the applicant under section 74 or 75(5) to conduct the business under the licence if the Director is satisfied that the applicant is a suitable person.
- (2) A person authorised under subsection (1) is taken to be the licensee while the licence continues in force.
- (3) The Director may transfer the licence to the person authorised under subsection (1).

## **Part 4            Conditions on licences and authorities**

### **Division 1        General conditions**

#### **78            Implied conditions**

Any provision of this Act or the regulations that imposes a duty on a licensee or prohibits certain conduct by a licensee is taken to be a condition of the licence.

#### **79            Prescribed conditions**

- (1) Each licence and authority is subject to the conditions prescribed for it by regulation.
- (2) The regulations may provide for the conditions to vary depending on any of the following factors:
  - (a) the location of the licensed premises;
  - (b) the type of licensee, licence or authority;
  - (c) whether an authority is held by the licensee in conjunction with another authority;
  - (d) any other factor prescribed by regulation.

#### **80            Limits on authorities**

- (1) An authority cannot be changed into or substituted for another authority, without making an application for the other authority.
- (2) No grocery store authority may be created or issued under this Act.
- (3) No takeaway authority may be created or issued until after 31 August 2023 or any later date extended under subsection (4).
- (4) The date after which a takeaway authority may be created or issued may be extended by up to 12 months at a time by regulation.
- (5) The restrictions in this section on creating and issuing authorities do not prevent the following:
  - (a) the transfer of an authority under section 77;
  - (b) the conversion of a licence issued under the *Liquor Act 1978* in accordance with Part 15, Division 2.

**81            Duration of licence**

- (1) The term of a licence is to be fixed by the Commission when it issues the licence.
- (2) A licence remains in force until it expires or is abandoned, surrendered, suspended or cancelled.

**82            Compliance with codes of practice**

A licensee must abide by any code of practice established by the Commission under section 20.

**83            Discretionary licence conditions**

- (1) The Commission may, in accordance with the regulations, make a licence or an authority subject to the conditions the Commission considers necessary or appropriate.
- (2) Without limiting subsection (1), conditions that may be imposed by the Commission include the following:
  - (a) the construction and furnishing of licensed premises;
  - (b) the equipment, facilities and services provided on or in licensed premises;
  - (c) the days and hours when licensed premises may be open and when liquor may be sold, supplied or served;
  - (d) the minimum facilities and services on or in licensed premises;
  - (e) the method of selling, supplying or serving liquor, including the containers for, the quantities of and the types of liquor;
  - (f) the standard of maintenance and hygiene of the licensed premises;
  - (g) the provision of entertainment on or in licensed premises;
  - (h) the provision of food on or in licensed premises;
  - (i) the display and content of signs and notices on or in licensed premises;
  - (j) the persons who may be admitted to licensed premises;
  - (k) the prohibition or restriction of activities on or in licensed premises.

## **84            Minister's power to add or vary conditions**

- (1) The Minister may add or vary any condition to a licence or an authority that the Minister believes is urgently needed for the wellbeing of a community that might be affected by the licence or authority.
- (2) Without limiting subsection (1), conditions that may be added by the Minister include the following:
  - (a) a condition about when the licensed premises may be open for the sale, supply or service of liquor;
  - (b) a condition about the type of liquor that may be sold, supplied or served on or in the licensed premises;
  - (c) a condition about the amount of liquor that may be sold, supplied or served for consumption away from the licensed premises;
  - (d) a condition requiring proof of a purchaser's identity for a sale, supply or service of liquor exceeding an amount prescribed by regulation;
  - (e) a condition requiring the keeping of records prescribed by regulation for sales, supplies or service of liquor.
- (3) When considering whether to add or vary a condition, the Minister must consider the purposes of this Act.
- (4) The Minister must table in the Legislative Assembly a copy of any decision to add or vary a condition within 6 sitting days after making the decision.
- (5) A condition added or varied under subsection (1) prevails to the extent of any inconsistency with a condition imposed by the Commission.

## **Division 2            Conditions related to licensed premises**

### **85            Exemption for interstate retailer's licence**

This Division does not apply in relation to an interstate retailer's licence.

**86            Proper maintenance**

A licensee must keep the licensed premises and all machinery, equipment, fittings, furniture, furnishings and any other items used in connection with operations under the licence maintained in good order and repair and in a neat and tidy appearance.

**87            Fire safety conditions**

A licensee must comply with the requirements of the *Fire and Emergency Act 1996* and in particular the standards relating to fire safety in the regulations made under that Act.

**88            Public health conditions**

A licensee must comply with any public health notice issued to the licensee or in relation to the licensed premises by the Chief Health Officer under the *Public and Environmental Health Act 2011*.

**89            Undue or unreasonable noise**

A licensee must not cause or permit its employees or patrons to cause undue or unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.

*Examples for section 89*

- 1 *The delivery of stock and the removal of rubbish must be at appropriate hours.*
- 2 *Live music must be at a reasonable volume.*

**90            Posting signs and notices**

A licensee must post conspicuous signs, notices or other information on or in the licensed premises as directed by the Director.

**91            Limit on material alterations**

- (1) The prior written approval of the Commission is required before any of the following material alterations are made to licensed premises:
  - (a) a significant increase in the area of the premises used for the sale, supply, service or consumption of liquor;
  - (b) a structural alteration to any part of the premises where liquor is sold, supplied, served or consumed;
  - (c) a change to an entrance to or an exit from the premises;

- (d) a significant change to the external appearance of the premises;
  - (e) a significant change to the premises' facilities related to the sale, supply, service or consumption of liquor.
- (2) A licensee must not make any alteration to the licensed premises that would result in a contravention of, or non-compliance with, a provision of the following:
- (a) this Act;
  - (b) the *Alcohol Harm Reduction Act 2017*;
  - (c) the *Tobacco Control Act 2002*;
  - (d) any other law of the Territory that regulates:
    - (i) the sale, supply, service or consumption of liquor; or
    - (ii) the location, construction or facilities of premises used for the sale, supply, service or consumption of liquor.

## **92            Application for approval of material alteration**

- (1) A licensee may apply to the Commission for approval of a material alteration to the licensed premises.
- (2) The application must be lodged with the Director in the approved form.
- (3) The application must be accompanied by the following:
  - (a) a copy of the plans and specifications for the alteration;
  - (b) a copy of any permit required under the *Building Act 2004* to carry out the alteration;
  - (c) a summary of any notice given under the *Fire and Emergency Act 1996* in relation to the premises;
  - (d) evidence that the proposed alteration would not result in a contravention or failure to comply with a law specified in section 91(2).
- (4) If the Director considers it to be in the public interest, the Director may require the applicant to publish notice of the application in the manner and time specified by the Director.

- (5) The notice must include the following:
  - (a) a description in sufficient detail to identify the location of the licensed premises;
  - (b) a description of the nature of any business conducted on or in the licensed premises;
  - (c) details of the material alteration;
  - (d) any other particulars specified by the Director.
- (6) If the application relates to premises within a local government area, the Director must inform the chief executive officer of the local council as soon as reasonably practicable.
- (7) To avoid doubt, sections 58 and 59 apply to an application if an objection to the application is lodged under section 57.

### **93            Decision on material alteration of licensed premises**

- (1) In considering an application to make a material alteration to licensed premises, the Commission must consider the following:
  - (a) any objection to the application made under section 57;
  - (b) any response provided by the applicant under section 58;
  - (c) the public interest and community impact requirements.
- (2) After considering the matters in subsection (1), the Commission must:
  - (a) approve the material alteration; or
  - (b) refuse to approve the material alteration.
- (3) The Commission may attach conditions to the approval of the material alteration.
- (4) As soon as practicable after making a decision under subsection (2), the Commission must give a decision notice to:
  - (a) the applicant; and
  - (b) each person who lodged an objection to the application under section 57.
- (5) If the Commission approves a material alteration, no business is to be conducted on or in the licensed premises, unless arrangements for that business are approved by the Commission.



**94            Material alteration offences**

- (1) A licensee commits an offence if a material alteration is made to the licensed premises without the prior approval of the Commission.

Maximum penalty:        100 penalty units.

- (2) A licensee commits an offence if:

- (a) the Commission approves a material alteration; and
- (b) business is conducted on or in the licensed premises while the alteration is being made; and
- (c) the business is not conducted in accordance with arrangements approved by the Commission.

Maximum penalty:        100 penalty units.

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

**95            Remedying unauthorised alterations**

- (1) If a licensee makes a material alteration to the licensed premises without the prior approval of the Commission, the Commission may, after notifying the licensee of the Commission's intention, cause the alteration to be removed from the licensed premises or the premises to be restored to a condition satisfactory to the Commission.

- (2) The cost of taking the action under subsection (1) is a debt due to the Territory by the licensee and is recoverable in a court of competent jurisdiction.

**Division 3            Conditions related to operations**

**96            Payment for liquor**

- (1) A licensee and the licensee's employees must not sell liquor to a person unless, at the time of the sale, payment is made in one or more of the following ways:

- (a) by legal tender within the meaning of the *Currency Act 1965* (Cth);
- (b) by cheque drawn by the person and dated on or before the date of sale;
- (c) by credit card or debit card;

- (d) by debit to an ADI account authorised by the person;
  - (e) if the sale is made to the person, or the person on behalf of an entity, in the ordinary course of business – by charging the business account of the person or entity held with the licensee;
  - (f) by a method prescribed by regulation.
- (2) A licensee commits an offence if the licensee contravenes subsection (1).
- Maximum penalty:        100 penalty units.
- (3) A licensee's employee commits an offence if the employee contravenes subsection (1).
- Maximum penalty:        100 penalty units.
- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant has a reasonable excuse.

**97            Retaining possession of credit and debit cards**

- (1) A licensee must not retain possession or control of a person's credit card or debit card as security for payment by the person for liquor or other goods at the licensed premises.
- (2) A licensee commits an offence if the licensee contravenes subsection (1).
- Maximum penalty:        100 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.
- (5) The Minister may, by *Gazette* notice, issue guidelines on retaining possession or control of a person's credit card or debit card for this section.
- (6) Without limiting subsection (4), proof of compliance with the guidelines issued by the Minister is evidence of a reasonable excuse.

**98            Conditions on time of operation**

- (1) A licensee must not sell, supply or serve liquor outside the hours prescribed by regulation in respect of the licensee's authority.
- (2) A licensee must not allow patrons to enter or remain on or in the licensed premises outside the hours prescribed by regulation in respect of the licensee's authority.
- (3) Despite subsections (1) and (2), a licensee may allow patrons to enter and remain on or in the licensed premises outside the hours prescribed by regulation if:
  - (a) no person is being sold, supplied or served liquor on or in the premises; and
  - (b) no person has access to gaming machines on or in the premises.

**99            Advertising and promotions**

A licensee must not publish or cause to be published, in any media, an advertisement that could be construed as inducing the irresponsible or excessive consumption of liquor on or in licensed premises contrary to a guideline of the Commission under section 313.

**100          Conditions about minimum pricing**

- (1) A licensee must comply with the provisions in relation to minimum pricing under Part 5.
- (2) A licensee must comply with the obligations in relation to liquor promotions set out in section 120.
- (3) The requirements of subsections (1) and (2) cannot be varied by the Commission.

**Division 4            Conditions related to information**

**101          Change of licensee's contact information**

- (1) A licensee must give the Director written notice of any change in the licensee's contact information, including its emergency contact phone number.
- (2) The notice must be given within 14 days of the change.

## **102 Change in licensee's corporate positions**

- (1) A licensee that is a body corporate must give the Director written notice of any change in the following persons:
  - (a) a person who is a director of the licensee;
  - (b) a person who exercises, or is in a position to exercise, control or have substantial influence over the licensee in the conduct of its affairs;
  - (c) a person who manages, or intends to manage, the licensee's business under the licence and who is not the licensee's nominee;
  - (d) in the case of a club or association – a person who holds an executive position in the club or association;
  - (e) in the case of a proprietary company – a person who is a shareholder owning or controlling more than 10% of the issued voting stock of the company.
- (2) The written notice must be given within 14 days of the change.
- (3) A child who is a shareholder in a company is not for that reason to be regarded as a person occupying a position of authority.
- (4) The Commission may investigate any change notified under subsection (1) and re-examine the question of the licensee's fitness to hold the licence.

## **103 Change of interstate retailer's licensee's status**

- (1) An interstate retailer licensee must give the Director written notice of any variation, expiry, suspension or cancellation of the licensee's State or other Territory authorisation referred to in section 40(8)(a).
- (2) The notice must be given within 14 days of the change.

## **104 Keeping records of liquor purchases and sales**

- (1) A licensee must keep a written record of information, as prescribed by regulation, regarding the licensee's purchases and sales of liquor under the licence or an authority.
- (2) The licensee must retain each record for at least 3 years, unless exempted by the Director.

- (3) A licensee commits an offence if the licensee contravenes subsection (1) or (2).

Maximum penalty:     50 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

#### **105        Licensee's quarterly return**

- (1) A licensee must, in accordance with the regulations, prepare a quarterly return regarding the licensee's purchases and sales of liquor under the licence.

- (2) The return must:

- (a) be in the approved form; and
- (b) contain the information prescribed by regulation; and
- (c) be lodged with the Director within 28 days after the end of each quarter.

- (3) A licensee commits an offence if the licensee contravenes subsection (1) or (2).

Maximum penalty:     50 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

#### **106        Producing records and other documents**

- (1) A licensee must, on the request of an inspector or a police officer, produce to the inspector or officer:

- (a) any record required to be kept by the licensee under this Act;  
or
- (b) any other document relating to the sale, supply or service of liquor in the course of the licensee's business.

- (2) A licensee commits an offence if the licensee fails to comply with a request under subsection (1).

Maximum penalty:     20 penalty units.

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

## **Division 5            Variation of conditions**

### **107            Application to vary conditions**

- (1) A licensee may apply to the Commission to vary the conditions of a licence or an authority.
- (2) The licensee must satisfy the Commission that varying the conditions of a licence or an authority:
  - (a) is in the public interest; and
  - (b) would not have a significant adverse impact on the community.
- (3) The application must be lodged with the Director in the approved form.
- (4) The application must be accompanied by the following:
  - (a) an affidavit made under section 50;
  - (b) the application fee prescribed by regulation.
- (5) If a licensee wishes to vary the size of the licensed premises, the licensee must apply under section 92 for approval to make a material alteration to licensed premises.

### **108            Notice of application to vary conditions**

- (1) The Director may require the applicant to publish notice of the application to vary the conditions of a licence or an authority if the Director considers it to be in the public interest.
- (2) The notice must:
  - (a) identify the location of the licensed premises; and
  - (b) describe the nature of the business conducted on or in the licensed premises; and
  - (c) summarise the proposed variation of conditions; and
  - (d) contain any other particulars determined by the Director; and
  - (e) be published in accordance with directions from the Director.

- (3) The Director must, as soon as reasonably practicable, inform the following that the application has been made:
  - (a) the Chief Executive Officer of the Agency administering the *Public and Environmental Health Act 2011*;
  - (b) the Commissioner of Police;
  - (c) if the application relates to premises within a local government area – the chief executive officer of the local council.
- (4) To avoid doubt, sections 58 and 59 apply to an application if an objection to the application is lodged under section 57.

### **109        Variation on application**

- (1) When considering an application to vary the conditions of a licence or an authority, the Commission must also consider the following:
  - (a) the affidavit required by section 50;
  - (b) any objection to the application made under section 57;
  - (c) any response provided by the applicant under section 58;
  - (d) the public interest and community impact requirements.
- (2) After considering the application and the other matters in subsection (1), the Commission must decide whether to:
  - (a) vary the conditions of the licence or authority; or
  - (b) refuse to vary the conditions of the licence or authority.
- (3) As soon as practicable after making a decision under subsection (2), the Commission must give a decision notice to:
  - (a) the applicant; and
  - (b) each person who lodged an objection to the application under section 57.
- (4) A variation of the conditions of a licence or an authority takes effect on the date specified by the Commission in the decision notice.

### **110        Variation by Commission**

- (1) The Commission may, on its own initiative, vary the conditions of a licence or an authority other than a condition added or varied by the Minister under section 84.

- (2) Before varying the conditions, the Commission must give the licensee a written notice that:
  - (a) states the proposed variation; and
  - (b) states the reasons for the proposed variation; and
  - (c) invites the licensee to submit a response to the proposed variation within 28 days after the date of the notice.
- (3) The Commission may vary the conditions of the licence or authority as proposed in the notice or in another way the Commission considers appropriate after considering:
  - (a) any response of the licensee submitted within the 28-day period; and
  - (b) the results of any hearing; and
  - (c) the public interest and community impact requirements.
- (4) As soon as practicable after deciding to vary the conditions under subsection (3), the Commission must give a decision notice to the licensee.
- (5) The variation takes effect on the later of the following:
  - (a) the date on which the licensee receives the decision notice;
  - (b) the date stated in the decision notice.
- (6) Subsections (2) to (5) do not apply if the variation is for a formality or a clerical reason that does not alter the substance of the conditions.

### **111        Limit on variation of conditions**

The following cannot be varied by the Commission:

- (a) a condition added by the Minister under section 84;
- (b) the days on which a licensee is prohibited from selling, supplying or serving liquor;
- (c) the requirements to provide information on liquor purchases and sales to the Director.



## **112 Hearing by Commission about varying conditions**

- (1) If the Commission considers it appropriate, the Commission may convene a hearing about whether to vary the conditions of a licence.
- (2) Before convening a hearing, the Commission may do any of the following:
  - (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 or body to make written submissions in relation to the proposed variation of conditions;
  - (c) publish any written submissions received under paragraph (b).
- (3) The Commission may conduct a hearing as the Commission considers appropriate.

## **Part 5 Minimum pricing**

### **Division 1 Application of Part**

#### **113 Application of Part**

This Part does not apply to the following:

- (a) duty-free liquor;
- (b) the wholesale sale of liquor;
- (c) a liquor product exempted by regulation.

### **Division 2 Measuring standard drinks**

#### **114 Meaning of *standard drink***

A ***standard drink*** is the volume of a liquor product that contains 10 g of ethyl alcohol when measured at 20°C.

#### **115 Number of standard drinks in liquor products**

- (1) The number of standard drinks in a liquor product is calculated according to the following formula:

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

where:

- SD** = the number of standard drinks.
- V** = volume of the liquor product in litres.
- ABV** = the alcohol content of the liquor product, expressed as a number equal to the percentage of volume, as indicated on the product label.

*Notes for subsection (1)*

- 1 *The value 0.789 represents the specific gravity of ethyl alcohol.*
- 2 *Some product labels will indicate the number of standard drinks contained in the product container.*

*Example for subsection (1)*

*A 250 ml glass of wine from a bottle with the product label showing 6% alcohol content would contain 1.18 standard drinks:  $0.25 \times 6 \times 0.789 = 1.18$ .*

- (2) The number of standard drinks in a liquor product may be determined from its product label, without using the formula in subsection (1), if the label:
  - (a) indicates the number of standard drinks in the product; and
  - (b) 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).
- (3) If a liquor product is in a container without a product label that complies with subsection (2), the number of standard drinks in the product may be determined by reference to the compliant product label of an otherwise identical product.
- (4) If subsection (1), (2) or (3) result in different amounts, the lower number is to be used to calculate the minimum sale price.

## **116 Cocktails and mixed beverages**

If a liquor product consists of 2 or more other liquor products, the number of standard drinks in the product is the sum of the number of standard drinks in each component liquor product.

*Examples for section 116*

- 1 *A licensee offers a "bundle" consisting of 1 bottle of spirits and 12 cans of beer. The number of standard drinks in the bundle is the sum of the number for the spirits and each can of beer.*

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

*0.040 L tequila at 35% alcohol  $\times$  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 product**

#### **117 Meaning of *sale price***

- (1) The ***sale price*** of a liquor product is the amount of money to be paid for the product, including the following:
  - (a) any discounts offered or given to the purchaser;
  - (b) any refunds offered or given to the purchaser;
  - (c) any amount to be paid for shipping the product to the purchaser.
- (2) For subsection (1), it is immaterial whether a discount or refund is applied at the time of the sale or later, if it is reasonably connected to the sale.

*Example for subsection (2)*

*A licensee sells to a customer a "bundle", consisting 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 does not include shipping charges paid separately by the purchaser to a third party.

#### **118 Minimum sale price**

- (1) A liquor product must not be sold, or offered for sale, below the minimum sale price.
- (2) The minimum sale price is \$1.30 for each standard drink contained in the liquor product, or any higher amount specified by the Minister by *Gazette* notice.
- (3) The minimum sale price is indexed, from 1 July 2019, in accordance with the method prescribed by regulation.
- (4) The Minister must review the minimum sale price every 3 years.
- (5) In reviewing the minimum sale price, the Minister must take into account the following:
  - (a) the objective of reducing the harmful consumption of liquor;

- (b) the objective of minimising the effect of the minimum pricing regime on moderate consumers;
- (c) the purposes of this Act;
- (d) any other matters the Minister considers relevant.

**119 Complimentary drinks**

- (1) A licensee may serve up to 2 standard drinks in a day free of charge to a patron.
- (2) Serving drinks in accordance with subsection (1) does not:
  - (a) contravene the requirements for the minimum sale price; or
  - (b) constitute an offence against Division 4.

**120 Promotions with non-liquor items**

- (1) Subject to subsection (2), the sale price includes the value of other non-liquor items included with a liquor product and sold as a single product.
- (2) The sale price does not include a non-liquor item offered at a discounted rate, or for free, as part of the sale unless:
  - (a) the item is also available to any purchaser who spends at least the same amount on other products, whether liquor or not; or
  - (b) the item is being given away as part of the promotion and is not available for separate sale.

*Examples for subsection (2)*

- 1 *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 items.*
- 2 *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.*

## 121 Sale price manipulation

- (1) The Commission may impose a condition under subsection (2) if it believes on reasonable grounds that a licensee:
- (a) is bundling 2 or more liquor products, or liquor products and non-liquor items, in a way that tends to make the liquor products more attractive than as separate purchases, similar to reducing the sale price of the liquor products below the minimum sale price; or
  - (b) is selling liquor products with non-liquor items at a price that appears to be below the minimum sale price that would apply if the liquor products were purchased separately from the non-liquor items; or
  - (c) is selling liquor products effectively 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 if the customer also purchases non-liquor items 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 or authority, including one or more of the following:
- (a) a condition that liquor products must be sold in a separate transaction from non-liquor items;
  - (b) a condition that every different liquor product must be the subject of a separate transaction;
  - (c) a condition that the licensee is restricted or prohibited 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 or prohibited from selling certain non-liquor items below a minimum price as part of the sale of liquor or in a manner connected with the sale of liquor.
- (3) The Commission may attribute a minimum value to an item sold or offered by a licensee as part of the sale of liquor.

*Example for subsection (3)*

*A customer purchases a carton of ZYX beer and receives a \$5 gift card for free. The beer has a minimum sale price of \$30. The Commission could attribute a minimum value of \$5 to the gift card, so that any sale price less than \$35 would be unlawful.*

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

## **122 Liquor product not precisely identified**

- (1) If a liquor product is not precisely identified in a sale or offer, the minimum sale price is to be determined by reference to the liquor product of the highest alcohol content within the same range of liquor products.

*Example for subsection (1)*

*An offer lists a carton of ZYX beer, but ZYX markets two beers with either 4.5% or 7.5% alcohol content. The minimum sale price must be calculated by reference to 7.5% alcohol content, unless the sale identifies the beer as the one with the lower alcohol content – e.g. "ZYX Mid-strength Beer".*

- (2) This section does not give rise to a prosecution for an offence against section 123, 124 or 290.

## **Division 4 Minimum sale price offences**

### **123 Offering liquor product below minimum sale price**

- (1) A person commits an offence if:
- (a) the person is a licensee; and
  - (b) the person intentionally offers a liquor product for sale; and

- (c) the sale price for which the liquor product is offered is below the minimum sale price; and
- (d) the liquor product is being offered for consumption in the Territory or allows for delivery to a person or location within the Territory and the person is reckless in relation to that circumstance.

Maximum penalty: 200 penalty units.

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

#### **124 Selling liquor product below minimum sale price**

- (1) A person commits an offence if:
  - (a) the person is a licensee; and
  - (b) the licensee intentionally sells a liquor product; and
  - (c) the sale price for the liquor product is below the minimum sale price for that liquor product sale; and
  - (d) the liquor is to be delivered to a person or location within the Territory and the licensee is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units.

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

## **Part 6 Harm minimisation**

### **Division 1 Patron identification system**

#### **125 Establishing identification system**

- (1) The Minister may establish an identification system for licensees to determine whether a person is prohibited from purchasing or consuming liquor by any of the following:
  - (a) a BDO or court order under the *Alcohol Harm Reduction Act 2017*;
  - (b) a bail condition imposed under the *Bail Act 1982*, other than Part 3 of that Act;
  - (c) a court order under the *Domestic and Family Violence Act 2007*;

- (d) a provision under a law of the Territory prescribed by regulation.
- (2) The system must be designed to:
- (a) enable a licensee or the licensee's employees to scan approved forms of identification presented by patrons at the time of purchasing or consuming liquor; and
  - (b) indicate to a licensee or the licensee's employees whether the patron is prohibited from purchasing or consuming liquor or liquor of a particular kind or quantity.
- (3) Only the following forms of identification are approved for the identification system:
- (a) a passport;
  - (b) a licence under the *Motor Vehicles Act 1949* or under an equivalent Act of a State or other Territory;
  - (c) a licence granted under the *Firearms Act 1997*;
  - (d) any other form of identification approved by the Director.

**126 Application of identification system**

- (1) The regulations may prescribe which authorities require the use of the identification system.
- (2) The Territory must give a scanner to any licensee who holds an authority that requires the identification system as prescribed by regulation.

**127 Operating identification system**

- (1) A licensee must use and maintain the identification system if the licensee holds an authority that requires the identification system as prescribed by regulation.
- (2) If required to use the identification system, a licensee and the licensee's employees must not sell liquor to an individual unless:
  - (a) the individual presents an approved and undamaged form of identification of the individual; and
  - (b) the licensee or employee uses the system to scan the individual's form of identification; and
  - (c) the system indicates the individual is not prohibited under section 125(1).



- (3) In the case of a purchase not made in person:
- (a) the individual may provide the details of the approved form of identification; and
  - (b) the licensee or the licensee's employee may use those details instead of presenting and scanning the approved form itself.
- (4) If required to use the identification system, a licensee and the licensee's employees:
- (a) must not disclose or use any information indicated in the system, except in accordance with this Act or another law of the Territory; and
  - (b) must not damage or tamper with the system or any component of the system; and
  - (c) must maintain the system in accordance with directions from the Commission; and
  - (d) must comply with any other requirement prescribed by regulation for the system.
- (5) The Commission may, by *Gazette* notice, exempt an authority from a requirement in subsection (1), (2) or (4) for the period specified in the notice.

## **128 Offences related to operation of identification system**

- (1) A licensee commits an offence if the licensee contravenes a requirement in section 127.
- Maximum penalty: 100 penalty units.
- (2) A licensee's employee commits an offence if the employee contravenes a requirement in section 127(2) or (4).
- Maximum penalty: 100 penalty units.
- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

### *Example for subsection (4)*

*A reasonable excuse for a contravention might be a failure of the identification system to operate properly for a reason other than the defendant's conduct.*

## **Division 2 Local liquor accords**

### **129 Entering local liquor accord**

- (1) The Director must take all reasonable steps to enter into a local liquor accord with licensees to prevent or reduce any anti-social behaviour, disorder, harm and violence, including domestic violence as defined in section 5 of the *Domestic and Family Violence Act 2007*, in which liquor is involved.
- (2) The Director may, by written notice, require a licensee to be a party to a local liquor accord.
- (3) A licensee is taken to be a party to the local liquor accord within 14 days after being given the notice in subsection (2).
- (4) The following entities may also be parties to a local liquor accord:
  - (a) the Commissioner of Police;
  - (b) a local council;
  - (c) any body or organisation representing commercial or business interests in a local area;
  - (d) a community or residents' group with an interest in preventing or reducing alcohol-related violence or in improving the amenity of a local area;
  - (e) a person or body prescribed by regulation.
- (5) A party to a local liquor accord may leave the accord at any time if the party entered into the accord voluntarily.

### **130 Content of local liquor accord**

- (1) A local liquor accord may provide for anything that might prevent or reduce alcohol-related violence, including the following actions by licensees:
  - (a) ceasing or restricting the sale, supply or service of liquor on or in the licensed premises earlier than otherwise allowed;
  - (b) restricting the public's access to the licensed premises;
  - (c) prohibiting or restricting the use of glass containers;
  - (d) maintaining a register of incidents of alcohol-related violence;
  - (e) installing and operating video surveillance or other security systems;

- (f) providing a specified number and type of security staff on or in the licensed premises;
  - (g) charging higher prices for liquor.
- (2) A local liquor accord must include the following:
- (a) the name and address of each party to the accord;
  - (b) the name and address of a party, or a representative of a party, who is to be the coordinator for the accord;
  - (c) the local area in which the local liquor accord is to apply;
  - (d) any other matter prescribed by regulation.
- (3) The Director must publish a local liquor accord in a way determined by the Director.

### **131 Effect of local liquor accord**

- (1) A licensee must comply with any local liquor accord to which the licensee is a party.
- (2) Any conduct engaged in by a person for the purpose of preparing a draft local liquor accord, approving a local liquor accord or promoting or giving effect to the terms of a local liquor accord, is specifically authorised for the purposes of section 51 of the *Competition and Consumer Act 2010* (Cth).

*Example of conduct for preparing a local liquor accord*

*Holding a meeting to discuss the option of preparing a local liquor accord.*

- (3) Conduct authorised by subsection (2) is authorised only to the extent to which the conduct, so far as it consists of things done to regulate the sale or supply of liquor or in some other respect, would otherwise contravene Part IV of the *Competition and Consumer Act 2010* (Cth).

### **132 Variation and termination of local liquor accord**

- (1) The Director may, on the Director's own initiative or on application of a party to a local liquor accord, vary it at any time by written notice to the coordinator of the accord.
- (2) Subject to section 129(2), a party to a local liquor accord may only be added or removed with the party's consent.

- (3) The coordinator of a local liquor accord must give written notice to the Director if any party to the accord wishes to terminate the accord.
- (4) The Director may terminate a local liquor accord at any time if the Director considers it appropriate to do so.
- (5) As soon as practicable after making a decision under this section, the Director must give a decision notice to each party to the local liquor accord.

### **Division 3 Responsible drinking**

#### **133 Responsible service**

A licensee must not take any action that would induce the irresponsible or excessive consumption of liquor on or in licensed premises contrary to a guideline of the Commission under section 313.

#### **134 Responsible service certificate**

- (1) A licensee must ensure that every employee whose responsibilities involve serving patrons or supervising the serving of patrons:
  - (a) holds a responsible service of alcohol certificate issued by a body:
    - (i) accredited by the Australian Skills Quality Authority; or
    - (ii) approved by the Commission; and
  - (b) completes a refresher course on the responsible service of alcohol from a body approved by the Commission if the certificate is more than 3 years old.
- (2) In the case of a new employee who does not hold the certificate, but whose responsibilities involve serving patrons or supervising the serving of patrons, the licensee must ensure that the employee either obtains the certificate within 7 days or is removed from those responsibilities.
- (3) A licensee must keep the following:
  - (a) a record, in the approved form, of the names of all employees who hold the certificate;
  - (b) a copy of each employee's certificate.

**135 Duty to refuse service**

- (1) A licensee and the licensee's employees must refuse to serve liquor to a person if the licensee or employee believes on reasonable grounds that the person:
- (a) is intoxicated; or
  - (b) is registered on the banned drinkers register.
- (2) A person commits an offence if the person contravenes subsection (1).
- Maximum penalty: 100 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

**136 Power to refuse service**

- (1) A licensee and the licensee's employees may refuse to serve liquor to a person if the licensee or employee believes on reasonable grounds that the person:
- (a) will commit an offence against this Act; or
  - (b) will become intoxicated; or
  - (c) will engage in violent, quarrelsome or disorderly behaviour on or in the licensed premises, or in the vicinity of those premises; or
  - (d) has engaged in any conduct specified in paragraph (c) within the last 12 months.

**137 No discrimination**

To avoid doubt, a person must not use an attribute specified in section 19(1) of the *Anti-Discrimination Act 1992* as a reason to form a belief under section 135 or 136.

**138 Duty and power to exclude and remove persons**

- (1) A licensee and the licensee's employees must exclude and remove from the licensed premises any person who is violent, quarrelsome, disorderly or incapable of controlling the person's behaviour, other than a person occupying residential accommodation on or in the licensed premises.

- (2) A licensee and the licensee's employees may exclude and remove from the licensed premises any person who is intoxicated, other than a person occupying residential accommodation on or in the licensed premises.
- (3) A person commits an offence if the person contravenes subsection (1).  
  
Maximum penalty: 100 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

**139 Power to exclude or remove persons**

- (1) A licensee, a licensee's employee, an inspector or a police officer may exclude or remove from the licensed premises:
  - (a) a person occupying residential accommodation on or in the licensed premises who is intoxicated, violent, quarrelsome, disorderly or incapable of controlling the person's behaviour; or
  - (b) any person whose presence on or in the licensed premises might:
    - (i) render the licensee liable to a penalty under this Act or any other law of the Territory; or
    - (ii) disrupt the business of the licensee or unreasonably interfere with the wellbeing of other persons lawfully on or in the premises; or
  - (c) any person convicted of an offence relating to the possession or supply of a drug on or in licensed premises within the last 12 months.
- (2) A licensee, licensee's employee, inspector or police officer exercising a power under this section or section 138 may use the force that is reasonably necessary for the purpose.
- (3) A police officer must, on the request of the licensee, licensee's employee or inspector, exclude, remove or assist in excluding or removing from licensed premises any person who is being excluded or removed in accordance this section or section 138.

- (4) A person may be excluded or removed from licensed premises even if the person is a member of an incorporated association that is the licensee in respect of the licensed premises.

**140 Excluded or removed person**

- (1) A person who is being excluded or removed in accordance with section 138 or 139 must immediately leave the licensed premises.
- (2) A person commits an offence if the person contravenes subsection (1).

Maximum penalty: 20 penalty units.

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

**141 Returning after being excluded or removed**

- (1) A person excluded or removed from licensed premises under section 138 or 139 must not re-enter, or attempt to re-enter, the licensed premises within 12 hours after the time the person left or was removed from the licensed premises.
- (2) A person commits an offence if the person contravenes subsection (1).

Maximum penalty: 20 penalty units.

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

**142 Prohibiting and restricting promotion of irresponsible drinking**

- (1) The Director may, on the grounds specified in subsection (2), issue a written direction to a licensee that:
- (a) prohibits or restricts the licensee from doing any conduct specified in subsection (2)(a) to (e); or
  - (b) requires the licensee to give the Director a report, within a specified period, about action taken to ensure responsible drinking occurs on or in the licensed premises.
- (2) The direction under subsection (1) may be issued if the Director believes on reasonable grounds that:
- (a) the licensee has committed, is committing, or is about to commit, an offence against this Division; or
  - (b) the licensee is encouraging patrons to consume more liquor than normal or to consume liquor more rapidly than normal; or

- (c) the licensee is encouraging the irresponsible, rapid or excessive consumption of liquor on or in the licensed premises; or
  - (d) the licensee is promoting, or allowing the promotion of, liquor in a way that appeals to children through designs, motifs, characters or other marketing tactics that appeal to children; or
  - (e) the licensee is promoting liquor in an indecent or offensive manner; or
  - (f) it is otherwise in the public interest to issue the direction to prohibit or restrict irresponsible drinking.
- (3) The conduct specified in subsection (2)(b) and (c) includes the following:
- (a) providing extreme discounts to the price of liquor that encourages higher consumption of liquor;
  - (b) providing significant discounts of limited duration that encourages drinking more rapidly;
  - (c) serving liquor in non-standard measures that encourages higher consumption of liquor;
  - (d) using marketing tactics that rely on emotion to encourage irresponsible drinking.
- (4) The direction may be issued in conjunction with any other action taken under this Act.
- (5) A licensee to whom a direction is issued under this section must comply with the direction.

### **143 Controlling promotion of undesirable liquor products**

- (1) The Director may issue a direction to prohibit or restrict the sale, supply or service of any liquor product that, in the opinion of the Director, appeals to children.
- (2) A liquor product is taken to appeal to children if:
- (a) the name of the product or the design of its packaging is attractive to children; or
  - (b) the product is likely to be confused with a non-alcoholic beverage or confectionary product.



- (3) Before taking action under subsection (1), the Director must give the manufacturer or supplier of the product written notice:
  - (a) identifying the liquor product; and
  - (b) stating the nature of the proposed prohibition or restriction; and
  - (c) stating the reasons for the proposed prohibition or restriction; and
  - (d) inviting the manufacturer or supplier to show cause, in writing and within 28 days from the date the notice is given, why the product should not be prohibited or restricted.
- (4) After considering any response received within 28 days of the date of the notice, the Director may:
  - (a) take no action; or
  - (b) issue a direction prohibiting or restricting the sale or supply of the liquor product.
- (5) As soon as practicable after making a decision under this section, the Director must give a decision notice to the manufacturer or supplier.

#### **144 Review by Commission**

The manufacturer or supplier of a liquor product may, under Part 4 of the *Liquor Commission Act 2018*, apply for the review of a decision of the Director prohibiting or restricting the sale or supply of the product.

#### **145 Offences related to undesirable liquor products**

- (1) A person commits an offence if:
  - (a) the person is subject to a direction under section 143; and
  - (b) the person intentionally engages in conduct; and
  - (c) the conduct results in a contravention of the direction and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if:
  - (a) the person intentionally manufactures or supplies a liquor product; and

- (b) the liquor product is prohibited or restricted under section 143; and
- (c) the conduct results in a contravention of the prohibition or restriction and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units.

- (3) Strict liability applies to subsections (1)(a) and (2)(b).

## **Division 4 Harm minimisation audits**

### **146 Scope of audit**

- (1) A ***harm minimisation audit*** is an audit of a licensee's activities, operations and licensed premises to measure the extent to which the licensee does the following:
  - (a) promotes the purposes of this Act;
  - (b) complies with codes of practice established by the Commission under section 20;
  - (c) complies with guidelines made by the Commission under section 313;
  - (d) complies with any local liquor accord to which the licensee is a party;
  - (e) minimises the harm or ill-health caused by the consumption of liquor;
  - (f) avoids practices that encourage irresponsible drinking;
  - (g) ensures liquor is sold, supplied, served and consumed in a responsible manner;
  - (h) safeguards public order and safety from any adverse effects of the licence;
  - (i) protects the safety, health and welfare of patrons;
  - (j) prevents access to liquor by children and other persons who are prohibited or restricted from consuming liquor;
  - (k) ensures employees properly perform their duties;
  - (l) prevents the giving of credit in sales of liquor to patrons;

- (m) reduces or limits increases in anti-social behaviour and alcohol-related violence.

#### **147 Conducting harm minimisation audit**

- (1) The Director may designate a person who is authorised to conduct harm minimisation audits.
- (2) Before designating a person, the Director must be satisfied the person has the appropriate qualifications or experience to conduct a harm minimisation audit.
- (3) The Director may, on the Director's own initiative or in response to a complaint, direct that a harm minimisation audit be conducted in respect of a licensee.
- (4) The Director must give the licensee written notice of the pending harm minimisation audit, including who will conduct it and any terms or conditions of the audit.
- (5) A person conducting a harm minimisation audit may exercise the powers of an inspector under Part 7, Division 1.
- (6) After conducting a harm minimisation audit, the person must give a written report on the audit to the licensee and Director.
- (7) The report must be prepared in accordance with any guidelines issued by the Commission and include the following:
  - (a) the outcome of the harm minimisation audit;
  - (b) any changes being recommended to the licensee's activities, operations or premises.

#### **148 Action after harm minimisation audit**

- (1) After considering a harm minimisation audit report, the Director may do any of the following in relation to any non-compliance with a licensee's obligations under this Act:
  - (a) give the licensee a formal warning;
  - (b) issue an infringement notice;
  - (c) offer the licensee the option of entering into an enforceable undertaking;
  - (d) refer the matter to the Commission for action under Part 7, Division 4.

- (2) The Director must, as soon as practicable, report to the Commission on the action taken under subsection (1).

## **Division 5           Inedible substances containing alcohol**

### **149           Application**

This Division applies to a substance that:

- (a) contains more than 1.15% of ethyl alcohol by volume; and
- (b) is not intended to be ingested.

*Example for section 149*

*Mouthwash containing alcohol.*

### **150           Control of inedible alcohol products**

- (1) A person must not consume a substance described in section 149 in any public place.
- (2) If a person contravenes subsection (1):
  - (a) the person may be searched under section 233; and
  - (b) the substance may be seized and disposed of as if it were liquor under section 240.

## **Part 7           Licence and authority compliance**

### **Division 1           Entry and inspections of premises**

#### **151           Inspector's identity card**

A inspector must carry the inspector's identity card when exercising a power under this Act.

#### **152           Entry and inspections by Inspector and police officer**

- (1) An inspector or a police officer may enter and inspect any licensed premises at any time the premises are open or appear to be in use.
- (2) An inspector or a police officer is not authorised to enter a private room on or in licensed premises without the prior consent of the occupant, the licensee or a person who is apparently in charge of the licensed premises, unless the inspector or officer believes on reasonable grounds that an offence against this Act has occurred, is occurring or is likely to occur in that room.

- (3) An inspector or a police officer may, at any time, enter and inspect any premises if the inspector or officer believes on reasonable grounds that:
  - (a) liquor is being sold on those premises; or
  - (b) liquor is being kept for sale on or in premises which are not licensed premises; or
  - (c) an offence against this Act has occurred, is occurring or is likely to occur on those premises.
- (4) Before exercising a power under this section, an inspector must produce the inspector's identity card on the request of the occupier or a person apparently in charge of the premises.
- (5) In this section:

***private room*** means a room on or in the licensed premises that is used predominantly for a purpose not related to the operation or management of the licensed premises under a licence.

### **153       Inspection powers**

- (1) An inspector or a police officer may, during an inspection, exercise any of the following powers:
  - (a) examine, make an inventory of and take samples of any liquor or substance found that the inspector or officer believes on reasonable grounds to be or to contain alcohol;
  - (b) inspect any book, document or other record;
  - (c) remove any book, document or record for the purpose of having copies made;
  - (d) seize and remove any liquor or container that the inspector or officer believes on reasonable grounds to be evidence of an offence against this Act;
  - (e) request a licensee or any person on or in licensed premises to answer questions;
  - (f) request a licensee or any person on or in licensed premises to produce a document or thing under the person's control;
  - (g) request a licensee or any a person on or in licensed premises to give any other reasonable assistance the inspector or officer requires to carry out the inspection.

- (2) An inspector or a police officer may retain a book, document or record removed or produced under subsection (1) for as long as reasonably necessary to make copies of the book, document or record.
- (3) An inspector or a police officer who takes a sample of liquor or a substance under subsection (1) must:
  - (a) divide the sample into 2 approximately equal parts; and
  - (b) put each part in a sealed container to which is affixed a label bearing:
    - (i) the signature of the inspector or officer; and
    - (ii) particulars of the premises on which the sample was taken; and
    - (iii) particulars of the date and time when the sample was taken; and
  - (c) give one of the containers to the licensee, occupier or other person apparently in charge of the licensed premises; and
  - (d) deliver the other container to an analyst approved by the Director.
- (4) An inspector or a police officer may exercise the powers under this section with the reasonable assistance and force that the inspector or officer considers necessary.
- (5) Any liquor or substance seized under this section is to be dealt with in accordance with Part 12.

#### **154       Other powers to detect non-compliance**

- (1) For the purpose of investigating what an inspector or a police officer believes on reasonable grounds is a licensee's non-compliance with this Act, the inspector or officer may offer to purchase, attempt to purchase or purchase liquor from a licensee contrary to the licensee's licence or authority.
- (2) An inspector or a police officer need not identify themselves as an inspector or a police officer when acting under subsection (1), but must not do any thing additional to encourage a licensee to accept the offer or to sell the liquor.

- (3) Evidence obtained under subsection (1) 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 that subsection.
- (4) Evidence obtained under subsection (1) may be used as follows:
  - (a) by the Commission and the Director under Division 4;
  - (b) by an inspector or a police officer to locate or identify other evidence, which may be used in a criminal proceeding.

## **Division 2           Investigations and enforceable undertakings**

### **155           Investigations**

- (1) The Director must conduct an investigation into a licensee, a licence, an authority or licensed premises if:
  - (a) the Chairperson requests it; or
  - (b) the Director accepts a complaint under section 158.
- (2) An investigation into a complaint accepted under section 158 must be conducted within 90 days after the complaint is accepted or any longer period allowed by the Commission.
- (3) The Director may conduct an investigation into a licensee, a licence, an authority or licensed premises if:
  - (a) the Director receives information, other than a complaint, about a contravention of this Act relating to the licensee, licence, authority or licensed premises; or
  - (b) the Director otherwise considers it advisable on the Director's own initiative.
- (4) An investigation is to be conducted as the Director considers appropriate.
- (5) Two or more investigations may be conducted jointly or at the same time.
- (6) The Director must during an investigation:
  - (a) inform the licensee of the nature of the investigation, including any applicable complaint; and

- (b) give the licensee sufficient opportunity to provide a written response to the matter under investigation and any applicable complaint.

### **156 Enforceable undertakings**

- (1) As an alternative to disciplinary action, the Director may accept an enforceable undertaking given by a licensee for a contravention of this Act that has occurred or is alleged to have occurred.
- (2) If an enforceable undertaking is in force, no disciplinary action may be taken against the licensee in respect of the contravention for which the undertaking is given.
- (3) The Director may also invite a licensee to give an enforceable undertaking to prevent a risk of potential harm even if no contravention of this Act has occurred or is alleged to have occurred.
- (4) An enforceable undertaking may provide for the following:
  - (a) the prevention of a contravention of this Act;
  - (b) matters related to mitigation or remediation in relation to a contravention;
  - (c) matters related to the prevention of risks of potential harm;
  - (d) any other matter the Director and the licensee consider relevant.
- (5) Acceptance of an enforceable undertaking must be given in writing by the Director to the licensee.
- (6) A copy of any accepted enforceable undertaking must be published on the Director's website.
- (7) An enforceable undertaking cannot be varied or withdrawn without the consent of the Director.
- (8) A licensee's breach of an enforceable undertaking is grounds for disciplinary action against the licensee.



### **Division 3           Complaints against licensees**

#### **157           Making a complaint**

- (1) A person may make a complaint against a licensee on any of the following grounds:
- (a) the licensee contravened a condition of the licence or authority;
  - (b) the licensee or the licensee's employee contravened another provision of this Act or the regulations, whether or not it constitutes an offence;
  - (c) the licensee or the licensee's employee contravened another law of the Territory that regulates:
    - (i) the sale, supply, service or consumption of liquor; or
    - (ii) the location, construction or facilities of licensed premises;
  - (d) the licensee or, if the licensee is a body corporate, an executive officer of the body corporate, was found by a court of competent jurisdiction to be guilty of an offence against a law of the Territory that is punishable by imprisonment for 5 years or more;
  - (e) the licensee contravened a provision of an enforceable undertaking;
  - (f) the licensee contravened a direction given to the licensee under this Act;
  - (g) the licensee's licensed premises are no longer being used:
    - (i) for the sale, supply, service or consumption of liquor; or
    - (ii) in compliance with the licence and authority;
  - (h) the licensee is not a fit and proper person to hold the licence;
  - (i) the licensee's nominee is not a fit and proper person and the licensee should reasonably know that;
  - (j) an employee of the licensee is not a fit and proper person to be an employee of the licensee and the licensee should reasonably know that;

- (k) the licensee obtained the licence by fraud or misrepresentation;
  - (l) the licensee holds the licence for the benefit, directly or indirectly, of a person to whom the licence would not have been issued;
  - (m) the licensed premises were used in a way that caused:
    - (i) disorderly conduct on or in the premises or in the vicinity of the premises; or
    - (ii) annoyance or disturbance to persons residing, working or conducting a business in the vicinity of the premises;
  - (n) the licensee is no longer eligible to hold the licence.
- (2) The complaint must:
- (a) be made in the approved form; and
  - (b) specify the ground for the complaint; and
  - (c) be signed by the complainant; and
  - (d) be lodged with the Director.
- (3) A complaint may be made and investigated at any time but, if the licence expired or was cancelled, the complaint must be made within 6 months after the latest occurrence of a matter that forms a ground for the complaint.

### **158       Acceptance of complaint**

- (1) The Director may refuse to accept a complaint if satisfied that:
- (a) the complaint is frivolous or vexatious; or
  - (b) the complaint is trivial; or
  - (c) the complaint is misconceived or lacking in substance; or
  - (d) no grounds exist for the complaint; or
  - (e) the complaint fails to disclose any conduct that contravenes, or is likely to contravene, this Act; or
  - (f) action to deal with the complaint has little or no chance of success.

- (2) Within 14 days after a complaint is lodged, the Director must decide whether to:
  - (a) accept the complaint; or
  - (b) refuse to accept the complaint.
- (3) Within 14 days after making a decision under subsection (2), the Director must give the complainant written notice of the decision.
- (4) A decision under subsection (2) is not reviewable by the Commission or NTCAT.

**159       Notice to licensee**

- (1) Within 14 days after making a decision to accept a complaint under section 158(2)(a), the Director must give the licensee written notice of:
  - (a) the substance of the complaint; and
  - (b) the Director's intention to investigate the complaint; and
  - (c) the licensee's right to respond to the complaint under subsection (2).
- (2) A licensee may respond in writing to a complaint, which must be lodged with the Director within 14 days after being given the notice referred to in subsection (1).

**160       Action after investigation**

- (1) On completing an investigation, the Director may do any of the following:
  - (a) take no further action if satisfied that:
    - (i) there are no grounds or evidence to justify taking further action; or
    - (ii) the matter does not warrant taking further action;
  - (b) give the licensee a formal warning in relation to the complaint;
  - (c) mediate the complaint;
  - (d) issue an infringement notice in relation to the complaint;
  - (e) enter into an enforceable undertaking with the licensee in relation to the complaint;

- (f) refer the matter to the Commission for disciplinary action.
- (2) The Director may refer to the Commission any other matter suitable for disciplinary action that arises during an investigation.
- (3) Within 14 days after making a decision under subsection (1) or (2), the Director must give a decision notice to the following:
  - (a) the complainant;
  - (b) the licensee;
  - (c) the Commission.

**161       Referral of disciplinary matter**

If the Director refers a matter to the Commission for disciplinary action, the referral must specify details about:

- (a) any response given by the licensee under section 159(2); and
- (b) the result of the investigation; and
- (c) the grounds for disciplinary action.

**Division 4       Commission's power to take disciplinary action**

**162       Disciplinary action**

- (1) The Commission may take disciplinary action against the licensee only if the Commission is satisfied:
  - (a) a ground for the disciplinary action exists; and
  - (b) the disciplinary action is appropriate in relation to that ground.
- (2) The Commission may take any of the following disciplinary actions against a licensee:
  - (a) vary the conditions of a licensee's licence or impose additional conditions on the licence;
  - (b) suspend a licence;
  - (c) cancel a licence;
  - (d) impose a monetary penalty on a licensee in accordance with section 164;
  - (e) direct a licensee to take, or refrain from taking, a specific action;

- (f) disqualify a person from holding a licence for a specified period.
- (3) Subject to section 165, the Commission may take disciplinary action against a licensee for a contravention of this Act even if:
- (a) the licensee is issued an infringement notice in relation to that contravention; or
  - (b) the licensee is being prosecuted for an offence in relation to that contravention.

### **163       Hearing and decision**

- (1) If the Director refers a matter to the Commission for disciplinary action, the Commission must decide whether to take disciplinary action against the licensee.
- (2) The Commission must conduct a hearing into any matter referred to it by the Director.
- (3) Two or more related matters may be heard jointly or at the same time.
- (4) The Commission may hear a matter not referred to it but which arises from a matter that was referred to it.
- (5) On completing the hearing, the Commission must:
  - (a) dismiss the matter of the hearing; or
  - (b) take disciplinary action against the licensee.
- (6) The Commission may dismiss a matter referred to it and cancel a hearing if:
  - (a) the matter is withdrawn; or
  - (b) the Commission is satisfied that the matter should be dismissed.
- (7) As soon as practicable after making a decision under subsection (1), the Commission must give a decision notice to the parties to the hearing.
- (8) To avoid doubt, this section does not affect the operation of section 254 or 255.

**164       Monetary penalty**

- (1) The amount of a monetary penalty must not exceed the lesser of the following:
  - (a) 200 penalty units;
  - (b) in the case of an offence – the maximum amount of the fine specified for the offence.
- (2) A monetary penalty is a debt due to the Territory.
- (3) A licensee must pay any monetary penalty imposed on the licensee within 28 days, or any longer period allowed by the Commission, after notice of the penalty is given to the licensee.
- (4) To avoid doubt, the monetary penalty is a civil penalty for the purposes of the *Penalty Units Act 2009*.

**165       Limit on monetary penalty**

- (1) No monetary penalty may be imposed against a licensee for a contravention of this Act if:
  - (a) the licensee is issued an infringement notice in relation to that contravention; or
  - (b) the licensee is being prosecuted for an offence in relation to that contravention.
- (2) However, a monetary penalty may be imposed by the Commission against a licensee specified in subsection (1) if:
  - (a) the infringement notice is withdrawn; or
  - (b) the prosecution is discontinued.
- (3) The Commission must take into account any penalty imposed by a court of competent jurisdiction on a licensee when taking disciplinary action against a licensee.

**Division 5       Record of enforcement and compliance**

**166       Register of enforcement matters**

- (1) The Director must maintain a register to record:
  - (a) any enforceable undertaking; and
  - (b) any disciplinary action taken by the Commission.

- (2) The register must contain the following information:
  - (a) the name and address of the licensee involved;
  - (b) the date of any disciplinary action or any enforceable undertaking;
  - (c) a copy of all decisions of the Commission regarding any disciplinary action;
  - (d) a copy of any enforceable undertaking;
  - (e) the details of any expiry, withdrawal or variation of an undertaking.
- (3) The register must be published on the Commission's website.

## **Part 8            Controlled areas**

### **Division 1        Alcohol protected areas**

#### **167            Application of Commonwealth changes to *Liquor Act 1978***

- (1) Nothing in this Act is to be construed or taken as preventing the *Stronger Futures in the Northern Territory Act 2012* (Cth) from operating in relation to this Act in the same way it operated in relation to the *Liquor Act 1978*.

*Note for subsection (1)*

*The Stronger Futures in the Northern Territory Act 2012 (Cth) modified the Liquor Act 1978 by inserting a new Division 1AA into Part VIII, which provided for alcohol protected areas and related offences.*

- (2) For the purpose of applying and construing this Act in relation to the *Stronger Futures in the Northern Territory Act 2012* (Cth), the definition of **supply** in section 4(1) does not apply to Part VIII, Division 1AA of the *Liquor Act 1978* as included in this Act.

*Note for subsection (2)*

*Section 10A of the Acts Interpretation Act 1901 (Cth) provides for the interpretation of Commonwealth amendments to this Act.*

*Examples for subsection (2)*

- 1 *A reference in the Stronger Futures in the Northern Territory Act 2012 (Cth) to the "NT Liquor Act" would be taken to be a reference to this Act.*
- 2 *Part 8 of this Act would be taken to include Part VIII, Division 1AA in the same way it was inserted in the Liquor Act 1978 by the Stronger Futures in the Northern Territory Act 2012 (Cth).*

3 *An alcohol protected area would be taken to be a general restricted area under this Act.*

## **Division 2            Prohibited public places**

### **168            No consumption in prohibited public places**

- (1) Subject to Division 6, a person must not consume liquor in any public place in the following locations:
  - (a) Alice Springs;
  - (b) Darwin;
  - (c) Katherine;
  - (d) Palmerston;
  - (e) Tennant Creek;
  - (f) the Darwin Waterfront Precinct specified under section 4 of the *Darwin Waterfront Corporation Act 2006*;
  - (g) any local government area that a local council declares, by *Gazette* notice, to be subject to this prohibition;
  - (h) any public place not within a location specified by paragraphs (a) to (g) but within 2 km of licensed premises;
  - (i) prescribed by regulation.
- (2) If a person contravenes subsection (1):
  - (a) the person may be searched under section 233; and
  - (b) the liquor may be seized and disposed of under section 240.

## **Division 3            General restricted area**

### **169            Power to declare general restricted area**

- (1) The Commission may, by *Gazette* notice, declare a specified area of land to be a general restricted area in which liquor is prohibited.
- (2) A declaration of a general restricted area may be made on the Commission's own initiative or on application under section 171.
- (3) The declaration must specify the following:
  - (a) the boundaries of the general restricted area;





- (c) the liquor was for the purposes of worship associated with the celebration of a religious service by a person approved by the Director; or
- (d) the liquor was being transported in unopened containers from a destination outside the general restricted area to another destination outside the general restricted area.

**171        Application for general restricted area**

- (1) Any person may apply to the Commission for the declaration of a general restricted area.
- (2) The application must be in the approved form and lodged with the Director.
- (3) The application must include the following:
  - (a) a detailed explanation of the restriction being proposed;
  - (b) a detailed description of the proposed general restricted area;
  - (c) the reasons for the proposed restriction.
- (4) The Director may reject an application if the Director is satisfied the application is frivolous or vexatious.

**172        Consultation and notice of restriction**

- (1) The Director must give notice of any proposed general restricted area to the following:
  - (a) any licensee whose licensed premises are in the area;
  - (b) any applicant for a licence whose proposed licensed premises are in the area;
  - (c) any licensee whom the Director considers may be affected adversely by the proposed restriction;
  - (d) any local council in the proposed area.
- (2) The notice must include the following:
  - (a) a detailed explanation of the proposed restriction;
  - (b) a detailed description of the proposed general restricted area;
  - (c) the reasons for the restriction;

- (d) an invitation to make written submissions to the Commission about the proposed restriction.
- (3) The Director must take reasonable steps to consult on the proposed restriction with:
  - (a) the people who reside in the proposed area; and
  - (b) any local council in the proposed area.

**173        Director to report to Commission**

The Director must report to the Commission on the following:

- (a) any submissions made in response to the notice under section 172;
- (b) any opinions and advice provided in response to the consultation under that section.

**174        Decision on restriction**

- (1) The Commission must make its decision on whether to declare a general restricted area after considering the following:
  - (a) any application under section 171 to declare the general restricted area;
  - (b) the report by the Director;
  - (c) the public interest and community impact requirements.
- (2) As soon as practicable after making a decision under subsection (1), the Commission must give a decision notice to each person referred to in section 172(1).
- (3) A general restricted area in the declaration may be different from the proposed area, but must include part of the proposed area.

**175        Publication of general restricted area**

- (1) Within 28 days after the date of publication of the *Gazette* notice referred to in section 169(1), the Commission must publish the following in a way determined by the Commission:
  - (a) the boundaries of the general restricted area;
  - (b) the prohibitions or restrictions in the general restricted area;
  - (c) any other relevant details of the declaration;

- (d) any other matters the Commission considers appropriate.
- (2) Subsection (1) applies to any variation or revocation of the declaration.

**176        Commencement of general restricted area**

A declaration of a general restricted area has effect on the later of the following:

- (a) the date of publication of the *Gazette* notice referred to in section 169(1);
- (b) the date specified in the declaration.

**177        Variation of general restricted area**

- (1) The Commission may, on application or its own initiative, vary or revoke a declaration regarding a general restricted area.
- (2) Sections 172 to 176 apply, with the necessary changes, to any variation or revocation of a declaration regarding a general restricted area in the same manner as a declaration.

**178        Warning of general restricted area**

- (1) The Commission must take all steps it considers necessary to warn the public of a general restricted area at:
  - (a) the places where a road or other customary route enters the general restricted area; and
  - (b) the customary departure locations for any vessels or aircraft travelling into the general restricted area.
- (2) The warning must state the following:
  - (a) the details of the declaration;
  - (b) a summary of the offence against section 170;
  - (c) any other matters the Commission considers appropriate.

## **Division 4            Special restricted area**

### **179            Declaration of special restricted area**

- (1) The Minister may, by *Gazette* notice, declare an area of land to be a special restricted area if the Minister thinks the declaration is urgently needed for the wellbeing of one or more communities in the vicinity of the area.
- (2) The declaration must specify the following:
  - (a) the boundaries of the special restricted area;
  - (b) the prohibitions or restrictions in the special restricted area;
  - (c) when the declaration expires.
  - (d) any other matters the Minister considers appropriate.
- (3) The Minister may, by *Gazette* notice, vary, extend or revoke a declaration before it expires.
- (4) A declaration may be extended more than once.
- (5) The Minister must make the decision on whether to declare a special restricted area after considering:
  - (a) any information, advice or recommendation the Minister may request from the Commission; and
  - (b) the public interest and community impact requirements.
- (6) If the special restricted area includes within its boundaries any portion of a general restricted area, the operation of the declaration in that portion of the general restricted area:
  - (a) is suspended while the declaration under subsection (1) is in force; and
  - (b) resumes when the declaration under subsection (1) expires.
- (7) The Minister must table a copy of a declaration made under this section in the Legislative Assembly within 6 sitting days after making the declaration.

### **180            Offence relating to special restricted areas**

- (1) A person commits an offence if the person:
  - (a) brings prohibited liquor into a special restricted area; or



**182            Commencement of special restricted area**

A declaration of a special restricted area has effect on the later of the following dates:

- (a) the date of publication of the *Gazette* notice referred to in section 179;
- (b) the date specified in the declaration.

**183            Warning of special restricted area**

- (1) Before the declaration takes effect, the Minister must take all steps the Minister considers necessary to warn the public of the special restricted area.
- (2) The warning must state the following:
  - (a) the details of the declaration;
  - (b) a summary of the offence against section 180;
  - (c) any other matters the Minister considers appropriate.
- (3) The Minister may enter into an arrangement with any local council in the special restricted area to give the public warning required under subsection (2).
- (4) Subsection (2) applies to any variation of the declaration.
- (5) The duty to warn the public under this section ceases when the declaration expires.

**184            Delegation by Minister**

The Minister may delegate any of the Minister's functions under this Division to the Commission.

**Division 5            Restricted premises**

**185            Power to declare restricted premises**

The Director may, on application, declare any of following to be restricted premises:

- (a) residential premises;
- (b) privately owned land and any building or structure on the land, including any part of the land, building or structure that is open to and used by the public;

- (c) Crown land that is leased or occupied under a licence or agreement;
- (d) a retail shopping centre as defined in section 5(1) of the *Business Tenancies (Fair Dealings) Act 2003*;
- (e) a church or other building owned by a religious body and used for public worship;
- (f) a hospital or other premises providing health services;
- (g) a school or other educational premises;
- (h) any land, premises or other place prescribed by regulation.

**186        Offence in relation to restricted premises**

(1) A person must not:

- (a) bring liquor onto or into restricted premises; or
- (b) have possession of liquor on or in restricted premises; or
- (c) consume liquor on or in restricted premises.

Maximum penalty:        100 penalty units.

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

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that:

- (a) the liquor was:
  - (i) on or in restricted premises belonging to a religious body; and
  - (ii) used for public worship; and
  - (iii) intended for use in connection with the celebration of a religious service by a person approved by the Director; or
- (b) the person was:
  - (i) passing through an area of restricted premises open to and used by the public; and
  - (ii) in possession of an unopened container of liquor intended for consumption elsewhere.



**187        Application for declaration of restricted premises**

- (1) An application for a declaration of restricted premises may be made by an owner or occupier of the place to be restricted.
- (2) An application for a declaration of restricted premises may be made for any part of the place that is open to and used by the public by the following:
  - (a) a person residing in or conducting business in the neighbourhood of the place;
  - (b) a charity or a community-based organisation or body whose activities are connected with or relevant to the neighbourhood of the place;
  - (c) a police officer of or above the rank of Senior Sergeant.
- (3) An application for a declaration of restricted premises may be made for a public housing residence by a police officer of or above the rank of Assistant Commissioner.
- (4) An application may be made by a representative on behalf of the applicant.

**188        Application process**

- (1) The application must be in the approved form and lodged with the Director.
- (2) The application must include the following:
  - (a) the name and contact information of the applicant and any representative of the applicant;
  - (b) a detailed explanation of the restriction being sought for the place;
  - (c) a detailed description of the proposed restricted premises;
  - (d) the reasons for the proposed restriction;
  - (e) if the applicant is not the occupier of the place:
    - (i) the name and contact information of the owner; and
    - (ii) a statement of whether the owner was informed of the application.
- (3) The Director may request additional information from the applicant or applicant's representative.

- (4) The Director may reject an application if satisfied the application is frivolous or vexatious.

**189        Consultation on application**

- (1) As soon as practicable after the Director receives an application to restrict a place, the Director must consult with the following:
- (a) all occupiers of the place;
  - (b) all owners of the place;
  - (c) the Commissioner of Police.
- (2) The consultation may be conducted in any manner the Director considers appropriate.

**190        Decision after consultation**

- (1) No declaration may be made unless the Director is satisfied that:
- (a) the declaration would:
    - (i) be in the public interest; or
    - (ii) reflect the wishes of a majority of the occupiers of the proposed restricted premises; and
  - (b) the declaration is practicable in the circumstances.
- (2) The Director must make a decision on whether to declare a place to be restricted premises after considering the following:
- (a) the application;
  - (b) the results of the consultation;
  - (c) the public interest and community impact requirements.
- (3) The restricted premises in the declaration may be different from the proposed restricted premises in the application, but must include part of the proposed restricted premises.
- (4) As soon as practicable after making a decision under subsection (2), the Director must give a decision notice to the applicant.

**191            Commencement of restriction**

A declaration of restricted premises takes effect from the time notice of the declaration is displayed at the restricted premises under section 193.

**192            Variation of restriction**

- (1) The Director may, on application, vary a declaration of restricted premises by reducing or enlarging the places to which the declaration relates.
- (2) Sections 186 to 193 apply, with the necessary changes, to the variation of a declaration in the same manner as a declaration.

**193            Warning of restricted premises**

- (1) Within 14 days after making a declaration of restricted premises, the Director must display a notice outside the place warning the public of the restricted premises.
- (2) The notice must include the following:
  - (a) the details of the declaration;
  - (b) a summary of the offences against sections 186 and 194;
  - (c) any other information the Director considers appropriate.
- (3) The Director must:
  - (a) revise the notice to include any variation of the declaration;  
and
  - (b) remove the notice as soon as practicable after the declaration expires or is revoked.

**194            Removing, defacing or interfering with notice**

- (1) Subject to subsection 193(3), a person must not remove, deface or otherwise interfere with the notice of the declaration.
- (2) A person commits an offence if the person contravenes subsection (1).

Maximum penalty:        20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

**195        Expiry of restriction**

- (1) If the declaration was made on the application of an owner or occupier of the place, the declaration expires if:
  - (a) the owner's title to the place is transferred; or
  - (b) the occupier's lease of the place expires or is terminated.
- (2) The owner of the restricted premises must give written notice to the Director if ownership of the place is transferred or the lease expires or is terminated.

**196        Revocation of restriction**

- (1) The Director may, on application or the Director's own initiative, revoke a declaration of restricted premises.
- (2) An application to revoke a declaration may be made by the following:
  - (a) the applicant for the declaration or the applicant's representative;
  - (b) an occupier of the restricted premises.
- (3) As soon as practicable after making a decision under this section, the Director must give a decision notice to the applicant.

**Division 6        Permissions and permits**

**197        Permission for prohibited public place**

- (1) The owner or occupier of a public place listed in section 168(1) may give permission for the consumption of liquor on or in all or a part of that place.
- (2) The permission may be given generally to the public or to specific persons, bodies or groups, with or without conditions.
- (3) The permission of a local council must be given by *Gazette* notice.

**198        Permit for restricted areas**

- (1) A person may apply for a permit to exempt the person from the restrictions in:
  - (a) a general restricted area; and
  - (b) a special restricted area.

- (2) The Director may grant a permit to a person to do one or more of the following:
  - (a) bring liquor into the restricted area;
  - (b) possess liquor, or have control of liquor, in the restricted area;
  - (c) consume liquor in the restricted area.
- (3) The permit may only be granted to a person who:
  - (a) resides in the restricted area; or
  - (b) is temporarily living in the restricted area; or
  - (c) intends to temporarily live in the restricted area.
- (4) The Director may grant a permit subject to the conditions the Director considers appropriate.

**199        Application for permit**

- (1) An application for a permit must be in the approved form and lodged with the Director.
- (2) An applicant for a permit must satisfy the Director that issuing the permit:
  - (a) is in the public interest; and
  - (b) will not have a significant adverse impact on the community.
- (3) The application must include the applicant's reasons for wanting the permit.
- (4) The Director may reject an application if satisfied the application is frivolous or vexatious.

**200        Decision on application**

- (1) The Director must take reasonable steps to consult on the proposed permit with the following:
  - (a) the residents of the restricted area;
  - (b) any local council in the restricted area;
  - (c) the Commissioner of Police;
  - (d) any permit committee established for the restricted area under the regulations.

- (2) Before making a decision, the Director must consider the following:
  - (a) the application;
  - (b) the results of the consultation;
  - (c) the public interest and community impact requirements.
- (3) After considering the matters specified in subsection (2), the Director must:
  - (a) approve the application and issue the permit; or
  - (b) refuse to issue the permit.
- (4) As soon as practicable after making a decision under subsection (1), the Director must give a decision notice to the applicant.

#### **201        Guests of permit holder**

A person may consume liquor at the invitation of the holder of a permit if the person:

- (a) is a guest of the holder of the permit on or in premises owned or occupied by the holder of the permit; and
- (b) does not reside in the restricted area to which the permit relates.

#### **202        Delivery of liquor to permit holder**

For the purpose of delivering liquor to a permit holder, a person may:

- (a) bring liquor owned, or ordered under a contract of purchase, by the holder of the permit into the restricted area to which the permit relates; and
- (b) possess, or have control of that liquor, in the restricted area to which the permit relates.

#### **203        Revocation of permit**

- (1) The Director may revoke a permit if the holder of the permit:
  - (a) contravenes a condition of the permit; or
  - (b) moves to a place outside the restricted area to which the permit relates.

- (2) As soon as practicable after making the decision, the Director must give a decision notice to the person who held the permit.

#### **204        Offences related to permits**

- (1) A person commits an offence if the person contravenes a condition of a permit.

Maximum penalty:        20 penalty units.

- (2) The holder of a revoked permit must return it to an inspector or a police officer when requested to do so by an inspector or officer.

- (3) A person commits an offence if the person contravenes subsection (2).

Maximum penalty:        20 penalty units.

- (4) An offence against subsection (1) or (3) is an offence of strict liability.

## **Part 9            Addressing anti-social behaviour**

### **Division 1        Interpretation and application**

#### **205        Definitions**

In this Part:

***banned person*** means an individual who is subject to a notice under section 209.

***banning notice*** means a notice under section 209.

***banning offence*** means an offence listed in section 206.

***excluded person*** means an individual who is subject to an order under section 217 or 219.

***exclusion order*** means an order under section 217 or 219.

***high risk area*** means an area of land declared to be a high risk area under section 207.

#### **206        Applicable offences**

- (1) A banning notice or an exclusion order may be issued in relation to an offence against any of the following:

- (a) section 225;

- (b) section 43BF as it relates to offence of arson against section 66, 133, 166, 174C, 174D, 174E, 176A(2), 177, 181, 186, 188, 188A, 189A, 192, 200, 212, 213, 215, 241(1) or 243(1) of the Criminal Code;
  - (c) section 47, 47AA, 50 or 53 of the *Summary Offences Act 1923*;
  - (d) section 7(1), 7A or 8 of the *Weapons Control Act 2001*;
  - (e) any other offence prescribed by regulation.
- (2) To avoid doubt, this Part does not apply retrospectively to any conduct, in relation to an offence, before the offence is listed in or prescribed under subsection (1).

## **Division 2 High risk areas**

### **207 Declaration of a high risk area**

- (1) The Minister may, by *Gazette* notice, declare an area to be a high risk area if:
- (a) alcohol-related violence occurred in a public place within the vicinity of licensed premises in the area; and
  - (b) the Minister believes that banning notices and exclusion orders are a reasonable way of preventing or reducing the further occurrence of alcohol-related violence in the area.
- (2) Before making a declaration under subsection (1), the Minister may consult with the Commission, the Commissioner of Police and any other person the Minister considers appropriate.

### **208 Variation and revocation of declaration of high risk area**

- (1) The Minister may, by *Gazette* notice, vary or revoke a declaration of a high risk area at any time.
- (2) The Minister must, by *Gazette* notice, revoke a declaration of a high risk area if the Minister believes that alcohol-related violence is no longer occurring in the high risk area.



## **Division 3 Banning notices**

### **209 Police power to give banning notice**

- (1) A police officer may issue a banning notice to a person if the officer believes on reasonable grounds that:
  - (a) the person is committing or has committed a banning offence wholly or partly in a high risk area; and
  - (b) the person is likely to continue to commit a banning offence in a high risk area; and
  - (c) the banning offence has caused, or may cause, alcohol-related violence in a high risk area; and
  - (d) the notice would be a reasonable way of preventing the person from continuing to commit the banning offence or committing another banning offence in a high risk area.
- (2) In determining whether the belief is reasonable, the police officer must consider each of the following:
  - (a) the apparent state of health of the person to whom the notice would apply;
  - (b) whether the person should be arrested or held in custody pending the hearing of any charges against the person in relation to the banning offence;
  - (c) whether the person is capable of comprehending the nature and effect of the notice;
  - (d) any other matter the officer considers relevant.
- (3) Only one banning notice may be issued to a person in relation to the same banning offence.
- (4) However, another banning notice in relation to a different banning offence may be issued to a banned person, even for the same high risk area or the same licensed premises.

### **210 Requirements before giving banning notice**

- (1) If a police officer intends to issue a banning notice to a person, the officer must:
  - (a) produce the officer's police identification unless the officer is in uniform; and

- (b) inform the person of the officer's intention of giving the notice.
- (2) The person to whom the notice is being issued may ask the police officer to state the officer's name, rank and place of duty and the officer must give that information.
- (3) A contravention of subsection (1) or (2) by a police officer does not constitute an offence against this Act, but may be dealt with under Part IV of the *Police Administration Act 1978*.

## **211 Identification of person**

- (1) For the purpose of issuing a banning notice to a person, a police officer may request the person to state the person's name and the address of the person's usual place of residence or work.
- (2) The police officer may request the person to produce evidence of the name and address given by the person in response to a requirement under subsection (1), if the police officer suspects on reasonable grounds that the stated name or address is false.
- (3) A person commits an offence if:
  - (a) the person is requested by a police officer under subsection (1) to state the person's name and address; and
  - (b) the person:
    - (i) fails to state the person's name and address; or
    - (ii) states a name that is false in a material particular; or
    - (iii) states an address other than the full and correct address of the person's usual place of residence or work.

Maximum penalty:     5 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) A person commits an offence if the person:
  - (a) has evidence available of the person's name and the address of the person's usual place of residence or work; and
  - (b) does not produce that evidence when requested by a police officer under subsection (2).

Maximum penalty:     5 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

- (7) It is a defence to a prosecution for an offence against subsection (3) or (5) if the defendant has a reasonable excuse.
- (8) Despite subsection (3), it is not an offence for the person to fail to comply with a request made under subsection (1) or (2) if the police officer who made the request did not inform the person, at the time the request was made, that it is an offence to fail to comply with the request.

## **212 Effect of banning notice**

- (1) A banning notice, according to its terms, bans the person from entering or remaining in either of the following:
  - (a) the high risk area for a specified period of up to 14 days;
  - (b) specified licensed premises in the high risk area for a specified period of up to 14 days.
- (2) The ban starts from the time the banning notice is received by the person.
- (3) A banning notice does not prevent a person from:
  - (a) residing in or attending the person's usual place of residence or work; or
  - (b) entering or remaining in the high risk area for the purpose of residing in or attending the person's usual place of residence or work.

## **213 Contents of banning notice**

A banning notice must include the following:

- (a) the name of the banned person;
- (b) a description of the banning offence for which the person is being given the notice and the grounds for the police officer's belief;
- (c) the name, rank and place of duty of the police officer giving the notice;
- (d) a description of the high risk area in which the notice applies;
- (e) the time when the notice is given to the person and the period of the ban;

- (f) an explanation of the scope of the ban, including whether the person is banned from the high risk area generally or from specified licensed premises in the high risk area;
  - (g) a statement that it is an offence to contravene the notice or a direction given by a police officer to leave the high risk area or the specified licensed premises in the high risk area during the ban;
  - (h) an explanation of how the ban can be varied or revoked.
- (2) To enforce a banning notice, a police officer may give licensees in the high risk area, and their employees, a copy of the notice and a photograph of the banned person.

#### **214 Revocation or variation by police officer**

- (1) Any police officer may vary a banning notice at any time by written notice given to the banned person stating the variation.
- (2) A variation may include adding, varying or removing conditions on a banning notice.
- (3) A banning notice cannot be varied to extend the period for which the notice applies.
- (4) The police officer who gave a banned person a banning notice may revoke it if the officer considers it appropriate to do so.

*Note for section 214*

*A banned person may also apply to the Commissioner of Police to revoke a banning notice under section 216.*

#### **215 Offence to contravene banning notice**

- (1) A person commits an offence if:
  - (a) the person is a banned person; and
  - (b) the person enters, attempts to enter or remains in a high risk area or licensed premises contrary to the banning notice.

Maximum penalty: 20 penalty units.

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

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

*Note for section 215*

*Section 212(3) exempts certain activities or purposes from a banning notice. A person does not contravene the banning notice if the person enters, attempts to enter or remains in a high risk area or licensed premises for one of those activities or purposes.*

## **216 Revocation or variation by Commissioner of Police**

- (1) A banned person may apply to the Commissioner of Police to revoke or vary the banning notice.
- (2) The application must be in writing and give reasons for revoking or varying the notice.
- (3) The application does not affect the operation of the banning notice.
- (4) The Commissioner of Police must consider the request and may revoke or vary the banning notice if satisfied that:
- (a) there are sufficient grounds for revoking or varying it; or
  - (b) there are special circumstances that make it otherwise appropriate to revoke or vary it.

*Example for subsection (4)(b)*

*A person is given a banning notice the night before the person's wedding. The wedding reception is to take place at the licensed premises from which the person is banned. The Commissioner of Police may decide there are special circumstances because of the number of persons attending the reception, the costs involved or the lack of alternative venues.*

- (5) A banning notice ceases to have effect from the time the Commissioner of Police revokes it.
- (6) To avoid doubt, the provisions of section 214 apply to the Commissioner of Police.

## **Division 4 Exclusion orders**

### **217 Making exclusion order**

- (1) A court of competent jurisdiction may make an exclusion order on:
- (a) an application by the Commissioner of Police under section 218; or
  - (b) a finding of guilt for a banning offence under section 219.

- (2) The court may make an exclusion order about a person for a high risk area if the court is satisfied that making the exclusion order would be a reasonable way of preventing the person from committing a banning offence in the high risk area.
- (3) To determine whether making the exclusion order would be a reasonable way of preventing the person from committing a banning offence in the high risk area, the court must consider each of the following to the extent it is relevant:
  - (a) the nature and gravity of the banning offence;
  - (b) whether the person was previously found guilty of an offence committed in an area and, at the time of the offence or a later time, the offence is a banning offence and the area is a high risk area;
  - (c) whether the person is or was the subject of an exclusion order or banning notice;
  - (d) whether the person is or was the subject of an infringement notice for a banning offence committed in a high risk area;
  - (e) the likely effect of an exclusion order on the person and any victim of the banning offence;
  - (f) the likely effect of an exclusion order on public order and safety;
  - (g) any other matters the court considers relevant.

## **218 Application after multiple notices**

The Commissioner of Police may apply to the Local Court for an exclusion order under section 217 in relation to a person if:

- (a) the person was given one of the following notices at least 3 times:
  - (i) a banning notice for the high risk area;
  - (ii) an infringement notice for a banning offence committed wholly or partly in the high risk area and not withdrawn or the subject of an election referred to in section 21 of the *Fines and Penalties (Recovery) Act 2001*; and
- (b) the notices were all given within the 24 month period before the date of the application to the Court.

**219 Exclusion order on finding of guilt**

- (1) A court of competent jurisdiction that finds a person guilty of a banning offence may also make an exclusion order about the person if the court:
  - (a) is satisfied of the matters required under section 217; and
  - (b) is satisfied the banning offence was committed wholly or partly in a high risk area; and
  - (c) does not sentence the person to a term of imprisonment of 12 months or more in relation to the banning offence.
- (2) An exclusion order under this section may be made on the court's own initiative or on application of the Director of Public Prosecutions or a police officer.
- (3) An exclusion order under this section may be made in addition to and despite any other order the court may make relating to the offender and the offence.

**220 Effect of exclusion order**

- (1) An exclusion order excludes the offender from the following places:
  - (a) any high risk area specified in the order;
  - (b) any licensed premises in any high risk area specified in the order.
- (2) The exclusion is for the period specified in the order, not exceeding 12 months.
- (3) An exclusion order may:
  - (a) exclude the person at all times or at specified times, during the specified period; and
  - (b) allow the person to enter an excluded place for specific purposes at specific times; and
  - (c) make the order subject to any other conditions the court considers appropriate.

## **221 Offence of contravening exclusion order**

- (1) An person commits an offence if the person is subject to an exclusion order and:
  - (a) the person enters or remains in a high risk area or premises contrary to the exclusion order; or
  - (b) the person attempts to enter a high risk area or premises contrary to the exclusion order.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

## **222 Variation of exclusion order**

- (1) Any of the following may apply for a variation of an exclusion order to the court that made the order:
  - (a) the person subject to the order;
  - (b) the Director of Public Prosecutions;
  - (c) a police officer.
- (2) After considering the application, the court may vary the exclusion order in any way the court considers appropriate if satisfied that circumstances arising since the making of the order make it appropriate to do so.
- (3) To avoid doubt, an exclusion order may be varied more than once.

## **Division 5 Enforcement of banning notices and exclusion orders**

### **223 Direction to leave high risk area or licensed premises**

- (1) A police officer may give a direction to a person under subsection (2) if the officer believes on reasonable grounds that the person is:
  - (a) a banned person in a high risk area or licensed premises contrary to a banning notice; or
  - (b) an excluded person in a high risk area or licensed premises contrary to an exclusion order.



- (2) The police officer may direct the person to leave the high risk area or the licensed premises and specify the way in which the person is to leave.
- (3) When giving the direction, the police officer must:
  - (a) produce the officer's police identification unless the officer is in uniform; and
  - (b) inform the person that:
    - (i) the officer is empowered to give the direction; and
    - (ii) it is an offence to fail to comply with the direction; and
  - (c) make all reasonable attempts to ensure the person understands the direction.
- (4) A contravention of subsection (3) by a police officer does not constitute an offence against this Act but may be dealt with under Part IV of the *Police Administration Act 1978*.

#### **224 Use of reasonable force to remove banned person**

- (1) A police officer may use reasonable force to:
  - (a) prevent a banned person or an excluded person from entering or remaining in, or from attempting to enter or remain in, a high risk area or licensed premises contrary to a banning notice or an exclusion order; and
  - (b) remove a banned person or an excluded person from a high risk area or licensed premises after the person fails to comply with a direction given under section 223.
- (2) This section does not limit any powers of arrest a police officer has under any other law of the Territory.
- (3) Any action taken under this section in relation to a person does not prevent commencing a proceeding against the person for an offence.

#### **225 Offence to fail to comply with direction**

- (1) The banned or excluded person must comply with a direction given in accordance with section 223.
- (2) A person commits an offence if the person contravenes subsection (1).

Maximum penalty: 50 penalty units.

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

## **Division 6            Offences and general matters**

### **226            Offence to permit entry of banned person or excluded person**

- (1) A licensee commits an offence if:
- (a) the licensee intentionally permits a person to enter the licensed premises; and
  - (b) the person is subject to a banning notice or an exclusion order and the licensee has knowledge of that circumstance; and
  - (c) the entry of the person is in contravention of the banning notice or exclusion order.

Maximum penalty:     200 penalty units.

- (2) A licensee's employee commits an offence if:
- (a) the employee intentionally permits a person to enter the licensed premises; and
  - (b) the person is subject to a banning notice or an exclusion order and the employee has knowledge of that circumstance; and
  - (c) the entry of the person is in contravention of the banning notice or exclusion order.

Maximum penalty:     100 penalty units.

- (3) Strict liability applies to subsections (1)(c) and (2)(c).

### **227            Employee violence or drug use**

- (1) A licensee must notify the Director as soon as practicable if the licensee becomes aware that an employee of the licensee is charged with or found guilty of an offence involving violence or the unlawful possession of drugs.
- (2) The Director may direct the licensee to limit or restrict the responsibilities and activities of an employee referred to in subsection (1) and that employee's contact with patrons until the matter is dealt with by a court of competent jurisdiction.
- (3) The licensee must comply with any direction given under subsection (2).

**228 Disclosure of information for enforcement purposes**

- (1) The Director or a police officer may disclose information about a banned person or an excluded person to a licensee or the licensee's employees if the Director or officer considers it necessary for the effective and efficient enforcement of a banning notice or an exclusion order.
- (2) The information may include any of the following:
  - (a) the fact a banning notice or an exclusion order was issued or made;
  - (b) the places from which the person is banned or excluded;
  - (c) the name and a photograph of the person;
  - (d) the period for which the notice or order applies;
  - (e) a copy of the notice or order and of any variation or revocation of the notice or order;
  - (f) other information about the person, notice or order that the Director or police officer considers appropriate in the circumstances.

**229 Proceedings regarding high risk area**

- (1) A court of competent jurisdiction hearing a proceeding in which the validity of a declaration of a high risk area is called into question must not stay the operation of the declaration pending the final determination of the proceeding, unless the court considers there are exceptional circumstances.
- (2) If a court of competent jurisdiction finds a declaration of a high risk area to be invalid, the finding does not affect the validity, in relation to any period before that finding, of the following:
  - (a) any banning notice given or exclusion order made in relation to the high risk area;
  - (b) any thing done under this Part in reliance on the banning notice or exclusion order.

**230 Annual report by Commissioner of Police**

- (1) The Commissioner of Police must, each financial year, give a report to the Minister about activities under this Part.

- (2) The report must include the following information:
- (a) the number of banning notices issued during the year;
  - (b) the number of persons to whom banning notices were issued during the year;
  - (c) the number of banning notices issued during the year to each person who was given more than one banning notice during the year;
  - (d) the offences for which banning notices were issued during the year;
  - (e) the high risk areas for which banning notices were issued during the year;
  - (f) the ages of the persons to whom banning notices were issued during the year;
  - (g) whether any of the persons to whom banning notices were issued during the year identified themselves as an Aboriginal person or Torres Strait Islander and, if any, the number of persons;
  - (h) the number of banning notices given during the year for:
    - (i) each high risk area; and
    - (ii) each licensed premises;
  - (i) the number of persons charged with an offence against section 215 or 225 during the year and the results of those charges;
  - (j) the number of contraventions of section 215 or 225 recorded by police officers during the year for which no charges were laid;
  - (k) any other information prescribed by regulation.
- (3) The report must include the following information about exclusion orders applied for by the Commissioner of Police:
- (a) the number of applications for exclusion orders made during the year;
  - (b) the number of exclusion orders made during the year;
  - (c) the number of persons for whom exclusion orders were applied for during the year;

- (d) the number of exclusion orders applied for during the year for each person for whom more than one exclusion order was applied for during the year;
  - (e) the offences for which exclusion orders were applied for during the year;
  - (f) the high risk areas for which exclusion orders were applied for during the year;
  - (g) the ages of the persons for whom exclusion orders were applied for during the year;
  - (h) whether any of the persons for whom exclusion orders were applied for during the year identified themselves as an Aboriginal person or Torres Strait Islander and, if any, the number of persons;
  - (i) the number of exclusion orders applied for during the year for:
    - (i) each high risk area; or
    - (ii) each licensed premises;
  - (j) the number of persons charged with an offence against section 221 during the year and the results of those charges;
  - (k) the number of contraventions of section 221 recorded by police officers during the year for which no charges were laid;
  - (l) any other information prescribed by regulation.
- (4) The Commissioner of Police must collect the information necessary to enable reports to be prepared under subsection (1).
- (5) The report must be given to the Minister within 3 months after the end of each financial year.
- (6) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (7) In this section:

**Minister** means the Minister administering the *Police Administration Act 1978*.

## **Part 10 Special search and seizure powers**

### **Division 1 Application and interpretation**

#### **231 Forfeiture offences**

The search powers in Division 3 and the seizure powers in Division 6 must not be exercised except in relation to a forfeiture offence.

*Note for section 231*

*The offences added to the Liquor Act 1978 by the Stronger Futures in the Northern Territory Act 2012 (Cth) are taken to be a forfeiture offence because they are an offence against section 170.*

#### **232 Exercising other powers**

To avoid doubt, nothing in this Part is to be construed or taken as preventing the exercise of any power to search, enter and seize under another law of the Territory.

*Note for section 232*

*A police officer has powers to search, enter and seize under the Police Administration Act 1978.*

### **Division 2 Search for suspected unlawful consumption**

#### **233 Searching persons**

An inspector or a police officer may, without a warrant, search a person who the inspector or officer suspects on reasonable grounds is contravening section 150 or 168.

### **Division 3 Special search powers**

#### **234 Search on suspicion of forfeiture offence**

An inspector or a police officer may, without a warrant, exercise the powers specified in section 236 if the inspector or officer suspects on reasonable grounds that:

- (a) a forfeiture offence was committed, is being committed or is about to be committed; and
- (b) it would not be reasonably practicable to obtain a warrant to investigate the forfeiture offence.

### **235 Search on random basis**

An inspector or a police officer may, without a warrant, exercise the powers specified in section 236 on a random basis to detect whether a forfeiture offence was committed, is being committed or is about to be committed if the search is conducted:

- (a) within a general restricted area or a special restricted area; or
- (b) in relation to a vehicle, vessel or aircraft that the inspector or officer suspects on reasonable grounds to be travelling to a general restricted area or a special restricted area; or
- (c) in relation to a driver, passenger or member of the crew of a vehicle, vessel or aircraft referred to in paragraph (b), whether on board or not; or
- (d) in relation to baggage or cargo that the inspector or officer suspects on reasonable grounds to be destined for travel to or delivery to a general restricted area or a special restricted area.

### **236 Search powers**

The following powers may be exercised by the inspector or police officer under this Division:

- (a) enter and search premises;
- (b) stop, enter, search, remove and detain a vehicle, vessel or aircraft;
- (c) stop, detain and search a person;
- (d) search any thing found:
  - (i) on or in the premises entered or searched under paragraph (a); or
  - (ii) on or in the vehicle, vessel or aircraft stopped, entered, searched, removed or detained under paragraph (b); or
  - (iii) on the person stopped, detained or searched under paragraph (c).

## **Division 4 Search of restricted premises**

### **237 Search of restricted premises**

An inspector or a police officer who suspects on reasonable grounds that an offence against section 186 was committed, is being committed or is about to be committed may, without a warrant:

- (a) enter and search the restricted premises; and
- (b) search any person on or in the restricted premises who is suspected of committing the offence.

## **Division 5 Limits on searches**

### **238 Entering residential premises**

- (1) Despite any thing to the contrary in this Act, an inspector or a police officer must not enter residential premises, without a warrant, unless:
  - (a) an occupier of the premises consents; or
  - (b) the premises are in a general restricted area; or
  - (c) the premises are in a special restricted area; or
  - (d) the premises are restricted premises.
- (2) An inspector or a police officer must not use the powers in section 235 to enter residential premises.

### **239 Same gender searches**

A personal search of a person under this Act must be conducted:

- (a) by someone who is of the same or similar gender as the person being searched, unless it is not reasonably practicable; and
- (b) in a manner that respects the person's dignity and privacy.



## **Division 6 Special seizure powers**

### **240 Seizing containers**

- (1) An inspector or a police officer may exercise the power in subsection (2) if the inspector or officer suspects on reasonable grounds that one of the following is being or is about to be committed:
  - (a) a contravention of section 168(1);
  - (b) a forfeiture offence;
  - (c) an offence against section 186;
  - (d) a breach of a banned drinker order made under the *Alcohol Harm Reduction Act 2017*.
- (2) The inspector or police officer may, without a warrant, seize any opened or unopened container that the inspector or officer believes on reasonable grounds contains liquor.
- (3) After seizing the container, the inspector or police officer must take reasonable steps to determine if the container contains liquor.
- (4) The inspector or police officer must return the container to the person from whom it was seized if the inspector or officer determines that the container does not contain liquor.
- (5) If the container contains liquor, the inspector or police officer must immediately:
  - (a) empty the container; or
  - (b) destroy the container and its contents; or
  - (c) retain possession of the container and its contents for disposal under Part 12.
- (6) This section may be used, in the same way as for liquor, by an inspector or a police officer to seize, empty, or destroy a container of a substance prohibited under section 150.

### **241 Seizing any thing related to forfeiture offence**

- (1) If an inspector or a police officer suspects on reasonable grounds that a forfeiture offence was committed, is being committed or is likely to be committed, the inspector or officer may, without a warrant, seize any thing that the inspector or officer believes on reasonable grounds may be used as evidence in proceedings for

prosecution of the forfeiture offence.

- (2) In the course of exercising the power in subsection (1), an inspector or a police officer may, without a warrant, seize any thing that the inspector or officer believes on reasonable grounds was used in the commission of the forfeiture offence, despite the following:
  - (a) the thing having no evidentiary value in the prosecution of the offence;
  - (b) the thing being the property of a someone other than a person suspected of committing the offence;
  - (c) the thing being at risk of forfeiture to the Territory under Part 12;
  - (d) the thing and the offence not being subject to the *Criminal Property Forfeiture Act 2005*.

#### **242 Limit on seizure of vehicles, vessels and aircraft**

- (1) An inspector or a police officer must not seize a vehicle, vessel or aircraft unless the inspector or officer believes on reasonable grounds that:
  - (a) the amount of liquor involved in the forfeiture offence is at least 2 standard drinks; and
  - (b) the forfeiture offence is likely to be prosecuted other than by an infringement notice.
- (2) Before seizing a vehicle, vessel or aircraft, an inspector or a police officer must consider:
  - (a) its anticipated future use; and
  - (b) whether its seizure and possible forfeiture will cause hardship to a person or community.

#### **243 Inclusion of section 95A of *Liquor Act 1978***

For the purpose of applying and construing this Division in relation to the *Stronger Futures in the Northern Territory Act 2012* (Cth):

- (a) this Division is taken to include section 95A in the same way it was inserted in the *Liquor Act 1978* by that Act; and

- (b) a reference in section 95A to section 95 of the *Liquor Act 1978* is taken to be a reference to section 241 of this Act.

*Note for section 243*

*The Stronger Futures in the Northern Territory Act 2012 (Cth) modified the Liquor Act 1978 by inserting section 95A in relation to seizing vehicles.*

#### **244 Notice of seizure of vehicle, vessel or aircraft**

- (1) If a vehicle, vessel or aircraft is seized under this Act, the Commissioner of Police must take reasonable efforts to identify any person who owns or has an interest in the vehicle, vessel or aircraft.
- (2) The Commissioner of Police must take reasonable efforts to notify any person identified as owning or having an interest in the vehicle, vessel or aircraft of the following:
- (a) that the vehicle, vessel or aircraft was seized;
  - (b) where it is being held;
  - (c) what charges, if any, are laid in respect of the offence in respect of which the vehicle, vessel or aircraft was seized;
  - (d) the process for release of the vehicle, vessel or aircraft under Part 12, Division 1;
  - (e) that the vehicle, vessel or aircraft may be forfeited under section 99A of the *Sentencing Act 1995* or Part 12, Division 2 of this Act;
  - (f) the process for opposing any forfeiture of the vehicle, vessel or aircraft.
- (3) The Commissioner of Police may enter into an agreement with any organisation that provides legal services to people in relation to the seizure or forfeiture of the vehicle, vessel or aircraft under this Act to notify the organisation of the following:
- (a) any charges laid in respect of a vehicle, vessel or aircraft seized or forfeited under this Act;
  - (b) the particulars of any person the Police Force believes owns or has an interest in the vehicle, vessel or aircraft.

**245 Annual report by Commissioner of Police**

- (1) The Commissioner of Police must, each financial year, give a report to the Minister in relation to vehicles, vessels and aircraft seized under this Act.
- (2) The report must include the following information:
  - (a) the number of vehicles, vessels and aircraft seized;
  - (b) a simple description of each vehicle, vessel and aircraft seized in a manner that does not allow it to be identified and its approximate value;
  - (c) the date of each seizure;
  - (d) the forfeiture offence for which each vehicle, vessel or aircraft was seized;
  - (e) the actual amount of liquor involved in each forfeiture offence for which each vehicle, vessel or aircraft was seized, or the estimated amount if the actual amount not known;
  - (f) the number of vehicles, vessels and aircraft released and the reasons for the release;
  - (g) whether there was a criminal proceeding in relation to the forfeiture offence for which vehicle, vessel or aircraft was seized and the result of that proceeding;
  - (h) the number of applications for forfeiture of vehicles, vessels and aircraft, whether the applications were opposed and the results of those applications;
  - (i) the number of vehicles, vessels and aircraft forfeited and the dates of forfeiture;
  - (j) the final disposition of each vehicle, vessel and aircraft forfeited and the reasons for the manner of its disposition;
  - (k) the proceeds from each disposition, if any.
- (3) The report must be given to the Minister within 3 months after the end of each financial year.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

(5) In this section:

**Minister** means the Minister administering the *Police Administration Act 1978*.

## **Part 11 Other enforcement powers**

### **Division 1 Point of sale intervention**

#### **246 Definitions**

In this Division:

**customer** means a person who appears to an inspector or a police officer to be a customer of a licensee for the reasons in section 247(1).

**liquor related offence** means any of the following:

- (a) an offence against this Act;
- (b) an offence against the *Alcohol Harm Reduction Act 2017*;
- (c) breach of a bail condition relating to liquor imposed under Part 3 of the *Bail Act 1982*;
- (d) breach of a court order relating to liquor made under the *Domestic and Family Violence Act 2007*.

#### **247 Point of sale intervention powers – customer**

- (1) An inspector or a police officer may exercise the powers under this section in relation to a person who appears to the inspector or officer to be a customer of a licensee for the following reasons:
  - (a) the person is on or in licensed premises or within 20 m of:
    - (i) an entrance to licensed premises; or
    - (ii) an entrance to the building containing licensed premises; or
    - (iii) a driveway or car park for licensed premises;
  - (b) the person appears to the inspector or officer to be intending to purchase, to be purchasing, to have purchased or to possess liquor purchased from the licensee for consumption away from the licensed premises.

- (2) The inspector or police officer may require the customer to do any of the following:
  - (a) state the customer's name and address;
  - (b) state where the customer intends to consume the liquor;
  - (c) show the customer's identification approved under section 125(3);
  - (d) answer questions about the information in the identification to confirm that the information is accurate;
  - (e) answer questions about whether the customer is:
    - (i) subject to a prohibition referred to in section 125(1); or
    - (ii) prohibited from consuming liquor at the place stated under paragraph (b);
  - (f) state whether the customer intends to provide any of the liquor to another person.
- (3) If the customer appears to intend to provide any of the liquor to another person, the inspector or police officer may:
  - (a) require the customer to answer questions about the other person, to find out if the other person is prohibited from consuming liquor section 125(1); and
  - (b) investigate whether the customer or other person are subject to a bail condition relating to liquor imposed under Part 3 of the *Bail Act 1982*; and
  - (c) investigate whether the customer or other person are subject to a prohibition referred to in section 125(1).
- (4) If the inspector or police officer suspects on reasonable grounds that a liquor offence is likely to occur, the inspector or officer may do either or both of the following:
  - (a) seize any container in the possession of the customer that the inspector or officer believes on reasonable grounds contains liquor;
  - (b) prevent the customer from entering or remaining on or in the licensed premises.
- (5) The inspector or police officer must destroy the contents of a container seized under subsection (4)(a) as soon as practicable.

- (6) If the inspector or police officer believes on reasonable grounds that the identification offered by the customer under subsection (2) is fictitious or false in a material particular, the inspector or officer may seize the identification.
- (7) If the customer is in a vehicle, an inspector or a police officer may:
  - (a) require the driver of the vehicle to stop the vehicle; and
  - (b) require the driver and passengers to follow any reasonable direction to allow the inspector or officer to exercise a power under subsections (2) to (8).

**248        Point of sale intervention power – licensee**

- (1) An inspector or a police officer may give a direction under subsection (2) if the inspector or officer:
  - (a) exercises a power in relation to a customer under section 247; and
  - (b) suspects on reasonable grounds that an offence against this Act is likely to occur in relation to the customer.
- (2) The inspector or police officer may direct the licensee and the licensee's employees at the licensed premises where the customer was present not to sell liquor to the customer for the remainder of the day on which the direction is given.
- (3) When giving the direction under subsection (2), the inspector or police officer must also give the name of the customer or another means of identifying the customer.
- (4) A licensee and a licensee's employee given a direction under subsection (2) must take all reasonable steps to comply with the direction.

**249        Inspector and police officer obligations**

- (1) An inspector must produce the inspector's identity card before exercising a power under section 247 or 248.
- (2) If a police officer is not in uniform, the officer must produce the officer's police identification for inspection before exercising a power under section 247 or 248.
- (3) Before exercising a power under section 247 or 248 in relation to a person, an inspector or a police officer must warn the person that failure to comply with the a requirement or direction power under those sections is an offence

**250 Offence to fail to comply with requirement or direction**

- (1) A person commits an offence if the person fails to comply with a requirement or direction given to the person under section 247(2), (3)(a) or (9).

Maximum penalty: 50 penalty units.

*Note for subsection (1)*

*It is an offence against section 285 to provide false information to an inspector or a police officer.*

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) No prosecution for an offence against subsection (1) may be commenced if the inspector or police officer giving the requirement failed to comply with an obligation in section 249.

*Note for subsection (3)*

*The defendant has an evidential burden in relation to these matters (see section 43BU of the Criminal Code).*

**251 Offence to fail to comply with direction**

- (1) A person commits an offence if the person:
- (a) is a licensee or a licensee's employee; and
  - (b) is given a direction under section 248(2); and
  - (c) fails to take all reasonable steps to ensure that the direction is complied with.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person has a reasonable excuse.
- (4) An inspector or a police officer may also lodge a complaint under section 157 with the Director against the licensee regarding an offence against this section.



**252 Disclosing information**

Despite section 9 of the *Information Act 2002* and the operation of any other law of the Territory that prohibits or restricts the disclosure of information, a person may disclose information that is requested or collected under this Division for the purposes of enforcing this Division.

**253 Point of sale intervention powers do not limit other powers**

The powers of an inspector or a police officer under this Part are in addition to, and do not limit, any other power the inspector or officer may have under this Act or another law of the Territory.

**Division 2 Emergency and other powers**

**254 Emergency powers of Director**

- (1) In an emergency, the Director may do any of the following if of the opinion that it is in the public interest:
  - (a) suspend a licence or an authority;
  - (b) impose a condition on a licensee;
  - (c) vary a condition of a licence or an authority.
- (2) An action taken under subsection (1) has effect for a maximum of 7 days or a shorter period determined by the Director.
- (3) As soon as practicable after making the decision, the Director must give a decision notice to the licensee.
- (4) A condition of a licence determined by the Minister under section 84 cannot be varied under this section.

**255 Police power to suspend licence or authority**

- (1) The Commissioner of Police may suspend a licence or an authority if any of the following occurs, or is likely to occur, at or in the vicinity of the licensed premises and the officer considers it appropriate to do so:
  - (a) an emergency or a natural disaster;
  - (b) riotous conduct;
  - (c) a breach of the peace;
  - (d) a threat to public safety.

- (3) The Commissioner of Police may also suspend a licence or an authority if:
  - (a) the licensee, or the licensee's employee or agent, is being investigated for an offence against this Act; and
  - (b) a police officer investigating the offence believes on reasonable grounds that the offence is likely to continue.
- (4) A suspension under this section has effect for a maximum of 48 hours or a shorter period determined by the Commissioner of Police.
- (5) The Commissioner of Police must, without delay, give written notice of the suspension to the following:
  - (a) the licensee;
  - (b) the Minister;
  - (c) the Chairperson;
  - (d) the Director.
- (6) The notice must include the period of suspension and reasons for the suspension.

**256 Power to suspend sales at major event**

- (1) The following persons may, by order, suspend or restrict the sale of liquor under a major event authority:
  - (a) the Director;
  - (b) a police officer at or above the rank of Commander.
- (2) An order under subsection (1) may be made if the Director or police officer believes on reasonable grounds that:
  - (a) the licensee is in breach of a condition of the licence or authority; or
  - (b) there is an imminent threat of, or actual, alcohol-related violence or anti-social behaviour on or in the licensed premises.
- (3) A suspension or restriction under this section has effect for a maximum of 7 days or a shorter period determined by the person making the order.

- (4) The person making the order must, without delay, give written notice of the suspension or restriction to the following:
  - (a) the licensee;
  - (b) the Minister;
  - (c) the Chairperson;
  - (d) the Director, unless the Director is making the order.
- (5) The notice must include the period of suspension and reasons for the suspension.

**257      Annual report by Commissioner of Police**

- (1) The Commissioner of Police must, each financial year, give to the Minister a report that provides the following information:
  - (a) the number of suspensions imposed by the Commissioner of Police under section 255 and a police officer under section 256 during the year;
  - (b) the licences and authorities that were suspended;
  - (c) the periods during which those suspensions had effect.
- (2) The report must be given to the Minister within 3 months after the end of each financial year.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (4) In this section:

**Minister** means the Minister administering the *Police Administration Act 1978*.

**258      Suspension if drug premises order made**

- (1) The Commissioner of Police may apply to the Commission to suspend a licence or an authority if the licensed premises are drug premises as defined in section 11A of the *Misuse of Drugs Act 1990*.
- (2) The Commission must give the licensee a written notice:
  - (a) stating that an application has been made under subsection (1); and

- (b) inviting the licensee to submit a written response to the application by a specified date not earlier than 28 days after the date of the notice.
- (3) In considering the application, the Commission must have regard to the matters the Commission considers appropriate, including:
  - (a) the material before the Local Court when the drug premises order was made; and
  - (b) evidence of any steps taken by the licensee, before or after the making of the order, to ensure that dangerous drugs are not supplied on or in the licensed premises by the licensee or the licensee's employee or agent; and
  - (c) any written submission made by the licensee under subsection (2)(b).
- (4) The Commission may suspend the licence if the Commission considers that:
  - (a) suspension of the licence is necessary for the protection of the public; or
  - (b) the circumstances of the case are of sufficient gravity to justify the suspension of the licence.
- (5) A suspension must not exceed more than 14 days.
- (6) As soon as practicable after making a decision under this section, the Commission must give a decision notice to the Commissioner of Police and the licensee.
- (7) The suspension of a licence under this section has effect on and from the later of:
  - (a) the date on which the licensee receives the decision notice; or
  - (b) the date specified by the Commission in the decision notice.
- (8) This section does not prevent the Commission taking any other action it is permitted to take under this Act in relation to the licensee or the licensee's licence, authority or licensed premises.

## **Division 3 Undercover police operations**

### **259 Undercover operations**

- (1) A police officer below the rank of Commander may, in writing, apply to a senior officer for an authorisation to possess, purchase, sell or supply 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 possess, purchase, sell or supply 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.

### **260 Annual report by Commissioner of Police**

- (1) The Commissioner of Police must, each financial year, give a report to the Minister in relation to activities under this Division.
- (2) The report must include the following information:
  - (a) the number of applications for authorisations made under section 259(1);
  - (b) the number of authorisations granted under section 259(2);
  - (c) the number of charges laid for offences against this Act as a result of authorisations granted under section 259(2).
- (3) The report must be given to the Minister within 3 months after the end of each financial year.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (5) In this section:

**Minister** means the Minister administering the *Police Administration Act 1978*.

## **Division 4      Related matters**

### **261      Inspector's duty to produce identification**

If an inspector purports to exercise a power under this Act without producing the inspector's identity card when requested to do so by a person whose person or property is the subject of the power:

- (a) the inspector is not authorised to exercise the power; and
- (b) the person is not required to comply with a requirement made by the inspector.

### **262      Reasonable force**

An inspector or a police officer may use any reasonable force or obtain reasonable assistance in acting under this Act.

### **263      Police immunity**

- (1) Despite any thing 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 of the Territory;
  - (b) the liquor is in the officer's possession as evidence for or in proceedings for an offence against this Act or any other law of 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 a proceeding for an offence against this Act or of any other law of the Territory;
  - (e) the liquor is in the officer's possession as an exhibit for the purpose of qualifying the officer to give evidence in a proceeding for an offence against this Act or any other law of the Territory.
- (2) If a police officer obtains or possesses liquor in circumstances listed in subsection (1):
  - (a) the officer is not a party to, or guilty of, an offence against this Act; and

- (b) any evidence of the officer is not to be taken to be the evidence of an accomplice in any proceeding.

**264        Police directions**

A direction given by a police officer under this Act:

- (a) may be given orally or in writing; and
- (b) must be reasonable in all the circumstances.

**265        Police property used in investigation**

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

**Part 12            Forfeiture and disposition of assets**

**Division 1        Police management and disposal of seized things**

**266        Control and management of seized things**

Subject to section 240(5)(a) and (b), the Commissioner of Police must keep control and management of any thing seized under this Act until it is otherwise dealt with under this Part.

**267        Disposition of seized things, other than vehicles, vessels or aircraft**

A thing seized under this Act must be dealt with in accordance with section 166 of the *Police Administration Act 1978* subject to the following:

- (a) the need to retain custody of the thing for evidentiary purposes in any proceeding;
- (b) the Commissioner of Police's power to release the thing under section 268;
- (c) the Commissioner of Police's duty to release a vehicle, vessel or aircraft under section 269;
- (d) any order made under section 99A of the *Sentencing Act 1995*;
- (e) any application under Division 2 for forfeiture of a vehicle, vessel or aircraft.

**268 Discretionary release of seized things**

- (1) The Commissioner of Police may release a thing seized under this Act:
  - (a) on the Commissioner's own initiative; or
  - (b) on application by a person who owns, or has an interest in, the thing; or
  - (c) on application by any other party affected by the seizure.
- (2) The Commissioner of Police must consider the following matters when making a decision under this section to release a thing:
  - (a) whether releasing the thing would lessen or prevent hardship to a person;
  - (b) whether releasing the thing would benefit the community;
  - (c) whether releasing the thing would significantly diminish the evidentiary value of the thing for any proceeding;
  - (d) the seriousness and frequency of the forfeiture offences in respect of which the thing was seized;
  - (e) whether it is likely that the thing, if released, would be used in the commission of further forfeiture offences;
  - (f) any other matters the Commissioner considers relevant.
- (3) The Commissioner of Police may invite anyone who appears to own, or have an interest in, the thing to apply for its release.
- (4) As soon as practicable after an application is made, the Commissioner of Police must:
  - (a) approve the application and release the thing; or
  - (b) refuse the application.
- (5) The Commissioner of Police may attach conditions to the release of a thing under this section.



**269 Mandatory release of seized vehicles, vessels or aircraft**

- (1) Subject to subsection (2), the Commissioner of Police must release a vehicle, vessel or aircraft seized under this Act if:
- (a) no person is charged with a forfeiture offence in respect of which the thing was seized within the time allowed for laying the charge; or
  - (b) only an infringement notice is given for all forfeiture offences in respect of which the thing was seized; or
  - (c) a court of competent jurisdiction orders the release of the thing; or
  - (d) a person was charged with a forfeiture offence in respect of which the thing was seized and all proceedings have ended and:
    - (i) no order is made under section 99A of the *Sentencing Act 1995*; and
    - (ii) no application for forfeiture is made by a police officer under Division 2 within the time allowed for making the application.
- (2) If an application for forfeiture is pending under Division 2, the Commissioner of Police is not required to release the vehicle in the circumstances specified in subsection (1)(a) or (b) but may release it under section 268.

**270 Release to owner**

- (1) If a thing is to be released under this Division, the Commissioner of Police must make a reasonable effort to identify an owner of the thing.

*Note for subsection (1)*

*The registration information about a motor vehicle is not conclusive evidence of its ownership.*

- (2) A thing to be released under this Division must be released to the person who the Commissioner of Police believes on reasonable grounds is the primary owner of the thing.
- (3) If the Commissioner of Police cannot identify the primary owner of the thing, a thing released under this Division must be released to a person whom the Commissioner of Police believes on reasonable grounds owns, or has an interest in, the thing.

- (4) The person to whom a thing is being released may arrange for the thing to be collected by another person on the person's behalf.
- (5) If an owner is identified after reasonable efforts, the Commissioner of Police must give written notice of the following to each owner:
  - (a) the process for taking possession of the thing;
  - (b) the process for disposing of the thing if no one takes possession of it.
- (6) The release of a thing under this Division does not affect any property right a person may have in the thing.
- (7) A thing to be released under this Division must be dealt with under section 166 of the *Police Administration Act 1978* if:
  - (a) no owner or person with an interest in the thing is identified after reasonable efforts; or
  - (b) no owner or person with an interest in the thing is willing to take possession of the thing within 90 days of being notified; or
  - (c) no owner or person with an interest in the thing makes arrangements to take possession of the thing within 90 days of being notified.

## **Division 2 Forfeiture of assets**

### **271 Forfeiture under Sentencing Act 1995**

If a person is charged with the offence in respect of which a thing was seized under this Act, the thing must be dealt with under section 99A of the *Sentencing Act 1995*.

### **272 Police application for forfeiture of vehicle, vessel or aircraft**

- (1) Subject to this section, a police officer may apply to the Local Court for an order under this Division for the forfeiture of a vehicle, vessel or aircraft if:
  - (a) the vehicle, vessel or aircraft was used in the commission of a forfeiture offence; and
  - (b) the police officer believes on reasonable grounds that the quantity of liquor involved in the forfeiture offence exceeds 10 standard drinks.

- (2) No application may be made if a person is charged with a forfeiture offence in respect of which the thing was seized unless:
  - (a) all proceedings for the offence have ended; and
  - (b) no person is found guilty of a forfeiture offence.
- (3) To avoid doubt, an application may be made even if the vehicle, vessel or aircraft was not seized under this Act.
- (4) Despite subsection (1)(b), an application may be made if:
  - (a) a person was charged with a forfeiture offence in respect of which the thing was seized; and
  - (b) all proceedings for all forfeiture offences in respect of which the thing was seized have ended; and
  - (c) no person is found guilty of any of those forfeiture offences; and
  - (d) the application is made on the day proceedings ended.
- (5) The application must be lodged with the Local Court as follows:
  - (a) if no person is charged with a forfeiture offence in respect of which the thing was seized – within 28 days after the offence was alleged to have been committed;
  - (b) if a person is charged with a forfeiture offence in respect of which the thing was seized but no person is found guilty of a forfeiture offence after all proceedings have ended – on the day proceedings end.
- (6) The application must be in the form prescribed by regulation, if any, and state clearly the particulars of the following:
  - (a) the forfeiture offence in respect of which the vehicle, vessel or aircraft was seized;
  - (b) the vehicle, vessel or aircraft.
- (7) The police officer making the application must take reasonable efforts to:
  - (a) identify any person who owns or has an interest in the vehicle, vessel or aircraft; and
  - (b) serve a copy of the application on any persons so identified and located.

### **273 Order to bring an early application**

- (1) A person may apply to the Local Court for an order to require the Commissioner of Police to make an application under section 272 if:
  - (a) a vehicle, vessel or aircraft was seized under this Act; and
  - (b) a person was charged with a forfeiture offence in respect of which the thing was seized; and
  - (c) the Commissioner of Police refuses to release the vehicle, vessel or aircraft under section 268; and
  - (d) the applicant wants the vehicle, vessel or aircraft released.
- (2) The Local Court may order that the Commissioner of Police make an application under section 272 for the vehicle, vessel or aircraft, despite charges having been laid, for the purpose of making an early determination of the matter.
- (3) If the Local Court makes an order referred to in subsection (2):
  - (a) an application must be made under section 272 as soon as practicable despite section 272(2); and
  - (b) no other application may be made under this Division or the *Sentencing Act 1995* in respect of the vehicle, vessel or aircraft.
- (4) If the Commissioner of Police fails to make the application in accordance with the order, the Commissioner of Police must immediately release the vehicle, vessel or aircraft.

### **274 Presumptions**

- (1) There is a presumption in favour of forfeiture of a vehicle, vessel or aircraft used in the commission of a forfeiture offence if the Local Court is satisfied on the balance of probabilities that:
  - (a) the quantity of liquor involved in the forfeiture offence exceeds 50 standard drinks; or
  - (b) the forfeiture is unopposed despite reasonable efforts being taken to identify and notify any person who owns or has an interest in the vehicle, vessel or aircraft.
- (2) In the case of an order under section 99A of the *Sentencing Act 1995*, there is a presumption against forfeiture of a vehicle, vessel or aircraft used in the commission of an offence if the Local

Court is satisfied on the balance of probabilities that the quantity of liquor involved in the offence does not exceed 10 standard drinks.

### **275 Order of forfeiture**

- (1) After hearing an application under section 272, the Local Court may:
  - (a) order that a vehicle, vessel or aircraft seized under this Act be forfeited to the Territory;
  - (b) order that a vehicle, vessel or aircraft be seized and forfeited to the Territory;
  - (c) order that a vehicle, vessel or aircraft seized under this Act be released;
  - (d) order that a vehicle, vessel or aircraft seized under this Act be held for a specified period and then released.
- (2) The Local Court must not order that a vehicle, vessel or aircraft be forfeited unless satisfied that:
  - (a) the vehicle, vessel or aircraft was used in the commission of a forfeiture offence; and
  - (b) the quantity of liquor involved in the forfeiture offence exceeded 10 standard drinks; and
  - (c) it is appropriate in the circumstances to do so.
- (3) Subsection (2)(b) does not apply if the Local Court is making the order in accordance with section 99A of the *Sentencing Act 1995*.
- (4) Before making an order under this section, the Local Court must consider the following:
  - (a) the presumption in section 273;
  - (b) the approximate value of the vehicle, vessel or aircraft;
  - (c) whether forfeiture is a proportionate response to the offence given the value of the vehicle, vessel or aircraft and the nature of the forfeiture offence;
  - (d) the hardship that forfeiture is likely to cause to any person;
  - (e) the role of the vehicle, vessel or aircraft in the community and the effect that forfeiture is likely to have on the community;

- (f) whether the forfeiture offence was engaged in for the purpose of financial benefit;
- (g) the extent to which an owner of the vehicle, vessel or aircraft was unaware of the forfeiture offence or not reasonably able to prevent the forfeiture offence;
- (h) the need for general or specific deterrence of the forfeiture offence, and the extent to which forfeiture would assist with deterrence.

### **276 Delivery of possession**

- (1) When making an order specified in section 275(1)(b), the Local Court may order that:
  - (a) any person in possession of the vehicle, vessel or aircraft deliver possession of it to a police officer within a specified time; and
  - (b) the person must pay a specified amount to the Territory, not exceeding the approximate value of the vehicle, vessel or aircraft, if the person fails to deliver it as ordered.
- (2) If served with an order specified in section 275(1)(b), a person in possession of a vehicle, vessel or aircraft that is subject to the order must deliver possession of it in accordance with the order.

### **277 Matters not admissible in criminal proceedings**

Anything said or done by a person in respect of an application under this Division is not admissible against that person in any criminal proceeding.

### **278 Appeals**

- (1) The following may appeal an order under section 275 in respect of a vehicle, vessel or aircraft:
  - (a) an owner of it;
  - (b) a person with an interest in it;
  - (c) a person possession of it.
- (2) The appeal is to the Supreme Court.
- (3) The appeal may be made as if the person were a defendant making an appeal under section 163 of the *Local Court (Criminal Procedure) Act 1928*.

- (4) The appeal is limited to questions of law.

### **279 Effect of forfeiture**

Subject to any Act of the Commonwealth, a thing forfeited to the Territory under this Act becomes the public property of the Territory and extinguishes all other interests in the thing.

*Notes for section 279*

- 1 *The Personal Property Securities Act 2009 (Cth) protects security interests in goods.*
- 2 *The sale and disposal of public property is also governed by the Financial Management Act 1995.*

## **Part 13 Further offences and related matters**

### **Division 1 Public safety offences**

#### **280 Sale of adulterated liquor**

- (1) A person commits an offence if:
- (a) the person is a licensee or a licensee's employee; and
  - (b) the person intentionally sells, supplies or serves liquor to another person; and
  - (c) the liquor is adulterated and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units.

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

#### **281 Permitting riotous conduct on or in licensed premises**

- (1) A licensee or a licensee's employee must not permit indecent, violent, quarrelsome or riotous conduct to occur on or in the licensed premises.
- (2) A person commits an offence if the person contravenes subsection (1).

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

## **Division 2      Responsible service offence**

### **282      Prohibition of liquor to intoxicated person**

- (1) A person commits an offence if:
- (a) the person is a licensee or a licensee's employee; and
  - (b) the person intentionally sells or otherwise supplies liquor to another person; and
  - (c) the other person is on or in the licensed premises and is intoxicated, and the person is reckless in relation to those circumstances.

Maximum penalty:      200 penalty units.

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

## **Division 3      Information offences**

### **283      Offences about misrepresentation of identity**

- (1) A person must not misrepresent the person's identity for the purpose of purchasing liquor.
- (2) A person commits an offence if the person:
- (a) intentionally purchases liquor; and
  - (b) intentionally misrepresents the person's identity to the licensee or the licensee's employee at the time of purchase by:
    - (i) making oral statements that are false; or
    - (ii) presenting a form of written identification that is fictitious, false or relates to someone else.

Maximum penalty:      50 penalty units.

- (3) A person commits an offence if:
- (a) the person intentionally presents a document to purchase liquor; and
  - (b) the document could reasonably be taken to be a form of identification of the person and the person has knowledge of that circumstance; and



- (c) the document is fictitious or false in respect of the person's identity or relates to another person's identity and the person has knowledge of that circumstance.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if:

- (a) the person intentionally provides a form of the person's identification to another person; and
- (b) the other person uses the identification to misrepresent the other person's identity to purchase liquor contrary to this Act; and
- (c) the person is reckless in relation to the circumstance in paragraph (b).

Maximum penalty: 50 penalty units.

- (5) Strict liability applies to subsection (4)(b).

#### **284 Seizure of document wrongly used as form of identification**

- (1) A licensee and the licensee's employees must seize a form of identification produced to the licensee or employee, if the licensee or employee believes on reasonable grounds that:
  - (a) the identification is fictitious, false or relates to another person; and
  - (b) the person producing the identification is using it to purchase liquor or to enter or remain on or in licensed premises contrary to this Act.
- (2) A licensee or a licensee's employee who seizes a form of identification must, as soon as practicable, tell the person producing the document that it is being seized and will be given to the Director within 72 hours.
- (3) A licensee or a licensee's employee who seizes a form of identification must give it to the Director as soon as practicable and no later than 72 hours after the time of seizure.
- (4) A person commits an offence if the person contravenes subsection (2) or (3).

Maximum penalty: 20 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

- (6) A failure to comply with subsection (2) or (3) does not affect the validity of the seizure.
- (7) As soon as the Director is given a form of identification seized under this section, the Director must:
  - (a) if it is relevant to a contravention of this Act – take all reasonable steps for it to be used as evidence in relation to the contravention; or
  - (b) if it is not relevant – take all reasonable steps to return it to the person to whom it relates.

**285 Providing false information to inspector or police officer**

- (1) A person commits an offence if:
  - (a) the person intentionally gives information to another person; and
  - (b) the other person is an inspector or a police officer; and
  - (c) the information is false in a material particular and the person is reckless in relation to that circumstance; and
  - (d) the inspector or police officer is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) Strict liability applies to subsection (1)(b).
- (3) In this section:

***acting in an official capacity***, in relation to an inspector or a police officer, means the inspector or officer is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

**286 Offence to disclose confidential information**

- (1) A person commits an offence if:
  - (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
  - (b) the information is confidential and the person is reckless in relation to that circumstance; and

- (c) the person intentionally engages in conduct; and
- (d) the conduct results in the disclosure of the information and the disclosure is not:
  - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
  - (ii) to a person who is otherwise entitled to the information; and
- (e) the person is reckless in relation to the result and circumstance referred to in paragraph (d).

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

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information referred to in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if the person consented to the disclosure of the information.

*Note for section 286*

*In addition to the circumstances mentioned in this section, a person who discloses information mentioned in this section 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).*

## **Division 4 Licence offences**

### **287 Posting of licence**

- (1) A licensee, other than an interstate retailer, must ensure that the following are posted in a conspicuous place on or in the licensed premises that is visible to patrons:
  - (a) a copy of the licence and all authorities held by the licensee;
  - (b) the name of the licensee or its nominee;
  - (c) a statement of the hours of operation;
  - (d) a notice that liquor will not be sold to persons under 18 years of age.

- (2) A licensee commits an offence if the licensee contravenes subsection (1).

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that the licence or authority was in the possession of the Director.

### **288 Producing licence and documents on demand**

- (1) A licensee must produce the licence and all authorities held by the licensee to an inspector or a police officer on demand of the inspector or officer.
- (2) A licensee must produce to an inspector, within 24 hours of a demand from the inspector, all agreements and other records establishing or evidencing:
- (a) the contractual relationship between the licensee and any current manager, lessee or other operator of the licensed premises; and
  - (b) the employment or contractual relationship with all employees and contractors working on or in the licensed premises.
- (3) A licensee commits an offence if the licensee contravenes subsection (1) or (2).

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that, at the time of the alleged offence, the licence, authority or other document was in the possession of the Director.

### **289 Permitting breach of *Gaming Control Act 1993***

- (1) A licensee commits an offence if:
- (a) a person is found guilty of an offence against the *Gaming Control Act 1993*; and
  - (b) the offence occurred on the licensee's licensed premises; and

- (c) the licensee had knowledge of the conduct constituting the offence against that Act.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1)(a) and (b).

## **290 Contravening licence conditions**

- (1) A licensee commits an offence if:

- (a) the licensee intentionally engages in conduct; and
- (b) the conduct results in a contravention of a condition of the licensee's licence or authority and the licensee is reckless in relation to that result; and
- (c) the contravention does not constitute another offence against this Act.

Maximum penalty: 200 penalty units.

- (2) Strict liability applies to subsection (1)(c).
- (3) To avoid doubt, references in subsection (1)(b) to licence and conduct include an interstate retailer's licence and conduct outside the Territory.

## **291 Purchase of unauthorised liquor**

- (1) A person commits an offence if:

- (a) the person intentionally purchases liquor; and
- (b) the sale of the liquor is not authorised by an interstate retailer's licence or both a licence and an authority and the person is reckless in relation to that circumstance.

Maximum penalty: 100 penalty units.

- (2) An inspector or a police officer carrying out duties under this Act is exempt from subsection (1).

## **Division 5      Offences related to children**

### **292      Meaning of *guardian***

In this Division:

***guardian***, in relation to a child, means:

- (a) the child's legal guardian; and
- (b) an adult who is given the care and control of the child by the child's parent or legal guardian.

### **293      Using child to purchase or collect liquor**

- (1) A person must not send a child to purchase or collect liquor from licensed premises.
- (2) A person commits an offence if the person contravenes subsection (1).

Maximum penalty:      50 penalty units.

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

### **294      Child employee**

- (1) Subject to subsection (2), a licensee must not employ a child to sell or supply liquor.
- (2) The Director may, by written notice, give permission to a licensee to employ a child to sell or supply liquor on or in licensed premises as:
  - (a) the licensee's employee; or
  - (b) someone undergoing employment training.
- (3) The Director may give the permission generally or on application by the licensee.
- (4) A licensee commits an offence if:
  - (a) the licensee contravenes subsection (1); and
  - (b) the licensee does not have permission from the Director under subsection (2).

Maximum penalty:      85 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

**295 Areas of licensed premises prohibited to children**

- (1) The Director may, by written notice, declare all or part of licensed premises to be an area or areas:
  - (a) prohibited to children; or
  - (b) prohibited to any child not accompanied by an adult who is the child's parent, step-parent, spouse or guardian.
- (2) As soon as practicable after making the declaration referred to in subsection (1), the Director must give the licensee of the licensed premises to which the declaration relates:
  - (a) a copy of the written notice; and
  - (b) a decision notice in relation to the decision to make the declaration.
- (3) When given a copy of a notice under subsection (2), the licensee must post and maintain a warning in the approved form at:
  - (a) each entrance of the licensed premises, or area to which the notice relates; and
  - (b) other places on or in the licensed premises required by the Director.
- (4) A licensee commits an offence if the licensee contravenes subsection (3).

Maximum penalty: 20 penalty units.
- (5) An offence against subsection (4) is an offence of strict liability.

**296 Permitting child to enter or remain in prohibited area**

- (1) A licensee and the licensee's employee must not permit a child to enter or remain on or in an area of licensed premises prohibited to children under section 295.
- (2) A licensee or a licensee's employee commits an offence if the licensee or employee contravenes subsection (1).

Maximum penalty: 85 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.

- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that:
- (a) the child was an employee permitted by the Director under section 294(2); or
  - (b) the child was at least 16 years of age and provided the defendant with a document that could reasonably be taken as a form of identification that was reasonably acceptable as indicating the person was an adult.

**297 Child's misrepresentation of age**

- (1) A child must not misrepresent the child's age for the purpose of:
- (a) entering or remaining on or in licensed premises contrary to a declaration under section 295; or
  - (b) purchasing liquor.
- (2) A child commits an offence if the child:
- (a) intentionally purchases liquor; and
  - (b) intentionally misrepresents the child's age to the licensee or the licensee's employee at the time of purchase by:
    - (i) making an oral statement that is false; or
    - (ii) presenting a form of identification that is fictitious or false in respect of the child's age or relates to someone else.

Maximum penalty: 50 penalty units.

- (3) A child commits an offence if:
- (a) the child intentionally presents a document to purchase liquor; and
  - (b) the document could reasonably be taken to be a form of identification of the child and the child has knowledge of that circumstance; and
  - (c) the document is fictitious or false in respect of the child's age or relates to someone else.

Maximum penalty: 50 penalty units.



- (4) A person commits an offence if:
- (a) the person intentionally provides a form of the person's identification to a child; and
  - (b) the child intends to use the identification to misrepresent the child's identity or age for a purpose contrary to this Act; and
  - (c) the person is reckless in relation to the circumstance in paragraph (b).

Maximum penalty: 50 penalty units.

- (5) In this section:

***for a purpose contrary to this Act*** means one of the following:

- (a) for a child to enter or remain on or in licensed premises contrary to a declaration under section 295;
- (b) for a child to purchase or attempt to purchase liquor.

## **298 Irresponsible supply of liquor to child**

- (1) A person must not supply liquor to a child unless:
- (a) the person is an adult who is a parent, step-parent, spouse or guardian of the child; and
  - (b) the person supervises the child responsibly.
- (2) A person commits an offence if:
- (a) the person intentionally supplies liquor to another person; and
  - (b) the other person is a child and the person is reckless in relation to that circumstance; and
  - (c) the person is not an adult who is a parent, step-parent, spouse or guardian of the child or is not supervising the child responsibly.

Maximum penalty: 100 penalty units.

- (3) Strict liability applies to subsection (2)(c).
- (4) The following matters must be taken into account when considering whether the child was supervised responsibly:
- (a) whether the adult was impaired in any way;

- (b) whether the child was intoxicated;
  - (c) the age of the child;
  - (d) whether the child was consuming the liquor with food;
  - (e) the quantity of, and the period over which, the liquor was supplied.
- (5) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that the liquor was for the purposes of worship associated with the celebration of a religious service by a person approved by the Director.

**299 No liquor for child on or in licensed premises**

A child must not consume or possess liquor on or in licensed premises.

**300 Offence for liquor to child on or in licensed premises**

- (1) A person commits an offence if:
- (a) the person is a licensee; and
  - (b) the person intentionally engages in conduct; and
  - (c) the conduct results in a child being sold, supplied with or served liquor or consuming liquor on or in licensed premises, and the person is reckless in relation to that result.

Maximum penalty: 200 penalty units.

- (2) A person commits an offence if:
- (a) the person is a licensee's employee; and
  - (b) the person intentionally engages in conduct; and
  - (c) the conduct results in a child being sold, supplied with or served liquor or consuming liquor on or in licensed premises, and the person is reckless in relation to that result.

Maximum penalty: 100 penalty units.

- (3) Strict liability applies to subsection (1)(a) and (2)(a).

- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes that:
- (a) the person to whom the liquor was sold, supplied or served was at least 16 years of age; and
  - (b) before the liquor was sold, supplied or served to the person, the person provided a form of identification that was reasonably acceptable as indicating the person was an adult.
- (5) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes that:
- (a) the defendant did not directly sell, supply or serve the liquor to the child and did not directly allow the child to consume the liquor; and
  - (b) the liquor was sold, supplied or served to an adult accompanying the child; and
  - (c) the adult was the child's parent, step-parent, spouse or guardian; and
  - (d) the defendant reasonably expected the adult would ensure the child would not obtain or consume the liquor.
- (6) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes that:
- (a) the defendant did not directly sell or supply the liquor to the child and did not directly allow the child to consume the liquor; and
  - (b) the defendant exercised proper diligence to prevent the sale, supply or service of liquor to, or consumption of liquor by, the child in contravention of that subsection.

## **Division 6      Offences related to inspectors**

### **301      Falsely representing to be inspector**

A person commits an offence if the person:

- (a) intentionally represents, by words or conduct, that the person or another person is an inspector officer; and
- (b) knows the representation is false.

Maximum penalty:      50 penalty units or imprisonment for  
6 months.

### **302 Obstructing an inspector or a police officer**

- (1) A person commits an offence if:
- (a) the person intentionally obstructs another person; and
  - (b) the other person is an inspector or a police officer; and
  - (c) the inspector or police officer is exercising a power under this Act and the person has knowledge of that circumstance.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

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

- (3) In this section:

**obstruct** includes hinder and resist.

## **Division 7 Criminal responsibility**

### **303 Criminal responsibility of individual for employee or agent**

- (1) A physical element of an offence committed by an employee or agent of an individual must also be attributed to the individual if the employee or agent was acting within:
- (a) the actual or apparent scope of the employee's or agent's employment; or
  - (b) the employee's or agent's actual or apparent authority.

- (2) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence committed by an employee or agent of an individual, that fault element must be attributed to the individual if the individual expressly, tacitly or impliedly authorised or permitted the commission of the offence.

*Note for section 303*

*Part IIAA, Division 5, of the Criminal Code provides for the criminal responsibility of a body corporate for its employees and agents.*

### **304 Criminal liability of executive officer of body corporate**

- (1) An executive officer of a body corporate commits an offence if the body corporate commits an offence against this Act.

Maximum penalty: The maximum penalty that may be imposed on an individual for the offence.

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that the defendant:
  - (a) was not in a position to influence the conduct of the body corporate in relation to the commission of the offence; or
  - (b) took reasonable steps to prevent the commission of the offence; or
  - (c) did not know, and could not reasonably have been expected to know, that the offence would be committed.
- (4) The defendant has a legal burden of proof in relation to a matter referred to in subsection (3).
- (5) In deciding whether the defendant took reasonable steps to prevent the commission of the offence, a court of competent jurisdiction must consider the following to the extent relevant:
  - (a) any action the defendant took towards ensuring that:
    - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the Act;
    - (ii) the body corporate implemented any appropriate recommendation arising from an assessment referred to in subparagraph (i);
    - (iii) the body corporate's employees and agents had reasonable knowledge and understanding of the requirement to comply with the provision to which the offence relates; and
  - (b) any action the defendant took after the defendant became aware that the offence could be, or was about to be, committed.
- (6) Subsection (5) does not limit the matters the court may consider.
- (7) This section does not affect the liability of the body corporate.
- (8) This section applies whether or not the body corporate is prosecuted for, or found guilty of, the offence with which the executive officer is charged.
- (9) Without limiting any other defence available to the officer, an executive officer may rely on a defence that would be available to

the body corporate if it were charged with the offence with which the executive officer is charged and, in so doing, the officer bears the same burden of proof that the body corporate would bear.

(10) In this section:

**executive officer**, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

## **Division 8 Related matters**

### **305 Limit on prosecuting offence**

If the Commission takes disciplinary action against a licensee for a contravention of this Act:

- (a) an infringement notice cannot be issued to the licensee for the offence against this Act constituted by that contravention; and
- (b) a proceeding for an offence against this Act constituted by that contravention cannot commence or continue in a court of competent jurisdiction.

### **306 Limitation of time for making complaint**

A complaint under section 49 of the *Local Court (Criminal Procedure) Act 1928* in respect of an offence against this Act must be made within 28 days after the date on which the matter of the complaint arose, unless the quantity of liquor involved in the offence exceeds 10 standard drinks.

### **307 Statements of fact in complaint**

In a proceeding for an offence against this Act, a statement of fact may be made in a complaint or information as evidence in respect of the following physical elements of the offence:

- (a) that a specified person was or was not, at a specified time, a licensee;
- (b) that a licensee was or was not, at a specified time, issued an authority;
- (c) that specified premises were or were not, at a specified time, licensed premises;
- (d) that a specified substance is or is not liquor, or is or is not a liquor product.

### **308 Certificate evidence**

- (1) A certificate signed by the Director specifying that a specified person was or was not registered as a wholesaler at a specified time is evidence of the matter specified in the certificate.
- (2) A certificate signed by the Director stating that on a specified date a specified licensee had possession of a specified person's credit card or debit card is evidence that the licensee had possession of the card in contravention of section 97(1).
- (3) In any proceeding for an offence against section 170(1), a certificate, purporting to be signed by the Director and stating that a place was or was not, at a specified time, within a general restricted area, is evidence of the facts stated.
- (4) In any proceeding for an offence against section 180(1), a certificate, purporting to be signed by the Director and stating that a place was or was not, at a specified time, within a special restricted area, is evidence of the facts stated.
- (5) In any proceeding in a Court in respect of an offence against this Act, a certificate that purports to have been signed by an approved analyst and states the result of an analysis of substance received from an inspector or a police officer is evidence of the matters stated in the certificate.

### **309 Results of breath analysis as evidence**

In a proceeding under this Act in relation to whether a person was intoxicated, the result of a breath test or breath analysis taken in accordance with the *Traffic Act 1987* is admissible as prima facie evidence.

### **310 Evidence in offences relating to children**

- (1) In any prosecution for an offence against section 295 or 296, a certificate, purporting to be signed by the Director and stating that part of licensed premises was prohibited to children, and that notice of that prohibition was given to the licensee at a specified time, is evidence of the facts stated.
- (2) In any prosecution for an offence against section 298, the onus of proving that the care and control of a child had, at the relevant time, been given to a particular person by the child's parent or legal guardian rests on the defendant.





- (2) Without limiting subsection (1), the guidelines may relate to any of the following matters:
  - (a) applications for licences, authorities or other matters under this Act;
  - (b) the operation of licensed premises;
  - (c) the obligations of licensees and their employees under this Act;
  - (d) compliance with this Act;
  - (e) complaints and disciplinary actions.
- (3) The guidelines must be published in a way determined by the Commission.
- (4) A licensee is not subject to a guideline until 14 days after the date the Commission publishes the guideline.

#### **314 Approved forms**

The Director may approve forms under this Act.

#### **315 Extending or abridging time**

- (1) The Commission or Director may, at their discretion, extend or abridge a time limit specified under this Act for a procedure, power or function related to them respectively.
- (2) The Commission or Director may extend a time limit after it has expired.
- (3) Failure by the Commission or the Director to meet a deadline under this Act does not for that reason alone invalidate the action, matter or proceeding being conducted.

#### **316 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may provide for the following:
  - (a) the standard conditions to which each authority is subject;
  - (b) a risk-based scheme for regulating licenses and authorities;
  - (c) permit systems for liquor in controlled areas;

- (d) prohibiting or regulating the quantities or kinds of liquor that may be sold;
  - (e) matters in relation to investigations, complaints and actions taken by the Director in respect of a complaint or an investigation;
  - (f) matters in relation to registers under this Act;
  - (g) matters related to hearings by the Commission;
  - (h) matters relating to enforceable undertakings;
  - (i) prohibiting or regulating the giving of credit for the purchase of liquor from licensed premises;
  - (j) the fees to be charged under this Act.
- (3) The regulations may:
- (a) prescribe a fine for an offence against the regulations not exceeding:
    - (i) if the offender is an individual – 100 penalty units; or
    - (ii) if the offender is a body corporate – 500 penalty units; and
  - (b) provide for infringement notices and the payment of an amount prescribed by regulation instead of a penalty that may otherwise be imposed for an offence against this Act; and
  - (c) provide that a provision of the regulations applies generally or only to specified persons, licences, authorities or licensed premises.

### **317 Review of Act**

- (1) The Minister must review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after 3 years after the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in the Assembly within 12 months after the end of the period of 3 years.

## **Part 15            Repeal and transitional matters**

### **Division 1        Repeals**

#### **318            Acts repealed**

The Acts specified in the Schedule are repealed.

### **Division 2        Transitional matters**

#### **319            Definition**

In this Part:

***commencement*** means the commencement of section 318.

#### **320            Licences**

- (1) A licence issued under the *Liquor Act 1978* and valid immediately before the commencement continues in effect in accordance with its terms and conditions after the commencement.
- (2) A licence issued under the *Liquor Act 1978* expires on the earlier of the following dates:
  - (a) 1 October 2020;
  - (b) the date the licence is converted under subsection (6).
- (3) A person holding a licence issued under the *Liquor Act 1978* may apply to the Director to convert it into a licence with equivalent authorities under this Act.
- (4) An application to convert a licence must be:
  - (a) lodged with the Director before 1 April 2020; and
  - (b) in the approved form; and
  - (c) accompanied by an affidavit made under section 50 of this Act.
- (5) If a licensee does not submit an application before 1 April 2020, the Director may proceed to convert the licence under subsection (6)(b) or (c) without the licensee's consent or participation.

- (6) After considering the application, the Director must:
- (a) issue a licence with the authorities and conditions the applicant considers equivalent to the licence issued under the *Liquor Act 1978*; or
  - (b) issue a licence with the authorities and conditions the Director considers equivalent to the licence issued under the *Liquor Act 1978*; or
  - (c) refuse to issue a licence and allow the licence issued under the *Liquor Act 1978* to expire.
- (7) Issuing licences and authorities under this section is not subject to the following:
- (a) the public interest and community impact requirements, including any onus on the applicant to satisfy those requirements;
  - (b) the giving of public notice of an application;
  - (c) the process of making objections to an application.

### **321 Transfer of licence**

- (1) An application for the transfer of a licence made under the *Liquor Act 1978* is to proceed and be determined under that Act unless the applicant gives the Director written notice that the applicant wishes to proceed and have the application determined under this Act.
- (2) The provisions of section 320 of this Act apply in relation to the licence being transferred.

### **322 Substitution of licensed premises**

An application for the substitution of licensed premises made under section 46A of the *Liquor Act 1978* is to proceed and be determined under that Act unless the applicant gives the Director written notice that the applicant wishes to proceed and have the application determined under section 71 of this Act.

### **323 BYO restaurants**

- (1) A person who, immediately before the commencement, operated a restaurant that served liquor brought by a patron for consumption with food provided by the person is exempt from Part 3 of this Act until 1 October 2021 and may continue to serve liquor to patrons for consumption with food provided by the person until immediately before that date.

- (2) A person referred to in subsection (1) who wishes to continue to serve liquor to patrons for consumption with food provided by the person on or after 1 October 2021 must apply for a licence and BYO authority before 1 June 2021 in accordance with Part 3, Division 3 of this Act.

### **324      Fees**

- (1) No annual fee is payable under this Act for a licence issued under the *Liquor Act 1978*.
- (2) The annual fee for any licence or authority issued under this Act before 31 December 2020 is payable on or before 2 January 2021.
- (3) The Director must, before 1 October 2020, give the holder of a licence issued under the *Liquor Act 1978* a written estimate of the amount of the annual fee prescribed by regulation for the licence and authorities converted under section 320 of this Act.
- (4) The annual fee for the licence and authorities converted under section 320 of this Act must be paid on or before 2 January 2021.

### **325      Regulated areas**

- (1) Any area that was a general restricted area under section 81 of the *Liquor Act 1978* immediately before the commencement is taken to be a general restricted area under section 169 of this Act.
- (2) Any area that was a special restricted area under section 101AD of the *Liquor Act 1978* immediately before the commencement is taken to be a special restricted area under section 179 of this Act.
- (3) Any premises that were restricted premises under section 101B of the *Liquor Act 1978* immediately before the commencement are taken to be restricted premises under section 185 of this Act.
- (4) Any licensed premises or parts of licensed premises that were areas where a child must not enter or remain under section 106 of the *Liquor Act 1978* immediately before the commencement are taken to be areas prohibited to children under section 295 of this Act.
- (5) Any declaration of a regulated place under section 101T of the *Liquor Act 1978* in effect immediately before the commencement ceases to have effect on the commencement.
- (6) Any exemption from, or permission to, consume liquor in a regulated place made by the Director-General or a local council in effect under the *Liquor Act 1978* immediately before the commencement is taken to be permission to consume liquor in a

public place under section 197 of this Act.

- (7) Any area that was a designated area under the *Liquor Act 1978* immediately before the commencement is taken to be a high risk area under section 207 of this Act.

### **326      Permits**

A permit issued under section 87, 89A or 101AI of the *Liquor Act 1978* and valid immediately before the commencement is taken to be a permit issued under this Act and continues in effect in accordance with its terms and conditions.

### **327      Officers**

- (1) A person holding office as an assessor under the *Liquor Act 1978* immediately before the commencement is taken to be an assessor appointed under section 12 of this Act.
- (2) A person holding office as an inspector under the *Liquor Act 1978* immediately before the commencement is taken to be an inspector appointed under section 16 of this Act.

### **328      Patron identification system**

The identification system established by the Minister under section 31A of the *Liquor Act 1978* is taken to be the identification system established under Part 6, Division 1 of this Act.

### **329      Seized things**

- (1) Part 10, Division 6, of this Act applies to any thing seized under the *Liquor Act 1978* and still in the possession of the Commissioner of Police or the Police Force immediately before the commencement.
- (2) For the purpose of applying the definition of **forfeiture offence** in section 4(1) of this Act to any thing seized under the *Liquor Act 1978* and still in possession of the Commissioner of Police or the Police Force immediately before the commencement, the following sections of that Act are taken to be a forfeiture offence:
- (a) section 75;
  - (b) section 101AE;
  - (c) section 115;
  - (d) section 116.

- (3) For the purpose of lodging an application for forfeiture under section 275 of this Act for any thing seized under the *Liquor Act 1978* and still in possession of the Commissioner of Police or the Police Force immediately before the commencement, the time limit is within 28 days after the commencement if no person is charged with the offence.
- (4) The Commissioner of Police must include in the first report made under section 245 of this Act after the commencement information about all vehicles, vessels and aircraft seized under the *Liquor Act 1978* and still in the possession of the Commissioner of Police or the Police Force immediately before the commencement.

### **330 Transitional regulations**

- (1) A regulation may provide for a matter of a transitional nature:
  - (a) because of the enactment of this Act; or
  - (b) to otherwise allow or facilitate the transition from the operation of the *Liquor Act 1978* to this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement.
- (3) 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.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expire 1 year after the commencement.

## **Part 16 Consequential amendments**

### **Division 1 Accommodation Providers Act 1981**

#### **331 Act amended**

This Division amends the *Accommodation Providers Act 1981*.

**332 Section 3 amended (Interpretation)**

Section 3(1), definition **accommodation establishment**

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

**Division 2 Alcohol Harm Reduction Act 2017**

**333 Act amended**

This Division amends the *Alcohol Harm Reduction Act 2017*.

**334 Section 4 amended (Definitions)**

(1) Section 4, definition **banned drinker register**

*omit, insert*

**banned drinker register** means the register of persons who are banned for the purposes of the identification system established under section 125 of the *Liquor Act 2019*.

(2) Section 4, definition **alcohol**

*omit*

section 4(1) of the *Liquor Act 1978*

*insert*

section 4(1) of the *Liquor Act 2019*

(3) Section 4, definition **information sharing authority**, paragraph (b)

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*



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**335 Section 10 amended (When police may make BDO)**

- (1) Section 10(1)(c)(ii) and (iii) and (d)  
*omit (all references)*  
, or a contravention notice under the *Liquor Act 1978*,
- (2) Section 10(1), examples, paragraph (b)  
*omit*  
*section 75(1) of the Liquor Act 1978*  
*insert*  
*section 170 of the Liquor Act 2019*
- (3) Section 10(3), definition ***alcohol-related infringement notice***, paragraph (a)  
*omit, insert*  
(a) section 140(2), 141(2), 170(1), 180(1), 186(1), 215(1), 221(1) or 225(2) of the *Liquor Act 2019*; or

**336 Section 24 amended (Extension of BDO by police)**

- Section 24(1)(d)  
*omit*  
, or a contravention notice under the *Liquor Act 1978*

**337 Section 42 amended (Offence to supply alcohol to persons subject to prohibition)**

- (1) Section 42(1)(c)  
*omit*  
*section 31A(2) of the Liquor Act 1978*  
*insert*  
*section 125(1) of the Liquor Act 2019*

(2) Section 42(2)

*omit, insert*

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that the defendant is:

(a) a licensee or a licensee's employee who used the identification system in accordance with the *Liquor Act 2019* which did not identify the other person as being subject to the prohibition; or

(b) a protected person as defined in section 4 of the *Domestic and Family Violence Act 2007*.

**338 Section 43 amended (Police power to require breath test)**

Section 43(2), definition ***public place***

*omit*

**Division 3 Constitutional Convention (Election) Act 2011**

**339 Act amended**

This Division amends the *Constitutional Convention (Election) Act 2011*.

**340 Section 30 amended (Limit on appointment of licensed premises as polling place)**

Section 30

*omit*

licensed premises as defined in the *Liquor Act 1978*

*insert*

premises licensed under the *Liquor Act 2019*

**Division 4 Electoral Act 2004**

**341 Act amended**

This Division amends the *Electoral Act 2004*.

**342 Section 43 amended (Limit on appointment of licensed premises as polling place)**

Section 43

*omit*

licensed premises within the meaning of the *Liquor Act 1978*

*insert*

premises licensed under the *Liquor Act 2019*

**Division 5 Gaming Control Act 1993**

**343 Act amended**

This Division amends the *Gaming Control Act 1993*.

**344 Section 3 amended (Definitions)**

(1) Section 3, definition ***liquor***

*omit, insert*

***liquor***, see section 4(1) of the *Liquor Act 2019*.

(2) Section 3, definition ***public place***

*omit*

**345 Section 32 replaced**

Section 32

*repeal, insert*

**32 Liquor licence at casino**

Despite the *Liquor Act 2019*, no person other than the Licensee or an approved employee of the Licensee may hold a licence under that Act for any place on or in a casino.

**346 Section 35 amended (Entry of casino by Director-General, gaming inspectors, &c.)**

Section 35(1)(c)

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

## **Division 6 Gaming Machine Act 1995**

### **347 Act amended**

This Division amends the *Gaming Machine Act 1995*.

### **348 Section 3 amended (Definitions)**

- (1) Section 3, definitions ***club***, ***club liquor licence***, ***hotel liquor licence*** and ***liquor***

*omit*

- (2) Section 3

*insert*

***club*** means a body corporate that holds a liquor licence with a club authority.

***liquor***, see section 4(1) of the *Liquor Act 2019*.

- (3) Section 3, definition ***liquor licence***, paragraph (a)

*omit, insert*

- (a) a licence issued under the *Liquor Act 2019*; or

### **349 Section 24 amended (Application for gaming machine licence)**

Section 24(1)

*omit, insert*

- (1) An application for a gaming machine licence may be made by the following:
- (a) a body corporate that holds a liquor licence with a club authority;
  - (b) the holder of a liquor licence with a public bar authority;
  - (c) the holder of a liquor licence with a wayside inn authority;
  - (d) the holder of a liquor licence with an authority prescribed by regulation;

- (e) a body corporate that has applied to become the holder of a licence and an authority referred to in paragraphs (a) to (d);
- (f) an individual who has applied to become the holder of a licence and an authority referred to in paragraphs (b) and (d).

**350 Section 37 amended (Definitions)**

- (1) Section 37, definitions ***Liquor Act application*** and ***transferable licence***

*omit*

- (2) Section 37

*insert*

***transferable licence*** means a gaming machine licence issued for premises that are licensed under the *Liquor Act 2019* and operating under an authority prescribed by regulation.

**351 Section 37C amended (Application for transfer of gaming machine licence)**

Section 37C(2)

*omit, insert*

- (2) A transfer application cannot be made unless an application under the *Liquor Act 2019* to approve the transfer of the licensee's liquor licence to the proposed transferee is made and approved or is still pending a decision.

**352 Section 38 amended (Information and material)**

Section 38(1)(a)

*omit, insert*

- (a) a copy of the application under the *Liquor Act 2019* for transfer of the liquor licence or evidence that the application was made;

**353 Section 38C replaced**

Section 38C

*repeal, insert*

**38C Relationship with application under *Liquor Act 2019***

- (1) The Director-General must not determine a transfer application until the applicant's application under the *Liquor Act 2019* for transfer of the liquor licence is determined.
- (2) If the application for transfer of the liquor licence is refused, the Director-General must refuse the transfer application unless:
  - (a) no proceedings are commenced to review the refusal within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act 2014*; or
  - (b) on review, NTCAT confirms the refusal and no appeal to the Supreme Court is made within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act 2014*; or
  - (c) on appeal from NTCAT, the Supreme Court confirms the refusal.

**354 Section 42A amended (Definitions)**

Section 42A, definition *Liquor Act application*

*omit*

**355 Section 42B amended (Application for substitution of premises)**

Section 42B(3)

*omit, insert*

- (3) A substitution application cannot be made unless an application under the *Liquor Act 2019* to approve the substitution of the proposed new premises for the premises licensed under that Act is made and approved or is still pending a decision.

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**356 Section 42C amended (Information and material)**

Section 42C(1)(a)

*omit, insert*

- (a) a copy of the application under the *Liquor Act 2019* for substitution of the licensed premises or evidence that it was made;

**357 Section 42F replaced**

Section 42F

*repeal, insert*

**42F Relationship with application under *Liquor Act 2019***

- (1) The Director-General must not determine a substitution application until the applicant's application under the *Liquor Act 2019* for substitution of the licensed premises is determined.
- (2) If the application for substitution of the licensed premises is refused, the Director-General must refuse the transfer application unless:
- (a) no proceedings are commenced to review the refusal within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act 2014*; or
- (b) on review, NTCAT confirms the refusal and no appeal to the Supreme Court is made within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act 2014*; or
- (c) on appeal from NTCAT, the Supreme Court confirms the refusal.

**358 Section 57 repealed (Continuance of licences in certain circumstances)**

Section 57

*repeal*

**359 Section 88 amended (Hours of gaming)**

Section 88(a)

*omit, insert*

- (a) when under the *Liquor Act 2019* liquor is not permitted to be sold in that part of the premises; or

**Division 7 Housing Act 1982**

**360 Act amended**

This Division amends the *Housing Act 1982*.

**361 Section 5 amended (Definitions)**

- (1) Section 5, definition ***liquor***

*omit, insert*

***liquor***, see section 4(1) of the *Liquor Act 2019*.

- (2) Section 5, definition ***prescribed offence***, paragraph (b)

*omit, insert*

- (b) section 170, 180 or 186 of the *Liquor Act 2019*;

**362 Section 28G amended (Power to seize a dangerous article or a container of liquor)**

Section 28G(3)(c)

*omit*

75, 101AE or 101L of the *Liquor Act 1978*

*insert*

170, 180 or 186 of the *Liquor Act 2019*

**Division 8 Kava Management Act 1998**

**363 Act amended**

This Division amends the *Kava Management Act 1998*.



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**364 Section 3 amended (Interpretation)**

Section 3(1), definition **authorised officer**, paragraph (c)

*omit, insert*

(c) an inspector appointed under section 16 of the *Liquor Act 2019*.

**365 Section 29 amended (Authorised officers)**

Section 29(2)

*omit*

Inspector of Licensed Premises appointed under section 18 of the *Liquor Act 1978*

*insert*

inspector appointed under section 16 of the *Liquor Act 2019*

**Division 9 Lake Bennett (Land Title) Act 2005**

**366 Act amended**

This Division amends the *Lake Bennett (Land Title) Act 2005*.

**367 Schedule 5 amended (Development for Lake Bennett locality)**

(1) Schedule 5, clause 2, definition **hotel**

*omit*

licence under the *Liquor Act 1978*

*insert*

licence and public bar authority under the *Liquor Act 2019*

(2) Schedule 5, clause 2, definitions **motel** and **restaurant**

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

## **Division 10 Law of Property Act 2000**

### **368 Act amended**

This Division amends the *Law of Property Act 2000*.

### **369 Schedule 2 amended (Short forms of covenants in leases)**

- (1) Schedule 2, Covenants, item 17, columns 1 and 2

*omit (all references)*

within the meaning of the *Liquor Act 1978*

*insert*

in accordance with the *Liquor Act 2019*

- (2) Schedule 2, Covenants, item 17, column 2

*omit*

requirements of the *Liquor Act 1978*

*insert*

requirements of the *Liquor Act 2019*

- (3) Schedule 2, Covenants, item 18, column 2

*omit*

within the meaning of the *Liquor Act 1978*

*insert*

in accordance with the *Liquor Act 2019*

## **Division 11 Liquor Commission Act 2018**

### **370 Act amended**

This Division amends the *Liquor Commission Act 2018*.

### **371 Section 3 amended (Definitions)**

- (1) Section 3, definition ***Director-General decision***

*omit*

(2) Section 3

*insert*

**Director**, see section 4(1) of the *Liquor Act 2019*.

**372 Section 16 amended (Convening of Commission)**

Section 16(2)

*omit*

**373 Part 4 replaced**

Part 4

*repeal, insert*

## **Part 4 Review of Director's decisions**

### **29 Application for review**

- (1) Any decision of the Director is reviewable by the Commission, except:
  - (a) a decision under section 158(2) of the *Liquor Act 2019*; and
  - (b) a decision of a delegate of the Director that is reviewable by the Director under the *Liquor Act 2019*.
- (2) The following persons may apply for review of a decision of the Director:
  - (a) the applicant affected by a decision regarding an application;
  - (b) any person affected by a decision regarding disciplinary action;
  - (c) a licensee affected by a decision regarding the licence or authority held by the licensee;
  - (d) any person who made a submission, complaint or objection during the process that resulted in the decision;
  - (e) any other person given a right to review under the *Liquor Act 2019*.

- (3) The application must be made to the Commission by the later of:
  - (a) 28 days after written notice of the decision of the Director is given to the person referred to in subsection (2); or
  - (b) any later date allowed by the Commission.
- (4) The application must:
  - (a) be in the form approved by the Commission; and
  - (b) be accompanied by the fee prescribed by regulation; and
  - (c) state the grounds on which it is made and the facts relied on to establish the grounds.
- (5) To avoid doubt, a decision made by the Director as a delegate of the Commission is reviewable by the Commission under this Part.

### **30 Effect of application on decision of Director**

- (1) Applying for review does not stay the operation of the decision of the Director.
- (2) However, the Commission may stay the operation of the decision of the Director pending completion of the review.

### **31 Commission to consider application**

- (1) On receipt of the application, the Commission must review the decision of the Director.
- (2) The Commission may reject an application if satisfied the application is frivolous or vexatious.

### **32 Conducting and deciding review**

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

- (b) vary the decision; or
- (c) set aside the decision and substitute a new decision.

### **33 Notice of decision on review**

- (1) As soon as practicable after making a decision under section 32, the Commission 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 decision of the Director was made.
- (2) The notice must state the following:
  - (a) the Commission's decision and the reasons for it;
  - (b) details of any right the person has, under the Act under which the decision of the Director was made, to apply for a review of, or to appeal, the Commission's decision.

### **34 Subject to other Acts**

This Part is subject to any other Act.

### **374 Section 37 replaced**

Section 37

*repeal, insert*

### **37 Delegation**

- (1) The Commission may, in writing, delegate its powers and functions under this Act or the *Liquor Act 2019* to the following:
  - (a) the Chairperson or another member;
  - (b) the Director;
  - (c) a public sector employee.
- (2) Subject to any limits determined by the Commission, a delegation under subsection (1) to the Chairperson or Director may be further delegated if the Chairperson or Director, as the case may be, considers it appropriate.

## Division 12 Misuse of Drugs Act 1990

### 375 Act amended

This Division amends the *Misuse of Drugs Act 1990*.

### 376 Section 11A amended (Definitions)

(1) Section 11A, definitions *licensee* and *liquor licence premises*  
*omit*

(2) Section 11A  
*insert*

*licensee*, see section 4(1) of the *Liquor Act 2019*.

*liquor licence premises* means:

- (a) premises that are licensed under the *Liquor Act 2019* and operating under an authority prescribed by regulation; and
- (b) any carpark adjoining those premises that is owned or leased by an owner, landlord or tenant of the premises.

### 377 Section 11E amended (Record and warning of first finding of dangerous drugs on premises)

Section 11E(4)(a)

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

### 378 Section 11F amended (Record and warning of second finding of dangerous drugs on premises)

Section 11F(4)(a)

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

**379 Section 11G amended (Record and warning of third finding of dangerous drug on premises)**

Section 11G(4)(a)

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

**380 Section 11W amended (Commissioner of Police may apply for suspension of liquor licence)**

Section 11W

*omit*

section 49A of the *Liquor Act 1978*

*insert*

section 258 of the *Liquor Act 2019*

**381 Section 37 amended (Penalty guidelines)**

(1) Section 37(1), definition ***licenced premises***

*omit*

(2) Section 37(1), definition ***aggravating circumstance***, paragraph (c), before "licensed"

*insert*

liquor

**382 Section 43 amended (Regulations)**

Section 43(2)(b), before "licensed" (*all references*)

*insert*

liquor

## **Division 13 Private Security Act 1995**

### **383 Act amended**

This Division amends the *Private Security Act 1995*.

### **384 Section 3 amended (Definitions)**

Section 3, definition ***public place***

*omit, insert*

***public place*** means:

- (a) premises licensed under the *Liquor Act 2019*; or
- (b) an entertainment venue to which the public are admitted, whether or not for consideration.

### **385 Section 5 amended (Crowd controllers)**

Section 5

*omit*

licensed premises within the meaning of the *Liquor Act 1978*

*insert*

premises licensed under the *Liquor Act 2019*

## **Division 14 Racing and Betting Act 1983**

### **386 Act amended**

This Division amends the *Racing and Betting Act 1983*.

### **387 Section 4 amended (Definitions)**

Section 4(1), definition ***public place***, paragraph (c)

*omit, insert*

- (c) premises licensed under the *Liquor Act 2019*.

## **Division 15 Referendums Act 1998**

### **388 Act amended**

This Division amends the *Referendums Act 1998*.



**389 Section 13 amended (Polling places)**

Section 13(2)

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

**Division 16 Residential Tenancies Act 1999**

**390 Act amended**

This Division amends the *Residential Tenancies Act 1999*.

**391 Section 99A amended (Failure by tenant relating to acceptable behaviour agreement)**

Section 99A(3)(a)

*omit*

Part VIIIA of the *Liquor Act 1978*

*insert*

Part 8, Division 5, of the *Liquor Act 2019*

**Division 17 Sentencing Act 1995**

**392 Act amended**

This Division amends the *Sentencing Act 1995*.

**393 Section 3 amended (Interpretation)**

Section 3(1), definition ***restricted area***

*omit*

**394 Section 5 amended (Sentencing guidelines)**

After section 5(4)(a)

*insert*

(aa) may have regard to a forfeiture order under the *Liquor Act 2019* to the extent that the property that is subject to the order relates to the offence or offences for which the offender is being sentenced; and

**395 Section 44 amended (Home detention order)**

Section 44(2)

*omit*

restricted area

*insert*

general restricted area under the *Liquor Act 2019*

**396 Section 99A amended (Forfeiture of property orders)**

(1) Section 99A

*omit*

Where

*insert*

(1) If

(2) Section 99A, at the end

*insert*

(2) If a court finds a person guilty of a forfeiture offence as defined in the *Liquor Act 2019*, the court must determine any forfeiture of a vehicle, vessel or aircraft as if a forfeiture application were made by a police officer under Part 12, Division 2, of that Act.

**Division 18 Serious Crime Control Act 2009**

**397 Act amended**

This Division amends the *Serious Crime Control Act 2009*.

**398 Section 6 amended (Definitions)**

Section 6, definition ***prescribed activity***, paragraph (h)

*omit, insert*

(h) being a licensee under the *Liquor Act 2019*;

**Division 19 Summary Offences Act 1923**

**399 Act amended**

This Division amends the *Summary Offences Act 1923*.

**400 Section 53 amended (Obscenity)**

Section 53(7) and (8)

*omit*

licensed premises within the meaning of the *Liquor Act 1978*

*insert*

premises licensed under the *Liquor Act 2019*

**401 Section 66 amended (Regulation of places of public resort)**

Section 66(2)

*omit (all references)*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

**Division 20 Tobacco Control Act 2002**

**402 Act amended**

This Division amends the *Tobacco Control Act 2002*.

**403 Section 5 amended (Definitions)**

(1) Section 5, definitions ***liquor-licensed premises*** and ***liquor licensee***

*omit*

(2) Section 3

*insert*

**liquor licensed premises** means premises that are licensed under the *Liquor Act 2019*.

**liquor licensee** means a person who holds a licence under the *Liquor Act 2019*, other than an interstate retailer's licence.

**404 Section 11 amended (Exempt areas)**

Section 11(4A)

*omit, insert*

(4A) The regulations may prescribe the following matters in relation to exempt areas on or in liquor licensed premises:

- (a) the conditions applicable to an exempt area, which may vary for different liquor authorities;
- (b) a process for liquor licensees to obtain a certificate from the Director-General certifying that the area complies with the applicable conditions;
- (c) the payment of a fee prescribed by regulation for the certificate;
- (d) any other matters related to exempt areas on or in liquor licensed premises.

**405 Section 22 amended (Conditions of vending machine displays)**

Section 22(4), before "licensee"

*insert*

liquor

**406 Section 26 amended (Vending machine restrictions)**

Section 26(5)

*omit, insert*

(5) In this section:

**children free area** means an area in liquor licensed premises prohibited to children under section 295 of the *Liquor Act 2019*.

## **Division 21 Tobacco Control Regulations 2002**

### **407 Regulations amended**

This Division amends the *Tobacco Control Regulations 2002*.

### **408 Regulation 3 amended (Definitions)**

Regulation 3, definition *restaurant*  
*omit*

### **409 Regulation 15D inserted**

After regulation 15C, in Part 2, Division 2

*insert*

### **15D Limits on outdoor smoking area**

A liquor licensee must not allow the service or consumption of food or drink in an outdoor smoking area that is operated under the following authorities issued under the *Liquor Act 2019*:

- (a) catering authority;
- (b) club authority;
- (c) community club authority;
- (d) community event authority;
- (e) major event authority;
- (f) special event authority;
- (g) special venture authority.

## **Division 22 Totalisator Licensing and Regulation Act 2000**

### **410 Act amended**

This Division amends the *Totalisator Licensing and Regulation Act 2000*.

**411 Section 92 amended (Offences by persons employed by licensee or agent)**

Section 92(2)

*omit*

licensed premises within the meaning of the *Liquor Act 1978*

*insert*

premises licensed under the *Liquor Act 2019*

**Division 23 Traffic Act 1987**

**412 Act amended**

This Division amends the *Traffic Act 1987*.

**413 Section 46A amended (Breath analysis instruments at licensed premises – readings not admissible as evidence)**

Section 46A(1) and (2)

*omit*

*Liquor Act 1978*

*insert*

*Liquor Act 2019*

**Division 24 Valuation of Land Act 1963**

**414 Act amended**

This Division amends the *Valuation of Land Act 1963*.

**415 Section 9 amended (Unimproved capital value)**

Section 9(3)

*omit*

granted and in force under the *Liquor Act 1978*

*insert*

in force under the *Liquor Act 2019*

**Division 25 Repeal of Part**

**416 Repeal of Part**

This Part is repealed on the day after it commences.

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**Schedule Repealed Acts**

section 318

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<i>Liquor Act 1978</i>	Act No. 10, 1979
<i>Liquor Act 1979</i>	Act No. 23, 1979
<i>Liquor Act 1980</i>	Act No. 35, 1980
<i>Liquor Amendment Act 1981</i>	Act No. 33, 1981
<i>Liquor Amendment Act (No. 2) 1981</i>	Act No. 88, 1981
<i>Liquor Amendment Act (No. 3) 1981</i>	Act No. 110, 1981
<i>Liquor Amendment Act 1982</i>	Act No. 12, 1982
<i>Liquor Amendment Act (No. 2) 1982</i>	Act No. 93, 1982
<i>Liquor Amendment Act 1984</i>	Act No. 39, 1984
<i>Liquor Amendment Act 1986</i>	Act No. 29, 1986
<i>Liquor Amendment Act (No. 2) 1986</i>	Act No. 40, 1986
<i>Liquor Amendment Act 1988</i>	Act No. 47, 1988
<i>Liquor Amendment Act (No. 2) 1988</i>	Act No. 62, 1988
<i>Liquor Amendment Act 1989</i>	Act No. 67, 1989
<i>Liquor Amendment Act 1990</i>	Act No. 61, 1990
<i>Liquor Amendment Act (No. 2) 1990</i>	Act No. 62, 1990
<i>Liquor Amendment Act 1991</i>	Act No. 13, 1991
<i>Liquor Amendment Act 1992</i>	Act No. 1, 1992
<i>Liquor Amendment Act (No. 2) 1992</i>	Act No. 55, 1992
<i>Liquor Amendment Act 1993</i>	Act No. 24, 1993
<i>Liquor Amendment Act (No. 2) 1993</i>	Act No. 46, 1993
<i>Liquor Amendment Act (No. 3) 1993</i>	Act No. 75, 1993
<i>Liquor Amendment Act 1996</i>	Act No. 20, 1996



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<i>Liquor Amendment Act 1999</i>	Act No. 70, 1999
<i>Liquor Amendment Act 2002</i>	Act No. 76, 2002
<i>Liquor Amendment Act 2003</i>	Act No. 8, 2004
<i>Liquor Amendment Act 2004</i>	Act No. 14, 2004

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