

2018

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

Liquor Amendment (Point of Sale Intervention) Bill 2018

SERIAL NO. 47

EXPLANATORY STATEMENT

GENERAL OUTLINE

The purpose of this Bill is to make amendments to the *Liquor Act* to empower police officers and licensed inspectors to make Point of Sale Interventions, and to empower the Commissioner of Police to suspend a liquor licence in certain circumstances.

NOTES ON CLAUSES

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 Amendment (Point of Sale Intervention) 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. Act amended

This is a formal clause which provides that the following amendments are made to the *Liquor Act*.

Clause 4. Section 4 amended

This clause makes amendments to section 4 of the *Liquor Act* (the interpretation section) by inserting new definitions for the terms ‘alcohol-related offence’ to refer, for the purposes of new Part VIII C, to the new section 101ZJ, and ‘Police Force’ to refer to the Police Force of the Northern Territory established by section 5(1) of the *Police Administration Act*.

Clause 5. Sections 48B and 48C inserted

This clause inserts a new section 48B into the *Liquor Act*, which provides a power to the Commissioner of Police to suspend a liquor licence, with that suspension to last no longer than 48 hours.

The Commissioner of Police may suspend a liquor licence in the event that an emergency or natural disaster, riotous conduct, or a breach of the peace or threat to public safety occurs, or is likely to occur, at or near a licensed premises, and the Commissioner of Police considers that it is appropriate to do so.

The Commissioner of Police may also suspend a licence if the licensee, or an employee or their agent, is being investigated for an offence against the *Liquor Act* in relation to the premises specified in the licence, and an investigating police officer reasonably believes that the offending is likely to continue.

The Commissioner of Police must give written notice of the suspension to the licensee, to the Attorney-General and Minister for Justice, to the Chairperson of the Liquor Commission, and to the Director-General of Licensing.

The notice must be given immediately, must include the period of time for which the suspension is to be in effect, and must provide the reasons for the suspension.

The clause also inserts a new section 48C which establishes a requirement for the Commissioner of Police to report annually on the suspensions imposed each year under new section 48B, including the number of those suspensions, the licences that were suspended, and the periods during which those suspensions were in effect.

The report must be given to the Attorney-General and Minister for Justice within three months after the end of each financial year, who must in turn table a copy of that report in the Legislative Assembly within seven sitting days after receiving it.

Clause 6. Part VIIC inserted

This clause inserts a new Part VIIC into the *Liquor Act*, which consists of new sections 101ZJ, 101ZK, 101ZL, 101ZM, 101ZN, 101ZO, 101ZP, and 101ZQ.

New section 101ZJ inserts a new definition, for the purposes of this Part, for the term ‘alcohol-related offence’ to mean an offence against the *Liquor Act* or *Alcohol Harm Reduction Act 2017*.

New section 101ZK provides new powers to a police officer or inspector in relation to a person (the customer) who is intending to purchase, or appears to be purchasing, liquor for consumption away from a licensed premises, and that person is on, or within 20 metres of, the entrance to the licensed premises, or the entrance to the building containing the licensed premises, or a driveway or car park to the licensed premises.

The police officer or inspector may require the customer to provide their name and address, to show approved identification as defined in section 31A(4) of the *Liquor Act* and answer questions to establish that the information in the approved identification is accurate, and whether the customer is intending to provide any of the purchased liquor to another person.

The police officer or inspector may also ask the customer where the customer intends to consume the purchased liquor, including questions to determine whether the customer is prohibited from consuming liquor at that location or whether the customer is prohibited from consuming liquor in general.

If it appears that the customer is intending to provide alcohol to another person, the police officer or inspector may also require the customer to answer questions about the other person to establish whether the other person is prohibited from consuming liquor.

The police officer or inspector may also investigate whether the customer, or any other person to whom the customer intends to supply liquor, is subject to a prohibition under section 31A(2) of the *Liquor Act*, or is subject to bail conditions relating to liquor as defined in the *Bail Act* for the purposes of bail granted under Part 3 of that Act.

If the police officer reasonably suspects that an offence against the *Liquor Act* or the *Alcohol Harm Reduction Act 2017* is likely to occur, the police officer or inspector may seize a container purchased by the customer that the police officer or inspector reasonably believes to contain liquor. The police officer or inspector may also prevent the person from entering or remaining on the licensed premises.

If the police officer or inspector reasonably believes that the approved identification provided by the customer is materially false or fictitious,

the police officer or inspector may also seize the approved identification.

New section 101ZL provides new powers to a police officer or inspector in relation to a licensed premises (the licensee) where the police officer or inspector exercises a power under new section 101ZK in relation to a customer and reasonably suspects that an offence against the *Liquor Act* or *Alcohol Harm Reduction Act 2017* is likely to occur.

The police officer or inspector may direct the licensee or their employee not to sell liquor to the person for the remainder of the day on which the direction is given and the licensee or their employee must take all reasonable steps to comply with that direction.

New section 101ZM provides that a police officer or inspector who seizes a container from the customer under new section 101ZK(5)(a) must destroy the container and its contents as soon as practicable. A police officer or inspector who gives a direction to the licensee or their employee not to sell liquor to a person for the remainder of the day, must give the licensee or their employee the name of the customer, and may give other information necessary to enable the licensee or their employee to identify the customer.

The new section 101ZN creates an offence for failing to comply with a requirement given by a police officer or inspector under new section 101ZK(2) or (3).

The customer commits an offence if a police officer or inspector requires the customer to answer a question, produce approved identification or provide information required under new section 101ZK(2) or (3), and the customer fails to comply with that requirement.

The offence is one of strict liability and attracts a maximum penalty of 50 penalty units.

The offence will not apply if the police officer is not in uniform at the time of issuing the requirement and does not produce police identification if the customer asks to inspect it, or if the inspector does not produce their identity card if the customer asks to inspect it. Finally, the offence will also not apply if, before issuing a requirement to the customer, the police officer or inspector does not issue a warning that failure to comply with the requirement is an offence.

New section 101ZO creates an offence for failing to take all reasonable steps necessary to comply with a direction given by a police officer or inspector under new section 101ZL(2).

The licensee or their employee commits an offence if they receive a direction from a police officer or inspector in accordance with new section 101ZL(2), not to sell liquor to the customer for the remainder of the day, and the licensee or their employee, without reasonable excuse, fails to take all reasonable steps necessary to comply with the direction.

The offence is one of strict liability and attracts a maximum penalty of 50 penalty units or 6 months of imprisonment.

A police officer or inspector may also lodge a complaint, in relation to that offence, under section 68 of the *Liquor Act* against a licensee who commits an offence against new section 101ZO with the Director-General of Licensing.

New section 101ZP specifies that a person may disclose information that is requested or collected under new Part VIIC for the purposes of enforcing that Part, notwithstanding section 9 of the *Information Act* or the operation of any other law of the Northern Territory that prohibits or restricts the disclosure of information.

The new section 101ZQ specifies that the powers conferred by the new Part VIIC are in addition to, and are not limited by, any other powers that the officer or inspector has by virtue of the *Liquor Act* or any other law of the Northern Territory.

Clause 7. Section 106BE inserted

This clause inserts a new section 106BE into the *Liquor Act*, which creates an offence of providing false information to a police officer or inspector.

A person commits the offence if they intentionally give information to a police officer or an inspector, who the person knows is operating in their official capacity, and the information is materially false and the person is reckless as to that fact.

Strict liability applies to the fact the person is a police officer or inspector. The offence attracts a maximum penalty of 50 penalty units or 6 months of imprisonment.

The clause also inserts a new definition for the term 'acting in an official capacity' to mean, for the purposes of this section, a police officer or inspector who is exercising their powers or performing functions, under or in relation to, the administration of the *Liquor Act*.

Clause 8. Repeal of Act

This is a standard clause which provides that the *Liquor Amendment (Point of Sale Intervention) Act 2018* is repealed on the day after it commences. As this is an amending Act, there is no need to retain the Act on the statute book, once all the amendments to other Acts have been effected.

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 Amendment (Point of Sale Intervention) 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 overarching objective of the Bill is to reduce alcohol related harm to the community of the Northern Territory and is consistent with the recommendations made by the Alcohol Polices and Legislation Review Final Report (the Riley Review). The Bill seeks to achieve this in two main ways.

Firstly, the Bill provides an increased power for the Commissioner of Police to suspend Liquor Licences. The Riley Report recommendation 2.7.4 recommended that the *Liquor Act* be amended to empower police with similar authority to that of the Director-General of Licensing to suspend a licence under section 48A of the *Liquor Act*, save that such powers of suspension be limited to a 48 hour period.

Secondly, the Bill provides specific legislation to formalise the existing practice of Police conducting Point of Sale Interventions (POSI) regarding alcohol supply that have been operating in Alice Springs, Katherine and Tennant Creek for a number of years. Those operations were commenced without specific written legislation being implemented, with Police acting under a range of provisions of the *Liquor Act* and the *Police Administration Act*. The Riley Review recommendation 3.6.2 recommended that 'The *Liquor Act* be amended to empower uniformed Licensing Inspectors to undertake the POSI role'.

Human rights implications

This Bill engages applicable rights or freedoms within the *International Covenant on Civil and Political Rights* (ICCPR), as follows.

The right to privacy and attacks on reputation - Article 17 ICCPR.

Article 17 of the ICCPR provides that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation’.

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.

The information required by the police officer or licensing inspector is limited to information that is currently available to the Banned Drinkers Registry, or necessary for detecting potential secondary supply of alcohol into areas where it is restricted or limited or where laws currently restrict those people from consuming alcohol.

Examples of this include supply of alcohol to those on bail conditions, in restricted premises, persons on sentences with alcohol restriction conditions and to others who should not be consuming alcohol, such as children. This information is necessary to safeguard the integrity and effective operation and enforcement of other existing legislative frameworks to limit or prohibit alcohol supply and use, and to reduce alcohol-related harm.

Right to the presumption of innocence – Article 14(2) ICCPR

Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to presumption of innocence is also a fundamental common law principle.

When ‘strict liability’ applies to an offence, the prosecution is only required to prove the physical elements of an offence, and not the fault elements, beyond reasonable doubt in order for the defendant to be found guilty. The defence of honest and reasonable mistake of fact remains available to the defendant (see sections 43AN and 43AX of the Criminal Code).

Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the

person was aware of their duties and obligations. Strict liability offences can be considered a limitation of the presumption of innocence because the defendant can be found guilty without the prosecution being required to prove fault.

Strict liability offences will not necessarily be inconsistent with the presumption of innocence, provided that removal of the presumption of innocence pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective. Whether a strict liability provision impermissibly limits the right to the presumption of innocence will depend on the circumstances of the case and the particular justification for an offence being a strict liability offence.

The following are strict liability offences (as well as fault-based offences):

- A person failing to comply with a requirement issued by a police officer or licensing inspector to answer a question, provide identification or provide information (see new sections 101ZK(2) and (3)).

The offence will also only apply if the police officer is in uniform, the police officer or inspector displays their identification or identity card if asked, and if before issuing a requirement, the police officer or inspector warns the person that failing to comply with a requirement is an offence.

The strict liability provision is punishable by a maximum penalty of 50 penalty units, which is considered within the acceptable range of penalty for a strict liability offence.

- A licensee or a licensee's employee failing to comply with a direction by a police officer or licensing inspector not to sell liquor to a person for the remainder of the day on which the direction is given (see new section 101ZL(2)).

The strict liability offence only applies to the licensee or their employee, who can reasonably be expected to understand the direction of the police officer or inspector, or a person to whom the police officer or inspector has requested information.

The strict liability provision is punishable by a maximum penalty of 50 penalty units or six months imprisonment, which is considered within the acceptable range of penalty for a strict liability offence.

- A person who provides false information to a police officer or licensing inspector (see new section 106BE).

Strict liability will only apply to the fact that the person being provided the information is a police officer or inspector and will not require the prosecution to prove that fact.

The prosecution will still be required to prove other elements of the offence, including that the person intentionally gives information to the police officer or inspector, that the information is false in a material particular and that the person is reckless in relation to that circumstance, and that the person knows that the police officer or inspector is acting in their official capacity.

This offence has been created to reflect the strong public interest in ensuring proper adherence to the requirement for a person to comply with a police officer or inspector or to provide information.

The provision is punishable by a maximum penalty of 50 penalty units or six months imprisonment, which is considered within the acceptable range of penalty for a strict liability offence.

The strict liability offences in the Bill are regulatory in nature and act as a deterrent to behaviour that would compromise the ability of police officers or inspectors to control supply of alcohol to persons who should not be permitted to purchase or consume alcohol, and the ability of police officers or inspectors to obtain accurate information from persons within the vicinity of a licensed premises.

They are compatible with Article 14(2) of the ICCPR, as they pursue a legitimate objective in acting as a deterrent to unauthorised activities that may otherwise represent a risk to public health and safety, and they are reasonable and proportionate in achieving that outcome.

Conclusion

This Bill is compatible with human rights as it 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.