
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AMENDMENT (ALCOHOL) BILL 2007

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
the Hon Mal Brough MP)
OUTLINE

This bill makes amendments to consolidate the alcohol measures in the Northern Territory National Emergency Response Act 2007. The bill:

- changes the 1,350 ml trigger for seeking and recording details in relation to takeaway alcohol sales to reduce the complexity of the provision;
- makes changes to clarify the storage of records of takeaway purchases;
- provides certain exceptions to the alcohol offences in relation to tourism operations in parks and other areas if declared;
- provides for the alcohol measures to be determined not to apply in a particular area if warranted, for example, where comprehensive and effective local alcohol management measures are implemented; and
- makes clear that no past or future Northern Territory legislation undermines the emergency response alcohol measures.

Financial impact statement

There is no financial impact from this bill in 2007-08.
NOTES ON CLAUSES

Clause 1 sets out how the Act is to be cited, that is, the Northern Territory National Emergency Response Amendment (Alcohol) Act 2007.

Clause 2 provides a table that sets out the commencement dates of the various sections in, and Schedules to, the Act. Most of the provisions in the Act commence on the day after Royal Assent.

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.

This explanatory memorandum uses the following abbreviations:

- ‘Liquor Act’ means the Liquor Act (NT); and
Schedule 1 – Alcohol

Summary

This Schedule makes amendments to consolidate the alcohol measures in the Northern Territory National Emergency Response Act 2007. The bill:

- changes the 1,350 ml trigger for seeking and recording details in relation to takeaway alcohol sales to reduce the complexity of the provision;
- makes changes to clarify the storage of records of takeaway purchases;
- provides certain exceptions to the alcohol offences in relation to tourism operations in parks and other areas if declared;
- provides for the alcohol measures to be determined not to apply in a particular area if warranted, for example, where comprehensive and effective local alcohol management measures are implemented; and
- makes clear that no past or future Northern Territory legislation undermines the emergency response alcohol measures.

Background

The NT NER Act introduced sweeping measures in response to the Little Children are Sacred report. One set of these measures concerned alcohol.

Alcohol restrictions have been targeted at people in prescribed areas because of the established link between alcohol in these communities and concerns about the protection of children.

The legislation provides for recording of larger amounts of takeaway alcohol in order to allow authorities to monitor potential traffickers. This bill introduces a simpler method of calculating the threshold amount required to trigger the requirement.

Tourism is a valuable industry in the Northern Territory and the defences inserted by this bill are intended to minimise the economic impact of these measures on that industry. This defence should not become a route by which people living in prescribed areas, who would otherwise be subject to the alcohol restrictions, can circumvent them. The provisions seek to ensure that these defences do not undermine the alcohol measures in the principal legislation.
Explanation of the changes

Amendments to section 12 of the NT NER Act

**Item 1** repeals paragraph 12(1)(a) of the NT NER Act and inserts a new paragraph. The legislative scheme for the alcohol measures in the NT NER Act is based on the Liquor Act as in force when the NT NER Act was enacted. The paragraph being replaced provided that the Liquor Act had effect in each prescribed area as if it were a general restricted area under that Act. Subsequent amendments to the Liquor Act have made it necessary to insert this provision for certainty of operation of the NT NER Act alcohol measures.

**Item 2** inserts subsections (3A), (3B) and (3C) into section 12 of the NT NER Act.

Subsection 12(3A) provides that it is a defence to a prosecution for an offence under subsection 12(2) (bringing liquor into, possessing or controlling liquor in, or consuming liquor within, an area) if certain criteria are met. Under paragraph (a), the defendant must be engaged in recreational activities in a national park, a Northern Territory park or an area covered by a declaration made by Commonwealth Minister under subsection 12(8A). Paragraph (b) requires the recreational activities to have been organised by a person in the tourist business. Paragraph (c) requires that, if the area is a park, the recreational activities are consistent with any management plan or similar document created for that park. Paragraph (d) requires that, if alcohol is consumed, the defendant must have been behaving in a responsible manner.

Subsection 12(3B) provides that *recreational activities* do not include an activity whose sole or primary purpose is the consumption of liquor. The intention of this provision is to ensure that legitimate tourist operations can continue to operate but that such operations cannot be used as a subterfuge for the consumption of alcohol.

Subsection 12(3C) provides that activities that are ancillary to the consumption of alcohol, which would otherwise form part of an offence under subparagraph 12(2)(a)(i) (bringing liquor into an area) or 12(2)(a)(ii) (possessing or controlling liquor within an area), would entitle the defendant to claim this defence. The intention is that activities such as transporting the alcohol would be permitted, provided the other conditions for claiming the defence existed.

**Item 3** adds subsections 12(5A), (5B), and (5C). These subsections create defences against prosecutions under subsection 12(4) (supply of alcohol, transporting to supply or possessing to supply).
Subsection 12(5A) provides a defence if the defendant and the person supplied, or to be supplied, were engaged in recreational activities in a national park or a Northern Territory park or area covered by a declaration by the Commonwealth Minister under subsection 12(8A). The recreational activities must be organised by someone in the tourist business. If the area is a park and if a management plan or similar document for the park exists, the recreational activities must be consistent with that.

Subsection 12(5B) provides that recreational activities do not include an activity whose sole or primary purpose is the consumption of liquor. The intention of this provision is to ensure that legitimate tourist operations can continue to operate but that the defence cannot be used as a subterfuge for the consumption of alcohol.

Subsection 12(5C) provides a defence in relation to an offence under subparagraph 12(4)(a)(ii) or (iii) in that activities that are ancillary to the consumption of alcohol, which would otherwise form part of an offence under subparagraph 12(4)(a)(ii) (bringing liquor into an area for the purposes of supplying to other people) or 12(4)(a)(iii) (possessing liquor intending to supply it within an area), would entitle the defendant to claim this defence. The intention is that activities such as transporting the alcohol would be permitted, provided the other conditions for claiming the defence existed.

Item 4 adds subsection 12(8A), which provides that the Commonwealth Minister may declare that a specified area of land or waters in a prescribed area is an area to which a defence under subsection (3A), (3C), (5A) or (5C) is available. The intention is that people undertaking organised tourist activities in a prescribed area would be able to avail themselves of the defences in those subsections if the area is covered by a Ministerial declaration.

Item 5 is a consequential amendment because of the insertion of subsection 12(8A).

Amendment to section 19 of the NT NER Act

Item 6 substitutes a new subsection 19(1), which enables the Commonwealth Minister to declare that all, or part, of the alcohol provisions in Division 2 of Part 2 of the NT NER Act no longer apply to all or part of a specified prescribed area. It is the intention that the emergency alcohol measures can cease in communities where it is demonstrated that there is no necessity to keep the provisions in place, for example where comprehensive and effective alcohol management plans are in place.

Repeal of Division 3 of the NT NER Act

Item 7 repeals Division 3 of Part 2 of the NT NER Act, since it is substantially replicated by new Division 3A (see below).
**Insertion of Division 3A into Part 2 of the NT NER Act**

**Item 8** inserts a new Division 3A – Sales of liquor for consumption away from licensed premises. The new Division substantially replicates the repealed Division 3. However, the basis of the requirement for keeping records of takeaway alcohol purchases has been changed in the substituted paragraphs 20(2)(a), (3)(a) and (4)(a). Under these paragraphs, the identification and record-keeping requirements apply where there is, in a single transaction, an alcohol sale of $100 or more or a sale of a quantity of wine exceeding five litres in a single container or two or more two-litre containers. The intention is to ensure that records are kept of alcohol purchases involving large amounts of money or in containers of a size which are used by ‘grog runners’.

The substituted section 21 has been amended to enable records collected for takeaway purchases under section 20 to be stored either on or at the licensed premises or at the direction of the Commission. This is intended to make the storage of records administratively convenient for both licensees and the Commission. Further, there is now a defence to a prosecution under subsection 21(4) if the licensee proves that the records sought under subsection 21(4) are not on the licensed premises but are kept as directed in writing by the Commission.

Section 22 is substituted in an unamended form.

**Addition of Division 6 to Part 2 of the NT NER Act**

**Item 9** adds at the end of Part 2, Division 6 – Certain things not valid. The new Division contains sections 25A and 25B.

The operation of the provisions enacted in Part 2 of the NT NER Act depends on the Liquor Act remaining in effect in relation to general restricted areas under that Act. Those areas are also prescribed areas under the NT NER Act. Section 25A provides that this will happen.

Subsection 25B(1) provides that the Commonwealth Minister may declare that this Division ceases to have effect. Subsection 25B(2) provides that such a declaration is a legislative instrument but that neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies.

It would lead to uncertainty as to the operation of the law if a declaration were to be subject to disallowance. Such uncertainty would be highly undesirable, given the short-term and emergency nature of the intervention.

The instrument is exempt from the sunsetting regime because section 6 sunsets all provisions of the Part after five years. It would be otiose and confusing for an instrument which repealed some or all of the Part to be sunsetted after the Part itself has ceased to have effect.