

2018

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**Liquor Legislation Amendment (Licensing) Bill 2018**

**SERIAL NO. 42**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The purpose of this Act is to make consequential amendments to the *Liquor Act*, to support the functions and operation of the NT Liquor Commission established under the *Liquor Commission Act 2018*.

**NOTES ON CLAUSES**

**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 Legislation Amendment (Licensing) Act 2018*.

**Clause 2.           Commencement**

This is a formal clause which provides when the Act will commence. The Act will commence upon commencement of the *Liquor Commission Act 2018*.

**Clause 3.           Act amended**

This is a formal clause which provides that the following clauses amend the *Liquor Act*.

**Clause 4,           Section 4 (Interpretation) amended**

This clause amends the definitions contained in section 4 of the *Liquor Act*. The clause inserts a new definition for: “Commission”; “community impact assessment guidelines”; and “public interest and community impact test”. The clause also amends the existing definition for “decision notice” to include a reference to the *Liquor Commission Act*.

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

This clause amends the public interest test in section 6 of the *Liquor Act*. The clause inserts a new section 6(2)(o) which requires the decision maker to ensure that any sale of additional liquor due to the grant of a licence or the relaxation of restrictive conditions will not increase anti-social behavior.

This clause also inserts a new community impact test in new section 6(3). This requires the decision maker to consider factors relating to impacts on the community in the areas that would be affected by the outcome of the decision to grant or refuse an application or the changing of conditions. The new community impact test requires consideration of: the harm that might be caused due to the excessive or inappropriate consumption of liquor; the cultural, recreational, employment or tourism impacts; the social impact and impact on the amenity of the relevant locality; the density of existing liquor licences within the community area; the volume of alcohol sales within the community area; and any other matter prescribed in regulations.

This clause also inserts new section 6(4) which requires an applicant to comply with any community impact assessment guidelines, and any other requirements specified by the Commission.

**Clause 6. Sections 6A and 6B inserted**

This clause inserts a new requirement for community impact assessment guidelines. The Liquor Commission will be required to publish, by Gazette notice, guidelines for determining whether or not an application under section 6(1) satisfies the public or community interest test.

The community impact assessment guidelines may provide for the types of matters to be considered when assessing community impact by the Commission. The community impact assessment guidelines may also set out requirements for an applicant under section 6(1) to provide documents, material or information to address certain factors with respect to community impact, or provide other information including: the suburb, council area or community area in which the premises is to be located; cultural, recreational, employment or tourism benefits; and how the proposed outlet would benefit the local and broader community. The guidelines may also require the applicant to take certain steps or to carry out consultation.

The proposed benefits to the local and broader community may include ancillary services to the premises, such as accommodation and dining facilities, but the addition of the proposed outlet would not, in and of itself, be considered as a benefit.

The provisions of the guidelines may be general, limited or may vary according to the nature of the application or any other factor specified as determined by the Commission.

The new section 6B places the onus upon the applicant to satisfy the Commission that the application meets the public interest and community impact test.

**Clause 7.           Section 24 amended (Licences)**

This clause amends section 24 of the *Liquor Act* to provide that the Liquor Commission will be the body that issues a licence to the applicant.

However, subsection (2) provides that no new takeaway liquor licence may be issued during the moratorium period of 5 years from the commencement of the *Liquor Legislation Amendment (Licensing) Act 2018*. The moratorium period may be extended by regulation prior to expiration of the moratorium period, but for not more than 12 months at a time.

**Clause 8. Section 26 amended (Application for licence)**

This clause omits subsection 3 from section 26, which deals with the requirement for a public interest test when considering an application for a licence. This is because the public interest test is now in section 6.

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

This clause inserts a note for this section which specifies that the affidavit mentioned in this section is also required for applications under section 32A(1A), section 41(1A), and section 46A(1A).

**Clause 10. Section 27 amended (Notice of application)**

This clause inserts a new section 27(3) to provide that when an application has been made, the Director-General must, as soon as reasonably practicable, inform: the CEO of the Department of Health; the Commissioner of Police; and, if the application relates to premises within the area of a shire council or a regional council, the CEO of that council, of the application.

**Clause 11. Section 28 amended (Assessment of applications)**

This clause requires the Director-General to refer an application, along with the accompanying affidavit and the results of investigations in relation to the application, to the Liquor Commission for decision on the application.

This clause also replaces references to Director-General with Commission in sections 28(2), (3), (3B) and (4).

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

This clause inserts a new subsection (1A) which requires that an affidavit mentioned in section 26A must also be provided with the application under section 32A(1) as if applying for a new licence.

This clause also removes the existing subsection 32A(5) and replaces it with a new subsection to provide that when an application has been made, the Director-General must, as soon as reasonably practicable, inform: the CEO of the Department of Health; the Commissioner of Police; and, if the application relates to premises within the area of a shire council or a regional council, the CEO of that council, of the application.

This clause also inserts a new subsection (6AA) which requires the Director-General to refer an application for variation of conditions of a licence to the Liquor Commission.

The clause also specifies that the Commission must consider the affidavit required by section 32A(1A) and omits other references to the Director-General and replaces them with the Commission.

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

This clause omits references to the Director-General and replaces them with the Commission. This will mean that when the Minister is determining additional conditions of a licence that are urgently needed, the Minister may consult with the Commission in determining those conditions.

**Clause 14. Section 41 amended (Application for transfer)**

This clause inserts a new subsection (1A) which requires that an affidavit mentioned in section 26A must also be provided with the application under section 41(1).

This clause also inserts a new subsection 41(3) to provide that when an application has been made, the Director-General must, as soon as reasonably practicable, inform: the CEO of the Department of Health; the Commissioner of Police; and, if the application relates to premises within the area of a shire council or a regional council, the CEO of that council, of the application.

**Clause 15. Section 42 inserted**

This clause inserts a new section 42, which provides that the Director-General must refer an application for transfer of a licence to the Commission for decision.

**Clause 16. Section 46A amended (Substitution of premises)**

This clause inserts a new subsection (1A) which requires that an affidavit mentioned in section 26A must also be provided with the application under section 46A(1) as if applying for a new licence.

This clause also removes the existing subsection 46A(4) and replaces it with a new subsection to provide that when an application has been made, the Director-General must, as soon as reasonably practicable, inform: the CEO of the Department of Health; the Commissioner of Police; and, if the application relates to premises within the area of a shire council or a regional council, the CEO of that council, of the application.

This clause also inserts a new subsection 46A(5AA) to require the Director-General to refer an application for substitution of premises to the Commission. The Liquor Commission will be the decision maker on whether to approve or refuse an application.

The clause also specifies that the Commission must consider the affidavit required by section 46A(1A) and omits other references to the Director-General and replaces them with the Commission.

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

This clause makes minor amendments to clarify that a person, organisation or group may object to an application under section 26(1) for the grant of a licence, and under section 46A for the substitution of premises.

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

The clause also amends the existing section to include a reference to the *Liquor Commission Act*.

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

This clause inserts a new subsection 1A to provide that the Director-General must refer an application to suspend a licence to the Commission for the Commission to decide.

The clause also omits other references to the Director-General and replaces them with the Commission, which will be the decision maker to suspend a licence if a drug premises order is made.

**Clause 20. Part V inserted**

This clause inserts a new Part V into the *Liquor Act*, which sets out matters to be determined by the Liquor Commission.

Division 1 of the new Part sets out preliminary matters.

New section 50 provides a list of matters the Director-General must refer to the Commission. These include: the application for the grant of a licence under section 26; an application for variation of the conditions of a licence; an application under section 46A for substitution of other premises for the premises specified in the licence; applications under section 119 seeking approval to make material alterations to licensed premises; and a complaint against a licensee where the Director-General considers disciplinary action should be taken.

New section 51 provides a list of persons, organisations and groups that will have standing to appear before a hearing of the Commission. These include the applicant and persons, organisations and groups who have lodged a valid objection in accordance with section 47F. The Commission will also have the power to grant leave to appear to persons, organisations or groups who have not otherwise lodged a valid objection in accordance with section 47F.

New section 52 sets out who has standing to appear before the Commission at the hearing of a complaint. These include: the licensee;

an employee of the licensee; the complainant; and any other person requested by the Commission under section 120ZE to give information or documents to the Commission.

Division 2 of the new Part V sets out provisions for hearings by the Commission.

New section 53 requires the Chairperson of the Commission to fix the time and place for a hearing and give notice of the hearing to the parties. The Commission may require a person appearing before it to give evidence on oath, must give all parties an opportunity to be heard, and is not bound by the rules of evidence. The Commission may also conduct the hearing by use of telephone or online facilities and may adjourn the hearing from time to time to another place.

Subsection (2) requires a hearing to be conducted in public unless the Commission considers that is likely to cause undue hardship to a person, in which case the hearing or part of the hearing may be conducted in private. Parties may also be represented at a hearing by legal practitioner or any other person. If a legal practitioner appears or a witness gives evidence, they have the same protection and immunity as a legal practitioner appearing, or a witness giving evidence, in a proceeding in the Supreme Court

**Clause 21. Section 58 amended (Application for special licence)**

This clause amends section 58, to provide that on application for the grant of a special licence, the Director-General must refer the application to the Commission. The Liquor Commission will be the decision maker on whether to issue or refuse to issue a special licence.

**Clause 22. Section 65 amended (Object of Part)**

This clause amends section 65, which relates to enforcement provisions for licences and special licences.

The clause inserts new subsection (2) to provide that the Director-General is empowered to: accept and investigate a complaint; dismiss a complaint; issue a formal warning or infringement notice; enter into an enforceable undertaking; or refer a matter to the Commission. However the clause makes clear that the power to determine a complaint and take disciplinary action is now a function of the Liquor Commission.

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

This clause amends section 67(3)(l) to provide that, where a licensee holds the licence for the benefit (wholly or partly) of a person to whom the Director-General or the Commission would not have granted the licence, there is a ground for complaint or disciplinary action against the licensee.

**Clause 24. Part VII, Division 2 heading amended**

This clause amends the heading of Part VII, Division 2 to refer to the Commission and Director-General's powers in relation to complaints.

**Clause 25. Section 68 amended (Complaints)**

This clause amends section 68 to make clear the Director-General may dismiss a complaint if no grounds exist for the complaint. It also requires the Director-General to refer a complaint to the Liquor Commission for disciplinary action to be taken against a licensee.

The section also requires, where the Director-General takes action to give a formal warning, issue an infringement, or enter into an enforceable undertaking with the licensee, to provide a report to the Commission. Where the Director-General refers a matter to the Commission, the referral must include any comment given by the licensee and the result of the investigation.

The clause also removes the Director-General's function in providing a decision notice to a licensee after investigating a complaint, but instead requires the Director-General to refer the complaint to the Liquor Commission for disciplinary action to be taken against the licensee.

**Clause 26. Part VII, Division 3 heading amended**

This clause amends the heading in Part VII, Division 3 to remove the reference to "Director-General's" and replaces it with a reference to "Commission's".

**Clause 27. Section 69 amended (Disciplinary action)**

This clause amends section 69 to enable the Director-General, on completing an investigation into a complaint about a licensee, to refer the complaint to the Commission for the Commission to decide whether to take disciplinary action against the licensee. The clause provides that the referral must contain information on the disciplinary action that is recommended and the grounds for that action and also requires the Director-General to give the licensee information about the referral.

The clause also provides that the Commission must conduct a hearing to decide the complaint and may, by notifying the Director-General and the licensee in writing, dismiss or uphold the complaint, and specify disciplinary action, which may be the same or different to that which was recommended by the referral.

The Commission may only take disciplinary action if the Commission has satisfied itself that a ground for the action exists and that the disciplinary action is justified in relation to that ground.

**Clause 28. Section 79 replaced**

This clause removes section 79 of the *Liquor Act* and replaces it with a section requiring the Director-General to provide a report to the Commission about an application or proposal for the Commission to decide whether to make a declaration about a general restricted area.

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

This clause amends section 81 to remove references to the Director-General and replace them with the Commission. The Commission will be the decision maker regarding the declaration of a general restricted area, after having received a report from the Director-General. It also replaces a reference to 'shall' with 'must'.

**Clause 30. Section 82 amended (Notice of declaration)**

This clause amends section 82 to replace references to Director-General with Commission, and replaces the word 'shall' with 'must'.

**Clause 31. Section 86CA inserted**

This clause inserts a new section 86CA that requires the Director-General to refer an application or proposal for an inquiry about a declaration of a public restricted area to the Commission. The Director-General must also provide the Commission with a report on the results of the inquiry, including any submissions. The Commission will be the decision maker regarding the declaration of a public restricted area.

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

This clause amends the reference to Director-General and replaces it with Commission.

The clause also provides that when considering the declaration of a public restricted area, the Commission is required to take into account the views of anyone else the Commission considers to have an interest in the area.

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

This clause amends section 119 to provide that a licensee must not make a material alteration to the licensee's licensed premises without the Commission's approval. The clause also requires the Director-General to refer an application to materially alter a licensed premises to the Commission for decision.

**Clause 34. Section 120ZA replaced**

This clause removes section 120ZA and replaces it with a new section that sets out the meaning of a reviewable decision. The clause provides that a reviewable Commission decision is one that is specified in the Schedule to the *Liquor Act*. The clause defines "Commission decision", "delegate decision" and "Director-General decision" for the purposes of reviewable decisions under the *Liquor Act* and the *Liquor Commission Act 2018*.

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

This clause amends section 120ZB so that a person is an affected person of a reviewable decision if the person was an affected person for a decision that was reviewed under Part 3 of the *Licensing (Director-General) Act* or Part 4 of the *Liquor Commission Act 2018*.

**Clause 36. Section 120ZE amended (Access to information)**

The clause amends the definition for decision maker in section 120ZE to include the Commission.

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

This clause amends subsection 1 of section 123 by inserting 'or the Commission' after 'Director-General' to also require the return of a licence that has been cancelled or suspended by the Commission.

**Clause 38. Section 127 replaced**

This clause removes section 127 and replaces it with a new section to provide that the Commission or the Director-General has the discretion to extend or abridge a time specified in the *Liquor Act* as a time within which an act or thing must be done, or a time before which an act or thing must not be done. The discretion given to the Commission or Director-General to extend time applies despite the time prescribed by the *Liquor Act* having expired.

**Clause 39. Part XXV inserted**

This clause inserts a new Part XXV, to provide for transitional provisions for the *Liquor Legislation Amendment (Licensing) Act 2018*.

New section 168 inserts a new definition of 'commencement' which applies to this Part, to mean the commencement of the *Liquor Legislation Amendment (Licensing) Act 2018*.

New section 169 inserts a new provision to provide for how a pending application, received by the Director-General under section 50(1) of the *Liquor Legislation Amendment (Licensing) Act 2018* prior to commencement, should be treated.

Where the Director-General has held a hearing in relation to the application, the Director-General must determine the application in accordance with the *Liquor Act* as in force before the commencement.

Where the Director-General has not held a hearing in relation to the application, the Director-General must refer the application to the Commission for determination in accordance with the *Liquor Act* as in force after the commencement.

New section 170 inserts a transitional provision to provide for how complaints received by the Director-General prior to the commencement of the *Liquor Legislation Amendment (Licensing) Act 2018* are treated.

Where the Director-General has received a complaint under section 50(e) of the *Liquor Legislation Amendment (Licensing) Act 2018* before its commencement, but at the time of commencement a decision has not been made by the Director-General, the Director-General must refer the complaint to the Commission for determination.

#### **Clause 40. Act further amended**

This is a formal clause that provides that the Schedule of amendments to the *Liquor Act* has effect. The Schedule omits a number of references to 'Director-General' in the *Liquor Act* and replaces it with the term 'Commission'.

### **Part 3 Amendment of Liquor Regulations**

**Clause 41. Regulations amended**

This is a formal clause which provides that the following clauses amend the Liquor Act.

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

This clause amends the Liquor Regulations by repealing Part V, consisting of regulation 14, which deals with the moratorium on new take-away liquor licences. The moratorium is formalised in the new section 24(2), inserted into the *Liquor Act* by this Act.

**Clause 43. Repeal of Act**

This is a standard clause which provides that the *Liquor Legislation Amendment (Licensing) Act 2018* is repealed 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 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 Legislation Amendment (Licensing) 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 Legislation Amendment (Licensing) Bill 2018 makes consequential amendments to the *Liquor Act* to create a new public interest and community impact test for licensing applications, transfers primary decision making powers under the *Liquor Act* from the Director-General to the Liquor Commission, and separates the roles and functions of the Director-General and the Liquor Commission with respect to complaints and serious disciplinary matters. It also formalises a moratorium on the issuing of new takeaway liquor licences for a period of five years, with an ability to further extend the moratorium for 12 month periods via Regulation.

#### **Human rights implications**

The Bill is consistent with human rights and freedoms.

#### **Conclusion**

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

