

# Three Year Review of the Liquor Act 2019 – Legislative Assembly Summary Report

Pursuant to section 320 of the *Liquor Act 2019*

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Acronyms	Full form
APCU	Alcohol Policy Coordination Unit
ASB	Anti-Social Behaviour
BDO	Banned Drinker Order
BDR	Banned Drinker Register
BYO	Bring Your Own
CM&C	Department of the Chief Minister and Cabinet
DITT	Department of Industry, Tourism and Trade
DV	Domestic Violence
DVO	Domestic Violence Order
NT	Northern Territory
NGO	Non-Government Organisation
NTCAT	Northern Territory Civil and Administrative Tribunal
NTG	Northern Territory Government
NTPFES	Northern Territory Police, Fire and Emergency Services
PAA	Police Administration Act 1978
PALI	Police Auxiliary Liquor Inspector
POSI	Point of Sale Intervention
RBL	Risk Based Licensing
RSA	Responsible Service of Alcohol
SORT	Social Order Response Team

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## 1. Overview

The *Liquor Act 2019* (the Liquor Act) governs the sale, provision, service, promotion and consumption of liquor, with the purpose of minimising alcohol harm in the Northern Territory (NT).

Section 320 of the Liquor Act requires the Minister to undertake a review as soon as possible after three years from the day the Liquor Act received assent. The Liquor Act received assent on 3 September 2019.

The objective of the three year review is to determine whether:

- The policy objectives of the Liquor Act remain valid.
- The terms of the Liquor Act remain appropriate for securing those objectives.

Submissions were also sought about the operation of the Banned Drinker Register (BDR) established under the *Alcohol Harm Reductions Act 2017* (the Alcohol Harm Reduction Act) and any other policy initiatives the NT Government stakeholders identified to reduce alcohol-related harm.

The three year review of the Liquor Act (the Review) has examined a wide range of information and explored views through consultation with businesses, industry groups and non-government organisations and the community. There were 29 submissions received in response to the Discussion Paper released in December 2022, with submissions received up until mid-March 2023 (a copy of the Discussion Paper can be found at **Appendix A**).

This Report sets out the outcomes of the Review and is required to be tabled to the Legislative Assembly within 12 months following the end of the three year period (October 2023). It does not refer to all matters raised by stakeholders during the consultation.

## 2. Summary of recommendations

In short, the Review has determined that the policy objectives of the Liquor Act remain valid and the terms of the Liquor Act largely remain appropriate for achieving those objectives, but that consideration should be given to amending some aspects of the Liquor Act as outlined below:

### Ex-officio inspectors

- Establishing an ex-officio inspector mechanism in the Liquor Act.

### Authorities

- Combining the ‘restaurant bar authority’ with the ‘restaurant authority’.
- Amending the current ‘producer’s authority’ by removing the wording around the prescribing of limits in regulations (section 47(1)(j)).
- Including the following standard conditions for the ‘producer’s authority’:
  - Sell the licensee’s product to wholesale customers (those who are authorised liquor) at any time by direct sales transactions (e.g. online or by post).
  - Sell and sample the licensee’s product by retail at liquor industry shows, community festivals, farmer’s markets or fairs, by providing notification to the Director of Liquor Licensing (the Director) in a format approved at least seven (7) days prior to the event.
  - Sell, serve and supply to people to sample or consume within a special event authority or a major event authority with the consent of the event organiser.

- Annual reporting for producers that are registered as a wholesaler instead of quarterly reporting.
- Prescribing by regulation the limit on aggregate annual volume of alcohol that may be sold under the ‘community club authority’ as intended by section 47(1)(l) of the Liquor Act.

#### Application process – Fit and proper person

- Prescribing by regulation the matters the NT Liquor Commission (the Commission) must have regard to when assessing if a person is fit and proper to hold a licence (as intended by section 59(4)).
- Amending the Liquor Act to provide clarity to the Commission on the matters to be assessed in determining whether or not an ‘associate of a person’ or ‘persons of influence and potential beneficiaries’ are ‘fit and proper’ persons in regard to an application. This could be done by way of broadening section 59(4) to include ‘associate of a person’ and ‘persons of influence and potential beneficiaries’ in making the proposed regulation.
- Amending the Liquor Act to include a specific requirement or authority for the NT Police, Fire and Emergency Services (NTPFES) to provide relevant information to the Commission about whether an associate of a person was ‘fit and proper’.
- Amending section 61(2) of the Liquor Act to specifically provide that ‘persons of influence and potential beneficiaries’ and ‘associates of a person’ not being ‘fit and proper’ as grounds for an objection.
- Amending the provisions in relation to the transfer of an existing licence (sections 71 to 75) to include that the fitness of a person to whom the licence is to be transferred is a relevant consideration, including the fitness of their associates, and that this is a grounds for objection to the transfer for NTPFES. Noting, section 51(3) should apply.<sup>1</sup>

#### Outdated provisions relating to the licensing framework

- Remove section 65 as most licences can now be obtained electronically, making this provision redundant.
- Amend section 66(1) to provide that the surrender of a licence or authority is effected by notifying the Director in the approved form.
- Replace the 42 days in sections 76(7)(c), (8), (8)(b) and (8)(c) with 90 days in accordance with section 76(2).
- Amend sections 290(4) and 291(5) to remove reference to the licence or authority being in possession by the Director and include the availability of electronic copies or a link to the public register as a defence. Include a note in the provision that a licensee may have a QR code posted around the premises which links to an electronic copy of the licence.

#### Fees

- Prescribe registration fees to help with cost recovery by Licensing NT.

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<sup>1</sup> Section 51(3) provides that a licensee who is applying for an authority is assumed to be a fit and proper person, in the absence of evidence to the contrary.

## Annual fees – Risk based licensing framework

- Discounts not available to licensees who commit breaches during a reporting period.
- The breach multipliers are increased as follows:
  - first breach 50% loading
  - second breach 75% loading
  - third breach 100% loading
  - fourth breach 200% loading
  - fifth breach 300% loading.
- The *Liquor Regulations 2019* (the Regulations) should be amended so that any breaches committed by a licensee over three years, rather than two, are considered for calculating the annual licence fee. This should be retained by the licensee for the specified period and the venue in the case of a licence transfer or sale of a licensee.

## Transfer of licence

- Amend the provisions in relation to the transfer of an existing licence (sections 71 to 75) to include that the fitness of a person to whom the licence is to be transferred is a relevant consideration, including the fitness of their associates, and that this is a grounds for objection to the transfer for NTPFES. Noting, section 51(3) should apply.<sup>2</sup>
- The recommendations set out 3.4.1 of this report are applied in relation to transfer applications insofar as applicable.

## General conditions of licences and authorities

- Providing further clarity to licensees and the community on the interpretation and application of the noise conditions or requirements on licensees under the Liquor Act. Consideration could be given to either amending the legislation or the Commission issuing Guidelines or Codes of Practice under the Liquor Act.
- Amending the sections 96(4) and 60(5) of the Liquor Act to provide that the approval may be given by either the Commission, or if the Commission so directs, the Director.

## Extension of moratorium of takeaway licences

- Extend the takeaway moratorium for a further 12 months in accordance with the process set out in section 84 of the Liquor Act.

## Local liquor accords

- Amend section 134 of the Liquor Act so that provisions of the local liquor accord are not treated as licence conditions for participating licensees, but that licensees may choose to implement such provisions as conditions on a voluntary basis.

## NT Liquor Commission powers

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<sup>2</sup> Section 51(3) provides that *A licensee who is applying for an authority is assume to be a fit and proper person, in the absence of evidence to the contrary.*

- Amending section 113 to expressly confer on the Commission the power to not only vary conditions, but to add them.
- Removing or limiting the Northern Territory Civil and Administrative Tribunal (NTCAT) review mechanism for Commission decisions under section 113.
- Amending section 167 to increase the amount of monetary penalty the Commission can impose, particularly if maximum penalty amounts for offences are increased.

#### Prohibited public places

- Amending section 171 so as to make reference to the defined regions in Regulation 4 of the Regulations.
- Amendment the Liquor Act to provide police with the power to identify the person they are searching or seizing alcohol from in regards to a contravention of section 171.
- Amending the point of sale provisions in the Liquor Act to explicitly include the contravention of section 171 as grounds for exercise of point of sale intervention powers.

#### High risk areas, banning notices and exclusion orders

- Amending section 209 of the Liquor Act to include the following offences when a banning notice or an exclusion order may be issued:

##### **Criminal Code Act**

- Section 69 – Going armed in public
- Section 180A – Endangering occupants of vehicles and vessels
- Section 217 – Theft
- Section 218 – Robbery
- Section 224 – Damaging or interfering with property as a trespasser.

##### **Weapons Control Act**

- Section 6(e) – Prohibited weapon.
- Amending the ‘effect of a banning notice’ under section 215 of the Liquor Act from 14 days to 90 days.
- Amending the provisions regarding banning notices to provide clarity around police powers to confirm a person’s identity and use of reasonable force to remove a banned person.

#### Penalty amounts for offences (including infringement notices)

- Increase the maximum penalty amounts and infringement notice amounts.

#### Search and seizure powers

- Section 234 is amended to remove any doubt that the seizure power under section 243 can be utilised in relation to a contravention of section 171.

## Point of sale intervention

- Amend the definition of ‘customer’ in section 249 and section 250(1) so that it is a customer of a licensed premises instead of a customer of a licensee.
- Section 250 be amended so the reference to liquor purchased from the licensee is changed to liquor purchased from the licensed premises to avoid any unnecessary arguments about the lawfulness of the point of sale intervention (POSI) powers if an employee sold the liquor and not the licensee.
- Amend section 250(2)(c) to require customers to ‘hand’ their approved identification which can include e-licences displayed on a device to an officer or inspector as opposed to ‘show’ them as the provision currently requires.
- Amend section 250(3) to allow inspectors and police to investigate irrespective of whether the customer intends to share the liquor.
- Amend section 250(3) to clarify that a police officer or inspector is entitled to investigate before determining whether to exercise a power under section 250(4).
- Amend section 250(4) to allow a police officer or inspector to refuse entry to a licensed premises if the officer or inspector suspects on reasonable grounds that a contravention of section 171 (no consumption in prohibited public place) or a breach of an order prescribed under section 128(1)3 is likely to occur.
- Amend section 251(1)(b) to remove an offence against this Act and insert a liquor related offence to improve the efficacy of the powers set out in section 250 and section 251.
- Remove section 254(4) as it is not required as police or inspectors are able to lodge a complaint with the Director under section 160 in any event.

## Emergency and other powers

- Amend section 258 to include a requirement that if the power is being exercised on the grounds set out in subsection (3) (i.e. the licensee or the licensee’s employee is being investigated for an offence against the Liquor Act and the officer believes on reasonable grounds that the offence is likely to continue), that the officer must believe on reasonable grounds that the suspension is required to prevent or reduce a threat or risk to the public.

## Forfeiture and disposition of assets

- Correction to error of the heading of section 270.
- Amend section 270 to clarify that section 166 of the *Police Administration Act 1978* (the PAA) only applies when ownership is unknown.
- Amend the provisions so that the requirements for release prescribed by section 273 also apply to the release of vehicles, vessels and aircraft pursuant to section 276(4).
- Amend section 274 to require reasonable efforts to be made to ensure prior notification is given to the owner of the thing.
- Amend section 278 to clearly state the orders available and the test required for both types of applications.

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<sup>3</sup> Section 128 of the Liquor Act provides for the establishment of the patron identification system (or BDR scanning system).

- Amend section 279 so that it can apply to forfeiture orders made under section 99A of the *Sentencing Act 1995*.
- Remove the time limit for laying a complaint under section 309.

### Investigations

- Consideration be given to amending section 158 or section 58 to ensure that the Director is able to conduct necessary investigations into applicants for licences, including in relation to transfers. In addition, the Commission should have the ability to direct the Director to conduct an investigation into applications (including whether an applicant is a fit and proper person).

### Banned Drinker Register

- Amending the Alcohol Harm Reduction Act as follows:

So that police must make a banned drinker order (BDO) for a person:

- If the person is charged with an alcohol-related offence on a single occasion.
  - If the person is taken into protective custody on a single occasion.
  - If the person is issued with an alcohol-related infringement notice on a single occasion.
  - If the person is the subject of a banning notice under the Liquor Act.
  - If the person is found to have contravened section 171 of the Liquor Act (consumption of alcohol in prohibited public place), if the police have reasonable grounds to believe that because of the person's behaviour, the person may intimidate, alarm or cause substantial annoyance to people.
  - If the person is named as the defendant in a police domestic violence order (DVO) if the police officer who makes the DVO believes on reasonable grounds that the defendant was affected by alcohol at the time of engaging in the conduct to which the conduct relates.
- Amending the Liquor Act and Regulations:
    - To enable the collection of additional data through the BDR system for the purpose of police investigating and preventing the secondary supply of alcohol in the NT.

## 3. Matters considered – *Liquor Act 2019*

### 3.1. Ex-officio inspectors

The Discussion Paper for the Review suggested that to address public drinking and the associated anti-social behaviour, that the Liquor Act be amended to empower other appointed officers such as transit officers, public housing safety officers, park rangers, council rangers and contracted security officers as ex-officio inspectors with the authority to search individuals and seize any unopened container that is believed to contain liquor.

A number of councils submitted that this proposal was not supported insofar as it applied to council employees.

NTPFES also raised the concern that there could be safety issues if such persons were not suitably trained to appropriately engage with public drinkers in the exercise of such powers.

While the final decision as to whether or not other appointed officers should be empowered to tip-out liquor of those drinking in public places has not been made, there is merit in establishing a proper mechanism under the legislation should Government determine to extend these powers to other suitably qualified and trained

persons in the future. This would enable the Minister to add specific cohorts as ex-officio inspectors via *Gazette* notice.

### 3.1.1. Recommendations about ex-officio inspectors

It is recommended that consideration be given to establishing an ex-officio inspector mechanism in the Liquor Act.

## 3.2. Authorities

Section 47 of the Liquor Act provides for 22 different types of authorities that may be attached to a licence. For the most part, stakeholders appeared satisfied with the authorities in place, however, comments were received in regards to the ‘restaurant bar authority’, ‘community club authority’ and the ‘producer’s authority’ that warrant consideration.

### 3.2.1. Restaurant bar authority

There are currently 92 approved restaurant bar authorities in the NT. The restaurant bar authority is only available for licensees with an existing restaurant authority. It permits a premises to relax its appearance, or part of its premises, to be more akin to a café or eatery as opposed to strictly being a restaurant. It also permits the licensee to only make available light meals, while consumption without a meal is not permitted.

Industry stakeholders have queried the need for the ‘restaurant bar authority’ given the fact that the ‘small bar authority’ and the ‘restaurant authority’ appears to adequately cover the different operational scenarios.

Conditions	Restaurant Bar Authority	Restaurant Authority	Small Bar Authority
Max capacity constraints	No	No	Yes
Full meal available	No	Yes	No
Consumption of liquor w/o meal permitted?	Yes	No	Yes
Light meal available	Yes	No	Yes
Seated to drink	Yes	Yes	No
Good Friday & Christmas Day trading	Yes	Yes	No
Eligible for Late Night Authority	Yes	Yes	Yes
Appearance of café, restaurant or eatery requirement	Yes (restaurant only)	Yes (any of the three)	No
Risk Rating for Fees	Moderate	Moderate	Moderate

It appears possible for the restaurant bar authority and restaurant authority to be combined, but not altogether clear if it is absolutely necessary.

### 3.2.2. Community Club Authority

Licensing NT has pointed out that no limit on aggregate annual volume of alcohol has been prescribed by regulation in relation to the ‘community club authority’ despite section 47(1)(l) providing for it. This would appear to be an oversight, and should be addressed as it is the main point of differentiation between the ‘club authority’ and the ‘community club authority’, which also has a bearing on risk classification and consequently the risk based licensing structure (community club is very low, whereas club is moderate).

### 3.2.3. Producers’ Authority

This authority permits the licensee to sell the amounts of liquor prescribed by regulation produced by the licensee for consumption on and off the premises (section 47(1)(j)). To date, no amounts have been prescribed by regulation and it is not clear what purpose the prescribing of amounts of liquor serves, as there is no delineation in fee structures under the regulations. Consideration should be given to removing this requirement from section 47(1)(j) and simply allowing the Commission to determine any limits as they deem appropriate for each licence.

Industry has also made submissions with respect to the current conditions of the ‘producers’ authority’, seeking the inclusion of the following standard conditions:

- Sell the licensee’s product to wholesale customers (those who are authorised liquor) at any time by direct sales transactions (e.g. online or by post).
- Sell and sample the licensee’s product by retail at liquor industry shows, community festivals, farmers’ markets or fairs, by providing notification to the Director in a format approved at least seven (7) days prior to the event.
- Sell, serve and supply to people to sample or consume within a special event authority or a major event authority with the consent of the event organiser.

The above conditions are available to producers in other jurisdictions.<sup>4</sup>

Industry has asked for annual reporting for producers that are registered as a wholesaler instead of quarterly reporting. Industry advises that there is a higher burden on producer/wholesalers in comparison to the traditional wholesalers as they undertake the data collection manually, whereas the traditional wholesalers have fit-for-purpose automated record systems. Industry advises that the impact on wholesale data is minimal given their overall sales.

### 3.2.4. Recommendations about authorities

It is recommended that consideration be given to refining the current authorities available under the Liquor Act. In particular:

- Combining the ‘restaurant bar authority’ with the ‘restaurant authority’.
- Amending the current ‘producers’ authority’ by removing the wording around the prescribing of limits in regulations (section 47(1)(j)).

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<sup>4</sup> For instance, the NSW Liquor Producer licence permits tastings, on and off premises sales to the public, direct sale to wholesalers and retail sales at liquor industry shows, farmer markets or fairs. The Victorian Producer’s Licence is similar, although to sell at farmers’ markets and fairs they will also need a promotional event authorisation.

- Including the following standard conditions for the ‘producer’s authority’:
  - Sell the licensee’s product to wholesale customers (those who are authorised liquor) at any time by direct sales transactions (e.g. online or by post).
  - Sell and sample the licensee’s product by retail at liquor industry shows, community festivals, farmers’ markets or fairs, by providing notification to the Director in a format approved at least seven days prior to the event.
  - Sell, serve and supply to people to sample or consume within a special event authority or a major event authority with the consent of the event organiser.
- Annual reporting for producers that are registered as a wholesaler instead of quarterly reporting.
- Prescribing by regulation the limit on aggregate annual volume of alcohol that may be sold under the ‘community club authority’ as intended by section 47(1)(l) of the Liquor Act.

### 3.3. Takeaway sales – Legitimate residence requirement

During the COVID-19 health emergency, the Director introduced special requirements for the sale of takeaway alcohol, including the requirement for a person to prove that they have a legitimate residence to consume takeaway alcohol.

The same measure has been voluntarily applied by licensees in Parap/Fannie Bay via the Darwin Outer City Liquor Accord<sup>5</sup>.

Under this measure, if a customer produces a BDR form of identification that has a local place of residence on it (e.g. within the relevant municipality) then the transaction proceeds as per usual. If the identification does not have a local place of residence on it, then the licensee must ask the customer if they have a legitimate residence at which to consume the liquor within the locality. A public place is not a legitimate residence for the purpose of this measure.

The intent of the measure is to address and minimise the consumption of liquor in public places and the resultant alcohol-related anti-social behaviour and harm that occurs as a result.

This measure has had some impact in reducing unlawful drinking of alcohol in public areas, however, some licensees have raised concerns about voluntarily implementing the measure particularly when it is not universally implemented throughout the Territory and the potential adverse customer reaction at point of sale.

At this stage it is not recommended that this measure be legislated as a condition for takeaway authorities. Improvements or enhancement to the BDR mechanism are the preferred pathway to reducing harm from takeaway alcohol consumption in the NT.

### 3.4. Application process – Fit and proper person

A number of submissions were received from NTPFES, Licensing NT and the Commission in regards to the provisions concerning a ‘fit and proper’ person.

There was general consensus that the Liquor Act would benefit from amendment in regards to the assessment of whether an ‘associate of a person’ (section 55) or the ‘persons of influence and potential beneficiaries’ (section 53) in relation to an applicant are ‘fit and proper’ for the purposes of Liquor Act.

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<sup>5</sup> [Darwin Liquor Accord](#), accessed via nt.gov.au

Section 59(4) provides:

*In assessing whether a person is a fit and proper person to hold a licence, the Commission must have regard to the matters prescribed by regulation.*

No such regulation has been made. Section 59(4) could be amended to specifically include 'associate of a person' and 'persons of influence and potential beneficiaries'. This would then provide for additional guidance to be set out in regulation (as originally intended) for the Commission.

Further, NTPFES has also pointed out that a person cannot object to a licence on the grounds that an applicant's associates are not fit and proper. NTPFES has recommended an amendment to section 61 to change this. The NT's liquor licensing laws must ensure that associates of applicant's are fit and proper to deter infiltration by criminal elements to prevent money laundering, drug trafficking and general involvement of organised crime in the liquor industry.

Similar issues are canvassed in this report in relation the transfer of licences.

### 3.4.1. Recommendations about 'fit and proper person' provisions

It is recommended that consideration be given to the following matters about the licence application process under the Liquor Act:

- Prescribing by regulation the matters the Commission must have regard to when assessing if a person is a fit and proper to hold a licence (as intended by section 59(4)).
- Amending the Liquor Act to provide clarity to the Commission on the matters to be assessed in determining whether or not an 'associate of a person' or 'persons of influence and potential beneficiaries' are 'fit and proper' persons in regards to an application. This could be done by way of broadening section 59(4) to include 'associate of a person' and persons of influence and potential beneficiaries' in making the proposed regulation.
- Amending the Liquor Act to include a specific requirement or authority for the NTPFES to provide relevant information to the Commission about whether an associate of a person was 'fit and proper'.
- Amending section 61(2) of the Liquor Act to specifically provide that 'persons of influence and potential beneficiaries' and 'associates of a person' not being 'fit and proper' as grounds for an objection.
- Amending the provisions about the transfer of an existing licence (sections 71 to 75) to include that the fitness of a person to whom the licence is to be transferred is a relevant consideration, including the fitness of their associates, and that this is a grounds for objection to the transfer for NTPFES. Noting, section 51(3) should apply.<sup>6</sup>

## 3.5. Outdated provisions relating to the licensing framework

Licensing NT has identified some anomalies in the Liquor Act that are not significant in nature, but will ensure that the Liquor Act is free from any unnecessary provisions.

Section 65 provides that the Director may issue a duplicate licence, authority or permit to its holder if satisfied it was destroyed, lost or stolen. Given that most licences are electronic nowadays, this provision is redundant.

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<sup>6</sup> Section 51(3) provides that *a licensee who is applying for an authority is assume to be a fit and proper person, in the absence of evidence to the contrary.*

Section 290 of the Liquor Act concerns the posting of a liquor licence by a licensee in a conspicuous place on or in the licensed premises visible to patrons, failure to do so is an offence. Subsection (4) provides that it is a defence if the defendant establishes that the licence or authority was in the possession of the Director.

Given that hardcopies are no longer issued, it would appear that the defence is no longer relevant to the offence. Licensing NT recommends that the defence provision be amended to remove reference to copies held by the Director and instead include the availability of electronic copies or a link to the public register as a defence. For instance, a licensee may have a QR code posted around the premises which links to an electronic copy of the licence.

Similar amendments are suggested for section 291 (Producing licence and documents on demand).

Section 66 provides for the surrender of a licence or authority. Subsection (1) provides:

*A licensee may surrender the licence or authority by returning it to the Director.*

In the digital age this is no longer relevant. It is suggested that the provision is amended to provide that the surrender is effected by notifying the Director in the form approved by the Director.

Section 76 provides for acting licensees. Under the provision an acting licensee cannot act on behalf of a licensee for more than 90 days during any 12 month period. Subsection (7)(c) provides that an offence is committed if the conduct exceeds 42 days during any 12 month period. This appears to be an error. It should be 90 days, not 42 days. This error is repeated in subsections (8), (8)(b) and (8)(c).

### 3.5.1. Recommendation about outdated provisions

It is recommended that consideration be given to:

- Remove section 65 as most licences can now be obtained electronically, making this provision redundant.
- Amend section 66(1) to provide that the surrender of a licence or authority is effected by notifying the Director in the approved form.
- Replace the 42 days in sections 76(7)(c), (8), (8)(b) and (8)(c) with 90 days in accordance with section 76(2).
- Amend sections 290(4) and 291(5) to remove reference to the licence or authority being in possession by the Director and include the availability of electronic copies or a link to the public register as a defence. Include a note in the provision that a licensee may have a QR code posted around the premises which links to an electronic copy of the licence.

## 3.6. Fees

Prior to commencement of the Liquor Act in 2019, the only application fee (or indeed any fee) that was payable for a liquor licence was a \$200 application fee irrespective of the type of liquor licence being sought.

The Liquor Act and Regulations provides for ten different application fees dependent on the type of application. For instance, the cheapest application fee is 17 revenue units<sup>7</sup> (\$1.27) or \$21.59, which is for the one year wholesaler's registration, licence and community event authority, licence and major event authority and the licence and special event authority. Whereas, the most expensive application fee is 166 revenue units or \$210.82 which is for the 'licence and one or more authorities (other than special event authority)' and the 'adding one or more authorities to an existing licence (other than special event authority)'.

The fee for an application for a transfer of a licence is 83 revenue units or \$105.41.

### 3.6.1. Registration fee

Under the Liquor Act, there are requirements for different types of organisations and persons to be put on a register by the Director. For instance:

- Section 34 – Register of wholesalers
- Section 40 – Register of complimentary suppliers
- Section 41C – Register of BYO servers of liquor
- Section 41G – Register of registered small community groups.

Currently, there is no application or registration fee payable in relation to the matters except for wholesalers.

### 3.6.2. Recommendations about current applications fees

It is recommended that consideration be given to prescribing registration fees for all categories to help with cost recovery by Licensing NT.

## 3.7. Annual fees – Risk based licensing framework

Since 2019, licensees have been subject to annual fees calculated under a risk based licensing (RBL) model which considers a range of criteria in determining a licensee's annual fee, including discount and breach multipliers. A factsheet explaining the current RBL model is at **Appendix B**.

The RBL framework is a key recommendation from the 2017 Alcohol Policies and Legislation Review Final Report (the Riley Review). The RBL model is an incentive model that rewards those who supply alcohol responsibly and financially penalises those licensees who break the rules.

Regulation 9(3) calculates the total annual fee a licensee must pay for the licence and all authorities held by the licensee:  $F$  is  $[(BF \times V \times H) \times (1 - D)] \times Br$ , where:

- $F$  is the annual fee payable for the licence and all authorities held by the licensee.
- $BF$  is the base fee determined under regulation 10.
- $Br$  is the breach multiplier determined under regulation 11.
- $D$  is the discount multiplier determined under regulation 12.
- $H$  is the hours multiplier determined under regulation 13.
- $V$  is the volume multiplier determined under regulation 14.

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<sup>7</sup> The *Revenue Units Act 2009* sets out the value of a 'revenue unit' to be \$1.27 for the financial year ending 30 June 2023.

The total annual fee cannot be less than 50% of the base fee determined under regulation 10. In the case of a licence with more than one authority, there is no fee payable for any authority held by the licensee other than the authority with the highest risk classification. Where a licensee holds two or more authorities with the same risk classification, the fee is based on the authority with the highest 'ranking' within the classification.

Issues with the RBL model were raised by industry, regulatory and non-government organisation (NGO) stakeholders through the submission process, with the general consensus being that the current RBL model was complex and not resulting in appropriate financial penalties for breaches.

A simple way to remedy this issue would be to remove the benefit of discounts to those licensees with breaches and to increase the breach multipliers.

In addition, it was suggested that the regulations should be amended so that any breaches committed by a licensee over three years, rather than two, are considered for calculating the annual licence fee. This should be retained by the licensee for the specified period and the venue in the case of a licence transfer or sale of a licensee. Breaches would remain linked to a licensee should they apply for more licenses, sell or transfer a licence. This suggestion would increase the impact of compliance breaches by licensees and improve the effectiveness of the RBL as a harm reduction measure.

### 3.7.1. Recommendations about annual fees under the RBL model

It is recommended that the RBL model be retained with the following changes:

- Discounts not be available to licensees who commit breaches during a reporting period.
- The breach multipliers are increased as follows:
  - first breach 50% loading
  - second breach 75% loading
  - third breach 100% loading
  - fourth breach 200% loading
  - fifth breach 300% loading.
- Regulations should be amended so that any breaches committed by a licensee over three years, rather than two, are considered for calculating the annual licence fee. This should be retained by the licensee for the specified period and the venue in the case of a licence transfer or sale of a license.

Example calculations using the above formula is at **Appendix C**.

## 3.8. Transfer of Licence

The current process requires the Commission to authorise the transfer only if satisfied that the proposed transferee is a fit and proper person. This is different to the process and considerations for the issuing of a licence or authority under section 49. Further, the Commission has the ability to authorise the transfer of the licence with or without conditions, or to refuse the transfer.

The Director must inform the Commissioner of Police of the transfer application as soon as reasonably practicable after receiving it. No other party is given notice of the transfer application.

Industry has raised the following issues regarding the current transfer of licence process under the Liquor Act, including:

- Under section 72(2), a new application must be submitted as if the proposed transferee is applying for a new licence, which then means that sections 52(1), (2), (3)(e) and (4), 53 to 55 and 56(1), (2), (3) and (4)(b) apply to the application, which is unnecessarily burdensome.
- That the transfer of a licence should not re-examine any aspect of the licence's operations, be required to have a public notice published or require the submission of a new licence application.

Service organisations and NTPFES have argued that when a licence is transferred, applications cannot be objected to on the grounds that the transferee is not a fit and proper person.

While the transfer process is truncated, it is intentionally so. Licensees require certainty that at some point they can sell their business, and that they have the ability to transfer the liquor licence to a suitable new owner. The transfer process should not be seen as an opportunity to address non-compliance matters, and in fact, the transfer to a suitable licensee may lead to improved compliance outcomes and hence be in the public interest.

There does not appear to be any need to broaden the transfer process to include public interest considerations. If there are concerns with compliance or performance of a licensee, the Liquor Act provides for a robust complaints and compliance mechanism. There is merit in refining the provisions as they relate to the assessment of the proposed licensee as a 'fit and proper person'. Similar issues have been canvassed in this report in regards to 'Fit and Proper' requirements.

NTPFES should have the ability to provide information to the Commission about a transferee, including their associates, to assist the Commission in determining if the person is fit and proper. The most appropriate way to do this may be through the inclusion of specific grounds for objection limited to NTPFES only.

### 3.8.1. Recommendations about transfer applications

It is recommended that consideration be given to:

- Amending the provisions about the transfer of an existing licence (sections 71 to 75) to include that the fitness of a person to whom the licence is to be transferred is a relevant consideration, including the fitness of their associates, and that this is a grounds for objection to the transfer for NTPFES. Noting, section 51(3) should apply.<sup>8</sup>
- The recommendations set out in this report regarding 'fit and proper' are applied in relation to transfer applications insofar as applicable.

## 3.9. General Conditions of Licences and Authorities

Part 4 Division 2 of the Liquor Act sets out a number of conditions applicable to all licensed premises (except for an interstate retailer's licence), including 'undue and unreasonable noise' (section 93) and 'limit on material alterations' (section 95).

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<sup>8</sup> Section 51(3) provides that *A licensee who is applying for an authority is assume to be a fit and proper person, in the absence of evidence to the contrary.*

### 3.9.1. Undue and unreasonable noise

Section 93 condition provides that:

*A licensee must not cause or permit its employees or patrons to cause undue or unreasonable noise on or in the licensed premises that affects the amenity of the neighbourhood.*

*Examples for section 93*

- 1 *The delivery of stock and the removal of rubbish must be at appropriate hours.*
- 2 *Live music must be at a reasonable volume.*

Industry stakeholders have provided submissions seeking amendment to this clause to provide greater clarity to licensees and the community. Industry has put forward the following suggestions:

- Insert a definition of ‘unreasonable noise’ in to the Liquor Act which specifies applicable noise limits.
- Insert a mechanism in the Liquor Act which provides for the approval of individual ‘sound management plans’ for venues by the Commission, which includes specific noise limits and would form part of the licensee’s conditions.
- Amend section 160 of the Liquor Act to limit the time frame for making a noise complaint to two months after the latest occurrence of a matter that forms the basis of a noise complaint.

The Commission does not support the inclusion of specific noise limits in the legislation, but it does encourage licensees to seek approval of a sound management plan. The Commission has submitted that it is able, where appropriate, to make a licence condition requiring the licensee to comply with the approved plan. The Commission makes it clear that whether or not such a sound management plan condition is appropriate, will vary from case to case.

The Commission submitted that the six month time limit for making a complaint as set out in section 160(3) of the Liquor Act is adequate.

Some jurisdictions prescribe noise limits to determine ‘unreasonable noise’ in their regulations, (including Queensland and New South Wales) and permit the making of special conditions for licensees about noise. Queensland’s Office of Liquor and Gaming Regulation provides extensive guidance to licensees and the community about noise conditions from licensed premises, including Guidelines under their liquor legislation for the preparation of acoustic reports by licensed premises to assist with compliance with noise conditions.

The NT’s legislative framework takes a less prescriptive approach to noise conditions in comparison to other jurisdictions. On the one hand this allows for greater flexibility in applying the law when it comes to noise conditions for licensees. For instance it allows for the Commission to make conditions for specific licences with respect to noise, including the acceptance of a sound management plan for a premises. On the other, it can lead to confusion for licensees and the community as to what is expected when it comes to compliance with noise requirements, or indeed how to go about making a sound management plan for consideration by the Commission.

It does appear that further clarity in regards to noise conditions for licensed premises would be beneficial, and achievable through:

- Legislative amendment (e.g. specifying noise limits or setting out a mechanism for sound management plans).
- Issuing of guidance material (e.g. guidelines under section 316 or a code of practice under section 20 of the Liquor Act).

### 3.9.2. Material alterations

Section 95 of the Liquor Act provides for the types of material alterations to a premises that the prior written approval of the Commission is required. Section 96 sets out the application process for the approval of a material alteration that falls under section 95. The process also provides that the Director may, if they consider it to be in the public interest, require the applicant to publish notice of the application in the manner and time specified by the Director.

The application process does allow for objections to such applications (objections are dealt with in section 61).

It is an offence for a licensee to make a material alteration without the prior approval of the Commission (section 98).

A small number of submissions were received in relation to the material alterations provisions. Industry submitted that the regulatory framework be amended to better facilitate activation of sidewalks, alleyways and nearby space to existing licensed venues, which may or may not necessitate amendment of the material alterations provisions.

Additionally, the Commission identified the need to amend sections 96(4) and 60(5) of the Liquor Act. These two provisions provide that, where the Commission has approved the issues of a licence or material alternative to an existing licence for premises not yet constructed or under construction, no liquor trading is permitted unless and until the Commission has given its approval. In practice, licensees obtain this approval by providing the Director with evidence of compliance with the relevant regulatory schemes and codes for building, planning etc., upon which the Director forwards this material to the Commission. The Commission recommends that it would be beneficial to amend the provisions to provide that the approval may be given by either the Commission, or if the Commission so directs, the Director.

There is some merit in considering the amendment proposed by the Commission to facilitate the quicker processing of approvals and negate the need for the Commission to undertake this work.

It is not clear that amendments to the material alterations provisions in general is warranted at this point in time.

### 3.9.3. Recommendations about general licence and authority conditions

It is recommended that consideration be given to:

- Providing further clarity to licensees and the community on the interpretation and application of the noise conditions or requirements on licensees under the Liquor Act. Consideration could be given to either amending the legislation or the Commission issuing Guidelines or Codes of Practice under the Liquor Act.
- Amending the sections 96(4) and 60(5) of the Liquor Act to provide that the approval may be given by either the Commission, or if the Commission so directs, the Director.

## 3.10. Extension of moratorium of takeaway licences

Section 84 of the Liquor Act provides for limits on authorities:

(1) ...

(2) ...

(3) *No takeaway authority may be created or issued until after 31 August 2023 or any later date extended under subsection (4).*

- (4) *The date after which a takeaway authority may be created or issued may be extended by up to 12 months at a time by regulation.*
- (5) *The restrictions in this section on creating and issuing authorities do not prevent the following:*
  - a. *The transfer of an authority under section 81.*
  - b. *The conversion of a licence issued under the Liquor Act 1978 in accordance with Part 15, Division 2.*

The moratorium on takeaway licences was a recommendation of the Riley Review (recommendation 2.5.20).

Some submissions were received from stakeholders which supported the continuation of the moratorium, including across industry and the health and service sector.

The NT is still experiencing high levels of alcohol related harm and is still arguably over serviced by takeaway premises, with government commencing a voluntary buy-back process for grocery store licences in an effort to reduce the number of takeaway alcohol venues.

There are also some dormant takeaway licences available for transfer or operation by their owners.

The continuation of the moratorium for a further 12 months would appear reasonable given the circumstances.

### **3.10.1. Recommendations about the extension of the takeaway moratorium**

It is recommended that consideration be given to extending the takeaway moratorium for a further 12 months in accordance with the process set out in section 84 of the Liquor Act.

## **3.11. Minimum Pricing**

Part 5 of the Liquor Act deals with minimum pricing conditions, also known as the 'floor price'. The provisions essentially mandate a minimum price per standard drink. The conditions apply to all licences. Section 121 provides that the:

- Minimum sale price is \$1.30 for each standard drink.
- Minimum sale price is indexed, from 1 July 2019, in accordance with the method prescribed by regulation.
- The Minister must review the minimum sale price every three (3) years.

The floor price is not a tax. It is a supply measure aimed at reducing the harms associated with high-alcohol, low-cost alcoholic beverages.

The floor price was a recommendation of the Riley Review, and came into operation on 1 October 2018.

The efficacy of the minimum pricing conditions as a measure to reduce alcohol related harm has been the subject of two evaluations, with the latest occurring in 2022<sup>9</sup>. This report does not set out to re-cavass those reports. However, the value of this measure has been assessed and in 2022 was found to be effective in reducing supply of low-cost, high-alcohol products, but drinkers have shifted to other products.

A number of submissions were received about the floor price, with some wanting the conditions abolished, whilst other have stated that the price should be increased. The provisions regarding indexation in the Liquor Act and Regulations are confusing and would benefit from simplification.

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<sup>9</sup> [Evaluation of Minimum Unit Price of Alcohol in the Northern Territory](#) (6 July 2022), accessed via [health.nt.gov.au](http://health.nt.gov.au)

It is recommended that Government reviews the indexation provisions for the floor price to ensure the provisions are simplified to assist industry and consumers.

### 3.12. Local Liquor Accords

Local liquor accords are voluntary agreements between licensees and the Director for the purpose of preventing or reducing any anti-social behaviour, disorder, harm or violence (including domestic violence), in which liquor is involved. Liquor accords may also be parties to local liquor accords:

- The Commission of Police.
- A local council.
- Any body or organisation representing commercial or business interests in a local area.
- A community or residents' group with an interest in preventing or reducing alcohol-related violence or in improving the amenity of a local area.
- A person or body prescribed by regulation.

Liquor accords are enabled under Part 6, sections 132-135 of the Liquor Act.

A liquor accord may specify conditions such as:

- Additional restrictions on selling (takeaway) alcohol within permitted trading hours.
- Restrictions on the public's access to licensed premises.
- Prohibition or restriction on the use of glass containers.
- Maintaining an incident register.
- Installation and operation of closed-circuit television or other security devices.
- Security staffing.
- Selling price of alcohol.

Under the Liquor Act, it is a requirement that the agreement is in writing and approved by the Director. There are currently a number of accords operating across the NT, including:

- Darwin inner city
- Darwin northern suburbs
- Darwin outer city
- Nhulunbuy
- Kakadu
- Katherine
- Alice Springs.

Section 134(1) of the Liquor Act provides that a Licensee must comply with any local liquor accord provisions to which the licensee is a party, as if those provisions were licence conditions. While joining a liquor accord is currently voluntary, the Director does have the power to require a licensee to be a party to a liquor accord (section 132).

A number of submissions were received about local liquor accords. The Commission supports the existing provisions and reiterated that the cost associated with liquor accords should be borne by respective parties, that is, not covered by government. The Commission notes that licensees are entitled to a discount on their annual licence fee if they voluntarily join a liquor accord. In the view of the Commission, the liquor accord scheme is a potentially useful measure through which responsible licensees can set a good example for their competitors and colleagues to follow.

Industry submissions advocated strongly that the terms of an accord should not be subject to potential disciplinary action for non-compliance under the Liquor Act. Industry is generally supportive of the role played by local liquor accords. Some industry submissions contended that the determination of licence conditions should be thoroughly considered through the application process, and in the context specific to each licence application, rather than partially pre-determined by a liquor accord.

NT Health supports the requirement for licensees to comply with a local liquor accord to which the licensee is a party to under section 134 of the Liquor Act.

Some NGO health service providers proposed that the legislation be amended to enable health organisations and peak bodies join local liquor accords.

Some licensees have chosen not to join their local liquor accords as they were not prepared to have the local liquor accord's provisions as licence conditions. While it is true the Director could utilise their power under section 132 and require the licensee to join the accord, there is some sense to the argument that the community and the industry is best serviced by an effective accords framework that is built on a level of positive engagement by a diverse range of licensees in local communities, alongside other relevant stakeholders such as the local police.

The Liquor Act already has a myriad of ways in which a licensee's conditions can be varied. Removing the automatic application of liquor accord provisions to liquor licence conditions of parties would not weaken the regulatory framework in any meaningful way.

There is a far greater benefit to be derived from having robust, well attended, voluntary liquor accords.

It may be more appropriate to insert a provision which explicitly provides that licensees may choose to implement conditions agreed by local liquor accords, but are not obligated to.

It should be noted that the Riley Review did not recommend that liquor accord provisions should be automatically be treated as licence conditions. The Riley Review (recommendation 2.5.32) only provided that the licensing authority be permitted to give a direction to a licensee to participate in an accord, with failure to do so constituting a breach, and that there be a positive duty on the licensing authority to establish liquor accords.

### **3.12.1. Recommendations about local liquor accords**

It is recommended that consideration be given to amending section 134 of the Liquor Act so that provisions of a local liquor accord are not treated as licence conditions for participating licensees, but that licensees may choose to implement such provisions as conditions on a voluntary basis.

## **3.13. NT Liquor Commission powers**

While the Commission is established under the *Liquor Commission Act 2018*, the Liquor Act does contain a number of provisions in relation to the Commission's powers and processes.

### **3.13.1. Power to vary conditions of a licence or authority**

Section 113 of the Liquor Act provides that the Commission may, on its own initiative, vary the conditions of a licence or an authority other than a condition added or varied by the Minister under section 88.

The Commission has submitted, for the avoidance of doubt, that section 113 be amended to expressly confer on the Commission the power to not only vary, but to add conditions. There does not appear to be any reason to not make the requested change.

The Commission has submitted that amendment should be made to the Liquor Act to remove the entitlement of parties to a review of the Commission's decision in relation to section 113. The Commission has referred to the fact that the Commission is required to be constituted by three members, including one legal member and a health member, whereas the NTCAT would only be constituted by a single member.

To illustrate the difficulties arising from NTCAT reviews of section 113 decisions, the Commission referred to its own initiative review of takeaway licences in the Alice Springs area that commenced in August 2018. Some, but not all, licensees sought NTCAT review of the Commission's subsequent decision, as a result the Commission was unable to finalise the matter until January 2020. This in turn impacted the review of the Barkly region takeaway licence conditions, which led to significant frustration and complaints by members of the affected communities.

If NTCAT review was removed for section 113, the Commission's decisions would continue to be subject to judicial review by the Supreme Court.

Some industry stakeholders have raised concerns about the proposed removal of NTCAT review for section 113 decisions of the Commission.

However, section 113 does specify the procedure that the Commission must follow when using this power, which includes giving affected licensees written notice and the opportunity to respond to the proposed variation. The Commission may only vary the conditions after considering any responses from affected licensees, the results of any hearings and the public interest and community impact requirements.

There does appear to be merit to the Commission's argument that the NTCAT review mechanism should be removed for section 113 decisions. The community and industry have a right to expect that when the Commission uses its own motion power to consider varying the conditions of a licence or authority, and the procedures set out under the provision have been adhered to, that the Commission will be able to implement its decision without undue delay.

It may appropriate to consider limiting the NTCAT review mechanism for section 113 decisions in situations where the Commission has not held a hearing.

### 3.13.2. Monetary penalties

Section 167 of the Liquor Act provides that the amount of monetary penalty imposed by the Commission, when taking disciplinary action against a licensee, must not exceed the lesser of the following:

- 200 penalty units (or \$32 400)<sup>10</sup>.
- In the case of an offence –the maximum amount of the fine specified for the offence.

The penalty amounts for fines for offences under the Liquor Act will not be the subject of this report. If recommendations are made to increase those maximum amounts, then consideration should also be given to amending section 167 to avoid any unintentional fettering of the Commission's ability to impose a monetary penalty.

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<sup>10</sup> Under the *Penalty Units Act 2009* a 'penalty unit' is \$162.

### 3.13.3. Recommendations about NT Liquor Commission powers

It is recommended that consideration be given to:

- Amending section 113 to expressly confer on the Commission the power to not only vary conditions, but to add them.
- Removing or limiting the NTCAT review mechanism for Commission decisions under section 113.
- Amending section 167 to increase the amount of monetary penalty the Commission can impose, particularly if maximum penalty amounts for offences are increased.

### 3.14. Prohibited Public Places

Section 171 of the Liquor Act provides that a person must not consume liquor in any public place (or in a vehicle at a public place) in the following locations:

- Alice Springs, Darwin, Katherine, Palmerston, Tennant Creek, Darwin Waterfront Precinct.
- Any local government area that a local council declares, by notice published on the council's website, to be subject to this prohibition.
- Any place not within a location specified by paragraphs (a) to (g) but within 2km of licensed premises.
- Any place prescribed by regulation.

NTPFES has raised concerns that the boundaries of Alice Springs, Darwin, Katherine, Palmerston and Tennant Creek are not specified in the legislation. They believe that the inclusion of further information would provide absolute clarity to officers and the community.

Regulation 4 of the Regulations provides that the regions of Darwin, Daly-Tiwi-West Arnhem, East Arnhem, Katherine, Alice Springs and Barkly are defined in accordance with the *Australian Statistical Geography Standard Volume 1 – Northern Territory Maps* dated July 2011. It would appear to be a reasonable proposition to amend section 171 so as to make reference to these regions and satisfy the call for clarity.

Section 171(2) provides that if a person contravenes the provision, the person may be searched under section 236 of the Liquor Act and the liquor may be seized and disposed of under section 243 of the Liquor Act. There is no other penalty for a contravention of this provision, which aligns with recommendation 79 of the *Royal Commission into Aboriginal Deaths in Custody*. NTPFES has raised concerns that while they are empowered to conduct searches of persons for possible contraventions of section 171, they do not have the correlating power to identify the person they are searching or seizing alcohol from. This is clearly unsatisfactory, firstly it is a safety issue for police officers (they need to know who they are interacting with) and secondly, they need to be able to keep accurate records as to the exercise of their powers.

#### 3.14.1. Recommendations about prohibited public places

It is recommended that consideration be given to:

- Amending section 171 so as to make reference to the defined regions in Regulation 4 of the Regulations.
- Amend the Liquor Act to provide police with the power to identify the person they are searching or seizing alcohol from in regards to a contravention of section 171.
- Amending the point of sale provisions in the Liquor Act to explicitly include the contravention of section 171 as grounds for exercise of point of sale intervention powers.

### 3.15. High Risk Areas, Banning Notices and Exclusion Orders

To prevent and reduce further occurrences of alcohol-related violence in the area, a high risk area can be declared, which gives NT Police the authority to issue alcohol banning notices. This would effectively ban the person from entering or remaining in the high risk area or specified licensed premises for up to 14 days, and will prevent and reduce further incidents of alcohol-related violence in the area. A court may also make an exclusion order to prevent a person from entering or remaining in a high risk area.

The declaration of a high risk area is covered under section 210 of the Liquor Act. The Liquor Act provides that the Minister may declare an area to be a high risk area if:

- Alcohol-related violence has occurred in a public place in the area which is in the vicinity of licensed premises.
- The Minister believes that banning notices and exclusion orders are a reasonable way of preventing or reducing the further occurrence of alcohol-related violence in the area.

Laws relating to banning notices are covered under sections 212 to 219 under the Liquor Act. In 2019, the amendment of the Liquor Act resulted in changes to the application of banning notices and introduced measures to address anti-social behaviour. This provided police with powers to reduce alcohol-related violence by banning individuals from a high risk area for up to 14 days.

The issue of banning notices under section 215 of the Liquor Act has been raised by NTPFES in relation to the terms and effect of the banning notice. Under this section, a person is only prohibited from entering or remaining in a high risk area or licenced premises for up to 14 days.

NTPFES has raised that unlike Domestic Violence Orders, the issuing of a banning notice does not automatically result in the person being placed on the BDR, until the banning notice is breached pursuant to section 218 of the Liquor Act.

However, a BDO is currently only triggered after satisfying any combination of three alcohol-related protective custodies or alcohol infringement notices within two years, pursuant to section 10(c) and (d) of the Alcohol Harm Reduction Act.

The issue of banning notices and the BDR will be dealt with under the Alcohol Harm Reduction Act part of the report.

Currently applicable offences under section 209 of the Liquor Act include are set out in **Appendix D**.

NTPFES has submitted that more offences should be added for when a banning or exclusion order may be issued and the period of a banning notice extended. The suggestions are appropriate, particularly in light of the prevalence of weapons offences in public areas.

In addition, NTPFES has suggested some amendments to the provisions regarding banning notices to provide clarity around their power to confirm a person's identity and use of reasonable force to remove a banned person.

The suggestions are appropriate, particularly in light of the prevalence of weapons offences in public areas.

#### 3.15.1. Recommendations about high risk areas, banning notices and exclusion orders

It is recommended that consideration be given to:

- Amending section 209 of the Liquor Act to include the following offences of when a banning notice or an exclusion order may be issued:

### **Criminal Code Act**

- Section 69 – Going armed in public
- Section 180A – Endangering occupants of vehicles and vessels
- Section 217 – Theft
- Section 218 – Robbery
- Section 224 – Damaging or interfering with property as a trespasser.

### **Weapons Control Act**

- Section 6(e) – Prohibited weapon.
- Amending the ‘effect of a banning notice’ under section 215 of the Liquor Act from 14 days to 90 days.
- Amending the provisions regarding banning notices to provide clarity around police powers to confirm a person’s identity and use of reasonable force to remove a banned person.

## **3.16. Penalty amounts for offences (including infringement notices)**

The Liquor Act contains over 50 different offences. Regulation 114 of the Regulations provides that an infringement notice to a person who the inspector or officer believes on reasonable grounds has committed an offence against a provision of the Liquor Act specified in Schedule 6.<sup>11</sup> Submissions were received from a number of stakeholders, including industry, which identified the need to increase the penalties for offences against the Liquor Act.

Currently, the lowest maximum monetary penalty for an offence in the Liquor Act is five (5) penalty units (\$810) and the highest is 300 penalty units (\$48 600).<sup>12</sup> The NT’s maximum penalties appear low in comparison to equivalent offences in other jurisdictions. For example, the offence of a licensee intentionally selling or supplying liquor to an intoxicated person carries a maximum fine of 200 penalty units (\$32 400) or an infringement notice of 5 penalty units (\$810), while in Queensland the maximum penalty is \$71 875.<sup>13</sup>

The lowest infringement penalty amount is 0.5 penalty units (\$81) and the highest is five (5) penalty units (\$810).

In particular, the infringement penalty amounts for the offence of failing to leave a licensed premises when excluded or removed (section 143) and the offence of returning after being excluded or removed (section 144) were identified as being too low to be much of a deterrent to offenders. The maximum penalty for those two offences is 20 penalty units (\$3240), but the infringement amount is currently only 1 penalty unit (\$162). In comparison, the Queensland infringement amount for the equivalent offence is \$718.<sup>14</sup> The same offending in Victoria results in an infringement notice of \$806.<sup>15</sup>

After reviewing the current penalties and infringement amounts and comparing them to other jurisdiction’s penalties it is recommended that consideration be given to increasing the penalties to ensure that the penalties act as a deterrent to non-compliance and offending against the Liquor Act.

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<sup>11</sup> Note Schedule 6 Part 1 sets out the offences for which an inspector or a police officer may issue an infringement notice, and Part 2 sets out the offences for which only an inspector may issue an infringement notice.

<sup>12</sup> Under the *Penalty Units Act 2009* a ‘penalty unit’ is \$162.

<sup>13</sup> Section 285 of the Liquor Act.

<sup>14</sup> Section 165 of the *Liquor Act 1992* (QLD).

<sup>15</sup> Section 114(2) of the *Liquor Control Reform Act 1998* (Vic).

A table setting out the current offence maximum penalties, infringement amounts and any proposed changes is at **Appendix E**.

### **3.16.1. Recommendations about monetary penalties and infringement notices**

It is recommended that consideration be given to increasing the maximum penalty amounts and infringement notice amounts.

## **3.17. Search and seizure powers**

Part 10 of the Liquor Act sets out special search and seizure powers for police and inspectors.

Section 234 provides that the search powers in Division 3 and the seizure powers in Division 6 of Part 10 must not be exercised except in relation to a forfeiture offence. As previously outlined in the report, a contravention of section 171 (no consumption in prohibited public place) is not an offence, and that it cannot be a forfeiture offence. Section 243 (seizing containers) specifically states that a contravention of section 171 is grounds for the exercise of the power, however, it is incongruous with the wording of section 234 re forfeiture offence. Section 234 should be amended to provide absolute clarity about the application of powers to section 171 contraventions.

### **3.17.1. Recommendations about search and seizure powers**

It is recommended that section 234 is amended to remove any doubt that the seizure power under section 243 can be utilised in relation to a contravention of section 171.

## **3.18. Point of sale intervention (POSI)**

Police officers and Police Auxiliary Liquor Inspectors (PALIs) are empowered to conduct point of sale duties, including the ability to intervene and stop sales at takeaway liquor outlets across the NT. They are currently in place in Alice Springs, Tennant Creek and Katherine.

Part 11 of the Liquor Act contains other enforcement powers, including those concerning point of sale intervention powers relied upon by police and inspectors when undertake PALI duties.

NTPFES has identified a number of issues with the existing powers set out under Part 11. The amendments are sought with the intention of providing absolute clarity to officers and inspectors undertaking POSI duties.

### **3.18.1. Recommendations about point of sale intervention provisions**

It is recommended that the following amendments be made:

- Amend the definition of 'customer' in section 249 and section 250(1) so that it is a customer of a licensed premises instead of a customer of a licensee.
- Section 250 be amended so the reference to liquor purchased from the licensee is changed to liquor purchased from the licensed premises to avoid and unnecessary arguments about the lawfulness of the POSI powers if an employee sold the liquor and not the licensee.
- Amend section 250(2)(c) to require customers to hand their approved identification which can include e-licences displayed on a device to an officer or inspector as opposed to show them as the provisions currently requires.
- Amend section 250(3) to allow inspectors and police to investigate irrespective of whether the customer intends to share the liquor.

- Amend section 250(3) to clarify that a police officer or inspector is entitled to investigate before determining whether to exercise a power under section 250(4).
- Amend section 250(4) to allow a police officer or inspector to refuse entry to a licensed premises if the officer or inspector suspects on reasonable grounds that a contravention of section 171 (no consumption in prohibited public place) or a breach of an order prescribed under section 128(1)<sup>16</sup> is likely to occur.
- Amend section 251(1)(b) to remove an offence against this Act and insert a liquor related offence to improve the efficacy of the powers set out in section 250 and section 251.
- Remove section 254(4) as it is not required as police or inspectors are able to lodge a complaint with the Director under section 160 in any event.

### 3.19. Emergency and other powers

Part 11, Division 2 of the Liquor Act sets out emergency and other powers. Section 258 provides for a police power to suspend a licence or authority. The provision is as follows:

- (1) *the Commissioner of Police may suspend a licence or an authority if any of the following occurs, or is likely to occur, at or in the vicinity of the licensed premises and the office considers it appropriate to do so:*
  - (a) *An emergency or a natural disaster*
  - (b) *Riotous conduct*
  - (c) *A breach of the peace*
  - (d) *A threat to public safety.*
- (3) *The Commissioner of Police may also suspend a licence or an authority if:*
  - (a) *The licensee, or the licensee’s employee or agent, is being investigated for an offence against this Act; and*
  - (b) *A police officer investigating the offence believes on reasonable grounds that the offence is likely to continue.*
- (4) *A suspension under this section has effect for a maximum of 48 hours or a shorter period determined by the Commissioner of Police.*
- (5) *The Commissioner of Police must, without delay, give written notice of the suspension to the following:*
  - (a) *The licensee*
  - (b) *The Minister*<sup>17</sup>
  - (c) *The Chairperson*
  - (d) *The Director.*
- (6) *The notice must include the period of suspension and reasons for the suspension.*

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<sup>16</sup> Section 128 of the Liquor Act provides for the establishment of the patron identification system (or BDR scanning system).

<sup>17</sup> For the purposes of section 258 it is the Minister administering the *Police Administration Act 1978*.

Under section 260, the Commissioner of Police must give to the Minister a report each financial year outlining the number of suspensions imposed by the Commissioner of Police under section 258. The Minister must table a copy of the report in the Legislative Assembly.

This emergency power was first introduced in June 2018 to give effect to the recommendation of the Riley Review (recommendation 2.7.4) to empower police with similar powers to suspend a licence for 48 hours as those provided to the licensing authority under section 48A of the former Liquor Act 1978.

Since its introduction, it has been used eight times:

- August 2018 – Tennant Creek Hotel (Tennant Creek);
- August 2018 – Piggly Wiggly’s Supermarket (Alice Springs);
- May 2020 – Bojangles Restaurant and Saloon (Alice Springs);
- December 2020 – Larrimah Pink Panther Pub (Larrimah);
- November 2021 – Peppiminarti Club Association Incorporated (Peppiminarti);
- August 2022 – Rock Bar (Alice Springs);
- January 2023 – Todd Tavern (Alice Springs); and
- February 2023 – Gap View Hotel (Alice Springs).

Some stakeholders contend that the shutting down of a premises for 48 hours and the public shaming of the licensee is a far higher penalty than would be imposed for breaches of the Liquor Act. It is readily acknowledged that the suspension of a licensed premises has financial and potentially reputation risks for licensees. It should also be acknowledged that the exercise of the power may not be in response to actions or omission of the licensee. Section 258(1) clearly anticipates that the Commissioner may need to suspend a licence in some scenarios (e.g. a breach of the peace, riotous conduct, and a threat to public safety) including for reasons that may be occurring in the vicinity of, but not at the licensed premises. Consequently, the circumstances for the suspension may not necessarily give rise to compliance and enforcement action against the licensee.

Even if the suspension was due to an investigation of the licensee or its employee for an offence against the Liquor Act, the fact that no complaints or charges resulted does not make the exercise of the power improper.

Some industry stakeholders have submitted that the suspension power under section 258 should be repealed or fettered in some form to provide natural justice for affected licensees. NTPFES and other stakeholders have endorsed the current wording of the suspension power and pointed to its efficacy in ensuring community safety.

Each jurisdiction has their own emergency suspension powers. Under section 137C of Queensland’s *Liquor Act 1992*, the Commissioner for Liquor may urgently suspend a licence if the Commissioner believes on reasonable grounds that a ground exists for taking disciplinary action in relation a licence and harm may be caused to members of the public if urgent action to suspend the licence is not taken.

In the Australian Capital Territory, under section 146 of the *Liquor Act 2010* a senior police officer may make an emergency closure order to close licensed premises for 24 hours if the officer believes on reasonable grounds that a breach of the Liquor Act has happened, or is likely to happen and the closure of the premises is necessary to prevent or reduce a significant threat or significant risk to the safety of the community.

New South Wales has short term closure mechanism under sections 82 and 83 of the *Liquor Act 2007*. Under this process, an application by either the Director-General or the Commissioner of Police to the Independent Liquor and Gaming Authority is required (or to an authorised officer – a magistrate, a registrar of the Local Court). The Authority must be satisfied that a serious breach has occurred or is likely to occur, on the premises and that that closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.

The main point of difference between the NT's emergency suspension power other jurisdictions relates to the requirements regarding breaches or potential breaches by the licensee or its employees. Generally, if a suspension is to be granted on these grounds, other jurisdictions also require that must be satisfied that there the closure is necessary to prevent or reduce a threat or risk to the public.

If any amendment to the current wording of section 258 were to be considered, then it should be limited to whether an additional requirement be inserted in regards to subsection (3), namely that the closure is necessary to reduce or prevent a significant threat or risk to the public.

### 3.19.1. Recommendations about the police emergency power under section 258

It is recommended that consideration be given to amending section 258 to include a requirement that if the power is being exercised on the grounds set out in subsection (3) (i.e. the licensee or the licensee's employee is being investigated for an offence against the Liquor Act and the officer believes on reasonable grounds that the offence is likely to continue), that the officer must believe on reasonable grounds that the suspension is required to prevent or reduce a threat or risk to the public.

## 3.20. Forfeiture and disposition of assets

Part 12 of the Liquor Act deals with the forfeiture and disposition of assets seized under the Liquor Act.

NTPFES was the only stakeholder to make a submission about this subject.

Section 270 provides that a thing seized under the Liquor Act must be dealt with in accordance with section 166 of the *Police Administration Act 1978* subject to the following:

- (a) *The need to retain custody of the thing for evidentiary purposes in any proceeding.*
- (b) *The Commissioner of Police's power to release the thing under section 271*
- (c) *The Commissioner of Police's duty to release a vehicle, vessel or aircraft under section 272.*
- (d) *Any order made under section 99A of the Sentencing Act 1995.*
- (e) *Any application under Division 2 for forfeiture of a vehicle, vessel or aircraft.*

The heading of the section is 'Disposition of seized things, other than vehicles, vessels or aircraft'. Obviously this is incorrect and should be amended given the reference to 'vehicle, vessel or aircraft' in subsections (b) and (e).

Section 166 of the PAA relates to the sale of unclaimed goods. NTPFES posit that a strict interpretation section 270 is that a seized good (that is no longer required for evidence, not released under section 271 or section 272, not subject to a section 99A order or a forfeiture application) must be dealt with by publishing a notice in the *Gazette* and then, if no claim of ownership is made, by public auction or disposal in a manner as directed by the Commissioner of Police. This seems unwarranted for items where there is no uncertainty as to ownership. NTPFES proposed to amend section 270 to so only when ownership of an item cannot be ascertained that section 166 of the PAA is enlivened.

Section 273 prescribes the steps that must be taken by the Commissioner of Police when returning property under Part 12. NTPFES notes that the steps are quite extensive and would also be useful to apply for the returning of vehicles, vessels or aircraft pursuant to section 276(4).

Section 274 applies if a person is charged with an offence against the Liquor Act. Section 274(2) requires the person to be given prior notice of the intention to make a forfeiture application. NTPFES believe that the current interpretation of the provision means that the person referred to in the section is the person charged with the offence. NTPFES note that the person charged with the offence is not necessarily the owner of the thing subject to forfeiture. NTPFES submit that section 274 should be amended to require reasonable efforts to be made to give prior notification to the owner of the thing.

Section 278 provides for the Local Court to make orders of forfeiture. NTPFES have sought amendment to the provision to remove in any confusion about the orders available and the test required for applications under section 275 of the Liquor Act and section 99A of the *Sentencing Act 1995*.

Section 279 provides that when the Court has made an order under section 278(1), the Court may make additional orders about the delivery of the vehicle, vessel or aircraft. Currently, section 279 only applies to police applications for forfeiture. NTPFES would like section 279 to also apply when forfeiture is ordered pursuant to section 99A of the *Sentencing Act 1995*.

Section 309 provides a 60 day time limit for the laying of a complaint for forfeiture offence, unless the offending involves more than 50 standard drinks.

NTPFES has previously argued for this time limit to be lifted stating that it can easily take more than 60 days from the date of the offending before a defendant indicates an intention to contest a complaint. NTPFES strongly recommends removing section 309 and instead relying on the usual six month time limitation given by the *Local Court (Criminal Procedure) Act 1928*.

### **3.20.1. Recommendations about the forfeiture and disposition of assets provisions**

It is recommended that the following amendments be considered:

- Correct the error of the heading of section 270.
- Amend section 270 to clarify that section 166 of the PAA only applies when ownership is unknown.
- Amend the provisions so that the requirements for release prescribed by section 273 also apply to the release of vehicles, vessels and aircraft released pursuant to section 276(4).
- Amend section 274 to require reasonable efforts to be made to ensure prior notification is given to the owner of the thing.
- Amend section 278 to clearly state the orders available and the test required for both types of applications.
- Amend section 279 so that it can apply to forfeiture orders made under section 99A of the *Sentencing Act 1995*.
- Removing the time limit for laying a complaint under section 309.

### **3.21. Investigations**

Section 58 of the Act provides that the Director may conduct an investigation into an application as the Director considers appropriate. Section 158 provides that the Director must conduct an investigation into a licensee, a licence, an authority or licensed premises if the Chairperson of the Commission requests it or the Director accepts a complaint under section 161 (Complaints against licensees).

Licensing NT has submitted that section 158 (Investigations) should be amended to include ‘an applicant for a licence’, including applications for transfers, to enable the Director to conduct necessary investigations.

The proposed change would help with the efficacy of the regulatory and compliance framework.

In addition, there may be benefit in amending the provisions to enable the Commission to direct the Director to undertake investigations into applications (including whether an applicant is a fit and proper person).

### 3.21.1. Recommendations about investigations

It is recommended that consideration be given to amending section 158 or section 58 to ensure that the Director is able to conduct necessary investigations into applicants for licences, including in relation to transfers. In addition, the Commission should have the ability to direct the Director to conduct an investigation into applications (including whether an applicant is a fit and proper person).

## 4. Matters considered – Banned Drinker Register (BDR)

The BDR is a policy initiative that aims to improve the community health and safety by reducing alcohol-related harms. The BDR identifies people who are banned from buying, possessing or consuming alcohol (not just takeaway alcohol). Currently, only takeaway premises are required to use the patron identification system at their point of sale (i.e. the BDR scanners), which has led people to the mistaken belief that the BDR only prevents a person from purchasing takeaway alcohol.

The length of time a person is on the BDR when issued a Police BDO or by the BDR Registrar can vary from three, six or 12 months.

The BDR is established under the Alcohol Harm Reduction Act, but the Liquor Act (and Regulations) also contains relevant provisions in relation to the establishment of the patron identification system, which authorises it and importantly the offence provision for failing to utilise the system.

The Discussion Paper for the review called for submissions on how to improve or change the current arrangements for the BDR and outlined potential ways in which to strengthen the BDR, including:

- Amending the legislation so that a banning notice triggers a BDO and places a person on the BDR.
- Increasing the number of authorised persons who may apply to the BDR Registrar for the making of a BDO.
- Reviewing the triggers for police BDOs.

A number of submissions were received about the BDR.

### 4.1. Triggers for BDOs

There are a number of pathways through which a person may be added to the BDR under the Alcohol Harm Reduction Act:

- Self-referral for any reason.
- Having alcohol prohibitions conditions on a court order (including child protection orders), bail or parole orders.
- By decision of the BDR Registrar after being referred by an authorised person or a family member or carer.
- By Police issuing a BDO for any of the following triggers:

- Alcohol-related offence.
- Any combination of three alcohol-related protective custodies or alcohol infringement notices in two years.
- Two low-range drink driving offences in three years or a single mid-range or high range drink driving offence.
- Being the defendant on an alcohol-related DVO.

In February 2023, there were 3321 individuals on the BDR with a Police issued BDO being the most common reason for being on the BDR, accounting for 51% of all banned persons.

NTPFES, health and other stakeholders have identified the need to review the current triggers for police BDOs in an effort to reduce the increased levels of anti-social behaviour, domestic violence (DV) and assaults fuelled by the consumption of takeaway alcohol.

#### 4.1.1. Police protective custody

The PAA sets out the police powers for apprehension without arrest if they believe, on reasonable grounds:

- The person is intoxicated.
- The person is in a public place or trespassing on private property.
- Because of the person's intoxication, the person:
  - cannot adequately care for themselves and it is not practicable at that time for the person to be cared for by someone else; or
  - may cause harm to themselves or someone else; or
  - may intimidate, alarm or cause substantial annoyance to people; or
  - is likely to commit offence.

If someone has been taken into protective custody by police they are not to be charged with an offence while they are held under those provisions.

A police officer may take someone into protected custody and not take them into a watch house but instead take them to a family member or friend to care for them, or to a sobering up shelter or to the hospital for medical care.

As at February 2023, there were 366 individuals placed on the BDR through the protective custody pathway, accounting for 21% of all police BDOs.

In the 2019-20 financial year, 10 555 persons were taken into protective custody across the NT.<sup>18</sup> In December 2022, police publicly reported that in a single week in Alice Springs police had taken over 100 persons into protective custody.

In the 2021-22 financial year, there were a total of 3211 protective custody apprehensions in police watch houses. As at 2 May 2023, there were 3031 protective custody apprehensions in police watch houses for the financial year. It is anticipated that this figure will exceed the previous financial year's number of protective custody apprehensions in police watch houses.

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<sup>18</sup> Note that this number includes all episodes of protective custody, which may include watch house custody, transfer to family/friends, sobering up shelters or hospital etc.

The harm or potential harm that someone is exposed to when they are intoxicated enough to require protective custody should not be underestimated. The consumption of takeaway alcohol (unsupervised, with no RSA oversight) in public areas is often the cause of protective custody episodes. The BDR is an effective measure to prevent those persons from accessing takeaway alcohol and from ending up in protective custody or worse.

If the Alcohol Harm Reduction Act was amended so that police *must* make a BDO for a person, if the person on a single occasion, is taken into alcohol-related protective custody by police, it would substantially increase the number of persons on the BDR, restricting further access to takeaway alcohol and assisting with reducing alcohol-related harm in the NT. NTPFES, NT Health and other stakeholders have supported the proposed change.

Based on current protective custody episodes resulting in watch house custody, it is estimated that over 1000 individuals could potentially be added to the BDR.

#### 4.1.2. Alcohol-related infringement notices

As at February 2023, there were 152 individuals placed on the BDR through the infringement notice pathway, accounting for 9% of all police BDOs.

Similar to the proposed change for the protective custody trigger, it is proposed that the legislation is amended so a single alcohol related infringement notice would trigger a police BDO.

There is no proposed change to the list of alcohol-related infringement notice offences under the Alcohol Harm Reduction Act.

The proposal would lead to an increase in the number of persons on the BDR due to alcohol-related infringement notices, further restricting access to takeaway alcohol and assisting with reducing alcohol related harm in the community.

NTPFES, NT Health and other stakeholders have supported the proposed change.

#### 4.1.3. DVO

The Alcohol Harm Reduction Act provides that a police officer *may* make a BDO for a person who is named as the defendant in a police DVO, if the police officer who makes the DVO believes on reasonable grounds that the defendant was affected by alcohol at the time of engaging in the conduct to which the DVO relates.

NTPFES has advised that DV call-outs are one, if not, their biggest single job, with the highest number of DV assaults occurring in Alice Springs. In the last 15 months to March 2023, NTPFES has reported that an average of 66% of all DV matters involve alcohol across the NT. From 1 January 2022 to 30 April 2023, 226 BDOs have been issued under a DVO by police.

It is acknowledged that due to current systems constraints some BDOs are not being issued to DVO defendants.<sup>19</sup> It is hoped that the new SerPro system, anticipated for launch later in 2023, will remove the need for police to manually generate BDO orders and instead automate the issuing of BDOs for DVO defendants where alcohol is involved.

While the new SerPro system will address some of the issues with DVO triggered BDOs, it is recommended that the legislation is amended so that a police officer *must* make a BDO for a person who is named as the defendant in a police DVO where alcohol is involved to further ensure all necessary BDOs are issued to ensure that those persons do not continue to have access to takeaway alcohol and reduce the potential for further DV assaults.

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<sup>19</sup> The use of multiple IT systems in the police and justice space means that there is currently a need for manual entry and checking by police.

#### 4.1.4. Banning notices

Under the Liquor Act, police *may* issue a banning notice to a person if the officer believes on reasonable grounds that the person is committing or has committed a banning offence in the high risk area, and that person is likely to continue to commit a banning offence and the banning offence has caused, or may cause, alcohol related violence in a high risk area.

Current high risk areas where a banning notice may be issued include the central business districts of Darwin, Palmerston, Katherine, Tennant Creek and Alice Springs, as well as the Casuarina Precinct. As at 1 May 2023, there have been 220 banning notices issued in the financial year to date across the NT.

Currently, the Alcohol Harm Reduction Act does not treat the issuing of a banning notice to a person as a trigger in or of itself for a BDO. This appears to be anomalous and there is a broad stakeholder support for including it as a trigger for a BDO.

#### 4.1.5. Alcohol consumption in prohibited public place

Section 171 of the Liquor Act provides that a person must not consume liquor in any public place. If the person contravenes this provision a person may be searched under section 236 of the Liquor Act and the liquor may be seized and disposed of under section 243 of the Liquor Act. There is no other penalty for a contravention of this provision and it is not an offence per se.

It is generally vulnerable persons engaging in the consumption of alcohol in public places, including Aboriginal women who are 35 times more likely to experience domestic and family violence than non-Indigenous Australian women.

Since the beginning of Operation DRINA in Alice Springs on 24 November 2022, there has been over 2000 litres of alcohol destroyed or seized by police (an average of between 50 to 100 litres per week). In Darwin, police alcohol operations destroyed and seized between 250 and 300 litres of alcohol on average per week. However, the amount of alcohol being consumed in contravention of the Liquor Act is difficult to calculate, but is significantly higher than the amounts that police are able to intercept.

Alcohol consumption remains a key driver of anti-social behaviour (ASB) in the NT, with over 4500 ASB incidents recorded by police since the beginning of December 2022, noting that there is likely to be considerable underreporting of anti-social behaviour incidents across the NT.

It is proposed that the Alcohol Harm Reduction Act is amended so that police *must* make a BDO for a person, if the person is found to have contravened section 171 of the Liquor Act, if the police have reasonable grounds to believe that because of the person's behaviour, the person may intimidate, alarm or cause substantial annoyance to people.

If this amendment was made, a significant number of people engaging in problematic public drinking could be added to the BDR every month, further limiting access to takeaway alcohol and reducing alcohol related harm and increasing community safety and amenity. This proposed change has received support from NTPFES, health and other stakeholders.

It is important to note, that this proposal would not re-criminalise public drunkenness.

At the very least, a contravention of section 171 should be added as a trigger for a police BDO in some form, whether that be in its own right as proposed, or considered as part of the current trigger requiring a combination of three events (currently worded as a combination of three alcohol-related protective custodies or alcohol infringement notices) in two years.

## 4.2. Police BDO lengths

Currently, police issued BDO lengths are follows:

- First BDO three months.
- Second BDO six months.
- Further breaches result in a 12 month BDO.

There has been general support from a range of stakeholders for the police BDO lengths to be substantially increased.

On average, about 60% of the BDR population has the ability to apply to the BDR Registrar for a reduction of their BDO. However, very few people have sought a reduction, which in part is due to the fact that persons subject to a three month BDO being unable to access and complete a therapeutic support program prior to the expiration of their order. It is anticipated that increasing minimum lengths for police BDOs to six (6) months (first BDO) will go some way to encouraging a greater number of persons to engage with therapeutic programs.

However, if Government was to implement the recommended changes to triggers for Police issues BDOs, it may not be appropriate or necessary to extend the periods of police issued BDOs.

## 4.3. BDR system and data use

Section 128(2) of the Liquor Act provides that the system must be designed to:

- Enable a licensee or the licensee's employees to scan approved forms of identification presented by patrons at the time of purchasing or consuming liquor; and*
- Indicate to a licensee or the licensee's employees whether the patron is prohibited from purchasing or consuming liquor or liquor of a particular kind or quality.*

When the BDR was established (for the second time) in 2017, particular care was taken to limit the collection and use of customer data through the BDR scanning system. This was done in some part to alleviate community concerns at the time about data and privacy.

As a result, the BDR system is does not retain any data about the type or quantity of a customer's liquor purchase. It simply retains information about the number of scans and whether the system blocked someone from purchasing (it does not retain the identity of the person).

The system could be altered to retain some key data, which could be provided to senior police for the purpose of identifying potential secondary supply offences across the NT.

Secondary supply of takeaway alcohol to persons across the NT causes harm. It is difficult to detect and hard to police. The BDR could potentially offer a police a source of operational intelligence at very little cost which would allow police to focus their efforts to disrupt those benefitting through illegal secondary supply.

It is recommended that in the interests of transparency and good governance, that if it was determined that changes be made to the BDR system to allow for the capturing of any more information, that the legislation be amended to clearly articulate what information was to be collected and for what purpose it could be used.

Comprehensive community consultation would be required prior to any changes to ensure that the community can make informed comment. The community would need to know exactly what is intended from the changes to the BDR system including:

- Justification of the need for identifying information to be collected.

- Details of the personal information that will be collected from them at the point of sale and stored within the system.
- The manner in which personal information will be retained and for how long.
- The measures that will be taken to ensure data security.
- Who will have access to the information and for what purposes it will be used.
- How an individual can access, challenged or correct the information stored in the system.

#### **4.4. Recommendations about the Banned Drinker Register**

It is recommended that consideration be given to:

- Amending the Alcohol Harm Reduction Act as follows:

So that police must make a BDO for a person:

- If the person is charged with an alcohol-related offence on a single occasion.
  - If the person is taken into protective custody on a single occasion.
  - If the person is issued with an alcohol-related infringement notice on a single occasion.
  - If the person is the subject of a banning notice under the Liquor Act.
  - If the person is found to have contravened section 171 of the Liquor Act (consumption of alcohol in prohibited public place) if the police officer has reasonable grounds to believe that because of the person's behaviour, the person may intimidate, alarm or cause substantial annoyance to people.
  - If the person is named as the defendant in a police DVO if the police officer who makes the DVO believes on reasonable grounds that the defendant was affected by alcohol at the time of engaging in the conduct to which the conduct relates.
- Amending the Liquor Act and Regulations:
    - To enable the collection of additional data through the BDR system for the purpose of police investigating and preventing the secondary supply of alcohol in the NT.

### **5. Appendix A – Three Year Liquor Act 2019 Review Discussion Paper**

### **6. Appendix B – Risk Based Licensing Framework**

### **7. Appendix C – Risk based licensing model calculations**

### **8. Appendix D – Applicable offences under section 209**

### **9. Appendix E – Proposed infringement notice offences and prescribed amounts**