The dramatic increase of powers to police aboriginal people in the Northern Territory:

what little is gained for such a high a price

Mary Spiers
• A disclaimer
This is story about vulnerable people living with the consequences of rushed law making and - apparently - no policy development.
WARNING
PRESCRIBED AREA

NO LIQUOR
It is an offence to bring, possess, consume, supply, sell or control liquor beyond this point without a liquor permit or licence.

Maximum penalty:
- $1,100 - 1st offence
- $2,200 - 2nd or subsequent offences
- $74,800 and/or 18 months jail for supplying intending to supply over 1,200ml quantity of pure alcohol in liquor to a third person

It is not an offence to directly transport unopened liquor through a Prescribed Area provided you can clearly demonstrate your destination is outside the Prescribed Area.

The Liquor Act (NT) as amended by the Northern Territory National Emergency Response Act 2007 (Commonwealth)

NO PORNOGRAPHY
It is an offence to bring, possess, supply, sell or transport certain pornographic material beyond this point.

Maximum penalty possession:
- $5,000 for level 1 material
  Includes Category 1 Restricted and Category 2 Restricted publications. X18+ films, unclassified publications that would likely be classified Category 1 Restricted or Category 2 Restricted. Unclassified films that would likely be X18+ and prohibited advertisements
- $11,000 for level 2 material
  Includes films, computer games or publications that are Refused Classification or are unclassified but would likely be Refused Classification

Maximum penalty supply:
- $11,000 - supply less than 3 items
- $22,000 - and/or 2 years jail for 3 or more items.

Classification (Publications, Films and Computer Games) Act 1985 (Commonwealth)
How did we realise something had changed?

– Observations by Patrollers …

– Confusion from Town Camp Residents …

What did I find
Northern Territory National Emergency Response Act 2007

No. 129, 2007

An Act to respond to the Northern Territory’s national emergency, and for related purposes
Part 2 Alcohol
Division 2 Prescribed areas

Section 12

(d) specifying the possible penalties for the offence.

(2) The Commission must also cause to be published in a newspaper circulating in the district in which the relevant land is situated a notice:
(a) describing the relevant area; and
(b) stating that it is an offence to bring liquor into, to be in possession or control of liquor or to consume or sell liquor within the area; and
(c) specifying the possible penalties for the offence.

(3) A failure to comply with subsection (1) or (2) does not invalidate a declaration under section 4.

12 Modification: prescribed areas

(1) The Liquor Act has effect as if:
(a) each prescribed area had been declared by the Commission to be a general restricted area under that Act; and
(b) the offences against subsection 75(1) of that Act, so far as they relate to a prescribed area, were replaced by the following provisions of this section.

(2) A person commits an offence if:
(a) the person:
   (i) brings liquor into an area; or
   (ii) has liquor in his or her possession or control within an area; or
   (iii) consumes liquor within an area; and
(b) the area is a prescribed area.

Maximum penalty:
(b) stating that it is an offence to bring liquor into, to be in possession or control of liquor or to consume or sell liquor within the area; and
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   (b) the area is a prescribed area.

Maximum penalty:
   (c) 10 penalty units for a first offence; or
   (d) 20 penalty units for a second or subsequent offence.

(3) It is a defence to a prosecution for an offence against subsection (2) if the
NORTHERN TERRITORY OF AUSTRALIA
LIQUOR ACT

As in force at 15 November 2007
Division 3  

Powers of entry, search and seizure for general restricted areas

94A  

Application

This Division applies to an offence against this Part in relation to a general restricted area (a relevant offence).

95  

Powers of search and seizure

(1) An inspector may, without a warrant:

(a) do 1 or more of the following if the inspector reasonably suspects a relevant offence has been, or is being or likely to be, committed:

(i) enter and search an area of land (whether or not it is the general restricted area);

(ii) stop, enter, search, remove and retain a vehicle, vessel or aircraft (whether or not it is in the general restricted area);

(iii) stop, detain and search a person in connection with the exercise of a power under subparagraph (i) or (ii);

(iv) search a thing in connection with the exercise of a power under subparagraph (i), (ii) or (iii); and

(b) seize a thing found in connection with the exercise of a power under paragraph (a)(i), (ii), (iii) or (iv) that the inspector reasonably believes to be related to a relevant offence.

(2) In addition, an inspector may, without a warrant:

(a) do 1 or more of the following on a random basis for the detection of a relevant offence that has been, or is being or likely to be, committed:

(i) stop, enter, search, remove and retain a vehicle (whether or not it is in the general restricted area);

(ii) stop, detain and search a person (whether or not in connection with the exercise of a power under subparagraph (i));

(iii) search a thing in connection with the exercise of a power under subparagraph (i) or (ii); and

(b) seize a thing in connection with the exercise of a power under paragraph
Powers to enter a house & land:

(1) An inspector may, without a warrant:

(a) do 1 or more of the following if the inspector reasonably suspects a relevant offence has been, or is being or likely to be, committed:

(i) enter and search an area of land (whether or not it is the general restricted area);

(ii) stop, enter, search, remove and retain a vehicle, vessel or aircraft (whether or not it is in the general restricted area);

(iii) stop, detain and search a person in connection with the exercise of a power under subparagraph (i) or (ii);

(iv) search a thing in connection with the exercise of a power under subparagraph (i), (ii) or (iii); and

(b) seize a thing...

Under s74 LA General Restricted Areas include private premises;
see also interpretation of 'premises' which incl area of landd

(2) In addition, an inspector may...
Random search powers:

(2) In addition, an inspector may, without a warrant:

(a) do 1 or more of the following on a random basis for the detection of a relevant offence that has been, or is being or likely to be, committed:

(i) stop, enter, search, remove and retain a vehicle (whether or not it is in the general restricted area);

(ii) stop, detain and search a person (whether or not in connection with the exercise of a power under subparagraph (i));

(iii) search a thing in connection with the exercise of a power under subparagraph (i) or (ii); and

(b) seize a thing in connection with the exercise of a power under paragraph (a)(i), (ii) or (iii) that the inspector reasonably believes to be related to a relevant offence.
• Also under s18 NTERA,
  • In prescribed areas only,

    Police have power to enter a private home to take a seriously intoxicated person into protective custody

    (extending the power under the NT’s Police Administration Act.)
In short:

*Police can enter a house within a prescribed area if*

- Police reasonably suspect there is alcohol inside or
- there is really drunk person in the house

*Inside or outside a prescribed area,*
  
  if police are carrying out searches for the purpose of stopping alcohol going into prescribed areas:

- Police can **randomly stop & search** people, cars, bags, etc.

*And*

- They can lawfully seize any alcohol found
Let’s look at this another way

• Where did this law come from?
• And what does it mean in practice in, eg, Alice Springs?
Seizure

• Police can “seize a thing in connection with the exercise of a {random search} power […] that [s/he] reasonably believes to be related to a relevant offence”
  – no receipt
  – no explanation re how to apply to get alcohol back
  – no requirement an offence be laid
  – No requirement to warn an offence to obstruct
  – No requirement to identify self or station

• Anyone sober with ID & over 18 can still buy alcohol
## Comparing town & the bush

<table>
<thead>
<tr>
<th></th>
<th>Alice Springs</th>
<th>Yuendumu</th>
</tr>
</thead>
<tbody>
<tr>
<td>liquor outlets</td>
<td>105</td>
<td>0</td>
</tr>
<tr>
<td>take away licences</td>
<td>27</td>
<td>0 (closest is ~270km)</td>
</tr>
<tr>
<td>Population</td>
<td>23892</td>
<td>~800</td>
</tr>
<tr>
<td>Popn living in prescribed area</td>
<td>~2500-3000</td>
<td>~800</td>
</tr>
<tr>
<td>Chose to become ‘dry’?</td>
<td>No*</td>
<td>Yes</td>
</tr>
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- In 2 previous years started a process of becoming dry
town & several town camps had chosen to become ‘dry’
Consequences of the Law:

(There is no data - only anecdotal)

Who do the police in fact “randomly” search? - random… or targeted?

What happens when you give police a power which encourages them to target indigenous people?

What does this law do in a community that already struggles with race relations?
Consequences of the Law:

(cont’d)

• What about the children (the original reason for this law’s introduction)?
• Has it stopped the drinking?
  – Drinkers find other places to drink:
    • The hills, the highways, or hide
  – Alternatively: they realise the police can’t catch them all the time
  – Drinking as a form of resistance?
The prohibition of alcohol?

• Turn off the tap?
• Turn down the tap?
• Leave the tap running but don’t let some people drink from it?
Concerns:

- Safeguards?
  - Identify self?
  - Explain power? Explain how to complain?
  - Requirement to inquire whether person going to prescribed area?
  - Record keeping? ... Issuing receipts?
  - Geographical limitation?
  - Same gender searching? - yes!
Concerns:

there are no anti-corruption strategies in place &
lawful police action is viewed skeptically by the community
Concerns:

The law is very broad & police don’t have resources to give it full effect, and community members are unhappy about inconsistent application of the law:

- there are complaints about police entry to homes, and the same people complains that police do not stop taxi’s bring passengers with grog
A final remark

• The Race Discrimination Act
  – NTERA says: this law will be taken to be a special measure
    ... If this is special measure that benefits indigenous people then it can bear the scrutiny of review
  - Lawyers seems frozen about challenging NTERA -
    ...I’d suggest that there is a basis for running a challenge that takes the principles in the Tas Dams Case one step further.