

2018

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**Liquor Amendment (Minimum Pricing) Bill 2018**

**SERIAL NO. 55**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The Bill amends the *Liquor Act* to provide that it is a condition of holding a liquor licence in the Northern Territory that retail alcohol sales must be above a minimum price per standard drink. This imposes a floor price on alcohol. The Bill also:

- provides for interstate retailers to be able to obtain an interstate retailer licence through a simplified process;
- inserts extra-territoriality provisions into the offences at sections 110 and 115 of the *Liquor Act*, to ensure that the floor price rules apply equally to anyone who is selling to the Territory market;
- raises the penalty of selling liquor in a manner unauthorised by licence in order to better reflect the seriousness of alcohol-related harm and the damage done to the community when liquor is not sold in compliance with the regulatory framework;
- provides inspectors and Police with additional powers particularly suitable for dealing with sales below the floor price, including by interstate online retailers, which would otherwise be difficult to detect and prove;
- inserts two new offences of offering and selling alcohol below the minimum sale price; and
- provides for the Liquor Regulations to specify data which must be submitted by licensees to enable monitoring of the floor price.

**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 (Minimum Pricing) Act 2018*.

## **Clause 2. Commencement**

This is a formal clause, which provides that the Bill will commence on a day fixed by the Administrator by notice in the *Gazette*.

## **Clause 3. Act amended**

This is a formal clause that provides that the Bill amends the *Liquor Act*.

## **Clause 4. Section 3 amended (Objects)**

This clause amends the objects of the *Liquor Act* to make clear that it has extraterritorial application where liquor products are being sold to persons in the Territory or delivered to the Territory. This is to ensure there is no doubt that interstate-based retailers are covered by the legislation in these circumstances, irrespective of where 'sales' may take place contractually.

## **Clause 5. Section 4 amended (Interpretation)**

This clause inserts the following new definitions into the *Liquor Act*:

- *interstate retailer* is a term defined by new section 30A(1), which is inserted by clause 8 of the Bill, and is used to define who is eligible for an interstate retailer licence;
- *interstate retailer licence* is a new transitional licencing measure that is defined by the new section 30A(2), which is inserted by clause 5 of the Bill;
- *liquor product* means a particular brand or type of liquor. The term 'liquor' is already defined by the *Liquor Act* to mean 'a beverage that contains more than 1.15% by volume of ethyl alcohol'. Different liquor products will have different quantities of alcohol and so will legally be able to retail for different minimum prices under the minimum pricing provisions. For example '750ml bottle of ABCD Manufacturer Shiraz 2017' is a different product from '2L cask of ABCD Manufacturer Shiraz 2016';
- *liquor sale* means a transaction involving the sale of one or more liquor products, whether or not other products are included as part of the transaction. This means that products can be bundled together as a single 'liquor sale';
- *liquor sale offer* means an offer to sell liquor aimed at particular individuals, to a group, or to the world at large;
- *minimum sale price* means the minimum price at which a liquor product can be sold and is defined in more detail by new section 118E;
- *product label* refers to the typical labels required on liquor products which specify the percentage and quantity of alcohol and the number of standard drinks. To simplify compliance with and enforcement of the floor price, retailers and enforcement authorities will be able to rely on such labels in order to determine the permitted price for a liquor product;

- *sale price* means the amount actually paid for all products in a 'liquor sale', including non-liquor products. The sale price takes into account discounts and refunds connected to the sale. In other words, the total amount paid for goods must comply with the floor price provisions even after discounts and refunds are taken into account. The sale price is further defined by new section 118F, which is inserted by clause 12 of the Bill;
- *standard drink* means the volume of a particular liquor product that contains a certain quantity of pure ethyl alcohol, and is further defined by new section 118B; and
- *wholesale sale* means the sale of liquor to a licensee for resale to a retail purchaser. The minimum unit price provisions are intended only to apply to 'end of chain' sales to consumers, not to wholesalers and distributors who supply alcohol to licensees, so this term is used to distinguish between these two kinds of sales.

#### **Clause 6.                    Section 19B inserted**

This clause inserts new section 19B, which gives liquor inspectors additional powers suited to addressing compliance with the floor price, in particular compliance in relation to online sales. The new section authorises liquor inspectors to attempt to purchase, and to actually purchase, alcohol contrary to the floor price or where the vendor does not have a licence, in order to obtain evidence that such offers and sales are in fact occurring. Without this authorisation, the inspector would be committing an offence.

When using this power, the inspector need not identify themselves as an inspector, however the inspector must not do anything to encourage the sale. For example, it would be permissible for an inspector to fill an online shopping cart with products below the floor price, fill out postage details to an address in the Territory, and to pay for the products. However, if the inspector was told by the website that the sale could not take place at the quoted price because the liquor was for delivery to the Territory, it would not be permissible to contact the company to complain about this and to demand delivery.

The authority extends to all stage of the sale, including payment and delivery, because otherwise, depending on the evidence, it may not be clear whether the retailer has a procedure in place that would have stopped the sale at a later stage of the delivery process.

The evidence gathered using these powers can be used by the Director-General and the Liquor Commission to take action against a licensee. These include powers to issue a monetary penalty, to vary conditions or licence, and to suspend or cancel a licence. Because the way in which the evidence is gathered involves causing an offence to be committed, it is problematic to lead this evidence in criminal proceedings, so the evidence cannot be lead in a criminal matter. However, the evidence can be used as intelligence to gather further evidence which is admissible in a criminal proceeding.

Police also have additional powers to gather evidence which is admissible in a criminal proceeding, as discussed in relation to clause 11.

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

This clause amends section 24. Section 24 provides there is a moratorium on take-away liquor licences. The amendment clarifies that interstate retailer licences are not take-away licences to which the moratorium applies. Interstate retailer licences do not permit a retailer to operate premises in the Territory. They also are not approvals of new sources of liquor, but rather the mechanism by which businesses that already sell liquor into the Territory are now to be obliged to comply with the floor price.

**Clause 8. Part III, Division 1A inserted**

This clause inserts new sections 30A and 30B, which set out a simplified process by which an interstate retailer that has been assessed and granted a licence by an interstate regulator can obtain a Territory licence, which is to be called an *interstate retailer licence*.

To ensure that local businesses that are required to comply with the floor price cannot be undercut by interstate retailers, it is necessary to ensure that all liquor sold or sold into the Territory must be sold subject to the floor price rules. This requires bringing interstate retailers who sell into the Territory under the legislative scheme. To achieve this objective, clause 11 amends section 115 of the *Liquor Act* to extend its operation to interstate retailers who sell alcohol in the Territory without a Territory licence. This in turn makes it necessary for interstate retailers to obtain Territory licences. While this can be done under existing provisions, the current process is long and technical.

To avoid unnecessary disruption to business, new sections 30A and 30B provide a simplified and expedited process by which interstate retailers can obtain a Territory licence. This is justifiable because it can be assumed that interstate retailers as defined have had to comply with a rigorous interstate application process, and so it would generally be appropriate for a licence on similar terms to be the starting point.

To obtain the licence, the licensee merely needs to advise the Liquor Commission that the licensee wishes to sell in the Territory, and provide the Liquor Commission with a copy of (one of) the licensee's interstate-issued authorisations to sell retail liquor. The licence fees that usually attach to an application for a licence under section 26 do not apply to an application for an interstate retailer licence, because this is a one-off fast-tracked application for limited purposes.

By virtue of new section 30B, the licensee immediately has an interim equivalent licence in the Territory. The Liquor Commission is also obliged to formally issue an interstate retailer licence in the same terms. Both the interim licence and the licence granted by the Liquor Commission require the licensee to comply with the floor price conditions.

It is intended that clause 8 will commence prior to the other provisions to enable retailers to ensure that they have a licence in place prior to the new offence provision becoming operational.

This *interstate retailer licence* authorises the licensee to sell liquor in the Territory. It does not authorise the licensee to operate licensed premises in the Territory unless the licence terms and conditions have been varied under the *Liquor Act*. It is

anticipated that this licence will be used particularly by online vendors who make retail sales direct to consumers in the Territory.

Once an *interstate retailer licence* has been issued, it is a Territory licence granted under the *Liquor Act* that exists independently of the interstate licence upon which it was modelled. The usual processes under the *Liquor Act* apply in relation to the licence, for example in relation to its modification or in relation to complaints, and the licensee can be subject to enforcement activities to ensure compliance.

The new section 30C clarifies that such interstate retailers do not have to comply with the banned drinkers register requirements unless this is explicitly made a condition of their licence. Again, this is a provision to enable interstate retailers to easily transition into the licensing scheme through which the minimum pricing requirements are enforced. Currently, many interstate-based retailers already comply voluntarily with the banned drinkers register. The new section 30C maintains the status quo.

It should be noted that a project is currently underway to more completely re-write the *Liquor Act*, and it is more appropriate to consider the application of the banned drinkers register to interstate retailers in that extended review. The present Bill is focused on implementing the floor price.

**Clause 9.                    Section 32 inserted**

This clause inserts new section 32 which makes adhering to the floor price provisions a condition of all liquor licences in the Territory. These provisions are set out in the new Part IXA 'Minimum pricing obligations' which the Bill inserts into the *Liquor Act*.

**Clause 10.                Section 110 amended (Licensee must not contravene licence conditions)**

This clause amends section 110, which is the offence of breaching the conditions of a liquor licence. The amendment gives this offence extra-territorial application where the breach involves selling liquor to a person in the Territory, or where the liquor is to be delivered to a location within the Territory.

**Clause 11.                Sections 115 and 116 replaced**

This clause amends sections 115 and 116. Section 115 is the offence of selling liquor where the sale is not authorised by licence. No Territory licences will authorise a sale of liquor below the floor price. The amendment gives this offence extra-territorial application where the breach involves selling liquor to a person in the Territory, or where the liquor is to be delivered to a location within the Territory.

The penalty for this offence has been raised from 250 penalty units and 12 months, to 300 penalty units and 3 years. The rise in penalty reflects the serious and harmful impact alcohol is now well-documented to have in the Territory, and how critical it is that action can be taken to regulate the availability of alcohol to problem drinkers. It is appropriate for the penalty to be higher than the penalty for other offences such as breaches of conditions of licence, which are intended to apply to a broader range of conditions, many of which are quite subjective. It is also appropriate for the penalty to be higher than for the new strict liability offences which will be inserted as new sections 118L and 118M, because these offences

have a strict liability component, whereas section 115 is for flagrant, intentional selling below the floor price, and the selling of black market alcohol without any licence at all.

The new penalty recognises that in order to effectively implement measures to reduce alcohol-related harm, black market alcohol is an issue that must be addressed. One of the potential consequences of a rise in the price of legal alcohol is that some persons may turn to purchasing illegal alcohol, and some may try to profit illegally by becoming distributors. The new penalty is intended to deter this behaviour.

It should be noted that further, more comprehensive consideration of all the penalties in the *Liquor Act* will occur as part of the broader project of re-writing the *Liquor Act*.

It is also a consequence of raising the penalty to three years that Police have a wider range of investigatory tools available to obtain evidence for prosecution. The seriousness of the offence is a factor in obtaining warrants under the *Surveillance Devices Act*, and it enables Police to conduct covert 'controlled operations' under the *Police (Special Investigative and Other Powers) Act*, where a Police officer is authorised to participate in a criminal offence (for example, purchasing liquor from a person who is unlicensed) in order to obtain evidence. While it is not expected that Police would use these powers routinely, such powers could potentially be used in relation to an issue of serious, large-scale unauthorised selling of alcohol.

These powers have cross-border validity and so can be used to investigate offences that occur across multiple Australian states and territories. The pieces of legislation that provide these powers have their own safeguards to ensure the powers are used appropriately, and so the evidence gathered under these sections can be used in criminal prosecutions.

Section 116 is the offence of purchasing liquor without a licence or from a person who is not authorised to retail liquor. Currently, this offence permits purchasing from an interstate retailer, whether or not that retailer has a Territory licence. This will no longer be permitted. This change is part of consistently requiring persons who sell liquor in or into the Territory to obtain licences. It should be noted that liquor inspectors are authorised by law to engage in this behaviour when exercising powers under section 19A. To ensure there is no doubt of this, subsection (2) explicitly provides this is the case.

Police will need to take care to identify whether they are exercising their police powers or licensing inspector powers in order to ensure evidence is admissible in criminal proceedings.

## **Clause 12. Part IXA inserted**

This clause inserts new Part IXA 'Minimum pricing obligations' into the *Liquor Act*. Part IXA contains a number of provisions that specify how the floor price operates in different situations, how it is calculated, and creates offences for selling alcohol below the floor price. Part IXA contains the following new provisions:

### Section 118A 'Application of Part':

This section clarifies two circumstances in which the floor price does not apply:

- It does not apply to sales by wholesalers to licensees. For this purpose, a wholesale sale is any sale to a licensee, as defined by the new definition of 'wholesale sale' inserted into section 4 by clause 5.
- It does not apply to duty-free liquor, such as the alcohol that can be purchased in limited quantities by passengers travelling internationally. Duty-free liquor is only able to be purchased in limited quantities in special circumstances that includes significant associated costs (eg. the cost of a plane ticket).

#### Section 118B 'Meaning of *standard drink*'

The concept of a 'standard drink' is key to calculating the minimum price at which a particular liquor product can be sold, because the minimum price depends on the number of standard drinks in the product. The definition of a standard drink in this clause is consistent with the definition used in the Code made under the *Food Standards Australia New Zealand Act 1991* (Cth), and so is consistent with current labelling practices of standard drinks in beverages by the liquor industry.

While most liquor beverages in Australia are currently labelled and required to be labelled by law, this section ensures that there is a method for calculating the standard drinks for any beverages that do not have standard drink labels.

#### Section 118C 'Number of standard drinks in liquor sale or liquor sale offer'

The purpose of the section is to allow the number of standard drinks in a beverage to be calculated by reference to the label on the beverage. It will not be necessary for retailers or enforcers to verify the precise quantity of pure ethyl alcohol in the beverage by forensic testing or similar.

Subsection (2) allows the number of standard drinks in one product to be determined by reference to the product label of a sufficiently similar liquor product. It is not necessary to refer to the particular bottle which was sold to determine the number of standard drinks. It is acceptable to refer to another bottle of the same liquor product, meaning the volume, brand, line, and potentially vintage (where the number of standard drinks varies between vintages) in order to determine the number of standard drinks that were in the liquor sale in question.

Subsection (3) recognises that the formula in section 118B sometimes leads to small discrepancies (for example, due to rounding) with the number of standard drinks on the label. So long as the liquor is sold at or above the price calculated based on the lower figure, the sale will be permissible.

#### Section 118D 'Mixed sales'

This section clarifies how to calculate the floor price for a liquor sale that includes multiple liquor and non-liquor products. These multiple products could include mixed drinks which contain a combination of alcohols at different percentages and some non-alcoholic components, or it could be a transaction for a sale that, for example, includes bottles of liquor and groceries.

The floor price provisions have been constructed in recognition that bundling products together is a common practice, and often occurs in circumstances where it would be cumbersome or artificial to process the liquor and non-liquor components in separate transactions.

The example in this section is given of how to calculate the price of a common mixed drink that might be prepared and served on premises that involves multiple types of alcohol. The calculation shows that this common mixed drink would contain about 1.73 standard drinks. At a floor price of \$1.30, the minimum sale price for the mixed drink would be \$2.25. Industry practice in the Territory is that pricing of such mixed drinks is already well above \$2.25, particularly when sold for on-premise consumption. While the floor price applies to all licensees, it will in practice have little or no effect on those retailers who already do not sell excessively cheap alcohol. It should therefore be noted that while the example is provided to illuminate how the floor price is calculated in mixed drink scenarios, it is anticipated that there will in practice be unlikely to require any changes to bartending practices or precision in order to sell mixed drinks in a floor-price compliant manner.

### Section 118E 'Minimum pricing'

This section sets the minimum price at which liquor can be sold in the Territory. The minimum price for a given product is \$1.30 per standard drink.

The section also specifies that the floor price is subject to modification by the Minister, and is subject to indexation. The method and timing of indexation will be prescribed by Regulations, and will occur after 1 July 2019.

Subsections (4) and (5) require the Minister to review the floor price every three years, and for this review to consider the following objectives:

- the objective of reduction of harmful consumption of liquor;
- the objective that the minimum pricing regime should result in minimal impact on moderate consumers.

These objectives are consistent with the objectives for determining a floor price identified in the Final Report of the Alcohol Policies and Legislation Review (October 2017). 'Harmful consumption' is a broad term that is intended to encompass many kinds of direct and indirect harm that flow to individuals and the Territory community as a result of liquor consumption.

### Section 118F 'Meaning of *sale price*'

This section defined the term 'sale price', which is the price paid for any transaction involving liquor. It is this price which is evaluated for compliance with the minimum pricing rules.

The 'sale price' means the price paid for the entire bundle of products in the transaction, taking into account discounts and refunds. If discounts and refunds result in liquor being sold for less than the floor price, that is not permissible. Even if the discount or refund is not applied at the time of sale, it is caught by the rule so long as it is reasonably connected to the sale.

Subsection (3) clarifies that freight charges paid by the customer to the licensee can be taken into account. If the customer pays for 2 x \$5 bottles of wine but then pays the licensee an additional \$13 to have these freighted to a collection point, the total sale price is \$23.

### Section 118G 'Promotions'

This section is intended to prevent licensees from effectively undermining the floor price by selling non-liquor products in bundles with liquor products, and discounting the non-liquor products to effectively sell cheap liquor. The section prohibits offering additional discounts on non-liquor products in a liquor sale, if the same discount is not available when purchasing equivalent value non-liquor product. It is a condition of licence to comply with this rule.

Section (3) provides an exception for specific kinds of promotions, and is intended to permit giveaways and discount branded merchandise that is exclusively available with a particular liquor product.

### Section 118H 'Power of Commission in relation to sale price manipulation'

This section gives the Liquor Commission the power to take action to prevent licensees from attempting to exploit bundling or promotions in a manner that undermines the floor price. When liquor products are sold in transactions separate from non-liquor product, it is simple to see whether goods are being sold at or below the floor price. However, some retailers sell liquor as part of a business that offers consumers the ability to purchase various attractive non-liquor products in the same transaction as their liquor products. This can lead to a total sale price which is above the minimum sale price, even if the liquor products were individually priced below the minimum price they would incur if sold separately.

This practice is to some extent deterred by the new offence at section 118L, which makes it an offence to offer products below the floor price. So if a bottle of wine with a minimum sale price of \$10 is advertised for \$5, the advertisement is itself an offence, irrespective of whether any sale takes place. However, it is possible to offer a bottle of wine for sale for \$5 if that the offer also states that \$5 or more worth of non-liquor products must be purchased in the same transaction. The offered sale price is then at the minimum sale price.

In many circumstances, this will maintain the deterrent effect of the floor price, because the customer still has to pay \$10 to obtain the liquor. This is certainly true if the offer is something like 'a glass of wine with your meal for \$10', as this is not a method by which a problem drinker can effectively consume large amounts of alcohol for only a few dollars. However, if the licensee offers 'up to 10 bottles of wine at \$5 provided a consumer purchases at least \$50 worth of groceries' this would allow a heavy drinker to simply purchase large amounts of alcohol below the floor price with groceries that were going to be purchased anyway. This is a technical loophole in the floor price rule, which cannot be removed without imposing onerous restrictions on licensees as to how they process and price transactions.

To deter licensees from using this loophole to promote the consumption of cheap liquor in a way that effectively undermines the floor price, the Liquor Commission is empowered by the new section 118H to impose stricter conditions just on individual licensees who attempt to exploit the loophole. Such conditions, could include restricting the promotions that the business can run, setting minimum prices at which products may be sold, and requiring the licensee to keep additional records. Such restrictions would not be desirable from the perspective of the business, and so it is anticipated that the fact the Liquor Commission has this power will deter inappropriate pricing manipulation.

Giving the Liquor Commission this power also means that the floor price can be implemented in a manner that is not as rigid as it might otherwise be, in which businesses can still process bundled sales and sell bundled products. Permitting bundling recognises that in practical terms, it may be difficult to precisely identify the sale price of liquor items in a bundle if they are not clearly, separately priced. It also recognises that the mere rule of processing items in separate transactions would not prevent a determined licensee from nominally assigning \$10 to a bottle of wine, and giving that same customer a \$5 discount to the packet of cigarettes purchased the next day. The kind of stringent conditions that would be required to make this behaviour a clear breach of licence would be unduly onerous to apply to all licensees, most of whom can be expected not to engage in such price manipulation.

Subsection (3) gives the Liquor Commission broad powers to impose additional conditions on the licensee in response to the sale price manipulation issues identified, and makes clear that a range of even quite specific and interventionist conditions are permissible. The list is a non-exhaustive list, and does not limit the Licensing Commissioner's powers to impose conditions that are logically connected to dealing with conduct identified in subsection (1).

Subsection (4) represents an additional condition that can be imposed on a licensee to restrict a method of manipulating the sale price below the floor price, namely to specify the minimum price of an item that can be provided or purchased as part of a promotion.

Subsection (5) makes it clear that the powers in this section should not be used to 'read down' the powers of the Liquor Commission to impose licence conditions generally that may be found in the *Liquor Act* or other legislation. The present Bill is an interim initiative while the entire *Liquor Act* is in the process of being re-developed in order to address the recommendations of the Alcohol Policies and Legislation Review. As such, section 118H ensures the Liquor Commission has sufficient powers for the purpose of dealing with floor price issues, irrespective of their general powers or future changes that may be made to those general powers.

#### Section 118J 'When liquor product not precisely identified'

This section deals with ambiguous liquor sale offers. Evaluating whether a liquor sale offer breaches the floor price turns on identifying the number of standard drinks in the offer, which may vary depending on the precise brand, line and vintage of a product, and the volume purchased. This section places the onus on retailers to avoid offers that could be read as an offer to purchase below the floor price.

For the purpose of evaluating whether a breach of licence has occurred and consequences to the licensee's licence, the Liquor Commission may interpret offers where the product so poorly identified that it could be for one or more products with differing alcohol content as an offer of the product with the higher alcohol content. However, in keeping with principles of human rights, this rule does not extend to criminal proceedings. Subsection (3) means that subsection (2) does not apply in criminal proceedings. This means that a licensee is only criminally liable if the offer allows the court to be satisfied beyond reasonable doubt that the offer contravened the minimum pricing rules.

#### Section 118K 'Licensee to keep data'

This section requires licensees to keep data prescribed by regulation in relation to liquor sales. Currently section 111 of the *Liquor Act* requires licensees to keep data relating to the volume of wholesale purchases, but not in relation to sales to consumers or pricing. The wholesale data is the total volume of categories of liquor (eg. light beer, heavy beer etc) by quarter. The wholesale dataset has many uses, but it has a number of limitations:

- there is a time-lag between when liquor is purchased by a retailer and when it is consumed by the community;
- the wholesale purchase data does not necessarily represent where the liquor will retail, as the licensee may purchase in one location and send liquor to be retailed in another community;
- the wholesale data tells us little about the price at which liquor does retail, the areas and products are being affected by the floor price; and
- the wholesale data is so aggregated that it has limited value in terms of timely detection and prevention of particularly problematic alcohol consumption, or evaluating the impact of alcohol harm reduction measures.

It is in the public interest to obtain data that allows both for accurate analysis of the floor price on pricing of liquor and consumption of liquor, and for data analytics work that help to identify where alcohol harm reduction initiatives are most needed and which approaches are most effective.

However, it is recognised that new data collection requirements impose administrative burdens on industry. In order to minimise this burden, the government will be liaising directly with industry to understand the capabilities and limitations of their existing data collection systems, and to devise a scheme for data collection that is not unduly onerous and that achieves the public interest objectives. It will also ensure that data is provided to government in a form suitable for relevant analysis. The data collection regulations will be developed and prescribed after a consultation process and on the basis of expert advice.

The new section 32 inserted by clause 9 of the Bill makes it a condition of licence at section 32(3) that the licensee must provide this data to the Director-General as prescribed by regulation.

#### Section 118L 'Offering liquor below minimum sale price'

This is a new offence provision which makes offering to sell liquor at a price below the minimum unit price an offence that can be prosecuted. Consistent with the maximum penalty for the existing offence of breaching a condition of licence, the penalty for this offence is 100 penalty units. The offence puts the onus on retailers to ensure they comply with the floor price requirements by making compliance a matter of partial strict liability. The sale must take place intentionally, but failing to consider whether the price at which the product is sold is below the floor price is not a defence. Retailers are best placed to assess and ensure they are offering liquor for compliant sale prices.

This offence is similar to the offence inserted by section 118M but it concerns an offer of sale, irrespective of whether a sale takes place. The intention of this

offence is to prohibit promotional activities which purport to offer alcohol for sale below the floor price.

It should be noted that all the offences in the *Liquor Act* are to be interpreted in accordance with Part IIAA of the Criminal Code. Relevantly, Part IIAA of Division 5 provides principles of corporate criminal responsibility. This means that licensees who are body corporates must take responsibility for the actions of employees, agents, or officers of the body corporate who are acting within the actual or apparent scope of their employment. Part IVA of the *Interpretation Act* provides that the penalties for offences apply to body corporates, and section 38DB(3) of the *Interpretation Act* sets the maximum penalty for a body corporate at a fine of an amount equal to 5 times the fine for an individual.

#### Section 118M 'Selling liquor below minimum sale price'

This is a new offence provision which makes selling liquor at a price below the minimum unit price an offence that can be prosecuted. Consistent with the maximum penalty for the existing offence of breaching a condition of licence, the penalty for this offence is 100 penalty units. Similar to the offence in the new section 118K, this offence puts the onus on retailers to ensure they comply with the floor price requirements by making compliance a matter of partial strict liability. The making of the offer must take place intentionally, but failing to consider whether the price at which the product is sold is below the floor price is not a defence.

The notes above regarding corporate criminal responsibility and penalties also apply in relation to this new offence.

#### **Clause 13. Part XXVI inserted**

This clause provides transitional provisions in relation to the substantive amendments made in the clauses above.

New section 172 'Definition' provides that commencement is defined by reference to the commencement of clause 12, which inserts Part IXA, containing the new minimum pricing obligations. It is anticipated that clause 8 may be commenced earlier than other clauses in the Bill in order to enable interstate retailers to obtain Territory licences in advance of the floor price provisions coming into effect.

New section 173 'Variation of licence conditions' ensures that it is clear that the new minimum pricing conditions and associated requirements are applicable to all licences, including licences granted before the commencement of this provision.

New section 174 'Offences' is a standard clause that only allows a licensee to be prosecuted for not complying with the floor price when in relation to conduct that occurs entirely after the commencement of the Bill.

#### **Clause 14. Repeal**

This is a standard clause for amending acts, which causes them to be repealed once they have performed their amending function.

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