

2019

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Liquor Bill 2019

SERIAL NO. 95

EXPLANATORY STATEMENT

GENERAL OUTLINE

This Bill provides a comprehensive framework for the regulation of sale and supply of liquor in the Northern Territory in response to the Final Report Alcohol Policies and Legislation Review of October 2017. The *Liquor Act 1978* is repealed and is replaced with a new Liquor Act 2019.

The object of the Bill is to minimise the harm associated with excessive consumption and misuse of alcohol and to provide a framework for a risk-based licensing regime to regulate sale, service and supply of liquor.

The primary purpose 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.

The secondary purposes are a balance of regulation and facilitation of business, and the protection of community wellbeing and amenity including:

- protecting and enhancing community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor; and
- regulating 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.

To achieve the purposes, the Bill provides a framework to:

- regulate sale, supply, service, promotion and consumption of liquor;
- prohibit certain products and activities relevant to sale, supply, service, promotion and consumption; and
- provide for the administration of the Act.

NOTES ON CLAUSES

Part 1 Preliminary matters

Contains the short title, commencement, purpose, interpretation, application, requirement for acquisitions to be on just terms and application of Criminal Code.

Clause 1. Short Title

This is a formal clause which provides for the citation of the Bill.

The Bill, when passed, may be cited as the *Liquor Act 2019*.

Clause 2. Commencement

This is a formal clause which provides when the Act will commence.

The Act will commence on a day fixed by the Administrator by Gazette notice.

Clause 3. Purposes

This is a formal clause which sets out the primary and secondary purposes of the Act.

The Act seeks to minimise the harm associated with excessive consumption and misuse of alcohol and to provide a framework for a risk-based licensing regime to regulate sale, service and supply of liquor. The Act provides a regulatory regime to do this.

The primary purpose of the Act is therefore to minimise the harm associated with consumption of liquor in a way that recognizes the public interest in sale, supply, service, promotion and consumption of liquor.

The secondary purposes are a balance of regulation and facilitation of business and the protection of community wellbeing and amenity.

The Act provides a framework to achieve the purposes through regulating sale, supply, service, promotion and consumption of liquor; prohibiting certain products and activities relevant to sale, supply, service, promotion and consumption; and to provide for the administration of the Act.

A person exercising a power or function is to have regard to the primary and secondary purposes.

Clause 4. Interpretation

This clause defines terms used through the Act, including 'alcohol-related violence', 'liquor product', 'premises', and 'sell'.

A new term is introduced for 'supply' to mean without the expectation of a reward or benefit.

Clause 5. Meaning of *intoxicated*

This clause defines 'intoxicated' to replace the term 'drunk' used in the *Liquor Act 1978*. The definition is similar to, and consistent with, the definition used in the *Police Administration Act 1978*.

Clause 6. Application

This clause provides that the Act applies to substances, being 'liquor', and provides a modern definition of liquor for the Act, which captures substances that may not be liquid but may be ingestible as liquor.

This clause also disapplies substances that may otherwise fall in the definition of liquor, including a medicine or other product used for medicinal purposes.

The clause also provides how a substance may be determined to be liquor for the Act through a method to measure the volume of ethyl alcohol.

Clause 7. Acquisitions to be on just terms

This clause is a standard clause relating to property acquisition through an Act and provides that if property is acquired through a provision of the Act or a regulation made under the Act and is not on just terms, then just compensation is payable and is determined by a court.

Clause 8. Application of Criminal Code

This clause applies Part IIAA of the Criminal Code, which states the general principles of criminal responsibility including defences and burden of proof, to offences against the Act.

Part 2 Administration

This Part provides for the administration of the Act, including appointment of a Director of Licensing, assessors, inspectors and the powers of the Liquor Commission under the Act. The Part also sets out the legal protections for the statutory positions in administering the Act and how matters relating to decisions under the Act may be reviewed.

Division 1 Director of Licensing

Clause 9. Appointment

This clause provides that the Director of Licensing is a person appointed by the Minister.

Clause 10. Powers and functions

This clause sets out the powers and functions of the Director under the Act (or as conferred under any other Act).

The powers and functions include compliance and investigations relating to complaints, issuing infringement notices for breaches of offences against the Act, and educative functions to licensees and the public on the operations of the Act.

Clause 11. Delegation

This clause provides that, except for review of a decision, the Director may delegate any of their powers and functions under the Act to a public sector employee.

The Director may also delegate functions relating to permits to the chief executive officer of a local council or to a police officer in charge of a station.

Division 2 Assessors

Clause 12. Appointment

This clause provides that a person may be appointed as an assessor by the Minister and has the functions of advising the Director regarding administration and operation of the Act or to perform any other function required by the appointment.

The Commonwealth legislation *Stronger Futures of the Northern Territory Act 2012* makes reference to assessors and provides functions for assessors under that Act.

Clause 13. Terms of appointment

This clause provides that the period of the appointment of an assessor is determined by the Minister in the appointment.

Clause 14. Conditions of appointment

This clause provides that the conditions of appointment, including remuneration and expenses, are determined by the Administrator.

Clause 15. Conflicts of interest

This clause provides that conflicts of interests such as personal interests in a matter that an assessor is asked to give advice on must be disclosed to the Director and to the Minister.

An assessor cannot provide advice in relation to a matter where they have a personal interest without written approval of the Minister. Personal interest is defined to include direct or indirect financial interest in a matter or any personal, professional, commercial or other relationships that may be regarded as constraining the exercise of independent judgment.

Division 3 Inspectors

Clause 16. Appointment

This clause provides that a person may be appointed an inspector by the Minister and is required to perform duties as required under the Act or as assigned by the Director.

Clause 17. Identity card

This clause provides that the inspector must have an identity card stating their name and that they are an inspector.

The inspector identity card may be one issued by another Act and must show a photograph of the inspector along with the date of issue and expiry and be signed by the inspector.

Clause 18. Return of identity card

This clause requires a person who ceases to be an inspector to return the identity card within 21 days of ceasing to be an inspector. Failure to do so constitutes an offence of strict liability punishable by a maximum penalty of 50 penalty units. A defence of reasonable excuse applies.

Division 4 Liquor Commission

Clause 19. Commission decisions

This clause provides that the Commission is the primary decision maker for the Act, setting out that the Commission is responsible for decisions relating to licence and authority applications (including to vary a licence or authority), substitution of premises and material alteration applications, transfer of licences and for taking disciplinary action against a licensee.

Clause 20. Codes of practice

This clause provides that the Commission may establish codes of practice to regulate certain matters in relation to the Act, including advertising and promotion of liquor, how a business is conducted under a licence or authority, and management of patrons, customers and purchasers such as management of safety.

Codes of practice must be published as the Commission considers appropriate (e.g. by *Gazette* notice) and compliance with the codes of practice is a condition of licence.

Clause 21. Commission hearings

This clause provides that a hearing may be conducted by the Commission on any matter that it may make a decision on under the Act.

A hearing conducted by the Commission must be in public, unless the Commission is of the view that it is not appropriate, such as where commercial-in-confidence information requires protection or undue hardship may be caused to a person.

A hearing may be conducted in full or in part in private or by way of written submissions if it is determined that a public hearing is not appropriate.

Clause 22. Appearance at hearings

This clause provides which persons, organisations and groups have standing to appear at a hearing of the Commission.

In matters relating to licences and authorities, other than a disciplinary action, the applicant and an objector have standing, as well as objectors without a valid objection if granted leave and other persons requested by the Commission.

In a matter regarding disciplinary action, the Director has standing, along with the licensee, an employee involved in the matter and any complainant, as well as any other person requested by the Commission under the *Liquor Commission Act 2018*.

Clause 23. Procedure for hearings

This clause provides that the time and place, along with notice of the time and place, must be provided by the Commission for a hearing to the parties.

A person may be required to appear to give evidence on oath or affirmation and a party may be required to provide copies of relevant documents to another party.

The Commission is not bound by rules of evidence and may determine rules and procedures for conduct of hearings however natural justice applies so that all parties to a hearing must have an opportunity to be heard in accordance with the rules and procedures.

Division 5 Legal protections

Clause 24. Protection at hearing

This clause provides that a legal practitioner who provides representation for a party at a hearing of the Commission has the same protection and immunity as a legal practitioner appearing in a Supreme Court proceeding.

A witness providing evidence also has the same protection as a witness in a Supreme Court proceeding.

Clause 25. Protection from liability

This clause provides that no civil or criminal liability applies to the exercise of a performance or function under the Act that is done in good faith by persons exercising powers or functions under the Act.

This applies to a member of the Commission, the Director, an inspector, an assessor and a police officer (only for civil liability and subject to Part VIIA of the *Police Administration Act 1978*).

Division 6 Review of delegate's decisions

Clause 26. Notice of delegate decision

This clause provides that notice must be provided in writing of a decision by a delegate of the Director which provides reasons for the decision and that there is a right to apply for a review of a decision in a specified timeframe.

Clause 27. Application for review

This clause provides who may apply to the Director for a review of a decision of the Director's delegate, and that the application for review must be lodged within 28 days of the notice of decision (or a later date allowed by the Director) in the approved form stating the ground for review and facts relied upon to establish the grounds.

Clause 28. Effect of application for review

This clause provides that an application for review does not stay the operation of a decision, however the Director may stay the operation of the decision pending completion of the review.

The Director may reject an application for review if satisfied that it is frivolous or vexatious or that there are no grounds for the application.

Clause 29. Reviewing delegate's decision

This clause provides that an application for review that is not rejected must be reviewed and the matter considered as if the decision were made by the Director by taking into account any matter required when the decision was made, and affirm, vary or set aside the decision and substitute a new decision. Natural justice applies to the review.

Clause 30. Decision notice

This clause provides that a decision notice must be provided on making a review decision and provided to the applicant as well as any person who had a right to apply for a review of the decision.

Division 7 Review of Commission's decisions

Clause 31. Review by NTCAT

This clause provides that decisions of the Commission which require a decision notice, are reviewable by NTCAT. The persons who may apply to NTCAT for review are set out and include the Director in all cases.

Part 3 Registrations, licences and authorities

Part 3 sets out the requirements for registering to sell liquor as a wholesaler, obtaining a licence for the sale or supply of liquor, the application and objection process to obtain a licence or authority, as well as other key matters relating to licences such as how a licence may be transferred.

Division 1 Wholesales of liquor

Clause 32. Registration of wholesaler

This clause provides that a person must not sell wholesale liquor for delivery to a person in the Northern Territory unless they are registered as a wholesaler.

Clause 33. Application for registration

This clause provides that a person may lodge an application for registration in the approved form, and specifying the desired registration period of 1, 3 or 5 years, as a wholesaler of liquor with the Director.

The Director must decide whether to register the applicant as a wholesaler, with or without conditions, or refuse to register the applicant as a wholesaler. A decision notice must be provided.

A licensee is not eligible to be registered as a wholesaler under this section and must obtain a wholesale authority to sell liquor wholesale.

A wholesaler may renew by making a new application for registration.

Clause 34. Register of wholesalers

This clause provides that the Director must keep a register of each registered wholesaler, including the date of registration and the relevant registration period.

Clause 35. Unauthorised wholesaler

This clause provides that it is an offence to sell liquor to a licensee through a wholesale sale, if not a registered wholesaler or a licensee holding a wholesaler's authority and carries a maximum penalty of 250 penalty units or 12 months imprisonment.

Clause 36. Keeping records of liquor sales

This clause provides that a registered wholesaler must keep written record of information in relation to sales of liquor as prescribed in the regulations.

The records must be kept for 3 years unless exempted by the Director from this requirement. It is an offence of strict liability to not keep written records of sales as prescribed, or for the period of 3 years (unless exempted by the Director). A maximum penalty of 50 penalty units applies to the offence.

Clause 37. Wholesaler's quarterly return

This clause requires a wholesaler to lodge a return in approved form each quarter, within 28 days of the end of the quarter, which contains information regarding sales of liquor.

It is an offence of strict liability to not lodge a return in the approved form or providing the required information as prescribed, a maximum penalty of 50 penalty units applies.

Division 2 Sale, supply and service of liquor**Clause 38. Requirement for licence**

This clause provides that a licence is required to sell liquor in the Territory, or to sell liquor from outside the Territory for delivery within the Territory or to supply or serve liquor in premises operating for commercial or business purposes.

A licence only provides authorisation in accordance with the conditions relevant to the particular authority or authorities issued to the licensee relating to the licence.

Clause 39. Exceptions from licence requirement

This clause sets out the places where no licence is required for sale, supply or service of liquor, including defence facilities as authorised by the defence authority, within the precincts of the Legislative Assembly or on an aircraft in flight.

This clause also provides that no licence is required for sale, service or supply in circumstances such as sale of flavor extracts in containers of maximum 50ml, or in retirement villages or aged care facilities where no more than 2 standard drinks a day are provided to a resident under authority of the responsible body administering the facility.

No licence is required for service of no more than 2 standard drinks in a day by a business to a customer as part of the service, such as a glass of wine to a customer at a hair salon. No licence is required if the supply is by an employer to employees and their guests and families.

This clause further provides that no licence is required for transactions such as forfeiture of liquor under a law of the Territory or duty free sales at a duty free shop.

Clause 40. Interstate retailer's licence

This clause provides that sale of liquor from a place outside the Territory for delivery to the Territory requires an interstate retailer's licence.

This licence is available to a person who is authorised under a law under a state or territory to sell liquor, but not if they hold a licence under this Act and must not operate licensed premises in the Territory and is granted by the Commission on provision of a copy of the other sale authority and notice of intention to sell into the Territory.

No application or annual fee applies for an interstate retailer's licence.

An interstate retailer is not required to comply with identification system requirements under Part 6 Division 1 of this Act (relating to the Banned Drinker Register).

An interstate retailer is subject to the same terms and conditions that apply under the authorisation to sell liquor provided by the State or Territory and does not authorise conduct outside the Territory that is beyond power to authorise.

Clause 41. Unauthorised sale of liquor

Subclause (1) provides that it is an offence to sell liquor if not authorised and the sale is not exempt from the requirement to hold a licence, and carries a maximum penalty of 300 penalty units or imprisonment for 3 years.

Subclause (2) also provides that it is an offence to sell liquor from outside the Territory for delivery within the Territory if not authorised by an interstate retailer's licence or exempted from the requirement for a licence, and carries a maximum penalty of 300 penalty units or imprisonment for 3 years.

Clause 42. Unauthorised supply or service of liquor

This clause provides it is an offence to supply or serve liquor in commercial or business premises if not exempted from the requirement for a licence and not otherwise authorised by a licence to sell liquor. The offence carries a maximum penalty of 200 penalty units or imprisonment for 2 years.

Clause 43. Authorities attached to licence

This clause establishes the authorities which may apply to a licence, with the conditions relevant to particular authorities prescribed by regulation.

The authorities include categories such as small bar, takeaway, lodging, club, public bar and BYO.

One or more authority may be attached to a licence and provide authorisation for sale and supply of liquor as set out in the relevant conditions of the authority. For example, a licensee may hold a public bar authority, a takeaway authority, a restaurant authority and restaurant bar authority as the licensed premises has a public bar area, a restaurant area with a bar, and also an area selling liquor for takeaway. Or, a licensee may hold a public bar authority and a late night authority which provides that the licensee operates a public bar with additional authority to operate after standard hours of operation (12 midnight) in accordance with the conditions relevant to the late night authority.

The authorities link into the risk based licensing scheme in relation to the application of fees based on the level of risk that particular authorities present.

Division 3 Issuing licences and authorities**Clause 44. Commission issues licences and authorities**

This clause provides that a licence and authority or authorities is issued by the Commission.

Clause 45. Public interest and community impact

This clause provides that a licence may only be issued by the Commission to an applicant who the Commission is satisfied is a fit and proper person, and satisfied that the issuing of a licence or authority is in the public interest and does not adversely impact the community, by considering the public interest and community impact test.

This clause sets out the considerations of the Commission in determining if the issue of a licence or authority advances the public interest which includes harm minimisation, responsible sale, supply and service of liquor, safeguarding of public order and safety, local

community benefits and prevention of irresponsible drinking practices and reduction of anti-social behavior.

This clause also sets out the considerations of the Commission in determining if the issue of a licence or authority adversely impacts the community, including considerations of the risk of annoyance, disturbance or inconvenience to persons who work or reside in the area, effect on culture, recreation, employment and tourism, effect on social amenities and public health.

The Commission may mitigate possible adverse impacts through the imposition of conditions such as controls on the kind of liquor that may be sold, the way that liquor may be sold and when liquor may be sold.

Clause 46. Community impact assessment guidelines

This clause provides that community impact assessment guidelines must be issued and notified in the *Gazette* by the Minister to assist with assessment of community impact.

The guidelines may require the provision of specified information is required from an applicant for a licence and may have a general, limited or varied application to licence applications. This is intended to provide flexibility for applications where the authority sought has limited impact such as a community event authority where the event may be a one off and limited in attendance (by invitation) and is not intended to continue on a permanent basis or be open to members of the public to attend.

Clause 47. Onus on applicant

This clause provides that the onus is on the applicant to provide information that will enable the Commission to be satisfied that the issue of a licence and/or authority will be in the public interest and not have a significant adverse impact on the community.

The applicant must conduct consultation required by the Commission and community impact assessment guidelines and comply with any other requirements determined by the Commission.

Clause 48. Application for licence and authority

This clause provides that an application for a licence or authority is made by a person.

An application must be lodged in writing and accompanied by an affidavit disclosing persons of influence and potential beneficiaries of the licence, a draft notice for publication, the evidence to satisfy the onus in relation to the public interest and community impact considerations and the prescribed fee.

An application may be made in relation to a premises which is under development with the intent that the licence will be transferred at a later date to another person who will operate the licenced premises.

Clause 49. Licensing of body corporate

This clause provides that a body corporate may apply for a licence, which requires an individual to be a nominee and joint licensee.

Only a body corporate within the meaning of section 57A of the *Corporations Act 2001* (Cth) can apply for and hold a licence. That definition includes associations such as associations under the *Northern Territory Associations Act*.

Clause 50. Disclosure of persons of influence and potential beneficiaries

This clause provides that applications for a licence and authority must disclose persons who may be able to influence the applicant or who may expect to obtain benefit, indirectly or directly, from the applicant.

This information is provided by way of affidavit required for the licence application.

Clause 51. Associates of a person

This clause provides who is considered an associate for the purpose of determining an application. This includes including spouses, family members and business partners, as well as a body corporate of which the person is an executive officer, an employee or employer or a person who has provided advice in relation to the sale of liquor (for fee or reward).

Clause 52. Acceptance of application

This clause provides timeframes associated with applications including that within 21 days of an application being lodged, the Director of licensing must accept the application for consideration if it meets the requirements, refuse if it does not meet the requirements, or provisionally accept the application if changes could be made within 28 days (or longer as permitted) to make the application meet requirements.

The applicant must be notified of the Director's decision and the Director must also notify the Department of Health (as the relevant agency administering the *Public and Environment Health Act 2011*), the Commissioner of Police and, if relevant, a local council within 14 days of accepting an application.

Clause 53. Public notice of application

This clause provides that within 14 days of accepting the application the Director of Licensing must also advise the applicant of public notice requirements.

The applicant must post a first notice within 28 days and a second notice within 42 days, and as may be required, which identifies the location of the proposed licensed premises, which authority or authorities are applied for and information about the business to be conducted.

The 14 day period for the Director to advise the applicant may be extended if more time is required.

Clause 54. Investigation of applications

This clause provides that the Director may conduct an investigation into the application as appropriate, and if an objection is lodged.

Clause 55. Consideration of applications

This clause provides that an application accepted by the Director must be referred to the Commission for consideration – either 7 days after no objection is received, or if an objection is received, after the 14 days allowed for an applicant to respond once notified of the objection.

The Commission must consider an application through considering the information provided in the application by the applicant including the

affidavit, the results of any investigation conducted and any objection and response and the suitability of the premise to be licensed, financial information and reputation and character of the applicant (whether the applicant is a fit and proper person).

The commission may require the applicant to provide additional documents or information.

Clause 56. Decision to issue licence or authority

This clause provides that after considering the application, the Commission must make a decision whether to issue a licence or authority or refuse to issue the licence or authority.

A decision notice must be provided to the applicant and to any person who lodged an objection.

If the application is refused, the Commission may refund the whole or part of the application fee.

Division 4 Objection to application

Clause 57 Objecting to application

This clause sets out when an objection may be made, who may object to an application, and the grounds for making an objection and the timeframe for making an objection. The grounds include that there would be an adverse effect on the amenity of the area, or the health, safety or social conditions of the community.

An objection must be in writing and signed, setting out the grounds for objection, and lodged within 28 days after the publication of the last public notice required under the Act.

Clause 58. Applicant's right to respond to objection

This clause provides that the applicant has a right to respond to an objection, with the Director required to give the applicant written notice of the grounds of the objection and their right to respond.

A response must be in writing and lodged with the Director within 14 days after being given the notice of the objection.

Clause 59. Limit on new grounds

This clause provides that during the course of the Commission determining an application, a body that has made an objection may only raise any objection that is a ground specified and relied upon in the objection or is a ground responding to new information arising during the determination, inquiry, review or hearing.

Division 5 Related matters**Clause 60. Register of licensees**

This clause provides that a register of licensees must be kept by the Director which includes information such as the name and address of the licensee, the address of the licensed premises and the relevant dates for the licence and what authorities and conditions are associated with the licence.

Clause 61. Duplicate licences, special licences and permits

This clause provides that a duplicate licence, authority or permit may be issued by the Director, on application by the holder of the licence, authority or permit, if the licence, authority or permit was destroyed, lost or stolen.

Clause 62. Surrender of licence or authority

This clause provides that a licensee may surrender a licence or an authority by returning it to the Director, who must accept the surrender for it to take effect.

To accept the surrender, the Director must be satisfied that at least 14 days notification has been provided to persons who have an interest in the licence, and while the person ceases to be a licensee they remain liable for any act or omission prior to the surrender taking effect and any liability incurred.

Clause 63. Abandonment of licence

This clause provides that that a licence is taken to be abandoned if the premises have not operated for more than 6 months without prior approval of the Director.

An abandoned licence has no effect and the Commission may cancel the licence, and the person who abandoned the licence has no rights or privileges under the licence.

A person who held an abandoned licence remains liable for any act or omission prior to the abandonment and any liability incurred.

Clause 64. Licence, authority and permit not personal property

This clause makes it clear that a licence, authority or permit is not personal property.

Division 6 Fees for licences and authorities

Clause 65. Fees for licences and authorities

This clause provides that annual fees apply to a licence and authorities held by a licensee. The fees are prescribed by regulation and based on factors such as type of licence or authority, volume of liquor sold, supplied or served and the hours of operation.

A licensee must be provided with a written estimate by 1 October each year with the annual fee due by 2 January the following year.

A licence is automatically suspended if the licensee fails to pay by 2 January.

Clause 66. Prescribing fees

This clause provides that regulations may prescribe fees for applications, licences and authorities including factors such as the type of licence or authority, the revenue earned or expected from sale of liquor, the amount of liquor sold or the alcohol content of liquor products, the hours of operation and compliance record of a licensee.

The factors and criteria upon which regulations can be made supports the risk based licensing system underpinning the harm minimisation objects of this Act.

Division 7 Transfer of licence**Clause 67. Transfer of licence**

This clause provides that a licence is transferable, but only has effect if the transfer is authorised by the Commission.

Clause 68. Application for transfer

This clause provides that an application must be made to the Commission to transfer a licence, as if an application is being made for a new licence.

An application in the approved form must be lodged with the Director and accompanied by an affidavit, a draft public notice and the application fee. However, while the Department of Health, the Commissioner of Police and any relevant local council must be notified, the community impact process is not required for a transfer.

Clause 69. Decision on transfer

This clause provides that the Commission is to consider the application for transfer as soon as reasonably practicable after receiving the application and decide whether to authorise the transfer or refuse to authorise the transfer.

If the transfer is refused the Commission must notify the licensee and proposed transferee.

Clause 70. Certificate of transfer

This clause provides that a certificate of transfer is to be issued if the transfer is authorised.

The certificate has the effect of transferring the licence and authorities.

The former licensee remains liable for act or omissions occurring prior to the transfer.

Clause 71. Substitution of premises

This clause provides that a licensee cannot substitute premises for the licensed premises and must apply for a new licence.

However the Commission may, instead of issuing a new licence, amend a licence to substitute other premises for the licensed premises if there is no change to the operation of the business and the substitution satisfies the public interest and community impact test

Division 8 Absence, insolvency or death of licensee**Clause 72. Acting licensee**

This clause provides that an acting licensee must be appointed if a licensee is unable to conduct the business of the licensee for more than 7 consecutive days.

A maximum of 42 days applies to the appointment of an acting licensee in any 12 month period, unless otherwise determined by the Director.

If the licensee does not appoint a person to act as the licensee the Director may do so.

This clause provides it is an offence of strict liability if the licensee does not appoint a person and provide written notice to the Director within 3 days of the appointment, carrying a maximum penalty of 50 penalty units.

This clause also provides it is an offence if a person appointed and acts for the licensee more than 42 days during any 12 month period (or other period determined by the Director), carrying a maximum penalty of 50 penalty units.

A licence must be cancelled by the Director after 42 days if it is expected that the licensee will not be able to conduct the business, no application was made for a transfer or substitution of the licence and no satisfactory arrangements in relation to the conduct of the business have been made.

Clause 73. Continuation of licence after death

This clause provides that if a licensee dies, the licence continues until it expires or is cancelled. The Director may vary the expiry date.

Clause 74. Conduct of business after death

This clause provides that an application may be made in approved form, for a person to be appointed to act as the licensee by a legal representative or member of family or person claiming an entitlement to the estate of the deceased person, and the Director may appoint a person to act as the licensee until the licence expires, is cancelled or is transferred.

Clause 75. Notice of bankruptcy, etc.

This clause provides that a licensee must provide written notification in the approved form to the Director if they become bankrupt or insolvent within 7 days of being declared bankrupt or makes an application relating to insolvency.

This clause provides that it is an offence of strict liability to contravene the requirement to notify or to lodge a notice with the Director in 7 days, carrying a maximum penalty of 20 penalty units.

Clause 76. Cancellation of licence on death and insolvency

This clause provides that a licence may be cancelled by the Director if a licensee dies or becomes bankrupt and no adequate arrangements have been made for the conduct of the business.

Clause 77. Transfer of business

This clause provides that the Director may authorise a person on application to act as licensee on death or bankruptcy of a licensee, to conduct the business.

The authorised person is taken to be the licensee with the licence continues in force and the licence may be transferred to such authorised person.

Part 4 Conditions on licences and authorities

The Part sets out the conditions that apply to licences and licensed premises and the various authorities which may be attached to a licence.

Division 1 General conditions

Clause 78. Implied conditions

This clause sets out the implied conditions to be complied with by a licensee under the Act by providing that the duties imposed or conduct that is prohibited are taken to be conditions of a licence.

Clause 79. Prescribed conditions

This clause provide that conditions may be prescribed to a licence and authorities by regulation.

The conditions may vary dependent on location, type of licensee, licence or authority and if more than one authority is held under a licence.

Clause 80. Limits on authorities

This clause provides that there are limits on authorities including that an authority cannot be substituted for another authority without an application to vary the licence.

Limits are placed on new grocery store licences and takeaway authorities, however existing licences may be transferred or transitioned from the *Liquor Act 1978*. This reflects the recommendations of the review of alcohol policies and legislation.

Clause 81. Duration of licence

This clause provides that the term of the licence is fixed by the Commission and remains in force until expires, is abandoned, surrendered, suspended or cancelled.

Clause 82. Compliance with codes of practice

This clause provides that licensees must comply with any Codes of Practice established by the Commission.

Clause 83. Discretionary licence conditions

This clause provides that the Commission may set discretionary conditions relevant to a licence or an authority as considered necessary or appropriate.

The conditions include matters such as construction and furnishing of a premises, or the hours and days that a licensed premises may be open.

Clause 84. Minister's power to add or vary conditions

This clause provides the Minister with a power to add or vary a condition in urgent situations where the wellbeing of a community that might be affected is at risk.

The conditions may include conditions about hours for sale, supply or service of liquor, the type of liquor that may be sold or the amount of liquor.

The Minister must consider the purposes of the Act in making a condition under this provision and must table a copy of the decision in the Legislative Assembly within 6 sitting days after making the decision.

Division 2 Conditions related to licensed premises**Clause 85. Exemption for interstate retailer's licence**

This clause provides that this Division does not apply to interstate retailer's licences, as an interstate retailer does not operate from within the Northern Territory and is not permitted to do so as a condition of the interstate retailer's licence. Therefore there is no licensed premises in the Northern Territory that the conditions of this Division otherwise apply to.

Clause 86. Proper maintenance

This clause provides that it is a condition that a licensee must keep machinery, equipment, fittings etc. used in connection with operations properly maintained.

Clause 87. Fire safety conditions

This clause provides that it is a condition that fire safety and public health conditions are complied with.

Clause 88. Public health conditions

This clause provides that it is a condition that any public health notices that are issued under the *Public and Environmental Health Act 2011* are complied with.

Clause 89. Undue or unreasonable noise

This clause provides that it is a condition that no undue or unreasonable noise affecting the amenity of the neighbourhood is permitted. Noise may also be a ground for a complaint against a licensee.

Clause 90. Posting signs and notices

This clause provides that it is a condition that signs, notices or other information must be posted in a conspicuous place as directed by the Director.

Clause 91. Limit on material alterations

This clause provides that prior written approval from the Commission is required before material alterations are made.

Such proposed alterations include alterations to a premises which relate to structural or affect the capacity for sale and consumption of liquor on the premises.

An alteration must not result in a breach of this Act or other relevant legislation relating to sale, supply or consumption of liquor or location or construction of premises for the sale, supply or consumption of liquor.

Clause 92. Application for approval of material alteration

This clause requires the licensee to make an application to make material alterations, with information relating to the alteration such as a copy of the plans and specifications or permits to carry out the alteration that may be required under the *Building Act 2004*.

The Director may request that public notice be published if considered in the public interest to do so, relating to the application to make a material alteration.

If the application relates to premises within a local government area, the Director must inform the local council of the application as soon as reasonably practicable.

Clause 93. Decision on material alteration of licensed premises

This clause provides that in making a decision in relation to a material alteration that the Commission must consider any objections made, any responses provided by the applicant in response to the objections and public interest and community impact.

The Commission must notify the applicant and any objector once a decision is made.

Unless approved by the Commission, no business may be conducted while the approved material alteration is being made.

Clause 94. Material alteration offences

Offences apply in relation to unapproved material alterations and unapproved trade while material alterations are made.

Subclause (1) of this clause provides that it is an offence of strict liability for a licensee to make a material alteration without prior approval of the Commission, carrying a penalty of 100 penalty units.

Subclause (2) of this clause provides that it is an offence of strict liability for a licensee to trade while undertaking alterations without prior written approval of the Commission, carrying a penalty of 100 penalty units.

Clause 95. Remediating unauthorised alterations

This clause provides that if a material alteration is made to licensed premises without approval of the Commission, the Commission may after notifying the licensee, remove unauthorised alterations or have the premises restored to a condition satisfactory to the Commission at the cost of the licensee.

Division 3 Conditions related to operations**Clause 96. Payment for liquor**

This clause provides that the sale of liquor requires payment to be made by legal tender (cash), cheque, credit or debit card, authorised debit or to a business account or otherwise prescribed. Payment cannot be made by exchange of goods or services.

It is an offence of strict liability to contravene this requirement, carrying a maximum penalty of 100 penalty units.

Clause 97. Retaining possession of credit and debit cards

This clause provides that it is an offence of strict liability to retain possession or control of a person's credit or debit card as security for payment for liquor at a licensed premises, carrying a maximum penalty of 100 penalty units.

The Minister may issue a guideline on requirements for the sale of liquor relating to retaining credit and debit cards, compliance of which may be used as reasonable excuse in relation to the offence.

Clause 98. Conditions on time of operation

This clause provides that it is a condition that the licensee must not sell, supply or serve liquor outside of the hours relevant to the licensee's authority, or allow patrons to enter or remain on the premises outside of the hours prescribed in respect of the authority.

However, if no liquor is being sold, supplied or served and there is no access to gaming machines, then a patron may be allowed to enter and remain on premises. This is intended to provide some flexibility to licensees in use of the premises for purposes other than sale or supply of liquor, such as use of community rooms in a premises with club authority by community members, or service of breakfast at a restaurant or hotel in an area which is licensed to sell, supply and serve liquor during standard hours of operation (10am to 12 midnight).

Clause 99. Advertising and promotions

This clause provides that it is a condition that a licensee must not publish or cause to be published material inducing, or construed as inducing, irresponsible or excessive consumption of liquor contrary to Commission guidelines.

Clause 100. Conditions about minimum pricing

This clause provides that it is a condition that a licensee must ensure that liquor is sold and offered for sale in compliance with minimum pricing obligations which provide that liquor cannot be sold under the minimum sale price.

The Commission cannot vary conditions relating to compliance with minimum pricing obligations.

Division 4 Conditions related to information**Clause 101. Change of licensee's contact information**

This clause provides that it is a condition to notify the Director of changes in a licensee's contact information, within 14 days of the change.

Clause 102. Change in licensee's corporate positions

This clause provides that it is a condition that any changes to corporate structures, must be provided in writing within 14 days of the change.

The Commission may investigate any change notified and re-examine the fitness to hold licence.

Clause 103. Change of interstate retailer's licensee's status

This clause provides that for an interstate retailer's licence that it is a condition to notify the Director in writing of any variation, suspension or cancellation of the licence within 14 days of the change.

Clause 104. Keeping records of liquor purchases and sales

This clause provides that the licensee must retain written records as prescribed by regulation, regarding purchase and sale of liquor, and that the records must be retained for 3 years unless exempted.

It is an offence of strict liability to not retain records as required or for the 3 year period required, carrying a maximum penalty of 50 penalty units.

Clause 105. Licensee's quarterly return

This clause provides that the licensee must prepare a quarterly return as prescribed regarding purchase and sale of liquor, in the approved form and with the information prescribed, and be lodged within 28 days at the end of each quarter.

It is an offence of strict liability to contravene the requirement to lodge and in the approved form within time, carrying a maximum penalty of 50 penalty units.

Clause 106. Producing records and other documents

This clause provides that a licensee must produce records required to be kept and other documents as requested by an inspector.

Failure to comply with the direction is an offence of strict liability carrying a maximum penalty of 20 penalty units.

Division 5 Variation of conditions

Clause 107. Application to vary conditions

This clause enables a licensee to apply to have a variation of conditions or an authority by way of written application.

A decision to vary is made by the Commission following a hearing, and is made following consideration by the Commission as to whether the variation is in the public interest and not have a significant adverse effect on the community.

The Commission cannot vary a condition added by the Minister or the days on which a prohibition applies to selling liquor under an authority or any information requirements.

An application to vary the size of licensed premises must be made through approval for a material alteration.

Clause 108. Notice of application to vary conditions

This clause provides that the Director may require the licensee to publish a notice of the application to vary conditions if considered to be in the public interest.

The notice must identify the location of the licensed premises, the nature of the business and the proposed variation.

The Director must notify the Department of Health, the Commissioner of Police and a relevant local council of the application to vary conditions.

Clause 109. Variation on application

This clause provides that in considering an application to vary conditions, the Commission must consider the affidavit, any objection made to the application, any responses and the public interest and community impact requirements.

On deciding whether to vary or refuse the application to vary, the Commission must give a decision notice to the applicant and any objector.

Clause 110. Variation by Commission

This clause provides that the Commission may vary conditions on its own initiative, other than a condition added by the Minister.

Before making a variation under this clause, the Commission must notify the licensee of the proposed variation and invite a response within 28 days.

The Commission may make the variation after considering any response, the results of a hearing and the public interest and community impact requirements.

A decision notice must be provided to the licensee and the variation takes effect either on the receipt of the decision notice or on a stated date in the decision notice.

A variation that is for a formality or clerical reason that does not alter the substance of conditions does not require the Commission to notify a licensee or hold a hearing.

Clause 111. Limit on variation of conditions

This clause provides a limit on the variation of conditions that can be made by the Commission including a condition imposed by the Minister cannot be varied by the Commission.

Clause 112. Hearing by Commission about varying conditions

This clause provides that a hearing may be convened for the variation of conditions if considered appropriate, and may publish notice and invite written submissions in relation to the proposed variation.

The hearing may be conducted as the Commission considers appropriate.

Part 5 Minimum pricing

This Part makes provision for minimum pricing requirements that apply to the sale of liquor in, or destined for, the Northern Territory.

Division 1 Application of Part**Clause 113. Application of Part**

This clause provides that the minimum pricing requirements contained in the Part do not apply to certain sales such as duty free sale, wholesale sales or a liquor product exempted by regulation.

Division 2 Measuring standard drinks**Clause 114. Meaning of *standard drink***

This clause defines a standard drink to be volume of liquor product containing 10g of ethyl alcohol when measured at 20 degrees Celsius.

Clause 115. Number of standard drinks in liquor products

This clause provides the formula for calculating the number of standard drinks in a liquor product and that the number of standard drinks may be determined by its product label if indicated and could be reasonably assumed to comply with Australian food codes.

Clause 116. Cocktails and mixed beverages

This clause provides that for a liquor product that contains two or more other liquor products, such as in a cocktail, the sum is the number of standard drinks from each of the added liquor products.

Division 3 Minimum pricing for liquor product**Clause 117. Meaning of *sale price***

This clause provides that the sale price is the amount paid for the product and includes discounts or other rebates or costs applied to the transaction. Shipping costs applied separately by a third party are not included in the meaning of sale price.

Clause 118. Minimum sale price

This clause provides that a minimum sale price applies to the sale, and offers for sale, of a liquor product.

The minimum sale price is \$1.30 for each standard drink, or any higher amount specified by the Minister by *Gazette* notice.

The minimum sale price is indexed in accordance with the method set out in the regulations and must be reviewed by the Minister every 3 years.

The object of the minimum sale price includes reducing harmful consumption of liquor while minimising the effect on moderate consumers of liquor.

Clause 119. Complimentary drinks

This clause provides that a licensee may serve up to two standard drinks free of charge to a patron and this is not in contravention with the requirements for the minimum sale price and does not constitute an offence.

Clause 120. Promotions with non-liquor products

This clause provides that the sale price includes the value of other non-liquor products sold together with a liquor product but excludes non-liquor products that are not available for sale separately from the

liquor product purchased or are available on purchase of other products of the same value.

Clause 121. Sale price manipulation

This clause provides that conditions may be imposed by the Commission if reasonably believed that sale price manipulation is or has occurred through bundling liquor products with other products to make the liquor more attractive, or at a price below the minimum sale price that would have occurred if the products were sold separately from the non-liquor products, or by accepting gift cards or tokens which make the value less than the minimum sale price.

Any conditions considered appropriate may be applied by the Commission including conditions providing that bundling of liquor and non-liquor products cannot occur or that restrictions on certain kinds of promotions or giveaways are restricted or prohibited.

A decision notice must be provided for the imposition of a condition under this clause.

Clause 122. Liquor product not precisely identified

This clause provides that if a liquor product is not precisely identified in a sale then the minimum price is determined by reference to the liquor product of the highest alcohol content in the same range of liquor products.

Division 4 Minimum sale price offences

Clause 123. Offering liquor product below minimum sale price

This clause provides that it is an offence for a licensee to offer a liquor product for sale for consumption within the Northern Territory below the minimum sale price, and carries a maximum penalty of 200 penalty units.

Clause 124. Selling liquor product below minimum sale price

This clause provides that it is an offence for a licensee to sell a liquor product below the minimum sale price for delivery into the Northern Territory, carrying a maximum penalty of 100 penalty units.

Part 6 Harm minimisation

Part 6 sets out harm minimisation measures relating to the sale of liquor, including establishing the Banned Drinker Register through a patron identification system, local liquor accords, responsible service of alcohol requirements, harm minimisation audits and provisions controlling inedible substances containing alcohol.

Division 1 Patron identification system

Clause 125. Establishing identification system

This clause provides for the establishment of an identification system. An identification system currently exists and will transition to the new Act. The system is widely known as the Banned Drinker Register (BDR) which identifies if a purchaser is prohibited from purchasing or consuming liquor.

Prohibitions are made by the court or other authorised means such as through ban drinker orders or as a result of parole conditions.

This clause sets out the forms of identification that are approved for the identification system.

Clause 126. Application of identification system

This clause provides that the regulations may prescribe the authorities which require the use of the identification system.

The system is operated through scanners which are provided to licensees who are required to use the identification system. Under regulations made under the *Liquor Act 1978* the identification system has applied to the sale of liquor to be consumed away from licensed premises. It is intended that liquor purchased pursuant to an authority allowing for takeaway consumption will be prescribed under this Act.

Clause 127. Operating identification system

This clause provides that a licensee or employee of a licensee is required to scan certain identification to establish if a person is banned before selling liquor to the person.

The licensee and employees must not use the information in the system except as provided in this Act and must not damage or tamper with the system.

Clause 128. Offences related to operation of identification system

This clause provides that it is an offence of strict liability to not sell takeaway liquor in accordance with the conditions of operation of the identification system, carrying a maximum penalty of 100 penalty units.

Division 2 Local liquor accords

Clause 129. Entering local liquor accord

This clause provides that the Director must take steps to engage with licensees in an area to establish local liquor accords where it may prevent or reduce anti-social behavior, disorder, harm or violence.

The Director may require a licensee to be a party to a local liquor accord and the licensee is taken to be a party within 14 days of receiving written notice.

The parties to an accord may include the Commissioner of Police, a local council, commercial or business bodies with interests in the area.

A voluntary party to a local liquor accord may leave the accord at any time.

Clause 130. Content of local liquor accord

This clause provides that a local liquor accord may provide for anything that might prevent or reduce alcohol-related violence.

The accords may provide that licensees party to the accord comply with certain requirements such as not serving alcohol in glass containers at certain times or days. These measures are intended to increase safety and reduce harm.

The name and address of each party to the accord and the local area of the accord must be included in the accord.

The Director must publish a local liquor accord.

Clause 131. Effect of local liquor accord

This clause provides that a licensee must comply with any local liquor accord to which they are a party.

The conduct engaged in for the purpose of preparing a local liquor accord is authorised for the purposes of section 51 of the *Competition and Consumer Act 2010* (Cth) insofar as the conduct may regulate the sale and supply of liquor or in some other respect and not contravene Part IV of that Act.

Clause 132. Variation and termination of local liquor accord

This clause provides that a liquor accord may be varied by the Director, on application or on the Director's own initiative. A local liquor accord may be terminated at any time if the Director considers it appropriate.

A voluntary party to a local liquor accord may only be added or removed with the party's consent

The Director must provide notice to all parties of a decision in relation to a local liquor accord.

Division 3 Responsible drinking**Clause 133. Responsible service**

This clause provides that a licensee has a duty for responsible drinking and must not take action that would induce irresponsible or excessive consumption of liquor on licensed premises.

Clause 134. Responsible service certificate

This clause provides that employees must undertake training in responsible service and hold a certificate from an accredited or approved body, and undertake refresher training every 3 years to ensure maintenance of standards in serving liquor responsibly.

A licensee must keep record of all employees who hold the certificate and a copy of the certificate.

Clause 135. Duty to refuse service

This clause provides that a licensee and employees must refuse to serve liquor if it is believed on reasonable grounds that the person is intoxicated or registered on the banned drinkers register.

Contravention of the duty to refuse service is an offence of strict liability carrying a maximum penalty of 100 penalty units

Clause 136. Power to refuse service

This clause provides that the licensee and employee may refuse to serve liquor to a person if it is believed on reasonable grounds that the person will commit an offence against this Act, will become intoxicated, engage in quarrelsome, violent or disorderly conduct in the licensed premises or has done so in the last 12 months.

Clause 137. No discrimination

This clause provides that 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 in respect of clauses 135 or 136.

Clause 138. Duty and power to exclude and remove persons

This clause provides that a licensee and employees must exclude and remove from the licensed premises any person who is intoxicated, quarrelsome, violent or disorderly or incapable of controlling the person's behaviour.

Contravention of the duty to exclude and remove is an offence of strict liability carrying a maximum penalty of 100 penalty units.

Clause 139. Power to exclude or remove persons

This clause provides that a licensee or employee, an inspector or police officer is empowered to exclude or remove a person from licensed premises if the person is intoxicated, violent, quarrelsome, disorderly etc., or the presence of the person would make them liable to a penalty under this Act or another law of the Territory, or the person has been convicted of an offence relating to possession of drugs within the past 12 months.

Reasonable force may be used in exercising a power under this clause as is necessary for the purpose.

A police officer must remove or assist with excluding or removing a person from licensed premises if requested by the licensee or employee.

Clause 140. Excluded or removed person

This clause provide that a person who is removed or excluded is to immediately leave the licensed premises.

Failure to leave is an offence of strict liability carrying a maximum penalty of 20 penalty units.

Clause 141. Returning after being excluded or removed

This clause provides that a person excluded or removed is not to re-enter premises for a period of 12 hours after being excluded or removed.

It is an offence of strict liability to return after being excluded or removed within 12 hours carrying a maximum penalty of 20 penalty units.

Clause 142. Prohibiting and restricting promotion of irresponsible drinking

This clause provides that the promotion of irresponsible drinking may also be prohibited or restricted through issue of a direction by the Director if it is believed on reasonable grounds that the licensee is, for example, committing offences against the Division, or is encouraging patrons to consume rapidly, providing extreme discounts or serving in non-standard measures that encourages higher consumption of liquor.

Clause 143. Controlling promotion of undesirable liquor products

This clause provides that a direction may be issued by the Director which prohibits or restricts sale supply or service of any liquor product that appeals to children. This may include products with packaging attractive to children or confused with non-alcoholic beverages.

The Director must notify the manufacturer of the product prior to a direction being made advising of the proposed restriction and inviting a response. A direction may be made after 28 days of the notice after considering the response if any.

Clause 144. Review by Commission

This clause provides that the manufacturer or supplier of a products may apply for review of the decision of the Director prohibiting the sale or supply of the product.

Clause 145. Offences related to undesirable liquor products

This clause provides that it is an offence to sell liquor contrary to a direction carrying a maximum penalty of 100 penalty units.

This clause also provides that it is an offence to manufacture or supply a liquor product prohibited or restricted by the Director, carrying a maximum penalty of 100 penalty units.

Division 4 Harm minimisation audits**Clause 146. Scope of audit**

This clause provides is a harm minimisation audit, being an audit of a licensee's activities, operations and licensed premises to measure, among other things, the promotion of the purposes of this Act, compliance with codes of practice and ensure liquor is being sold in a responsible way.

Clause 147. Conducting harm minimisation audit

This clause provides how a harm minimisation audit may be conducted, that a person may be designated by the Director and that a harm minimisation audit may be on the Director's own initiative or in response to a complaint.

A person conducting a harm minimisation audit may exercise the powers of an inspector and must provide a written report to the Director, outlining the outcome and any recommended changes.

Clause 148. Action after harm minimisation audit

This clause provides that after considering a harm minimisation audit report, that the Director may, in respect of non-compliance, give a formal warning, issue an infringement notice, require an enforceable undertaking be entered or referred the matter e to the Commission for compliance action.

Division 5 Inedible substances containing alcohol

Division 5 provides for a new control relating to substances containing alcohol which may present a risk of harm through misuse, such as mouth wash.

Clause 149. Application

This clause provides that this Division applies to a substance that contains more than 1.15% of ethyl alcohol by volume and is not a product that is intended to be ingested or consumed by mouth, such as mouth wash.

Clause 150. Control of inedible alcohol products

This clause provides that a person must not consume a substance containing alcohol which is not intended to be ingested in any public place.

Police are empowered to conduct a search and seize and dispose of the substance.

Part 7 Licence and authority compliance

This Part provides how compliance occurs for licences and authorities, including how inspections and investigations may occur and the disciplinary action that may result.

Division 1 Entry and inspections of premises

Clause 151. Inspector's identity card

This clause provides that an inspector must carry an identity card when exercising a power under this Act.

Clause 152. Entry and inspections by Inspector and police officer

This clause provides that an inspector or a police officer may enter and inspect a licensed premises when the premises is open, or any premises if there are reasonable grounds to believe that liquor is being sold or kept for sale and the premises is not licensed or that an offence against the Act is occurring.

Identification must be produced by an inspector before exercising powers. Police officers and inspectors are not authorised to enter a private room without consent.

Clause 153. Inspection powers

This clause provides that inspectors and police officers are empowered to take inventories or samples of liquor (in accordance with the Act's requirements), inspect books, documents or other records and seize and remove liquor as evidence of an offence.

They may also ask questions and request production of a document or thing in the control of the person.

Clause 154. Other powers to detect non-compliance

This clause provides that in investigating a suspected non-compliance with the Act, inspectors and police officers may offer to purchase, attempt to purchase or purchase liquor for the purpose of investigating and need not identify themselves when doing so.

Evidence is not admissible in criminal prosecutions but may be used by the Commission or Director for disciplinary action or to locate or identify other evidence which may be used in criminal proceedings.

Division 2 Investigations and enforceable undertakings

Clause 155. Investigations

This clause provides that the Director must conduct an investigation on request of the Chairperson of the Commission or if a complaint is accepted, and may conduct an investigation if information is received about a contravention or on the Director's own initiative if considered advisable.

The Director must inform the licensee of the nature of the investigation and provide sufficient opportunity for a written response.

Clause 156. Enforceable undertakings

This clause enables an enforceable undertaking to be accepted by the Director as an alternative to disciplinary action.

No disciplinary action may be taken in relation to conduct constituting a contravention relating to the enforceable undertaking.

An enforceable undertaking cannot be varied or withdrawn without the consent of the Director.

A breach of an enforceable undertaking by a licensee is a ground for disciplinary action.

Division 3 Complaints against licensees**Clause 157. Making a complaint**

This clause sets out how a complaint against a licensee may be made.

A person may make a complaint on grounds as prescribed including that a condition of the licence or authority is contravened, that a law relating to regulation of sale, supply or consumption of liquor has been contravened or that the licensee is not a fit and proper person to hold the licence.

The complaint must be in writing in the approved form and lodged with the Director and can be made at any time, however if the licence expired or was cancelled then it must be made within 6 months of occurrence.

Clause 158. Acceptance of complaint

This clause provides that the Director may refuse to accept a complaint if frivolous or vexatious or if there are no grounds or if there is little prospect of success.

The complaint must be accepted or refused within 14 days of being lodged and written notice provided to the complainant.

The decision is not reviewable.

Clause 159. Notice to licensee

This clause provides that on making a decision, the Director must notify the licensee of the complaint and intention to investigate within 14 days and if the licensee responds, they must do so within 14 days of being given notice.

Clause 160. Action after investigation

This clause provides that once an investigation occurs, the Director may take action including taking no further action if there are no grounds or it is not warranted, give a formal warning, mediate, issue an infringement or refer to the Commission for disciplinary action.

A matter that arises during investigation that is suitable for disciplinary action may be referred at any time.

Notice of the decision must be given to the complainant, licensee and the Commission within 14 days of the decision.

Clause 161. Referral of disciplinary matter

This clause provides that a referral to the Commission must provide information about the licensee's response, if any, the result of the investigation and outline grounds for taking disciplinary action.

Division 4 Commission's power to take disciplinary action**Clause 162. Disciplinary action**

This clause provides that the Commission make take disciplinary action if satisfied that a ground exists and that the action is appropriate.

Actions that may be taken include varying the conditions of licence, suspending or cancelling a licence and imposing a monetary penalty of no more than 200 penalty units or the maximum applicable of the fine specified for an offence.

An action may be taken even if an infringement notice has been issued or the licensee is being prosecuted for the contravention, however no monetary penalty may be imposed.

Clause 163. Hearing and decision

This clause provides that if a matter is referred by the Director, the Commission must decide whether to take action and must conduct a hearing into the matter.

The matter may be dismissed or action may be taken.

If the matter is withdrawn or the Commission is satisfied that the matter should be dismissed then the matter may be dismissed.

Clause 164. Monetary penalty

This clause provides that the amount of a monetary penalty that may be imposed cannot exceed 200 penalty units or the maximum amount of the fine specified for the offence.

A licensee must pay any monetary penalty imposed within 28 days or any longer period allowed by the Commission after notice of the penalty is given.

Clause 165. Limit on monetary penalty

This clause provides that no monetary penalty may be imposed if an infringement notice is issued for the contravention or if the licensee is being prosecuted in relation to the contravention. However, if the infringement notice is withdrawn or prosecution is discontinued the Commission may impose a monetary penalty for the conduct.

Division 5 Record of enforcement and compliance**Clause 166. Register of enforcement matters**

This clause provides that a register must be maintained by the Director of enforcement matters, to record any enforceable undertaking or any disciplinary action taken by the Commission.

The Register must be published and contain specified information including the name and address of the licensee, the date of the disciplinary action or enforceable undertaking and a copy of the Commission's decisions.

Part 8 Controlled areas

The Part establishes areas where possession, consumption and sale of liquor is controlled or prohibited, which at a basic level, provides for 'dry' areas where liquor is not available for purchase or consumption, unless otherwise permitted.

Division 1 Alcohol protected areas

Clause 167. Application of Commonwealth changes to *Liquor Act 1978*

This clause applies the Commonwealth changes to the *Liquor Act 1978*. The *Stronger Futures in the Northern Territory Act 2012* (Cth) modifies the operation of the *Liquor Act 1978*. Those provisions will apply to the new Act in the same way so that a reference to the NT *Liquor Act* is a reference to this Act, an alcohol protected area as defined is taken to be a general restricted area under this Act and a provision inserted may continue to be cited by the same number but a reference to the section of the NT *Liquor Act* is taken to be a reference to an equivalent section in this Act.

The definition of supply in clause 4(1) does not apply to Part VIII, Division 1AA as included in this Act.

Division 2 Prohibited public places

Clause 168. No consumption in prohibited public places

This clause provides that liquor must not be consumed in public places in specified locations including Alice Springs, Darwin, Katherine, Palmerston and Tennant Creek.

Additional public places may be declared by a local council of a local government area or prescribed by regulation.

It also provides that any public place not within a location specified above that is within 2km of licensed premises is a prohibited public place.

A contravention is not an offence however police may search a person and seize and dispose of liquor if reasonably believed that a person is contravening the prohibition on consuming in a relevant public place.

Division 3 General restricted area

Clause 169. Power to declare general restricted area

This clause provides for general restricted areas which prohibits the bringing, possession, consumption and sale, service and supply of liquor generally or prohibited liquor in the area.

The Commission may declare a specified area of land to be a general restricted area on its own initiative or on application by any person.

The prohibition may be for certain types of liquor or for liquor generally.

Clause 170. Offence for general restricted area

This clause provides that it is an offence of strict liability to contravene the prohibition, carrying a maximum penalty of 200 penalty units or imprisonment for 12 months.

Defences to the offence include that the defendant has a permit allowing the conduct constituting the offence, the conduct was necessary as it was an emergency situation to preserve life or prevent injury, or the liquor was being transported through the area to a another destination.

Clause 171. Application for general restricted area

This clause provide that any person may make an application to the Commission to declare a general restricted area.

The application must be in the approved form and lodge with the Director, containing an explanation for the restriction proposed and description of the area.

Clause 172. Consultation and notice of restriction

This clause provides that notice must be provided by the Director to licensees in a proposed general restricted area and to local councils in the area.

The notice must contain explanation of the proposed restriction, the area of the proposed restriction and the reasons for it, along with an invitation to response.

Reasonable steps to consult with people who reside in the proposed area and with the local council must be taken.

Clause 173. Director to report to Commission

This clause provides that the Director must report to the Commission on the consultation, on submissions made and any opinions and advice provided in response to the consultation.

Clause 174. Decision on restriction

This clause provides that the Commission must consider the report, along with public interest and community impact requirements in making a decision whether to declare a general restricted area.

A decision notice must be provided to each of the persons notified. The general restricted area may be different to the area proposed but must include part of the proposed area.

Clause 175. Publication of general restricted area

This clause provides that notice of a general restricted area must be published in the way determined by the Commission.

Clause 176. Commencement of general restricted area

This clause provides that a declaration of a general restricted area commences on the date of publication of the Gazette notice, or on date specified in the declaration.

Clause 177. Variation of general restricted area

This clause provides that a general restricted area may be varied or revoked by the Commission on application or on the Commission's own initiative.

Clause 178. Warning of general restricted area

This clause provides that the Commission make take all steps to warn to the public of a general restricted area at places where the road enters the area or at departure locations for airports flying into the general restricted area.

Division 4 Special restricted area

Clause 179. Declaration of special restricted area

This clause provides that a special restricted area may be declared by the Minister if it is considered to be urgently needed for the wellbeing of a community or communities in the area.

The declaration must identify the boundaries, the prohibitions or restrictions applying, when the declaration expires and any other matters considered appropriate.

A special restricted area may be varied or revoked.

The Minister must make the decision to make a declaration for a special restricted area after considering information, advice or recommendations of the Commission, and the public interest and community impact requirements.

The Minister may vary, extend or revoke a declaration by Gazette notice before it expires.

Clause 180. Offence relating to special restricted areas

This clause provides that it is an offence of strict liability to contravene a special restricted area by bringing, possessing, consuming or selling, serving and supplying liquor in the area, carrying a maximum penalty of 200 penalty units or imprisonment for 12 months.

Defences to the offence include that the defendant has a permit allowing the conduct constituting the offence, the conduct was necessary as it was an emergency situation to preserve life or prevent injury, or the liquor was being transported through the area to a another destination.

Clause 181. Publication of special restricted area

This clause provides that notice of a special restricted area must be published, within 28 days of the declaration being published in the Gazette, advising of the boundaries, the prohibitions or restrictions that apply and details of the declaration.

Clause 182. Commencement of special restricted area

This clause provides that a special restricted area commences on the date of the Gazette notice publication or the date specified in the declaration.

Clause 183. Warning of special restricted area

This clause provides that the Minister must take all steps to warn the public advising of a special restricted area, stating the areas of the declaration, a summary of the offence and other matters as considered appropriate.

The Minister may enter into an arrangement with the relevant local council regarding the public warning.

Clause 184. Delegation by Minister

This clause provides that the Minister may delegate functions under this Division to the Commission.

Division 5 Restricted premises**Clause 185 Power to declare restricted premises**

This clause provides that the Director may, on application, declare premises including residential premises, retail premises, hospital or other premises, schools or privately owned land including buildings or structures on the land, as restricted premises.

Clause 186. Offence in relation to restricted premises

This clause provides that it is an offence of strict liability to contravene the prohibition, which prohibits liquor being brought onto the restricted premises, having possession of liquor on restricted premises or consuming liquor on restricted premises, carrying a maximum penalty of 100 penalty units. There are specified defences provided in subclause (3).

Clause 187. Application for declaration of restricted premises

This clause provides that an application may be made by an owner or occupier of the place to be restricted.

For places that are open for use by the public, an application may be made by a person in the neighbourhood residing or conducting a business, a community group conducting activities in the area, or a police officer of or above the rank of Senior Sergeant.

This clause also provides that a senior police officer may also make an application for a public housing residence.

Clause 188. Application process

This clause provides that an application for a declaration for restricted premises must be in the approved form and lodged with the Director. The application must include information such as the name of the applicant and an explanation of the restriction being sought and description of the proposed restricted premises.

Clause 189. Consultation on application

This clause provides that consultation must be conducted with occupiers, owners and the Commissioner of Police. The consultation may be in manner considered appropriate by the Director.

Clause 190. Decision after consultation

This clause provides that a declaration for a restricted premises must be in the public interest and reflect the wishes of the majority of occupiers and be practicable in the circumstances.

Clause 191. Commencement of restriction

This clause provides that a declaration takes effect from the time the warning notice of the declaration is displayed.

Clause 192. Variation of restriction

This clause provides a variation may be declared by the Director which reduces or enlarges the place that is restricted, on application by an owner, occupier or in the case of public housing, a police officer.

Clause 193. Warning of restricted premises

This clause provides that a warning of the restricted premises must be displayed outside the premises which details that the premises is a restricted premises and that it is an offence to contravene the restriction or to deface or remove the notice.

Clause 194. Removing, defacing or interfering with notice

This clause provides that it is an offence of strict liability to deface or remove a warning notice, carrying a maximum penalty of 20 penalty units.

Clause 195. Expiry of restriction

This clause provides that if the restriction was made on application of the owner of the place the declaration expires if the title is transferred, and if the application was made by the occupier of the place the declaration expires if the lease is terminated or expires.

Written notice must be provided to the Director.

Clause 196. Revocation of restriction

This clause provides that the restriction declaration may be revoked on application or on the Director's own initiative.

An application may be made by the applicant for the declaration or by an occupier of the restricted premises.

A decision notice must be provided to the applicant as soon as practicable.

Division 6 Permissions and permits**Clause 197. Permission for prohibited public place**

This clause provides that the owner or occupier of a public place where a prohibition on consumption applies may permit that liquor may be consumed on all or part of that place, which may be given generally or to specific groups.

The permission of a local council must be given by Gazette notice.

Existing permissions under the *Liquor Act 1978* relating to regulated places, transition to the new Act.

Clause 198. Permit for restricted areas

This clause provides that a person who resides in a restricted area, either in a general restricted area or a special restricted area, may apply to the Director for a permit to bring, consume and possess liquor in a restricted area.

Clause 199. Application for permit

This clause provides that an application for a permit must be in approved form and lodged with the Director.

The Direction must be satisfied before issuing a permit that it will be in the public interest and not have a significant adverse impact on the community.

Reasons for the permit must be provided.

Clause 200. Decision on application

This clause provides that the Director must take reasonable steps to consult with residents in the restricted area, the local council, the Commissioner of Police or a permit committee in making a decision on whether to issue a permit.

The Director must consider the results of the consultation along with the application and the public interest and community impact requirements before making a decision. A decision notice must be provided to the applicant as soon as practicable.

Clause 201. Guests of permit holder

This clause provides that a person who is a guest of a permit holder may consume liquor at the invitation of the permit holder if the person is not a resident of the area.

Clause 202. Delivery of liquor to permit holder

This clause provides that a person may bring liquor that is owned or ordered by the holder of a permit into a restricted area and may possess or have control of that liquor in the restricted area.

Clause 203. Revocation of permit

This clause provides that a permit may be revoked by the Director if contravened or the person moves.

Clause 204. Offences related to permits

This clause provides that it is an offence of strict liability to contravene any condition applying to a permit, carrying a maximum penalty of 20 penalty units.

Part 9 Addressing anti-social behavior

This Part contains measures to address anti-social behaviour whereby areas with alcohol-related crime may be declared a high risk area. This provides police with additional measures to reduce alcohol-related crime by banning individuals from a declared area.

Division 1 Interpretation and application**Clause 205. Definitions**

This clause defines the terms used in the part including 'banned person', 'banning offence', 'excluded person' and 'high risk area'.

Clause 206. Applicable offences

This clause provides that a banning notice or exclusion order may be issued in relation to certain offences being liquor related offences including offences against the *Summary Offences Act 1993* and offences against the Criminal Code.

Division 2 High risk areas**Clause 207. Declaration of a high risk area**

This clause provides that the Minister may declare an area as a high risk area if alcohol-related violence has occurred in a public place in the area which is in the vicinity of a licensed premises and it is considered a reasonable way to prevent or reduce the further occurrence of alcohol-related violence.

Clause 208. Variation and revocation of declaration of high risk area

This clause provides that an area that is declared a high risk area may be revoked at any time by notice in the Gazette.

The Minister may revoke if it is believed that the area is no longer an area where alcohol-related violence occurs.

Division 3 Banning notices**Clause 209. Police power to give banning notice**

This clause provides that police may issue a banning notice to a person if it is believed on reasonable grounds that the person is committing or has committed a banning offence in the high risk area, that a banning offence has caused or may cause alcohol-related violence in the high risk area and that banning the person is a reasonable way to prevent the person committing the banning offence or another banning offence.

The clause provides the factors to be considered by police in forming a reasonable belief, including the apparent state of health, if the person should be arrested and held in custody for charges relating to the banning notice or if the person is capable of understanding the nature and effect of the banning notice.

Clause 210. Requirements before giving banning notice

This clause provides that, before a banning notice may be issued, a police officer must, unless in uniform, produce police identification and inform the person that a banning notice is being made.

Clause 211. Identification of person

This clause provides that a police officer may require the person to state their name and address for the purpose of issuing a banning notice and may request the person produce evidence of their name and address if they believe that the person has provided a false name or address.

This clause provides that it is an offence of strict liability for a person to fail to state their name and address when requested and state a false name and address, carrying a maximum penalty of 5 penalty units.

This clause provides that it is an offence of strict liability if a person has evidence available of their name and address and does not provide it when requested by a police officer, carrying a maximum penalty of 5 penalty units.

Police must inform a person at the time of making a request that it is an offence to not comply.

Clause 212. Effect of banning notice

This clause provides that the effect of a banning notice is to ban the person from entering or remaining in either the high risk area or in specified licenses premises for a specified period up to 14 days.

The period of the ban commences on receiving the notice. The banning notice does not prevent a person from residing in a high risk area or attending their usual place of residence or work, or for the purpose of entering a high risk area to attend their usual place of residence or work.

Clause 213. Contents of banning notice

This clause provides that a banning notice must include the name of the banned person, a description of the offence for which the banning notice is being given, who gave the notice, the time period of the banning notice, a description of what the banning notice means and how the ban can be varied or revoked.

Clause 214. Revocation or variation by police officer

This clause provides that a banning notice may be varied or revoked by written notice at any time by a police officer, with variation including adding, varying or removing conditions, but cannot extend the period of the notice.

Clause 215. Offence to contravene banning notice

This clause provides that a person commits an offence of strict liability if they are a banned person and contravene a banning notice by entering, attempting to enter or remaining in a high risk area or licensed premises contrary to the banning notice. The offence carries a maximum penalty of 20 penalty units.

Clause 216. Revocation or variation by Commissioner of Police

This clause provides that a banned person may apply in writing to the Commissioner of Police for a banning notice to be revoked or varied, giving reasons for the application. The operation of the banning notice is not affected by the application and the Commissioner of Police must consider the application to determine if there are sufficient grounds to revoke or vary or special circumstances that make it appropriate to do so.

Division 4 Exclusion orders

Clause 217. Making exclusion order

This clause provides that a court of competent jurisdiction may make an exclusion order for a high risk area on application of the Commissioner of Police or on a finding of guilt for a banning offence.

To determine if an exclusion order would be a reasonable way of preventing a person from committing a banning offence in the high risk area, the court must consider, among other things, the nature of the offending, if there are previous findings of guilt for offences committed in the area, if the person has previously or is currently the subject of an exclusion order or banning notice.

Clause 218. Application after multiple notices

This clause provides that an exclusion order may be applied for a person by the Commissioner of Police to the Local Court if the person has been given 3 banning notices or 3 infringement notices for a banning offence within the previous 2 year period.

Clause 219. Exclusion order on finding of guilt

This clause provides that a court of competent jurisdiction that finds a person guilty of a banning offence may also make an exclusion order for a person if satisfied the offence was committed wholly or partially in a high risk area and does not sentence the person to a term of imprisonment exceeding 12 months.

The exclusion order may be made on application by a police officer or the Director of Public Prosecutions or on the court's own initiative and

may be made in addition to any other order the court may make in relation to the offence.

Clause 220. Effect of exclusion order

This clause provides that an exclusion order prohibits an offender from a high risk area or any specified licensed premises in a high risk area, for a period up to 12 months.

The order may exclude the person at all or specified times and allow the person to enter an excluded place at specified times (for example, to attend work).

Clause 221. Offence of contravening exclusion order

This clause provides that it is an offence of strict liability for a person who is subject to an exclusion order to contravene the order by entering or remaining in a high risk area or attempting to enter the area, carrying a maximum penalty of 50 penalty units.

Clause 222. Variation of exclusion order

This clause provides that a variation of an exclusion order may be made by the person the subject of the order, the Director of Public Prosecutions or a police officer by application. The Court may make a variation after considering the application if it is considered appropriate.

Division 5 Enforcement of banning notices and exclusion orders

Clause 223. Direction to leave high risk area or licensed premises

This clause provides that a police officer may give a person who is subject to a banning notice or exclusion order a direction to leave the high risk area or licensed premises.

The police officer must identify themselves as a police officer (if not in uniform) in giving the direction by producing identification and inform the person that it is an offence to not comply with the direction.

Clause 224. Use of reasonable force to remove banned person

This clause allows a police officer to use reasonable force to prevent a banned or excluded person from entering or remaining in a high risk area or licensed premises contrary to a banning notice or exclusion order, and to remove a banned or excluded person from a high risk or licensed premises after they fail to comply with a direction.

Clause 225. Offence to fail to comply with direction

This clause provides that it is an offence of strict liability for a banned or excluded person to fail to comply with a direction of a police officer to leave a high risk area or licensed premises, carrying a maximum penalty of 50 penalty units.

Division 6 Offences and general matters**Clause 226. Offence to permit entry of banned person or excluded person**

This clause provides that it is an offence to permit a banned or excluded person from entering a licensed premises if known that the person is banned or excluded and the entry is in contravention of the banning notice or exclusion order.

The maximum penalty that applies for this offence is 200 penalty units for a licensee and 100 penalty units for an employee.

Clause 227. Employee violence or drug use

This clause provides that a licensee must notify the Director if they become aware of an employee being charged with or found guilty of an offence involving violence or the unlawful possession of drugs.

The Director may direct that the licensee limit or restrict the responsibilities and activities of an employee and the employee's contact with patrons until the matter is dealt with by a court.

Clause 228. Disclosure of information for enforcement purposes

This clause provides that the Director or a police officer may disclose information about a banned or excluded person to a licensee or the licensee's employees if it is considered necessary for the effective and efficient enforcement of a banning notice or exclusion order.

The information may include the fact that a notice or order was issued, the places the person is banned or excluded from and the period of the notice or order.

Clause 229. Proceedings regarding high risk area

This clause provides that in any proceeding where the validity of a declaration of a high risk area is questioned, the operation of the declaration must not be stayed by the court until the final determination, unless there are exceptional circumstances.

If the court does find that the declaration is invalid, the validity of any banning notice or exclusion order made or anything done in reliance on the notice or order is not affected.

Clause 230. Annual report by Commissioner of Police

This clause provides that the Commissioner of Police must report to the Police Minister each financial year on the activities undertaken under Part 9 and include information such as the number of banning notices issued, the number of persons to whom banning notices were issued and the offences for which banning notices were given.

The report must also provide information about exclusion orders including the number of applications for exclusion orders made, the number of orders made and the offences that exclusion orders were made in respect of.

The report must be provided within 3 months of the end of financial year and a copy must be tabled within 6 sitting days.

Part 10 Special search and seizure powers

This Part sets out the special search and seizure powers available to inspectors and police officers under the Bill. These powers are additional to powers in the *Police Administration Act*, and primarily relate to the enforcement of provisions relating to restricted areas and restricted premises.

Division 1 Application and interpretation

Clause 231. Forfeiture offences

This clause provides that the special search and seizure powers in this Part must only be exercised in respect of forfeiture. A 'forfeiture offence' is defined in clause 4(1) and are the applicable offences listed in the definition. The forfeiture offences are particularly serious offences which concern unregulated secondary supply of liquor.

Clause 232. Exercising other powers

This clause is a standard clause, clarifying that the powers provided in this Part do not derogate from other search and seizure powers that may otherwise exist at law.

Division 2 Search for suspected unlawful consumption

Clause 233. Searching persons

This clause authorises the search without warrant of a person who a police officer reasonably suspects to be consuming liquor in a public area where liquor consumption is prohibited. Searches can also be for non-edible alcohol-containing substances, such as mouthwash or vanilla essence.

Division 3 Special search powers

Clause 234. Search on suspicion of forfeiture offence

This clause provides the general power to conduct searches under the *Liquor Act*. This power can be exercised if there is reasonable suspicion that a forfeiture offence has been, is being, or is about to be committed. The power cannot be exercised if it would be reasonably practicable to obtain a warrant. The places and things that can be searched are defined by clause 236.

Clause 235. Search on random basis

This clause provides a separate and additional power to conduct random searches of persons and premises in order to enforce the strict liquor prohibitions of restricted areas. The power allows random searches within general and special restricted areas, and in relation to persons and goods travelling to restricted areas. These powers do not allow entry of residential premises when read in conjunction with clause 238(2).

Clause 236. Search powers

This clause defines the places and things that can be searched, using powers under clauses 235 and 236. It also ensures inspectors and police have the powers to stop and detain vehicles, vessels, aircraft, or persons for the purpose of conducting such searches.

Division 4 Search of restricted premises**Clause 237. Search of restricted premises**

This clause provides a search power in relation to premises that are declared to be restricted premises.

Division 5 Limits on searches**Clause 238. Entering residential premises**

This clause limits the power to conduct searches of residential premises using the powers under this Part. This is a safeguard that limits searches without warrants of residential premises to situations where this is necessary to enforce the prohibition of secondary supply to restricted areas and restricted premises, or where there is otherwise consent of an occupier of the premises. Subsection (2) prohibits use of the random inspection power for searches of residential premises.

Clause 239. Same gender searches

This provision provides a safeguard in relation to the privacy and dignity of persons being searched. It requires searches to be done by a person of the same or similar gender where this is reasonable practicable, and always in a manner that respects the person's dignity and privacy. The drafting of the law reflects that there may be persons who do not identify as either male or female, and that in some situations there may also not

be female inspectors or police officers available to search female persons. Many of these searches take place in remote areas, and there will be times where it is not reasonably practicable to obtain a female person to conduct the search. What is reasonably practicable, and what is a manner that respects the person's dignity and privacy, is a question of fact to be considered on a case-by-case basis. It would necessarily encompass consideration of the person's cultural and personal beliefs, the need to conduct an intrusive search, as well as the resources reasonably available to conduct that search.

Division 6 Special seizure powers

Clause 240. Seizing containers

This clause enables containers that may contain liquor to be searched, and for liquor to be tipped out or seized, as required. The power can be exercised in relation to listed offences, as well as in relation to consumption of alcohol in public places.

Clause 241. Seizing any thing related to forfeiture offence

This clause provides a general power to seize things, either for:

- evidentiary purposes, or
- if the thing has been used in the commission of a listed offence.

An inspector or police officer may wish to seize things that have been crime used in order to seek forfeiture, either under section 99A of the *Sentencing Act*, or by way of application under Part 12 of the Bill.

The power to seize is not restricted to the point at which a vehicle, vessel, or aircraft is first stopped and searched. Seizure can occur at any time, subject to the limitations and considerations set out in clauses 242-244.

Clause 242. Limit on seizure of vehicles, vessels and aircraft

Subclause (1) prohibits seizure of vehicles, vessels and aircraft for trivial offences. The prohibition applies in relation to offences involving a quantity of liquor that is 2 standard drinks or less, or if the intention it to proceed by way of caution or infringement notice. The seizure of a vehicle, vessel or aircraft is a substantial imposition on the owner of that vehicle, vessel or aircraft, as well as on any person who relies on the

vehicle, vessel or aircraft. While it is recognised that secondary supply is a serious issue, a matter that is dealt with by way of infringement notice or caution is (by definition) a matter that an inspector or police officer has judged to be not serious enough to proceed by way of prosecution. The limit regarding the quantity of liquor covers a trivial amount of liquor, too minor to cause intoxication. Where trace amounts of liquor are found in containers, the power can be used if there is reason to believe more than two standard drinks were used in the commission of a listed offence (for example, where a person is caught in a restricted area in circumstances suggesting they have been distributing liquor from large containers which are now all but empty). However, this clause limits seizing a vehicle, vessel or aircraft for a single can of beer, or for trace amounts of liquor where there is no reason to believe that a higher quantity of liquor has been involved in an incident of unlawful possession or supply.

Subclause (2) provides considerations that apply in relation to seizure of vehicles, vessels, and aircraft in particular. These considerations are non-exhaustive, and are in addition to the non-exhaustive considerations of hardship which apply to vehicles 'for the benefit of the community as a whole' that are provided by section 95A. Subclause (2) clarifies what is required to be considered in relation to vehicles that may not be for the benefit of a community as a whole.

Clause 243. Inclusion of section 95A of the *Liquor Act 1978*

This clause ensures that section 95A, as inserted by the *Stronger Futures in the Northern Territory Act 2012* (Cth), continues to apply to the equivalent provision under the Bill.

Clause 244. Notice of seizure of vehicle, vessel or aircraft

This clause provides a safeguard to protect the property rights of owners of vehicles, vessels, or aircraft that are seized under the powers in the Bill. The clause requires the Commissioner of Police to make reasonable efforts to identify and notify persons with a legal interest in a vehicle, vessel, or aircraft that has been seized about the seizure and potential forfeiture of the vehicle, vessel or aircraft, and the need to take action if they wish to repossess the vehicle, vessel or aircraft, or object to forfeiture.

Subclause (3) allows the Commissioner of Police to enter into an agreement with a legal service provider, such as a Legal Aid organisation, to provide notifications of seized vehicles, vessels or aircraft. The provision authorises communication of personal information for this purpose, and so enables the sharing of information in accordance with Information Privacy Principle 2.1(f), as per the requirements of the *Information Act*. This provision enables practical arrangements to be made which can better assist persons affected by forfeiture to better understand and exercise their legal rights. The personal information is minimal and not particularly intrusive, but sufficient for a legal service provider to make arrangements to identify affected persons, and offer assistance where this would be appropriate.

Clause 245. Annual report by Commissioner of Police

This clause requires the Commissioner of Police to report on the seizure and forfeiture of vehicles, vessels and aircraft, in order to enable transparency and scrutiny of the use of these powers, as well as consideration of their use and effectiveness.

Part 11 Other enforcement powers

This Part provides for other enforcement measures such as point of sale interventions, and undercover police operations.

Division 1 Point of sale intervention

Clause 246. Definitions

This clause provides the definitions for this Part, including a definition of 'customer' and 'liquor related offence'.

Clause 247. Point of sale intervention powers - customer

This clause provides an inspector or police officer with powers to do certain things in relation to a person who appears to be a customer of a licensee, in circumstances where it appears that the person is in or on licensed premises, or at an entrance to a building containing licensed premises, or in a driveway or car park for licensed premises, and the person appears to be intending to purchase, is purchasing, has purchased or possesses liquor purchased to be consumed elsewhere.

In such circumstances, an inspector or police officer may require the customer to do such things as state their name and address and show approved identification, state where they intend on consuming the liquor, to answer questions to confirm identity and answers questions about if they are subject to a prohibition that would prevent them from purchasing liquor or be prohibited from consuming liquor at their place of residence or if they intend to provide liquor to anyone else. If it is believed on reasonable grounds that the approved identification provided to establish identity is fictitious or false in a material particular, the identification may be seized.

If it is intended to provide liquor to someone else, the customer may be required to answer questions about who they intend to provide liquor to (to determine if that person is subject to a prohibition on purchase or consumption of liquor and is on the banned drinker register), and investigations may be made into whether the customer or other person are subject to bail conditions relating to liquor or a prohibition that prevents the person from purchasing liquor through being on the banned drinker register.

The clause provides that if it is suspected on reasonable grounds by an inspector or police officer that a liquor offence is likely to occur, then they may seize any container in the possession of the customer which is reasonably believed to contain liquor and prevent the customer from entering or remaining on or in the licensed premises. Any container seized must be destroyed as soon as practicable.

An inspector or police officer may require the driver of a vehicle to stop and require the driver and passengers to follow reasonable directions to enable the exercise of powers under this section if a customer of a licensed premises is in a vehicle.

Clause 248. Point of sale intervention - licensee

This clause provides that an inspector or police officer may give a direction to a licensee if a power is exercised in relation to a customer and it is suspected on reasonable grounds that an offence against the Act is likely to occur.

The inspector or police officer may direct the licensee to not sell liquor to the customer for the remainder of the day. The inspector or police officer

must provide the licensee means of identifying the customer, through either the name of the customer or other means.

Clause 249. Inspector and police officer obligations

This clause provides that a police officer not in uniform must produce identification when exercising powers under this Part and an inspector must produce the inspector's identity card before exercising a power under this Part.

A person must be warned that the failure to comply with powers exercised in the Part is an offence.

Clause 250. Offence to fail to comply with requirement or direction

This clause provides that it is an offence of strict liability to not comply with a requirement to answer questions and provide information as required, carrying a maximum penalty of 50 penalty units.

Clause 251. Offence to fail to comply with direction

This clause provides that it is a strict liability offence for a licensee or employee to fail to comply with a direction of a police officer or inspector and to take reasonable steps to ensure the direction is complied with, carrying a maximum penalty of 50 penalty units or imprisonment for 6 months.

A complaint may also be lodged with the Director regarding the licensee under this section.

Clause 252. Disclosing information

This clause provides that a person may disclose information requested or collected for the purposes of enforcing this Division despite section 9 of the *Information Act 2002*, and the operation of any other law of the Territory that would otherwise restrict disclosure of information.

Clause 253. Point of sale intervention powers do not limit other powers

This clause provides that powers under Part 11 do not limit any other powers of inspectors or police officers under this Act or another law of the Territory.

Division 2 Emergency and other powers

Clause 254. Emergency powers of Director

This clause provides that in an emergency the Director may suspend a licence or authority, impose a condition or vary a condition of licence or authority if in the public interest to do so. The maximum time the action takes effect is 7 days and a condition of licence determined by the Minister cannot be varied under this section.

Clause 255. Police power to suspend licence or authority

This clause provides that the Commissioner of Police may suspend a licence or authority in the event of an emergency or natural disaster, riotous conduct, breach of the peace or threat to public safety if considered appropriate to do so. The Commissioner of Police may also suspend a licence or authority if the licensee or an employee is being investigated for an offence against this Act and it is believed on reasonable grounds that the offence will continue.

The suspension has maximum timeframe of 48 hours, and must be notified in writing with reasons to the licensee, the Minister, the Chairperson of the Commission and the Director.

Clause 256. Power to suspend sales at major event

This clause provides that the Director or a senior police officer may suspend or restrict the sale or service of liquor at an event operating under a major event authority if it is believed on reasonable grounds that the licensee is in breach of licence conditions or there is an imminent threat of alcohol-related violence or anti-social behavior. The suspension has effect for a maximum of 7 days. Written notice with reasons of the suspension must be provided to the licensee, the Minister, the Chairperson of the Commission and the Director.

Clause 257. Annual report by Commissioner of Police

This clause provides that the Commissioner of Police must provide a report at the end of the financial year providing information on the number of suspensions imposed and the licences and authorities that were suspended, to be given to the Police Minister within 3 months of the end of financial year for tabling within 6 sitting days.

Clause 258. Suspension if drug premises order made

This clause provides that the Commissioner of Police may apply to the Commission to suspend a licence or an authority if the licensed premises are drug premises in accordance with the *Misuse of Drugs Act 1990*.

The Commissioner must notify the licensee in writing of the application and invite a written response within 28 days. The Commission must have regard to the matters considered appropriate in considering the application including the material before the Court when the drug premises order was made and any written response of the licensee.

The Commission may suspend the licence if considered necessary for the protection of the public or the circumstances are sufficient grave to justify the suspension. A suspension must not exceed 14 days and notice of the decision must be provided to the licensee and Commissioner of Police.

Division 3 Undercover police operations**Clause 259. Undercover operations**

This clause provides that a police officer may apply in writing to a senior police officer for authorisation to possess, purchase, sell or supply liquor that would otherwise be contrary to the Act for the purpose of undercover operations to detect the commission of an offence. Authorisation may be granted in writing subject to any conditions considered appropriate.

Clause 260. Annual report by Commissioner of Police

This clause provides that the Commissioner of Police must give a report to the Police Minister each financial year within 3 months of the end of financial year to be tabled within 6 sittings days by the Minister. The report must include information regarding the number of applications for undercover operation authorisations and the number of authorisations granted and the number of charges laid as a result of those operations.

Division 4 Related matters

Clause 261. Inspector's duty to produce identification

This clause provides that an inspector is required to produce the inspector's identity card when requested to do so by a person the subject of the exercise of a power under this Act, or they are otherwise not authorised to exercise the power and the person is not required to comply with a requirement made by the inspector.

Clause 262. Reasonable force

This clause provides that an inspector or police officer may use reasonable force or obtain reasonable assistance in acting under the Act.

Clause 263. Police immunity

This clause provides that despite anything in this Act, the possession of liquor by a police officer in certain circumstances is not an offence. This includes if the liquor was seized or obtained in the course of exercising powers under the Act, the liquor is held as evidence for an offence or is held for analysis.

Clause 264. Police directions

This clause provides that a direction of a police officer under the Act may be given orally or in writing and must be reasonable in all the circumstances.

Clause 265. Police property used in investigation

This clause provides that any thing that is the property of the Territory and used by a police officer during an investigation continues to be the property of the Territory following the completion of an investigation where the thing was used.

Part 12 Forfeiture and disposition of assets

This Part sets out the circumstances in which things seized under this Bill can be forfeited, and the processes by which this must occur. In particular, it provides special safeguards in relation to the forfeiture of vehicles, vessels, and aircraft, as these are particularly likely to be seized in relation to offences involving secondary supply, and involve significant competing public interest considerations. In particular, it is critical to effectively deter secondary supply in restricted areas, and forfeiture is an important tool in achieving deterrence, however forfeiture has the capacity to further impact already limited alternative transport options available in remote communities.

There are several different pathways by which a matter may come before the court to consider forfeiture. The dominant pathway is, for reasons of practicality and accessibility to justice, intended to be via section 99A of the *Sentencing Act*, following a finding of guilt. However, in the event that a contravention involves more than 10 standard drinks of liquor, there is capacity for the Commissioner of Police to apply for forfeiture of a vehicle, vessel, or aircraft that has been used in the commission of the offence, irrespective of whether there is any charge or finding of guilt in relation to that offence. This may be an important tool for deterrence where it is clear that an offence has been committed, but it is impossible to prove the identity of the offender beyond reasonable doubt. In relation to vehicles, vessels, and aircraft, all pathways require a court to consider the question of whether forfeiture is appropriate in all the circumstances.

Division 1 Police management and disposal of seized things

Clause 266. Control and management of seized things

This clause provides that, subject to the power in clause 240 to tip out liquor, the Commissioner of Police must deal with things seized under the Bill in accordance with this Part.

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

This clause provides that the default legal framework for dealing with seized things that are not vehicles, vessels, or aircraft applies, similarly to things seized under the *Police Administration Act*. However, this does not interfere with the Commissioner of Police's discretion to release things under section 268 of this Bill, or any need to retain the thing for evidentiary purposes. The prosecution may apply for forfeiture of seized items under section 99A of the *Sentencing Act 1995* where this is applicable. There is also nothing precluding Police from applying for an order under section 130B of the *Local Court (Criminal Procedure) Act 1928* in relation to the thing.

Clause 268. Discretionary release of seized things

This clause gives the Commissioner of Police a broad discretion to release things seized under this Act. This discretion may be exercised on the Commissioner's own initiative, on the application by a person with a legal interest in the thing, or on application by any other person affected by the seizure. This means applications can be made by non-owners, such as persons who rely on a vehicle that has been seized. While the application can be made by a person without a legal interest in the thing, the thing can only be released to a person with a legal interest in the thing during the actual release process. Hence, this enables non-owners to take the initiative for pursuing release, but may in practical terms require some liaison with an owner in order for Police to be satisfied that release of the things is practical and appropriate.

Subclause (2) provides a non-exhaustive list of factors that must be considered before a thing is released under this section. These factors encompass the key competing public interest considerations in relation to release of seized things.

Subclause (3) ensures the Commissioner of Police may progress consideration of appropriate release by inviting a person to apply for release. This does not imply there is a requirement that such an application be made before Police can use the own motion power provided by subclause (1).

Subclause (4) requires the Commissioner of Police to consider and make a decision in relation to an application for release of a thing as soon as practicable.

Subclause (5) allows the Commissioner of Police to attach conditions to the release of a thing under this section. For example, there could be conditions as to who can drive a vehicle and where it must be stored. If these conditions were not complied with, Police may consider exercising the power under clause 240 to 're-seize' a thing that has been released under this section.

Clause 269. Mandatory release of seized vehicles, vessels or aircraft

This clause requires the Commissioner of Police to release a vehicle, vessel or aircraft that is not being dealt with by way of an appropriate court process, including when the applicable time limits for such a court process have expired, or proceedings have been discontinued.

Clause 270. Release to owner

This clause places a requirement on the Commissioner of Police to make reasonable efforts to identify and return a thing released to the appropriate owner. In particular, it is noted that the registered owner of a motor vehicle is not necessarily the owner of that motor vehicle. This is a particularly important consideration in relation to remote communities, where many vehicles are owned by a different person to the registered person, due to limitations around the licence and identification requirements, situations of shared use, as well as limited access to motor vehicle registry services.

Subclause (6) clarifies that release under this section does not re-assign any property rights, but is merely a process of using reasonable efforts to try and effect a suitable return to an appropriate person. Subclause (7) provides finality to the process in the event that an owner cannot be identified or does not make arrangements to take possession within a reasonable time. This is known to occur where seized property is of low value, such as a vehicle in very poor condition. Subclause (7) therefore ensures Police are able to dispose of such assets rather than continuing to store them.

Division 2 Forfeiture of assets

Clause 271. Forfeiture under the Sentencing Act 1995

This clause ensures that the process for forfeiture is, where possible, primarily determined under section 99A of the *Sentencing Act 1995*. This ensures the relevant incident is not litigated multiple times where this is not necessary, and takes advantage of the existing court apparatus that already considers such incidents in remote communities, which is where most persons affected by seizure and forfeiture under this Bill are likely to reside. Section 99A of the *Sentencing Act 1995* is amended by clause 396 of this Bill so as to dovetail with the provisions for forfeiture in this Bill. It also emphasises that forfeiture is primarily a tool for responding to the commission of an offence.

Clause 272. Police application for forfeiture of vehicle, vessel or aircraft

This clause enables a police officer to apply for forfeiture of a vehicle, vessel or aircraft used in an offence, even where a charge has not been laid or a finding of guilt has not been obtained in relation to the relevant offence. This application may only be made:

- in relation to a listed offence; and
- where the quantity of liquor involved is more than 10 standard drinks; and
- within 28 days of the commission of the offence (or, in the event that a related criminal proceeding involves a 'not guilty' finding, on the day that proceeding ends).

Subclause (2) prohibits an application from being made if criminal proceedings are on foot, consistent with the intention to rely on the criminal process as much as possible, as discussed in relation to clause 271. (However, note, this prohibition does not apply where there is a court order under clause 273.)

Subclause (5) provides the basic requirements for making an application in the event that a form for making such an application has not been prescribed, and also enables such a form to be prescribed.

Subclause (6) imposes a requirement on the police officer making the application to identify and serve all persons with a legal interest in the vehicle, vessel, or aircraft with a copy of the application. Service can be effected as per the standard provision of the *Interpretation Act*, or by email.

Clause 273. Order to bring an early application

This clause provides a safeguard against unreasonable impacts on owners due to delays in the criminal process.

This clause enables an owner to obtain a court decision in relation to forfeiture prior to related criminal proceedings concluding, where this would be in the interests of justice. This clause is intended to provide for situations where the criminal proceedings are unduly delayed and/or there is a strong need for the owner to be able to use the vehicle, vessel, or aircraft. If forfeiture proceedings are brought on under this provision, they can be decided prior to the related criminal proceeding being finalised, which removes the question of forfeiture from later consideration. Note that clause 277 provides a safeguard for the privilege against self-incrimination if this occurs. Clause 394 also amends the *Sentencing Act 1995* to provide that any such forfeiture can be taken into account by the court in relation to imposing a penalty in the related criminal proceedings, similarly to the way related proceedings under the *Criminal Property Forfeiture Act* can be considered under section 5 of the *Sentencing Act 1995*.

Clause 274. Presumptions

This clause provides guidance to the court in relation to the exercise of the discretion to forfeit vehicles, vessels, and aircraft under clause 275. This clause provides presumptions that reflect the seriousness of the offence by reference to the quantity of liquor involved, which is a pivotal consideration in relation to preventing secondary supply. The court must apply a presumption in favour of forfeiture if the quantity of liquor involved is more than 50 standard drinks, or against forfeiture if the quantity is less than 10 standard drinks. (Note that forfeiture for 10 or less standard drinks can only occur following a finding of guilt, as an application for forfeiture under clause 272 can only be made in relation to an offence involving at least 10 standard drinks).

This presumption concerning the quantity of liquor is to be the overriding presumption rather than a finding of guilt, reflecting that the primary issue is whether the vehicle is being used to convey substantial amounts of liquor into a restricted area, not whether a finding of guilt could be obtained in relation to what might be a small quantity of liquor for personal use. Also, in practice, secondary supply offences often involve multiple persons, and involve vehicles owned and used by persons with different degrees of connection to the offending.

There is further a presumption in favour of forfeiture if no one opposes the application for forfeiture. The court must be satisfied that police have complied with obligations to take reasonable steps to identify and notify persons believed to have an interest in the vehicle, vessel, or aircraft.

Clause 275. Order of forfeiture

This clause provides the court with a range of dispositions in relation to an application for forfeiture. These include forfeiture, seizure and forfeiture, release, and release after a period of temporary forfeiture. It is anticipated that temporary forfeiture may be appropriate to provide some deterrence, but where permanent forfeiture may be considered too harsh.

Subclause (4) sets out the relevant factors that the court must consider in relation to whether a vehicle, vessel or aircraft should be forfeited. Where a presumption applies, these considerations may allow a presumption to be rebutted.

Clause 276. Delivery of possession

This clause provides the option for a court to order an appropriate incentive for the person in possession of the vehicle, vessel, or aircraft to cooperate with an order for forfeiture, short of criminal proceedings for contempt. Failure to comply with the order does not mean the person retains ownership of the thing, as if the thing is forfeited, the Territory obtains ownership of the thing in accordance with clause 279.

Clause 277. Matters not admissible in criminal proceedings

This clause provides protection for the privilege against self-incrimination in the event that an application for forfeiture is dealt with prior to a related criminal matter.

Clause 278. Appeals

This clause provides a limited right for an owner to appeal to the Supreme Court regarding a decision to forfeit a vehicle, vessel or aircraft. Similar to an equivalent provision in the *Misuse of Drugs Act*, the provision uses the process for criminal appeals, which reflects that forfeiture may be part of the mix of penalties imposed on an offender in relation to a criminal matter. The right of appeal is limited to questions of law. This is in keeping with the intent to ensure matters of forfeiture are dealt with expeditiously and that it is in the interests of justice for those proceedings to be finalised by means of the Local Court's decision, except where an error of law has occurred.

Clause 279. Effect of forfeiture

This clause provides that the effect of forfeiture is that the thing becomes the property of the Territory and must be dealt with under the *Financial Management Act 1995*. This clause is of course subject to any federal legislation that takes precedence, notably the *Personal Properties Securities Act 2009* (Cth), through which lenders may have registered an interest in the thing.

Part 13 Further offences and related matters

This Part sets out the offences covering various matters within the Act.

Division 1 Public safety offences**Clause 280. Sale of adulterated liquor**

This clause provides that it is an offence to sell, supply or serve liquor that is adulterated, carrying a maximum penalty of 100 penalty units. Adulterated includes watering down liquor other than in a standard way (such as a 'rum and coke' where a standard drink is mixed with a mixer) or mixing other substances to change the alcohol content or nature of the alcohol product in a way that adulterates the liquor product. Offences relating to spiking of drinks by others (not selling or supplying as a licensee or employee) are found in the Criminal Code.

Clause 281. Permitting riotous conduct on or in licensed premises

This clause provides that it is a strict liability offence for a licensee or employee to permit indecent, violent, quarrelsome or riotous conduct on licensed premises carrying a maximum penalty of 100 penalty units.

Division 2 Responsible service offence**Clause 282. Prohibition of liquor to intoxicated person**

This clause provides that it is an offence for a licensee or employee of licensee to sell or supply liquor to an intoxicated person on licensed premises, carrying a maximum penalty of 200 penalty units.

Division 3 Information offences**Clause 283. Offences about misrepresentation of identity**

This clause provides for three offences relating to misrepresentation of identity for the purpose of purchasing liquor.

It is an offence to purchase liquor through misrepresenting identity at the time of purchase by making false statements or presenting a form of identification that is false, fictitious or relates to someone else. The offence carries a maximum penalty of 50 penalty units.

It is an offence to present a document to purchase liquor and the document can be taken to be identification of the person and the document is false or fictitious or relates to another person. The offence carries a maximum penalty of 50 penalty units.

It is an offence to provide a form of identification to another person and that person uses the identification to misrepresent their identity for the purpose of purchasing liquor contrary to the Act. The offence carries a maximum penalty of 50 penalty units.

Clause 284. Seizure of document wrongly used as form of identification

This clause provides that a licensee and employee must seize identification produced if it is believed on reasonable grounds to be fictitious or false or relates to another person, and the person is presenting the identification in order to purchase liquor or remain on licensed premises contrary to the Act.

As soon as practicable, the person must be advised that the identification is being seized and will be provided to the Director within 72 hours. The identification must be given to the Director within 72 hours of being seized. It is an offence of strict liability to not advise the person that identification is being seized or provide the identification to the Director within 72 hours of seizure, carrying a maximum penalty of 20 penalty units.

Failure to comply does not affect the validity of the seizure.

Clause 285. Providing false information to inspector or police officer

This clause provides that it is an offence to give information to a police officer or inspector performing functions or exercising powers under this Act that is false in a material particular. The offence provides a maximum penalty of 50 penalty units or 6 months imprisonment.

Clause 286. Offence to disclose confidential information

This clause provides that is an offence to disclose confidential information obtained in the course of performing a function connected with the administration of the Act or exercising a power under the Act if the disclosure is not for a purpose connected to the administration of the Act or to a person who is entitled to be provided the information. The maximum penalty for this offence is 200 penalty units or 2 years imprisonment.

Division 4 Licence offences

Clause 287. Posting of licence

This clause provides that a licensee, other than an interstate retailer, must post in a conspicuous place or on licensed premises, a copy of the licence and authorities held by the licensee, the name of the licensee or nominee, the hours of operation and a notice that liquor will not be sold to persons under 18 years of age. It is an offence of strict liability to contravene the requirement to post carrying a maximum penalty of 100 penalty units.

Clause 288. Producing licence and documents on demand

This clause provides that on demand of an inspector or police officer a licensee must produce the licence and authorities held by the licensee.

The licensee must produce within 24 hours of a demand of an inspector, all agreements and other records relating to contractual relationships between the licensee and manager, lessee or operator of the licensed premises, employment relationship of employees or contractors.

It is an offence of strict liability to fail to comply with a demand of an inspector or police officer to produce information carrying a maximum penalty of 20 penalty units.

Clause 289. Permitting breach of *Gaming Control Act 1993*

This clause provides that the licensee commits an offence if a person is found guilty of an offence against the *Gaming Control Act 1993* on the licensed premises of the licensee and the licensee knew of the conduct, carrying a maximum penalty of 100 penalty units.

Clause 290. Contravening licence conditions

This clause provides that the licensee commits an offence if the conduct of the licensee results in a contravention of the conditions of the licence or authority and the conduct is not another offence against this Act. The maximum penalty that applies is 200 penalty units.

Clause 291. Purchase of unauthorised liquor

This clause provides that it is an offence for a person to purchase liquor that is not authorised by an interstate retailer licence or a licence and authority carrying a maximum penalty of 100 penalty units.

Division 5 Offences related to children**Clause 292. Meaning of *guardian***

This clause defines guardian in relation to a child to include a legal guardian and an adult who is given care and control of the child by the child's parent or guardian.

Clause 293. Using child to purchase or collect liquor

This clause provides that it is an offence of strict liability for a person to send a child to purchase or collect liquor from licensed premises, carrying a maximum penalty of 50 penalty units.

Clause 294. Child employee

This clause provides that a child must not be employed to sell or supply liquor unless written notice is provided by the Director to a licensee permitting the employment or employment training of the child to sell or supply liquor. Permission may be given generally or on application.

It is an offence of strict liability to employ a child to sell or supply liquor on licensed premises without written permission of the Director, carrying a maximum penalty of 85 penalty units.

Clause 295. Area of licensed premises prohibited to children

This clause provides that all or part of a licensed premises may be declared by the Director as an area prohibited to children or prohibited to any child not accompanied by an adult who is a parent, spouse or guardian.

Notice of the declaration must be posted as a warning at each entrance of the licensed premises or the declared area and in other places as required by the Director. Failure to post notice as required is a strict liability offence carrying a maximum penalty of 20 penalty units.

Clause 296. Permitting child to enter or remain in prohibited area

This clause provides that a child must not be permitted to enter or remain in a prohibited area of a licensed premises. A licensee or employee commits an offence of strict liability if a child is permitted to enter or remain in a prohibited area of the licensed premises, carrying a maximum penalty of 85 penalty units.

Clause 297. Child's misrepresentation of age

This clause provides that a child must not misrepresent their age in order to enter or remain on a licensed premises or to purchase liquor.

A child commits an offence if they purchase liquor and at the time of purchase misrepresents their age by making a false oral statement or presenting identification that is false or fictitious in relation to their age or relates to someone else. The offence carries a maximum penalty of 50 penalty units.

A child commits an offence if they present a document to purchase liquor that could be taken to be identification for the child and the document is fictitious or false in respect of age or relates to someone else. The offence carries a maximum penalty of 50 penalty units.

A person commits an offence if they provide a form of identification to a child for the child to use as identification to misrepresent the child's age for the child to enter or remain in a prohibited area of licensed premises or to purchase or attempt to purchase liquor. The offence carries a maximum penalty of 50 penalty units.

Clause 298. Irresponsible supply of liquor to child

This clause provides that it is an offence to supply liquor to a child, unless the person is a parent or guardian of a child and supervises the child responsibly. The offence carries a maximum penalty of 100 penalty units.

Clause 299. No liquor for child on or in licensed premises

This clause provides that a child must not consume or possess liquor on or in licensed premises.

Clause 300. Offence for liquor to child on or in licensed premises

This clause provides that it is an offence for a licensee or employee to sell, supply or service liquor to a child or permit consumption of liquor by a child on licensed premises. The offence carries a maximum penalty of 200 penalty units for a licensee and 100 penalty units for an employee.

It is a defence to a prosecution if the child was at least 16 years of age and provided identification that indicated they were an adult. It is also a defence if the defendant did not directly sell, supply or serve the liquor to the child and did not directly allow the consumption and the liquor was sold, supplied or served to an adult accompanying the child and the adult was the parent or guardian who would be expected to ensure the child would not obtain or consume the liquor. It is also a defence if the defendant did not directly sell or supply the liquor and exercised diligence to prevent the sale, supply or service of liquor or consumption of liquor by children.

Division 6 Offences related to inspectors**Clause 301. Falsely representing to be inspector**

This clause provides that it is an offence to falsely represent, by words or conduct, that a person is an inspector, carrying a maximum penalty of 50 penalty units or 6 months imprisonment.

Clause 302. Obstructing an inspector or a police officer

This clause provides that it is an offence to obstruct, including hindering or resisting, an inspector or police officer exercising a power under the Act, carrying a maximum penalty of 50 penalty units or 6 months imprisonment.

Division 7 Criminal responsibility**Clause 303. Criminal responsibility of individual for employee or agent**

This clause is a standard clause relating to criminal responsibility of a licensee, as an individual who is not a body corporate, for employee conduct that constitutes an offence under this Act. The clause provides that the responsibility for a physical element of an offence committed by an employee or agent must also be attributed to the individual if they employee or agent was acting in scope of their employment or under apparent authority as employee or agent.

If intention, knowledge or recklessness is a fault element of the physical element, the fault element must be attributed to the individual if the commission of the offence was expressly, tacitly or impliedly authorised or permitted by the individual.

The criminal responsibility of a body corporate for employees and agents is in Part IIAA, Division 5 of the Criminal Code.

Clause 304. Criminal liability of executive officer of body corporate

This clause is a standard clause providing for the criminal liability of an executive officer of a body corporate. It provides that an executive officer of a body corporate is liable under this Act if the body corporate commits an offence against this Act. The maximum penalty that may be imposed is that which may be imposed on an individual for the offence.

Defences to a prosecution include that the defendant was not in a position to influence the conduct in relation to the commission of the offence or that they did not know and could not have reasonably been expected to know that the offence would be committed.

The criteria that the court must consider in determining if the defendant took reasonable steps to prevent the conduct is prescribed, but is not limited by the section. The liability of the body corporate is not limited by the section and the section applies regardless of whether the body corporate is prosecuted and found guilty of the offence.

Division 8 Related matters

Clause 305. Limit on prosecuting offence

This clause provides that if the Commission takes disciplinary action against a licensee for a contravention then no infringement notice may be issued for the same contravention nor can a proceeding be instituted or continued by a court of competent jurisdiction.

Clause 306. Limitation of time for making complaint

This clause provides that a complaint made to the Local Court under section 49 of the *Local Court (Criminal Procedure) Act 1928* in respect of an offence under this Act must be made within 28 days after the date when the matter the subject of the complaint occurred, unless the quantity of the liquor involved in the offence exceeds 10 standard drinks.

Clause 307. Statements of fact in complaint

This clause provides that in a proceeding for an offence against this Act, a statement of fact may be made as evidence in respect of the following physical elements of the offence, that a specified person was or was not a licensee at a specified time, that an authority was or was not issued to the licensee at a specified time, that specified premises were or were not licensed premises at a specified time and that a specified substance is or is not liquor or a liquor product.

Clause 308. Certificate evidence

This clause provides for certificate evidence for proceedings including that a certificate signed by the Director as evidence of a person being a registered wholesaler at a specified time is evidence of the matter specified.

A certificate signed by the Director that a person had possession of a person's credit card or debit card on a specified date is evidence that the licensee had possession of the card in contravention of clause 97(1).

A certificate of a place being at a specified time a general restricted area or a special restricted area is evidence of the facts stated.

A certificate of analysis of substance stating the result of an analysis of a substance received from an inspector or a police officer and signed by an approved analyst is evidence of the matters stated in the certificate.

Clause 309. Results of breath analysis as evidence

This clause provides that in a proceeding where the intoxication of a person is in question, the result of a breath test or breath analysis taken in accordance with the *Traffic Act 1987* is admissible and prima facie evidence.

Clause 310. Evidence in offences relating to children

This clause provides that for offences relating to prohibited areas in a licensed premises, a certificate signed by the Director stating that part of the premises was prohibited to children and notice was provided to the licensee at a specified time of the prohibition, is evidence of the facts stated.

In proceedings for an offence of supplying liquor to a child, the onus of proving care and control of a child had been given by a parent or guardian rests on the defendant.

Part 14 Miscellaneous

This Part provides for miscellaneous provisions including demands for information, delivery or service of documents and guidelines.

Clause 311. Request for information

This clause provides that the Commission or Director may make any inquiries or conduct investigations as necessary and may, by written notice, require a person to give specified documents or information within a reasonable time specified in the notice.

It is an offence of strict liability for a person to contravene the request in the written notice, carrying a maximum penalty of 50 penalty units or 6 months imprisonment.

Clause 312. Delivery or service of documents

This clause provides that unless otherwise provided, a document, notice, direction or request may be given, delivered or lodged by serving in accordance with the requirements of the *Interpretation Act 1978* or by sending to an email address as an attachment to an email.

Unless evidence proves otherwise, a document, notice, direction or request sent is taken to be given to the recipient when it is sent to the email address of the recipient.

Clause 313. Guidelines

This clause provides that the Commission may make guidelines with the Minister's approval in relation to the operation and administration of the Act. The guidelines may relate to such matters as applications for licences, authorities or other matters, the operation of licensed premises of compliance with the Act. A guideline must be published and takes effect 14 days after publication.

Clause 314. Approved forms

This clause provides that the Director may approve forms for use under the Act.

Clause 315. Extending or abridging time

This clause provides that a time limit for a procedure, power or function may be extended by the Commission or Director and may be done after the time limit has expired.

Actions, matters or proceedings being conducted are not made invalid a failure of the Commission or Director to meet a deadline under the Act.

Clause 316. Regulations

This clause is a standard clause providing that the Administrator may make regulations under the Act.

Among other things, regulations may be made to provide for standard conditions, a risk based scheme for regulating licences and authorities, permit systems for controlled areas, regulating the types of liquor and quantities and the fees to be charged.

The regulations may also prescribe a fee for an offence and provide for infringement notices and payment of a prescribed amount instead of a penalty that may otherwise be imposed.

The regulations may also provide that a provision of the regulations applies generally or more specifically to persons, licences, authorities or licensed premises.

Clause 317 Review of Act

This clause provides that the Act must be reviewed by the Minister as soon as possible after 3 years after assent to determine if the policy objectives of the Act remain valid and the terms of the Act remain appropriate to secure the objectives.

A report on the outcome of the review is to be tabled in the Legislative Assembly within 12 months after the end of the 3 year period.

Part 15 Repeal and transitional matters

This Part provides for repeals and transitional matters.

Division 1 Repeals**Clause 318. Acts repealed**

This is a standard clause which provides that Acts specified in the Schedule are repealed. This includes the *Liquor Act 1978* and all the Liquor Amendments Acts.

Division 2 Transitional matters**Clause 319. Definition**

This clause defines commencement as the commencement of the repeal of the *Liquor Act 1978* and Acts in the Schedule.

Clause 320. Licences

This clause provides that a licence issued under the *Liquor Act 1978* valid immediately before commencement continues in effect after commencement. The licence expires either on 1 October 2020 or on conversion under this Act.

An application to the Director must be made and lodged in the approved form with accompanying affidavit before 1 April 2020 to convert a licence. If no application is made, the Director may proceed to convert the licence without the consent or participation of the licensee. The Director must consider the application and issue a licence considered equivalent or refuse to issue a licence and allow the licence to expire. Existing licences being converted pursuant to this clause are not subject

to the public interest and community impact requirements, public notice requirements or objections process.

Clause 321. Transfer of licence

This clause provides that an application to transfer a licence made under the *Liquor Act 1978* before the commencement of this Act, is to proceed and be determined under that Act unless the applicant provides written notice nominating to have the transfer proceed and be determined under this Act.

Clause 322. Substitution of licensed premises

This clause provides that an application to substitute licensed premises made under section 46A of the *Liquor Act 1978* is to proceed and be determined under the provisions of that Act unless the applicant provides written notice nominating to have the substitution proceed and be determined under this Act.

Clause 323. BYO restaurants

This clause provides that a person operating a restaurant that served liquor brought by a patron for consumption with food is exempt from requiring a licence until 1 October 2121 and may continue to serve liquor to patrons for consumption with food until then.

A person operating a restaurant providing BYO service of liquor who wishes to continue to serve liquor brought by a patron for consumption with food after 1 October 2121 must apply for a licence and BYO authority before 1 June 2121.

Clause 324. Fees

This clause provides that no annual fee is payable for a licence issued under the *Liquor Act 1978*. However an annual fee is payable for a licence or authority issued under this Act and is first payable on or before 2 January 2021.

An estimate of the fees to be provided by the Director to a licensee before 1 October 2020 for a converted licence and the annual fee for a converted licence must be paid on or before 2 January 2021.

Clause 325. Regulated areas

This clause provides for the transitional matters for controlled areas and other areas providing restrictions as provided under this Act in effect under the *Liquor Act 1978* to continue as if an area under this Act, including that a general restricted area in place before commencement is taken to be a general restricted area under this Act, and a licensed premises that is subject to a declaration prohibiting children from areas of the licensed premises is taken to be a prohibited area under this Act.

An exemption or permission to consume liquor in a regulated place in effect under the *Liquor Act 1978* is taken to be a permission to consume liquor in a public place under this Act, irrespective of any declaration of a regulated place ceasing to have effect.

Clause 326. Permits

This clause provides a permit in effect under the *Liquor Act 1978* that is valid continues after commencement and taken to be a permit issued under this Act in accordance with its terms and conditions under this Act.

Clause 327. Officers

This clause provides for persons holding office under the *Liquor Act 1978* at the time of commencement of this Act are taken to be an inspector or assessor appointed under this Act.

Clause 328. Patron identification system

This clause provides that the identification system established under section 31A of *Liquor Act 1978* by the Minister continues, and is taken to be the identification system established under Part 6 Division 1 of this Act.

Clause 329. Seized things

This clause provides that Part 10 Division 6 of this Act applies to things seized under the *Liquor Act 1978* in possession of police at the time of commencement of this Act.

For the purpose of applying the definition of forfeiture offence to things seized under the *Liquor Act 1978* still in possession of police, the offences taken to be a forfeiture offence are sections 75, 101AE, 115 and 116.

For a forfeiture application, the time limit is 28 days after commencement if no person is charged with an offence.

The report of the Commissioner for Police must include in the first report under clause 245 of this Act, information about all vehicles, vessels and aircraft seized under the *Liquor Act 1978* in possession of the police at the time of commencement.

Clause 330. Transitional regulations

This clause provides that a regulation may provide for a matter of a transitional nature because of the enactment of this Act or otherwise to allow and facilitate transition from the operation of the *Liquor Act 1978* to this Act.

Any retrospective operation cannot apply earlier than the day of commencement of this Act and it must not operate to disadvantage a person by decreasing rights or imposing liabilities.

This section and any regulation made under it, expires 1 year after commencement.

Part 16 Consequential amendments

This Part contains 24 Divisions and contains consequential amendments to 24 pieces of legislation arising as a result of references or interaction with the *Liquor Act 1978*.

Division 1 Accommodation Providers Act 1981

Clause 331. Act amended

This is a standard clause which provides that this Division amends the *Accommodation Providers Act 1981*.

Clause 332 Section 3 amended (Interpretation)

This clause omits reference to the *Liquor Act 1978* and inserts reference to the *Liquor Act 2019* in the definition of 'accommodation establishment' in section 3(1) of the *Accommodation Providers Act 1981*.

Division 2 Alcohol Harm Reduction Act 2017

Clause 333 Act amended

This is a standard clause which provides that this Division amends the *Alcohol Harm Reduction Act 2017*.

Clause 334 Section 4 amended (Definitions)

This clause omits the definition of ‘banned drinker register’ in section 4 of the *Alcohol Harm Reduction Act 2017* and replaces it with a new definition. The new definition of ‘banned drinker register’, as inserted into the *Liquor Act 2019*, ‘means the register of persons who are banned for the purposes of the identification system established under section 125 of the *Liquor Act 2019*’.

This clause also omits reference to the *Liquor Act 1978* and inserts reference to the *Liquor Act 2019* in the definitions of ‘alcohol’ and ‘information sharing authority’ in section 4 of the *Alcohol Harm Reduction Act 2017*.

Clause 335 Section 10 amended (When police may make BDO)

This clause omits all references to ‘a contravention notice under the *Liquor Act 1978*’ in section 10(1) (c) (ii) and (iii) and (d) of the *Alcohol Harm Reduction Act 2017*. No contravention notices have been issued under the *Liquor Act 1978*.

This clause also amends the example in section 10(1) (b) of the *Alcohol Harm Reduction Act 2017* to omit reference to section 75(1) of the *Liquor Act 1978* and insert a reference to section 170 of the *Liquor Act 2019*.

This clause omits the definition of ‘alcohol-related infringement notice’ in section 10(3) (a) of the *Alcohol Harm Reduction Act 2017* and inserts reference to sections 140(2), 141(2), 170(1), 180(1), 186(1), 215(1), 221(1) or 225(2) of the *Liquor Act 2019* being relevant offences for the purpose of the *Alcohol Harm Reduction Act 2017*.

Clause 336 Section 24 amended (Extension of BDO by police)

This clause omits reference to a contravention notice under the *Liquor Act 1978* in section 24(1)(d) of the *Alcohol Harm Reduction Act 2017*.

Clause 337 Section 42 amended (Offence to supply alcohol to persons subject to prohibition)

This clause omits reference to section 31A(2) of the *Liquor Act 1978* and inserts reference to section 125(1) of the *Liquor Act 2019* in section 42(1)(c) of the *Alcohol Harm Reduction Act 2017*.

This clause also amends section 42(2) of the *Alcohol Harm Reduction Act 2017* so that the defence to a prosecution for an offence against subsection (1) of section 42 provides that it is a defence if the defendant is a licensee or a licensee's employee who used the identification system in accordance with the *Liquor Act 2019* which did not identify a person as being subject to a prohibition.

Clause 338 Section 43 amended (Police power to require breath test)

This clause omits the definition of a 'public place' in section 43(2) of the *Alcohol Harm Reduction Act 2017*.

Division 3 Constitutional Convention (Election) Act 2011

Clause 339 Act Amended

This is a standard clause which provides that this Division amends the *Constitutional Convention (Election) Act 2011*.

Clause 340 Section 30 amended (Limit on appointment of licensed premises as polling place)

This clause omits reference to licensed premises within the meaning of the *Liquor Act 1978* and inserts 'premises licensed under the *Liquor Act 2019*' in section 30 of the *Constitutional Convention (Election) Act 2011*.

Division 4 Electoral Act 2004

Clause 341 Act amended

This is a standard clause which provides that this Division amends the *Electoral Act 2004*.

Clause 342 Section 43 amended (Limit on appointment of licensed premises as polling place)

This clause omits reference to 'licensed premises within the meaning of the *Liquor Act 1978*' and inserts 'premises licensed under the *Liquor Act 2019*' in section 43 of the *Electoral Act 2004*.

Division 5 Gaming Control Act 1993

Clause 343 Act amended

This is a standard clause which provides that this Division amends the *Gaming Control Act 1993*.

Clause 344 Section 3 amended (Definitions)

This clause omits the definition of 'liquor' within section 3 of the *Gaming Control Act 1993* and inserts a new definition of '**liquor**, see section 4(1) of the *Liquor Act 2019*'.

This clause omits the definition of 'public place' within section 3 of the *Gaming Control Act 1993*.

Clause 345 Section 32 replaced

This clause repeals section 32 of the *Gaming Control Act 1993* and inserts a new section 32 relating to a liquor licence at a casino which provides that despite the *Liquor Act 2019*, no person other than the Licensee or an approved employee of the Licensee may hold a license under that Act for any place on or in a casino.

Clause 346 Section 35 amended (Entry of casino by Director-General, gaming inspectors &c)

This clause omits reference to the *Liquor Act 1978* and inserts reference to the *Liquor Act 2019* in section 35(1)(c) of the *Gaming Control Act 1993*.

Division 6 Gaming Machine Act 1995**Clause 347 Act amended**

This is a standard clause which provides that this Division amends the *Gaming Machine Act 1995*.

Clause 348 Section 3 amended (Definitions)

This clause omits the definitions of 'club', 'club liquor licence', 'hotel liquor licence' and 'liquor' within the meaning of section 3 of the *Gaming Machine Act 1995*.

This clause inserts a new definition of 'club' within section 3 of the *Gaming Machine Act 1995*, to mean a body corporate that holds a liquor licence with a club authority, and a new definition of 'liquor' which refers to section 4(1) of the *Liquor Act 2019*.

In relation to the definition of 'liquor licence' in section 3(a) of the *Gaming Machine Act 1995*, the definition is omitted and replaced with a new definition of 'a licence issued under the *Liquor Act 2019*'.

Clause 349 Section 24 amended (Application for gaming machine licence)

This clause omits section 24(1) of the *Gaming Machine Act 1995* and replaces it with equivalent new section 24(1) which specifies the relevant liquor licence authorities of the *Liquor Act 2019* under which an application may be made for a gaming machine licence.

Clause 350 Section 37 amended (Definitions)

This clause omits references to the definitions of 'Liquor Act application' and 'transferable licence' in section 37 of the *Gaming Machine Act 1995*.

A new definition of 'transferable licence' is inserted within section 37 of the *Gaming Machine Act 1995* to mean 'a gaming machine licence issued for premises that are licensed under the *Liquor Act 2019* and operating under an authority prescribed by regulation'.

Clause 351 Section 37C amended (Application for transfer of gaming machine licence)

This clause omits section 37C(2) of the *Gaming Machine Act 1995* and inserts a new section 37C(2) providing that 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’.

Clause 352 Section 38 amended (Information and material)

This clause omit reference to the *Liquor Act 1978* in section 38(1)(a) of the *Gaming Machine Act 1995*, and inserts a new section 38(1)(a) providing that ‘a copy of the transfer application made under the *Liquor Act 2019* for transfer of the liquor licence or evidence that the application was made’.

Clause 353 Section 38C replaced

This clause repeals section 38C of the *Gaming Machine Act 1995* and replaces it with a new section 38C providing for the relationship with an application under the *Liquor Act 2019*. Under new section 38C of the *Gaming Act 1995*, the Director-General must now not determine a transfer application until the applicant’s application under the *Liquor Act 2019* for transfer of the liquor licence is determined. Additionally, if the application for transfer of the liquor licence is refused, the Director-General must refuse the transfer application unless, within the time allowed under the *Northern Territory Act Civil and Administrative Tribunal Act 2014*, no proceedings are commenced to review the refusal.

Clause 354 Section 42A amended (Definitions)

This clause omits the definition of ‘Liquor Act application’ within section 42A of the *Gaming Machine Act 1995*.

Clause 355. Section 42B amended (Application for substitution of premises)

This clause omits section 42B(3) of the *Gaming Machine Act 1995*, and inserts a new section 42B(3) which provides that ‘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’.

Clause 356. Section 42C amended (information and material)

This clause omits section 42C (1) (a) of the *Gaming Machine Act* and inserts a new section 42C (1) (a) which provides that a copy of the application under the *Liquor Act 2019* for substitution of the licensed premises or evidence that it was made’.

Clause 357. Section 42F replaced

This clause omits section 42F of the *Gaming Machine Act* and inserts a new section 42F which provides that 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.

Furthermore, where an application is refused the Director-General must refuse the transfer application unless no review proceedings are commenced under the *Northern Territory Civil and Administrative Tribunal Act 2014* or on review, the refusal is confirm and no appeal to the Supreme Court is made, or on appeal from NTCAT the Supreme Court confirms the refusal.

Clause 358. Section 57 repealed (Continuance of licences in certain circumstances)

This clause repeals section 57 of the *Gaming Machine Act 1995*.

Clause 359. Section 88 amended (Hours of gaming)

This clause omits section 88(a) of the *Gaming Machine Act 1995* and replaces it with a new section 88(a) which provides that ‘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

Clause 360. Act amended

This is a standard clause which provides that this Division amends the *Housing Act 1982*.

Clause 361. Section 5 amended (Definitions)

This clause omits the definition of 'liquor' in section 5 of the *Housing Act 1982* and inserts a new definition of 'liquor' referencing section 4(1) of the *Liquor Act 2019*.

This clause also omits the definition of 'prescribed offence' in section 5(b) of the *Housing Act 1982* and inserts a new definition which references sections 170, 180 or 186 of the *Liquor Act 2019*.

Clause 362. Section 28G amended (Power to seize a dangerous article or a container of liquor)

This clause amends section 28G(3)(c) by omitting reference to sections 75, 101AE or 101L of the *Liquor Act 1978* and replacing with sections 170, 180 or 186 of the *Liquor Act 2019*.

Division 8 Kava Management Act 1998

Clause 363. Act amended

This is a standard clause which provides that this Division amends the *Kava Management Act 1998*.

Clause 364 Section 3 amended (Interpretation)

This clause omits the definition of 'authorised officer' in section 3(1) (c) under the *Kava Management Act 1998* and replaces it with 'an inspector appointed under section 16 of the *Liquor Act 2019*'.

Clause 365 Section 29 amended (Authorised officers)

This clause omits reference to 'Inspector of Licensed Premises appointed under section 18 of the *Liquor Act 1978*' in section 29(2) of the *Kava Management Act 1998* and inserts 'inspector appointed under the *Liquor Act 2019*'.

Division 9 Lake Bennett (Land Title) Act 2005

Clause 366 Act amended

This is a standard clause which provides that this Division amends the *Lake Bennett (Land Title) Act 2005*.

Clause 367 Schedule 5 amended (Development for Lake Bennett locality)

This clause amends the definition of 'hotel' under Schedule 5, clause 2 of the *Lake Bennett (Land Title) Act 2005* to omit the reference to 'licence under the *Liquor Act 1978*' and replace with 'a licence and public bar authority under the *Liquor Act 2019*'.

This clause also omits the reference to the *Liquor Act 1978* in the definitions of 'motel' and 'restaurant' under Schedule 5, clause 2 of the *Lake Bennett (Land Title) Act 2005* and replaces with a reference to *Liquor Act 2019*.

Division 10 Law of Property Act 2000

Clause 368 Act amended

This is a standard clause which provides that this Division amends the *Law of Property Act 2000*.

Clause 369 Schedule 2 amended (Short forms of covenants in leases)

This clause omits all references to 'within the meaning of the *Liquor Act 1978*' in Schedule 2, Covenants, item 17, columns 1 and 2 of the *Law of Property Act 2000* and replaces with 'in accordance with the *Liquor Act 2019*'.

The 'requirements of the *Liquor Act 1978*' are also omitted and replaced with 'requirements of the *Liquor Act 2019*'.

In item 18, column 2 of Schedule 2 of the *Law of Property Act 2000* the reference to 'within the meaning of the *Liquor Act 1978*' is replaced with 'in accordance with the *Liquor Act 2019*'.

Division 11 Liquor Commission Act 2018

Clause 370 Act amended

This is a standard clause which provides that this division amends the *Liquor Commission Act 2018*.

Clause 371 Section 3 amended (Definitions)

This clause omits section 3 definition of ‘Director-General decision’ under the *Liquor Commission Act 2018* and inserts the definition of ‘Director’ within the meaning of section 3 of the *Liquor Act 2019*.

Clause 372 Section 16 amended (Convening of Commission)

This clause omits section 16(2) of the *Liquor Commission Act 2018*.

Clause 373 Part 4 replaced

This clause repeals Part 4 of the *Liquor Commission Act 2018* and replaces it with an equivalent part that regulates the review of Director’s decisions under the *Liquor Act 2019*.

Clause 374 Section 37 replaced

This clause repeals section 37 of the *Liquor Commission Act 2018* which provides for delegations and replaces with a new section 37.

Division 12 Misuse of Drugs Act 1990

Clause 375 Act amended

This is a standard clause which provides that this Division amends the *Misuse of Drugs Act 1990*.

Clause 376 Section 11A amended (Definitions)

This clause amends section 11A of the *Misuse of Drugs Act 1990* by omitting definitions relating to licensee and liquor licensed premises and replacing with a new definitions which refer to the *Liquor Act 2019*.

Clause 377 Section 11E amended (Record and warning of first finding of dangerous drugs on premises)

This clause omits the reference to *Liquor Act 1978* in section 11E(4)(a) of the *Misuse of Drugs Act 1990*, and replaces it with a reference to *Liquor Act 2019*.

Clause 378 Section 11F amended (Record and warning of second finding of dangerous drugs on premises)

This clause omits the reference to *Liquor Act 1978* in section 11F(4)(a) of the *Misuse of Drugs Act 1990*, and replaces it with a reference to *Liquor Act 2019*.

Clause 379 Section 11G amended (Record and warning of third finding of dangerous drug on premises)

This clause omits the reference to *Liquor Act 1978* in section 11G(4)(a) of the *Misuse of Drugs Act 1990*, and replaces it with a reference to *Liquor Act 2019*.

Clause 380 Section 11W amended (Commissioner of Police may apply for suspension of liquor licence)

This clause omits the reference to section 49A *Liquor Act 1978* in section 11W of the *Misuse of Drugs Act 1990*, and replaces it with a reference to section 257 of the *Liquor Act 2019*.

Clause 381 Section 37 amended (Penalty guidelines)

This clause omits reference to section 37(1) of the *Misuse of Drugs Act 1990* which provides a definition of licensed premises.

This clause also amends the definition of aggravating circumstances in section 37(1)(c) of the *Misuse of Drugs Act 1990* to omit references to licensed premises and replace with a reference to liquor.

Clause 382 Section 43 amended (Regulations)

This clause amends 43(2) of the *Misuse of Drugs Act 1990* to omit references to 'licensed premises' and replace with a reference to 'liquor premises'.

Division 13 Private Security Act 1995**Clause 383 Act amended**

This is a standard clause which provides that this Division amends the *Private Security Act 1995*.

Clause 384 Section 3 amended (Definitions)

This clause omits the definition of public place in the *Private Security Act 1995* and inserts a new definition of public place which refers to the *Liquor Act 2019*.

Clause 385 Section 5 amended (Crowd controllers)

This clause omits licensed premises within the meaning of the *Liquor Act 1978* in the *Private Security Act 1995* and replaces with a new reference 'premises licensed under the *Liquor Act 2019*'.

Division 14 Racing and Betting Act 1983**Clause 386 Act amended**

This is a standard clause which provides that this Division amends the *Racing and Betting Act 1983*.

Clause 387 Section 4 amended (Definitions)

This clause omits the definition of public place in section 4(1)(c) of the *Racing and Betting Act 1983* and replaces with 'premises licensed under the *Liquor Act 2019*'.

Division 15 Amendment of Referendums Act 1998**Clause 388 Act amended**

This is a standard clause which provides that this Division amends the *Referendums Act 1998*.

Clause 389 Section 13 amended (Polling places)

This clause omits reference to the *Liquor Act 1978* in section 13(2) of the *Referendums Act 1998* and replaces with a reference to the *Liquor Act 2019*.

Division 16 Residential Tenancies Act 1999

Clause 390 Act amended

This is a standard clause which provides that this Division amends the *Residential Tenancies Act 1999*.

Clause 391 Section 99A amended (Failure by tenant relating to acceptable behavior agreement)

This clause omits reference to Part VIIA of the *Liquor Act 1978* in the *Residential Tenancies Act 1999* and replaces it with a reference to Part 8, Division 5 of the *Liquor Act 2019*.

Division 17 Sentencing Act 1995

Clause 392 Act amended

This is a standard clause which provides that this Division amends the *Sentencing Act 1995*.

Clause 393 Section 3 amended (Interpretation)

This clause omits the definition of restricted area in section 3(1) of the *Sentencing Act 1995*.

Clause 394 Section 5 amended (Sentencing guidelines)

This clause amends the *Sentencing Act 1995* to provide a new sub clause (aa) after section 5(4)(a) that provides the court may have regard to a forfeiture order under the *Liquor Act 2019* in relation to property subject to an order relates to the offence or offences an offender is being sentenced.

Clause 395 Section 44 amended (Home detention order)

This clause omits referent to restricted area in section 44(2) of the *Sentencing Act 1995* and replaces with a reference to general restricted area under the *Liquor Act 2019*.

Clause 396 Section 99A amended (Forfeiture of property orders)

This clause amends section 99A to provide for forfeiture consideration of any vehicle, vessel or aircraft as a forfeiture application under Part 12, Division 2 of the *Liquor Act 2019*.

Division 18 Serious Crime Control Act 2009

Clause 397 Act amended

This is a standard clause which provides that this Division amends the *Serious Crime Control Act 2009*.

Clause 398 Section 6 amended (Definitions)

This clause amends section 6 definition of prescribed activity in the *Serious Crime Control Act 2009* to include being a licensee under the *Liquor Act 2019*.

Division 19 Summary Offences Act 1923

Clause 399 Act amended

This is a standard clause which provides that this division amends the *Summary Offences Act 1923*.

Clause 400 Section 53 amended (Obscenity)

This clause omits the reference licensed premises within the meaning of the *Liquor Act 1978* in section 53 of the *Summary Offences Act 1923* and replaces with 'premises licensed under the *Liquor Act 2019*'.

Clause 401 Section 66 amended (Regulation of places of public resort)

This clause omits the reference to the *Liquor Act 1978* in section 66 of the *Summary Offences Act 1923* and replaces with a reference to the *Liquor Act 2019*.

Division 20 Tobacco Control Act 2002

Clause 402 Act amended

This is a standard clause which provides that this Division amends the *Tobacco Control Act 2002*.

Clause 403 Section 5 amended (Definitions)

This clause omits the definitions of 'liquor-licensed premises' and 'liquor licensee' in section 3 of the *Tobacco Control Act 2002* and replaces with definitions that include reference to the *Liquor Act 2019*.

Clause 404 Section 11 amended (Exempt areas)

This clause omits section 11(4A) of the *Tobacco Control Act 2002* and replaces with a new section 11(4A) which provides that regulations made under that Act may prescribe for matters in relation to exempt areas on or in liquor licensed premises including for the conditions applicable to an exempt area which may vary for different liquor authorities in the *Liquor Act 2019*.

Clause 405 Section 22 amended (Conditions of vending machine displays)

This clause amends section 22 of the *Tobacco Control Act 2002* to insert 'liquor' before the word 'licensee'.

Clause 406 Section 26 amended (vending machine restrictions)

This clause omits section 26(5) of the *Tobacco Control Act 2002* and replaces with a new section 26(5) to provide that a 'children free area' is an area in a liquor licensed premises which prohibits children under section 294 of the *Liquor Act 2019*.

Division 21 Tobacco Control Regulations 2002

Clause 407 Act amended

This is a standard clause which provides that this Division amends the *Tobacco Control Regulations 2002*.

Clause 408 Regulation 3 amended (Definitions)

This clause omits the definition of 'restaurant' from Regulation 3 of the Tobacco Control Regulations 2002.

Clause 409 Regulation 15D inserted

This clause inserts after regulation 15C in the Tobacco Control Regulations 2002, a new regulation 15D relating to 'limits on outdoor smoking areas' to provide that the service or consumption of food or drink in an outdoor smoking areas is not permitted under certain authorities under the *Liquor Act 2019*, including catering authority, club authority and community event authority.

Division 22 Totalisator Licensing and Regulation Act 2000

Clause 410 Act amended

This is a standard clause which provides that this Division amends the *Totalisator Licensing and Regulation Act 2000*.

Clause 411 Section 92 amended (Offences by persons employed by licensee or agent)

This clause omits a reference relating to the *Liquor Act 1978* in section 92(2) of the *Totalisator Licensing and Regulation Act 2000* and replaces with a reference relating to the *Liquor Act 2019*.

Division 23 Traffic Act 1987

Clause 412 Act amended

This is a standard clause which provides that this Division amends the *Traffic Act 1987*.

Clause 413 Section 46A amended (Breath analysis instruments at licensed premises – readings not admissible as evidence)

This clause omits reference to the *Liquor Act 1978* in section 46A of the *Traffic Act 1987* and replaces with a reference to the *Liquor Act 2019*.

Division 24 Valuation of Land Act 1963**Clause 414 Act amended**

This is a standard clause which provides that this Division amends the *Valuation of Land Act 1963*.

Clause 415 Section 9 amended (Unimproved capital value)

This clause omits reference relating to the *Liquor Act 1978* in section 9(3) of the *Valuation of Land Act 1963* and replaces with a reference relating to the *Liquor Act 2019*.

Division 25 Repeal of Part**Clause 416 Repeal of Part**

This is a standard clause that repeals this Part the day after the *Liquor Act 2019* commences.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

LIQUOR BILL 2019

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

OVERVIEW OF THE BILL

The Liquor Bill 2019 (the Bill) provides a Bill for an Act that governs the sale, supply, service, promotion and consumption of liquor and alcohol products through establishing a risk-based licensing framework with a primary purpose of minimising harm associated with consumption and misuse of alcohol.

HUMAN RIGHTS IMPLICATIONS

The Bill engages rights referred to in the International Convention on Civil and Political Rights (ICCPR).

Right to Equality and Non-discrimination: Articles 2, 3, 16 and 26 ICCPR

Articles 2, 3, 16 and 26 of the ICCPR relate to rights of equality and non-discrimination. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Discrimination is prohibited and laws should guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Elements of the Bill may interfere with these rights, as the Bill provides licensees and the licensee's employees with the power to refuse the service of liquor to a person where the licensee or licensee's employees hold a certain belief, such as, the person is registered on the banned drinkers register or the person will become intoxicated.

To make it clear that the power to refuse service or exclude a person is not a power to exclude on the basis of attributes protected through anti-discrimination law, it is expressly stated that a licensee or a licensee's employee must not use an attribute specified in section 19(1) of the *Anti-Discrimination Act 1992* as a reason to form a belief. Furthermore, the grounds by which a person may be refused service ensure the integrity and effective operation and enforcement of other existing legislative frameworks to limit or prohibit liquor supply and use, and to reduce alcohol-related harm.

The Bill also provides requirements for proof of identification for purchase of liquor pursuant to an identification system designed to prevent persons prohibited by law from purchasing liquor. The approved identification specified in the Bill for proof of identification may discriminate against people in the Northern Territory do not hold a

valid driver's licence, passport or firearms licence, especially Aboriginal people who live in remote communities. Limitation on the form of identification required to purchase alcohol would likely have a disproportionate (indirect) discriminatory impact on Aboriginal people.

However, this is mitigated by the power of the Director to approve other forms of identification which ensures that people who do not have a driver's licence, passport or firearms licence are able to lawfully purchase alcohol with other documentation.

Freedom of movement and choice of residence for lawful residents: Article 12 ICCPR

Article 12(1) of the ICCPR provides that 'Everyone within the territory of the State shall, within that territory, have the right to liberty of movement...'

Elements of the Bill may interfere with the free movement of persons, as police officers and inspectors are empowered to conduct searches, and to stop vehicles and to make enquires in relation to purchases of liquor.

Search related powers include being able to search a person without a warrant where there it is reasonably suspected that there is a contravention with a provision of the Act. Inspectors and officers have search powers that relate to public places, restricted areas and restricted premises.

The Bill provides that an inspector or police officer may search a person who the inspector or officer reasonably suspects of consuming an inedible alcohol substance in a public place (for example, mouthwash) or of consuming liquor in a public place.

The search powers are limited to the requirement for the inspector or police officer to form a reasonable suspicion that the person is consuming liquor in a public place.

The Bill allows an inspector or police officer to search a person who the inspector or officer reasonably suspects is committing a serious offence under this Act relating to secondary supply. T

These search powers are limited to the requirement for the inspector or police officer to form a reasonable suspicion that the person has committed, is committing, or is about to commit such an offence. It is also subject to the limitation that it must not be reasonably practicable to seek a warrant. It is also a limitation of this power that it can only be used to enter residential premises without the consent of an occupier of the premises in a general or special restricted area.

The Bill allows an inspector or police officer to search a vehicle, vessel, aircraft, person, or premises at random where the vehicle, vessel, aircraft, person, or premises is in a general restricted area or special restricted area. The clause also allows for random searches outside a restricted area where there is a reasonable suspicion that the vehicle, vessel, aircraft, person is travelling to or from a restricted area, or in the case of premises, that the premises contain goods that are being sent to a restricted area.

The purpose of this power is to detect and prevent the unlawful consumption of liquor in restricted areas, as well as to detect and prevent the unlawful sale and supply of liquor destined for restricted areas. These random search powers are limited in that they are restricted to non-residential premises. Searches of persons are required to be conducted by a person of the same gender.

The Bill provides a power that allows an inspector or police officer to search restricted premises, and any person on or in the restricted premises who is suspected of committing the offence.

The search power is limited by the requirement that the police officer must suspect on reasonable ground that an offence against section 177 is being or is likely to be committed. Searches of persons are required to be conducted by a person of the same gender.

Where a search is conducted, the search must be conducted by someone who is of the same gender as the person being searched. Same gender searches ensure a minimum level of dignity is maintained for the person being searched.

The Bill provides that where an inspector or a police officer suspects on reasonable grounds that an offence against Part 8 relating to controlled areas, is being or is likely to be committed (i.e. the transportation, possession, consumption and/or supply of alcohol controlled area), the inspector or officer may, without a warrant, seize any opened or unopened container that the inspector or officer believes on reasonable grounds contains liquor. After seizing the container, the inspector or police officer must take reasonable steps to determine if the container contains liquor.

This power is to protect the community from alcohol-related harm. The officer must take reasonable steps to determine the contents of the container. The power to seize containers, take reasonable steps to determine the contents of the container and empty the contents (or return the container) is considered proportionate to the policy objective of removing alcohol in controlled areas and minimising alcohol related harm.

The Bill provides inspector or police officer powers of entry to premises or search of persons or premises in controlled areas. These search powers are fettered by the requirement for the inspector or police officer to have a reasonable suspicion that a contravention of the Act has occurred (or is occurring).

These powers allow for the effective detection and enforcement of prohibited alcohol supply and use, and in turn, reduce alcohol related harm. This clause is in the interests of public order, the protection of public health or the protection of the rights and freedoms of others.

Notably, Article 12(3) of the ICCPR provides that freedom of movement may be curtailed where it is necessary for the purposes of maintaining '...public order [or] public health....and are consistent with.....other rights...'

The powers in the Bill are specific to instances where a police officer or inspector observes that a purchase is or is about to occur or has just occurred, or that conduct constituting a contravention of a provision of the Act is or has occurred. The purpose

for stopping and searching is to enable the inspector or officer to fulfil functions as prescribed in the Act where there is a reasonable suspicion of a contravention. The powers are provided in the interests of public order, the protection of public health, and the protection of the rights and freedoms of others.

As such, the purpose is one necessary to maintain public order and public health by controlling the supply of liquor to persons and places that are prohibited. The fettered powers are afforded to allow for the effective detection and enforcement of prohibited alcohol supply and use, and in turn, reduce alcohol related harm. These go to the central tenets of the Bill.

Elements of the Bill may also interfere with the free movement of persons, as a licensee and employee of the licensee are required to exclude and remove a person from licensed premises who is into intoxicated, violent, quarrelsome, disorderly or incapable of controlling the person's behaviour. The purpose of this clause is to protect the public, the person as well as the licensee and the licensee's employees.

As such, the purpose of the clause is one necessary to maintain public order and public health by controlling the possession, sale and consumption of liquor to persons to protect the public, the person and licensee and licensee's employees.

'Freedom from arbitrary or unlawful interference with privacy...': Article 17 ICCPR

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. While the UN Human Rights Committee (the Committee) has not defined 'privacy' it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The Committee states that searches of a person's home should be restricted to those necessary to gather evidence and should not amount to harassment. Searches of a person should be carried out in manner consistent with the dignity of the person.

Interests of public order, the protection of public health or the protection of the rights and freedoms of others, can be legitimate objectives in appropriate circumstances in respect of the prohibition on interference with privacy. In any event, limitations on privacy must be authorised by law and must not be arbitrary. The term unlawful means that no interference can take place except as authorised under domestic law. The law should be precise, and not give decision-makers too much discretion in authorising interferences with privacy.

Elements of the Bill that may interfere with this freedom, but in a limited way that is clear and not arbitrary.

The Bill provides that an identification system may be established for the purpose of facilitating licensees to determine whether a person is prohibited (by virtue of this or another Act) from purchasing or consuming alcohol.

The proof of identification required by the licensee for a sale of liquor subject to the identification system is required to ensure the licensee does not provide liquor to a prohibited person. The information is necessary to safeguard the integrity and

effective operation and enforcement of other existing legislative frameworks to limit or prohibit liquor supply and use, and to reduce alcohol-related harm. The law is precise and clear in its purpose. The identification system facilitates public order, the protection of public health or the protection of the rights and freedoms of others.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

For the purpose of Article 1 of the ICERD, 'racial discrimination' means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

This does not include special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals may equally enjoy or exercise human rights and fundamental freedoms, so long as such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The Bill ensures the continuation of a scheme which creates substantial liquor restrictions, and provides more intrusive powers to enforce those liquor restrictions.

The restricted or controlled areas targeted by the scheme are primarily Aboriginal communities and public spaces, which will have the effect of impairing the enjoyment and exercise of the rights and freedom of Aboriginal persons to privacy and freedom of movement to a greater degree than non-Aboriginal persons. However, these measures are taken for the sole purpose of securing adequate advancement of those same persons, who are disproportionately affected by alcohol-related harm.

International Convention on Economic, Social and Cultural Rights (ICESCR)

The Bill positively engages a number of rights in the ICESCR in that the Bill provides a scheme that is for the purpose of reducing alcohol-related harm, which in turn improves outcomes for people whose health, safety, and educational outcomes are detrimentally affected by high levels of alcohol consumption.

Relevantly, Article 10(3) of the ICESCR provides that special measures of protection and assistance should be taken on behalf of children and young persons. Article 11 of the ICESCR provides that everyone has the right to an adequate standard of living 'for himself and his family', including adequate food, clothing and housing. Article 12 of the ICESCR provides that everyone has the right to enjoyment of the highest attainable standard of physical and mental health. Article 13 recognises the right of everyone to education.

In relation to the provisions which enable the seizure and forfeiture of vehicles, these rights are both benefited and limited. The rights are limited because the removal of

vehicles, particularly in remote areas where other transport options are limited, can cause difficulties to persons in exercising these rights. However, seizure and forfeiture benefit the exercise of these rights by deterring and preventing alcohol-related harm that impacts on these rights.

In order to manage these competing impacts, the Bill limits the period of time for which a vehicle can be seized, and then requires a court to consider whether forfeiture is appropriate in all the circumstances, taking into account a range of factors that encompass consideration of both positive and negative impacts.

CONCLUSION

The provisions in this Bill have been drafted carefully to ensure that they are reasonable, proportionate and necessary to achieve the policy objective of the Bill. This Bill is compatible with human rights as it promotes a reduction in alcohol related harm and, to the extent that it limits human rights, those limitations are reasonable, necessary and proportionate to achieve the overall purpose of harm minimisation.