

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Liquor Bill 2010

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2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Liquor Bill 2010

A Bill for

An Act relating to the supply of liquor

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **Division 1.1 Introduction**

3 **1 Name of Act**

4 This Act is the *Liquor Act 2010*.

5 **2 Commencement**

6 This Act commences on a day fixed by the Minister by written
7 notice.

8 *Note 1* The naming and commencement provisions automatically commence on
9 the notification day (see Legislation Act, s 75 (1)).

10 *Note 2* A single day or time may be fixed, or different days or times may be
11 fixed, for the commencement of different provisions (see Legislation
12 Act, s 77 (1)).

13 *Note 3* If a provision has not commenced within 6 months beginning on the
14 notification day, it automatically commences on the first day after that
15 period (see Legislation Act, s 79).

16 **3 Dictionary**

17 The dictionary at the end of this Act is part of this Act.

18 *Note 1* The dictionary at the end of this Act defines certain terms used in this
19 Act, and includes references (*signpost definitions*) to other terms
20 defined elsewhere.

21 For example, the signpost definition ‘*identity card*—see the *Fair*
22 *Trading (Consumer Affairs) Act 1973*, dictionary.’ means that the term
23 ‘identity card’ is defined in that dictionary and the definition applies to
24 this Act.

25 *Note 2* A definition in the dictionary (including a signpost definition) applies to
26 the entire Act unless the definition, or another provision of the Act,
27 provides otherwise or the contrary intention otherwise appears (see
28 Legislation Act, s 155 and s 156 (1)).

1 **4 Notes**

2 A note included in this Act is explanatory and is not part of this Act.

3 *Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of
4 notes.

5 **5 Offences against Act—application of Criminal Code etc**

6 Other legislation applies in relation to offences against this Act.

7 *Note 1 Criminal Code*

8 The Criminal Code, ch 2 applies to all offences against this Act (see
9 Code, pt 2.1).

10 The chapter sets out the general principles of criminal responsibility
11 (including burdens of proof and general defences), and defines terms
12 used for offences to which the Code applies (eg *conduct*, *intention*,
13 *recklessness* and *strict liability*).

14 *Note 2 Penalty units*

15 The Legislation Act, s 133 deals with the meaning of offence penalties
16 that are expressed in penalty units.

17 **6 Application of Act—generally**

18 This Act does not apply to the following:

19 (a) the administration, dispensing or sale of liquor for medicinal
20 purposes—

21 (i) by or under the direction of a doctor; or

22 (ii) by a pharmacist;

23 (b) the supply, possession, consumption or purchase of liquor that
24 is authorised by a law in force in the Territory.

25 **Examples—par (b)**

26 1 *Defence Act 1903* (Cwlth), s 123A

2 *Army and Air Force Canteen Service Regulations 1959* (Cwlth), s 27

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

7 Application of Act—sale of liquor

(1) The provisions of this Act relating to the sale of liquor do not apply to the following:

(a) the duty-free sale of liquor;

(b) the sale of liquor for someone else by an auctioneer, by auction, in the ordinary course of the auctioneer's business;

(c) the sale by, or on behalf of, the Commonwealth or the Territory of liquor seized under a law in force in the ACT.

(2) In this section:

duty-free sale means a sale for which is given permission under the *Customs Act 1901* (Cwlth), section 96A (2).

8 Application of Act—sale of liquor at universities

(1) The provisions of this Act relating to the sale of liquor do not apply to the sale of liquor in an exempt university building.

(2) A person commits an offence if—

(a) the person sells liquor; and

(b) the sale happens in an exempt university building; and

(c) the sale is in contravention of a statute of the university.

Maximum penalty: 10 penalty units.

- 1 (3) A person commits an offence if—
2 (a) the person purchases liquor; and
3 (b) the purchase happens in an exempt university building; and
4 (c) the purchase is in contravention of a statute of the university.
5 Maximum penalty: 10 penalty units.
6 (4) In this section:
7 *exempt university building* means a building—
8 (a) that is occupied by—
9 (i) a university; or
10 (ii) a residential college affiliated with a university under a
11 statute of the university; and
12 (b) in which the sale of liquor is authorised by a statute of the
13 university.
14 *university* means the—
15 (a) Australian National University; or
16 (b) University of Canberra.

Division 1.2 Objects and principles

9 Object of Act

The object of this Act is to regulate the sale, supply, promotion and consumption of liquor—

- (a) to minimise the harm associated with the consumption of liquor; and
- (b) to facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety.

10 Harm minimisation and community safety principles

In making a decision under this Act, a decision-maker must have regard to the following principles (the *harm minimisation and community safety principles*):

- (a) responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor should be encouraged;
- (b) community safety should not be jeopardised, particularly in relation to events involving large numbers of people;
- (c) the liquor industry should be regulated in a way that minimises harm caused by alcohol abuse, including—
 - (i) adverse effects on health; and
 - (ii) personal injury; and
 - (iii) property damage; and
 - (iv) violent or anti-social behaviour;
- (d) the sale of liquor should be regulated in a way that contributes to the responsible development of the liquor, tourism and hospitality industries;

- 1 (e) community amenity, social harmony and wellbeing should be
2 protected and enhanced through the responsible sale, supply,
3 promotion and consumption of liquor;
- 4 (f) the safety, health and welfare of people using licensed
5 premises and permitted premises should not be put at risk;
- 6 (g) noise from licensed premises and permitted premises should
7 not be excessive;
- 8 (h) licensed premises and permitted premises should not be located
9 where they would be likely to cause undue disturbance,
10 inconvenience or offence to people—
- 11 (i) lawfully at adjacent or nearby premises; or
- 12 (ii) because of the premises' proximity to a place of public
13 worship, a hospital or a school;
- 14 (i) licences and permits should only be issued to people who
15 comply with ACT law, and are likely to continue to comply
16 with ACT law;
- 17 (j) licences and permits should only be issued for premises that
18 comply with ACT law, and are likely to continue to comply
19 with ACT law.

20 **Examples—decisions**

21 1 a decision to issue a licence under s 27

22 2 a decision to issue a permit under s 51

23 *Note* An example is part of the Act, is not exhaustive and may extend, but
24 does not limit, the meaning of the provision in which it appears (see
25 Legislation Act, s 126 and s 132).

1 **Division 1.3 Important concepts**

2 **11 What is *liquor*?**

3 (1) In this Act:

4 *liquor*—

5 (a) means a substance that—

6 (i) is capable of being ingested; and

7 (ii) contains more than 1.15% by volume of ethanol; and

8 (b) includes a substance prescribed by regulation; and

9 (c) does not include a substance prescribed by regulation not to be
10 liquor.

11 **12 Offence—sell liquor without licence or permit**

12 (1) A person commits an offence if the person—

13 (a) sells liquor to someone else; and

14 (b) does not hold a licence or permit authorising the sale.

15 Maximum penalty: 100 penalty units, 12 months imprisonment or
16 both.

17 (2) This section does not apply if the sale happens at a private event at
18 which not more than 30 people are present.

19 *Note* The defendant has an evidential burden in relation to the matters
20 mentioned in s (2) (see Criminal Code, s 58).

1 **13 Offence—fail to comply with condition of licence or**
2 **permit**

- 3 (1) A licensee commits an offence if—
4 (a) the licence is subject to a condition; and
5 (b) the licensee fails to comply with the condition.

6 Maximum penalty: 50 penalty units.

- 7 (2) A permit-holder commits an offence if—
8 (a) the permit is subject to a condition; and
9 (b) the permit-holder fails to comply with the condition.

10 Maximum penalty: 50 penalty units.

11 **14 Who is a *close associate*?**

- 12 (1) In this Act:

13 *close associate*—a person is a *close associate* of someone (the
14 *related person*) if—

- 15 (a) the person holds or will hold an executive position (however
16 described) in the related person's business; or
17 (b) the commissioner is satisfied that the person is or will be able
18 to exercise a significant influence in relation to the conduct of
19 the related person's business because the person holds or will
20 hold a financial interest, or is entitled to exercise a relevant
21 power, in the business.

- 22 (2) In this section:

23 *business* includes—

- 24 (a) a business not carried on for profit; and
25 (b) a trade or profession.

executive position—a position (however described) in the related person's business is an ***executive position*** if the holder of the position is concerned with, or takes part in, the management of the business.

exercise a power includes exercise the power on behalf of someone else.

financial interest, in a business, means—

- (a) a share in the capital of the business; or
- (b) an entitlement to receive income derived from the business, however the entitlement arises.

hold a position includes hold the position on behalf of someone else.

power means a power exercisable—

- (a) by voting or otherwise; and
- (b) alone or with others.

relevant power, in a business, means a power—

- (a) to take part in a directorial, managerial or executive decision for the business; or
- (b) to elect or appoint a person as an executive officer in the business.

15 Who is an *influential person* for a corporation?

(1) In this Act:

influential person, for a corporation, means any of the following:

- (a) an executive officer of the corporation;
- (b) a person who may exercise a relevant power in relation to the corporation;
- (c) a related corporation;

- 1 (d) an executive officer of a related corporation.
- 2 (2) In this section:
- 3 ***related corporation*** means a related body corporate under the
- 4 Corporations Act.
- 5 ***relevant power***, for a corporation, means a power—
- 6 (a) to take part in a directorial, managerial or executive decision
- 7 for the corporation; or
- 8 (b) to elect or appoint a person as an executive officer in the
- 9 corporation; or
- 10 (c) to exercise a significant influence in relation to the conduct of
- 11 the corporation.

Part 2 Liquor licences

Division 2.1 Classes of licences

16 What is a *licence*?

In this Act:

licence means—

- (a) a general licence; or
- (b) an on licence; or
- (c) an off licence; or
- (d) a club licence; or
- (e) a special licence.

17 What is a *general licence*?

In this Act:

general licence means a licence that authorises the licensee to sell liquor—

- (a) at a single licensed premises; and
- (b) in—
 - (i) open containers for consumption at the premises; or
 - (ii) sealed containers for consumption off the premises; and
- (c) at the licensed times.

Note A licence may have different licensed times for the sale of liquor for consumption at the premises and the sale of liquor for consumption off the premises.

1 **18** **What is an *on licence*?**

2 In this Act:

3 *on licence* means a licence that authorises the licensee to sell
4 liquor—

- 5 (a) at a single licensed premises; and
6 (b) in open containers for consumption at the premises; and
7 (c) at the licensed times.

8 **Examples—on licences**

- 9 1 bar licence
10 2 nightclub licence
11 3 restaurant and cafe licence

12 *Note* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 Legislation Act, s 126 and s 132).

15 **19** **What is an *off licence*?**

16 In this Act:

17 *off licence* means a licence that authorises the licensee to sell
18 liquor—

- 19 (a) at a single licensed premises; and
20 (b) in sealed containers for consumption off the premises; and
21 (c) at the licensed times.

- 1 **20 What is a *club licence*?**
- 2 In this Act:
- 3 ***club licence*** means a licence that authorises a club to sell liquor—
- 4 (a) in stated parts of a single licensed premises; and
- 5 (b) in—
- 6 (i) open containers for consumption at the premises; or
- 7 (ii) sealed containers for consumption off the premises; and
- 8 (c) at the licensed times; and
- 9 (d) to an adult—
- 10 (i) who is a member of the club; or
- 11 (ii) who is—
- 12 (A) at the licensed premises at the invitation of an adult
- 13 member of the club who is also at the premises; and
- 14 (B) authorised by the club to be at the premises.
- 15 **21 What is a *special licence*?**
- 16 In this Act:
- 17 ***special licence*** means a licence that authorises the licensee to sell
- 18 liquor—
- 19 (a) at a single licensed premises; and
- 20 (b) at the licensed times.

Division 2.2 On licences—subclasses

22 What is a *bar licence*?

(1) In this Act:

bar licence means an on licence for premises that are a bar.

(2) In this section:

bar—

(a) means premises where the predominant activity at the licensed times is the serving of liquor for consumption at the premises; and

(b) includes premises prescribed by regulation to be a bar.

Example

1 a pub

2 a tavern

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

23 What is a *nightclub licence*?

(1) In this Act:

nightclub licence means an on licence for premises that are a nightclub.

(2) In this section:

nightclub—

(a) means premises where the predominant activity at the licensed times is dancing and entertainment; and

(b) includes premises prescribed by regulation to be a nightclub.

1 **24 What is a *restaurant and cafe licence*?**

- 2 (1) In this Act:
- 3 *restaurant and cafe licence* means an on licence for premises that
- 4 are a restaurant or cafe.
- 5 (2) In this section:
- 6 *restaurant or cafe*—
- 7 (a) means premises where the predominant activity at the licensed
- 8 times is the serving of meals for consumption on the premises;
- 9 and
- 10 (b) includes premises prescribed by regulation to be a restaurant or
- 11 cafe.

12 **Division 2.3 Licences—application and decision**

13 **25 Licence—application**

- 14 (1) A person (a *proposed licensee*) may apply to the commissioner for a
- 15 stated licence for stated premises.
- 16 (2) The application must—
- 17 (a) be in writing; and
- 18 (b) state the class of licence applied for and, for an on licence, the
- 19 subclass of licence applied for; and
- 20 (c) include complete details of suitability information about—
- 21 (i) the proposed licensee; and
- 22 (ii) each close associate of the proposed licensee; and
- 23 (iii) if the proposed licensee is a corporation—each influential
- 24 person for the proposed licensee; and

- 1 (iv) if someone other than the proposed licensee is to have
2 day-to-day control of the business operated under the
3 licence—each person who is to have day-to-day control;
4 and
- 5 (v) the proposed licensed premises; and
- 6 *Note* **Suitability information**, about a person—see s 69.
7 **Suitability information**, about premises—see s 78.
- 8 (d) include a police certificate for each of the following people,
9 dated not earlier than 3 months before the date of the
10 application:
- 11 (i) the proposed licensee;
- 12 (ii) each close associate of the proposed licensee;
- 13 (iii) each influential person for the proposed licensee;
- 14 (iv) if someone other than the proposed licensee is to have
15 day-to-day control of the business operated under the
16 licence—each person who is to have day-to-day control;
17 and
- 18 (e) include—
- 19 (i) an ACTPLA certificate for the premises dated not earlier
20 than 3 months before the date of the application; and
- 21 (ii) the final floor plans of the premises approved by the
22 planning and land authority in the development approval
23 for the premises; and
- 24 (iii) a certificate of occupancy for the premises; and

- 1 (f) if the application is for a general licence, an on licence, a club
2 licence or a special licence—include a risk-assessment
3 management plan for the premises.

4 *Note 1* Giving false or misleading information is an offence against the
5 Criminal Code, s 338.

6 *Note 2* If a form is approved under s 222 for this provision, the form must be
7 used.

8 *Note 3* A fee may be determined under s 221 for this provision.

9 **26 Licence—public consultation**

10 A proposed licensee must comply with the public consultation
11 provisions in division 2.4 (Licences—public consultation).

12 **27 Licence—decision on application**

13 (1) This section applies if the commissioner receives an application for
14 a licence under section 25.

15 (2) The commissioner must issue the licence to the proposed licensee
16 only if satisfied that—

17 (a) if the proposed licensee is an individual—the proposed
18 licensee is an adult; and

19 (b) each of the following people is a suitable person to hold the
20 licence:

21 (i) the proposed licensee;

22 (ii) each close associate of the proposed licensee;

23 (iii) if the proposed licensee is a corporation—each influential
24 person for the proposed licensee;

25 (iv) if someone other than the proposed licensee is to have
26 day-to-day control of the business operated under the
27 licence—each person who is to have day-to-day control;
28 and

1 (c) the proposed licensed premises are suitable premises for the
2 licence; and

3 (d) the proposed licensee complies, and is likely to continue to
4 comply, with the requirements of this Act; and

5 (e) the proposed licensed premises comply with the requirements
6 of this Act.

7 *Note 1* A reference to an Act includes a reference to the statutory instruments
8 made or in force under the Act, including any regulation (see
9 Legislation Act, s 104).

10 *Note 2* **Suitable person**, to hold a licence or permit—see s 67.
11 **Suitable premises**, for a licence or permit—see s 75.

12 *Note 3* In making this decision, the commissioner must have regard to the harm
13 minimisation and community safety principles (see s 10).

14 *Note 4* A decision under this subsection is a reviewable decision (see s 214).

15 (3) The commissioner must, not later than the required time—

16 (a) decide the application; and

17 (b) tell the proposed licensee about the decision on the application.

18 (4) In this section:

19 **required time** means the latest of the following:

20 (a) if the commissioner receives a representation about a person or
21 premises under section 35 (Licence—representations)—
22 90 days after the commissioner receives the representation;

23 (b) if the commissioner requires the proposed licensee to provide a
24 police certificate or other information under section 71
25 (Commissioner may require police certificate etc for person)—
26 90 days after the day the commissioner receives the certificate
27 or information;

- 1 (c) if the commissioner requires the proposed licensee to provide a
2 certificate, plan or other information under section 79
3 (Commissioner may require certificate, plan, etc for
4 premises)—90 days after the day the commissioner receives
5 the certificate, plan or information;
- 6 (d) if the commissioner asks the proposed licensee to allow the
7 commissioner to inspect the premises under section 80
8 (Commissioner may require inspection of premises)—90 days
9 after the day the commissioner inspects the premises;
- 10 (e) 90 days after the day the commissioner receives the
11 application.
- 12 *Note* Failure to issue a licence within the required time is taken to be a
13 decision not to issue the licence (see *ACT Civil and Administrative*
14 *Tribunal Act 2008*, s 12).

15 **28 Licence—occupancy loading**

- 16 (1) This section applies if the commissioner decides to issue a licence
17 that authorises the licensee to sell liquor in open containers for
18 consumption at the licensed premises.
- 19 *Note* A general licence, on licence, club licence or special licence may
20 authorise the sale of liquor in open containers for consumption at the
21 licensed premises—see div 2.1.
- 22 (2) The commissioner must also decide the occupancy loading for each
23 public area at the proposed licensed premises.
- 24 *Note* **Occupancy loading**, for a public area at licensed premises or permitted
25 premises—see s 83.

29 Licence—adults-only areas

- (1) This section applies if the commissioner decides to issue a licence that authorises the licensee to sell liquor in open containers for consumption at the licensed premises.

Note A general licence, on licence, club licence or special licence may authorise the sale of liquor in open containers for consumption at the licensed premises—see div 2.1.

- (2) The commissioner must also decide the adults-only areas (if any) for the licensed premises.

Note 1 **Adults-only area**, for licensed premises or permitted premises—see s 93.

Note 2 If the commissioner decides that licensed premises are to include an adults-only area, the commissioner may decide when the area is to be used as an adults-only area (see s 94 (3)).

30 Licence—form

- (1) A licence must—

(a) be in writing; and

(b) include the following information:

(i) the class of the licence and, for an on licence, the subclass of licence;

(ii) the name of the licensee;

(iii) if the licensee carries on business under a name other than the licensee's name—the name under which the licensee carries on business;

(iv) the address of the licensed premises;

(v) the licensed times when—

(A) liquor to be consumed at the licensed premises may be sold (if any); and

- 1 (B) liquor to be consumed off the licensed premises may
2 be sold (if any);
- 3 (vi) the conditions on the licence;
- 4 (vii) anything else prescribed by regulation.
- 5 (2) A licence may include anything else the commissioner considers
6 relevant.

7 **31 Licence—conditions**

- 8 (1) A licence is subject to the condition that—
- 9 (a) the licensee must comply with this Act; and
- 10 (b) the licensed premises must comply with this Act.
- 11 (2) A licence is also subject to any other condition—
- 12 (a) prescribed by regulation; or
- 13 (b) imposed by the commissioner when the licence is issued,
14 renewed or amended.

15 **Examples—conditions**

- 16 1 that stated requirements about inspection must be complied with
- 17 2 that stated requirements about reporting must be complied with
- 18 3 that stated records must be kept
- 19 4 that stated levels of security must be used for stated events
- 20 5 that the licensee must not allow people to enter the licensed premises after a
21 stated time
- 22 6 that the licensee must comply with any liquor guidelines made by the
23 commissioner under s 217

24 *Note 1* A reference to an Act includes a reference to the statutory instruments
25 made or in force under the Act, including any regulation (see
26 Legislation Act, s 104).

27 *Note 2* Licences may be amended under s 37, s 38 or s 39.
28 Licences may be renewed under s 43.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

32 Licence—term

- (1) A licence comes into force on the day it is issued.
- (2) A licence expires on the day prescribed by regulation.
- (3) However, the commissioner may decide on reasonable grounds that a licence expires on another day.
- (4) If the commissioner makes a decision under subsection (3) for a class or subclass of licence, the decision is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Division 2.4 Licences—public consultation

33 Definitions—div 2.4

In this division:

applicant means—

- (a) for an application for a licence under section 25 (Licence—application)—the proposed licensee; or
- (b) for an application to amend a licence from 1 subclass of on licence to another subclass of on licence under section 38 (Licence—amendment on application by licensee)—the licensee.

- 1 ***relevant premises*** means—
- 2 (a) for an application for a licence under section 25 (Licence—
- 3 application)—the proposed licensed premises; or
- 4 (b) for an application to amend a licence from 1 subclass of on
- 5 licence to another subclass of on licence under section 38
- 6 (Licence—amendment on application by licensee)—the
- 7 licensed premises.

8 **34 Licence—public notification of application**

- 9 (1) The applicant must—
- 10 (a) display a sign about the application at the relevant premises;
- 11 and
- 12 (b) publish a notice about the application in a daily newspaper.
- 13 (2) A sign and notice must—
- 14 (a) state the class of licence applied for and, for an on licence, the
- 15 subclass of licence applied for; and
- 16 (b) comply with the requirements prescribed by regulation.
- 17 (3) A person commits an offence if the person—
- 18 (a) is an applicant; and
- 19 (b) fails to—
- 20 (i) display a sign in accordance with this section; or
- 21 (ii) publish a notice in accordance with this section.
- 22 Maximum penalty: 5 penalty units.
- 23 (4) An offence against this section is a strict liability offence.

35 Licence—representations

(1) If an applicant displays a sign or publishes a notice under section 34, anyone may give a written representation to the commissioner about how—

(a) 1 or more of the following people is not a suitable person to hold the licence:

(i) the applicant;

(ii) a close associate of the applicant;

(iii) if the applicant is a corporation—an influential person for the applicant;

(iv) if someone other than the applicant is to have day-to-day control of the business operated under the licence—a person who is to have day-to-day control; or

(b) the relevant premises are not suitable premises for the licence.

Note **Suitable person**, to hold a licence or permit—see s 67.
Suitable premises, for a licence or permit—see s 75.

(2) A representation about an application may be given to the commissioner only during the public consultation period for the application.

Note **Public consultation period**, for an application—see s 36.

(3) A person who gives the commissioner a representation about an application may, in writing, withdraw the representation at any time before the application is decided.

Note In deciding whether a person or premises are suitable for a licence, the commissioner must consider public consultation representations received under this section (see s 68 and s 76).

1 **36 What is the *public consultation period*?—div 2.5**

2 (1) In this division:

3 *public consultation period*, for an application, means—

4 (a) the period prescribed by regulation; or

5 (b) if the period prescribed is extended under subsection (2)—the
6 prescribed period as extended.

7 (2) The commissioner may, by notice published in a daily newspaper,
8 extend the public consultation period for an application.

9 *Note* The commissioner may extend the public consultation period after it has
10 ended (see Legislation Act, s 151C).

11 (3) If the commissioner extends the public consultation period under
12 subsection (2), the commissioner must give the applicant written
13 notice of the extension.

14 **Division 2.5 Licences—amendment, transfer,**
15 **renewal, etc**

16 **37 Licence—amendment initiated by commissioner**

17 (1) The commissioner may, by written notice (an *amendment notice*)
18 given to a licensee, amend the licence if satisfied that—

19 (a) each of the following people is a suitable person to hold the
20 licence as amended:

21 (i) the licensee;

22 (ii) each close associate of the licensee;

23 (iii) if the licensee is a corporation—each influential person
24 for the licensee;

- 1 (iv) if someone other than the licensee has, or is to have,
2 day-to-day control of the business operated under the
3 licence—each person who has, or is to have, day-to-day
4 control; and
- 5 (b) the licensed premises are suitable premises for the licence as
6 amended.
- 7 *Note 1* **Amend** includes amend, impose or remove a licence condition—see the
8 dictionary.
- 9 *Note 2* **Suitable person**, to hold a licence or permit—see s 67.
10 **Suitable premises**, for a licence or permit—see s 75.
- 11 *Note 3* In making this decision, the commissioner must have regard to the harm
12 minimisation and community safety principles (see s 10).
- 13 (2) However, the commissioner may amend the licence only if—
- 14 (a) the commissioner has given the licensee written notice (a
15 **proposal notice**) of the proposed amendment; and
- 16 (b) the proposal notice states that written comments on the
17 proposal may be made to the commissioner before the end of a
18 stated period of at least 14 days after the day the proposal
19 notice is given to the licensee; and
- 20 (c) after the end of the stated period, the commissioner has
21 considered any comments made in accordance with the notice.
- 22 (3) Subsection (2) does not apply if the licensee applied for, or agreed
23 in writing to, the amendment.
- 24 (4) The amendment takes effect on the day the amendment notice is
25 given to the licensee or a later day stated in the notice.

38 Licence—amendment on application by licensee

- (1) A licensee may apply to the commissioner to amend the licence.

Note 1 If a form is approved under s 222 for an application, the form must be used.

Note 2 A fee may be determined under s 221 for this provision.

- (2) A licensee must apply to the commissioner for amendment of the licence if someone else is to—

(a) become a close associate of the licensee; or

(b) if the licensee is a corporation—become an influential person for the licensee; or

(c) have day-to-day control of the business operated under the licence.

- (3) If a licensee applies to the commissioner to amend an on licence from 1 subclass to another, the licensee must comply with the public consultation provisions in division 2.4 (Licences—public consultation).

Example—amendment from 1 subclass to another

Restaurant and cafe licence to nightclub licence

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The commissioner may amend the licence only if satisfied that—

(a) each of the following people is a suitable person to hold the licence as amended:

(i) the licensee;

(ii) each close associate of the licensee;

(iii) if the licensee is a corporation—each influential person for the licensee;

- 1 (iv) if someone other than the proposed licensee has, or is to
2 have, day-to-day control of the business operated under
3 the licence—a person who has, or is to have, day-to-day
4 control; and
- 5 (b) the licensed premises are suitable premises for the licence as
6 amended.
- 7 *Note 1* **Amend** includes amend, impose or remove a licence condition—see the
8 dictionary.
- 9 *Note 2* **Suitable person**, to hold a licence or permit—see s 67.
10 **Suitable premises**, for a licence or permit—see s 75.
- 11 *Note 3* In making this decision, the commissioner must have regard to the harm
12 minimisation and community safety principles (see s 10).
- 13 *Note 4* A decision under this subsection is a reviewable decision (see s 214).
- 14 (5) The commissioner must, not later than the required time—
15 (a) decide the application for amendment; and
16 (b) tell the licensee about the decision on the application.
- 17 (6) In this section:
18 **required time** means the latest of the following:
- 19 (a) if the commissioner receives a representation about a person or
20 premises under section 35 (Licence—representations)—
21 90 days after the commissioner receives the representation;
- 22 (b) if the commissioner requires the licensee to provide a police
23 certificate or other information under section 71
24 (Commissioner may require police certificate etc for person)—
25 30 days after the day the commissioner receives the certificate
26 or information;

- 1 (c) if the commissioner requires the licensee to provide a
2 certificate, plan or other information under section 79
3 (Commissioner may require certificate, plan, etc for
4 premises)—30 days after the day the commissioner receives
5 the certificate, plan or information;
- 6 (d) if the commissioner asks the licensee to allow the
7 commissioner to inspect the premises under section 80
8 (Commissioner may require inspection of premises)—30 days
9 after the day the commissioner inspects the premises;
- 10 (e) 30 days after the day the commissioner receives the
11 application.
- 12 *Note* Failure to amend a licence within the required time is taken to be a
13 decision not to amend the licence (see *ACT Civil and Administrative*
14 *Tribunal Act 2008*, s 12).

15 **39 Licence—amendment for change to floor plan of licensed**
16 **premises**

- 17 (1) A licensee must apply to the commissioner for amendment of the
18 licence if the licensee intends to change the floor plan of the
19 licensed premises.
- 20 (2) The application must—
- 21 (a) be in writing; and
- 22 (b) include—
- 23 (i) an ACTPLA certificate for the premises, as intended to be
24 changed, dated not earlier than 3 months before the date
25 of the application; and
- 26 (ii) the final floor plans of the premises, as intended to be
27 changed, approved by the planning and land authority in
28 the development approval for the premises; and

- 1 (iii) if the licence is a general licence, an on licence, a club
2 licence or a special licence—a risk-assessment
3 management plan for the altered licensed premises.
- 4 (3) The commissioner may amend the licence only if satisfied that the
5 premises as intended to be changed are suitable premises for the
6 licence.
- 7 *Note 1* **Amend** includes amend, impose or remove a licence condition—see the
8 dictionary.
- 9 *Note 2* **Suitable premises**, for a licence or permit—see s 75.
- 10 *Note 3* A decision under this subsection is a reviewable decision (see s 214).
- 11 (4) If the commissioner amends a general licence, on licence, club
12 licence or special licence because of the intended changes to the
13 floor plan, the commissioner must also decide—
- 14 (a) the occupancy loading for each public area at the licensed
15 premises as intended to be changed; and
- 16 (b) the adults-only areas (if any) for the licensed premises as
17 intended to be changed.
- 18 *Note 1* **Occupancy loading**, for a public area at licensed premises or
19 permitted premises—see s 83.
- 20 *Note 2* **Adults-only area**, for licensed premises or permitted premises—
21 see s 93.
- 22 (5) The commissioner must, not later than the required time—
- 23 (a) decide the application for amendment for alteration of licensed
24 premises; and
- 25 (b) tell the licensee about the decision on the application.

(6) In this section:

required time means the latest of the following:

- (a) if the commissioner requires the licensee to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—30 days after the day the commissioner receives the certificate, plan or information;
- (b) if the commissioner asks the licensee to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—30 days after the day the commissioner inspects the premises;
- (c) 30 days after the day the commissioner receives the application.

Note Failure to amend a licence within the required time is taken to be a decision not to amend the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

40 Licence—application to transfer licence

- (1) A licensee may apply to the commissioner to transfer the licence to someone else (the ***proposed new licensee***).
- (2) The application must—
 - (a) be in writing; and
 - (b) include complete details of suitability information about—
 - (i) the proposed new licensee; and
 - (ii) each close associate of the proposed new licensee; and
 - (iii) if the proposed new licensee is a corporation—each influential person for the proposed new licensee; and

- 1 (iv) if someone other than the proposed new licensee is to
2 have day-to-day control of the business operated under
3 the licence—each person who is to have day-to-day
4 control; and
- 5 (c) include a police certificate for each of the following people,
6 dated not earlier than 3 months before the date of the transfer
7 application:
- 8 (i) the proposed new licensee;
- 9 (ii) each close associate of the proposed new licensee;
- 10 (iii) if the proposed new licensee is a corporation—each
11 influential person for the proposed new licensee;
- 12 (iv) if someone other than the proposed new licensee is to
13 have day-to-day control of the business operated under
14 the licence—each person who is to have day-to-day
15 control.

16 *Note 1* **Suitability information**, about a person—see s 69.

17 *Note 2* Giving false or misleading information is an offence against the
18 Criminal Code, s 338.

19 *Note 3* If a form is approved under s 222 for an application, the form must be
20 used.

21 *Note 4* A fee may be determined under s 221 for this provision.

22 **41 Licence—decision on application to transfer licence**

- 23 (1) This section applies if the commissioner receives an application to
24 transfer a licence under section 40.
- 25 (2) The commissioner must transfer the licence to the proposed new
26 licensee only if satisfied that—
- 27 (a) each of the following people is a suitable person to hold the
28 licence:
- 29 (i) the proposed new licensee;

- 1 (ii) each close associate of the proposed new licensee;
2 (iii) if the proposed new licensee is a corporation—each
3 influential person for the proposed new licensee;
4 (iv) if someone other than the proposed new licensee is to
5 have day-to-day control of the business operated under
6 the licence—each person who is to have day-to-day
7 control; and
8 (b) the proposed new licensee complies, and is likely to continue
9 to comply, with the requirements of this Act.
10 *Note 1* **Suitable person**, to hold a licence or permit—see s 67.
11 *Note 2* In making this decision, the commissioner must have regard to the harm
12 minimisation and community safety principles (see s 10).
13 *Note 3* A decision under this subsection is a reviewable decision (see s 214).
14 (3) The commissioner must, not later than the required time—
15 (a) decide the application for transfer; and
16 (b) tell the licensee about the decision on the application.
17 (4) In this section:
18 **required time** means the latest of the following:
19 (a) if the commissioner requires the proposed new licensee to
20 provide a police certificate or other information under
21 section 71 (Commissioner may require police certificate etc for
22 person)—30 days after the day the commissioner receives the
23 certificate or information;
24 (b) 30 days after the day the commissioner receives the
25 application.
26 *Note* Failure to transfer a licence within the required time is taken to be a
27 decision not to transfer the licence (see *ACT Civil and Administrative*
28 *Tribunal Act 2008*, s 12).

42 Licence—application for renewal

(1) A licensee may apply to the commissioner to renew the licence for a period not longer than the period prescribed by regulation.

(2) The application must be—

(a) in writing; and

(b) received by the commissioner at least 30 days before the licence expires.

(3) However, the commissioner may extend the time for making an application.

Note 1 A licensee may apply to the commissioner for the time to be extended, and the commissioner may extend the time, even though the time has ended (see Legislation Act, s 151C).

Note 2 If a form is approved under s 222 for an application, the form must be used.

Note 3 A fee may be determined under s 221 for this provision.

(4) If a licensee applies to renew a licence under this section, the licence remains in force until the application is decided.

43 Licence—decision on application for renewal

(1) This section applies if the commissioner receives an application for renewal of a licence under section 42.

(2) The commissioner must renew the licence only if satisfied that—

(a) each of the following people continues to be a suitable person to hold the licence:

(i) the licensee;

(ii) each close associate of the licensee;

(iii) if the licensee is a corporation—each influential person for the licensee;

- 1 (iv) if someone other than the licensee has day-to-day control
2 of the business operated under the licence—each person
3 who has day-to-day control; and
- 4 (b) the licensed premises continue to be suitable premises for the
5 licence.
- 6 *Note 1* **Suitable person**, to hold a licence or permit—see s 67.
7 **Suitable premises**, for a licence or permit—see s 75.
- 8 *Note 2* In making this decision, the commissioner must have regard to the harm
9 minimisation and community safety principles (see s 10).
- 10 *Note 3* A decision under this subsection is a reviewable decision (see s 214).
- 11 (3) The commissioner must, not later than the required time—
- 12 (a) decide the application for renewal; and
- 13 (b) tell the licensee about the decision on the application.
- 14 (4) In this section:
- 15 **required time** means the latest of the following:
- 16 (a) if the commissioner requires the licensee to provide a police
17 certificate or other information under section 71
18 (Commissioner may require police certificate etc for person)—
19 30 days after the day the commissioner receives the certificate
20 or information;
- 21 (b) if the commissioner requires the licensee to provide a
22 certificate, plan or other information under section 79
23 (Commissioner may require certificate, plan, etc for
24 premises)—30 days after the day the commissioner receives
25 the certificate, plan or information;
- 26 (c) if the commissioner asks the licensee to allow the
27 commissioner to inspect the premises under section 80
28 (Commissioner may require inspection of premises)—30 days
29 after the day the commissioner inspects the premises;

1 (d) 30 days after the day the commissioner receives the
2 application.

3 *Note* Failure to renew a licence within the required time is taken to be a
4 decision not to renew the licence (see *ACT Civil and Administrative*
5 *Tribunal Act 2008*, s 12).

6 **44 Licence—replacing when lost, stolen or destroyed**

7 (1) The commissioner may issue a replacement licence to a licensee if
8 satisfied that the licensee's original licence has been lost, stolen or
9 destroyed.

10 (2) For subsection (1), the commissioner may require the licensee to
11 give the commissioner a statutory declaration signed by the licensee,
12 stating that the original licence has been lost, stolen or destroyed.

13 *Note 1* A fee may be determined under s 221 for this provision.

14 *Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
15 statutory declarations under ACT laws.

16 **45 Licence—surrender**

17 (1) A licensee may surrender the licence by giving written notice
18 (a *surrender notice*) of the surrender to the commissioner.

19 (2) The surrender notice must be accompanied by—

20 (a) the licence; or

21 (b) if the licence has been lost, stolen or destroyed—a statutory
22 declaration signed by the licensee stating that the licence has
23 been lost, stolen or destroyed.

24 *Note 1* If a form is approved under s 222 for this provision, the form must be
25 used.

26 *Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
27 statutory declarations under ACT laws.

1 **46 Offence—fail to return licence**

- 2 (1) A person commits an offence if the person—
- 3 (a) ceases to be a licensee before the licence expires under
- 4 section 32 (Licence—term); and
- 5 (b) fails to return the licence to the commissioner as soon as
- 6 practicable, but not later than 21 days, after ceasing to be a
- 7 licensee.

8 Maximum penalty: 20 penalty units.

- 9 (2) An offence against this section is a strict liability offence.

Part 3 Liquor permits

Division 3.1 Classes of permits

47 What is a *permit*?

In this Act:

permit means—

- (a) a commercial permit; or
- (b) a non-commercial permit.

48 What is a *commercial permit*?

In this Act:

commercial permit means a permit that authorises the permit-holder to sell liquor—

- (a) at a single permitted premises; and
- (b) of a retail value not exceeding the value stated in the permit;
and
- (c) at the event stated in the permit; and
- (d) at the permitted times.

49 What is a *non-commercial permit*?

In this Act:

non-commercial permit means a permit that authorises a non-profit organisation to sell liquor—

- (a) at a single permitted premises; and
- (b) of a retail value not exceeding the value stated in the permit;
and

- 1 (c) that is—
- 2 (i) in open containers for consumption at the premises; or
- 3 (ii) in sealed containers for consumption off the premises;
- 4 and
- 5 (d) if the permit relates to an event—at the event stated in the
- 6 permit; and
- 7 (e) at the permitted times.

8 **Division 3.2 Permits—application and decision**

9 **50 Permit—application**

- 10 (1) A person (a *proposed permit-holder*) may apply to the
- 11 commissioner for a permit for stated premises.
- 12 (2) The application must—
- 13 (a) be in writing; and
- 14 (b) include complete details of suitability information about—
- 15 (i) the proposed permit-holder; and
- 16 (ii) each close associate of the proposed permit-holder; and
- 17 (iii) if the proposed permit-holder is a corporation—each
- 18 influential person for the proposed permit-holder; and
- 19 (iv) the proposed permitted premises; and
- 20 *Note* *Suitability information*, about a person—see s 69.
- 21 *Suitability information*, about premises—see s 78.
- 22 (c) if the premises are wholly or partly enclosed include—
- 23 (i) an ACTPLA certificate for the premises dated not earlier
- 24 than 3 months before the date of the application; and

(ii) the final floor plans of the premises approved by the planning and land authority in the development approval for the premises; and

(iii) a certificate of occupancy for the premises; and

(d) if the application is for a commercial permit—include a risk-assessment management plan for the premises.

Note 1 Giving false or misleading information is an offence against the Criminal Code, s 338.

Note 2 If a form is approved under s 222 for this provision, the form must be used.

Note 3 A fee may be determined under s 221 for this provision.

51 Permit—decision on application

(1) This section applies if the commissioner receives an application for a permit under section 50.

(2) The commissioner must issue the permit to the proposed permit-holder only if satisfied that—

(a) if the proposed permit-holder is an individual—the proposed permit-holder is an adult; and

(b) each of the following people is a suitable person to hold the permit:

(i) the proposed permit-holder;

(ii) each close associate of the proposed permit-holder;

(iii) if the proposed permit-holder is a corporation—each influential person for the proposed permit-holder; and

(c) the proposed permitted premises are suitable premises for the permit; and

(d) the proposed permit-holder complies, and is likely to continue to comply, with the requirements of this Act; and

- 1 (e) the proposed permitted premises comply with the requirements
2 of this Act.
- 3 *Note 1* A reference to an Act includes a reference to the statutory instruments
4 made or in force under the Act, including any regulation (see
5 Legislation Act, s 104).
- 6 *Note 2* **Suitable person**, to hold a licence or permit—see s 67.
7 **Suitable premises**, for a licence or permit—see s 75.
- 8 *Note 3* In making this decision, the commissioner must have regard to the harm
9 minimisation and community safety principles (see s 10).
- 10 *Note 4* A decision under this subsection is a reviewable decision (see s 214).
- 11 (3) The commissioner must, not later than the required time—
12 (a) decide the application; and
13 (b) tell the proposed permit-holder about the decision on the
14 application.
- 15 (4) In this section:
16 **required time** means the latest of the following:
- 17 (a) if the commissioner requires the proposed permit-holder to
18 provide a police certificate or information under section 71
19 (Commissioner may require police certificate etc for person)—
20 90 days after the day the commissioner receives the certificate
21 or other information;
- 22 (b) if the commissioner requires the proposed permit-holder to
23 provide a certificate, plan or other information under section 79
24 (Commissioner may require certificate, plan, etc for
25 premises)—90 days after the day the commissioner receives
26 the certificate, plan or information;
- 27 (c) if the commissioner asks the proposed permit-holder to allow
28 the commissioner to inspect the premises under section 80
29 (Commissioner may require inspection of premises)—90 days
30 after the day the commissioner inspects the premises;

- 1 (d) 90 days after the day the commissioner receives the
2 application.

3 *Note* Failure to issue a permit within the required time is taken to be a
4 decision not to issue the permit (see *ACT Civil and Administrative*
5 *Tribunal Act 2008*, s 12).

6 **52 Permit—occupancy loading**

- 7 (1) This section applies if the commissioner decides to issue a permit
8 for premises that are wholly or partly enclosed.

- 9 (2) The commissioner may also decide the occupancy loading for each
10 public area in each enclosed part of the premises.

11 *Note* **Occupancy loading**, for a public area at licensed premises or permitted
12 premises—see s 83.

13 **53 Permit—adults-only areas**

- 14 (1) This section applies if the commissioner decides to issue a permit
15 for premises that are wholly or partly enclosed.

- 16 (2) The commissioner must also decide the adults-only areas (if any) for
17 the permitted premises.

18 *Note* **Adults-only areas**, for licensed premises or permitted premises—see
19 s 93.

20 **54 Permit—form**

- 21 (1) A permit must be—

22 (a) in writing; and

23 (b) include the following information:

24 (i) the class of the permit;

25 (ii) the name of the permit-holder;

- 1 (iii) if the permit-holder carries on business under a name
2 other than the permit-holder's name—the name under
3 which the permit-holder carries on business;
4 (iv) the address or location of the permitted premises;
5 (v) the permitted times when—
6 (A) liquor to be consumed at the permitted premises may
7 be sold (if any); and
8 (B) liquor to be consumed off the permitted premises
9 may be sold (if any);
10 (vi) the conditions on the permit;
11 (vii) anything else prescribed by regulation.
12 (2) A permit may include anything else the commissioner considers
13 relevant.

14 **55 Permit—conditions**

- 15 (1) A permit is subject to the condition that—
16 (a) the permit-holder must comply with this Act; and
17 (b) the permitted premises must comply with this Act.
18 (2) A permit is subject to any other condition—
19 (a) prescribed by regulation; or
20 (b) imposed by the commissioner when the licence is issued,
21 renewed or amended.

22 **Examples—conditions**

- 23 1 that stated requirements about inspection must be complied with
24 2 that stated requirements about reporting must be complied with
25 3 that stated records must be kept
26 4 that stated levels of security must be used for stated events

- 1 5 that the permit-holder must not allow people to enter the permitted premises
2 after a stated time
- 3 6 that the permit-holder must comply with any liquor guidelines made by the
4 commissioner under s 217
- 5 *Note 1* A reference to an Act includes a reference to the statutory instruments
6 made or in force under the Act, including any regulation (see
7 Legislation Act, s 104).
- 8 *Note 2* Permits may be amended under s 57 or s 58.
9 Non-commercial permits may be renewed under s 62.
- 10 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
11 does not limit, the meaning of the provision in which it appears (see
12 Legislation Act, s 126 and s 132).

13 **56 Permit—term**

- 14 (1) A permit comes into force on the day stated in the permit.
- 15 (2) The commissioner must not issue a permit for longer than 1 year.
- 16 (3) A permit expires on the day stated in the permit.
- 17 (4) However, the commissioner may decide on reasonable grounds that
18 a permit expires on another day.
- 19 (5) If the commissioner makes a decision under subsection (4) for a
20 class of permit, the decision is a notifiable instrument.
- 21 *Note* A notifiable instrument must be notified under the Legislation Act.

(1) The commissioner may, by written notice (an *amendment notice*) given to a permit-holder, amend the permit if satisfied that—

- (iii) if the permit-holder is a corporation—each influential person for the permit-holder; and

- Note 3* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

- (c) after the end of the stated period, the commissioner has considered any comments made in accordance with the notice.

1 (3) Subsection (2) does not apply if the permit-holder applied for, or
2 agreed in writing to, the amendment.

3 (4) The amendment takes effect on the day the amendment notice is
4 given to the permit-holder or a later day stated in the notice.

5 **58 Permit—amendment on application by permit-holder**

6 (1) A permit-holder may apply to the commissioner to amend the
7 permit.

8 *Note 1* If a form is approved under s 222 for an application, the form must be
9 used.

10 *Note 2* A fee may be determined under s 221 for this provision.

11 (2) A permit-holder must apply to the commissioner for amendment of
12 the permit if someone else is to become—

13 (a) a close associate of the permit-holder; or

14 (b) if the permit-holder is a corporation—an influential person for
15 the permit-holder.

16 (3) The commissioner may amend the permit only if satisfied that—

17 (a) each of the following people is a suitable person to hold the
18 permit as amended:

19 (i) the permit-holder;

20 (ii) each close associate of the permit-holder;

21 (iii) if the permit-holder is a corporation—each influential
22 person for the permit-holder; and

- 1 (b) the permitted premises are suitable premises for the permit as
2 amended.
- 3 *Note 1* **Amend** includes amend, impose or remove a permit condition—see the
4 dictionary.
- 5 *Note 2* **Suitable person**, to hold a licence or permit—see s 67.
6 **Suitable premises**, for a licence or permit—see s 75.
- 7 *Note 3* In making this decision, the commissioner must have regard to the harm
8 minimisation and community safety principles (see s 10).
- 9 *Note 4* A decision under this subsection is a reviewable decision (see s 214).
- 10 (4) The commissioner must, not later than the required time—
11 (a) decide the application for amendment; and
12 (b) tell the permit-holder about the decision on the application.
- 13 (5) In this section:
14 **required time** means the latest of the following:
- 15 (a) if the commissioner requires the permit-holder to provide a
16 police certificate or other information under section 71
17 (Commissioner may require police certificate etc for person)—
18 30 days after the day the commissioner receives the certificate
19 or information;
- 20 (b) if the commissioner requires the permit-holder to provide a
21 certificate, plan or other information under section 79
22 (Commissioner may require certificate, plan, etc for
23 premises)—30 days after the day the commissioner receives
24 the certificate, plan or information;
- 25 (c) if the commissioner asks the permit-holder to allow the
26 commissioner to inspect the premises under section 80
27 (Commissioner may require inspection of premises)—30 days
28 after the day the commissioner inspects the premises;

1 (d) 30 days after the day the commissioner receives the
2 application.

3 *Note* Failure to amend a permit within the required time is taken to be a
4 decision not to amend the permit (see *ACT Civil and Administrative*
5 *Tribunal Act 2008*, s 12).

6 **59 Permit—not transferable**

7 A permit is not transferable.

8 **60 Permit—commercial permit not renewable**

9 A commercial permit is not renewable.

10 **61 Permit—application for renewal of non-commercial**
11 **permit**

12 (1) A non-commercial permit-holder may apply to the commissioner to
13 renew the permit for a period not longer than 1 year.

14 (2) The application must be—

15 (a) in writing; and

16 (b) received by the commissioner at least 30 days before the
17 permit expires.

18 (3) However, the commissioner may extend the time for making an
19 application.

20 *Note 1* A non-commercial permit-holder may apply to the commissioner for the
21 time to be extended, and the commissioner may extend the time, even
22 though the time has ended (see *Legislation Act*, s 151C).

23 *Note 2* If a form is approved under s 222 for an application, the form must be
24 used.

25 *Note 3* A fee may be determined under s 221 for this provision.

26 (4) If a non-commercial permit-holder applies to renew a permit under
27 this section, the permit remains in force until the application is
28 decided.

1 **62 Permit—decision on application for renewal of**
2 **non-commercial permit**

3 (1) This section applies if the commissioner receives an application for
4 renewal of a non-commercial permit under section 61.

5 (2) The commissioner must renew the permit only if satisfied that—

6 (a) each of the following people continues to be a suitable person
7 to hold the permit:

8 (i) the permit-holder;

9 (ii) each close associate of the permit-holder;

10 (iii) if the permit-holder is a corporation—each influential
11 person for the permit-holder; and

12 (b) the permitted premises continue to be suitable premises for the
13 permit.

14 *Note 1 Suitable person*, to hold a licence or permit—see s 67.

15 *Suitable premises*, for a licence or permit—see s 75.

16 *Note 2 In making this decision, the commissioner must have regard to the harm*
17 *minimisation and community safety principles (see s 10).*

18 *Note 3 A decision under this subsection is a reviewable decision (see s 214).*

19 (3) The commissioner must, not later than the required time—

20 (a) decide the application for renewal; and

21 (b) tell the permit-holder about the decision on the application.

22 (4) In this section:

23 *required time* is the latest of the following:

24 (a) if the commissioner requires the permit-holder to provide a
25 police certificate or other information under section 71
26 (Commissioner may require police certificate etc for person)—
27 30 days after the day the commissioner receives the certificate
28 or information;

1 (b) if the commissioner requires the permit-holder to provide a
2 certificate, plan or other information under section 79
3 (Commissioner may require certificate, plan, etc for
4 premises)—30 days after the day the commissioner receives
5 the certificate, plan or information;

6 (c) if the commissioner asks the permit-holder to allow the
7 commissioner to inspect the premises under section 80
8 (Commissioner may require inspection of premises)—30 days
9 after the day the commissioner inspects the premises;

10 (d) 30 days after the day the commissioner receives the
11 application.

12 *Note* Failure to renew a permit within the required time is taken to be a
13 decision not to renew the permit (see *ACT Civil and Administrative*
14 *Tribunal Act 2008*, s 12).

15 **63 Permit—replacing when lost, stolen or destroyed**

16 (1) The commissioner may issue a replacement permit to a
17 permit-holder if satisfied that the permit-holder's original permit has
18 been lost, stolen or destroyed.

19 (2) For subsection (1), the commissioner may require the permit-holder
20 to give the commissioner a statutory declaration signed by the
21 permit-holder, stating that the original permit has been lost, stolen or
22 destroyed.

23 *Note 1* A fee may be determined under s 221 for this provision.

24 *Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
25 statutory declarations under ACT laws.

64 Permit—surrender

- (1) A permit-holder may surrender the permit by giving written notice (a *surrender notice*) of the surrender to the commissioner.

Note If a form is approved under s 222 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—

(a) the permit; or

(b) if the permit has been lost, stolen or destroyed—a statutory declaration signed by the permit-holder stating that the permit has been lost, stolen or destroyed.

Note The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

65 Non-commercial permit—cancellation

- (1) The commissioner may, by written notice (a *cancellation notice*), given to a permit-holder, cancel the permit if satisfied that the non-commercial permit-holder has failed to comply with the permit.

Note 1 A decision under this subsection is a reviewable decision (see s 214).

Note 2 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

- (2) The cancellation takes effect on the day the cancellation notice is given to the permit-holder or a later day stated in the notice.

1 **66 Offence—fail to return permit**

2 (1) A person commits an offence if the person—

3 (a) ceases to be a permit-holder before the permit expires under
4 section 56 (Permit—term); and

5 (b) fails to return the permit to the commissioner as soon as
6 practicable, but not later than 21 days, after ceasing to be a
7 permit-holder.

8 Maximum penalty: 20 penalty units.

9 (2) An offence against this section is a strict liability offence.

Part 4 **Suitability of people and
premises for licences and
permits**

Division 4.1 **Suitability of people for licences and
permits**

67 **Who is a *suitable person*?**

In this Act:

suitable person, to hold a licence or permit, means a person who the commissioner is satisfied is a suitable person to hold the licence or permit.

68 **Commissioner must consider suitability information, etc**

In deciding whether a person is a suitable person to hold a licence or permit, the commissioner must consider each of the following:

- (a) suitability information about the person;
- (b) any police certificate or other information about the person given to the commissioner under—
 - (i) section 25 (Licence—application); or
 - (ii) section 40 (Licence—application to transfer licence); or
 - (iii) section 71 (Commissioner may require police certificate etc for person);
- (c) any public consultation representation about the person received by the commissioner under section 35 (Licence—representations).

Note In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

1 **69 What is *suitability information* about a person?**

2 (1) In this Act:

3 *suitability information*, about a person, means information about
4 the following:

5 (a) any conviction of, or finding of guilt against, the person for an
6 offence against 1 or more of the following:

7 (i) this Act;

8 (ii) a law of another jurisdiction corresponding, or
9 substantially corresponding, to this Act;

10 (iii) the *Crimes Act 1900*;

11 (iv) the Criminal Code;

12 (v) the *Crimes Act 1914* (Cwlth);

13 (vi) the *Criminal Code Act 1995* (Cwlth);

14 (vii) the *Unlawful Gambling Act 2009*;

15 (viii) the *Trade Practices Act 1974* (Cwlth);

16 (ix) the *Fair Trading Act 1992*;

17 (x) a law of another jurisdiction corresponding, or
18 substantially corresponding, to the *Fair Trading*
19 *Act 1992*;

20 (xi) a law in force in Australia or elsewhere relating to the
21 supply or consumption of liquor;

22 (xii) a law of the ACT with a maximum penalty of
23 imprisonment for 1 year or more;

- (xiii) a law elsewhere that, if the offence were committed in the ACT, would have a maximum penalty of imprisonment for 1 year or more;

Note A reference to an Act (including a Commonwealth Act) includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (b) any proven noncompliance by the person with a legal obligation in relation to the supply of liquor;

Examples

- 1 a commissioner's direction has been made against the licensee
- 2 an emergency closure order has been made against the licensee
- 3 the person has had a licence suspended

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (c) any refusal of an application by the person for a licence, permit or other authority (however described) in relation to the supply of liquor;

- (d) whether the person complies with the requirements of this Act;

- (e) if the person is an individual—whether the person is, or during the preceding 5 years was—

(i) bankrupt or personally insolvent; or

(ii) involved in the management of a corporation when the corporation was insolvent;

Note ***Bankrupt or personally insolvent***—see the Legislation Act, dict.

- 1 (f) if the person is a corporation—
2 (i) whether the person is, or during the preceding 5 years
3 was, insolvent; or
4 (ii) whether each influential person for the corporation is a
5 suitable person to hold the licence or permit;
6 (g) if the person is a club—whether the club is an eligible club;
7 (h) if the person is a non-profit organisation—whether the
8 organisation operates on a not-for-profit basis;
9 (i) the person's knowledge and understanding of the obligations
10 under this Act applying in relation to the licence or permit;
11 (j) any other matter relevant to the person's ability to safely and
12 responsibly supply liquor.

13 *Note* **Supply** includes sell (see dict).

14 (2) In this section:

15 **insolvent**—a corporation is taken to be **insolvent** if the
16 corporation—

- 17 (a) is being wound up; or
18 (b) has had a receiver or other controller appointed; or
19 (c) has entered into a deed of company arrangement with its
20 creditors; or
21 (d) is otherwise under external administration under the
22 Corporations Act, chapter 5.

70 What is an *eligible club*?

In this Act:

eligible club means a club that—

(a) is established for 1 or more of the following purposes:

(i) recreation;

(ii) promoting social, religious, political, literary, scientific, artistic, sporting or athletic purposes;

(iii) a purpose prescribed by regulation; and

(b) has a constitution or set of rules that—

(i) requires the nomination or election of financial members or foundation members to manage the affairs of the club; and

(ii) requires the club to keep records of nominations and elections for 2 years or more; and

(iii) requires the club to hold a meeting of its members at least once every 3 years to nominate or elect members to manage the affairs of the club; and

(iv) prohibits the supply of liquor to a person who is not a member of the club unless the person is on the club premises—

(A) at the invitation of a club member who is also on the club premises; and

(B) with the consent of the club; and

(v) prohibits the payment of a commission, profit or allowance from, or on receipts from, the supply of liquor at the club premises; and

- 1 (c) has a membership of at least—
2 (i) 200 adult financial members; or
3 (ii) if the club has held a club licence continuously since
4 before 1 June 1979 under the *Liquor Act 1975* or this
5 Act—150 adult financial members.

6 **71 Commissioner may require police certificate etc for**
7 **person**

- 8 (1) This section applies if the commissioner is making a decision about
9 whether a person is a suitable person to hold a licence or permit.
- 10 (2) The commissioner may, by written notice given to the person
11 (a *personal information notice*), require the person to give the
12 commissioner 1 or more of the following not later than a stated
13 reasonable time:
- 14 (a) a police certificate for 1 or more of the following people, dated
15 not earlier than 3 months before the date of the personal
16 information notice:
- 17 (i) the person;
- 18 (ii) a close associate of the person;
- 19 (iii) if the person is a corporation—an influential person for
20 the person;
- 21 (iv) if someone other than the proposed licensee is to have
22 day-to-day control of the business operated under the
23 licence and the decision relates to suitability for a
24 licence—each person who is to have day-to-day control;
- 25 (b) other stated information about the person.
- 26 (3) A personal information notice must also tell the person that giving
27 false or misleading information is an offence against the Criminal
28 Code, section 338 (Giving false or misleading information).

72 Commissioner need not decide suitability if certificate etc not provided

- (1) This section applies if—
- (a) the commissioner has given a person a personal information notice under section 71; and
 - (b) the person does not give the commissioner the certificate or information in accordance with the notice.
- (2) The commissioner need not decide whether the person is a suitable person to hold a licence or permit.

73 Offence—ongoing duty to update person’s suitability information

- (1) This section applies to a person if—
- (a) the commissioner—
 - (i) is deciding whether the person is a suitable person to hold a licence or permit; or
 - (ii) has decided that the person is a suitable person to hold a licence or permit and the person is operating under the licence or permit; and
 - (b) the person has given the commissioner suitability information about the person.

Note **Suitability information**, about a person—see s 69.

- (2) A person commits an offence if—
- (a) the person’s suitability information changes; and
 - (b) the person does not tell the commissioner about the change as soon as practicable, but not later than 7 days after the change happens.

Maximum penalty: 20 penalty units.

(3) This section does not apply if the person—

(a) was not aware of the change until later than 7 days after the change happened; and

(b) told the commissioner about the change as soon as the person became aware of the change.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

Division 4.2 Suitability of premises for licences and permits

74 Who is the *responsible person* for premises?—div 4.2

In this part:

responsible person, for premises, means—

(a) for a licence for the premises—the licensee or proposed licensee; or

(b) for a permit for the premises—the permit-holder or proposed permit-holder.

75 What are *suitable premises*?

In this Act:

suitable premises, for a licence or permit, means premises that the commissioner is satisfied are suitable premises for the licence or permit.

76 Commissioner must consider suitability information, etc

In deciding whether premises are suitable premises for a licence or permit, the commissioner must consider each of the following:

(a) suitability information about the premises;

- 1 (b) any certificate, plan or other information about the premises
2 given to the commissioner under—
- 3 (i) section 25 (Licence—application); or
- 4 (ii) section 39 (Licence—amendment for change to floor plan
5 of licensed premises); or
- 6 (iii) section 50 (Permit—application); or
- 7 (iv) section 79 (Commissioner may require certificate, plan,
8 etc for premises);
- 9 (c) any public consultation representation about the premises
10 received by the commissioner under section 35 (Licence—
11 representations);
- 12 (d) the results of any inspection of the premises by the
13 commissioner under section 80 (Commissioner may require
14 inspection of premises).
- 15 *Note* In making this decision, the commissioner must have regard to the harm
16 minimisation and community safety principles (see s 10).

17 **77 Commissioner must decide premises not suitable in**
18 **some circumstances**

- 19 (1) The commissioner must decide that premises are not suitable
20 premises for a licence or permit if—
- 21 (a) the premises do not comply with the requirements of—
- 22 (i) this Act; or
- 23 (ii) the *Building Act 2004*; or
- 24 (iii) the *Planning and Development Act 2007*; or
- 25 *Note* A reference to an Act includes a reference to the statutory
26 instruments made or in force under the Act, including any
27 regulation (see Legislation Act, s 104).

(b) use of the premises in accordance with the licence or permit would not be within the purpose of the lease for the land on which the premises are located; or

(c) if a risk-assessment management plan is required under section 25 (Licence—application), section 50 (Permit—application), or section 79 (Commissioner may require certificate, plan, etc for premises)—the commissioner does not approve the risk-assessment management plan.

Note The commissioner approves risk-assessment management plans under s 90.

(2) However, the commissioner may decide that the premises are suitable premises for the licence or permit if satisfied that, in all the circumstances, it would be unreasonable to find the premises unsuitable.

78 What is *suitability information* about premises?

In this Act:

suitability information, about premises, means information about the following:

(a) any conviction of, or finding of guilt against, a person for an offence against this Act involving the premises;

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(b) any proven noncompliance of the premises with a legal obligation in relation to the supply of liquor;

Example

the premises are licensed premises and the licence has been suspended

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- 1 (c) any refusal of an application for a licence, permit or other
2 authority (however described) in relation to the supply of
3 liquor at the premises;
- 4 (d) whether the premises comply with the requirements of—
5 (i) this Act; and
6 (ii) the *Building Act 2004*; and
7 (iii) the *Planning and Development Act 2007*;
- 8 (e) whether use of the premises in accordance with the licence or
9 permit would be within the purpose of the lease for the land on
10 which the premises are located;
- 11 (f) the fire safety of the premises;
- 12 (g) the level of noise likely to emanate from the premises if used in
13 accordance with the licence or permit;
- 14 (h) whether use of the premises in accordance with the licence or
15 permit would be likely to attract a large number of people and,
16 if so, the risk to community safety;
- 17 (i) whether use of the premises in accordance with the licence or
18 permit would be likely to cause undue disturbance,
19 inconvenience or offence to people—
20 (i) lawfully at adjacent or nearby premises; or
21 (ii) because of the premises' proximity to a place of public
22 worship, a hospital, residential premises, or a school;
- 23 (j) any other matter relevant to the appropriateness of the premises
24 in relation to the supply of liquor.
- 25 *Note* **Supply** includes sell (see dict).

1 **79 Commissioner may require certificate, plan, etc for**
2 **premises**

3 (1) This section applies if the commissioner is making a decision about
4 whether premises are suitable premises for a licence or permit.

5 (2) The commissioner may, by written notice given to the responsible
6 person for the premises (a *premises information notice*), require the
7 person to give the commissioner 1 or more of the following, not
8 later than a stated reasonable time:

9 (a) an ACTPLA certificate for the premises, dated not earlier than
10 3 months before the date of the premises information notice;

11 (b) the final floor plans of the premises approved by the planning
12 and land authority in the development approval for the
13 premises;

14 (c) a certificate of occupancy for the premises;

15 (d) a risk-assessment management plan for the premises;

16 *Note 1* See pt 6 (Risk-assessment management plans for licensed
17 premises and permitted premises).

18 *Note 2* If the commissioner does not approve the risk-assessment
19 management plan, the commissioner must also decide that the
20 premises are not suitable premises for the licence or permit (see
21 s 77).

22 (e) other stated information about the premises.

23 (3) A premises information notice must also tell the person that giving
24 false or misleading information is an offence against the Criminal
25 Code, section 338 (Giving false or misleading information).

80 Commissioner may require inspection of premises

- (1) This section applies if the commissioner is making a decision about whether premises are suitable premises for a licence or permit.
- (2) The commissioner may, by written notice given to the responsible person for the premises (an *inspection notice*), require the person to allow the commissioner to inspect the premises within a stated reasonable time.

81 Commissioner need not decide suitability if requirements not complied with

- (1) This section applies if—
 - (a) the commissioner has given a person a premises information notice under section 79 and the person does not give the commissioner the certificate, plan or information in accordance with the notice; or
 - (b) the commissioner has given a person an inspection notice under section 80 and the person does not allow the commissioner to inspect the premises in accordance with the notice.
- (2) The commissioner need not decide whether the premises are suitable premises for the licence or permit.

82 Offence—ongoing duty to update premises' suitability information

- (1) This section applies to a responsible person for premises if—
 - (a) the commissioner—
 - (i) is deciding whether the premises are suitable premises for a licence or permit; or

1 (ii) has decided that the premises are suitable premises for a
2 licence or permit and the premises are being used under
3 the licence or permit; and

4 (b) the responsible person has given the commissioner suitability
5 information about the premises.

6 *Note* **Suitability information**, about premises—see s 78.

7 (2) A responsible person commits an offence if—

8 (a) the premises' suitability information changes; and

9 (b) the responsible person does not tell the commissioner about the
10 change as soon as practicable, but not later than 7 days after
11 the change happens.

12 Maximum penalty: 20 penalty units.

13 (3) This section does not apply if the responsible person—

14 (a) was not aware of the change until later than 7 days after the
15 change happened; and

16 (b) told the commissioner about the change as soon as the person
17 became aware of the change.

18 *Note* The defendant has an evidential burden in relation to the matters
19 mentioned in s (3) (see Criminal Code, s 58).

1 **Part 5** **Occupancy loading for licensed**
2 **premises and permitted premises**

3 **83** **What is *occupancy loading*?**

4 In this Act:

5 *occupancy loading*, for a public area at licensed premises or
6 permitted premises, means the maximum number of people allowed
7 in the area.

8 **84** **What is a *public area*?**

9 In this Act:

10 *public area*, at licensed premises or permitted premises, means an
11 area at the premises that is open to the public.

12 **Example**

13 an outdoor area at the premises that is open to the public

14 *Note* An example is part of the Act, is not exhaustive and may extend, but
15 does not limit, the meaning of the provision in which it appears (see
16 Legislation Act, s 126 and s 132).

17 **85** **Occupancy loading decision**

18 (1) This section applies if the commissioner must decide the occupancy
19 loading for a public area at licensed premises or permitted premises.

20 *Note* Section 28, s 39 and s 52 require the commissioner to decide the
21 occupancy loading for public areas.

22 (2) In deciding the occupancy loading for a public area, the
23 commissioner must consider—

24 (a) the chief officer's (fire brigade) occupancy loading
25 recommendation for the area under section 86; and

26 (b) the building code.

- 1 (3) However, the commissioner must not decide an occupancy loading
2 for an area that exceeds the occupancy loading for the area
3 recommended under section 86 by the chief officer (fire brigade).

4 **86 Fire engineering study and inspection**

- 5 (1) This section applies if the commissioner must decide the occupancy
6 loading for a public area at licensed premises or permitted premises.
- 7 (2) The commissioner must ask the chief officer (fire brigade) to
8 recommend an occupancy loading for the area as soon as practicable
9 after deciding to—
- 10 (a) issue the licence under section 27 (Licence—decision on
11 application); or
- 12 (b) amend the licence under section 39 (Licence—amendment for
13 change to floor plan of licensed premises); or
- 14 (c) issue the permit under section 51 (Permit—decision on
15 application).
- 16 (3) To prepare the recommendation, the chief officer (fire brigade) may,
17 by written notice (an *occupancy loading notice*) given to the
18 responsible person for the premises, require the person to—
- 19 (a) give the chief officer (fire brigade) a fire engineering study for
20 the area not later than a stated reasonable time; or
- 21 (b) allow the chief officer (fire brigade) to inspect the area within a
22 stated reasonable time.

23 *Note* A fee may be determined under s 221 for this provision.

- 24 (4) In making the recommendation, the chief officer (fire brigade) must
25 consider—
- 26 (a) if the chief officer (fire brigade) has required the responsible
27 person for premises to provide a fire engineering study—the
28 fire engineering study; and

- 1 (b) if the chief officer (fire brigade) has required the responsible
2 person for premises to allow an inspection—the results of the
3 inspection; and
- 4 (c) the building code, part D1.13.
- 5 (5) The chief officer (fire brigade) must give the commissioner the
6 officer's occupancy loading recommendation for an area as soon as
7 practicable after—
- 8 (a) the commissioner's request; and
- 9 (b) the responsible person for the premises—
- 10 (i) provides the study (if required); and
- 11 (ii) allows the inspection (if required).
- 12 **87 Commissioner not to issue licence or permit if**
13 **requirement not complied with**
- 14 (1) This section applies if the chief officer (fire brigade) has given a
15 person an occupancy loading notice for premises and the person
16 does not comply with the notice.
- 17 (2) The commissioner must not issue or amend the licence, or issue the
18 permit, for the premises until the notice is complied with.

Part 6

Risk-assessment management plans for licensed premises and permitted premises

88 What is a *risk-assessment management plan*?

In this Act:

risk-assessment management plan, for licensed premises or permitted premises, means a plan that—

- (a) details procedures, practices and arrangements for conducting the business of selling liquor at the premises; and
- (b) includes anything prescribed by regulation.

Examples—what risk-assessment management plan may contain

- 1 how the premises are lit
- 2 what noise mitigation measures are in place
- 3 what security measures are in place

Note 1 If a form is approved under s 222 for this provision, the form must be used.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

89 What is an *approved risk-assessment management plan*?

In this Act:

approved risk-assessment management plan, for licensed premises or permitted premises, means a risk-assessment management plan approved under section 90 for the premises.

1 **90 Risk-assessment management plan—approval**

- 2 (1) The commissioner may approve a risk-assessment management plan
3 for licensed premises or permitted premises only if satisfied that the
4 procedures, practices and arrangements in the plan are consistent
5 with the harm minimisation and community safety principles.
- 6 (2) If the commissioner decides to approve a risk-assessment
7 management plan for licensed premises or permitted premises, the
8 commissioner must give the licensee or permit-holder written notice
9 that the plan has been approved.

10 **91 Risk-assessment management plan—amendment on**
11 **application**

- 12 (1) This section applies if an approved risk-assessment management
13 plan is in force for licensed premises or permitted premises.
- 14 (2) The licensee or permit-holder may apply to the commissioner to
15 amend the approved risk-assessment management plan.

16 **Example—amendment**

17 to change a procedure about how the licensee is to deal with intoxicated people

18 *Note 1* If a form is approved under s 222 for an application, the form must be
19 used.

20 *Note 2* A fee may be determined under s 221 for this provision.

21 *Note 3* An example is part of the Act, is not exhaustive and may extend, but
22 does not limit, the meaning of the provision in which it appears (see
23 Legislation Act, s 126 and s 132).

- 24 (3) In applying to amend an approved risk-assessment management
25 plan, the applicant must comply with any requirement prescribed by
26 regulation.
- 27 (4) The commissioner may, in writing, require the applicant to—
- 28 (a) give the commissioner additional information or documents
29 that the commissioner reasonably needs to decide the
30 application; or

1 (b) allow the commissioner to inspect the premises within a stated
2 reasonable time.

3 (5) If the applicant does not comply with a requirement under
4 subsection (3) or (4), the commissioner may refuse to consider the
5 application.

6 **92 Risk-assessment management plan—decision on**
7 **amendment**

8 (1) This section applies if the commissioner receives an application to
9 amend an approved risk-assessment management plan under
10 section 91.

11 (2) The commissioner may amend the approved risk-assessment
12 management plan only if satisfied that—

13 (a) the plan as amended would include procedures, practices and
14 arrangements consistent with the harm minimisation and
15 community safety principles; and

16 (b) any requirements prescribed by regulation have been complied
17 with.

18 *Note* A decision under s (2) is a reviewable decision (see s 214).

19 (3) The commissioner must, not later than the required time—

20 (a) decide the application for amendment; and

21 (b) tell the licensee about the decision on the application.

22 (4) In this section:

23 ***required time*** means the latest of the following:

24 (a) if the commissioner requires the applicant to give the
25 commissioner additional information or documents under
26 section 91—90 days after the day the commissioner receives
27 the application;

Part 6 Risk-assessment management plans for licensed premises and permitted premises

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1 (b) if the commissioner requires the applicant to allow the
2 commissioner to inspect the premises under section 91—90
3 days after the day the commissioner inspects the premises;

4 (c) 90 days after the day the commissioner receives the
5 application.

6 *Note* Failure to amend an approved risk-assessment management plan within
7 the required time is taken to be a decision not to amend the plan (see
8 *ACT Civil and Administrative Tribunal Act 2008*, s 12).

Part 7 **Adults-only areas for licensed
premises and permitted premises**

Division 7.1 **Adults-only area decisions**

93 **What is an *adults-only area*?**

In this Act:

adults-only area, for licensed premises or permitted premises,
means an area decided by the commissioner to be an adults-only
area under section 94.

94 **Adults-only areas decision**

- (1) This section applies if the commissioner must decide the adults-only
areas for licensed premises or permitted premises.

Note Section 29, s 39 and s 53 require the commissioner to decide adults-only
areas for premises.

- (2) In deciding the adults-only areas of premises, the commissioner
must consider—

(a) the purpose of the licensed premises or permitted premises;
and

(b) the layout of the licensed premises or permitted premises.

- (3) If the commissioner decides that licensed premises are to include an
adults-only area, the commissioner may also decide the times when
the area is to be used as an adults-only area.

Note In making a decision under this Act, a decision-maker must have regard
to the harm minimisation and community safety principles (see s 10).

Division 7.2 Approvals for young people's event in adults-only area at licensed premises

95 Young people's event approval—application

(1) A licensee may apply to the commissioner for approval to conduct a young people's event in an adults-only area of the licensed premises.

(2) The application must—

(a) be in writing; and

(b) include details of—

(i) the day and time when the event is to start; and

(ii) the day and time when the event is to end; and

(iii) the name of each person who is to work at the event; and

(iv) a police certificate for each person who is to work at the event, dated not earlier than 3 months before the date of the application; and

(v) anything else prescribed by regulation.

Note 1 Giving false or misleading information is an offence against the Criminal Code, s 338.

Note 2 If a form is approved under s 222 for this provision, the form must be used.

Note 3 A fee may be determined under s 221 for this provision.

(3) The commissioner may, in writing, require the applicant to—

(a) give the commissioner additional information or documents that the commissioner reasonably needs to decide the application; or

(b) allow the commissioner to inspect the premises within a stated reasonable time.

- 1 (4) If the applicant does not comply with a requirement under
2 subsection (3), the commissioner may refuse to consider the
3 application.

4 **96 Young people's event approval—decision**

- 5 (1) This section applies if the commissioner receives an application for
6 approval to conduct a young people's event under section 95.
- 7 (2) The commissioner may issue the approval to the applicant only if
8 satisfied that the applicant satisfies the criteria prescribed by
9 regulation.
- 10 (3) The commissioner must, not later than the required time—
11 (a) decide the application for approval; and
12 (b) tell the licensee about the decision on the application.
- 13 (4) In this section:
14 *required time* means the latest of the following:
- 15 (a) if the commissioner requires the applicant to give the
16 commissioner additional information or documents under
17 section 95—90 days after the day the commissioner receives
18 the application;
- 19 (b) if the commissioner requires the applicant to allow the
20 commissioner to inspect the premises under section 95—
21 90 days after the day the commissioner inspects the premises;
- 22 (c) 90 days after the day the commissioner receives the
23 application.

24 *Note* Failure to approve the conduct of a young people's event within the
25 required time is taken to be a decision not to approve the event (see
26 *ACT Civil and Administrative Tribunal Act 2008*, s 12).

1 **97 Young people's event approval—form**

- 2 (1) A young people's event approval must—
- 3 (a) be in writing; and
- 4 (b) include the following information:
- 5 (i) the name of the licensee;
- 6 (ii) the day and time when the event is to start;
- 7 (iii) the day and time when the event is to end;
- 8 (iv) the name of each person approved to work at the event;
- 9 (v) the conditions on the approval;
- 10 (vi) anything else prescribed by regulation.
- 11 (2) A young people's event approval may include anything else the
- 12 commissioner considers relevant.

13 **98 Young people's event approval—conditions**

- 14 A young people's event approval is subject to any condition—
- 15 (a) prescribed by regulation; or
- 16 (b) imposed by the commissioner when the approval is issued.

17 **99 Young people's event approval—term**

- 18 (1) A young people's event approval comes into force on the day and at
- 19 the time stated in the approval.
- 20 (2) An approval expires at the earlier of the following times:
- 21 (a) the day and time stated in the approval;
- 22 (b) 24 hours after the approval comes into force.

Part 8 **Conduct at licensed premises
and permitted premises**

Division 8.1 **Responsible service of alcohol**

100 **Offence—supply liquor without RSA certificate—licensee
or permit-holder**

(1) A person commits an offence if—

- (a) the person is a licensee; and
- (b) the person supplies liquor to someone else; and
- (c) the supply happens at the licensed premises; and
- (d) the person does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

Note *Supply* includes sell—see dict.

(2) A person commits an offence if—

- (a) the person is a commercial permit-holder; and
- (b) the person supplies liquor to someone else; and
- (c) the supply happens at the permitted premises; and
- (d) the person does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if—

- (a) the person is a licensee; and
- (b) an employee of the person supplies liquor to someone else; and
- (c) the supply happens at the licensed premises; and

- 1 (d) the employee does not hold an RSA certificate.
2 Maximum penalty: 50 penalty units.
- 3 (4) A person commits an offence if—
4 (a) the person is a commercial permit-holder; and
5 (b) an employee of the person supplies liquor to someone else; and
6 (c) the supply happens at the permitted premises; and
7 (d) the employee does not hold an RSA certificate.
8 Maximum penalty: 50 penalty units.
- 9 (5) An offence against this section is a strict liability offence.
- 10 **101 Offence—supply liquor without RSA certificate—**
11 **employee**
- 12 (1) A person commits an offence if—
13 (a) the person is an employee of a licensee; and
14 (b) the person supplies liquor to someone else; and
15 (c) the supply happens at the licensed premises; and
16 (d) the person does not hold an RSA certificate.
17 Maximum penalty: 10 penalty units.
- 18 *Note* **Supply** includes sell (see dict).
- 19 (2) A person commits an offence if—
20 (a) the person is an employee of a commercial permit-holder; and
21 (b) the person supplies liquor to someone else; and
22 (c) the supply happens at the permitted premises; and

1 (d) the person does not hold an RSA certificate.

2 Maximum penalty: 10 penalty units.

3 (3) An offence against this section is a strict liability offence.

4 **102 Offence—crowd controller without RSA certificate**

5 (1) A person commits an offence if—

6 (a) the person is a licensee; and

7 (b) a crowd controller is working as a crowd controller at the
8 licensed premises; and

9 (c) the crowd controller does not hold an RSA certificate.

10 Maximum penalty: 50 penalty units.

11 (2) A person commits an offence if—

12 (a) the person is a commercial permit-holder; and

13 (b) a crowd controller is working as a crowd controller at the
14 permitted premises; and

15 (c) the crowd controller does not hold an RSA certificate.

16 Maximum penalty: 50 penalty units.

17 (3) A person commits an offence if the person—

18 (a) is a crowd controller; and

19 (b) is working as a crowd controller at licensed premises; and

20 (c) does not hold an RSA certificate.

21 Maximum penalty: 10 penalty units.

(4) A person commits an offence if the person—

(a) is a crowd controller; and

(b) is working as a crowd controller at permitted premises; and

(c) does not hold an RSA certificate.

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

Note Crowd controllers are regulated under the *Security Industry Act 2003*.

103 Offence—fail to keep RSA certificates

(1) A person commits an offence if the person—

(a) is a licensee; and

(b) fails to keep a copy of an RSA certificate for each of the following people:

(i) the licensee;

(ii) each person employed to supply liquor at the licensed premises;

(iii) each crowd controller working as a crowd controller at the licensed premises.

Maximum penalty: 20 penalty units.

Note **Supply** includes sell (see dict).

(2) A person commits an offence if the person—

(a) is a commercial permit-holder; and

(b) fails to keep a copy of an RSA certificate for each of the following people:

(i) the permit-holder;

- 1 (ii) each person employed to supply liquor at the permitted
2 premises;
- 3 (iii) each crowd controller working as a crowd controller at
4 the permitted premises.
- 5 Maximum penalty: 20 penalty units.
- 6 (3) An offence against this section is a strict liability offence.

7 **Division 8.2 Intoxicated people**

8 **104 What is *intoxicated*?**

9 For this Act, a person is *intoxicated* if—

- 10 (a) the person's speech, balance, coordination or behaviour is
11 noticeably affected; and
- 12 (b) it is reasonable in the circumstances to believe that the affected
13 speech, balance, coordination or behaviour is the result of the
14 consumption of liquor.

15 **105 Offence—supply liquor to intoxicated person—licensee**
16 **or permit-holder**

- 17 (1) A person commits an offence if—
- 18 (a) the person is a licensee; and
- 19 (b) the person supplies liquor to another person; and
- 20 (c) the other person is intoxicated; and
- 21 (d) the supply happens at the licensed premises.
- 22 Maximum penalty: 50 penalty units.

- 1 (2) A person commits an offence if—
2 (a) the person is a permit-holder; and
3 (b) the person supplies liquor to another person; and
4 (c) the other person is intoxicated; and
5 (d) the supply happens at the permitted premises.
6 Maximum penalty: 50 penalty units.
- 7 (3) A person commits an offence if—
8 (a) the person is a licensee; and
9 (b) an employee of the licensee supplies liquor to another person;
10 and
11 (c) the other person is intoxicated; and
12 (d) the supply happens at the licensed premises.
13 Maximum penalty: 50 penalty units.
- 14 (4) A person commits an offence if—
15 (a) the person is a permit-holder; and
16 (b) an employee of the permit-holder supplies liquor to another
17 person; and
18 (c) the other person is intoxicated; and
19 (d) the supply happens at the permitted premises.
20 Maximum penalty: 50 penalty units.
- 21 (5) An offence against this section is a strict liability offence.

1 (6) In a prosecution for an offence against this section, a substance
2 supplied to a person is presumed to be liquor if—

3 (a) the substance is supplied to the person in an adults-only area at
4 the premises; and

5 (b) a police officer gives evidence—

6 (i) that the police officer saw the substance being supplied to
7 the person; and

8 (ii) that the police officer believes on reasonable grounds that
9 the substance is liquor.

10 *Note* A person rebutting the presumption in s (6) bears an evidential burden
11 in relation to the rebuttal (see Criminal Code, s 58).

12 **106 Offence—supply liquor to intoxicated person—employee**

13 (1) A person commits an offence if—

14 (a) the person is an employee of a licensee; and

15 (b) the person supplies liquor to another person; and

16 (c) the other person is intoxicated; and

17 (d) the supply happens at the licensed premises.

18 Maximum penalty: 10 penalty units.

19 (2) A person commits an offence if—

20 (a) the person is an employee of a permit-holder; and

21 (b) the person supplies liquor to another person; and

22 (c) the other person is intoxicated; and

23 (d) the supply happens at the permitted premises.

24 Maximum penalty: 10 penalty units.

25 (3) An offence against this section is a strict liability offence.

- 1 (4) In a prosecution for an offence against this section, a substance
2 supplied to a person is presumed to be liquor if—
- 3 (a) the substance is supplied to the person in an adults-only area at
4 the premises; and
- 5 (b) a police officer gives evidence—
- 6 (i) that the police officer saw the substance being supplied to
7 the person; and
- 8 (ii) that the police officer believes on reasonable grounds that
9 the substance is liquor.
- 10 *Note* A person rebutting the presumption in s (4) bears an evidential burden
11 in relation to the rebuttal (see Criminal Code, s 58).

12 **107 Offence—supply liquor to intoxicated person—other**
13 **person**

- 14 (1) A person commits an offence if—
- 15 (a) the person supplies liquor to another person; and
- 16 (b) the other person is intoxicated; and
- 17 (c) the supply happens at—
- 18 (i) licensed premises; or
- 19 (ii) permitted premises.
- 20 Maximum penalty: 5 penalty units.
- 21 (2) An offence against this section is a strict liability offence.
- 22 (3) This section does not apply to—
- 23 (a) for supply at licensed premises—
- 24 (i) the licensee; or
- 25 (ii) an employee of the licensee; or

(b) for supply at permitted premises—

(i) the permit-holder; or

(ii) an employee of the permit-holder.

Note 1 A licensee or permit-holder commits an offence if the licensee or permit-holder supplies liquor to an intoxicated person (see s 105).

Note 2 An employee of a licensee or permit-holder commits an offence if the employee supplies liquor to an intoxicated person (see s 106).

108 Offence—abuse, threaten, intimidate staff

(1) A person commits an offence if—

(a) a staff member at premises refuses to supply liquor to the person because the person is intoxicated; and

(b) the person engages in abusive, threatening or intimidating behaviour towards the staff member; and

(c) the behaviour is because of the refusal.

Maximum penalty: 10 penalty units.

Note **Supply** includes sell (see dict).

(2) A person commits an offence if—

(a) a staff member refuses to supply liquor to an intoxicated person; and

(b) the person engages in abusive, threatening or intimidating behaviour towards the staff member; and

(c) the behaviour is because of the refusal.

Maximum penalty: 10 penalty units.

(3) An offence against this section is a strict liability offence.

- 1 **109 Offence—fail to display sign about abuse offence**
- 2 (1) A person commits an offence if the person—
- 3 (a) is a licensee; and
- 4 (b) fails to display signs about the offence in section 108 at the
- 5 licensed premises in the way prescribed by regulation.
- 6 Maximum penalty: 10 penalty units.
- 7 (2) A person commits an offence if the person—
- 8 (a) is a permit-holder; and
- 9 (b) fails to display signs about the offence in section 108 at the
- 10 permitted premises in the way prescribed by regulation.
- 11 Maximum penalty: 10 penalty units.
- 12 (3) An offence against this section is a strict liability offence.

13 **Division 8.3 Children and young people**

- 14 **110 Offence—supply liquor to child or young person—**
- 15 **licensee or permit-holder**
- 16 (1) A person commits an offence if—
- 17 (a) the person is a licensee; and
- 18 (b) the person supplies liquor or low-alcohol liquor to another
- 19 person; and
- 20 (c) the other person is a child or young person; and
- 21 (d) the supply happens at licensed premises.
- 22 Maximum penalty: 50 penalty units.
- 23 *Note Supply* includes sell (see dict).

- 1 (2) A person commits an offence if—
2 (a) the person is a permit-holder; and
3 (b) the person supplies liquor or low-alcohol liquor to another
4 person; and
5 (c) the other person is a child or young person; and
6 (d) the supply happens at permitted premises.
7 Maximum penalty: 50 penalty units.
- 8 (3) A person commits an offence if—
9 (a) the person is a licensee; and
10 (b) an employee of the licensee supplies liquor or low-alcohol
11 liquor to another person; and
12 (c) the other person is a child or young person; and
13 (d) the supply happens at the licensed premises.
14 Maximum penalty: 50 penalty units.
- 15 (4) A person commits an offence if—
16 (a) the person is a permit-holder; and
17 (b) an employee of the permit-holder supplies liquor or
18 low-alcohol liquor to another person; and
19 (c) the other person is a child or young person; and
20 (d) the supply happens at the permitted premises.
21 Maximum penalty: 50 penalty units.
- 22 (5) An offence against this section is a strict liability offence.

- 1 (6) This section does not apply in relation to a young person if the
2 young person—
- 3 (a) was at least 16 years old at the time of the offence; and
- 4 (b) had, before the time of the offence, shown 1 or more of the
5 following people an identification document identifying the
6 young person as an adult:
- 7 (i) the defendant;
- 8 (ii) an employee of the defendant;
- 9 (iii) a crowd controller working as a crowd controller at the
10 premises.
- 11 *Note* The defendant has an evidential burden in relation to the matters
12 mentioned in s (6) (see Criminal Code, s 58).
- 13 (7) In a prosecution for an offence against this section, a substance
14 supplied to a person is presumed to be liquor if—
- 15 (a) the substance is supplied to the person in an adults-only area at
16 the premises; and
- 17 (b) a police officer gives evidence—
- 18 (i) that the police officer saw the substance being supplied to
19 the person; and
- 20 (ii) that the police officer believes on reasonable grounds that
21 the substance is liquor.
- 22 *Note* A person rebutting the presumption in s (7) bears an evidential burden
23 in relation to the rebuttal (see Criminal Code, s 58).

- 1 **111 Offence—supply liquor to child or young person—**
2 **employee**
- 3 (1) A person commits an offence if—
4 (a) the person is an employee of a licensee; and
5 (b) the person supplies liquor or low-alcohol liquor to another
6 person; and
7 (c) the other person is a child or young person; and
8 (d) the supply happens at the licensed premises.
9 Maximum penalty: 10 penalty units.
- 10 (2) A person commits an offence if—
11 (a) the person is an employee of a permit-holder; and
12 (b) the person supplies liquor or low-alcohol liquor to another
13 person; and
14 (c) the other person is a child or young person; and
15 (d) the supply happens at the permitted premises.
16 Maximum penalty: 10 penalty units.
- 17 (3) An offence against this section is a strict liability offence.
- 18 (4) This section does not apply in relation to a young person at licensed
19 premises if the young person—
20 (a) was at least 16 years old at the time of the offence; and
21 (b) had, before the time of the offence, shown 1 or more of the
22 following people an identification document identifying the
23 young person as an adult:
24 (i) the defendant;
25 (ii) the licensee;

- 1 (iii) a crowd controller working as a crowd controller at the
2 premises.
- 3 *Note* The defendant has an evidential burden in relation to the matters
4 mentioned in s (4) (see Criminal Code, s 58).
- 5 (5) This section does not apply in relation to a young person at
6 permitted premises if the young person—
- 7 (a) was at least 16 years old at the time of the offence; and
- 8 (b) had, before the time of the offence, shown 1 or more of the
9 following people an identification document identifying the
10 young person as an adult:
- 11 (i) the defendant;
- 12 (ii) the permit-holder;
- 13 (iii) a crowd controller working as a crowd controller at the
14 premises.
- 15 *Note* The defendant has an evidential burden in relation to the matters
16 mentioned in s (5) (see Criminal Code, s 58).
- 17 (6) In a prosecution for an offence against this section, a substance
18 supplied to a person is presumed to be liquor if—
- 19 (a) the substance is supplied to the person in an adults-only area at
20 the premises; and
- 21 (b) a police officer gives evidence—
- 22 (i) that the police officer saw the substance being supplied to
23 the person; and
- 24 (ii) that the police officer believes on reasonable grounds that
25 the substance is liquor.
- 26 *Note* A person rebutting the presumption in s (6) bears an evidential burden
27 in relation to the rebuttal (see Criminal Code, s 58).

112 Offence—supply liquor to child or young person—other person

- (1) A person commits an offence if—
- (a) the person supplies liquor or low-alcohol liquor to another person; and
 - (b) the other person is a child or a young person; and
 - (c) the supply happens at—
 - (i) licensed premises; or
 - (ii) permitted premises; and
 - (d) the person is a person other than—
 - (i) for supply at licensed premises—
 - (A) a licensee; or
 - (B) an employee of the licensee; or
 - (ii) for supply at permitted premises—
 - (A) a permit-holder; or
 - (B) an employee of the permit-holder.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply in relation to a young person at licensed premises if the young person—
- (a) was at least 16 years old at the time of the offence; and
 - (b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:
 - (i) the defendant;

- 1 (ii) the licensee;
- 2 (iii) an employee of the licensee;
- 3 (iv) a crowd controller working as a crowd controller at the
- 4 premises.
- 5 (4) This section does not apply in relation to a young person at
- 6 permitted premises if the young person—
- 7 (a) was at least 16 years old at the time of the offence; and
- 8 (b) had, before the time of the offence, shown 1 or more of the
- 9 following people an identification document identifying the
- 10 young person as an adult:
- 11 (i) the defendant;
- 12 (ii) the permit-holder;
- 13 (iii) an employee of the permit-holder;
- 14 (iv) a crowd controller working as a crowd controller at the
- 15 premises.
- 16 *Note 1* The defendant has an evidential burden in relation to the matters
- 17 mentioned in ss (3) and (4) (see Criminal Code, s 58).
- 18 *Note 2* It is an offence to supply liquor to a child or young person in a public
- 19 place (see s 203).

20 **113 Licensee, permit-holder, etc may refuse to supply liquor**

21 **without identification document**

- 22 (1) A staff member at premises may refuse to supply liquor or
- 23 low-alcohol liquor to a person if, when asked, the person does not
- 24 show the staff member an identification document identifying the
- 25 person as an adult.
- 26 (2) This section does not limit the circumstances in which a person may
- 27 refuse to supply liquor or low-alcohol liquor.

- 1 **114 Offence—child or young person consume liquor—**
2 **licensee or permit-holder**
- 3 (1) A person commits an offence if—
- 4 (a) the person is a licensee; and
- 5 (b) another person consumes liquor or low-alcohol liquor at the
- 6 licensed premises; and
- 7 (c) the other person is a child or young person.
- 8 Maximum penalty: 20 penalty units.
- 9 (2) A person commits an offence if—
- 10 (a) the person is a permit-holder; and
- 11 (b) another person consumes liquor or low-alcohol liquor at the
- 12 permitted premises; and
- 13 (c) the other person is a child or young person.
- 14 Maximum penalty: 20 penalty units.
- 15 (3) An offence against this section is a strict liability offence.
- 16 (4) This section does not apply in relation to a young person at premises
- 17 if the young person—
- 18 (a) was at least 16 years old at the time of the offence; and
- 19 (b) had, before the time of the offence, shown 1 or more of the
- 20 following people an identification document identifying the
- 21 young person as an adult:
- 22 (i) the defendant;
- 23 (ii) an employee of the defendant;

- 1 (iii) a crowd controller working as a crowd controller at the
2 premises.

3 *Note* The defendant has an evidential burden in relation to the matters
4 mentioned in s (4) (see Criminal Code, s 58).

5 **115 Offence—child or young person consume liquor**

6 A person commits an offence if the person—

- 7 (a) is a child or young person; and
8 (b) consumes liquor or low-alcohol liquor at—
9 (i) licensed premises; or
10 (ii) permitted premises.

11 Maximum penalty: 5 penalty units.

12 *Note* A police officer may caution a child or young person in relation to this
13 offence (see s 149).

14 **116 Offence—child or young person possess liquor—licensee**
15 **or permit-holder**

- 16 (1) A person commits an offence if—
17 (a) the person is a licensee; and
18 (b) another person possesses liquor or low-alcohol liquor at the
19 licensed premises; and
20 (c) the other person is a child or young person.

21 Maximum penalty: 20 penalty units.

- 1 (2) A person commits an offence if—
- 2 (a) the person is a permit-holder; and
- 3 (b) another person possesses liquor or low-alcohol liquor at the
- 4 permitted premises; and
- 5 (c) the other person is a child or young person.
- 6 Maximum penalty: 20 penalty units.
- 7 (3) An offence against this section is a strict liability offence.
- 8 (4) This section does not apply in relation to a young person if the
- 9 young person possesses the liquor or low-alcohol liquor in the
- 10 course of—
- 11 (a) the young person's employment at the licensed premises or
- 12 permitted premises; or
- 13 (b) a training program conducted by a declared training provider.
- 14 (5) This section does not apply in relation to a young person at premises
- 15 if the young person—
- 16 (a) was at least 16 years old at the time of the offence; and
- 17 (b) had, before the time of the offence, shown 1 or more of the
- 18 following people an identification document identifying the
- 19 young person as an adult:
- 20 (i) the defendant;
- 21 (ii) an employee of the defendant;
- 22 (iii) a crowd controller working as a crowd controller at the
- 23 premises.
- 24 *Note* The defendant has an evidential burden in relation to the matters
- 25 mentioned in ss (4) and (5) (see Criminal Code, s 58).

1 **117 Offence—child or young person possess liquor**

- 2 (1) A person commits an offence if the person—
- 3 (a) is a child or young person; and
- 4 (b) possesses liquor or low-alcohol liquor at—
- 5 (i) licensed premises; or
- 6 (ii) permitted premises.

7 Maximum penalty: 5 penalty units.

- 8 (2) This section does not apply to a young person if the young person
- 9 possesses the liquor or low-alcohol liquor in the course of—

- 10 (a) the young person's employment at the licensed premises or
- 11 permitted premises; or
- 12 (b) a training program conducted by a declared training provider.

13 *Note 1* The defendant has an evidential burden in relation to the matters

14 mentioned in s (2) (see Criminal Code, s 58).

15 *Note 2* A police officer may caution a child or young person in relation to this

16 offence (see s 149).

17 **118 Offence—child or young person supply liquor—licensee**

18 **or permit-holder**

- 19 (1) A person commits an offence if—
- 20 (a) the person is a licensee; and
- 21 (b) the person employs a child or young person; and
- 22 (c) the child or young person supplies liquor; and
- 23 (d) the liquor is supplied in an adults-only area of the licensed
- 24 premises.

25 Maximum penalty: 50 penalty units.

26 *Note* *Supply* includes sell (see dict).

- 1 (2) A person commits an offence if—
2 (a) the person is a permit-holder; and
3 (b) the person employs a child or young person; and
4 (c) the child or young person supplies liquor; and
5 (d) the liquor is supplied in an adults-only area of the permitted
6 premises.

7 Maximum penalty: 50 penalty units.

- 8 (3) An offence against this section is a strict liability offence.

9 **119 Offence—send child or young person to obtain liquor**

- 10 (1) A person commits an offence if—
11 (a) the person sends another person to buy liquor or low-alcohol
12 liquor at—
13 (i) licensed premises; or
14 (ii) permitted premises; and
15 (b) the other person is a child or young person.

16 Maximum penalty: 10 penalty units.

- 17 (2) A person commits an offence if—
18 (a) the person sends another person to collect liquor or
19 low-alcohol liquor at—
20 (i) licensed premises; or
21 (ii) permitted premises; and
22 (b) the other person is a child or young person.

23 Maximum penalty: 10 penalty units.

(3) This section does not apply in relation to a young person if the young person is sent to obtain liquor or low-alcohol liquor in the course of—

(a) the young person's employment at the licensed premises or permitted premises; or

(b) a training program conducted by a declared training provider.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

120 Offence—child or young person in adults-only area—licensee or permit-holder

(1) A person commits an offence if—

(a) the person is a licensee; and

(b) a child or young person is in an adults-only area of the licensed premises.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is a permit-holder; and

(b) a child or young person is in an adults-only area of the permitted premises.

Maximum penalty: 50 penalty units.

(3) An offence against this section is a strict liability offence.

(4) This section does not apply if the child or young person is in the care of an adult who—

(a) is a parent, step-parent, guardian, person acting in place of a parent, domestic partner or carer of the child or young person; and

(b) could reasonably be expected to responsibly supervise the child or young person.

Note For the meaning of **domestic partner**, see the Legislation Act, s 169.

(5) This section does not apply in relation to a young person if the young person is in the adults-only area in the course of—

(a) the young person's employment at the licensed premises or permitted premises; or

(b) a training program conducted by a declared training provider.

(6) This section does not apply in relation to a young person if—

(a) the young person is attending an approved young people's event in the adults-only area; and

(b) the event is conducted in accordance with the young people's event approval.

Note Young people's event approvals are made under s 95 (3).

(7) This section does not apply in relation to a young person if the young person—

(a) was at least 16 years old at the time of the offence; and

(b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:

(i) the defendant;

(ii) an employee of the defendant;

(iii) a crowd controller working as a crowd controller at the premises.

Note The defendant has an evidential burden in relation to the matters mentioned in ss (4), (5), (6) and (7) (see Criminal Code, s 58).

- 1 **121 Offence—child or young person in adults-only area**
- 2 (1) A person commits an offence if the person is—
- 3 (a) a child or young person; and
- 4 (b) in an adults-only area at—
- 5 (i) licensed premises; or
- 6 (ii) permitted premises.
- 7 Maximum penalty: 5 penalty units.
- 8 (2) An offence against this section is a strict liability offence.
- 9 (3) This section does not apply to a child or young person if the child or
- 10 young person is in the care of an adult who—
- 11 (a) is a parent, step-parent, guardian, person acting in place of a
- 12 parent, domestic partner or carer of the child or young person;
- 13 and
- 14 (b) could reasonably be expected to responsibly supervise the child
- 15 or young person.
- 16 *Note* For the meaning of **domestic partner**, see the Legislation Act, s 169.
- 17 (4) This section does not apply to a young person if the young person is
- 18 in the adults-only area in the course of—
- 19 (a) the young person's employment at the licensed premises or
- 20 permitted premises; or
- 21 (b) a training program conducted by a declared training provider.
- 22 *Note 1* Employment of children is dealt with in the *Children and Young People*
- 23 *Act 2008*.
- 24 *Note 2* Children and young people must not serve liquor (see s 118).

- 1 (5) This section does not apply to a young person if—
- 2 (a) the young person is attending an approved young people's
- 3 event in the adults-only area; and
- 4 (b) the event is conducted in accordance with the young people's
- 5 event approval.
- 6 *Note 1* The defendant has an evidential burden in relation to the matters
- 7 mentioned in ss (3), (4) and (5) (see Criminal Code, s 58).
- 8 *Note 2* A police officer may caution a child or young person in relation to this
- 9 offence (see s 149).
- 10 *Note 3* Young people's event approvals are made under s 95 (3).

11 **122 Offence—child or young person use false identification**

12 **for adults-only area**

- 13 (1) A person commits an offence if the person—
- 14 (a) is a child or young person; and
- 15 (b) uses a false identification document to obtain entry to an
- 16 adults-only area at—
- 17 (i) licensed premises; or
- 18 (ii) permitted premises.

19 Maximum penalty: 5 penalty units.

20 *Note* A police officer may caution a child or young person in relation to this

21 offence (see s 148).

- 22 (2) A person commits an offence if the person—
- 23 (a) is a child or young person; and
- 24 (b) uses a false identification document to remain in an adults-only
- 25 area at—
- 26 (i) licensed premises; or

1 (ii) permitted premises.

2 Maximum penalty: 5 penalty units.

3 *Note* A police officer may caution a child or young person in relation to this
4 offence (see s 149).

5 (3) An offence against this section is a strict liability offence.

6 **123 Offence—fail to mark adults-only areas**

7 (1) A person commits an offence if—

8 (a) the person is a licensee; and

9 (b) an adults-only area at the licensed premises is not clearly
10 marked for the public in the way prescribed by regulation.

11 Maximum penalty: 20 penalty units.

12 (2) A person commits an offence if—

13 (a) the person is a permit-holder; and

14 (b) an adults-only area at the permitted premises is not clearly
15 marked for the public in the way prescribed by regulation.

16 Maximum penalty: 20 penalty units.

17 (3) An offence against this section is a strict liability offence.

18 **124 Licensee, permit-holder, etc may seize false identification**
19 **document**

20 (1) If a staff member or crowd controller working at licensed premises
21 or permitted premises believes on reasonable grounds that a
22 document shown to the person is a false identification document, the
23 staff member or crowd controller may seize the document.

24 (2) However, a staff member or crowd controller working at licensed
25 premises or permitted premises must not seize a document that
26 purports to be a passport.

1 (3) As soon as practicable after a staff member or crowd controller
2 working at licensed premises or permitted premises seizes a
3 document, the staff member or crowd controller must give a receipt
4 for it to the person from whom it was seized.

5 (4) A receipt under this section must include the following:

6 (a) a description of the thing seized;

7 (b) an explanation of why the thing was seized;

8 (c) the staff member's or crowd controller's name, and how to
9 contact the staff member or crowd controller;

10 (d) if the thing is moved from the premises where it is seized—
11 where the thing is to be taken.

12 *Note* If a form is approved under s 222 for this provision, the form must be
13 used.

14 (5) A person commits an offence if the person—

15 (a) is a staff member or crowd controller working at licensed
16 premises or permitted premises; and

17 (b) seizes a document under subsection (1); and

18 (c) does not give the document to the commissioner within 7 days
19 after the document is seized.

20 Maximum penalty: 5 penalty units.

21 (6) A person commits an offence if the person—

22 (a) is a licensee or permit-holder; and

23 (b) does not make a record of—

24 (i) each document seized by the person, or an employee of
25 the person, under subsection (1); and

26 (ii) the date and time when, and the person who, seized the
27 document; and

- 1 (iii) the reason the document was seized; and
2 (iv) the date and time when the document was given to the
3 commissioner.

4 Maximum penalty: 5 penalty units.

5 (7) A person commits an offence if the person—

- 6 (a) is a licensee or a permit-holder; and
7 (b) does not keep a record mentioned in subsection (6)—
8 (i) for at least 2 years; and
9 (ii) at the licensed premises.

10 Maximum penalty: 5 penalty units.

11 **Division 8.4 Occupancy loading**

12 **125 Offence—exceed occupancy loading**

13 (1) A person commits an offence if—

- 14 (a) the person is a licensee; and
15 (b) the number of people in a public area at the licensed premises
16 is more than the number allowed under the occupancy loading
17 for the area.

18 Maximum penalty: 50 penalty units.

19 (2) A person commits an offence if—

- 20 (a) the person is a permit-holder; and
21 (b) the number of people in a public area at the permitted premises
22 is more than the number allowed under the occupancy loading
23 for the area.

24 Maximum penalty: 50 penalty units.

25 (3) An offence against this section is a strict liability offence.

- 1 **126 Offence—fail to display occupancy loading sign**
- 2 (1) A person commits an offence if the person—
- 3 (a) is a licensee; and
- 4 (b) fails to display a sign about the occupancy loading at the
- 5 licensed premises in the way prescribed by regulation.
- 6 Maximum penalty: 10 penalty units.
- 7 (2) A person commits an offence if the person—
- 8 (a) is a permit-holder; and
- 9 (b) fails to display a sign about the occupancy loading at the
- 10 permitted premises in the way prescribed by regulation.
- 11 Maximum penalty: 10 penalty units.
- 12 (3) An offence against this section is a strict liability offence.

13 **Division 8.5 Approved risk-assessment**

14 **management plans**

- 15 **127 Offence—fail to comply with approved risk-assessment**
- 16 **management plan**
- 17 (1) A person commits an offence if the person—
- 18 (a) is a licensee; and
- 19 (b) fails to comply with an approved risk-assessment management
- 20 plan in force for the licensed premises.
- 21 Maximum penalty: 20 penalty units.

- 1 (2) A person commits an offence if the person—
2 (a) is a commercial permit-holder; and
3 (b) fails to comply with an approved risk-assessment management
4 plan in force for the permitted premises.
5 Maximum penalty: 20 penalty units.
- 6 (3) A person commits an offence if—
7 (a) the person is a licensee; and
8 (b) an employee of the licensee fails to comply with an approved
9 risk-assessment management plan in force for the licensed
10 premises.
11 Maximum penalty: 10 penalty units.
- 12 (4) A person commits an offence if—
13 (a) the person is a commercial permit-holder; and
14 (b) an employee of the permit-holder fails to comply with an
15 approved risk-assessment management plan in force for the
16 permitted premises.
17 Maximum penalty: 10 penalty units.
- 18 (5) This section does not apply if—
19 (a) a term in the approved risk-assessment management plan for
20 the premises is inconsistent with a condition on the licence, or
21 commercial permit, for the premises; and
22 (b) the defendant complies with the condition.
- 23 *Note* The defendant has an evidential burden in relation to the matters
24 mentioned in s (5) (see Criminal Code, s 58).

- 1 **128 Offence—fail to make risk-assessment management plan**
2 **available**
- 3 (1) A person commits an offence if the person—
4 (a) is a licensee; and
5 (b) fails to make the risk-assessment management plan for the
6 licensed premises available for public inspection.
7 Maximum penalty: 10 penalty units.
- 8 (2) A person commits an offence if the person—
9 (a) is a commercial permit-holder; and
10 (b) fails to make the risk-assessment management plan for the
11 permitted premises available for public inspection.
12 Maximum penalty: 10 penalty units.
- 13 (3) An offence against this section is a strict liability offence.

14 **Division 8.6 Incidents**

15 **129 What is an *incident*?—div 8.6**

16 In this division:

17 *incident* means an incident—

- 18 (a) involving violent, unlawful or anti-social behaviour at licensed
19 premises or permitted premises; or
20 (b) involving violent or anti-social behaviour that—
21 (i) occurs in the immediate vicinity of licensed premises or
22 permitted premises; and
23 (ii) involves a person who has recently left, or been refused
24 admission to, the premises; or

- 1 (c) resulting in a person being removed from licensed premises or
- 2 permitted premises; or
- 3 (d) occurring after midnight and before the time prescribed by
- 4 regulation resulting in a person at licensed premises or
- 5 permitted premises requiring medical assistance; or
- 6 (e) prescribed by regulation.

7 **130 Incident register**

- 8 (1) A licensee or permit-holder must keep a register (an ***incident***
- 9 ***register***) of incidents that occur at the licensed premises or
- 10 permitted premises.
- 11 (2) The incident register must include the following details for each
- 12 incident:
- 13 (a) a description of the incident;
- 14 (b) the date and time the incident happened;
- 15 (c) the name, address and contact details of each person connected
- 16 with the incident including—
- 17 (i) each employee of the licensee or permit-holder connected
- 18 with the incident; and
- 19 (ii) each crowd controller working as a crowd controller at
- 20 the premises connected with the incident; and
- 21 (iii) each police officer connected with the incident;
- 22 (d) any action taken in relation to the incident.

23 *Note* An incident must be included in the register as soon as possible after the

24 incident occurs (see Legislation Act, s 151B).

1 **131 Offence—fail to keep incident register**

- 2 (1) A person commits an offence if the person—
3 (a) is a licensee; and
4 (b) does not keep an incident register for the licensed premises in
5 accordance with section 130.

6 Maximum penalty: 10 penalty units.

- 7 (2) A person commits an offence if the person—
8 (a) is a permit-holder; and
9 (b) does not keep an incident register for the permitted premises in
10 accordance with section 130.

11 Maximum penalty: 10 penalty units.

- 12 (3) An offence against this section is a strict liability offence.

13 **Division 8.7 Breath testing machines**

14 **132 What is a *breath testing machine*?—div 8.7**

15 In this division:

16 *breath testing machine* means a machine that is—

- 17 (a) designed to measure, by analysing a person's breath, the
18 concentration of alcohol present in the person's blood; and
19 (b) of a type specified in AS 3547-1997 (*Breath Alcohol Testing*
20 *Devices for Personal Use*) as in force from time to time.

21 *Note* This standard may be purchased at www.standards.org.au.

- 1 **133 Offence—fail to display breath testing machine sign**
- 2 (1) A person commits an offence if—
- 3 (a) the person is a licensee; and
- 4 (b) a breath testing machine is installed at the licensed premises;
- 5 and
- 6 (c) the person fails to display a sign about the breath testing
- 7 machine in the way prescribed by regulation.
- 8 Maximum penalty: 20 penalty units.
- 9 (2) A person commits an offence if—
- 10 (a) the person is a permit-holder; and
- 11 (b) a breath testing machine is installed at the permitted premises;
- 12 and
- 13 (c) the person fails to display a sign about the breath testing
- 14 machine in the way prescribed by regulation.
- 15 Maximum penalty: 20 penalty units.
- 16 **134 Evidence of breath tests**
- 17 (1) This section applies to evidence of the results of a test that indicates
- 18 the presence or concentration of alcohol in the blood of a person,
- 19 performed on a breath testing machine installed at licensed premises
- 20 or permitted premises.
- 21 (2) The evidence is not admissible—
- 22 (a) in a civil proceeding against the licensee or permit-holder; or
- 23 (b) in a criminal proceeding.

- 1 (3) However, this section does not prevent the admission into evidence
2 in a civil proceeding of the results of the test if it is established that
3 at the time of the test—
- 4 (a) the breath testing machine did not comply with AS 3547-1997;
5 or
- 6 (b) the licensee or permit-holder was aware, or should have been
7 aware, that the breath testing machine was not operating
8 correctly; or
- 9 (c) a sign about the breath testing machine was not displayed as
10 required under section 133.

11 **Division 8.8 Other offences**

12 **135 Offence—sell petrol at premises**

- 13 (1) A person commits an offence if—
- 14 (a) the person is a licensee; and
- 15 (b) the person sells petrol to another person; and
- 16 (c) the sale happens at the licensed premises.
- 17 Maximum penalty: 20 penalty units.
- 18 (2) A person commits an offence if—
- 19 (a) the person is a permit-holder; and
- 20 (b) the person sells petrol to another person; and
- 21 (c) the sale happens at the permitted premises.
- 22 Maximum penalty: 20 penalty units.
- 23 (3) This section does not apply to the sale of petrol at licensed premises
24 prescribed by regulation.

- 1 **136 Offence—conduct prohibited promotional activities**
- 2 (1) A person commits an offence if—
- 3 (a) the person is a licensee; and
- 4 (b) the person conducts a prohibited promotional activity; and
- 5 (c) the activity is conducted at the licensed premises.
- 6 Maximum penalty: 50 penalty units.
- 7 (2) A person commits an offence if—
- 8 (a) the person is a permit-holder; and
- 9 (b) the person conducts a prohibited promotional activity; and
- 10 (c) the activity is conducted at the permitted premises.
- 11 Maximum penalty: 50 penalty units.
- 12 (3) A person commits an offence if—
- 13 (a) the person is a permit-holder; and
- 14 (b) another person conducts a prohibited promotional activity; and
- 15 (c) the person knows about the activity; and
- 16 (d) the activity is conducted at the permitted premises.
- 17 Maximum penalty: 50 penalty units.
- 18 (4) In this section:
- 19 *prohibited promotional activity* means an activity that—
- 20 (a) encourages excessive or rapid consumption of liquor; or
- 21 (b) is prescribed by regulation.

- 1 **137 Offence—fail to leave premises when directed**
- 2 (1) A person commits an offence if—
- 3 (a) the person is at licensed premises; and
- 4 (b) 1 of the following people directs the person to leave the
- 5 premises:
- 6 (i) the licensee;
- 7 (ii) an employee of the licensee;
- 8 (iii) a crowd controller working as a crowd controller at the
- 9 premises; and
- 10 (c) the person fails to comply with the direction.
- 11 Maximum penalty: 20 penalty units.
- 12 (2) A person commits an offence if—
- 13 (a) the person is at permitted premises; and
- 14 (b) 1 of the following people directs the person to leave the
- 15 premises:
- 16 (i) the permit-holder;
- 17 (ii) an employee of the permit-holder;
- 18 (iii) a crowd controller working as a crowd controller at the
- 19 premises; and
- 20 (c) the person fails to comply with the direction.
- 21 Maximum penalty: 20 penalty units.
- 22 (3) An offence against this section is a strict liability offence.

- 1 **138 Offence—consume liquor at off licensed premises**
- 2 (1) A person commits an offence if—
- 3 (a) the person is an off licensee; and
- 4 (b) another person consumes liquor at the off licensed premises.
- 5 Maximum penalty: 20 penalty units.
- 6 (2) A person commits an offence if—
- 7 (a) the person consumes liquor; and
- 8 (b) the consumption happens at off licensed premises.
- 9 Maximum penalty: 10 penalty units.
- 10 (3) An offence against this section is a strict liability offence.
- 11 (4) This section does not apply if the person consuming the liquor at the
- 12 premises is—
- 13 (a) the off licensee; or
- 14 (b) an employee of the licensee; or
- 15 (c) a family member of the licensee.
- 16 (5) This section does not apply if the person consuming the liquor at the
- 17 premises was supplied with the liquor for consumption as a sample
- 18 of liquor available for sale and—
- 19 (a) there was no charge for the sample; and
- 20 (b) the sample was consumed at the premises in an area stated to
- 21 be a sampling area.
- 22 *Note* The defendant has an evidential burden in relation to the matters
- 23 mentioned in ss (4) and (5) (see Criminal Code, s 58).

- 1 **139 Offence—sexually explicit entertainment**
- 2 (1) A person commits an offence if—
- 3 (a) the person is a licensee; and
- 4 (b) there is sexually explicit entertainment at the licensed
- 5 premises.
- 6 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 7 both.
- 8 (2) A person commits an offence if—
- 9 (a) the person is a permit-holder; and
- 10 (b) there is sexually explicit entertainment at the permitted
- 11 premises.
- 12 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 13 both.
- 14 (3) This section does not apply if—
- 15 (a) the premises are in a prescribed location; or
- 16 (b) the entertainment is in a room at the premises used for
- 17 accommodation.
- 18 (4) In this section:
- 19 *sexual intercourse*—see the *Crimes Act 1900*, section 50.
- 20 *sexually explicit entertainment*—
- 21 (a) means a performance or other entertainment—
- 22 (i) in which a person displays genitalia; or
- 23 (ii) that includes sexual intercourse; and
- 24 (b) includes a performance, or other entertainment, prescribed by
- 25 regulation.

1 **140 Offence—fail to keep licence or permit at premises**

- 2 (1) A person commits an offence if the person—
3 (a) is a licensee; and
4 (b) fails to keep the licence at the licensed premises.

5 Maximum penalty: 5 penalty units.

- 6 (2) A person commits an offence if the person—
7 (a) is a permit-holder; and
8 (b) fails to keep the permit at the permitted premises.

9 Maximum penalty: 5 penalty units.

- 10 (3) An offence against this section is a strict liability offence.

11 **141 Offence—fail to keep records in required way**

- 12 (1) A person commits an offence if the person—
13 (a) is a licensee or permit-holder; and
14 (b) sells liquor; and
15 (c) does not record the sale—
16 (i) in electronic form; and
17 (ii) in a way that is easily retrievable.

18 Maximum penalty: 20 penalty units.

- 19 (2) A person commits an offence if the person—
20 (a) is a licensee or permit-holder; and
21 (b) sells liquor; and
22 (c) makes a record of the sale; and

1 (d) does not keep the record for at least 6 years.

2 Maximum penalty: 50 penalty units.

3 (3) An offence against this section is a strict liability offence.

4 **142 Offence—club licensee advertise for public attendance**

5 A person commits an offence if—

6 (a) the person is a club licensee; and

7 (b) the person publishes a statement; and

8 (c) the statement—

9 (i) constitutes an invitation to the public to attend the
10 licensed premises; or

11 (ii) could reasonably be understood as an invitation to the
12 public to attend the licensed premises.

13 Maximum penalty: 10 penalty units.

Part 9 Directions, emergency closure orders and cautions

Division 9.1 Commissioner's directions

143 Commissioner may direct licensee, permit-holder, employee etc

(1) This section applies if the commissioner believes on reasonable grounds that there is, or is likely to be—

- (a) a contravention of this Act; or
- (b) a breach of a licence or permit.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(2) The commissioner may direct (a *commissioner's direction*) 1 or more of the following people to take action to prevent the contravention or breach:

- (a) a licensee;
- (b) an employee of a licensee;
- (c) a person working at the licensed premises;
- (d) a permit-holder;
- (e) an employee of a permit-holder;
- (f) a person working at the permitted premises.

Examples—commissioner's direction

- 1 to a licensee to require people to leave a public area of the licensed premises because the occupancy loading for the area has been exceeded

2 to a licensee to reduce loud noise coming from premises

Note 1 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) A commissioner's direction must—

(a) be in writing; and

(b) either—

(i) state—

(A) the action to be taken; and

(B) when the direction must be complied with; or

(ii) state—

(A) the conduct not to be undertaken; and

(B) how long the direction is in force.

(4) A commissioner's direction must not state a day or time for compliance that is earlier than the day or time the person is given the commissioner's direction.

Note Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument.

1 **144 Offence—fail to comply with commissioner’s direction**

2 A person commits an offence if—

- 3 (a) a commissioner’s direction is in force for the person; and
4 (b) the person fails to take reasonable steps to comply with the
5 direction.

6 Maximum penalty: 100 penalty units, 12 months imprisonment or
7 both.

8 **Division 9.2 Emergency closure orders**

9 **145 Emergency closure of premises for 24 hours**

10 (1) A senior police officer may order (an *emergency closure order*) a
11 licensee, or permit-holder, to close licensed premises, or permitted
12 premises, if the officer believes on reasonable grounds that—

- 13 (a) a breach of this Act has happened, or is likely to happen; and
14 (b) the closure of the premises is necessary to prevent or reduce a
15 significant threat or significant risk to the safety of the
16 community.

17 (2) Without limiting subsection (1), the circumstances in which there
18 may be a significant threat or significant risk to the safety of the
19 community include circumstances in which there is—

- 20 (a) a threat to public health or safety; or
21 (b) a risk of substantial damage to property; or
22 (c) a significant threat to the environment; or
23 (d) a risk of an offence against a law of the ACT, with a maximum
24 penalty of imprisonment for 2 years or more, being committed
25 at the premises.

26 (3) An emergency closure order must not require the closure of
27 premises for longer than a continuous period of 24 hours.

1 (4) If an emergency closure order is made under subsection (1), a police
2 officer must, in writing, tell the licensee or permit-holder—

3 (a) the name of the senior police office making the order; and

4 (b) when the order starts; and

5 (c) when the order ends.

6 *Note* An emergency closure notice for the emergency closure order must be
7 given to the licensee or permit-holder as soon as practicable after the
8 order is made (see s 146 (1)).

9 (5) If an emergency closure order is in force for licensed premises, or
10 permitted premises, the licence, or permit, is suspended for the
11 period of the order.

12 **146 Emergency closure notice**

13 (1) If a senior police officer makes an emergency closure order for
14 licensed premises or permitted premises the officer must, as soon as
15 practicable, give a notice (an *emergency closure notice*) to the
16 licensee or permit-holder.

17 (2) An emergency closure notice must—

18 (a) be in writing; and

19 (b) state—

20 (i) the date of issue of the notice; and

21 (ii) when the order starts; and

22 (iii) when the order ends; and

23 (iv) the breach of this Act that the senior police officer
24 believes has happened or is likely to happen; and

25 (v) the grounds for the officer's belief; and

26 (c) be signed by the senior police officer.

- 1 (3) The senior police officer must also—
2 (a) keep a record of the emergency closure notice in the police
3 records; and
4 (b) give a copy of the notice to the commissioner.

5 **147 Offence—fail to comply with emergency closure order**

- 6 (1) A person commits an offence if—
7 (a) the person is—
8 (i) a licensee; or
9 (ii) a permit-holder; and
10 (b) an emergency closure order is in force for the person; and
11 (c) the person fails to comply with the emergency closure order.
12 Maximum penalty units: 50 penalty units.
13 (2) An offence against this section is a strict liability offence.

14 **Division 9.3 Police cautions for children and**
15 **young people**

16 **148 Definitions—div 9.3**

17 In this division:

18 *caution offence* means any of the following offences:

- 19 (a) section 115 (Offence—child or young person consume liquor);
20 (b) section 117 (Offence—child or young person possess liquor);
21 (c) section 121 (Offence—child or young person in adults-only
22 area);
23 (d) section 122 (Offence—child or young person use false
24 identification for adults-only area);

- 1 (e) section 201 (Offence—child or young person buy liquor);
2 (f) section 202 (Offence—child or young person use false
3 identification to buy liquor);
4 (g) section 210 (Offence—child or young person use false
5 identification to obtain proof of age card).

6 ***CYP chief executive*** means the chief executive of the administrative
7 unit responsible for the *Children and Young People Act 2008*.

8 **149 Police may caution children and young people**

- 9 (1) A police officer may caution a child or young person for a caution
10 offence if—
11 (a) the police officer believes on reasonable grounds that the child
12 or young person is committing, or has committed, the offence;
13 and
14 (b) the child or young person has not been cautioned in the
15 preceding 12 months for a caution offence.
16 (2) A caution must—
17 (a) be in writing; and
18 (b) state—
19 (i) the date of issue of the caution; and
20 (ii) the caution offence that the police officer believes the
21 child or young person is committing, or has committed;
22 and
23 (iii) the grounds for the police officer's belief; and
24 (c) warn the child or young person that if the child or young
25 person engages in behaviour that constitutes a further caution
26 offence within 12 months after the date of issue of the caution,
27 the child or young person may be prosecuted for the further
28 offence; and

- 1 (d) be signed by the police officer.
- 2 (3) A police officer who issues a caution must—
- 3 (a) keep the caution in the police records; and
- 4 (b) give a copy of the caution to—
- 5 (i) the child or young person; and
- 6 (ii) a person with parental responsibility for the child or
- 7 young person; and
- 8 (iii) if the CYP chief executive has parental responsibility
- 9 (whether shared or otherwise) for the child or young
- 10 person—the CYP chief executive; and
- 11 (iv) the commissioner.

12 *Note* A copy of the caution must be given to the person as soon as possible

13 (see Legislation Act, s 151B).

- 14 (4) If a child or young person is cautioned for an offence, the child or
- 15 young person must not be prosecuted in a court for the offence.

16 **150 Police must caution and release child or young person as**

17 **soon as practicable**

- 18 (1) If a police officer intends to caution a child or young person, the
- 19 police officer must—
- 20 (a) take the child or young person to a police station; and
- 21 (b) issue the caution within a reasonable time after the child or
- 22 young person is taken to the station.
- 23 (2) If a police officer cautions a child or young person, the police
- 24 officer must as soon as practicable after the caution is issued—
- 25 (a) arrange for the child or young person to be escorted by a police
- 26 officer to the child's or young person's home; or

- 1 (b) arrange for a person with parental responsibility for the child or
2 young person to come to the police station to collect the child
3 or young person; or
4 (c) release the child or young person.
5 (3) If a police officer releases a child or young person under
6 subsection (2) (c), the police officer must tell the CYP chief
7 executive about the release as soon as practicable after the release.

8 **151 Chief police officer may revoke cautions**

- 9 (1) The chief police officer may revoke a caution issued to a child or
10 young person if satisfied that the police officer who issued the
11 caution did not act in accordance with section 149 or section 150.
12 (2) If the chief police officer revokes a caution, the chief police officer
13 must—
14 (a) destroy the caution kept in the police records; and
15 (b) take reasonable steps to tell the child or young person that the
16 caution is revoked; and
17 (c) if the CYP chief executive was given a copy of the caution
18 under section 149 (3) (b)—tell the CYP chief executive that the
19 caution is revoked; and
20 (d) tell the commissioner that the caution is revoked.

Part 10 Enforcement

Division 10.1 General

152 Definitions—pt 10

In this part:

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

warrant means a warrant issued under division 10.3 (Search warrants).

Division 10.2 Powers of authorised people

153 Power to enter premises

(1) For this Act, an authorised person may—

- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or

- 1 (b) at any time when the premises is open for business, enter the
2 premises; or
- 3 (c) at any time, enter premises with the occupier's consent; or
- 4 (d) enter premises in accordance with a licence or permit
5 condition; or
- 6 (e) enter premises in accordance with a search warrant; or
- 7 (f) at any time, enter premises if the authorised person believes on
8 reasonable grounds that the circumstances are so serious and
9 urgent that immediate entry to the premises without the
10 authority of a search warrant is necessary.
- 11 (2) However, subsection (1) (a) and (b) do not authorise entry into a
12 part of premises that is being used only for residential purposes.
- 13 (3) An authorised person may, without the consent of the occupier of
14 premises, enter land around the premises to ask for consent to enter
15 the premises.
- 16 (4) To remove any doubt, an authorised person may enter premises
17 under subsection (1) without payment of an entry fee or other
18 charge.
- 19 (5) In this section:
- 20 *at any reasonable time* includes at any time when the public is
21 entitled to use the premises, or when the premises are open to or
22 used by the public (whether or not on payment of money).

23 **154 Production of identity card**

- 24 (1) An investigator must not remain at premises entered under this part
25 if the investigator does not produce his or her identity card when
26 asked by the occupier.
- 27 (2) A police officer must not remain at premises entered under this part
28 if the officer does not produce evidence that the officer is a police
29 officer when asked by the occupier.

- 1 **155 Consent to entry**
- 2 (1) When seeking the consent of an occupier of premises to enter
- 3 premises under section 153 (1) (b), an authorised person must—
- 4 (a) either—
- 5 (i) if the person is an investigator—produce his or her
- 6 identity card; or
- 7 (ii) if the person is a police officer—produce evidence that he
- 8 or she is a police officer; and
- 9 (b) tell the occupier—
- 10 (i) the purpose of the entry; and
- 11 (ii) that anything found and seized under this part may be
- 12 used in evidence in court; and
- 13 (iii) that consent may be refused.
- 14 (2) If the occupier consents, the authorised person must ask the occupier
- 15 to sign a written acknowledgment (an ***acknowledgment of***
- 16 ***consent***)—
- 17 (a) that the occupier was told—
- 18 (i) the purpose of the entry; and
- 19 (ii) that anything found and seized under this part may be
- 20 used in evidence in court; and
- 21 (iii) that consent may be refused; and
- 22 (b) that the occupier consented to the entry; and
- 23 (c) stating the time and date when consent was given.
- 24 (3) If the occupier signs an acknowledgment of consent, the authorised
- 25 person must immediately give a copy to the occupier.

1 (4) A court must find that the occupier did not consent to entry to the
2 premises by the authorised person under this part if—

3 (a) the question arises in a proceeding in the court whether the
4 occupier consented to the entry; and

5 (b) an acknowledgment of consent is not produced in evidence;
6 and

7 (c) it is not proved that the occupier consented to the entry.

8 **156 General powers on entry to premises**

9 (1) An authorised person who enters premises under this part may, for
10 this Act, do 1 or more of the following in relation to the premises or
11 anything at the premises:

12 (a) inspect or examine;

13 (b) take measurements or conduct tests;

14 (c) take samples;

15 (d) take photographs, films, or audio, video or other recordings;

16 (e) require the occupier, or anyone at the premises, to give the
17 authorised person reasonable help to exercise a power under
18 this part.

19 *Note* The Legislation Act, s 170 and s 171 deal with the application of the
20 privilege against self incrimination and client legal privilege.

21 (2) A person must take reasonable steps to comply with a requirement
22 made of the person under subsection (1) (e).

23 Maximum penalty: 50 penalty units.

- 1 **157 Power to seize things**
- 2 (1) An authorised person who enters premises under this part with the
- 3 occupier’s consent may seize anything at the premises if—
- 4 (a) the authorised person is satisfied on reasonable grounds that
- 5 the thing is connected with an offence against this Act; and
- 6 (b) seizure of the thing is consistent with the purpose of the entry
- 7 told to the occupier when seeking the occupier’s consent.
- 8 (2) An authorised person who enters premises under a warrant under
- 9 this part may seize anything at the premises that the authorised
- 10 person is authorised to seize under the warrant.
- 11 (3) An authorised person who enters premises under this part (whether
- 12 with the occupier’s consent, under a warrant or otherwise) may seize
- 13 anything at the premises if satisfied on reasonable grounds that—
- 14 (a) the thing is connected with an offence against this Act; and
- 15 (b) the seizure is necessary to prevent the thing from being—
- 16 (i) concealed, lost or destroyed; or
- 17 (ii) used to commit, continue or repeat the offence.
- 18 (4) Also, an authorised person who enters premises under this part
- 19 (whether with the consent of a person in charge of the premises,
- 20 under a warrant or otherwise) may seize anything at the premises if
- 21 satisfied on reasonable grounds that the thing poses a risk to the
- 22 health or safety of people or of damage to property or the
- 23 environment.
- 24 (5) The powers of an authorised person under subsections (3) and (4)
- 25 are additional to any powers of the authorised person under
- 26 subsections (1) or (2) or any other territory law.

- 1 (6) Having seized a thing, an authorised person may—
- 2 (a) remove the thing from the premises where it was seized (the
- 3 *place of seizure*) to another place; or
- 4 (b) leave the thing at the place of seizure but restrict access to it.
- 5 (7) A person commits an offence if—
- 6 (a) the person interferes with a seized thing, or anything
- 7 containing a seized thing, to which access has been restricted
- 8 under subsection (6); and
- 9 (b) the person does not have an authorised person's approval to
- 10 interfere with the thing.
- 11 Maximum penalty: 50 penalty units.
- 12 (8) An offence against this section is a strict liability offence.
- 13 *Note* See also s 200 about disposal of liquor seized in public places.

14 **Division 10.3 Search warrants**

15 **158 Warrants generally**

- 16 (1) An authorised person may apply to a magistrate for a warrant to
- 17 enter premises.
- 18 (2) The application must be sworn and state the grounds on which the
- 19 warrant is sought.
- 20 (3) The magistrate may refuse to consider the application until the
- 21 authorised person gives the magistrate all the information the
- 22 magistrate requires about the application in the way the magistrate
- 23 requires.
- 24 (4) The magistrate may issue a warrant only if satisfied there are
- 25 reasonable grounds for suspecting—
- 26 (a) there is a particular thing or activity connected with an offence
- 27 against this Act; and

- 1 (b) the thing or activity—
- 2 (i) is, or is being engaged in, at the premises; or
- 3 (ii) may be, or may be engaged in, at the premises within the
- 4 next 7 days.
- 5 (5) The warrant must state—
- 6 (a) that an authorised person may, with any necessary assistance
- 7 and force, enter the premises and exercise the authorised
- 8 person's powers under this part; and
- 9 (b) the offence for which the warrant is issued; and
- 10 (c) the things that may be seized under the warrant; and
- 11 (d) the hours when the premises may be entered; and
- 12 (e) the date, within 7 days after the day of the warrant's issue, the
- 13 warrant ends.
- 14 **159 Warrants—application made other than in person**
- 15 (1) An authorised person may apply for a warrant by phone, fax, email,
- 16 radio or other form of communication if the authorised person
- 17 considers it necessary because of—
- 18 (a) urgent circumstances; or
- 19 (b) other special circumstances.
- 20 (2) Before applying for the warrant, the authorised person must prepare
- 21 an application stating the grounds on which the warrant is sought.
- 22 (3) The authorised person may apply for the warrant before the
- 23 application is sworn.
- 24 (4) After issuing the warrant, the magistrate must immediately fax a
- 25 copy to the authorised person if it is practicable to do so.

- 1 (5) If it is not practicable to fax a copy to the authorised person—
- 2 (a) the magistrate must tell the authorised person—
- 3 (i) the terms of the warrant; and
- 4 (ii) the date and time the warrant was issued; and
- 5 (b) the authorised person must complete a form of warrant (the
- 6 *warrant form*) and write on it—
- 7 (i) the magistrate's name; and
- 8 (ii) the date and time the magistrate issued the warrant; and
- 9 (iii) the warrant's terms.
- 10 (6) The faxed copy of the warrant, or the warrant form properly
- 11 completed by the authorised person, authorises the entry and the
- 12 exercise of the authorised person's powers under this part.
- 13 (7) The authorised person must, at the first reasonable opportunity, send
- 14 to the magistrate—
- 15 (a) the sworn application; and
- 16 (b) if the authorised person completed a warrant form—the
- 17 completed warrant form.
- 18 (8) On receiving the documents, the magistrate must attach them to the
- 19 warrant.
- 20 (9) A court must find that a power exercised by the authorised person
- 21 was not authorised by a warrant under this section if—
- 22 (a) the question arises in a proceeding in the court whether the
- 23 exercise of power was authorised by a warrant; and
- 24 (b) the warrant is not produced in evidence; and
- 25 (c) it is not proved that the exercise of power was authorised by a
- 26 warrant under this section.

- 1 **160 Search warrants—announcement before entry**
- 2 (1) An authorised person must, before anyone enters premises under a
- 3 search warrant—
- 4 (a) announce that the authorised person is authorised to enter the
- 5 premises; and
- 6 (b) give anyone at the premises an opportunity to allow entry to
- 7 the premises; and
- 8 (c) if the occupier of the premises, or someone else who
- 9 apparently represents the occupier, is present at the premises—
- 10 identify himself or herself to the person.
- 11 (2) The authorised person is not required to comply with subsection (1)
- 12 if the authorised person believes on reasonable grounds that
- 13 immediate entry to the premises is required to ensure—
- 14 (a) the safety of anyone (including the authorised person or any
- 15 person assisting); or
- 16 (b) that the effective execution of the warrant is not frustrated.
- 17 **161 Details of search warrant to be given to occupier etc**
- 18 If the occupier of premises, or someone else who apparently
- 19 represents the occupier, is present at the premises while a search
- 20 warrant is being executed, the authorised person or a person
- 21 assisting must make available to the person—
- 22 (a) a copy of the warrant; and
- 23 (b) a document setting out the rights and obligations of the person.
- 24 **162 Occupier entitled to be present during search etc**
- 25 (1) If the occupier of premises, or someone else who apparently
- 26 represents the occupier, is present at the premises while a search
- 27 warrant is being executed, the person is entitled to observe the
- 28 search being conducted.

- 1 (2) However, the person is not entitled to observe the search if—
2 (a) to do so would impede the search; or
3 (b) the person is under arrest, and allowing the person to observe
4 the search being conducted would interfere with the objectives
5 of the search.
6 (3) This section does not prevent 2 or more areas of the premises being
7 searched at the same time.

8 **Division 10.4 Return and forfeiture of things seized**

9 **163 Receipt for things seized**

- 10 (1) As soon as practicable after an authorised person seizes a thing
11 under this part, the authorised person must give a receipt for it to the
12 person from whom it was seized.
13 (2) If, for any reason, it is not practicable to comply with subsection (1),
14 the authorised person must leave the receipt, secured conspicuously,
15 at the place of seizure under section 157 (Power to seize things).
16 (3) A receipt under this section must include the following:
17 (a) a description of the thing seized;
18 (b) an explanation of why the thing was seized;
19 (c) the authorised person's name, and how to contact the
20 authorised person;
21 (d) if the thing is moved from the premises where it is seized—
22 where the thing is to be taken.

23 *Note* If a form is approved under s 222 for this provision, the form must be
24 used.

- 1 **164** **Moving things to another place for examination or**
2 **processing under search warrant**
- 3 (1) A thing found at premises entered under a search warrant may be
4 moved to another place for examination or processing to decide
5 whether it may be seized under the warrant if—
- 6 (a) both of the following apply:
- 7 (i) there are reasonable grounds for believing that the thing is
8 or contains something to which the warrant relates;
- 9 (ii) it is significantly more practicable to do so having regard
10 to the timeliness and cost of examining or processing the
11 thing at another place and the availability of expert
12 assistance; or
- 13 (b) the occupier of the premises agrees in writing.
- 14 (2) The thing may be moved to another place for examination or
15 processing for not longer than 72 hours.
- 16 (3) An authorised person may apply to a magistrate for an extension of
17 time if the authorised person believes on reasonable grounds that the
18 thing cannot be examined or processed within 72 hours.
- 19 (4) The authorised person must give notice of the application to the
20 occupier of the premises, and the occupier is entitled to be heard on
21 the application.
- 22 (5) If a thing is moved to another place under this section, the
23 authorised person must, if practicable—
- 24 (a) tell the occupier of the premises the address of the place where,
25 and time when, the examination or processing will be carried
26 out; and
- 27 (b) allow the occupier or the occupier's representative to be
28 present during the examination or processing.

- 1 (6) The provisions of this part relating to the issue of search warrants
2 apply, with any necessary changes, to the giving of an extension
3 under this section.

4 **165 Access to things seized**

5 A person who would, apart from the seizure, be entitled to inspect a
6 thing seized under this part may—

- 7 (a) inspect it; and
8 (b) if it is a document—take extracts from it or make copies of it.

9 **166 Return of things seized**

- 10 (1) A thing seized under this part must be returned to its owner, or
11 reasonable compensation must be paid to the owner by the Territory
12 for the loss of the thing, unless—

13 (a) a prosecution for an offence against a territory law in
14 connection with the thing is begun within 1 year after the day
15 the seizure is made and the thing is required to be produced in
16 evidence in the prosecution; or

17 (b) an application for the forfeiture of the seized thing is made to a
18 court under the *Confiscation of Criminal Assets Act 2003* or
19 another territory law within 1 year after the day the seizure is
20 made; or

21 (c) all proceedings in relation to the offence with which the seizure
22 was connected have ended and the court has not made an order
23 about the thing.

- 24 (2) However, this section does not apply to a thing—

25 (a) if the chief executive believes on reasonable grounds that the
26 only practical use of the thing in relation to the premises where
27 it was seized would be an offence against this Act; or

28 (b) if possession of it by its owner would be an offence.

1 **167 Forfeiture of seized things**

- 2 (1) This section applies if—
- 3 (a) anything seized under this part has not been returned under
- 4 section 166; and
- 5 (b) an application for disallowance of the seizure under
- 6 section 169—
- 7 (i) has not been made within 10 days after the day of the
- 8 seizure; or
- 9 (ii) has been made within the 10-day period, but the
- 10 application has been refused or withdrawn before a
- 11 decision in relation to the application had been made.
- 12 (2) If this section applies to the seized thing—
- 13 (a) it is forfeited to the Territory; and
- 14 (b) it may be sold, destroyed or otherwise disposed of as the chief
- 15 executive directs.

16 **168 Power to destroy unsafe things**

- 17 (1) This section applies to anything inspected or seized under this part
- 18 by an authorised person if the authorised person is satisfied on
- 19 reasonable grounds that the thing poses a risk to the health or safety
- 20 of people or of damage to property or the environment.
- 21 (2) The authorised person may direct a person in charge of the premises
- 22 where the thing is to destroy or otherwise dispose of the thing.
- 23 (3) The direction may state 1 or more of the following:
- 24 (a) how the thing must be destroyed or otherwise disposed of;
- 25 (b) how the thing must be kept until it is destroyed or otherwise
- 26 disposed of;

- 1 (c) the period within which the thing must be destroyed or
2 otherwise disposed of.
- 3 (4) A person in charge of the premises where the thing is commits an
4 offence if the person contravenes a direction given to the person
5 under subsection (2).
- 6 Maximum penalty: 100 penalty units.
- 7 (5) Alternatively, if the thing has been seized under this part, the
8 authorised person may destroy or otherwise dispose of the thing.
- 9 (6) Costs incurred by the Territory in relation to the disposal of a thing
10 under subsection (5) are a debt owing to the Territory by, and are
11 recoverable together and separately from, the following people:
- 12 (a) the person who owned the thing;
- 13 (b) each person in control of the premises where the thing was.
- 14 (7) An offence against this section is a strict liability offence.

15 **169 Application for order disallowing seizure**

- 16 (1) A person claiming to be entitled to anything seized under this part
17 may apply to the Magistrates Court within 10 days after the day of
18 the seizure for an order disallowing the seizure.
- 19 (2) The application may be heard only if the applicant has served a copy
20 of the application on the chief executive.
- 21 (3) The chief executive is entitled to appear as respondent at the hearing
22 of the application.

23 **170 Order for return of seized thing**

- 24 (1) This section applies if a person claiming to be entitled to anything
25 seized under this part applies to the Magistrates Court under
26 section 169 for an order disallowing the seizure.

- 1 (2) The Magistrates Court must make an order disallowing the seizure if
2 satisfied that—
- 3 (a) the applicant would, apart from the seizure, be entitled to the
4 return of the seized thing; and
- 5 (b) the thing is not connected with an offence against this Act; and
- 6 (c) possession of the thing by the person would not be an offence.
- 7 (3) The Magistrates Court may also make an order disallowing the
8 seizure if satisfied there are exceptional circumstances justifying the
9 making of the order.
- 10 (4) If the Magistrates Court makes an order disallowing the seizure, the
11 court may make 1 or more of the following ancillary orders:
- 12 (a) an order directing the chief executive to return the thing to the
13 applicant or to someone else who appears to be entitled to it;
- 14 (b) if the thing cannot be returned or has depreciated in value
15 because of the seizure—an order directing the Territory to pay
16 reasonable compensation;
- 17 (c) an order about the payment of costs in relation to the
18 application.

19 **Division 10.5 Enforcement—miscellaneous**

20 **171 Damage etc to be minimised**

- 21 (1) In the exercise, or purported exercise, of a function under this part,
22 an authorised person must take all reasonable steps to ensure that the
23 person causes as little inconvenience, detriment and damage as
24 practicable.
- 25 (2) If an authorised person damages anything in the exercise or
26 purported exercise of a function under this part, the authorised
27 person must give written notice of the particulars of the damage to

- 1 the person the authorised person believes on reasonable grounds is
2 the owner of the thing.
- 3 (3) The notice must state that—
- 4 (a) the person may claim compensation from the Territory if the
5 person suffers loss or expense because of the damage; and
- 6 (b) compensation may be claimed and ordered in a proceeding for
7 compensation brought in a court of competent jurisdiction; and
- 8 (c) the court may order the payment of reasonable compensation
9 for the loss or expense only if satisfied it is just to make the
10 order in the circumstances of the particular case.
- 11 (4) If the damage happens at premises entered under this part in the
12 absence of the occupier, the notice may be given by leaving it,
13 secured conspicuously, at the premises.

14 **172 Compensation for exercise of enforcement powers**

- 15 (1) A person may claim compensation from the Territory if the person
16 suffers loss or expense because of the exercise, or purported
17 exercise, of a function under this part by an authorised person.
- 18 (2) Compensation may be claimed and ordered in a proceeding for—
- 19 (a) compensation brought in a court of competent jurisdiction; or
- 20 (b) an offence against this Act brought against the person making
21 the claim for compensation.
- 22 (3) A court may order the payment of reasonable compensation for the
23 loss or expense only if satisfied it is just to make the order in the
24 circumstances of the particular case.
- 25 (4) A regulation may prescribe matters that may, must or must not be
26 taken into account by the court in considering whether it is just to
27 make the order.

- 1 **Part 11** **Complaints and occupational**
2 **discipline**
- 3 **Division 11.1** **General**
- 4 **173** **Who is a *licensee*?—pt 11**
- 5 In this part:
- 6 *licensee*—
- 7 (a) means a licensee or former licensee; and
- 8 (b) includes an influential person for a corporation that is a
- 9 licensee or former licensee.
- 10 **174** **Who is a *commercial permit-holder*?—pt 11**
- 11 In this part:
- 12 *commercial permit-holder*—
- 13 (a) means a commercial permit-holder or former commercial
- 14 permit-holder; and
- 15 (b) includes an influential person for a corporation that is a
- 16 commercial permit-holder or former commercial
- 17 permit-holder.

Division 11.2 Complaints

175 Who may complain?

A person who believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee or commercial permit-holder may complain to the commissioner.

Examples—people who may complain

1 a member of the public

2 a user of a service

Note 1 Ground for occupational discipline, for a licensee—see s 182.
Ground for occupational discipline, for a commercial permit-holder—
see s 183.

*Note 2 An example is part of the Act, is not exhaustive and may extend, but
does not limit, the meaning of the provision in which it appears (see
Legislation Act, s 126 and s 132).*

176 Form of complaint

(1) A complaint must—

(a) be in writing; and

(b) be signed by the person (the *complainant*) making the
complaint; and

(c) include the complainant's name and address.

(2) However, the commissioner may accept a complaint for
consideration even if it does not comply with subsection (1).

(3) If the commissioner accepts for consideration a complaint that is not
in writing, the commissioner must require the complainant to put the
complaint in writing unless there is a good reason for not doing so.

- 1 **177** **Withdrawal of complaints**
- 2 (1) A complainant may withdraw the complaint at any time by written
3 notice to the commissioner.
- 4 (2) If the complainant withdraws the complaint, the commissioner—
- 5 (a) need not take further action on the complaint; and
- 6 (b) may take further action on the complaint if the commissioner
7 considers it appropriate to do so; and
- 8 (c) need not report to the complainant under section 181 (Action
9 after investigating complaint) on the results of taking the
10 action.
- 11 **178** **Further information about complaint etc**
- 12 (1) The commissioner may, at any time, require a complainant—
- 13 (a) to give the commissioner further information about the
14 complaint; or
- 15 (b) to verify all or part of the complaint by statutory declaration.
- 16 (2) When making a requirement under this section, the commissioner
17 must give the complainant a reasonable period of time to satisfy the
18 requirement and may extend that period, whether before or after it
19 ends.
- 20 (3) If the complainant does not comply with a requirement under
21 subsection (1), the commissioner need not, but may, take further
22 action in relation to the complaint.

1 **179 Investigation of complaint**

2 The commissioner must take reasonable steps to investigate each
3 complaint the commissioner accepts for consideration.

4 **180 No further action on complaint**

5 The commissioner must not take further action on a complaint if
6 satisfied that the complaint—

- 7 (a) lacks substance; or
8 (b) is frivolous, vexatious or was not made genuinely; or
9 (c) has been adequately dealt with.

10 *Note* The commissioner may also take no further action on a complaint if the
11 complainant has not complied with a requirement made under s 178 (see
12 s 178 (3)).

13 **181 Action after investigating complaint**

14 (1) After investigating a complaint against a licensee or commercial
15 permit-holder, the commissioner must—

16 (a) if satisfied on reasonable grounds that a ground for
17 occupational discipline exists in relation to the complaint—

18 (i) apply to the ACAT for an occupational discipline order in
19 relation to the licensee or commercial permit-holder; and

20 (ii) tell the complainant, in writing, that the application has
21 been made; or

22 (b) if not satisfied that a ground for occupational discipline exists
23 in relation to the complaint—

24 (i) tell the complainant, in writing, that the commissioner
25 will not take further action on the complaint; and

26 (ii) not take further action on the complaint.

- 1 (2) Subsection (1) (b) (ii) does not prevent the commissioner from
2 taking further action in relation to a complaint if the commissioner
3 becomes satisfied that a ground for occupational discipline exists in
4 relation to the complaint.

5 *Note* The commissioner need not notify the complainant under s (1) if the
6 complainant has withdrawn the complaint (see s 177).

7 **Division 11.3 Occupational discipline**

8 **182 Grounds for occupational discipline—licensee**

- 9 (1) Each of the following is a *ground for occupational discipline* in
10 relation to a licensee:

- 11 (a) the licensee has contravened, or is contravening, a provision of
12 this Act;

13 *Note* A reference to an Act includes a reference to the statutory
14 instruments made or in force under the Act, including any
15 regulation (see Legislation Act, s 104).

- 16 (b) the licensed premises do not comply with the requirements of
17 this Act;

- 18 (c) the licensee is not a suitable person to hold a licence;

19 *Note* For what ACAT must consider in deciding suitability—see s 184.

- 20 (d) the licensed premises are not suitable premises for the licence;

21 *Note* For what ACAT must consider in deciding suitability—see s 185.

- 22 (e) the commissioner has made a commissioner's direction for the
23 licensee and the licensee has not complied with the direction;

24 *Note* **Commissioner's direction**—see s 143.

- 25 (f) a senior police officer has made an emergency closure order
26 for the licensee and the licensee has not complied with the
27 order;

28 *Note* **Emergency closure order**—see s 145.

- 1 (g) the licensee has allowed the licensed premises to be used in a
2 way that causes undue disturbance or inconvenience to
3 people—
4 (i) lawfully at the premises; or
5 (ii) occupying premises in the neighbourhood;
6 (h) a loss of amenity has arisen in the vicinity of the licensed
7 premises that is attributable to the premises and about which
8 there has been a complaint;
9 (i) a licensee has allowed people to smoke in a part of the licensed
10 premises that is an enclosed public place;
11 (j) the licensee has failed to take reasonable steps to prevent
12 smoke from another area occupied by the licensee entering an
13 enclosed public place.
14 (2) There are grounds to suspend a licence if—
15 (a) the licensee has—
16 (i) contravened a commissioner's direction; or
17 (ii) breached a condition of the licence; and
18 (b) it is in the public interest to suspend the licence; and
19 (c) it is not appropriate to cancel the licence.

20 **183 Grounds for occupational discipline—commercial**
21 **permit-holder**

- 22 (1) Each of the following is a *ground for occupational discipline* in
23 relation to a commercial permit-holder:
24 (a) the permit-holder has contravened, or is contravening, a
25 provision of this Act;

26 *Note* A reference to an Act includes a reference to the statutory
27 instruments made or in force under the Act, including any
28 regulation (see Legislation Act, s 104).

- 1 (b) the permitted premises do not comply with the requirements of
2 this Act;
- 3 (c) the permit-holder is not a suitable person to hold a permit;
- 4 *Note* For what ACAT must consider in deciding suitability—see s 184.
- 5 (d) the permitted premises are not suitable premises for the permit;
- 6 *Note* For what ACAT must consider in deciding suitability—see s 185.
- 7 (e) the commissioner has made a commissioner's direction for the
8 permit-holder and the permit-holder has not complied with the
9 direction;
- 10 *Note* **Commissioner's direction**—see s 143.
- 11 (f) a senior police officer has made an emergency closure order
12 for the permit-holder and the permit-holder has not complied
13 with the order;
- 14 *Note* **Emergency closure order**—see s 145.
- 15 (g) the permit-holder has allowed the permitted premises to be
16 used in a way that causes undue disturbance or inconvenience
17 to people—
- 18 (i) lawfully at the premises; or
- 19 (ii) occupying premises in the neighbourhood;
- 20 (h) a loss of amenity has arisen in the vicinity of the permitted
21 premises that is attributable to the premises and about which
22 there has been a complaint;
- 23 (i) a permit-holder has allowed people to smoke in a part of the
24 permitted premises that is an enclosed public place;
- 25 (j) the permit-holder has failed to take reasonable steps to prevent
26 smoke from another area occupied by the permit-holder
27 entering an enclosed public place.

- 1 (2) There are grounds to suspend a commercial permit if—
2 (a) the permit-holder has—
3 (i) contravened a commissioner's direction; or
4 (ii) breached a condition of the permit; and
5 (b) it is in the public interest to suspend the permit; and
6 (c) it is not appropriate to cancel the permit.

7 **184 ACAT must consider suitability information, etc about**
8 **licensee or commercial-permit holder**

9 In deciding whether a licensee or commercial permit-holder is a
10 suitable person to hold a licence or commercial permit, the ACAT
11 must consider the following:

- 12 (a) suitability information about the licensee or permit-holder;
13 *Note Suitability information*, about a person—see s 69.
14 (b) any police certificate or other information about the person
15 given to the commissioner under—
16 (i) section 25 (Licence—application); or
17 (ii) section 40 (Licence—application to transfer licence); or
18 (iii) section 71 (Commissioner may require police certificate
19 etc for person);
20 (c) any public consultation representation about the person
21 received by the commissioner under section 35 (Licence—
22 representations);
23 (d) any information or documents given to the commissioner
24 under—
25 (i) section 91 (4) (Risk-assessment management plan—
26 amendment on application); or

- 1 (ii) section 95 (3) (Young people's event approval—
2 application).

3 **185 ACAT must consider suitability information, etc about**
4 **premises**

5 In deciding whether premises are suitable premises for a licence or
6 permit, the ACAT must consider the following:

- 7 (a) suitability information about the premises;
- 8 (b) any certificate, plan or other information about the premises
9 given to the commissioner under—
- 10 (i) section 25 (Licence—application); or
- 11 (ii) section 39 (Licence—amendment for change to floor plan
12 of licensed premises); or
- 13 (iii) section 50 (Permit—application); or
- 14 (iv) section 79 (Commissioner may require certificate, plan,
15 etc for premises);
- 16 (c) any public consultation representation about the premises
17 received by the commissioner under section 35 (Licence—
18 representations);
- 19 (d) any information or documents given to the commissioner
20 under—
- 21 (i) section 91 (4) (Risk-assessment management plan—
22 amendment on application); or
- 23 (ii) section 95 (3) (Young people's event approval—
24 application);
- 25 (e) results of any inspection of the premises by the commissioner
26 under—
- 27 (i) section 80 (Commissioner may require inspection of
28 premises); or

- 1 (ii) section 91 (4) (Risk-assessment management plan—
2 amendment on application); or
3 (iii) section 95 (3) (Young people's event approval—
4 application).

5 **186 Application to ACAT for occupational discipline**

6 If the commissioner believes on reasonable grounds that a ground
7 for occupational discipline exists in relation to a licensee or
8 commercial permit-holder, the commissioner may apply to the
9 ACAT for an occupational discipline order in relation to the licensee
10 or permit-holder.

11 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out
12 occupational discipline orders the ACAT may make.

**Part 12 Responsible service of alcohol
(RSA) training courses**

**Division 12.1 Approval to provide RSA training
courses**

187 Definitions—div 12.1

In this division:

approved RSA training course, for an approved RSA training provider, means a training course for which the RSA training provider holds an RSA training course approval under section 189.

approved RSA training provider means a registered training organisation that holds an RSA training course approval under section 189.

registered training organisation—see the *Training and Tertiary Education Act 2003*, dictionary.

188 RSA training course approval—application

- (1) A registered training organisation may apply to the commissioner for approval (an *RSA training course approval*) to provide a stated training course about the responsible service of alcohol.

Note 1 If a form is approved under s 222 for this provision, the form must be used.

Note 2 A fee may be determined under s 221 for this provision.

- 1 (2) The commissioner may, in writing, require the applicant to give the
2 commissioner additional information or documents that the
3 commissioner reasonably needs to decide the application.

4 **Example—information or documents**

5 information about the proposed training course

6 *Note* An example is part of the Act, is not exhaustive and may extend, but
7 does not limit, the meaning of the provision in which it appears (see
8 Legislation Act, s 126 and s 132).

9 **189 RSA training course approval—decision on application**

- 10 (1) This section applies if the commissioner receives an application for
11 approval under section 188.

- 12 (2) The commissioner may issue the approval to the applicant only if
13 satisfied that it is in the public interest to issue the approval.

- 14 (3) The commissioner must, not later than the required time—

15 (a) decide the application for approval; and

16 (b) tell the licensee about the decision on the application.

- 17 (4) In this section:

18 *required time* means the latest of the following:

- 19 (a) if the commissioner requires the applicant to give the
20 commissioner additional information or documents under
21 section 188—90 days after the day the commissioner receives
22 the additional information or documents;

- 23 (b) 90 days after the day the commissioner receives the
24 application.

25 *Note* Failure to issue an approval within a reasonable period is taken to be a
26 decision not to grant the approval (see *ACT Civil and Administrative*
27 *Tribunal Act 2008*, s 12).

- 1 **190** **RSA training course approval—form**
- 2 An RSA training course approval must—
- 3 (a) be in writing; and
- 4 (b) state the name of the registered training organisation to which
- 5 it is issued; and
- 6 (c) identify the training course to which it applies; and
- 7 (d) if the approval is conditional—state the conditions to which the
- 8 approval is subject; and
- 9 (e) state when the approval was issued; and
- 10 (f) state when the approval expires; and
- 11 (g) include anything prescribed by regulation.

- 12 **191** **RSA training course approval—term**
- 13 An RSA training course approval, unless renewed or cancelled,
- 14 remains in force until the end of 30 June after the day it is issued.

15 **Division 12.2** **RSA training course certificates**

- 16 **192** **What is an *RSA certificate*?**
- 17 In this Act:
- 18 ***RSA certificate***, for a person, means a certificate by an approved
- 19 RSA training course provider for an approved RSA training
- 20 course—
- 21 (a) certifying that the person satisfactorily completed the course on
- 22 a stated day; and
- 23 (b) stating when the certificate expires.
- 24 *Note* The certificate expires 3 years after the day on which the person
- 25 satisfactorily completed the course—see s 193.

1 **193 RSA training course providers must give RSA certificates**

- 2 (1) If an approved RSA training course provider is satisfied that a
3 person has satisfactorily completed an approved RSA training
4 course provided by the provider, the provider must give the person
5 an RSA certificate for the course.
- 6 (2) An RSA certificate expires 3 years after the day the person
7 satisfactorily completes the course.

Part 13 Licence and permit register

194 Licence and permit register

- (1) The commissioner must keep a register of licences and permits (the *licence and permit register*).
- (2) The register may include licence and permit information given to the commissioner under this Act.
- (3) The register may be kept in any form, including electronically, that the commissioner decides.
- (4) The register may be kept in 1 or more parts, as the commissioner considers appropriate.
- (5) The commissioner must make information in the register available for public inspection.

Example

the register may be available on a website

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (6) This section is subject to section 195.

195 Exception to public inspection

- (1) This section applies to an occupational discipline order in relation to a licensee or permit-holder if a record of that order is made in the licence and permit register.

Note An occupational discipline order is a decision of the ACAT that may be appealed under the *ACT Civil and Administrative Tribunal Act 2008*, pt 8.

- 1 (2) A matter included in the register in relation to the occupational
2 discipline order may be open for public inspection under section 194
3 only if—
- 4 (a) the time for any appeal of the decision has ended and no
5 application for appeal has been made; or
- 6 (b) an application for appeal has been made, the decision has been
7 confirmed on appeal and the time for further appeal has ended.
- 8 (3) If the decision has been reversed or set aside, a matter included in
9 the register in relation to the decision must not be open for public
10 inspection.
- 11 (4) If the decision has been changed (for example, by substitution), this
12 section applies to a matter included in the register in relation to the
13 decision as changed.
- 14 *Note* An example is part of the Act, is not exhaustive and may extend, but
15 does not limit, the meaning of the provision in which it appears (see
16 Legislation Act, s 126 and s 132).

17 **196 Correction and keeping up-to-date register**

- 18 (1) The commissioner may correct a mistake, error or omission in the
19 licence and permit register.
- 20 (2) The commissioner may change a detail included in the register to
21 keep the register up-to-date.

Part 14 Other liquor matters

Division 14.1 Alcohol-free public places

197 Alcohol-free places

- (1) A regulation may prescribe a place to be a place where liquor and low-alcohol liquor must not be consumed (a *permanent alcohol-free place*).
- (2) The commissioner may declare a public place to be a place where liquor and low-alcohol liquor must not be consumed for a stated period not longer than 1 month (a *temporary alcohol-free place*).
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

198 Offence—consume liquor at certain public places

- (1) A person commits an offence if—
 - (a) the person consumes liquor or low-alcohol liquor; and
 - (b) the liquor or low-alcohol liquor is consumed at—
 - (i) a bus interchange; or
 - (ii) a bus station; or
 - (iii) a place that is within 50m from—
 - (A) a bus interchange; or
 - (B) a bus station; or
 - (C) a shop; or
 - (D) licensed premises or permitted premises; or
 - (iv) a permanent alcohol-free place; or

1 (v) a temporary alcohol-free place.

2 Maximum penalty: 5 penalty units.

3 (2) An offence against this section is a strict liability offence.

4 (3) This section does not apply to the consumption of liquor or
5 low-alcohol liquor—

6 (a) at licensed premises or permitted premises; or

7 (b) at premises where food is sold for consumption at the
8 premises; or

9 (c) at a place that is within 50m from premises mentioned in
10 paragraph (a) or (b) by a person using furniture or other
11 facilities provided by the proprietor or lessee of the premises.

12 *Note* The defendant has an evidential burden in relation to the matters
13 mentioned in s (3) (see Criminal Code, s 58).

14 (4) In a prosecution for an offence against this section, a substance is
15 presumed to be liquor if—

16 (a) the substance is in a container; and

17 (b) a label or other mark on the container describes the contents as
18 liquor.

19 **Examples—label or mark that describes container contents as liquor**

20 1 ‘2.6% Alc/Vol’ printed on a can

21 2 ‘14% Alc/Vol’ printed on the label of a bottle

22 *Note 1* A person rebutting the presumption in s (4) bears an evidential
23 burden in relation to the rebuttal (see Criminal Code, s 58).

24 *Note 2* An example is part of the Act, is not exhaustive and may extend,
25 but does not limit, the meaning of the provision in which it
26 appears (see Legislation Act, s 126 and s 132).

- 1 **199** **Offence—possess open container of liquor at certain**
2 **public places**
- 3 (1) A person commits an offence if—
- 4 (a) the person possesses an open container of liquor or low-alcohol
5 liquor; and
- 6 (b) the liquor or low-alcohol liquor is possessed at—
- 7 (i) a bus interchange; or
- 8 (ii) a bus station; or
- 9 (iii) a place that is within 50m from—
- 10 (A) a bus interchange; or
- 11 (B) a bus station; or
- 12 (C) a shop; or
- 13 (D) licensed premises or permitted premises; or
- 14 (iv) a permanent alcohol-free place; or
- 15 (v) a temporary alcohol-free place; and
- 16 (c) the person intends to consume the liquor or low-alcohol liquor
17 at the place.
- 18 Maximum penalty: 5 penalty units.
- 19 (2) This section does not apply to the possession of liquor or
20 low-alcohol liquor—
- 21 (a) at licensed premises or permitted premises; or
- 22 (b) at premises where food is sold for consumption at the
23 premises; or

- 1 (c) at a place that is within 50m from premises mentioned in
2 paragraph (a) or (b) by a person using furniture or other
3 facilities provided by the proprietor or lessee of the premises.

4 *Note* The defendant has an evidential burden in relation to the matters
5 mentioned in s (2) (see Criminal Code, s 58).

- 6 (3) In a prosecution for an offence against this section, a substance is
7 presumed to be liquor if—

8 (a) the substance is in a container; and

9 (b) a label or other mark on the container describes the contents as
10 liquor.

11 **Examples—label or mark that describes container contents as liquor**

12 1 ‘2.6% Alc/Vol’ printed on a can

13 2 ‘14% Alc/Vol’ printed on the label of a bottle

14 *Note 1* A person rebutting the presumption in s (3) bears an evidential
15 burden in relation to the rebuttal (see Criminal Code, s 58).

16 *Note 2* An example is part of the Act, is not exhaustive and may extend,
17 but does not limit, the meaning of the provision in which it
18 appears (see Legislation Act, s 126 and s 132).

- 19 (4) In this section:

20 ***open***, for a container, includes—

21 (a) a container with the manufacturer's seal broken; and

22 (b) a container where the contents are accessible.

23 **200 Seizure of liquor in public places**

- 24 (1) This section applies if an authorised person suspects on reasonable
25 grounds that—

26 (a) a person (the ***possessor***) is in possession of liquor or
27 low-alcohol liquor; and

28 (b) the liquor or low-alcohol liquor is connected with the
29 commission of an offence against section 198 or section 199.

- 1 (2) The authorised person may seize the liquor or low-alcohol liquor
2 from the possessor if the authorised person has told the possessor—
- 3 (a) that the authorised person suspects the liquor or low-alcohol
4 liquor is connected with the commission of an offence against
5 section 198 or section 199; and
- 6 (b) the grounds for the suspicion.
- 7 (3) If an authorised person seizes liquor or low-alcohol liquor under
8 subsection (2), the authorised person may dispose of the liquor or
9 low-alcohol liquor.
- 10 (4) However, the authorised person must not dispose of the liquor or
11 low-alcohol liquor under subsection (3) if the possessor indicates in
12 any way that the possessor believes the authorised person's grounds
13 for the suspicion are incorrect.
- 14 (5) If an authorised person disposes of liquor or low-alcohol liquor
15 under subsection (3)—
- 16 (a) the possessor must not be prosecuted for an offence in relation
17 to the liquor or low-alcohol liquor; and
- 18 (b) a caution must not be issued to the possessor in relation to any
19 act done in relation to the liquor or low-alcohol liquor.

20 **Division 14.2 Children and young people**

21 **201 Offence—child or young person buy liquor**

22 A person commits an offence if the person—

- 23 (a) is a child or young person; and
24 (b) buys liquor or low-alcohol liquor.

25 Maximum penalty: 5 penalty units.

26 *Note* A police officer may caution a child or young person in relation to this
27 offence (see s 149).

202 Offence—child or young person use false identification to buy liquor

(1) A person commits an offence if the person—

(a) is a child or young person; and

(b) uses a false identification document to buy liquor or low-alcohol liquor.

Maximum penalty: 5 penalty units.

Note A police officer may caution a child or young person in relation to this offence (see s 149).

(2) An offence against this section is a strict liability offence.

203 Offence—supply liquor to child or young person at public place

(1) A person commits an offence if—

(a) the person supplies liquor or low-alcohol liquor to another person; and

(b) the other person is a child or young person; and

(c) the supply happens in a public place.

Maximum penalty: 20 penalty units.

(2) This section does not apply in relation to a young person if the young person—

(a) was at least 16 years old at the time of the offence; and

(b) had, before the time of the offence, shown the defendant an identification document identifying the young person as an adult.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- 1 **204** **Offence—child or young person consume liquor in public**
2 **place**
- 3 A person commits an offence if—
- 4 (a) the person is a child or young person; and
- 5 (b) the person consumes liquor or low-alcohol liquor in a public
- 6 place.
- 7 Maximum penalty: 5 penalty units.
- 8 **205** **Offence—child or young person possess liquor in public**
9 **place**
- 10 (1) A person commits an offence if—
- 11 (a) the person is a child or young person; and
- 12 (b) the person possesses liquor or low-alcohol liquor at a public
- 13 place.
- 14 Maximum penalty: 5 penalty units.
- 15 (2) This section does not apply to a young person if the young person
- 16 possesses the liquor or low-alcohol liquor in the course of—
- 17 (a) the young person's employment at licensed premises or
- 18 permitted premises; or
- 19 (b) a training program conducted by a declared training provider.
- 20 *Note* The defendant has an evidential burden in relation to the matters
- 21 mentioned in s (2) (see Criminal Code, s 58).

1 **206 Police officer may ask for identification document**

2 (1) A police officer may ask a person show the officer an identification
3 document for the person if the police officer believes on reasonable
4 grounds that the person is—

- 5 (a) committing an offence against this Act; and
6 (b) a child or young person.

7 (2) A police officer must produce evidence that the officer is a police
8 officer if asked to do so by the person.

9 **207 Offence—fail to comply with police officer’s request for**
10 **identification document**

11 (1) A person commits an offence if—

- 12 (a) a police officer asks the person to show the officer an
13 identification document under section 206; and
14 (b) the person—
15 (i) fails to comply with the request; or
16 (ii) shows the police officer a false identification document.

17 Maximum penalty: 5 penalty units.

18 (2) An offence against this section is a strict liability offence.

19 (3) This section does not apply if the police officer fails to comply with
20 section 206 (2).

1 **208 What is a *proof of age card*?—div 14.2**

2 In this division:

3 *proof of age card*, for a person, means a card that includes the
4 following about the person:

- 5 (a) the name of the person;
- 6 (b) a photo of the person;
- 7 (c) the date of birth of the person.

8 **209 Proof of age cards**

- 9 (1) A person who is an adult may apply, in writing, to the road transport
10 authority for a proof of age card.

11 *Note 1* If a form is approved under s 222 for this provision, the form must be
12 used.

13 *Note 2* A fee may be determined under s 221 for this provision.

- 14 (2) The road transport authority may issue the applicant with a proof of
15 age card if satisfied of the applicant's identity and that the applicant
16 is an adult.

17 **210 Offence—child or young person use false identification to**
18 **obtain proof of age card**

19 A person commits an offence if the person—

- 20 (a) is a child or young person; and
- 21 (b) uses a false identification document to obtain a proof of age
22 card under section 209.

23 Maximum penalty: 10 penalty units.

24 *Note* A police officer may caution a child or young person in relation to this
25 offence (see s 149).

Division 14.3 Prohibited liquor products

211 What is a *prohibited liquor product*?

In this Act:

prohibited liquor product means a thing declared by the Minister to be a prohibited liquor product under section 212.

212 Prohibited liquor products

(1) The Minister may declare a thing containing liquor to be a prohibited liquor product if satisfied that the thing is likely to—

(a) have a special appeal to children or young people; or

(b) be confused with—

(i) confectionery; or

(ii) a non-alcoholic drink.

Examples

1 a thing with packaging that would appeal to children

2 a thing with a name that could be confused with confectionary

(2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

213 Offence—supply prohibited liquor product

A person commits an offence if—

(a) the person supplies something to someone else; and

(b) the thing is a prohibited liquor product.

Maximum penalty: 50 penalty units.

1 **Part 15** **Notification and review of**
2 **decisions**

3 **214** **What is a *reviewable decision*?—pt 14**

4 In this part:

5 *reviewable decision* means a decision mentioned in
6 schedule 1, column 3 under a provision of this Act mentioned in
7 column 2 in relation to the decision.

8 **215** **Reviewable decision notices**

9 If the commissioner makes a reviewable decision, the commissioner
10 must give a reviewable decision notice to each person mentioned in
11 schedule 1, column 4 in relation to the decision.

12 *Note 1* The commissioner must also take reasonable steps to give a reviewable
13 decision notice to any other person whose interests are affected by the
14 decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

15 *Note 2* The requirements for a reviewable decision notice are prescribed under
16 the *ACT Civil and Administrative Tribunal Act 2008*.

17 **216** **Applications for review**

18 The following people may apply to the ACAT for a review of a
19 reviewable decision:

- 20 (a) a person mentioned in schedule 1, column 4 in relation to the
21 decision;
- 22 (b) any other person whose interests are affected by the decision.

23 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*
24 *Act 2008* for the application, the form must be used.

Part 16 Miscellaneous

217 Liquor guidelines

(1) The commissioner may make guidelines (the *liquor guidelines*) for this Act consistent with the objects of this Act and the harm minimization and community safety principles.

(2) A liquor guideline is a notifiable instrument.

Note 1 A notifiable instrument must be notified under the Legislation Act.

Note 2 It is a condition of a licence or permit that the licensee or permit-holder must comply with the guidelines—see s 31 (1) (a) and s 55 (1) (a).

218 Declared training providers

(1) The Minister may declare a person to be a training provider for this Act (a *declared training provider*).

(2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

219 Acts and omissions of representatives

(1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

Section 220

- 1 *state of mind*, of a person, includes—
- 2 (a) the person's knowledge, intention, opinion, belief or purpose;
- 3 and
- 4 (b) the person's reasons for the intention, opinion, belief or
- 5 purpose.
- 6 (2) This section applies to a prosecution for an offence against this Act.
- 7 (3) If it is relevant to prove a person's state of mind about an act or
- 8 omission, it is enough to show—
- 9 (a) the act was done or omission made by a representative of the
- 10 person within the scope of the representative's actual or
- 11 apparent authority; and
- 12 (b) the representative had the state of mind.
- 13 (4) An act done or omitted to be done on behalf of a person by a
- 14 representative of the person within the scope of the representative's
- 15 actual or apparent authority is taken to have been done or omitted to
- 16 be done by the person.
- 17 (5) However, subsection (4) does not apply if the person establishes that
- 18 reasonable precautions were taken and appropriate diligence was
- 19 exercised to avoid the act or omission.
- 20 (6) A person who is convicted of an offence cannot be punished by
- 21 imprisonment for the person if the person would not have been
- 22 convicted of the offence without subsection (3) or (4).

23 **220 Proceedings for offences**

24 A proceeding in relation to an offence against this Act must not be

25 begun except by the commissioner or a police officer.

1 **221 Determination of fees**

- 2 (1) The Minister may determine fees for this Act.

3 *Note* The Legislation Act contains provisions about the making of
4 determinations and regulations relating to fees (see pt 6.3).

- 5 (2) A determination is a disallowable instrument.

6 *Note* A disallowable instrument must be notified, and presented to the
7 Legislative Assembly, under the Legislation Act.

- 8 (3) In this section:

9 **Minister** means the Minister for the time being administering the
10 provision of the Act for which the fee, charge or other amount is
11 determined.

12 **222 Approved forms**

- 13 (1) The commissioner may approve forms for this Act.

- 14 (2) If the commissioner approves a form for a particular purpose, the
15 approved form must be used for that purpose.

16 *Note* For other provisions about forms, see the Legislation Act, s 255.

- 17 (3) An approved form is a notifiable instrument.

18 *Note* A notifiable instrument must be notified under the Legislation Act.

19 **223 Regulation-making power**

- 20 (1) The Executive may make regulations for this Act.

21 *Note* Regulations must be notified, and presented to the Legislative
22 Assembly, under the Legislation Act.

- 23 (2) A regulation may make provision in relation to the following:

24 (a) licensed times and permitted times;

25 (b) the calculation of fees based on 1 or more of the following:

26 (i) the class or subclass of a licence or permit;

- 1 (ii) licensed times and permitted times;
2 (iii) the term of a licence or permit;
3 (iv) the nature and scale of the activities being carried out at
4 the licensed premises or permitted premises;
5 (v) the occupancy loading for the licensed premises or
6 permitted premises;
7 (vi) anything else consistent with the objects of this Act and
8 the harm minimisation and community safety principles;
9 (c) how fees may be paid;
10 (d) the circumstances in which the commissioner may waive or
11 reduce fees.
12 (3) A fee mentioned in subsection (2) may be an amount that is not a
13 fee for a service.
14 (4) A regulation may create offences and fix maximum penalties of not
15 more than 20 penalty units for the offences.

16 **224 Legislation repealed**

- 17 (1) The *Liquor Act 1975* (A1975-19) is repealed.
18 (2) The *Liquor Regulation 1979* (SL1979-11) is repealed.
19 (3) All other legislative instruments under the *Liquor Act 1975*
20 (A1975-19) are repealed.

Schedule 1 Reviewable decisions

(see s 214)

column 1 item	column 2 section	column 3 decision	column 4 person
1	27 (2)	refuse to issue licence	applicant for licence
2	38 (4)	refuse to amend licence	licensee
3	39 (3)	refuse to amend licence (change to floor plan)	licensee
4	41 (2)	refuse to transfer licence	licensee
5	43 (2)	refuse to renew licence	licensee
6	51 (2)	refuse to issue permit	applicant for permit
7	58 (3)	refuse to amend permit	permit-holder
8	62 (2)	refuse to renew permit	permit-holder
9	65 (1)	cancel non-commercial permit	permit-holder
10	90 (2)	refuse to approve risk- assessment management plan	licensee or permit-holder
11	92 (2)	refuse to amend risk- assessment management plan	licensee or permit-holder
12	95 (3) (2)	refuse to approve young people's event	applicant
13	189 (1) (b)	refuse to approve RSA training course	applicant

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- Act
- adult
- Australian driver licence
- bankrupt or personally insolvent
- building code
- business day
- chief officer (fire brigade)
- chief police officer
- commissioner for fair trading
- corporation
- Corporations Act
- planning and land authority
- police officer.

ACTPLA certificate, for a licence or permit at premises, means a certificate by the planning and land authority stating that the authority considers the operation of a business at the premises under the licence or permit either—

(a) complies with—

- (i) the lease where the premises are located; and
- (ii) the Territory plan; or

(b) does not comply with a stated provision of—

- (i) the lease where the premises are located; or
- (ii) the Territory plan.

adults-only area, for licensed premises or permitted premises—see section 93.

amend, a licence or permit, includes the following:

- (a) amend an existing licence condition;
- (b) impose a new licence condition;
- (c) remove an existing licence condition.

applicant, for division 2.4 (Licences—public consultation)—see section 33.

approved risk-assessment management plan, for licensed premises or permitted premises—see section 89.

approved RSA training course, for an approved RSA training provider, for division 12.1 (Approval to provide RSA training courses)—see section 187.

approved RSA training provider, for division 12.1 (Approval to provide RSA training courses)—see section 187.

at premises includes in or on the premises.

authorised person means—

- (a) an investigator; or
- (b) a police officer.

bar licence—see section 22.

breath testing machine, for division 8.7 (Breath testing machines)—see section 132.

caution offence, for division 9.3 (Police cautions for children and young people)—see section 148.

certificate of occupancy, for premises—see the *Building Act 2004*, dictionary.

child—see the *Children and Young People Act 2008*, section 11.

- 1 ***class***—each of the following is a ***class*** of licence:
- 2 (a) general licence;
- 3 (b) on licence;
- 4 (c) off licence;
- 5 (d) club licence;
- 6 (e) special licence.
- 7 ***close associate***—see section 14.
- 8 ***club licence***—see section 20.
- 9 ***commercial permit***—see section 48.
- 10 ***commercial permit holder*** means—
- 11 (a) a person who holds a commercial permit; or
- 12 (b) for part 11 (Complaints and occupational discipline)—see
- 13 section 174.
- 14 ***commissioner*** means the commissioner for fair trading.
- 15 ***commissioner's direction***—see section 143 (2).
- 16 ***complainant***, for division 11.2 (Complaints)—see section 176.
- 17 ***connected***, for part 10 (Enforcement)—see section 152.
- 18 ***crowd controller*** means a person who is a crowd controller for the
- 19 purposes of the *Security Industry Act 2003*, section 7.
- 20 ***CYP chief executive***, for division 9.3 (Police cautions for children
- 21 and young people)—see section 148.
- 22 ***declared training provider***—see section 218.
- 23 ***eligible club***—see section 70.
- 24 ***emergency closure notice***—see section 146.
- 25 ***emergency closure order***—see section 145.

1 **enclosed**, for premises, means enclosed as prescribed by regulation.

2 **enclosed public place**—see the *Smoking (Prohibition in Enclosed*
3 *Public Places) Act 2003*, dictionary.

4 **false identification document**, for a person, means an identification
5 document that—

- 6 (a) was fraudulently obtained; or
7 (b) was issued to someone else; or
8 (c) is forged; or
9 (d) is fraudulently altered; or
10 (e) has expired.

11 **foreign driver licence** means a licence to drive a motor vehicle
12 (however described) issued under the law of an external Territory or
13 a foreign country.

14 **general licence**—see section 17.

15 **ground for occupational discipline**, for division 11.3 (Occupational
16 discipline)—

- 17 (a) in relation to a licensee—see section 182; or
18 (b) in relation to a commercial permit-holder—see section 183.

19 **harm minimisation and community safety principles**—see
20 section 10.

21 **identification document**, for a person, means a document that—

- 22 (a) is—
23 (i) an Australian driver licence or foreign driver licence; or
24 (ii) a proof of age card or interstate proof of age card; or
25 (iii) a passport; and

- 1 (b) contains a photograph that could reasonably be taken to be the
2 person; and
- 3 (c) states the person's date of birth.
- 4 **identity card**—see the *Fair Trading (Consumer Affairs) Act 1973*,
5 dictionary.
- 6 **incident**, for division 8.6 (Incidents)—see section 129.
- 7 **incident register**, for division 8.6 (Incidents)—see section 130.
- 8 **influential person**, for a corporation—see section 15.
- 9 **interstate proof of age card** means a document corresponding to a
10 proof of age card that has been issued under the law of a State.
- 11 **intoxicated**—see section 104.
- 12 **investigator**—see the *Fair Trading (Consumer Affairs) Act 1973*,
13 dictionary.
- 14 **lease**—see the *Planning and Development Act 2007*, section 235.
- 15 **licence**—see section 16.
- 16 **licence and permit register**—see section 194.
- 17 **licensed times**, for the sale of liquor at licensed premises, means the
18 times stated in the licence for the sale of liquor at the premises.
- 19 **licensee**—
- 20 (a) means a person who holds a licence; or
- 21 (b) for part 11 (Complaints and occupational discipline)—see
22 section 173.
- 23 **liquor**—see section 11.
- 24 **liquor guidelines**—see section 217 (1).
- 25 **low-alcohol liquor** means a drink that is not liquor but contains
26 more than 0.5% by volume of ethyl alcohol.

1 **nightclub licence**—see section 23.

2 **non-commercial permit**—see section 49.

3 **non-profit organisation** means an organisation that—

4 (a) is not carried on for profit or gain to its individual members;
5 and

6 (b) does not make any distribution, whether in money, property or
7 otherwise, to its members.

8 **occupancy loading**, for a public area at licensed premises or
9 permitted premises—see section 83.

10 **occupancy loading notice**, for part 5 (Occupancy loading for
11 licensed premises and permitted premises)—see section 86 (3).

12 **occupier**, of premises, for part 10 (Enforcement)—see section 152.

13 **offence**, for part 10 (Enforcement)—see section 152.

14 **off licence**—see section 19.

15 **on licence**—see section 18.

16 **permanent alcohol-free place**—see section 197 (1).

17 **permit**—see section 47.

18 **permit-holder**, for part 11 (Complaints and occupational
19 discipline)—see section 174.

20 **permitted times**, for the sale of liquor at permitted premises, means
21 the times stated in the permit for the sale of liquor at the premises.

22 **person**—a reference to a **person** in relation to a non-commercial
23 permit includes a reference to a non-profit organisation.

24 **personal information notice**—see section 71.

1 ***police certificate***, for a person, means a written statement by the
2 Commonwealth CrimTrac agency indicating—

3 (a) whether, according to the records held by the agency, the
4 person has been charged with, or convicted of, an offence
5 against a law of—

6 (i) the Territory; or

7 (ii) the Commonwealth; or

8 (iii) a State; or

9 (iv) another country; and

10 (b) if so—particulars of each offence.

11 *Note* A conviction does not include a spent conviction (see *Spent Convictions*
12 *Act 2000*, s 16 (c) (i)).

13 ***premises*** includes land, structure, vehicle or boat.

14 ***premises information notice***—see section 79.

15 ***prohibited liquor product***—see section 211.

16 ***proof of age card***, for division 14.2 (Children and young people)—
17 see section 208.

18 ***proposed licensee***—see section 25.

19 ***proposed new licensee***—see section 40.

20 ***proposed permit-holder***—see section 50.

21 ***public area***, at licensed premises or permitted premises—see
22 section 84.

23 ***public consultation period***, for an application for division 2.4
24 (Licences—public consultation)—see section 36.

public place means any street, road, public park, reserve or other place that the public is entitled to use or that is open to, or used by, the public (whether or not for payment), including—

- (a) a shop, and any place occupied in relation to a shop; and
- (b) a factory, and any place occupied in relation to, a factory; and
- (c) a building or part of a building occupied by a club, and any place occupied in relation to a club; and
- (d) any private property that is commonly used by the public, whether as trespassers or otherwise.

registered training organisation, for division 12.1 (Approval to provide RSA training courses)—see section 187.

relevant premises, for division 2.4 (Licences—public consultation)—see section 33.

responsible person, for premises, for part 4 (Suitability of people and premises for licences and permits)—see section 74.

restaurant and cafe licence—see section 24.

reviewable decision, for part 14 (Notification and review of decisions)—see section 214.

risk-assessment management plan, for licensed premises or permitted premises—see section 88.

RSA certificate, for a person—see section 192.

RSA training course approval, for division 12.1 (Approval to provide RSA training courses)—see section 188.

sell includes—

- (a) sell by wholesale, retail, auction or tender; and
- (b) barter or exchange; and
- (c) supply for profit; and

- 1 (d) offer for sale, receive for sale or expose for sale; and
2 (e) consign or deliver for sale; and
3 (f) have in possession for sale.
- 4 **senior police officer** means the chief police officer or another police
5 officer of or above the rank of superintendent.
- 6 **smoke**—see the *Smoking (Prohibition in Enclosed Public Places)*
7 *Act 2003*, dictionary.
- 8 **special licence**—see section 21.
- 9 **staff member**, for part 8 (Conduct at licensed premises and
10 permitted premises), means—
- 11 (a) for licensed premises—
12 (i) the licensee; or
13 (ii) an employee of the licensee; or
14 (b) for permitted premises—
15 (i) the permit-holder; or
16 (ii) an employee of the permit-holder.
- 17 **subclass**—each of the following is a **subclass** of on licence:
18 (a) bar licence;
19 (b) nightclub licence;
20 (c) restaurant and cafe licence.
- 21 **suitability information**—
22 (a) about a person—see section 69; and
23 (b) about premises—see section 78.
- 24 **suitable person**, to hold a licence or permit—see section 67.
25 **suitable premises**, for a licence or permit—see section 75.

- 1 *supply* includes sell.
- 2 *temporary alcohol-free place*—see section 197 (2).
- 3 *warrant*, for part 10 (Enforcement)—see section 152.
- 4 *young person*—see the *Children and Young People Act 2008*,
- 5 section 12.

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2010.
- 2 **Notification**
Notified under the Legislation Act on 2010.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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