

AMSANT submission to the Economic Policy Scrutiny Committee: NT Liquor Bill 2019

June 2019

Introduction

AMSANT is in support of the vast majority of changes to the Liquor Act encompassed in this Bill. We recognise this Bill is another key aspect of the evidence-based reform to alcohol policy by the NT Government that is already leading to substantial reductions in alcohol related harm. While it is still early days, it is encouraging to see a measurable reduction in harms since the introduction of these vital reforms.

In particular, we note the recorded 44% reduction in alcohol-related assaults in Alice Springs (Crime Statistics monthly reports for Sept-Dec 2018, compared to same period in 2017) and a 24% reduction in alcohol related ED presentation in all NT hospitals (Dec 2018 compared to Dec 2017).

That said, we have outlined in this submission a number of recommendations that we believe can further strengthen the legislation currently before the Committee. Some of these recommendations relate to direct changes to the content and wording of the Bill, while others are recommendations for broader structural reform that we believe would support effective implementation of the Bill.

Over-policing, antisocial behaviour and the potential for racial profiling

AMSANT is concerned about the potential for some provisions in this Bill to allow for overzealous policing of drinking in public spaces which could increase contact between people with alcohol problems and the justice system or those suspected of drinking, in a way which is discriminatory, disempowering and gives rise to further marginalisation.

Effective compassionate policing can support those with alcohol problems to access health and other social services, but unfortunately, policing often results in a cycle of arrest and short term detention which can worsen the despair that is driving alcohol use. There is also a risk that there will be procedural or punitive responses to people who are extremely intoxicated or suspected of being intoxicated when what is required is medical intervention that may include a period of observation in hospital or other facility to ensure safety and avoid preventable death or injury.

The 1991 Royal Commission into Aboriginal Deaths in Custody recognised the need for more therapeutic and less punitive responses to the policing of intoxicated persons, recommending the decriminalisation of public drunkenness and the establishment of non-custodial facilities for the care and treatment of intoxicated persons.

Police who are enforcing legislation need to be well trained about the acute and long term effects of alcohol on both judgement and mental capacity as well as the risks of death and brain injury in severe intoxication, as well as to recognise potential conditions that may appear alcohol-related but have medical causes, for example, heart conditions, head injury, diabetic coma and dehydration. Police also should be trained to offer brief interventions and support to people with alcohol dependence and they should encourage referral to health and other social services.

Recommendation 1: That all police receive training on the effects of acute and chronic alcohol misuse including acquired brain injury, as well as identifying potential non-alcohol related medical conditions.

Recommendation 2: That police are required to record and report on all instances where powers under this Act are used.

Section 136 Power to Refuse Service & Section 137 No discrimination

This section allows a licensee and their employees the discretion to refuse service to a person if they believe “on reasonable grounds” that the person will become intoxicated, will engage in violent, quarrelsome or disorderly behaviour on or in the vicinity of the premises, or has engaged in this conduct within the last 12 months. These powers are *in addition* to existing Responsible Service of Alcohol (RSA) laws in section 135, which set out the obligations of licensees to refuse service to people who are intoxicated or on the BDR.

While we note that section 137 refers to the application of the *Anti-Discrimination Act 1992*, we remain concerned that section 136 will be applied prejudicially – noting as an example from this year, the extensive media coverage alleging that the manager of a Darwin bar was instructing staff not to serve Aboriginal people.

As it stands there is little scope for recourse against discrimination for disempowered and disadvantaged members of the community. The Anti-Discrimination Commission is currently under-resourced and under-staffed such that they are unable to adequately exercise important functions, such as own motion investigations. Furthermore, individuals subject to discrimination are often the least likely to seek legal assistance or make a report due to the complex layering of disadvantage and other barriers which prevent access, such as poor English language skills, lower levels of educational attainment and a lack of understanding of the legal systems or their rights.

To strengthen these provisions, we recommend that it be made an offence for this section to be applied in a discriminatory manner, as defined in the *Anti-Discrimination Act 1992*. This would allow the Director of Licensing and his or her delegate to conduct their own investigations and bring forward their own enforcement actions under this Act. Additionally, it is our position that the current complaints mechanism through the Anti-Discrimination should be reviewed and consideration given to how it can be made more effective and accessible, particularly for people with low English literacy levels.

Recommendation 3: Amendment of section 137 to the effect that:

A person commits an offence if the person uses an attribute specified in section 19(1) of the Anti-Discrimination Act 1992 as a reason to form a belief under section 135 or 136

Recommendation 4: That the accessibility of the complaints mechanism through the Anti-Discrimination Commission be reviewed, including for people with low English literacy levels.

Section 217 (3) Making exclusion orders

This section lists a series of considerations that the court must take into account when making an exclusion order.

AMSANT considers the application of exclusion orders may be reasonable if a person has repeatedly demonstrated violent or threatening behaviour when intoxicated in a public place. However, some people referred for an exclusion order are vulnerable, in poor health or with acquired brain injury who require a holistic approach rather than one which merely applies restrictions which may be unfairly punitive in their effects. An exclusion period of up to 12 months has the risk of cutting people off from services and social/family activities and can be a significant incursion on people's freedom of movement.

A health assessment should be made along with referrals for treatment prior to a Court making the decision to make an exclusion order. This can then support the person to address the underlying issues causing their behaviour. It may also uncover significant disabilities such as a brain injuries which may impact on the capacity of the person to comply with the exclusion order. This may require further consideration of guardianship and other long term support.

Recommendation 5: That an additional subsection be inserted at section 217 (3) requiring consideration of the health and wellbeing of the person, as determined through a health assessment and referrals for treatment and impacts on access to services.

Section 247 Point of sale intervention powers – customer

This section provides powers for police and auxiliaries that apply to any person within 20m of a licensed premises, including in vehicles. Police and auxiliaries can require customers to answer questions and provide ID, they can investigate if the customer is subject to bail conditions or is on the BDR, and they can seize alcohol and prevent the customer from entering or remaining on the licenced premises.

AMSANT has concerns that this section may be applied prejudicially and lead to over-policing. While AMSANT recognises the important role that police and auxiliaries stationed outside bottle shops have played in reducing alcohol-related harms in our community, we reiterate that excessive reliance on punitive police and legal responses can lead to over-criminalisation, increased rates of imprisonment, and ultimately a less cohesive and safe community for all of us. We see no reason why the powers of police and auxiliaries as set out in this section should be extended beyond customers who are on or in a licensed premises.

Recommendation 6: That powers for police auxiliaries not be applied to people on foot or in vehicles within 20m of a licensed premises.

Liquor industry regulation and licencing

AMSANT supports a total ban on the alcohol industry making political donations as recommended by the World Health Organisation. There is now strong evidence that even light to moderate drinking is harmful to health. The major political parties (apart from the National Party) do not accept donations from tobacco companies – but unfortunately this policy does not extend to the alcohol industry. A ban on alcohol donations would significantly reduce the risk of influence on political decisions from the alcohol industry.

Recommendation 7: That all political donations from alcohol industry be banned in the NT

The Director of Licensing will have some influence over alcohol promotion through a Code of Practice (noted in section 20(1)(a) of the Bill). This section stops licensees from advertising that promotes irresponsible drinking. However, codes can be relatively subjective and difficult to enforce. Given the very high levels of alcohol related harm in the NT, there should be a total ban on all alcohol related advertising.

Recommendation 8: That all forms of alcohol advertising be banned in the Northern Territory

Section 46 (2) Community Impact Assessment Guidelines

This section lists the information that an applicant must provide to the Commission as part of their community impact assessment. This list includes information about the *benefits* of the proposed license to the community. AMSANT would like to see a requirement that information about the *risks* of the proposed license also be included in each application.

Recommendation 9: That the community impact assessment guidelines require an application for a liquor license to include information about *risk* to the community.

We note that under section 47 of the Bill the onus is currently placed on the applicant to demonstrate that it satisfies questions of public interest and community impact. We have some concerns with this provision, given the bias that is likely to be present in evidence provided by the applicant in support of their own application. Furthermore, community objectors often have limited resourcing to bring substantive evidence to counter an applicant's claims.

This could be resolved by placing a requirement on the applicant to pay for an independent third party evaluation to be completed as part of their application to the Commission. Regardless, the Liquor Commission retains the power to inform itself and must be appropriately resourced and scrutinised to ensure that full and impartial evidence is made available as part of the application process.

AMSANT proposes that the operation of this section, including the option for a third party evaluation to become part of the application process, be considered as a priority for the 3 year Review of the Act, as set out in section 317.

Section 66 Prescribing fees

This section refers to a formula for calculating fees, as prescribed in the regulations. The most recent version of this formula that AMSANT has seen sets base fees for different license categories, with additional costs for risk factors and breaches of licence, and allows discounts for some conditions.

The proposed licensing fees are modest and should be increased for larger and higher-risk venues according to the particular risk factors associated with a venue. This will ensure that fees reflect the risks associated with the sale of alcohol, provide for reinvestment into measures to reduce alcohol related harm, and offset the cost of inspections to ensure compliance.

Where fees remain at modest levels, we do not agree discounting should be provided below the base level. For many of the measures currently included as able to attract a discount, we are unaware of any evidence to indicate a link to reduced harms or alcohol-related violence – for example, live local music/entertainment and membership of a liquor industry group. Discounting should only be considered if the discount is based on demonstrated measures that will reduce alcohol harm, and even then should be capped at 20%, rather than what is currently proposed at a maximum of a 50% discount.

Recommendation 10: That base liquor licence fees, as prescribed in regulation, be increased for high-risk venues and discounts be removed or otherwise capped at 20%.

Section 71 Substitution of premises

On our reading of the current Bill subsections (1) and (3) contradict each other. That is subsection (1) states that licensees seeking to substitute premises must apply for a new licence, while subsection (3) suggests that an application to substitute premises be made in the same manner as an application to vary conditions of the license.

To provide clarity, and ensure the full and proper assessment of all substitution applications, we would recommend that subsection (3) be removed.

Recommendation 11: That section 71 (3) be removed from the Bill

Part 15 Division 2 Transition arrangements

The Riley Review set out a clear plan for significant reform of alcohol policy and legislation in the NT, and the Government's effective implementation of this plan has already seen significant reductions in harms to our community. In order to avoid the undermining of this progress AMSANT strongly recommends that the Bill is amended to state that from the date the legislation is passed, any unresolved liquor license applications will lapse and all new applications will be considered under the new Act, rather than waiting until the date the legislation is implemented.

The Tackling Alcohol-fuelled Violence Legislation Amendment Bill 2015 (QLD) provides a precedent for this to occur. Transitional provisions included in this legislation meant that any applications for late-night extended trading hours for takeaway liquor that were undecided on the date the legislation was introduced to the Queensland Parliament were lapsed and no new applications were accepted from that date. The transitional provisions also retrospectively prevented appeal proceedings from being considered by the court or tribunal.

Recommendation 12: That a new section be introduced under Part 15 Division 2 Transitional matters to the effect:

sXXX Consideration of liquor licence applications:

- 1) *Applications for a new licence or to vary, transfer or substitute a licence will be considered under the new Act from the date this legislation has passed*
- 2) *If an application for a licence was made or purportedly made prior to the passing of this legislation but had not been resolved, it will be taken to have lapsed upon the passing of this legislation*
- 3) *Appeals by applicants for licences whose applications have lapsed upon the passing of this legislation will not be considered.*

Harm prevention

The primary purpose of the Act is “to minimise the harm associated with the consumption of liquor in a way that recognises the public’s interest in the sale, supply, service, promotion, and consumption of liquor”. Public interest is given clear definition within the Bill in section 45 (2).

We would suggest however, that harm is not clearly defined within the current Bill before parliament and requires definition under section 4 Interpretation.

Recommendation 13: That harm be included in section 4 of the Act, to the effect:

Harm means adverse effects related to the sale, supply and consumption of alcohol including:

- a. *adverse effects on children, vulnerable people and communities (whether to a community as a whole or a group within a community);*
- b. *adverse economic, social and cultural effects (whether on a community as a whole or a group within a community);*
- c. *adverse effects on a person's health;*
- d. *alcohol abuse or misuse; and*
- a. *domestic violence and/or anti-social behaviour, including causing personal injury and property damage.*

Division 5 (Section 149 and 150) Inedible substances containing alcohol

These sections have been added to allow police to seize and dispose of products containing alcohol, like mouthwash, being consumed in public spaces.

Recently in Darwin and Palmerston we have seen a spike in problem drinkers who are having difficulty in accessing liquor, switching to alcohol-based mouthwashes and cooking essences. Community groups have come together with the Department of Health and NT Police to tackle this issue by asking that retailers implement a series of harm reduction measures, including storing these products behind the counter as has been the practice for years in Alice Springs.

AMSANT is very supportive of this work, however we remain concerned that some retailers are unwilling to voluntarily comply with such measures. We therefore see a need for the insertion of a provision in this section of the Act that would compel retailers to comply with regulations specific to such products.

It is our position that section 150 should also include a subsection (3) that allows for these substances to be prescribed in the regulations. This would allow for specific regulations – e.g. a requirement to store these products behind a counter or restrict sale to people over 18 – to be set for individual products that are being misused.

Recommendation 14: That section 150 be amended to include:

(3) A substance described in section 149 can be controlled as prescribed under regulation