

2018

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

LIQUOR COMMISSION BILL 2018

SERIAL NO. 41

EXPLANATORY STATEMENT

GENERAL OUTLINE

The purpose of this Act is to establish a Northern Territory Liquor Commission, to set out how members of the Commission are appointed, the powers and responsibilities of the Commission, and how the Commission will operate.

NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short Title

This is a formal clause which provides for the citation of the Act. The Act, when passed, may be cited as the *Liquor Commission Act 2018*.

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. Definitions

This clause defines various words and expressions used in the Act. The key definitions are:

Chairperson which refers to the Chairperson of the Commission appointed under section 8(1) of this Act and includes the Deputy Chairperson while acting in the position of the Chairperson.

Commission which means the Northern Territory Liquor Commission established by this Act in section 5.

Contempt, of the Commission which is further defined by this Act in section 26.

Deputy Chairperson which refers to the Deputy Chairperson of the Commission appointed by this Act in section 8(1).

Deputy which refers to the deputy of a member of the Commission appointed by this Act in section 10.

Director-General decision which refers, for the purposes of Part 4 of this Act, to section 120ZA(2) of the *Liquor Act*.

Member which refers to a member of the Commission appointed by this Act in section 7, and includes the Chairperson and Deputy Chairperson.

Clause 4. Application of Criminal Code

This is a standard clause that provides that Part IIAA of the Criminal Code applies to an offence against the Act. Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof.

Part 2 Northern Territory Liquor Commission

Division 1 Establishment, functions and powers of Commission

Clause 5. Establishment of Commission

This clause establishes a new entity known as the Northern Territory Liquor Commission, which is formed as a body corporate with perpetual succession under a common seal. The Commission is capable of acquiring property and of suing and being sued.

This clause also provides that judicial notice may be taken of documents affixed with the Commission's seal, and the Commission acts as an emanation of the Crown in the right of the Territory.

Clause 6. Powers and functions of Commission

This clause sets out that the functions of the Commission are imposed under this Act or the *Liquor Act*, and that the Commission must do those things necessary or convenient in performing those functions.

The clause specifically identifies the Commission's functions include making decisions on all matters referred to it under the *Liquor Act*.

The clause also confers the Commission with the power to do all those things that are necessary or convenient for, or incidental to, the performance of those functions.

Division 2 Membership of Commission

Clause 7. Membership of Commission

This clause requires the Minister to appoint members to the Commission and publish those appointments in the *Gazette*.

The clause establishes that the Commission will consist of not less than four members whom the Minister considers appropriate to conduct the business of the Commission. The Minister must be satisfied that a person has the requisite knowledge, experience and expertise to be appointed as a member.

The clause specifies certain criteria which would render a person ineligible to be appointed, specifically that the person; holds an office or interest in a club or body corporate which holds a liquor licence or gaming machine licence; has been disqualified from holding a liquor licence, whether in their own name or as a nominated manager, in the previous two years; or has been declared bankrupt or benefited from a law for the relief from bankruptcy or insolvency.

The clause also identifies that at least one of the appointed members must possess qualifications or appropriate knowledge, experience or expertise in health related matters, and be in good standing. This is further specified as meaning that the person has current or previous registration with the Australian Health Practitioner Registration Agency for at least five years, or appropriate clinical experience that the Minister considers equivalent to registration.

Finally, the clause establishes that the Commission's exercise of powers are not affected solely because of the vacancy of any member's office.

Clause 8. Chairperson and Deputy Chairperson

This clause requires the Minister to appoint one of the members to be the Chairperson of the Commission and another member to be the Deputy Chairperson.

Both the Chairperson and Deputy Chairperson must be a lawyer, admitted to the legal profession for at least five years, and who is of good standing.

The clause also specifies that the Deputy Chairperson acts in place of the Chairperson if there is a vacancy in the Chairperson's office or if the

Chairperson is absent from duty or from the Territory, or is unable to perform the powers or functions of the Chairperson.

Clause 9. Chairperson administers affairs of Commission etc.

This clause specifies that the Chairperson administers the affairs of the Commission and must perform the functions of the Chairperson that are conferred by this or another Act.

The clause also provides that the Chairperson has the power to do all those things necessary or convenient in administering the affairs of the Commission and performing the Chairperson's functions.

Clause 10. Deputy members

This clause allows the Minister to appoint a person to be the deputy of a member of the Commission. It also requires that a person who is appointed to be the deputy of a member who is the Chairperson or Deputy Chairperson must also be a lawyer, admitted to the legal profession for at least five years, and of good standing.

A person appointed to be the deputy of the appointed member who possesses qualifications or appropriate knowledge, experience or expertise in health related matters under section 7(5), must also possess qualifications or appropriate knowledge, experience or expertise in health related matters.

The clause specifies that a deputy's appointment has effect while the member holds office and may be reappointed as the deputy of the member or of another member.

The clause provides that the deputy of a member may act in the place of the member if the member is absent from a meeting or other

proceeding of the Commission. When a deputy attends a meeting in the place of a member, the deputy is to be considered a member under the *Assembly Members and Statutory Offices (Remuneration and Other Entitlements) Act* and for the purposes of exercising the powers and performing the functions of the Commission.

A reference in this Act or the *Liquor Act* to a member of the Commission includes the deputy of a member while acting in the place of the member. The validity of a decision made by the Commission or acts done by a person acting as a deputy of a member may not be questioned in any proceeding on a ground arising from the fact that the occasion for the deputy to act in the place of a member had, or had not ceased.

A note to this clause also specifies that a deputy appointed to stand for the Chairperson does not act as the Chairperson while that person is absent. Rather, the deputy of the member who is also the Chairperson stands in for that member and the person appointed as the Deputy Chairperson acts in the stead of the Chairperson.

Clause 11. Term of office

This clause provides that a member holds their office for the period that is specified in the instrument of appointment, but that period is not to exceed five years, and is eligible for reappointment.

A member whose term expires continues to act in the office until a successor is appointed, unless the member is removed from office or vacates their office before that expiration.

Clause 12. Leave of absence

This clause allows the Minister to grant a leave of absence to a member.

Clause 13. Resignation of member

This clause permits a member to resign from the office by written notice to the Minister.

Clause 14. Termination of appointment of member

This clause enables the Minister to terminate the appointment of a member on the grounds of inability to perform their functions as a member, misbehavior, physical or mental incapacity or failure to disclose an interest as set out in section 21.

The clause requires the Minister to terminate the appointment of a member if the member is absent for three consecutive meetings of the Commission, except where leave has been authorised by the Minister.

The clause also requires the Minister to terminate an appointment if the member; becomes bankrupt; benefits from a law for the relief from bankruptcy or insolvency; or compounds with creditors or the member assigns their remuneration for their benefit.

Clause 15. Validity of acts

This clause provides that decisions of the Commission are not invalidated because a vacancy to a membership of the Commission exists or because of a defect in the appointment of a member.

Division 3 Proceedings of Commission**Clause 16. Convening of Commission**

This clause requires the Commission to be convened as often as is necessary for the exercise of its powers and the performance of its functions under this Act. This clause also requires the Commission to convene public hearings when making decisions under the *Liquor Act*.

The Chairperson must also make arrangements to enable the Commission to convene.

Clause 17. Constitution of Commission

This clause sets out that the required composition of the Commission when dealing with a matter is; the Chairperson or Deputy Chairperson; at least two other members, as selected by the Chairperson; and at least one of the other members must have health expertise as set out in section 7(5).

Clause 18. Sittings of Commission

This clause permits the Commission to deal with more than one matter at a time by convening with three or more members to deal with a matter and convening with three or more other members to deal with another matter.

Clause 19. Quorum

This clause specifies that the Commission, when convened with three members, constitutes a quorum.

Clause 20. Procedure of Commission

This clause establishes that questions before the Commission are determined by a majority of those members present. In the event of an

equal number of members deciding for and against the question, the presiding member may determine the question.

This clause also requires the Commission to keep records of proceedings, and that the procedures of the Commission are as the Commission determines, subject to any requirements under the *Liquor Act* in dealing with a matter under that Act.

Clause 21. Disclosure of interest

This clause requires that a member who has a direct or indirect pecuniary interest in a matter that is before the Commission or will be before the Commission must, as soon possible after the fact comes to the attention of the member, disclose the nature of that interest to the Chairperson,
or if that member is the Chairperson, to the Minister.

This clause also requires that the member making the disclosure must not take part in any deliberation or decision of the Commission related to the matter that occurs after making the disclosure and cannot be considered for the purposes of the Commission constituting a quorum while deliberating or making a decision about the matter.

The Commission must also produce and publish guidelines about the types of interests which a member must disclose.

Part 3 Matters relating to hearings by Commission

Clause 22. Power to require person to give evidence or produce evidentiary material

This clause gives power to the Commission to obtain evidence, either on application by a party or on its own initiative, by issuing summons to appear or produce evidentiary material.

Clause 23. Person fails to comply with summons

This is an offence provision related to the operation of the Commission. Under subsection 23(1) a person commits an offence if, when issued with a summons to appear as a witness, the person intentionally fails to appear or report from day-to-day unless excused. The maximum penalty is 100 penalty units or imprisonment for six months.

Under subsection 23(2) it is an offence if a person, issued with a summons to produce evidentiary material intentionally fails to comply. The maximum penalty for this offence is 100 penalty units or imprisonment for six months.

Subsection 23(3) provides that strict liability applies to the service of a summons to appear under section 23(1)(a) or a summons to produce material under section 23(2)(a). There is a reasonable excuse defence for both offences.

Clause 24. Documents produced at hearing

This clause establishes how the Commission may deal with documents or other evidentiary material. The Commission may inspect, and make and retain copies of the documents or other material. If the Commission does so, the Commission must return the original documents as soon as practicable after completion of the hearing.

Clause 25. Contempt

This is an offence provision which deals with contempt before proceedings of the Commission. A person who intentionally engages in conduct which constitutes contempt of the Commission without a reasonable excuse is liable to a maximum penalty of 100 penalty units or imprisonment for six months.

Clause 26. Conduct constituting contempt of the Commission

This clause defines the conduct that constitutes contempt for the purposes of the offence in section 25. Subsection 26(1) specifies that a person commits contempt of the Commission if the person appears before the Commission as a witness and fails to take an oath, answer a question or produce a document or thing.

Subsection 26(2) specifies that a person commits contempt of the Commission if the person fails to comply with an order of the Commission to do or not do something, unless another law of the Territory provides a penalty for non-compliance or enforcement of the order.

Subsection 26(4) specifies that a person commits contempt of the Commission if the person fails to comply with an undertaking given to the Commission.

Subsection 26(5) specifies that a person commits contempt of the Commission if the person; insults, threatens, intimidates or obstructs a member of the Commission; interrupts, hinders or obstructs a proceeding of the Commission; takes part in a disturbance at or near the place where the Commission is sitting; or engages in other conduct that would constitute contempt of the Commission under a law of the Territory.

Clause 27. Person engaging in contempt

This clause empowers the Commission to order a person who commits contempt of the Commission to leave the place where the Commission is sitting and enables the Commission to continue the proceeding in their absence.

Part 4 Review of Director-General decisions

Clause 28. Meaning of affected person

This clause provides for the meaning of ‘affected person’ for the purposes of Part 4 and administrative reviews of a decision of the Director-General.

An ‘affected person’ is; one who is declared to be an affected person in the Act under which the Director-General’s decision was made; a licensee to which a decision concerning disciplinary action relates; an applicant to which a decision concerning an application relates; or a person who has made a submission, complaint or objection during proceeding that resulted in a decision.

An affected person is also a licensee of a premises for which a decision under section 106 of the *Liquor Act* has been made.

Clause 29. Application for review

This clause permits an affected person to apply to the Commission for a review of the decision of the Director-General within 28 days after written notice of the decision is given. The Commission may allow an additional period of time in which to make the application.

An application for review must be in the approved form, stating the grounds and the facts to be relied on, and a prescribed fee must be paid.

Clause 30. Effect of application on Director-General decision

This clause provides that application does not stay the Director-General’s decision, however the Commission may stay the decision pending a decision on review.

Clause 31. Commission to consider application

This clause provides that the Commission must, on receipt of an application, review the Director-General's decision. The Commission may reject the application without reviewing it if the Commission considers the application to be frivolous or vexatious.

Clause 32. Conducting and deciding review

This clause provides that the Commission must take into account any matter which the Director-General would have been required to take into account in the Act under which the decision was made. The Commission must also follow the procedures determined by the Commission, and must comply with the rules of natural justice.

The review decision may affirm the Director-General's decision, vary the decision, or set it aside and substitute a new decision.

Clause 33. Notice of decision on review

This clause provides that the Commission must give written notice of the review of a decision to the applicant and each person with a right to apply for a review or appeal of the decision in the Act under which the decision was made.

The notice must state the Commission's decision, the reasons for making it, and detail any rights to apply for a review or appeal of the Commission's decision.

Clause 34. Inconsistency with another Act

This clause states that the new Part 4 is subject to any inconsistency with another Act.

Part 5 Miscellaneous matters**Division 1 Offences****Clause 35. Unauthorised disclosure of confidential information**

This clause is an offence provision which provides that a person commits an offence if, in the course of performing functions connected with administering this Act, the person obtains information, the information is confidential and the person knows that it is confidential, and the person intentionally engages in conduct which results in the disclosure of that information and is reckless as to that disclosure.

The maximum penalty is 200 penalty units or imprisonment for two years. Strict liability applies to the element of the offence that relates to obtaining the information.

This clause also specifies that the offence does not apply if; the person discloses the information for the purpose of administering this Act; discloses the information with the consent of the person to whom the information relates; discloses the information for legal proceedings arising out of the operation of this Act; or if the information is otherwise publicly available.

A note to this clause also specifies that criminal responsibility will not apply to a disclosure of confidential information if the disclosure is justified or excused by another law in accordance with section 43BE of the Criminal Code.

Clause 36. Misleading information

Subclause 36(1) is an offence provision which provides that a person commits an offence if the person intentionally gives information to the Commission, and the person knows that the information is misleading.

The maximum penalty is 400 penalty units or imprisonment for two years.

Subclause 36(2) also provides that a person commits an offence if the person intentionally gives a document to the Commission, and the person knows that the document contains misleading information.

The maximum penalty is 400 penalty units or imprisonment for two years.

Subclause 36(3) specifies that the subclause 36(2) offence does not apply if, when giving the document, the person draws the Commission's attention to the aspects of the document that are misleading, and provides information to enable the Commission to remedy the misleading information, to the extent that the person is able to do so.

This clause also sets out a definition relating to this clause for the term misleading information which refers to information which is materially misleading or misleading because of a material omission.

Division 2 Administrative matters

Clause 37. Delegation

This clause enables the Commission to delegate its powers and functions under this Act or the *Liquor Act* to; the Chairperson; another member; the Director-General; or an employee. A delegation to the Chairperson or to the Director-General may be further delegated if the Chairperson or Director-General considers it appropriate.

The clause also inserts definitions for this clause for the terms; Director-General, which refers to section 3 of the *Licensing (Director-General) Act*; and employee, which refers to section 3(1) of the *Public Sector Employment and Management Act*.

Clause 38. Annual report

This clause requires the Commission to publish a report to the Minister on its operations for the financial year under each Act that confers powers or imposes functions on the Commission. The Commission must give the report to the Minister within three months after the end of the financial year, and the Minister must in turn lay the report before the Legislative Assembly within six sitting days after receiving it.

Clause 39. Protection from liability

This clause provides that a person is not civilly or criminally liable for acts done or omitted by the person in good faith in the exercise of powers or performance of functions as a member of the Commission.

A person is also not civilly or criminally liable for an act done or omitted by the Commission in the exercise of powers or performance of functions under this Act.

This clause specifies that liability that the Territory or the Commission would have for an act or omission is not affected by this clause.

This clause also sets out a definitions relating to this clause for the terms; exercise, which refers to the exercise of a power including the purported exercise of the power; and performance, which refers to the performance of a function, including the purported performance of a function.

Clause 40. Regulations

This clause allows the Administrator to make regulations.

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 Commission Bill 2018

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 Commission Bill 2018 creates a new entity, the Northern Territory Liquor Commission, and transfers the power to make decisions under the *Liquor Act* from the Director-General of Licensing to the Commission. The Commission is also required to hold public hearings when making decisions under the *Liquor Act*.

Human rights implications

The Liquor Commission Bill 2018 engages rights referred to in the International Convention on Civil and Political Rights (ICCPR). The ICCPR protects the presumption of innocence. Article 14(2) states “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”.

Strict Liability

Some offences in the Bill prescribe strict liability for certain physical elements of the offence. Section 43AN of the Criminal Code states that where strict liability is prescribed for an offence or an element of an offence, there are no fault elements for the offence or the physical

element, and the defence of mistake of fact under section 43AX is available.

Strict liability offences engage the presumption of innocence because a person can be found guilty of an offence without the need to prove fault or 'a guilty mind' for the offence or for an element of the offence.

New section 23(3) states that strict liability applies to the physical elements in 23(1)(a) and (2)(a). Those physical elements are that the person has been served with a summons to appear as a witness at an inquiry by the Commission, or to produce documents or other evidentiary material. Strict liability is used in these circumstances because it can be reasonably expected that the person was aware of the fact that they had been served with the summons. The objective of the offences are to ensure compliance with summonses issued by a Commission. Additionally, subsection 23(4) provides for a reasonable excuse defence to the offences. What is a reasonable excuse will be up to a court to determine in the circumstances of the case.

New section 35(2) states that strict liability applies to the physical element in section 35(1)(a). That physical element applies to obtaining information in the court while performing a function connected with the administration of the Act. Strict liability applies because it would be reasonably expected that the person was aware they obtained the information in the course of performing their duties under the Act. Also the purpose of protecting the confidentiality of information would be thwarted if the person could say they did not actively seek the information out, but it was given to them in the course of their duties under the Act.

The offences in section 23(1) and (2) and in section 35(1) are not wholly strict liability, as strict liability applies to one physical element of each of the offences.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.