

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Liquor Bill 2010

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(Prepared by Parliamentary Counsel's Office)

Liquor Bill 2010

A Bill for

An Act relating to the supply of liquor, and for other purposes

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

Part 1 Preliminary

Division 1.1 Introduction

1 Name of Act

This Act is the *Liquor Act 2010*.

2 Commencement

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

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

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

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

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3 Dictionary

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

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

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

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

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

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

Note 2 *Penalty units*

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

6 Application of Act—sale of liquor—generally

- (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 administration, dispensing or sale of liquor for medicinal purposes—
 - (i) by or under the direction of a doctor; or
 - (ii) by a pharmacist;
 - (c) the sale of liquor authorised by a Commonwealth law;
 - (d) the sale of liquor in a Defence Force mess, canteen, camp or post by the permission, and under the control, of the Defence Force authorities;
 - (e) the sale, at a canteen or club established or conducted under the *Army and Air Force Canteen Service Regulations 1959* (Cwlth), of liquor by the Army and Air Force Canteen Service Board of Management to a person—
 - (i) who is a member of the Australian Defence Force or the naval, military or air force of a foreign country; or
 - (ii) who is an officer or employee of the Department of Defence; or
 - (iii) who is employed by the Army and Air Force Canteen Service Board of Management; or
 - (iv) who is employed at a special defence undertaking within the meaning of the *Defence (Special Undertakings) Act 1952* (Cwlth), section 6; or

- (v) who is in the canteen or club at the invitation of a person mentioned in subparagraph (i), (ii), (iii) or (iv);
- (f) the sale of liquor for someone else by an auctioneer, by auction, in the ordinary course of the auctioneer's business;
- (g) 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 sale in relation to which a collector within the meaning of the *Customs Act 1901* (Cwlth) gives permission in accordance with that Act, section 96A (2).

7 Application of Act—sale of liquor—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.

- (3) A person commits an offence if—
 - (a) the person purchases liquor; and
 - (b) the purchase happens in an exempt university building; and

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

Maximum penalty: 10 penalty units.

(4) In this section:

exempt university building means a building—

(a) that is occupied by—

(i) a university; or

(ii) a residential college affiliated with a university under a statute of the university; and

(b) in which the sale of liquor is authorised by a statute of the university.

university means the—

(a) Australian National University; or

(b) University of Canberra.

Division 1.2 Objects, principles and considerations

8 Object of Act

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

- (a) so as to minimise the harm associated with the consumption of liquor; and
- (b) in a way that takes into account community safety.

9 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;

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- (d) the sale of liquor should be regulated in a way that contributes to the responsible development of the liquor, tourism and hospitality industries;
- (e) community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor;
- (f) the safety, health and welfare of people using licensed and permitted premises should not be put at risk;
- (g) noise from licensed and permitted premises should not be excessive;
- (h) licensed and permitted premises should not be located where they would be likely to cause undue disturbance, inconvenience or offence to people—
 - (i) lawfully at adjacent or nearby premises; or
 - (ii) because of the premises' proximity to a place of public worship, a hospital or a school;
- (i) licences and permits should only be issued to entities that comply with ACT law, and are likely to continue to comply with ACT law;
- (j) licences and permits should only be issued for premises that comply with ACT law, and are likely to continue to comply with ACT law.

Examples—decisions

- 1 a decision to issue a licence under s 22
- 2 a decision to issue a permit under s 41

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).

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Division 1.3 Important concepts

10 What is *liquor*?

- (1) In this Act:

liquor—

- (a) means a substance capable of being ingested that contains more than 1.15% by volume of ethanol; and
 - (b) includes a substance prescribed by regulation.
- (2) However, *liquor* does not include something prescribed by regulation not to be liquor.

11 Offence—sell liquor without licence or permit

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

- (a) sells liquor to another person; and
- (b) does not hold a licence or permit authorising the sale.

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

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

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

Part 2 Liquor licences

Division 2.1 Classes of licences

12 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.

13 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) that is—
 - (i) in open containers and to be consumed at the premises; or

- (ii) in sealed containers and to be consumed off the premises;
and

- (c) at licensed times.

Note A licence may have different licensed times for sale of liquor to be consumed at the premises and sale of liquor in sealed containers to be consumed off the premises.

14 What is an *on licence*?

In this Act:

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

- (a) at a single licensed premises; and
- (b) that is to be consumed at the premises; and
- (c) at the licensed times.

15 What is an *off licence*?

In this Act:

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

- (a) at a single licensed premises; and
- (b) in sealed containers to be consumed off the premises; and
- (c) at the licensed times.

16 What is a *club licence*?

In this Act:

club licence means a licence that authorises a club to sell liquor—

- (a) in stated parts of a single licensed premises; and
- (b) that is—
 - (i) in open containers and to be consumed at the premises; or
 - (ii) in sealed containers and to be consumed off the premises; and
- (c) at licensed times; and
- (d) to an adult—
 - (i) who is a member of the club; or
 - (ii) who is—
 - (A) at the licensed premises at the invitation of an adult member of the club who is also at the premises; and
 - (B) authorised by the club to be at the premises.

17 What is a *special licence*?

In this Act:

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

- (a) at a single licensed premises; and
- (b) at the licensed times.

Division 2.2 Licences—application

18 Licence—application

- (1) An entity may apply to the commissioner for a licence.
- (2) The application must—
 - (a) be in writing; and
 - (b) include complete details of suitability information about—
 - (i) the proposed licensee; and
 - (ii) each close associate of the proposed licensee; and
 - (iii) if the proposed licensee is a corporation—each influential person for the proposed licensee; and
 - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and
 - (v) the proposed licensed premises; and
 - (c) include—
 - (i) a police certificate for each of the following people, dated not earlier than 3 months before the date of the application:
 - (A) the entity;
 - (B) each close associate of the entity;
 - (C) each influential person for the entity;
 - (D) each person who is to have day-to-day control of the business operated under the licence; and

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- (ii) an ACTPLA certificate for the premises dated not earlier than 3 months before the date of the suitability information notice; and
- (iii) the final floor plans of the premises approved by ACTPLA in the development approval for the premises; and
- (iv) if the application is for a general licence, an on licence, a club licence or a special licence—a risk assessment management plan for the proposed licensed premises.

Note 1 **Suitability information** for an entity—see s 60.
Suitability information for premises—see s 69.

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

Note 3 If a form is approved under s 205 for this provision, the form must be used.

Note 4 A fee may be determined under s 204 for this provision.

19 Licence—public notification of licence application

- (1) This section applies if a person (an *applicant*) has applied to the commissioner for a licence, other than an off licence, under section 18.
- (2) The person must—
 - (a) display a notice about the application on the proposed licensed premises; and
 - (b) publish a notice about the application in a daily newspaper.
- (3) A notice must—
 - (a) state the class of licence applied for; and
 - (b) comply with the requirements prescribed by regulation.

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- (4) A person commits an offence if the person—
- (a) is an applicant; and
 - (b) fails to—
 - (i) display a notice in accordance with this section; or
 - (ii) publish a notice in accordance with this section.

Maximum penalty: 5 penalty units.

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

20 Licence—representations about proposed licence

- (1) If a licence application has been publicly notified under section 19, anyone may make a written representation about how—
- (a) 1 or more of the following is not a suitable entity to hold the licence:
 - (i) the proposed licensee;
 - (ii) a close associate of the proposed licensee;
 - (iii) an influential person for the proposed licensee;
 - (iv) a person who is to have day-to-day control of the business operated under the proposed licence; or
 - (b) the proposed licensed premises are not suitable for the licence.
- (2) A representation about a licence application must be made during the public consultation period for the application.

Note **Public consultation period**, for a licence application—see s 21.

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- (3) A person who makes a representation about a proposed licence application may, in writing, withdraw the representation at any time before the application is decided.

Note In deciding whether premises are suitable premises for a licence, the commissioner must consider any public consultation representations received under this section (see s 59 and s 67).

21 What is the *public consultation period*?

- (1) In this division:

public consultation period, for a licence application, means—

- (a) the period prescribed by regulation; or
 - (b) if the period prescribed is extended under subsection (2)—the prescribed period as extended.
- (2) The commissioner may, by notice published in a daily newspaper, extend the public consultation period for the application.

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

- (3) If the commissioner extends the public consultation period under subsection (2), the commissioner must give the applicant for the licence written notice of the extension.

Division 2.3 Licences—decision

22 Licence—decision on application

- (1) This section applies if the commissioner has received an application for a licence under section 18.

- (2) The commissioner must issue the licence to the proposed licensee if satisfied that—
- (a) if the proposed licensee is an individual—the proposed licensee is an adult; and
 - (b) each of the following people is a suitable entity to hold the licence:
 - (i) the proposed licensee;
 - (ii) each close associate of the proposed licensee;
 - (iii) if the proposed licensee is a corporation—each influential person for the proposed licensee;
 - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and
 - (c) the proposed licensed premises are suitable premises for the licence; and
 - (d) the proposed licensee complies, and is likely to continue to comply, with the requirements of this Act; and
 - (e) the proposed licensed premises comply with the requirements of this Act.

Note 1 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).

Note 2 ***Suitable entity***—see s 58.
Suitable premises—see s 66.

Note 3 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

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- (3) The commissioner must refuse to issue the licence if not satisfied of the matters mentioned in subsection (2).

Note A decision under this subsection is a reviewable decision (see s 190).

- (4) The commissioner must, not later than the required time—
- (a) decide the application; and
 - (b) tell the proposed licensee about the decision on the application.
- (5) For subsection (4), the ***required time*** is the latest of the following:
- (a) if the commissioner receives public consultation representations about the entity under section 20—90 days after the commissioner receives the representations;
 - (b) if the commissioner requires the proposed licensee to provide other information under section 62 (2) (b)—90 days after the day the commissioner receives the information;
 - (c) if the commissioner requires the proposed licensee to provide other information under section 70 (2) (d)—90 days after the day the commissioner receives the information;
 - (d) if the commissioner asks the proposed licensee to allow the commissioner to inspect the premises under section 71—90 days after the day the commissioner is allowed to inspect the premises;
 - (e) 90 days after the day the commissioner receives the application.

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

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23 Licence—occupancy loading

- (1) This section applies if the commissioner decides to issue a general licence, club licence, on licence or special licence.
- (2) The commissioner must also decide the occupancy loading for each public area at the proposed licensed premises.

Note **Occupancy loading**, for a public area—see s 74.

24 Licence—adults-only areas

- (1) This section applies if the commissioner decides to issue a general licence, club licence, on licence or special licence.
- (2) The commissioner must also decide the adults-only areas (if any) for the licensed premises.

Note 1 The commissioner decides the adults-only areas of the premises under s 85.

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 85 (3)).

25 Licence—form

- (1) A licence must be in writing and include the following information:
 - (a) the class of the licence;
 - (b) the name of the licensee;
 - (c) if the licensee carries on business under a name other than the licensee's name—the name under which the licensee carries on business;
 - (d) the address of the licensed premises;
 - (e) the conditions on the licence;

- (f) anything else prescribed by regulation.
- (2) A licence may include anything else the commissioner considers relevant.

26 Licence—conditions

A licence is subject to—

- (a) the condition that—
 - (i) the licensee must comply with this Act; and
 - (ii) the licensed premises must comply with this Act; and
- (b) any other condition—
 - (i) prescribed by regulation; or
 - (ii) imposed by the commissioner when the licence is issued, renewed or amended.

Examples—conditions

- 1 that stated requirements about inspection must be complied with
- 2 that stated requirements about reporting must be complied with
- 3 that stated records must be kept
- 4 that increased security must be used for stated events
- 5 that the licensee must not sell liquor outside stated licensed times
- 6 that the licensee must not allow people to enter licensed premises after a stated time

Note 1 Licences may be amended under s 28 or s 29.
 Licences may be renewed under s 33.

Note 2 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).

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).

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27 Licence—term

- (1) A licence comes into force on the day it is issued.
- (2) A licence expires on the day prescribed by regulation for the type of licence issued.
- (3) However, the commissioner may decide on reasonable grounds that a licence expires on another day.

Note The commissioner may make a decision in relation to different classes of licence (see Legislation Act, s 48).

- (4) If the commissioner makes a decision under subsection (3) for a class of licence, the decision is a notifiable instrument.

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

Division 2.4 Licences—amendment, transfer, renewal, etc

28 Licence—amendment initiated by commissioner

- (1) The commissioner may, by written notice (an *amendment notice*) given to a licensee, amend the licence if satisfied that—
 - (a) each of the following people is a suitable entity 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;
 - (iv) if someone other than the licensee has day-to-day control of the business operated under the licence—each person who has day-to-day control; and

- (b) the licensed premises (if any) are suitable premises for the licence as amended.

Note 1 **Suitable entity**—see s 58.
Suitable premises—see s 66.

Note 2 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

- (2) However, the commissioner may amend the licence only if—
 - (a) the commissioner has given the licensee written notice (a **proposal notice**) of the proposed amendment; and
 - (b) the proposal notice states that written comments on the proposal may be made to the commissioner before the end of a stated period of at least 14 days after the day the proposal notice is given to the licensee; and
 - (c) after the end of the stated period, the commissioner has considered any comments made in accordance with the notice.
- (3) Subsection (2) does not apply if the licensee applied for, or agreed in writing to, the amendment.

Note In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

- (4) The amendment takes effect on the day the amendment notice is given to the licensee or a later day stated in the notice.
- (5) In this section:
amend, a licence, includes—
 - (a) amend an existing licence condition; or
 - (b) impose a new licence condition; or
 - (c) remove an existing licence condition.

29 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 205 for an application, the form must be used.

Note 2 A fee may be determined under s 204 for this provision.

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

- (a) someone else is to—

- (i) become a close associate of the licensee; or
- (ii) if the licensee is a corporation—become an influential person for the licensee; or
- (iii) have day-to-day control of the business operated under the licence; or

- (b) the licensee intends to change the floor plan of the licensed premises.

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

- (a) each of the following people is a suitable entity 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;
- (iv) if someone other than the proposed licensee has day-to-day control of the business operated under the licence—each person having day-to-day control; and

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- (b) the licensed premises are suitable premises for the licence as amended.

Note 1 **Suitable entity**—see s 58.
Suitable premises—see s 66.

Note 2 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

- (4) The commissioner must refuse to amend the licence if not satisfied of the matters mentioned in subsection (2).

Note A decision under this subsection is a reviewable decision (see s 190).

- (5) The commissioner must, not later than the required time—
 - (a) decide the application for amendment; and
 - (b) tell the licensee about the decision on the application.

- (6) In this section:

amend, a licence, includes—

- (a) amend an existing licence condition; or
- (b) impose a new licence condition; or
- (c) remove an existing licence condition.

required time means the latest of the following:

- (a) if the commissioner requires the licensee to provide a police certificate or other information under section 62 (2) (a)—30 days after the day the commissioner receives the certificate or information;
- (b) if the commissioner requires the licensee to provide a certificate, determination, plan or other information under section 70 (2)—30 days after the day the commissioner receives the certificate, determination, plan or information;

- (c) if the commissioner asks the licensee to allow the commissioner to inspect the premises under section 71—30 days after the day the commissioner is allowed to inspect the premises;
- (d) 30 days after the day the commissioner receives the application.

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

30 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) each influential person for the proposed new licensee; and
 - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and
 - (c) include a police certificate for each of the following people dated not earlier than 3 months before the date of the transfer application:
 - (i) the proposed new licensee;

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- (ii) each close associate of the proposed new licensee;
- (iii) each influential person for the proposed new licensee;
- (iv) if someone other than the licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control.

Note 1 **Suitability information** for an entity—see s 60.

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

Note 3 If a form is approved under s 205 for an application, the form must be used.

Note 4 A fee may be determined under s 204 for this provision.

31 Licence—decision on application to transfer licence

- (1) This section applies if the commissioner has received an application to transfer a licence under section 30.
- (2) The commissioner may transfer the licence only if satisfied that each of the following entities is a suitable entity to hold the licence:
 - (a) the proposed new licensee;
 - (b) each close associate of the proposed new licensee;
 - (c) each influential person for the proposed new licensee;
 - (d) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control.

Note 1 **Suitable entity**—see s 58.

Note 2 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

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- (3) The commissioner must refuse to transfer the licence if not satisfied of the matters mentioned in subsection (2).

Note A decision under this subsection is a reviewable decision (see s 190).

- (4) The commissioner must, not later than the required time—
- (a) decide the application for transfer; and
 - (b) tell the licensee about the decision on the application.
- (5) For subsection (4), ***required time*** means the latest of the following:
- (a) if the commissioner requires the proposed new licensee to provide a police certificate or other information under section 62—30 days after the day the commissioner receives the certificate or information;
 - (b) 30 days after the day the commissioner receives the application.

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

32 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.

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- (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 205 for an application, the form must be used.

Note 3 A fee may be determined under s 204 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.

33 Licence—decision on application for renewal

- (1) This section applies if the commissioner receives an application for renewal of a licence under section 32.
- (2) The commissioner may renew the licence only if satisfied that—
- (a) each of the following people continues to be a suitable entity 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;
 - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and

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- (b) the licensed premises continue to be suitable premises for the licence.

Note 1 **Suitable entity**—see s 58.
Suitable premises—see s 66.

Note 2 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

- (3) The commissioner must refuse to renew the licence if not satisfied of the matters mentioned in subsection (2).

Note A decision under this subsection is a reviewable decision (see s 190).

- (4) The commissioner must, not later than the required time—
- (a) decide the application for renewal; and
 - (b) tell the licensee about the decision on the application.
- (5) For subsection (4), the **required time** is the latest of the following:
- (a) if the commissioner requires the proposed licensee to provide a police certificate or other information under section 62 (2)—30 days after the day the commissioner receives the certificate or information;
 - (b) if the commissioner requires the proposed licensee to provide a certificate, determination, plan or other information under section 70 (2)—30 days after the day the commissioner receives the certificate, determination, plan or information;
 - (c) if the commissioner asks the proposed licensee to allow the commissioner to inspect the premises under section 71—30 days after the day the commissioner is allowed to inspect the premises;

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

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

34 Licence—replacing when lost, stolen or destroyed

- (1) The commissioner may issue a replacement licence to a licensee if satisfied that the licensee's original licence has been lost, stolen or destroyed.
- (2) For subsection (1), the commissioner may require the licensee to give the commissioner a statutory declaration signed by the licensee, stating that the original licence has been lost, stolen or destroyed.

Note 1 A fee may be determined under s 204 for this provision.

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

35 Licence—surrender

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

Note If a form is approved under s 205 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—
- (a) the licence; or

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

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 A power to make a statutory instrument includes power to amend or repeal (see *Legislation Act*, s 46).

36 Offence—failure to give up suspended or cancelled licence

- (1) A person commits an offence if—
- (a) the person ceases trading from licensed premises; and
 - (b) the person does not return the person’s licence to the commissioner as soon as practicable, but not later than 7 days after the day the person stops being a licensee.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person’s licence is suspended or cancelled; and
 - (b) the person fails to return the licence to the commissioner as soon as practicable, but not later than 7 days, after the day the licensee is told about the suspension or cancellation.

Maximum penalty: 20 penalty units.

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Part 3 Liquor permits

Division 3.1 Classes of permits

37 What is a *permit*?

In this Act:

permit means—

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

38 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.

39 What is a *non-commercial permit*?

In this Act:

non-commercial permit means a permit that authorises a non-profit organisation entity 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) that is—
 - (i) in open containers and to be consumed at the premises; or
 - (ii) in sealed containers and to be consumed off the premises;
and
- (d) if the permit relates to an event—at the event stated in the permit; and
- (e) at the permitted times.

Division 3.2 Permits—application

40 Permit—application

- (1) An entity may apply to the commissioner for a permit.
- (2) The application must—
 - (a) be in writing; and
 - (b) include complete details of suitability information about—
 - (i) the proposed permit-holder; and
 - (ii) each close associate of the proposed permit-holder; and
 - (iii) if the proposed permit-holder is a corporation—each influential person for the proposed permit-holder; and
 - (iv) the proposed permitted premises; and

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(c) include—

(i) if the proposed premises are wholly or partly enclosed—

(A) an ACTPLA certificate for the premises dated not earlier than 3 months before the date of the suitability information notice; and

(B) the final floor plans of the premises approved by ACTPLA in the development approval for the premises; and

(ii) if the application is for a commercial permit—a risk assessment management plan for the proposed permitted premises.

Note 1 **Suitability information** for an entity—see s 60.
Suitability information for premises—see s 69.

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

Note 3 If a form is approved under s 205 for this provision, the form must be used.

Note 4 A fee may be determined under s 204 for this provision.

Division 3.3 Permits—decision

41 Permit—decision on application

- (1) This section applies if the commissioner has received an application for a permit under section 40.
- (2) The commissioner must issue the permit to the proposed permit-holder 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 entity 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
- (e) the proposed permitted premises complies with the requirements of this Act.

Note 1 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).

Note 2 **Suitable entity**—see s 58.
Suitable premises—see s 66.

Note 3 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

- (3) The commissioner must refuse to issue the permit if not satisfied of the matters mentioned in subsection (1).

Note A decision under this subsection is a reviewable decision (see s 190).

- (4) The commissioner must, not later than the required time—
 - (a) decide the application; and
 - (b) tell the proposed permit-holder about the decision on the application.

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- (5) For subsection (4), the *required time* is the latest of the following:
- (a) if the commissioner requires the proposed permit-holder to provide information under section 62 (2) (b)—90 days after the day the commissioner receives the information;
 - (b) if the commissioner requires the proposed permit-holder to provide other information under section 70 (2) (d)—90 days after the day the commissioner receives the information;
 - (c) if the commissioner asks the proposed permit-holder to allow the commissioner to inspect the premises under section 71—90 days after the day the commissioner is allowed to inspect the premises;
 - (d) 90 days after the day the commissioner receives the application.

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

42 Permit—occupancy loading

- (1) This section applies if the commissioner decides to issue a permit for premises that are wholly or partly enclosed.
- (2) The commissioner may also decide the occupancy loading for each public area in each enclosed part of the premises.

Note **Occupancy loading**, for a public area—see s 74.

43 Permit—adults-only areas

- (1) This section applies if the commissioner decides to issue a permit for premises that are wholly or partly enclosed.
- (2) The commissioner must also decide the adults-only areas (if any) for the permitted premises.

Note 1 The commissioner decides the adults-only areas of the premises under s 85.

Note 2 If the commissioner decides that permitted 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 85 (3)).

44 Permit—form

- (1) A permit must be in writing and include the following information:
 - (a) the class of the permit;
 - (b) the name of the permit-holder;
 - (c) if the permit-holder carries on business under a name other than the permit-holder's name—the name under which the permit-holder carries on business;
 - (d) the address or location of the permitted premises;
 - (e) the conditions on the permit;
 - (f) anything else prescribed by regulation.
- (2) A permit may include anything else the commissioner considers relevant.

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45 Permit—conditions

A permit is subject to—

- (a) the condition that—
 - (i) the permit-holder must comply with this Act; and
 - (ii) the permitted premises must comply with this Act; and
- 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 other condition—
 - (i) prescribed by regulation; or
 - (ii) imposed by the commissioner when the licence is issued, renewed or amended.

Examples—conditions

- 1 that particular requirements about inspection must be complied with
- 2 that particular requirements about reporting must be complied with
- 3 that stated records must be kept
- 4 that increased security must be used for stated events

Note 1 Permits may be amended under s 28 or s 29.
 Permits may be renewed under s 33.

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).

46 Permit—term

- (1) A permit comes into force on the day stated in the permit.
- (2) A permit is issued for the period of up to 1 year stated in the permit.

- (3) However, the commissioner may decide on reasonable grounds that a permit expires on another day.

Note The commissioner may make a decision in relation to different classes of permit (see Legislation Act, s 48).

- (4) A decision under subsection (3) for a class of permit, is a notifiable instrument.

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

Division 3.4 Permits—amendment, transfer, renewal, etc

47 Permit—amendment initiated by commissioner

- (1) The commissioner may, by written notice (an *amendment notice*) given to a permit-holder, amend the permit if satisfied that—
- (a) each of the following people is a suitable entity to hold the permit as amended:
- (i) the permit-holder;
 - (ii) each close associate of the permit-holder;
 - (iii) if the permit-holder is a corporation—each influential person for the permit-holder; and
- (b) the permitted premises are suitable premises for the permit as amended.

Note 1 **Suitable entity**—see s 58.
Suitable premises—see s 66.

Note 2 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

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- (2) However, the commissioner may amend the permit only if—
- (a) the commissioner has given the permit-holder written notice (a *proposal notice*) of the proposed amendment; and
 - (b) the proposal notice states that written comments on the proposal may be made to the commissioner before the end of a stated period of at least 14 days after the day the proposal notice is given to the permit-holder; and
 - (c) after the end of the stated period, the commissioner has considered any comments made in accordance with the notice.
- (3) Subsection (2) does not apply if the permit-holder applied for, or agreed in writing to, the amendment.

Note In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

- (4) The amendment takes effect on the day the amendment notice is given to the permit-holder or a later day stated in the notice.
- (5) In this section:

amend, a permit, includes—

- (a) amend an existing permit condition; or
- (b) impose a new permit condition; or
- (c) remove an existing permit condition.

48 Permit—amendment on application by permit-holder

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

Note 1 If a form is approved under s 205 for an application, the form must be used.

Note 2 A fee may be determined under s 204 for this provision.

- (2) A permit-holder must apply to the commissioner for amendment of the permit if someone else is to become—
- (a) a close associate of the permit-holder; or
 - (b) if the permit-holder is a corporation—an influential person for the permit-holder; or
 - (c) the licensee intends to change the floor plan of the permitted premises.
- (3) The commissioner may amend the permit only if satisfied that—
- (a) each of the following people is a suitable entity to hold the permit as amended:
 - (i) the permit-holder;
 - (ii) each close associate of the permit-holder;
 - (iii) if the permit-holder is a corporation—each influential person for the permit-holder; and
 - (b) the permitted premises are suitable premises for the permit as amended.
- Note 1* **Suitable entity**—see s 58.
Suitable premises—see s 66.
- Note 2* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).
- (4) The commissioner must refuse to amend the permit if not satisfied of the matters mentioned in subsection (2).
- Note* A decision under this subsection is a reviewable decision (see s 190).
- (5) The commissioner must, not later than the required time—
- (a) decide the application for amendment; and
 - (b) tell the permit-holder about the decision on the application.

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(6) In this section:

amend, a permit, includes—

- (a) amend an existing permit condition; or
- (b) impose a new permit condition; or
- (c) remove an existing permit condition.

required time means the latest of the following:

- (a) if the commissioner requires the permit-holder to provide a police certificate or other information under section 62 (2)—30 days after the day the commissioner receives the certificate or information;
- (b) if the commissioner requires the permit-holder to provide a certificate, determination, plan or other information under section 70 (2)—30 days after the day the commissioner receives the certificate, determination, plan or information;
- (c) if the commissioner asks the permit-holder to allow the commissioner to inspect the premises under section 71—30 days after the day the commissioner is allowed to inspect the premises;
- (d) 30 days after the day the commissioner receives the application.

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

49 Permit—not transferable

A permit is not transferable.

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50 Permit—commercial permit not renewable

A commercial permit is not renewable.

51 Permit—application for renewal of non-commercial permit

- (1) A non-commercial permit-holder may apply to the commissioner to renew the permit for a period of not longer than 1 year.
- (2) The application must be—
 - (a) in writing; and
 - (b) received by the commissioner at least 30 days before the permit expires.
- (3) However, the commissioner may extend the time for making an application.

Note 1 A non-commercial permit-holder 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 205 for an application, the form must be used.

Note 3 A fee may be determined under s 204 for this provision.

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

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52 Permit—decision on application for renewal of non-commercial permit

- (1) This section applies if the commissioner receives an application for renewal of a non-commercial permit under section 51.
- (2) The commissioner may renew the permit only if satisfied that—
 - (a) each of the following people continues to be a suitable entity to hold the permit:
 - (i) the permit-holder;
 - (ii) each close associate of the permit-holder;
 - (iii) if the permit-holder is a corporation—each influential person for the permit-holder; and
 - (b) the permitted premises continue to be suitable premises for the permit.

Note 1 **Suitable entity**—see s 58.
Suitable premises—see s 66.

Note 2 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

- (3) The commissioner must refuse to renew the permit if not satisfied of the matters mentioned in subsection (2).

Note A decision under this subsection is a reviewable decision (see s 190).

- (4) The commissioner must, not later than the required time—
 - (a) decide the application for renewal; and
 - (b) tell the permit-holder about the decision on the application.

- (5) For subsection (4), the *required time* is the latest of the following:
- (a) if the commissioner requires the proposed permit-holder to provide a police certificate or other information under section 62 (2)—30 days after the day the commissioner receives the certificate or information;
 - (b) if the commissioner requires the proposed permit-holder to provide a certificate, determination, plan or other information under section 70 (2)—30 days after the day the commissioner receives the certificate, determination, plan or information;
 - (c) if the commissioner asks the proposed permit-holder to allow the commissioner to inspect the premises under section 71—30 days after the day the commissioner is allowed to inspect the premises;
 - (d) 30 days after the day the commissioner receives the application.

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

53 Permit—replacing when lost, stolen or destroyed

- (1) The commissioner may issue a replacement permit to a permit-holder if satisfied that the permit-holder's original permit has been lost, stolen or destroyed.
- (2) For subsection (1), the commissioner may require the permit-holder to give the commissioner a statutory declaration signed by the permit-holder, stating that the original permit has been lost, stolen or destroyed.

Note 1 A fee may be determined under s 204 for this provision.

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

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54 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 205 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.

55 Non-commercial permit—cancellation

- (1) The commissioner may cancel a non-commercial permit if the commissioner believes on reasonable grounds that the permit-holder has failed to comply with the permit.
- (2) If the commissioner decides to cancel a permit, the commissioner must give a written notice (a **cancellation notice**) to the permit-holder, cancelling the permit starting on the date stated in the notice (the **cancellation date**).

Note A decision under this subsection is a reviewable decision (see s 190).

- (3) The cancellation notice must be given to the permit-holder at least 7 days before the cancellation date.
- (4) A person commits an offence if—
- (a) the person is a non-commercial permit-holder; and
 - (b) the commissioner cancels the permit by giving the permit-holder a cancellation notice; and

- (c) the person fails to return the permit to the commissioner not later than 7 days after the day the cancellation notice is given to the person.

Maximum penalty: 5 penalty units.

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

EXPOSURE DRAFT

Part 4

Suitability of entities and premises for licences and permits

Division 4.1

Suitability of entities for licences and permits

56 Who is a *close associate*?

(1) In this Act:

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

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

(2) In this section:

business includes—

- (a) a business not carried on for profit; and
- (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.

57 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;
- (d) an executive officer of a related corporation.

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(2) In this section:

related corporation means a related body corporate under the Corporations Act.

relevant power, for a corporation, means a power—

- (a) to take part in a directorial, managerial or executive decision for the corporation; or
- (b) to elect or appoint a person as an executive officer in the corporation; or
- (c) to exercise a significant influence in relation to the conduct of the corporation.

58 Who is a *suitable entity*?

In this Act:

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

59 Commissioner must consider suitability information, etc

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

- (a) suitability information about the entity;
- (b) if a police certificate or other information must accompany the application under section 18 or is required by the commissioner under section 62—the certificate or information;
- (c) if public consultation representations about the entity are received under section 20—the representations.

Note In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

60 What is *suitability information* about an entity?

(1) In this Act:

suitability information, about an entity, means information about the following:

(a) any conviction of, or finding of guilt against, the entity for any of the following:

(i) an offence against this Act;

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).

(ii) an offence against a law of another jurisdiction corresponding, or substantially corresponding, to this Act;

(iii) an offence against the *Trade Practices Act 1974* (Cwlth);

(iv) an offence against the *Fair Trading Act 1992*;

(v) an offence against a law of another jurisdiction corresponding, or substantially corresponding, to the *Fair Trading Act 1992*;

(vi) an offence in Australia or elsewhere relating to the supply or consumption of liquor;

(vii) an offence against a law of the ACT with a maximum penalty of imprisonment for 1 year or more;

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

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

Examples

- 1 the entity has failed to comply with a condition of a licence
- 2 the entity 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 entity for a licence, permit or other authority (however described) in relation to the supply of liquor;
- (d) whether the entity complies with the requirements of this Act;
- 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).
- (e) if the entity is an individual—whether the entity is, or during the preceding 5 years was, bankrupt or personally insolvent;
- (f) if the entity is an individual—whether the entity is, or during the preceding 5 years was, involved in the management of a corporation when the corporation was insolvent;
- (g) if the entity is a corporation—whether the entity is, or during the preceding 5 years was, insolvent;
- (h) if the entity is a corporation—whether each influential member of the corporation is a suitable entity to hold the licence or permit;
- (i) if the entity is a club—whether the entity is an eligible club;
- (j) if the entity is a non-profit organisation—whether the entity operated on a not-for-profit basis;

- (k) the entity's knowledge and understanding of the obligations under this Act applying in relation to the licence or permit;
- (l) any other matter relevant to the entity's ability to safely and responsibly supply liquor.

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

- (2) In this section:

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

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

61 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) another purpose prescribed by regulation; and

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- (b) has a constitution or set of rules that—
 - (i) provide for the nomination or election of financial members or foundation members to manage the affairs of the club; and
 - (ii) provide for the keeping of records of nominations and elections for 2 years or more; and
 - (iii) prevent 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
 - (iv) requires the club to hold a meeting of its members at least once every 3 years to elect members to manage the affairs of the club; and
 - (v) prevents the payment of a commission, profit or allowance from or on receipts from the supply of liquor at the club premises; and
- (c) has a membership of at least 200 adult financial members.

62 Commissioner may require police certificate etc for an entity

- (1) This section applies if the commissioner is making a decision about whether an entity is a suitable entity to hold a licence or permit.
- (2) The commissioner may, by written notice given to the entity (a *suitability information notice*), require the entity to give the commissioner 1 or more of the following not later than a stated reasonable time:
 - (a) a police certificate for 1 or more of the following people, dated not earlier than 3 months before the date of the suitability information notice:
 - (i) the entity;
 - (ii) a close associate of the entity;
 - (iii) an influential person for the entity;
 - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control;
 - (b) other stated information about the entity.
- (3) A suitability information notice must also tell the entity that giving false or misleading information is an offence against the Criminal Code, section 338 (Giving false or misleading information).

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63 Commissioner need not decide suitability if information not provided

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

64 Offence—ongoing duty to update entity’s suitability information

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

Note **Suitability information** for an entity—see s 60.

- (2) The entity commits an offence if—
 - (a) the entity’s suitability information changes; and

- (b) the entity does not tell the commissioner about the change as soon as practicable, but not later than 7 days after the change happens.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Division 4.2 Suitability of premises for licences and permits

65 Who is the *responsible person* for premises?

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.

66 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.

67 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;

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- (b) if public consultation representations about the premises are received under section 20—the representations;
- (c) if the commissioner requires the responsible person for the premises to provide a certificate, determination or plan under section 70 (2)—the certificate, determination or plan;
- (d) if the commissioner requires the responsible person for the premises to allow the commissioner to inspect the premises under section 71—the results of the commissioner’s inspection.

Note In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

68 Commissioner must decide premises not suitable in some circumstances

- (1) The commissioner must decide that premises are not suitable premises for a licence or permit if—
 - (a) the premises do not comply with the requirements of—
 - (i) this Act; or
 - (ii) the *Planning and Development Act 2007*; or

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) 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 to accompany the application under section 18 or section 40, or the commissioner has required the responsible person for the premises to give the commissioner a risk assessment management plan under section 70—the commissioner does not approve the risk assessment management plan.

Note The commissioner approves risk assessment management plans under s 95.

- (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.

69 What is *suitability information* for premises?

In this Act:

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

- (a) any conviction of, or finding of guilt against, an entity 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).

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- (c) any refusal of an application for a licence, permit or other authority (however described) in relation to the supply of liquor at the premises;
- (d) whether the premises comply with the requirements of this Act;

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).

- (e) whether use of the premises in accordance with the licence or permit would be within the purpose of the lease for the land on which the premises are located;
- (f) the fire safety of the premises;
- (g) the level of noise likely to emanate from the premises if used in accordance with the licence or permit;
- (h) whether use of the premises in accordance with the licence or permit would be likely to attract a large number of people and, if so, the risk to community safety;
- (i) whether use of the premises in accordance with the licence or permit would be likely to cause undue disturbance, inconvenience or offence to people—
 - (i) lawfully at adjacent or nearby premises; or
 - (ii) because of the premises' proximity to a place of public worship, a hospital, residential premises, or a school;
- (j) any other matter relevant to the appropriateness of the premises in relation to the supply of liquor.

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

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70 Commissioner may require certificate, plan, etc for 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 (a *suitability information notice*), require the person to give the commissioner 1 or more of the following, not later than a stated reasonable time:
 - (a) an ACTPLA certificate for the premises, dated not earlier than 3 months before the date of the suitability information notice;
 - (b) the final floor plans of the premises approved by ACTPLA in the development approval for the premises;
 - (c) a risk assessment management plan for the premises;
Note 1 See pt 6 (Risk-assessment management plans for licensed and permitted premises).
Note 2 If the commissioner does not approve the risk assessment management plan, the commissioner must also decide that the premises are not suitable premises for the licence or permit (see s 68).
 - (d) other stated information about the premises.
- (3) A suitability information notice must also tell the person that giving false or misleading information is an offence against the Criminal Code, section 338 (Giving false or misleading information).

71 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.

72 Commissioner need not decide suitability if requirements not complied with

- (1) This section applies if—
- (a) the commissioner has given a person a suitability information notice under section 70 and the person does not give the commissioner the certificate, determination, plans or information, in accordance with the notice; or
 - (b) the commissioner has given a person an inspection notice under section 71 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.

73 Offence—ongoing duty to update premises' suitability information

- (1) This section applies to a responsible person for premises if—
- (a) either—
 - (i) the commissioner is deciding whether the premises are suitable premises for a licence or permit; or
 - (ii) the commissioner has decided that the premises are suitable premises for a licence or permit and the premises are being used under the licence or permit; and

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

Note **Suitability information** for premises—see s 69.

- (2) The responsible person commits an offence if—

- (a) the premises' suitability information changes; and
- (b) the responsible 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: 50 penalty units, imprisonment for 6 months or both.

- (3) It is a defence to a prosecution against subsection (2) if the defendant—

- (a) was not aware of the change 7 days before the suitability information changes; and
- (b) told the commissioner about the change as soon as the defendant became aware of the change.

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

Part 5 Occupancy loading for licensed and permitted premises

74 What is *occupancy loading*?

In this Act:

occupancy loading, for a public area—means the maximum number of people allowed in the area.

75 What is a *public area*?

In this Act:

public area—

- (a) means an area designated as a public area in the final floor plans of premises approved by ACTPLA in the development approval for the premises; and
- (b) includes an outdoor area at the premises that is open to the public.

76 Occupancy loading decision

- (1) This section applies if the commissioner must decide the occupancy loading for a public area at proposed licensed premises under section 23 or at proposed permitted premises under section 42.
- (2) In deciding the occupancy loading for a public area, the commissioner must consider—
 - (a) the chief officer's (fire brigade) occupancy loading recommendation for the area under section 77; and
 - (b) the building code.

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

77 Fire engineering study and inspection

- (1) This section applies if the commissioner is deciding the occupancy loading for an area at premises under section 23 or section 42.
- (2) The commissioner must, as soon as practicable after receiving the application, ask the chief officer (fire brigade) to recommend an occupancy loading for the area.
- (3) To prepare the recommendation, the chief officer (fire brigade) may, by written notice (an ***occupancy loading notice***) given to the responsible person for the premises, require the person to—
- (a) give the chief officer (fire brigade) a fire engineering study for the area not later than a stated reasonable time; or
 - (b) allow the chief officer (fire brigade) to inspect the area within a stated reasonable time.

Note A fee may be determined under s 204 for this provision.

- (4) In making the recommendation, the chief officer (fire brigade) must consider—
- (a) if the chief officer (fire brigade) has required the responsible person for premises to provide a fire engineering study—the fire engineering study; and
 - (b) if the chief officer (fire brigade) has required the responsible person for premises to allow an inspection—the results of the inspection; and
 - (c) the building code, part D1.13.

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- (5) The chief officer (fire brigade) must give the commissioner his or her occupancy loading recommendation for an area as soon as practicable after—
 - (a) the commissioner's request; and
 - (b) the responsible person for the premises—
 - (i) provides the study (if required); and
 - (ii) allows the inspection (if required).

78 Commissioner not to issue licence or permit if requirement not complied with

- (1) This section applies if the chief officer (fire brigade) has given a person an occupancy loading notice for premises and the person does not comply with the notice.
- (2) The commissioner must not issue the licence or permit for the premises until the notice is complied with.

Part 6

Risk-assessment management plans for licensed and permitted premises

79 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 81.

80 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 is lit
- 2 what noise mitigation efforts are in place
- 3 what security measures are in place

Note 1 If a form is approved under s 205 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).

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81 Risk-assessment management plan—approval

- (1) The commissioner may approve a risk-assessment management plan for licensed premises or permitted premises only if satisfied that the procedures, practices and arrangements are consistent with the harm minimisation and community safety principles.
- (2) The commissioner must not approve the proposed risk-assessment management plan for a licence or permit application if satisfied that the plan—
 - (a) does not contain the matters required by regulation; and
 - (b) includes procedures, practices and arrangements that are inconsistent with the harm minimisation principles.
- (3) If the commissioner decides to approve the proposed risk assessment management plan the commissioner must give the licensee or permit-holder written notice that the plan has been approved.

82 Risk-assessment management plan—amendment on application

- (1) This section applies if a risk assessment management plan has been approved for licensed premises or permitted premises.

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- (2) The licensee or permit-holder for premises for which a risk-assessment management plan has been approved may apply to the commissioner to amend the risk-assessment management plan.

Example—amendment

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

Note 1 If a form is approved under s 205 for an application, the form must be used.

Note 2 A fee may be determined under s 204 for this provision.

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).

- (3) The commissioner may, in writing, require the applicant to give the commissioner additional information or documents that the commissioner reasonably needs to decide the application.
- (4) If the applicant does not comply with a requirement under subsection (2), the commissioner may refuse to consider the application.

83 Risk-assessment management plan—decision on amendment

- (1) In deciding whether to approve an application to amend a risk-assessment management plan, the commissioner must consider whether the plan as amended would include—
- (a) procedures, practices and arrangements consistent with the harm minimisation and community safety principles; and
 - (b) the matters required by regulation.
- (2) On an application to amend a risk-assessment management plan, the commissioner must—
- (a) amend the plan in accordance with the application; or

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(b) refuse to amend the plan.

Note A decision under par (b) is a reviewable decision (see s 190).

(3) If the commissioner approves an amendment to a risk-assessment management plan, the commissioner must tell the applicant, in writing—

(a) that the amendment is approved; and

(b) when the amendment takes effect.

(4) If the commissioner refuses to amend the plan the commissioner must tell the applicant of the decision and the reasons for the decision.

(5) If the commissioner does not decide an application to amend a risk-assessment management plan within 90 days after the day the commissioner receives the application, the application to amend a plan is taken to have been refused by the commissioner.

Note It is a condition of a licence and of a permit that the holder of the licence or permit comply with the licence or permit's risk-assessment management plan.

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

Division 7.1 **Adults-only area decisions**

84 **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 85.

85 **Adults-only areas decision**

- (1) This section applies if the commissioner must decide the adults-only areas for licensed premises under section 24 or permitted premises under section 43.
- (2) In deciding the adults-only areas of premises, the commissioner must consider—
 - (a) the purpose of the licensed or permitted premises; and
 - (b) the layout of the licensed or permitted premises.
- (3) If the commissioner decides that licensed premises is to include an adults-only area, the commissioner may decide 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 9).

Division 7.2 Approvals for young people's events in adults-only areas at licensed premises

86 Young people's events in adults-only areas—application

- (1) A licensee may apply to the commissioner for approval to conduct a young people's event in an adult-only area of the licensed premises.
- (2) The application must—
 - (a) be in writing; and
 - (b) include details of—
 - (i) when the event is to happen; and
 - (ii) the duration of the event; and
 - (iii) the name of each person working at the event; and
 - (iv) a police certificate for each person working at the event; 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 205 for this provision, the form must be used.

Note 3 A fee may be determined under s 204 for this provision.

87 Young people's events in adults-only areas—decision

- (1) This section applies if the commissioner has received an application for approval to conduct a young people's event under section 86.
- (2) The commissioner must issue the approval to the applicant if satisfied that the applicant satisfies the criteria prescribed by regulation.

88 Young people's events in adults-only areas—form

- (1) A young people's event approval must be in writing and include the following:
 - (a) the name of the licensee;
 - (b) when the event is to happen;
 - (c) the duration of the event;
 - (d) the name of each person permitted to work at the event;
 - (e) the conditions on the approval;
 - (f) anything else prescribed by regulation.
- (2) A young people's event approval may include anything else the commissioner considers relevant.

89 Young people's events in adults-only areas—conditions

A young people's event approval is subject to any condition—

- (a) prescribed by regulation; or
- (b) imposed by the commissioner when the approval is issued.

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90 Young people's events in adults-only areas—term

- (1) An approval for a young people's event comes into force on the day and at the time stated in the approval.
- (2) An approval expires 24 hours after the approval comes into force.

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Part 8

Conduct of licensees and permit-holders at licensed and permitted premises

Division 8.1

Responsible service of alcohol

91

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

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) the person supplies liquor to another person; 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 another person; and
 - (c) the supply happens at the permitted premises; and
 - (d) the person is not the holder of 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 licensee supplies liquor to another person;
and
- (c) the supply happens at the licensed premises; and
- (d) the employee does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if—

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

Maximum penalty: 50 penalty units.

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

92 Offence—employee—supply liquor without RSA certificate

- (1) A person commits an offence if—

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

Maximum penalty: 10 penalty units.

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

- (2) A person commits an offence if—
- (a) the person is an employee of a commercial permit-holder; and
 - (b) the person supplies liquor to another person; and
 - (c) the supply happens at the permitted premises; and
 - (d) the person does not hold an RSA certificate.

Maximum penalty: 10 penalty units.

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

93 Offence—crowd controller without RSA certificate

- (1) A person commits an offence if the person—
- (a) is a crowd controller; and
 - (b) is working as a crowd controller at licensed premises; and
 - (c) does not hold an RSA certificate.
- Maximum penalty: 10 penalty units.
- (2) 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.

- (3) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) a crowd controller is working at the licensed premises; and

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

Maximum penalty: 50 penalty units.

(4) A person commits an offence if—

- (a) the person is a commercial permit-holder; and
- (b) a crowd controller is working at the permitted premises; and
- (c) the crowd controller does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

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

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

94 Offence—fail to keep RSA certificates

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

- (a) is a licensee; and
- (b) does not 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 employed to work 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) does not keep a copy of an RSA certificate for each of the following people:

- (i) the permit-holder;
- (ii) each person employed to supply liquor at the permitted premises;
- (iii) each crowd controller employed to work at the permitted premises.

Maximum penalty: 20 penalty units.

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

Division 8.2 Intoxicated people

95 What is *intoxicated*?

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

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

96 Intoxication guidelines

- (1) The commissioner may make guidelines (the *intoxication guidelines*) to assist in determining whether or not a person is intoxicated.
- (2) Intoxication guidelines may indicate circumstances in which a person is taken not to be intoxicated.

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- (3) The intoxication guidelines are a notifiable instrument.

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

97 Offence—licensee or permit-holder—supply liquor to intoxicated person

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) the person supplies liquor to another person; and
 - (c) the other person is intoxicated; and
 - (d) the supply happens at the licensed premises.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
 - (b) the person supplies liquor to another person; and
 - (c) the other person is intoxicated; and
 - (d) the supply happens at the permitted premises.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) an employee of the licensee supplies liquor to another person;
and
 - (c) the other person is intoxicated; and

(d) the supply happens at the licensed premises.

Maximum penalty: 50 penalty units.

(4) A person commits an offence if—

- (a) the person is a permit-holder; and
- (b) an employee of the licensee supplies liquor to another person;
and
- (c) the other person is intoxicated; and
- (d) the supply happens at the permitted premises.

Maximum penalty: 50 penalty units.

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

98 Offence—employee—supply liquor to intoxicated person

(1) A person commits an offence if—

- (a) the person is an employee of a licensee; and
- (b) the person supplies liquor to another person; and
- (c) the other person is intoxicated; and
- (d) the supply happens at the licensed premises.

Maximum penalty: 10 penalty units.

(2) A person commits an offence if—

- (a) the person is an employee of a permit-holder; and
- (b) the person supplies liquor to another person; and
- (c) the other person is intoxicated; and

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(d) the supply happens at the permitted premises.

Maximum penalty: 10 penalty units.

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

99 Offence—other person—supply liquor to intoxicated person

(1) A person commits an offence if—

- (a) the person supplies liquor to another person; and
- (b) the other person is intoxicated; and
- (c) the supply happens at—
 - (i) licensed premises; or
 - (ii) permitted premises.

Maximum penalty: 5 penalty units.

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

100 Offence—abuse, threaten, intimidate staff

(1) A person commits an offence if—

- (a) a staff member 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.

- (4) In this section:

staff member means—

- (a) a licensee; or
- (b) an employee of a licensee; or
- (c) a permit-holder; or
- (d) an employee of a permit-holder.

101 Offence—not display sign about abuse offence

- (1) A person commits an offence if the person—
- (a) is a licensee; and
 - (b) fails to display signs about the offence in section 100 at the licensed premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person—
- (a) is a permit-holder; and

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- (b) fails to display signs about the offence in section 100 at the permitted premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

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

Division 8.3 Children and young people

102 Offence—licensee or permit-holder—supply liquor to child or young person

- (1) A person commits an offence if—
 - (a) the person is a licensee; and
 - (b) the person supplies liquor or low-alcohol liquor to another person; and
 - (c) the other person is a child or young person; and
 - (d) the supply happens at licensed premises.

Maximum penalty: 50 penalty units.

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

- (2) A person commits an offence if—
 - (a) the person is a permit-holder; and
 - (b) the person supplies liquor or low-alcohol liquor to another person; and
 - (c) the other person is a child or young person; and
 - (d) the supply happens at permitted premises.

Maximum penalty: 50 penalty units.

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

- (4) 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 or an employee of 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 (4) (see Criminal Code, s 58).

103 Offence—employee—supply liquor to child or young person

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

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person is an employee of a permit-holder; and
 - (b) the person supplies liquor or low-alcohol liquor to another person; and
 - (c) the other person is a child or young person; and

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(d) the supply happens at the permitted premises.

Maximum penalty: 10 penalty units.

(3) A person commits an offence if—

- (a) the person is a licensee; and
- (b) an employee of the licensee supplies liquor or low-alcohol liquor to another person; and
- (c) the other person is a child or young person; and
- (d) the supply happens at the licensed premises.

Maximum penalty: 50 penalty units.

(4) A person commits an offence if—

- (a) the person is a permit-holder; and
- (b) an employee of the permit-holder supplies liquor or low-alcohol liquor to another person; and
- (c) the other person is a child or young person; and
- (d) the supply happens at the permitted premises.

Maximum penalty: 50 penalty units.

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

(6) 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 or an employee of 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 (6) (see Criminal Code, s 58).

104 Offence—other person—supply liquor to child or young 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 young person; and
 - (c) the supply happens at—
 - (i) licensed premises; or
 - (ii) permitted premises.

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 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 or an employee of 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 (3) (see Criminal Code, s 58).

Note 2 It is an offence to supply liquor to a child or young person in a public place (see s 197).

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105 Licensee, permit-holder, etc may refuse to supply liquor without identification document

- (1) A licensee, or an employee of a licensee, may refuse to supply liquor or low-alcohol liquor to a person if, when asked, the person does not show the licensee or employee an identification document identifying the person as an adult.
- (2) A permit-holder, or an employee of a permit-holder, may refuse to sell or supply liquor or low-alcohol liquor to a person if, when asked, the person does not show the permit-holder or employee an identification document identifying the person as an adult.
- (3) This section does not limit the circumstances in which a person may refuse to supply liquor or low-alcohol liquor.

106 Licensee, permit-holder, etc, may seize false identification

- (1) If a defined person believes on reasonable grounds that a document shown to the person is a false identification document, the defined person may seize the document.
- (2) However, a defined person must not seize a document that purports to be a passport.
- (3) A person commits an offence if the person—
 - (a) is a defined person; and
 - (b) seizes a document under subsection (1); and
 - (c) does not give the document to the commissioner within 7 days after the document is seized.

Maximum penalty: 5 penalty units.

- (4) A person commits an offence if the person—
- (a) is a licensee or permit-holder; and
 - (b) does not make a record of—
 - (i) each document seized by the person, or an employee of the person, under subsection (1); and
 - (ii) the date and time when, and the person who, seized the document; and
 - (iii) the reason the document was seized; and
 - (iv) the date and time when the document was given to the commissioner.

Maximum penalty: 5 penalty units.

- (5) A person commits an offence if the person—
- (a) is a licensee or a permit-holder; and
 - (b) does not keep a record mentioned in subsection (4)—
 - (i) for at least 2 years; and
 - (ii) at the licensed premises.

Maximum penalty: 5 penalty units.

- (6) In this section:

defined person means the following people:

- (a) a licensee;
- (b) a permit-holder;
- (c) an employee of a licensee;
- (d) an employee of a permit-holder;

- (e) a person employed to work at licensed premises;
- (f) a person employed to work at permitted premises.

107 Offence—licensee or permit-holder—child or young person consume liquor

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

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
 - (a) the person is a permit-holder; and
 - (b) another person consumes liquor or low-alcohol liquor at the permitted premises; and
 - (c) the other person is a child or young person.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) 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 or an employee of 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 (4) (see Criminal Code, s 58).

108 Offence—child or young person consume liquor

- (1) A person commits an offence if—
- (a) the person is a child or young person; and
 - (b) the person consumes liquor or low-alcohol liquor at licensed premises.

Maximum penalty: 5 penalty units.

- (2) A person commits an offence if—
- (a) the person is a child or young person; and
 - (b) the person consumes liquor or low-alcohol liquor at permitted premises.

Maximum penalty: 5 penalty units.

Note A police officer may caution a child or young person in relation to this offence (see s 144).

109 Offence—licensee or permit-holder—child or young person possess liquor

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) another person possesses liquor or low-alcohol liquor at the licensed premises; and

- (c) the other person is a child or young person.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—

- (a) the person is a permit-holder; and
- (b) another person possesses liquor or low-alcohol liquor at the permitted premises; and
- (c) the other person is a child or young person.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply in relation to a young person if the young person possesses the liquor or low-alcohol liquor in the course of—
 - (a) the young person's employment at the licensed or permitted premises; or
 - (b) a training program conducted by an entity prescribed by regulation.
- (5) 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 or an employee of 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 ss (4) and (5) (see Criminal Code, s 58).

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110 Offence—child or young person possess liquor

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

Maximum penalty: 5 penalty units.

- (2) This section does not apply to a young person if the young person possesses the liquor or low-alcohol liquor in the course of—
- (a) the young person's employment at the licensed or permitted premises; or
 - (b) a training program conducted by an entity prescribed by regulation.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

Note 2 A police officer may caution a child or young person in relation to this offence (see s 144).

111 Offence—licensee—child or young person supply liquor

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) the person employs a child or young person; and
 - (c) the child or young person supplies liquor; and

- (d) the liquor is supplied in an adults-only area of the licensed premises.

Maximum penalty: 50 penalty units.

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

- (2) A person commits an offence if—
 - (a) the person is a permit-holder; and
 - (b) the person employs a child or young person; and
 - (c) the child or young person supplies liquor; and
 - (d) the liquor is supplied 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.

112 Offence—child or young person buy liquor

A person commits an offence if the person—

- (a) is a child or young person; and
- (b) buys 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 144).

113 Offence—child or young person use false identification to buy liquor

A person commits an offence if the person—

- (a) is a child or young person; and

- (b) uses a false identification document; and
- (c) uses the false identification document to buy liquor or low-alcohol liquor.

Maximum penalty: 10 penalty units.

Note A police officer may caution a child or young person in relation to this offence (see s 144).

114 Offence—send child or young person to obtain liquor

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

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

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- (3) Subsection (2) 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 or permitted premises; or
- (b) a training program conducted by an entity prescribed by regulation.

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

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

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) a child or young person is at the licensed premises; and
 - (c) the child or young person is in an adults-only area of the 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 at the permitted premises; and
 - (c) the child or young person is in an adults-only area of the 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, carer or domestic partner 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 or permitted premises; or
 - (b) a training program conducted by an entity prescribed by regulation.
- (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 87.

- (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

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- (b) had, before the time of the offence, shown the defendant or an employee of 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 ss (4), (5), (6) and (7) (see Criminal Code, s 58).

116 Offence—child or young person in adults-only area

- (1) A person commits an offence if the person is—
 - (a) a child or young person; and
 - (b) in an adults-only area at—
 - (i) licensed premises; or
 - (ii) permitted premises.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) 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, carer or domestic partner 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.

- (4) This section does not apply 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 or permitted premises; or

- (b) a training program conducted by an entity prescribed by regulation.

Note 1 Employment of children is dealt with in the *Children and Young People Act 2008*.

Note 2 Children and young people must not serve liquor (see s 111).

- (5) This section does not apply 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 1 The defendant has an evidential burden in relation to the matters mentioned in ss (3), (4) and (5) (see Criminal Code, s 58).

Note 2 A police officer may caution a child or young person in relation to this offence (see s 144).

Note 3 Young people's event approvals are made under s 87.

117 Offence—child or young person use false identification to enter adults-only area

A person commits an offence if the person—

- (a) is a child or young person; and
- (b) uses a false identification document; and
- (c) uses the false identification document to obtain entry to, or remain in, an adults-only area at—
 - (i) licensed premises; or

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- (ii) permitted premises.

Maximum penalty: 10 penalty units.

Note A police officer may caution a child or young person in relation to this offence (see s 144).

118 Offence—not mark adults-only areas

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) an adults-only area in the licensed premises is not clearly marked for the public in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
 - (b) an adults-only area in the permitted premises is not clearly marked for the public in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

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

Division 8.4 Occupancy loading

119 Offence—licensee or permit-holder exceed occupancy loading

- (1) A person commits an offence if—
- (a) the person is a licensee; and

- (b) the number of people in a public area at the licensed premises is more than the number allowed under the occupancy loading for the area.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
 - (a) the person is a permit-holder; and
 - (b) the number of people in a public area at the permitted premises is more than the number allowed under the occupancy loading for the area.

Maximum penalty: 50 penalty units.

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

120 Offence—not display occupancy loading sign

- (1) A person commits an offence if the person—
 - (a) is a licensee; and
 - (b) fails to display a sign about the occupancy loading at the licensed premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person—
 - (a) is a permit-holder; and
 - (b) fails to display a sign about the occupancy loading at the permitted premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

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

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Division 8.5 Compliance with risk assessment management plan

121 Offence—not comply with risk assessment management plan

- (1) A person commits an offence if the person—
- (a) is a licensee; and
 - (b) fails to comply with a risk assessment management plan for the licensed premises.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person—
- (a) is a commercial permit-holder; and
 - (b) fails to comply with a risk assessment management plan for the permitted premises.

Maximum penalty: 20 penalty units.

- (3) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) an employee of the licensee fails to comply with the risk assessment management plan for the licensed premises.

Maximum penalty: 10 penalty units.

- (4) A person commits an offence if—
- (a) the person is a commercial permit-holder; and

- (b) an employee of the permit-holder fails to comply with the risk assessment management plan for the permitted premises.

Maximum penalty: 10 penalty units.

- (5) This section does not apply if—
 - (a) a term within a risk-assessment management plan was inconsistent with a condition on a licence or commercial permit; and
 - (b) the defendant complied with the condition.

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

122 Offence—not make risk assessment management plan available

- (1) A person commits an offence if the person—
 - (a) is a licensee; and
 - (b) fails to make the risk assessment management plan for the licensed premises available for public inspection.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person—
 - (a) is a commercial permit-holder; and
 - (b) fails to make the risk assessment management plan for the permitted premises available for public inspection.

Maximum penalty: 10 penalty units.

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

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123 Offence—not display sign about risk assessment management plan

- (1) A person commits an offence if the person—
- (a) is a licensee; and
 - (b) fails to display a sign about the risk assessment management plan at the licensed premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person—
- (a) is a commercial permit-holder; and
 - (b) fails to display a sign about the risk assessment management plan at the permitted premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

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

Division 8.6 Incidents

124 What is an *incident*?

In this division:

incident means any incident—

- (a) involving violent, unlawful or anti-social behaviour; or

- (b) of which the licensee or permit-holder is aware that involves violent or anti-social behaviour occurring in the immediate vicinity of the licensed or permitted premises that involves a person who has recently left, or been refused admission to, the premises; or
- (c) that results in a person being removed from the licensed premises or permitted premises; or
- (d) that results in a person at the licensed premises or permitted premises requiring medical assistance if the incident occurs outside of the licensed times or permitted times; or
- (e) prescribed by regulation.

125 Incident register

- (1) A licensee or permit-holder must keep a register (an ***incident register***) of incidents that occur at the licensed or permitted premises.
- (2) The incident register must include the following details for each incident:
 - (a) a description of the incident;
 - (b) the date and time the incident happened;
 - (c) the name, address and contact details of each person connected with the incident including—
 - (i) each employee involved in managing the incident; and
 - (ii) each police officer involved in the incident;
 - (d) any action taken in relation to the incident.

Note An incident must be included in the register as soon as possible after the incident occurs (see Legislation Act, s 151B).

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126 Offence—fail to keep incident register

- (1) A person commits an offence if the person—
- (a) is a licensee; and
 - (b) does not keep an incident register for the licensed premises in accordance with section 125.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person—
- (a) is a permit-holder; and
 - (b) does not keep an incident register for the permitted premises in accordance with section 125.

Maximum penalty: 10 penalty units.

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

127 Offence—sell petrol at licensed or permitted premises

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) the person sells petrol to another person; and
 - (c) the sale happens at the licensed premises.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
 - (b) the person sells petrol to another person; and

(c) the sale happens at the permitted premises.

Maximum penalty: 20 penalty units.

- (3) This section does not apply to licensed premises prescribed by regulation.

Division 8.7 Breath analysis instruments

128 What is a *breath analysing instrument*?

- (1) In this division:

breath analysing instrument means an instrument that is—

- (a) designed to ascertain, by means of analysis of a person's breath, the concentration of alcohol present in the person's blood; and
- (b) of a type specified in the Australian Standard.

- (2) In this section:

Australian Standard means AS 3547-1997 (*Breath Alcohol Testing Devices for Personal Use*) as in force from time to time.

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

129 Offence—not display breath analysis instrument sign

- (1) A person commits an offence if—

- (a) the person is a licensee; and
- (b) a breath analysis instrument is installed at the licensed premises; and

- (c) the person fails to display a sign about the breath analysis instrument in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
 - (a) the person is a permit-holder; and
 - (b) a breath analysis instrument is installed at the permitted premises; and
 - (c) the person fails to display a sign about the breath analysis instrument in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

130 Evidence of breath analysis tests

- (1) This section applies to evidence of the results of a test that indicates the presence or concentration of alcohol in the blood of a person, performed on a breath analysis instrument installed at licensed premises or permitted premises.
- (2) The evidence is not admissible—
 - (a) in a civil proceeding against the licensee or permit-holder; or
 - (b) in a criminal proceeding.
- (3) However, this section does not prevent the admission into evidence in a civil proceeding of the results of the test if it is established that at the time of the test—
 - (a) the breath analysing instrument did not comply with the Australian Standard; or
 - (b) the licensee, or permit-holder, was aware, or should have been aware, that the instrument was not operating correctly; or

- (c) a sign about the breath analysis instrument was not displayed as required under section 129.

Division 8.8 Other offences

131 Offence—promotional or marketing activity promoting excessive liquor consumption

- (1) A person commits an offence if—
 - (a) the person is a licensee; and
 - (b) the person conducts a promotional or marketing activity; and
 - (c) the activity is conducted at the licensed premises; and
 - (d) the activity encourages excessive or rapid consumption of liquor.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
 - (a) the person is a licensee; and
 - (b) another person conducts a promotional or marketing activity; and
 - (c) the person knows about the activity; and
 - (d) the activity is conducted at the licensed premises; and
 - (e) the activity encourages excessive or rapid consumption of liquor.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—
 - (a) the person is a permit-holder; and

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- (b) the person conducts a promotional or marketing activity; and
- (c) the activity is conducted at the permitted premises; and
- (d) the activity encourages excessive or rapid consumption of liquor.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if—
- (a) the person is a permit-holder; and
 - (b) another person conducts a promotional or marketing activity; and
 - (c) the person knows about the activity; and
 - (d) the activity is conducted at the permitted premises; and
 - (e) the activity encourages excessive or rapid consumption of liquor.

Maximum penalty: 50 penalty units.

132 Offence—conduct prohibited promotional or marketing activity

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) the person conducts a prohibited promotional or marketing activity; and
 - (c) the activity is conducted at the licensed premises.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is a licensee; and

- (b) another person conducts a prohibited promotional or marketing activity; and
- (c) the person knows about the activity; and
- (d) the activity is conducted at the licensed premises.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—

- (a) the person is a permit-holder; and
- (b) the person conducts a prohibited promotional or marketing activity; and
- (c) the activity is conducted at the permitted premises.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if—

- (a) the person is a permit-holder; and
- (b) another person conducts a prohibited promotional or marketing activity; and
- (c) the person knows about the activity; and
- (d) the activity is conducted at the permitted premises.

Maximum penalty: 50 penalty units.

- (5) In this section:

prohibited promotional or marketing activity means an activity prescribed by regulation.

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133 Offence—consume liquor at off licence premises

- (1) A person commits an offence if—
- (a) the person consumes liquor; and
 - (b) the consumption happens at an off licensed premises; and
 - (c) the person does not hold the off licence for the premises.
- Maximum penalty: 10 penalty units.
- (2) A person commits an offence if—
- (a) the person is an off licensee; and
 - (b) another person consumes liquor on the off licensed premises.
- Maximum penalty: 20 penalty units.
- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply if the person consuming the liquor at the premises—
- (a) is a person responsible for the premises, an employee of a person responsible for the premises or a family member of the person; or
 - (b) was supplied with the liquor for consumption as a sample of liquor available for sale and—
 - (i) there was no charge for the sample; and
 - (ii) the sample was consumed at the premises in an area stated to be a sampling area.

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

134 Offence—sexually explicit entertainment at licensed and permitted premises

- (1) A person commits an offence if—
- (a) the person is a licensee; and
 - (b) sexually explicit entertainment happens at the licensed premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply if—
- (a) the licensed premises are in a prescribed location; or
 - (b) the entertainment happens in a room at the premises used for accommodation.

- (3) A person commits an offence if—
- (a) the person is a permit-holder; and
 - (b) sexually explicit entertainment happens at the permitted premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) Subsection (2) does not apply if—
- (a) the permitted premises are in a prescribed location; or
 - (b) the entertainment happens in a room at the premises used for accommodation.

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(5) In this section:

sexually explicit entertainment—

- (a) means a performance or other entertainment—
 - (i) in which a person displays genitalia; or
 - (ii) that includes sexual intercourse; and
- (b) includes a performance, or other entertainment, prescribed by regulation.

135 Offence—not keep licence or permit on premises

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

Maximum penalty: 5 penalty units.

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

Maximum penalty: 5 penalty units.

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

136 Offence—not keep records in required way

- (1) A person commits an offence if the person—
 - (a) is a licensee or permit-holder; and
 - (b) sells liquor; and

- (c) does not record the sale—
 - (i) in electronic form; and
 - (ii) in a way that is easily retrievable.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person—
 - (a) is a licensee or permit-holder; and
 - (b) sells liquor; and
 - (c) makes a record of the sale; and
 - (d) does not keep the record for at least 6 years.

Maximum penalty: 50 penalty units.

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

137 Offence—club licensee advertise for public attendance

A person commits an offence if—

- (a) the person is a club licensee; and
- (b) the person publishes a statement; and
- (c) the statement—
 - (i) constitutes an invitation to the public to attend at the licensed premises; or
 - (ii) could reasonably be understood as an invitation to the public to attend the licensed premises.

Maximum penalty: 10 penalty units.

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Part 9 **Directions, closure orders and cautions**

Division 9.1 **Commissioner's directions**

138 **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, in relation to licensed or permitted premises—

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

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 (by *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 employed to work at the licensed premises;
- (d) a permit-holder;
- (e) an employee of a permit-holder;

- (f) a person employed to work at the permitted premises.

Examples—commissioner's direction

- 1 to a licensee to reduce loud noise coming from premises
- 2 to a licensee to allow people to use unused exits from premises

Note 1 In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 9).

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) state the action to be taken; and
 - (c) state when the direction must be complied with.
- (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.

139 Offence—fail to comply with commissioner's direction

A person commits an offence if—

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

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

Division 9.2 Closure orders

140 Emergency closure of premises for 24 hours

- (1) A senior police officer may order a licensee or permit-holder to close licensed premises or permitted premises, for as long as 24 hours if the officer believes on reasonable grounds that—
 - (a) a breach of this Act has happened, or is likely to happen; and
 - (b) the closure of the premises is necessary to prevent or reduce a significant threat or significant risk to safety of the community.
- (2) Without limiting the generality of subsection (1), the circumstances in which there may be a significant threat or risk to safety of the community include circumstances in which there is—
 - (a) a threat to public health or safety; or
 - (b) a risk of substantial damage to property; or
 - (c) a significant threat to the environment; or
 - (d) a risk of an offence against a law of the ACT, with a maximum penalty of imprisonment for 2 years or more, being committed at the premises.
- (3) If an emergency closure order is in force for licensed premises, the licence is suspended for the period of the order.
- (4) If an emergency closure order is in force for permitted premises, the permit is suspended for the period of the order.

141 Emergency closure notice

- (1) If a senior police officer orders a closure of licensed premises or permitted premises under section 140, the senior police officer must give the licensee or permit-holder a notice (an *emergency closure notice*) of the closure.

- (2) An emergency closure notice must state—
 - (a) the breach of this Act that the senior police officer believes has happened or is likely to happen; and
 - (b) the grounds for the senior police officer's belief; and
 - (c) when the closure starts; and
 - (d) when the closure ends.
- (3) An order may not require the closure of premises for a period longer than 24 hours.
- (4) A closure order must not start before the licensee or permit-holder is given the emergency suspension notice.

142 Offence—fail to comply with closure order

- (1) A person commits an offence if—
 - (a) the person is either—
 - (i) a licensee; or
 - (ii) a permit-holder; and
 - (b) the person fails to comply with an emergency closure notice given to the person under section 141.

Maximum penalty units: 50 penalty units.

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

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Division 9.3 Police cautions for children and young people

143 What is a *caution offence*?

In this division:

caution offence means any of the following offences:

- (a) section 108 (Offence—child or young person consume liquor);
- (b) section 110 (Offence—child or young person possess liquor);
- (c) section 112 (Offence—child or young person buy liquor);
- (d) section 113 (Offence—child or young person use false identification to buy liquor);
- (e) section 116 (Offence—child or young person in adults-only area);
- (f) section 117 (Offence—child or young person use false identification to enter adults-only area);
- (g) section 198 (Offence—child or young person consume liquor in public place);
- (h) section 199 (Offence—child or young person possess liquor in public place);
- (i) section 201 (Offence—child or young person use false identification to obtain proof of age card).

144 Police may caution children and young people

- (1) A police officer may caution a child or young person for a caution offence if—
 - (a) the police officer believes on reasonable grounds that the child or young person is committing, or has committed, the offence; and
 - (b) the child or young person has not been cautioned in the preceding 12 months for a caution offence.
- (2) A caution must—
 - (a) be in writing; and
 - (b) state—
 - (i) the date of issue of the caution; and
 - (ii) the caution offence that the police officer believes the child or young person is committing, or has committed; and
 - (iii) the grounds for the police officer's belief; and
 - (c) warn the child or young person that if the child or young person engages in behaviour that constitutes a further caution offence within 12 months after the date of issue of the caution, the child or young person may be prosecuted for the further offence; and
 - (d) be signed by the police officer.
- (3) A police officer who issues a caution must—
 - (a) keep the caution in the police records; and

- (b) give a copy of the caution to—
 - (i) the child or young person or a parent or guardian of the child or young person; and
 - (ii) the commissioner.
- (4) If a child or young person is cautioned for an offence, the child or young person must not be prosecuted in a court for the offence.

145 Police must caution and release child or young person as soon as practicable

- (1) If a police officer intends to caution a child or young person, the police officer must issue the caution within a reasonable time after the child or young person is taken by the police officer to a police station.
- (2) If a police officer cautions a child or young person, as soon as practicable after the caution is issued, the police officer must—
 - (a) arrange for the child or young person to be escorted to the child's or young person's home; or
 - (b) arrange for a parent or guardian of the child or young person to come to the police station to collect the child or young person; or
 - (c) release the child or young person.

146 Chief police officer may revoke cautions

- (1) The chief police officer may revoke a caution issued to a child or young person if satisfied that the police officer who issued the caution did not act in accordance with section 144 or section 145.

- (2) If the chief police officer revokes a caution, the chief police officer must—
- (a) destroy the caution kept in the police records; and
 - (b) take reasonable steps to tell the child or young person that the caution is revoked; and
 - (c) tell the commissioner that the caution is revoked.

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Part 10 Enforcement

Division 10.1 General

147 Definitions—pt 10

In this part:

authorised person means—

- (a) an investigator under the Fair Trading (Consumer Affairs) Act 1973; and
- (b) a police officer.

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).

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Division 10.2 Powers of authorised people

148 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
 - (b) at any time when the premises is open for business, enter the premises; or
 - (c) at any time, enter premises with the occupier's consent; or
 - (d) enter premises in accordance with a licence or permit condition; or
 - (e) enter premises in accordance with a search warrant; or
 - (f) at any time, enter premises if the authorised person believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.
- (2) However, subsection (1) (a) and (b) do not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

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- (5) In this section:

at any reasonable time includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

149 Production of identity card

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

150 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 148 (1) (b), an authorised person must—
 - (a) either—
 - (i) if the person is an investigator—produce his or her identity card; or
 - (ii) if the person is a police officer—produce evidence that he or she is a police officer; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.

- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

151 General powers on entry to premises

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;

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- (c) take samples;
- (d) take photographs, films, or audio, video or other recordings;
- (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

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

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

Maximum penalty: 50 penalty units.

152 Power to seize things

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
 - (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
 - (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or

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- (ii) used to commit, continue or repeat the offence.
- (4) Also, an authorised person who enters premises under this part (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (5) The powers of an authorised person under subsections (3) and (4) are additional to any powers of the authorised person under subsections (1) or (2) or any other territory law.
- (6) Having seized a thing, an authorised person may—
 - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
 - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
 - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

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

Note See also s 196 about disposal of liquor seized in public places.

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Division 10.3 Search warrants

153 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
 - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and

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- (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

154 Warrants—application made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, email, radio or other form of communication if the authorised person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
 - (a) the magistrate must tell the authorised person—
 - (i) the terms of the warrant; and
 - (ii) the date and time the warrant was issued; and
 - (b) the authorised person must complete a form of warrant (the **warrant form**) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.

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- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

155 Search warrants—announcement before entry

- (1) An authorised person must, before anyone enters premises under a search warrant—
 - (a) announce that the authorised person is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and

- (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including the authorised person or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

156 Details of search warrant to be given to occupier etc

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

157 Occupier entitled to be present during search etc

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Division 10.4 Return and forfeiture of things seized

158 Receipt for things seized

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 152 (Power to seize things).
- (3) A receipt under this section must include the following:
- (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the authorised person's name, and how to contact the authorised person;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

159 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;

- (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

160 Access to things seized

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

- (a) inspect it; and

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- (b) if it is a document—take extracts from it or make copies of it.

161 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, unless—
 - (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or
 - (b) an application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003* or another territory law within 1 year after the day the seizure is made; or
 - (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.
- (2) However, this section does not apply to a thing—
 - (a) if the chief executive believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
 - (b) if possession of it by its owner would be an offence.

162 Forfeiture of seized things

- (1) This section applies if—
 - (a) anything seized under this part has not been returned under section 161; and

- (b) an application for disallowance of the seizure under section 164—
 - (i) has not been made within 10 days after the day of the seizure; or
 - (ii) has been made within the 10-day period, but the application has been refused or withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
 - (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

163 Power to destroy unsafe things

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

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- (4) A person in charge of the premises where the thing is commits an offence if the person contravenes a direction given to the person under subsection (2).

Maximum penalty: 100 penalty units.

- (5) Alternatively, if the thing has been seized under this part, the authorised person may destroy or otherwise dispose of the thing.
- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
- (a) the person who owned the thing;
 - (b) each person in control of the premises where the thing was.
- (7) An offence against this section is a strict liability offence.

164 Application for order disallowing seizure

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

165 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 164 for an order disallowing the seizure.

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

Division 10.5 Enforcement—miscellaneous

166 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the person causes as little inconvenience, detriment and damage as practicable.

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

167 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

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- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

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Part 11 Complaints and occupational discipline

Division 11.1 General

168 Who is a *licensee*?—pt 11

In this part:

licensee—

- (a) means a licensee or former licensee; and
- (b) includes a defined influential person for a corporation that is a licensee or former licensee.

169 Who is a *permit-holder*?—pt 11

In this part:

permit-holder—

- (a) means a permit-holder or former permit-holder; and
- (b) includes a defined influential person for a corporation that is a permit-holder or former permit-holder licensee.

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Division 11.2 Complaints

170 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 177.
Ground for occupational discipline, for a commercial permit-holder—see s 178.

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).

171 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.

172 Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the commissioner.
- (2) If the complainant withdraws the complaint, the commissioner—
 - (a) need not take further action on the complaint; and
 - (b) may take further action on the complaint if the commissioner considers it appropriate to do so; and
 - (c) need not report to the complainant under section 176 (Action after investigating complaint) on the results of taking the action.

173 Further information about complaint etc

- (1) The commissioner may, at any time, require a complainant—
 - (a) to give the commissioner further information about the complaint; or
 - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the commissioner must give the complainant a reasonable period of time to satisfy the requirement and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement under subsection (1), the commissioner need not, but may, take further action in relation to the complaint.

174 Investigation of complaint

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

175 No further action on complaint

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

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

Note The commissioner may also take no further action on a complaint if the complainant has not complied with a requirement made under s 173 (see s 173 (3)).

176 Action after investigating complaint

- (1) After investigating a complaint against a licensee or commercial permit-holder, the commissioner must—
 - (a) if satisfied on reasonable grounds that a ground for occupational discipline exists in relation to the complaint—
 - (i) apply to the ACAT for an occupational discipline order in relation to the licensee or commercial permit-holder; and
 - (ii) tell the complainant, in writing, that the application has been made; or
 - (b) if not satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) tell the complainant, in writing, that the commissioner will not take further action on the complaint; and

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(ii) not take further action on the complaint.

- (2) Subsection (1) (b) (ii) does not prevent the commissioner from taking further action in relation to a complaint if the commissioner becomes satisfied that a ground for occupational discipline exists in relation to the complaint.

Note The commissioner need not notify the complainant under s (1) if the complainant has withdrawn the complaint (see s 172).

Division 11.3 Occupational discipline

177 Grounds for occupational discipline—licensees

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensee:

- (a) the licensee has contravened, or is contravening, a provision of this Act;
- (b) the licensee has allowed the licensed premises to be used in a way that causes undue disturbance or inconvenience to people lawfully at the premises;
- (c) the licensee has allowed the licensed premises to be used in a way that causes undue disturbance or inconvenience to people occupying premises in the neighbourhood;
- (d) the licensed premises do not comply with the requirements of this Act;

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).

- (e) a loss of amenity has arisen in the vicinity of the licensed premises that is attributable to the premises and about which there has been a complaint;

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- (f) a licensee has allowed people to smoke in a part of the licensed premises that is an enclosed public place;
- (g) the licensee has failed to take reasonable steps to prevent smoke from another area occupied by the licensee entering an enclosed public place;
- (h) there are grounds to suspend the licensee's licence;
- (i) the licensee is not a suitable entity to hold a licence;

Note For what to consider in deciding whether a licensee is suitable, see s (3).

- (j) the licensed premises are not suitable for the purposes of the licence.

Note For what to consider in deciding whether premises are suitable, see s (4).

(2) There are grounds to suspend a licence if—

- (a) either—
 - (i) the licensee has contravened a direction given under section 138; or
 - (ii) the licensee has breached a condition on a licence imposed under section 26; and
- (b) it is in the public interest to suspend the licence; and
- (c) it is not appropriate to cancel the licence.

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- (3) In deciding whether a licensee is a suitable entity to hold a licence, the ACAT must consider the following:
- (a) if the licence has previously been suspended for the contravention of a direction—whether, after the end of the period of suspension the licensee has again contravened that direction, or has contravened a direction to the same or similar effect;
 - (b) whether the licensee has been convicted of a defined offence;
 - (c) whether the licensee is bankrupt;
 - (d) if the licensee is a corporation—
 - (i) whether the corporation has been placed in liquidation; or
 - (ii) whether, in consideration of the matters mentioned in paragraphs (b) or (c) or otherwise, any defined influential person in relation to the corporation would not be a suitable entity to hold a licence.
- (4) In deciding whether premises are suitable for the purpose of the licence, the ACAT must consider the following:
- (a) whether the licensed premises comply with the requirements of this Act;
 - (b) whether the licensee’s conduct of the licensed premises has complied with the requirements of this Act.

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).

- (5) In this section:

enclosed public place—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

smoke—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

178 Grounds for occupational discipline—commercial permit-holders

- (1) Each of the following is a *ground for occupational discipline* in relation to a commercial permit-holder:
- (a) the permit-holder has contravened, or is contravening, a provision of this Act;
 - (b) the permit-holder has allowed the permitted premises to be used in a way that causes undue disturbance or inconvenience to people lawfully at the premises;
 - (c) the permit-holder has allowed the permitted premises to be used in a way that causes undue disturbance or inconvenience to people occupying premises in the neighbourhood;
 - (d) the permitted premises do not comply with the requirements of this Act;

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).

- (e) a loss of amenity has arisen in the vicinity of the permitted premises that is attributable to the premises and about which there has been a complaint;
- (f) a permit-holder has allowed people to smoke in a part of the licensed premises that is an enclosed public place;
- (g) the permit-holder has failed to take reasonable steps to prevent smoke from another area occupied by the permit-holder entering an enclosed public place;
- (h) there are grounds to suspend the permit-holder's permit;

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- (i) the licensee is not a suitable entity to hold a permit;

Note For what to consider in deciding whether a permit-holder is suitable, see s (3).

- (j) the permitted premises are not suitable for the purposes of the permit.

Note For what to consider in deciding whether premises are suitable, see s (4).

- (2) There are grounds to suspend a commercial permit if—

- (a) either—

- (i) the permit-holder has contravened a direction given under section 138; or

- (ii) the permit-holder has breached a condition of a permit imposed under section 45; and

- (b) it is in the public interest to suspend the permit; and

- (c) it is not appropriate to cancel the permit.

- (3) In deciding whether a commercial permit-holder is a suitable entity to hold a licence, the ACAT must consider the following:

- (a) if the permit-holder has previously been suspended for the contravention of a direction—whether, after the end of the period of suspension the permit-holder has again contravened that direction, or has contravened a direction to the same or similar effect;

- (b) whether the permit-holder has been convicted of a defined offence;

- (c) whether the permit-holder is bankrupt;

- (d) if the permit-holder is a corporation—
 - (i) whether the corporation has been placed in liquidation; or
 - (ii) whether, in consideration of the matters mentioned in paragraphs (b) or (c) or otherwise, any defined influential person in relation to the corporation would not be a suitable entity to hold a licence.
- (4) In deciding whether premises are suitable for the purpose of the permit, the ACAT must consider the following:
 - (a) whether the permitted premises comply with the requirements of this Act;
 - (b) whether the permit-holder's conduct of the permitted premises has complied with the requirements of this Act.

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).

- (5) In this section:

enclosed public place—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

smoke—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

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179 Application to ACAT for occupational discipline

If the commissioner believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee or commercial permit-holder, the commissioner may apply to the ACAT for an occupational discipline order in relation to the licensee or permit-holder.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out 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

180 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 182.

approved RSA training provider means a registered training organisation that holds an RSA training course approval under section 182.

registered training organisation—see the *Training and Tertiary Education Act 2003*, dictionary.

181 RSA training course approvals—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 205 for this provision, the form must be used.

Note 2 A fee may be determined under s 204 for this provision.

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- (2) The commissioner may, in writing, require the applicant to give the commissioner additional information or documents that the commissioner reasonably needs to decide the application.

Example—information or documents

information about the proposed training course

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).

182 RSA training course approvals—decision on application

- (1) On receiving an application for an RSA training course approval under section 181, the commissioner must—

- (a) grant the approval; or
- (b) refuse to grant the approval.

Note Failure to grant an approval within a reasonable period is taken to be a decision not to grant the approval (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

- (2) The commissioner must not grant the approval if satisfied that it is not in the public interest to grant the approval.
- (3) If the commissioner refuses to grant the approval, the commissioner must give the applicant written notice of the refusal.

183 RSA training course approvals—form

An RSA training course approval must—

- (a) be in writing; and
- (b) state the name of the registered training organisation to which it is granted; and
- (c) identify the training course to which it applies; and

- (d) if the approval is conditional—state the conditions to which the approval is subject; and
- (e) state when the approval was granted; and
- (f) state when the approval expires; and
- (g) include anything prescribed by regulation.

184 RSA training course approvals—term

An RSA training course approval, unless renewed or cancelled, remains in force until the end of 30 June after the day it is granted.

Division 12.2 RSA training course certificates

185 What is an *RSA certificate*?

In this Act:

RSA certificate, for a person, means a certificate by an approved RSA training course provider for an approved RSA training course—

- (a) certifying that the person satisfactorily completed the course on a stated day; and
- (b) stating when the certificate expires.

Note The certificate expires 3 years after the day on which the person satisfactorily completed the course—see s 186.

186 RSA training course providers must give RSA certificates

- (1) If an approved RSA training course provider is satisfied that a person has satisfactorily completed an approved RSA training course provided by the provider, the provider must give the person an RSA certificate for the course.

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- (2) An RSA certificate expires 3 years after the day the person satisfactorily completes the course.

Part 13 Licence and permit register

187 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 188.

188 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.

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- (2) A matter included in the register in relation to the occupational discipline order may be open for public inspection under section 187 only if—

- (a) the time for any appeal of the decision has ended and no application for appeal has been made; or
- (b) an application for appeal has been made, the decision has been confirmed on appeal and the time for further appeal has ended.

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.

- (3) If the decision has been reversed or set aside, a matter included in the register in relation to the decision must not be open for public inspection.
- (4) If the decision has been changed (for example, by substitution), this section applies to a matter included in the register in relation to the decision as changed.

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).

189 Correction and keeping up-to-date register

- (1) The commissioner may correct a mistake, error or omission in the licence and permit register.
- (2) The commissioner may change a detail included in the register to keep the register up-to-date.

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Part 14 Notification and review of decisions

190 What is a *reviewable decision*?—pt 14

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

191 Reviewable decision notices

If the commissioner makes a reviewable decision, the commissioner must give a reviewable decision notice to each person mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The commissioner must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

192 Applications for review

The following people may apply to the ACAT for a review of a reviewable decision:

- (a) a person mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

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Part 15 Miscellaneous

Division 15.1 Public places

193 Temporary alcohol-free places

- (1) The commissioner may declare a public place to be a place where liquor and low-alcohol liquor may not be consumed (a *temporary alcohol-free place*).

- (2) A declaration is a notifiable instrument.

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

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

- (a) consumes liquor or low-alcohol liquor in a place; and
- (b) the place is a temporary alcohol-free place.

Maximum penalty: 5 penalty units.

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

194 Offence—consume liquor near bus interchange etc

- (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 place that is within 50m from—
 - (A) a bus interchange; or
 - (B) a shop; or
 - (C) licensed premises; or

- (iii) a place prescribed by regulation.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the consumption of liquor or low-alcohol liquor—
 - (a) at licensed or permitted premises; or
 - (b) at premises where food is sold for consumption at the premises; or
 - (c) at a place that is within 50m from premises mentioned in paragraph (a) or (b) by a person using furniture or other facilities lawfully provided by the proprietor or lessee of those premises for that purpose.

195 Offence—possess open container of liquor near bus interchange etc

- (1) A person commits an offence if—
 - (a) the person possesses an open container of liquor or low-alcohol liquor; and
 - (b) the liquor or low-alcohol liquor is possessed at—
 - (i) a bus interchange; or
 - (ii) a place that is within 50m from—
 - (A) a bus interchange; or
 - (B) a shop; or
 - (C) licensed premises; or
 - (iii) a place prescribed by regulation; and

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- (c) the person intends to consume the liquor or low-alcohol liquor at the place.

Maximum penalty: 5 penalty units.

- (2) For this section, a container is taken to be open if a manufacturer's seal is broken or the contents of the container are otherwise accessible.
- (3) This section does not apply to the possession of liquor or low-alcohol liquor—
 - (a) at licensed or permitted premises; or
 - (b) at premises where food is sold for consumption at the premises; or
 - (c) at a place that is within 50m from premises mentioned in paragraph (a) or (b) by a person using furniture or other facilities lawfully provided by the proprietor or lessee of those premises for that purpose.

196 Seizure of liquor in public places

- (1) This section applies if an authorised person suspects on reasonable grounds that a person is in possession of liquor connected with the commission of an offence against section 193, section 194 or section 195.
- (2) The authorised person may seize the liquor from the person if the authorised person has told the person—
 - (a) that the authorised person suspects the liquor is connected with the commission of an offence against section 193, section 194 or section 195; and
 - (b) the grounds for the suspicion.

- (3) If an authorised person seizes liquor under subsection (2), the authorised person may dispose of the liquor as soon as practicable.
- (4) However, the authorised person must not dispose of the liquor under subsection (3) if the person indicates in any way that the person believes the authorised person's grounds for the suspicion are incorrect.
- (5) If an authorised person disposes of liquor under subsection (3)—
 - (a) the person must not be prosecuted for an offence in relation to the liquor; and
 - (b) a caution must not be issued to the person in relation to any act done in relation to the liquor.

197 Offence—supply liquor to child or young person in 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

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- (b) had, before the time of the offence, shown the defendant or an employee of 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).

198 Offence—child or young person consume liquor in public place

A person commits an offence if—

- (a) the person is a child or young person; and
- (b) the person consumes liquor or low-alcohol liquor in a public place.

Maximum penalty: 5 penalty units.

Note A police officer may caution a child or young person in relation to this offence (see s 144).

199 Offence—child or young person possess liquor in public place

- (1) A person commits an offence if—
 - (a) the person is a child or young person; and
 - (b) the person possesses liquor or low-alcohol liquor in a public place.
- (2) This section does not apply to a young person if the young person possesses the liquor or low-alcohol liquor in the course of—
 - (a) the young person's employment at licensed or permitted premises; or

- (b) a training program conducted by an entity prescribed by regulation.

Maximum penalty: 5 penalty units.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

Note 2 A police officer may caution a child or young person in relation to this offence (see s 144).

Division 15.2 Proof of age cards

200 Proof of age cards

- (1) A person who is an adult may apply, in writing, to the road transport authority for a proof of age card.

Note 1 If a form is approved under s 205 for this provision, the form must be used.

Note 2 A fee may be determined under s 204 for this provision.

- (2) The road transport authority may issue the applicant with a proof of age card if satisfied of the applicant's identity and that the applicant is an adult.

Note ***Proof of age card***—see the dictionary.

201 Offence—child or young person use false identification to obtain proof of age card

A person commits an offence if the person—

- (a) is a child or young person; and
(b) uses a false identification document; and

- (c) uses the false identification document to obtain a proof of age card under section 200.

Maximum penalty: 10 penalty units.

Note A police officer may caution a child or young person in relation to this offence (see s 144).

Division 15.3 Other provisions

202 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.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
 - (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
 - (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and

- (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the person if the person would not have been convicted of the offence without subsection (3) or (4).

203 Proceedings for offences

A proceeding in relation to an offence against this Act must not be begun except by the commissioner or a police officer.

204 Determination of fees

- (1) The Minister may determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) In this section:

Minister means the Minister for the time being administering the provision of the Act for which the fee, charge or other amount is determined.

205 Approved forms

- (1) The commissioner may approve forms for this Act.
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

206 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision in relation to the following:
 - (a) licensed times and permitted times;
 - (b) the calculation of fees based on all or any of the following:
 - (i) licensed times and permitted times;
 - (ii) the term of a licence or permit;
 - (iii) the nature and scale of the activities being carried out at the licensed or permitted premises;
 - (iv) the type of licensed or permitted premises;
 - (v) the occupancy loading for the licensed or permitted premises;
 - (vi) anything else consistent with the objects of this Act and the harm minimisation and community safety principles;
 - (c) means of payment of fees;

- (d) the circumstances in which the commissioner may waive or reduce fees.
- (3) A fee mentioned in subsection (2) may be an amount that is not a fee for a service.
- (4) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

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Schedule 1 Reviewable decisions

(see s 190)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	22 (3)	refuse to issue licence	applicant for licence
2	29 (4)	refuse to amend licence	licensee
3	31 (3)	refuse to transfer licence	licensee
4	33 (3)	refuse to renew licence	licensee
5	41 (3)	refuse to issue permit	applicant for permit
6	48 (4)	refuse to amend permit	permit-holder
7	52 (3)	refuse to renew permit	permit-holder
8	55 (1)	cancel non- commercial permit	permit-holder
9	81	refuse to approve risk-assessment management plan	licensee or permit-holder
10	83 (2)	refuse to amend risk-assessment management plan	licensee or permit-holder

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column 1 item	column 2 section	column 3 decision	column 4 entity
11	87 (2)	refuse to approve young people's event	applicant
12	182 (1) (b)	refuse to approve RSA training course	applicant

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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
- police officer.

ACTPLA certificate, for premises to which an application for the grant or renewal of a licence or permit relates, means a certificate by the planning and land authority stating—

- (a) whether the authority considers the carrying on of business at the premises under the licence or permit would not comply with a provision of—
 - (i) the lease of the land where premises are located; or
 - (ii) the Territory plan; and
- (b) if paragraph (a) applies—the relevant provision of the lease or Territory plan.

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adults-only area, for licensed premises or permitted premises—see section 84.

approved risk-assessment management plan—see section 79.

approved RSA training course, for division 12.1 (Approval to provide RSA training courses)—see section 180.

approved RSA training provider, for division 12.1 (Approval to provide RSA training courses)—see section 180.

at premises includes in or on the premises.

authorised person, for part 10 (Enforcement)—see section 147.

breath analysing instrument, for division 8.7 (Breath analysis instruments)—see section 128.

caution offence, for part 9 (Directions, closure orders and cautions)—see section 143.

child—see the *Children and Young People Act 2008*, section 11.

close associate—see section 56.

club licence—see section 16.

commercial permit—see section 38.

commissioner means the commissioner for fair trading.

connected, for part 10 (Enforcement)—see section 147.

crowd controller means a person who is a crowd controller for the purposes of the *Security Industry Act 2003*, section 7.

defined offence means an offence against any of the following Acts:

- (a) this Act;

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- (b) the *Crimes Act 1900*;
- (c) the Criminal Code;
- (d) the *Unlawful Gambling Act 2009*;
- (e) the *Crimes Act 1914* (Cwlth);
- (f) the *Criminal Code Act 1995* (Cwlth).

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

eligible club—see section 61.

enclosed, for premises, means enclosed as prescribed by regulation.

false identification document, for a person, means an identification document that—

- (a) was fraudulently obtained; or
- (b) was issued to someone else; or
- (c) is forged; or
- (d) is fraudulently altered; or
- (e) has expired.

foreign driver licence means a licence to drive a motor vehicle (however described) issued under the law of an external Territory or a foreign country.

general licence—see section 13.

harm minimisation and community safety principles—see section 9.

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identification document, for a person, means a document that—

- (a) is an—
 - (i) Australian driver licence or foreign driver licence; or
 - (ii) proof of age card or interstate proof of age card; or
 - (iii) passport; and
- (b) contains a photograph that could reasonably be taken to be the person; and
- (c) states the person's date of birth.

identity card—see the *Fair Trading (Consumer Affairs) Act 1973*, dictionary.

incident, for division 8.6 (Incidents)—see section 124.

influential person—see section 57.

interstate proof of age card means a document corresponding to a proof of age card that has been issued under the law of a State.

intoxicated—see section 95.

intoxication guidelines—see section 96.

licence—see section 12.

licence and permit register, for part 13 (Licence and permit register)—see section 187.

licensed times, for the sale of liquor at licensed premises, means the times stated in the licence for the sale of liquor at the premises.

licensee, for part 11 (Complaints and occupational discipline)—see section 168.

liquor—see section 10.

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low-alcohol liquor means a beverage that contains more than 0.5% by volume of ethyl alcohol.

non-commercial permit—see section 39.

non-profit organisation means an organisation that is not carried on for profit or gain to its individual members and does not make any distribution, whether in money, property or otherwise, to its members.

occupancy loading, for a public area—see section 74.

occupier, for part 10 (Enforcement)—see section 147.

offence, for part 10 (Enforcement)—see section 147.

off licence—see section 15.

on licence—see section 14.

permit—see section 37.

permit-holder, for part 11 (Complaints and occupational discipline)—see section 169.

permitted times, for the sale of liquor at permitted premises, means the times stated in the permit for the sale of liquor at the premises.

police certificate, for a person, means a written statement by the Australian Federal Police indicating—

- (a) whether, according to the records held by the Australian Federal Police, the person has been charged with, or convicted of, an offence against a law of—
 - (i) the Territory; or
 - (ii) the Commonwealth; or
 - (iii) a State; or

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- (iv) another country; and
- (b) if so—particulars of each offence.

Note A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

premises includes land, structure, vehicle or boat.

proof of age card, for a person, means a card that includes the following about the person:

- (a) the name of the person;
- (b) a photo of the person;
- (c) the date of birth of the person.

proposed risk-assessment management plan—see section 80.

public area—see section 75.

public consultation period, for part 2 (Liquor licences)—see section 21.

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 180.

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responsible person, for part 4 (Suitability of entities and premises for licences and permits)—see section 65.

reviewable decision, for part 14 (Notification and review of decisions)—see section 190.

risk-assessment management plan—see section 80.

RSA certificate—see section 185.

sell includes—

- (a) sell by wholesale, retail, auction or tender; and
- (b) barter or exchange; and
- (c) supply for profit; and
- (d) offer for sale, receive for sale or expose for sale; and
- (e) consign or deliver for sale; and
- (f) have in possession for sale.

senior police officer means the chief police officer or another police officer of or above the rank of superintendent.

sexual intercourse—see the *Crimes Act 1900*, section 50.

special licence—see section 17.

suitability information, for an entity—see section 60.

suitability information, for premises—see section 69.

suitable entity—see section 58.

suitable premises—see section 66.

supply includes sell.

warrant, for part 10 (Enforcement)—see section 147.

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young person—see the *Children and Young People Act 2008*, 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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