

**2010**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**EXPOSURE DRAFT**

**LIQUOR BILL 2010**

**EXPLANATORY STATEMENT**

**Circulated by authority of the  
Attorney-General  
Mr Simon Corbell MLA**

## **Exposure Draft Liquor Bill 2010**

### **Explanatory Statement**

This explanatory statement relates to the Liquor Bill which will be introduced into the ACT Legislative Assembly.

### **Overview of Bill**

The Liquor Bill 2010 replaces the *Liquor Act 1975* with new legislation, the object of which is to regulate the sale, supply, promotion and consumption of liquor in a way that minimises harm associated with the consumption of liquor, and in a way that takes into account the safety of the community.

The Liquor Bill reforms fall under three core areas:

- strengthening the licensing regime to better reflect harm minimisation and community safety principles;
- stronger enforcement of ACT liquor laws to better ensure compliance; and
- streamlining the licensing regime to promote more efficient regulatory action.

The principal reforms made by the Bill are as follows:

- (a) to require a decision-maker under the proposed Act (the Commissioner for Fair Trading (the commissioner), an authorised investigator or police officer) to take into account the harm minimisation and community safety principles as set out in section 9 of the Act.
- (b) to make compliance with the Act a condition of a liquor licence and a permit and give the commissioner power to impose a condition on a licence or permit at any time. Breach of a condition on a licence or permit would expose the licensee/permit-holder to occupational disciplinary action (including, amongst other things, suspension or cancellation of the licence/permit) by the ACT Civil and Administrative Tribunal.
- (c) to require an applicant for a liquor licence to give public notification of their intention to apply for a licence by placing a public notice on the proposed premises and in the Canberra Times. This will allow the community an opportunity to make written representations to the commissioner about the suitability of the proposed premises in that location, or representations about the people who would have responsibility or influence managing the proposed premises.
- (d) to require the commissioner to decide an occupancy loading indicating the maximum number of people allowed in each public area at the proposed licensed premises, as a public safety measure. The commissioner's decision about the occupancy loading will be based on a recommendation from the Chief Officer (Fire Brigade).
- (e) to reclassify permits into two classes: commercial and non commercial.
- (f) to give the commissioner a discretion to determine an occupancy loading for a permit where the premises are wholly or partly enclosed.
- (g) to instil a high level of integrity in the management of the liquor licence and permit by requiring a licensee/permit-holder to keep the commissioner updated about changes to the management of the premises and other suitability information.

- (h) to give the commissioner a discretion to require a police certificate at any time from a licensee or permit-holder when deciding the suitability of an entity to hold a licence or permit.
- (i) to require a licensee or permit-holder to notify the commissioner about changes to their personal or business circumstances.
- (j) to require a licensee to update the commissioner about changes to the licensed premises.
- (k) to require applicants for a licence and commercial permit to submit a risk-assessment management plan (RAMP) outlining details and arrangements for conducting the business of selling liquor at the premises or event. The commissioner may approve the RAMP only if satisfied that the RAMP is consistent with the harm minimisation and community safety principles.
- (l) to make provision for a licensee or permit-holder to seek amendment to their RAMP for approval by the commissioner.
- (m) to require licensees, commercial permit-holders, their staff including crowd controllers to undertake responsible service of alcohol training and obtain an RSA certificate.
- (n) to require licensees and commercial permit-holders to keep a copy of RSA certificates for all staff employed to supply liquor, including crowd controllers who work, on licensed premises.
- (o) to introduce a new strict liability criminal offence for licensees, permit-holders, their employees and members of the public who supply liquor to an intoxicated person on licensed premises.
- (p) to introduce a new strict liability public order offence for a patron or anyone to abuse, threaten, intimidate staff exercising the new responsible service of alcohol principles by refusing to sell an intoxicated patron liquor on licensed premises.
- (q) to require licensees and permit-holders to keep and maintain a register of incidents at their licensed premises.
- (r) to introduce a number of new criminal offences including breaching an occupancy loading, not complying with an approved RAMP, not displaying or making an approved RAMP available for public inspection, failure to give up suspended or cancelled licence, failing to keep an incident register, promoting or marketing liquor which encourages excessive consumption, conducting prohibited promotional or marketing activities, supplying liquor without an RSA certificate, failing to keep RSA certificates on licensed premises, and a number of offences dealing with the supply of liquor to children and young people at licensed premises or permitted premises and in public places.
- (s) to give the commissioner a new power to issue a written binding direction to a licensee or permit-holder prohibiting certain activities or requiring certain activities to occur in the interests of harm minimisation and community safety.
- (t) to give ACT Policing a power to close down a licensed premise for up to 24 hours in an emergency.
- (u) to provide new enforcement powers for authorised investigators and police officers to exercise.
- (v) to require the commissioner to approve RSA trainers.
- (w) to allow the commissioner to prescribe public areas as temporary alcohol-free zones.
- (x) to allow regulations to be prescribed under the Act to introduce a standard trading period from 7am to midnight, which will apply to all licence classes, except an off licence, which would cease trading earlier than midnight. Regulations will also

prohibit specific market promotional activities, set standard conditions for licences and permits and approve authorised RSA trainers.

### ***Strict Liability Offences***

A number of the offences in the Bill are strict liability offences. A strict liability offence under section 23 of the Criminal Code means that there are no fault elements for any of the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

Strict liability offences do not have a mental element, or mens rea. However, the actus reus, the physical actions, do have a mental element of their own, for example, voluntariness. For this reason, the general common law defences of insanity and automatism still apply as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

In respect of the use of strict liability offences in the Bill, a number of rights contained in the *Human Rights Act 2004* are engaged. These are the right to a fair trial which states that “[e]veryone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing”, and the “right to be presumed innocent until proved guilty according to law”.

Strict liability offences intersect with the right to fair trial under section 21 of the Human Rights Act. Although the right is engaged, strict liability is not prohibited by the Human Rights Act, however, it is important that the strict liability offence is reasonable within the specific context of the offence, and demonstrably justifiable in a free and democratic society.

Strict liability also engages the presumption of innocence, because these types of offences can be interpreted as using reverse onus of proof. The Government acknowledges that while strict liability offences engage the presumption of innocence, strict liability offences are not inherently incompatible with human rights.

The increasing prevalence of regulatory legislation, some of which contain strict liability offences, is also determined by community expectations of what activities should be regulated. As the values of a community change over time, the degree of moral blameworthiness attaching to certain conduct may change as well, as the moral blameworthiness of an action increases, the community’s desire for increased regulation of that activity will also increase.

The use of strict liability offences for liquor licensing can be justified on the basis that the offence applies to people who choose to engage in regulated activity, or are on notice that they are operating in a regulated context. People who choose to apply for a liquor licence or permit choose to do so and are on notice that they must abide by the laws that govern the licence. Licensees and permit-holders place themselves in a relationship or responsibility with their customers and the wider public. It is on this

basis that the Government believes that the use of strict liability offences contained in this Bill is relevant to the policy objectives, and reasonable

## **Liquor Bill 2010**

### **Outline of Provisions**

#### **PART 1                      Preliminary**

##### **DIVISION 1.1            Introduction**

###### **Clause 1 - Name of Act**

This clause names the Act as the *Liquor Act 2010*.

###### **Clause 2 - Commencement**

This clause notes that the Act will commence on the date decided by the Minister and notified in the Legislation Register.

###### **Clause 3 - Dictionary**

This clause explains that the dictionary at the end of the Act is part of the substantive provisions of the Act.

###### **Clause 4 - Notes**

This clause makes it clear that the notes in the Act are explanatory only and do not form part of the substantive provisions of the Act. By contrast, where the Act includes an example, the example is part of the substantive provisions of the Act having regard to section 132 of the *Legislation Act 2001*.

###### **Clause 5 - Offences Against Act – application of Criminal Code etc**

This clause applies the Criminal Code 2002, Chapter 2 to all offences against this Act.

###### **Clause 6 - Application of Act – sale of liquor - generally**

This clause creates exceptions to the Act. These exceptions are included because they are generally regulated by Commonwealth law, or because they occur in another similarly regulated context.

###### **Clause 7 - Application of Act – sale of liquor – universities**

This clause disapplies the provisions of this Act relating to the sale of liquor in an exempt university building and makes it an offence for a person to sell or purchase liquor in an exempt university building in contravention of a statute of the university.

##### **DIVISION 1.2            Objects, principles and considerations**

###### **Clause 8 - Object of Act**

This clause acknowledges the need to minimise the harm associated with the misuse and abuse of liquor and take into account the safety of the community when making regulatory decisions about the sale, provision, promotion and consumption of liquor.

### **Clause 9 - Harm minimisation and community safety principles**

This clause sets out the new harm minimisation and community safety principles which the commissioner for Fair Trading (the commissioner) must take into account before making a decision about issuing a liquor licence or permit

### **DIVISION 1.3      Important concepts**

#### **Clause 10 - What is *liquor*?**

This clause defines liquor for the purposes of the Act, and provides that substances may be declared not to be liquor despite having an alcohol content that meets the definition.

#### **Clause 11 - Offence – sell liquor without licence or permit**

This clause makes it a criminal offence for a person to sell liquor to another person without a liquor licence or permit with the exception of a private function at which 30 people or less are in attendance.

## **PART 2                  LIQUOR LICENCES**

### **DIVISION 2.1      Classes of Licences**

#### **Clause 12 - What is a *licence*?**

This clause sets out the five classes of liquor licences regulated by the Act.

#### **Clause 13 - What is a *general licence*?**

This clause describes the authority conferred on the holder of a general licence. An example of a general licence would be a hotel which sells liquor for consumption on and off the premises.

#### **Clause 14 - What is an *on licence*?**

This clause describes the authority conferred on the holder of an on licence. Examples of an on licence include a restaurant, tavern or a nightclub, which sell liquor for consumption on the premises.

#### **Clause 15 - What is an *off licence*?**

This clause describes the authority conferred on the holder of an off licence. Examples of an off licence include wine cellars, bottle shops and supermarkets, which sell liquor for consumption off the premises.

#### **Clause 16 - What is a *club licence*?**

This clause describes the authority conferred on the holder of a club licence. This licence is used for registered clubs to sell liquor to members only or invited guests for consumption on and off the premises.

#### **Clause 17 - What is a *special licence*?**

This clause creates a licence category that allows for the commissioner to respond to special market circumstances. It is intended to be used where an application does not readily fit any of the other licence categories, and where special licence conditions are necessary.

## **DIVISION 2.2          Licences - application**

### **Clause 18 - Licence – application**

This clause outlines the information which an applicant for a liquor licence must provide in writing to the commissioner with their application. Amongst other things, an applicant will be required to prepare a risk assessment management plan, which sets out how the applicant intends to manage risks associated with the proposed licensed venue.

### **Clause 19 - Licence – public notification of licence application**

This clause requires an applicant for a liquor licence to place a sign at the proposed venue and publish a notice in the Canberra Times notifying the public and giving them an opportunity to comment on the proposed licensed venue at that location. Breach of this provision is a strict liability offence.

### **Clause 20 - Licence – representations about proposed licence**

This clause gives the community an opportunity to make representations about the opening of a new liquor licensed premises. Representations by the community must relate to suitability information about the licensee or the premises.

### **Clause 21 - What is the *public consultation period*?**

This clause defines the meaning of ‘public consultation period’ as it relates to how it will be prescribed and extended, where appropriate, by the commissioner.

## **DIVISION 2.3          Licences - decision**

### **Clause 22 - Licence – decision on application**

This clause sets out the decision-making criteria which the commissioner must consider before issuing a liquor licence and the timeframe within which the licence must be determined.

### **Clause 23 - Licence –occupancy loading**

This clause requires the commissioner to determine an occupancy loading for each public area within a licensed premise. The commissioner must also determine, where appropriate, an occupancy loading for any approved area outside a licensed premise, under the *Roads and Public Places Act 1937*.

### **Clause 24 - Licence - adults only areas**

This clause requires the commissioner to decide the appropriateness of minors being in all or parts of a licensed premise and those times when minors can be in certain areas of the licensed premises, including all classes of licences except in relation to an off licence.

### **Clause 25 - Licence - form**

This clause sets out the information which the commissioner must include on a liquor licence.

**Clause 26 - Licence - conditions**

This clause makes it a condition of the licence that the licensee must comply with the Act and ensure that the licensed premise complies with the Act. The licensee is also required to comply with any condition imposed by regulation or by the commissioner. Breach of any of these conditions would expose the licensee to occupational disciplinary action (including amongst other things suspension or cancellation of the licence) by the ACT Civil and Administrative Tribunal (ACAT).

**Clause 27 - Licence - term**

This clause explains when a licence takes effect and expires and gives the commissioner discretion to extend the expiry date for particular classes of licence.

**DIVISION 2.4 Licences – amendment, transfer, renewal etc****Clause 28 - Licence - amendment initiated by the commissioner**

This clause gives the commissioner power to amend a licence by written notice, but only if satisfied that certain criteria are met and the licensee has been given appropriate notice to comment on the amendment. Any decision by the commissioner to amend a licence must take into account the harm minimisation and community safety principles in section 9 of the Act.

**Clause 29 - Licence - amendment on application by licensee**

This clause gives a licensee an opportunity to apply to the commissioner to amend the licence. A licensee must apply and obtain approval from the commissioner before appointing a close associate, an influential person, a day-to-day manager or if the licensee intends to change the floor plan of the licensed premises. A decision by the commissioner must take into account the harm minimisation and community safety principles in section 9 of the Act.

**Clause 30 - Licence – application to transfer licence**

This clause outlines the criteria a licensee must meet and address when making an application to the commissioner to transfer a licence to someone else.

**Clause 31 - Licence – decision on application to transfer licence**

This clause sets out the criteria the commissioner must consider before agreeing to transfer a licence under section 30 of the Act.

**Clause 32 - Licence – application for renewal**

This clause sets out the criteria a licensee must meet and address when making an application to the commissioner to renew their licence.

**Clause 33 - Licence – decision on application for renewal**

This Clause sets out the criteria the commissioner must consider before agreeing to renew a licence under section 32 of the Act. In deciding to renew a licence, the commissioner must take into account the harm minimisation and community safety principles in section 9 of the Act. The commissioner may request an applicant for renewal of a licence to provide a police certificate in accordance with section 62 of the Act.



**Clause 34 - Licence – replacing when lost, stolen or destroyed**

This clause makes provision for a licensee to obtain a replacement licence if their licence is lost, stolen or destroyed.

**Clause 35 - Licence - surrender**

This clause makes provision for a licensee to surrender their licence by written notice to the commissioner due to unforeseen personal or business related circumstances.

**Clause 36 - Offence – failure to give up suspended or cancelled licence**

This clause makes it an offence for a licensee to fail to return their licence to the commissioner within 7 days of ceasing to trade or where it has been suspended or cancelled.

**PART 3 LIQUOR PERMITS****DIVISION 3.1 Classes of permits****Clause 37 - What is a *permit*?**

This clause sets out the two classes of liquor permits regulated by the Act.

**Clause 38 - What is a *commercial liquor permit*?**

This clause describes the authority conferred on the holder of a commercial liquor permit. A commercial liquor permit authorises the holder to sell liquor for profit for an approved value at times stated on the permit at the permitted premises.

**Clause 39 - What is a *non-commercial liquor permit*?**

This clause describes the authority conferred on the holder of a non-commercial or not-for-profit liquor permit. A non-commercial liquor permit authorises the holder to sell liquor in open containers for consumption on the premises or in sealed containers for consumption off the premises at an approved value at stated times at the event stated in the permit.

**DIVISION 3.2 Permits - application****Clause 40 - Permit - application**

This clause outlines the information which an applicant for a permit must include in an application for a liquor permit. Where any aspect of an event is held within enclosed premises, additional information is required to manage potential risks associated with having large numbers of people consuming alcohol in a confined space.

**DIVISION 3.3 Permits - decision****Clause 41 - Permit - decision on application**

This clause outlines the criteria that must be considered by the commissioner in deciding whether to grant a permit application. These considerations closely mirror those that must be considered for a licence application.

**Clause 42 - Permit - occupancy loading**

This clause gives the commissioner a discretionary power to determine an occupancy loading for a permitted premise, where appropriate. For example, in circumstances where the commissioner considers that a building where a permitted event is to be held is likely to become unsafe if too many patrons attend. Under this clause, the commissioner would have power to determine an occupancy loading limit for the permitted event.

**Clause 43 - Permit - adults only areas**

This clause gives the commissioner a power to determine an adults only area within an area of a permitted premises which is wholly or partly enclosed where children are not allowed to enter.

**Clause 44 - Permit - form**

This clause outlines the minimum information which the commissioner must include on a permit.

**Clause 45 - Permit - conditions**

This clause makes it a condition of the permit that the permit-holder must comply with the Act and ensure that the permitted premise complies with the Act. The permit-holder is also required to comply with any condition imposed by regulation or by the commissioner. Breach of these conditions would expose the permit-holder to occupational disciplinary action (including amongst other things suspension or cancellation of the permit) by the ACT Civil and Administrative Tribunal (ACAT).

**Clause 46 - Permit - term**

This clause explains when a permit takes effect and expires and gives the commissioner discretion to extend the expiry date for the permit.

**DIVISION 3.4      Permits – amendment, transfer, renewal, etc****Clause 47 - Permit - amendment initiated by commissioner**

This clause gives the commissioner power to amend a permit. This power is necessary to facilitate changes in circumstance between the time a permit is granted and the time of the event to which the permit will apply.

**Clause 48 - Permit - amendment on application by permit-holder**

This clause gives permit-holders the power to apply for an amendment. This power facilitates changes in the circumstances between the time the permit-holder receives the permit and the time the event is to be held.

**Clause 49 - Permit - not transferable**

This clause prohibits the transfer of commercial and non commercial permits.

**Clause 50 - Permit - commercial permit not renewable**

This clause prohibits the renewal of a commercial permit which can be issued for a period of up to one year.

**Clause 51 - Permit - application for renewal of non-commercial permit**

This clause states that a non-commercial liquor permit may be renewed on application for a period of up to one year. The renewal of these permits will allow for yearly events for not-for-profit and social organisations who wish to sell alcohol on a limited basis.

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

This clause outlines the criteria which the commissioner must consider before renewing a non-commercial permit.

**Clause 53 - Permit - replacing when lost, stolen or destroyed**

This clause facilitates the replacement of a permit by the commissioner if it is lost, stolen, or destroyed.

**Clause 54 - Permit - surrender**

This clause provides a method for a permit-holder to surrender a permit to the commissioner. This would occur in cases where the permit-holder is going to relinquish the permit for any reason. Compliance with clause 54 constitutes surrendering the permit to the commissioner.

**Clause 55 - Non-commercial permit - cancellation**

This clause outlines the grounds and method available to the commissioner for cancelling a non-commercial permit.

## **PART 4                      SUITABILITY OF ENTITIES AND PREMISES FOR LICENCES AND PERMITS**

### **DIVISION 4.1              Suitability of entities for licences and permits**

**Clause 56 - Who is a *close associate*?**

This clause defines the meaning of who a close associate is of an applicant for a licence or permit for the purposes of providing suitability information to the commissioner for consideration. Applicants will be required to give information about close associates as well as themselves to assist with the processing of an application.

**Clause 57 - Who is an *influential person* for a corporation?**

This clause defines the meaning of who an influential person is for the purposes of dealing with an application by a corporation under the Act. The definition is central to regulating corporations applying for or holding a liquor licence or permit, as information about each influential person is also required to be provided for the commissioner's consideration in determining the suitability of an application under the Act.

**Clause 58 - Who is a *suitable entity*?**

This clause defines a suitable entity as any entity the commissioner decides is suitable to hold a licence or permit under the Act.

**Clause 59 - Commissioner must consider suitability information, etc**

This clause outlines the criteria which the commissioner must consider in determining whether an entity is suitable to hold a licence or permit under the Act.

**Clause 60 - What is *suitability information* about an entity?**

This clause defines what suitability information is for the purposes of clause 59 above.

**Clause 61 - What is an *eligible club*?**

This clause defines the meaning of an eligible club for the purposes of the Act.

**Clause 62 - Commissioner may require police certificate etc for an entity**

This clause empowers the commissioner to request a police certificate as a matter of discretion. Police certificates are generally required as part of the application process. However, this power gives the commissioner a discretion to require a police certificate at any time, as a means of ensuring (where there may be doubt) that a licensee or permit-holder continues to be a suitable person under the Act.

**Clause 63 - Commissioner need not decide suitability if information not provided**

This clause allows the commissioner to refuse to decide an application for a licence or permit if information necessary or required by the commissioner is not provided.

**Clause 64 - Offence - ongoing duty to update entity's suitability information**

This clause makes it an offence for a licensee or permit-holder not to update the commissioner about changes to suitability information either before or after the commissioner decides the application. This will ensure that the commissioner remains updated on the current status and conduct of all licensees and permit-holders.

**DIVISION 4.2      Suitability of premises for licences and permits****Clause 65 - Who is the *responsible person* for premises?**

This clause defines who is the responsible person for a licensed premises and a permitted premises.

**Clause 66 - What are *suitable premises*?**

This clause defines what suitable premises are for a licence or permit.

**Clause 67 - Commissioner must consider suitability information, etc**

This clause outlines the criteria which the commissioner must consider in deciding whether premises are suitable premises for a licence or permit under the Act.

**Clause 68 - Commissioner must decide premises not suitable in some circumstances**

This clause acknowledges that there will be times when the commissioner must not issue a licence or permit for stated premises, but makes provision to do so in certain circumstances.

**Clause 69 - What is *suitability information* for premises?**

This clause defines what suitability information is for the purposes of clause 69 above.

**Clause 70 - Commissioner may require certificate, plan, etc for premises**

This clause gives the commissioner power to request information by written notice to the applicant to assist the commissioner decide the suitability of premises for a licence or permit under the Act.

**Clause 71 - Commissioner may require inspection of premises**

This clause acknowledges that the commissioner may need to inspect the premises before making a decision about its suitability for a licence or permit.

**Clause 72 - Commissioner need not decide suitability if requirements not complied with**

This clause allows the commissioner to refuse to decide an application for a licence or permit if information necessary or required by the commissioner is not provided.

**Clause 73 - Offence - ongoing duty to update premises' suitability information**

This clause makes it an offence for a licensee or permit-holder not to update the commissioner within seven days about changes to suitability information about the premises either before or after the commissioner decides the application. This will ensure that the commissioner remains updated on the current status of the premises.

## **PART 5                      OCCUPANCY LOADING FOR LICENSED AND PERMITTED PREMISES**

**Clause 74 - What is *occupancy loading*?**

This clause defines an “occupancy loading” for the purposes of the Act as the maximum number of people allowed in any public area to which the determination applies. An occupancy loading is necessary to ensure the safety of people within a licensed premises or within a part or wholly enclosed area of permitted premises.

**Clause 75 - What is a *public area*?**

This clause defines a “public area” as an area designated as a public area in the final floor plans of a premises.

**Clause 76 - Occupancy loading decision**

This clause outlines criteria which must be considered by the commissioner in determining an occupancy loading for a public area. While the recommendation of the chief fire officer must not be exceeded, the commissioner may determine an occupancy loading which allows fewer people to be within a public area.

**Clause 77 - Fire engineering study and inspection**

This clause sets out certain requirements which the commissioner must comply with before deciding the occupancy loading for a licence or permit. It also sets out certain requirements which the chief officer (fire brigade) must consider before making an occupancy loading recommendation to the commissioner.

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

This clause acknowledges that the commissioner must refuse to issue a licence or permit if an applicant for a licence or permit has failed to comply with an occupancy loading notice given by the chief officer (fire brigade) under subsection 77(3).

**PART 6                                      RISK-ASSESSMENT MANAGEMENT PLANS  
FOR LICENSED AND PERMITTED PREMISES**

**Clause 79 - What is an *approved risk-assessment management plan*?**

This clause defines the meaning of an approved risk-assessment management plan for the purposes of the Act.

**Clause 80 - What is a *risk-assessment management plan*?**

This clause defines a risk assessment management plan for the purposes of the Act. The plan is designed to provide the commissioner with information about how the applicant for the licence or permit intends to manage risks associated with the licensed or permitted premises. Applicants will be required to provide the commissioner with details about the procedures, practices and arrangements for conducting the business to ensure that liquor sold and supplied is done so in a responsible manner. The information which an applicant will be required to provide will be prescribed by regulation and will include, amongst other things, the type of premises for which a licence or permit is sought, that is, whether it will be a restaurant, bar, tavern or hotel, the extent of security at the premises and strategies in place to deal with intoxicated people and minors to ensure the responsible sale, supply and consumption of alcohol on the premises.

**Clause 81 - Risk-assessment management plan - approval**

This clause acknowledges that the commissioner may approve a risk-assessment management plan, but only if it is consistent with the harm minimisation and community safety principles in section 9 of the Act. The plan must address all matters prescribed by regulation.

**Clause 82 - Risk-assessment management plan - amendment on application**

This clause makes provision for a licensee or permit-holder to amend their risk-assessment management plan on application to the commissioner, subject to the commissioner's approval on harm minimisation and community safety grounds. Compliance with the plan is a condition on a licence and a permit.

**Clause 83 - Risk-assessment management plan - decision on amendment**

This clause requires the commissioner to consider the harm minimisation and community safety principles in deciding whether to amend a risk-assessment management plan. This will ensure that all amendments maintain the integrity of the harm minimisation and community safety principles which shaped the commissioner's initial approval.

**PART 7                                      AUDLTS-ONLY AREAS FOR LICENSED AND  
PERMITTED PREMISES**

## **DIVISION 7.1        Adults-only area decisions**

### **Clause 84 - What is an *adults-only* area?**

This clause defines an adults-only area as any area that the commissioner decides should be available only to adults aged 18 years or over.

### **Clause 85 - Adults-only areas decision**

This clause sets out criteria which the commissioner must consider when deciding the adults-only area for licensed premises under section 24 or permitted premises under section 43.

## **DIVISION 7.2        Approval for young people's events in adults-only areas at licensed premises**

### **Clause 86 - Young people's events in adults-only areas – application**

This clause makes provision for a licensee to apply to the commissioner to hold an event in an adults-only area at which young people may attend.

### **Clause 87 - Young people's events in adults-only areas - decision**

This clause provides that the commissioner may only approve an application to conduct a young people's event in an adults-only area if satisfied that the applicant has met the criteria prescribed by regulation. The regulations will provide that liquor shall not be sold, supplied or consumed at the function; all liquor within the premises must be removed or covered if unable to be removed so that persons attending the function are not exposed to liquor; entry to the function would be limited to those people or groups of people for whom the function is organised; and food and non-alcoholic beverages would be available at the function.

These events are only to be allowed in accordance with strict measures to ensure that young people are not exposed to or offered alcohol, and that their safety is maintained at all times while on the premises. Police checks for staff working at these events will be required along with full details about the event itself. These criteria are included to ensure that these events will only be approved in cases where all necessary precautions are taken to ensure safety of minors.

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

This clause outlines the information which must be included in an application for a young people's event under clause 86.

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

This clause authorises the commissioner to impose conditions of any kind when approving an application for a young people's event under section 86. Conditions may also be prescribed by regulation for these events.

### **Clause 90 - Young people's events in adults-only areas - term**

This clause states the time periods for when an approval for an event in an adults-only area under section 86 is valid.

## **PART 8                      CONDUCT OF LICENSEES AND PERMIT-HOLDERS AT LICENSED AND PERMITTED PREMISES**

### **DIVISION 8.1              Responsible service of alcohol**

#### **Clause 91 - Offence - licensee or permit-holder - supply liquor without RSA certificate**

This clause makes it a strict liability offence for a licensee or permit-holder to supply liquor on licensed or permitted premises without an RSA certificate proving the licensee or a commercial permit-holder's completion of responsible service of alcohol training. It will also be an offence for a licensee or permit-holder if an employee supplies liquor to another person on licensed premises without holding an RSA certificate.

#### **Clause 92 - Offence - employee supply liquor without RSA certificate**

This clause makes it a strict liability offence for an employee of a licensee or commercial permit-holder to serve liquor on licensed or permitted premises without having a certificate to prove the employee's completion of responsible service of alcohol training. The penalty is lower for an employee to reflect the employee's lower level of responsibility in relation to the licensed premises.

#### **Clause 93 - Offence - crowd controller without RSA certificate**

This clause makes it a strict liability offence for a crowd controller to work in a licensed or permitted premises and not hold an RSA certificate. It is also an offence for a licensee or commercial permit-holder to employ a crowd controller on licensed or permitted premises without them holding a certificate of responsible service of alcohol (RSA) training. This requirement is essential to ensure that crowd controllers are properly trained to recognise and deal with intoxicated patrons and minors on licensed and permitted premises. The required training of crowd controllers in the responsible service of alcohol should match that required of both licensees and their staff.

#### **Clause 94 - Offence - fail to keep RSA certificates**

This clause makes it a strict liability offence for a licensee or commercial permit-holder to not keep copies of RSA certificates for themselves and each employee employed for the supply of liquor. This offence is designed to allow for authorised investigators and to determine whether the mandatory training requirements for the responsible service of alcohol are being met by simply reviewing a record of certificates for each licensee, permit-holder and employee on the premises.

### **DIVISION 8.2              Intoxicated people**

#### **Clause 95 - What is *intoxicated*?**

This clause defines the meaning of when a person is intoxicated for the purpose of prosecuting the offence of supplying alcohol to an intoxicated person.



**Clause 96 - Intoxication guidelines**

This clause gives the commissioner discretion to publish guidelines on the definition of intoxicated.

**Clause 97 - Offence – licensee or permit-holder – supply liquor to intoxicated person**

This clause makes it a strict liability offence for a licensee or permit-holder to supply or sell liquor to an intoxicated person at licensed or permitted premises. The purpose of this offence is to ensure that public safety and social amenity are not put at risk by licensees or permit-holders selling liquor to intoxicated patrons on licensed premises, which can result in disorderly behaviour and health and safety consequences for individuals. It will also be a strict liability offence for a licensee or permit-holder to allow an employee to supply or sell liquor to an intoxicated patron at licensed premises.

**Clause 98 - Offence – employee – supply liquor to intoxicated person**

This clause makes it a strict liability offence for an employee of a licensee or permit-holder to supply or sell liquor to an intoxicated person at licensed premises. This offence carries a lesser penalty than the offence for a licensee, as the employee carries less responsibility for the management of licensed premises. The offence is included, however, to ensure that people who are employed to sell and supply liquor do so in a responsible way and not supply liquor to patrons who are already intoxicated.

**Clause 99 - Offence – other person – supply liquor to intoxicated person**

This clause makes it a strict liability offence for a patron to supply liquor to an intoxicated person on licensed or permitted premises.

**Clause 100 - Offence – abuse, threaten, intimidate staff**

This clause makes it a strict liability offence for a patron to abuse, threaten or intimidate an employee on licensed or permitted premises who has refused to supply them or another person with liquor because they are intoxicated.

**Clause 101 - Offence – not display sign about abuse offence**

This clause makes it an offence for a licensee not to display a sign about the offence in section 120 as prescribed by regulation. The offence is designed to ensure that the public is made aware of the new offence for abusing, threatening or intimidating staff who are exercising the responsible service of alcohol principles. As the offence of abusing staff is a strict liability offence, it is important that the public be made aware at every licensed premises.

**DIVISION 8.3 Children and young people****Clause 102 - Offence - licensee or permit-holder - supply liquor to child or young person**

This clause makes it a strict liability offence for a licensee or permit-holder (including commercial and non-commercial permit-holder) to supply liquor to a child or young person on licensed premises. This offence is designed to protect the well-being of children and young people. There is an exception to this offence where it can be shown that the young person was 16 years or older and had shown the defendant

identification. This exception is included to ensure that licensees and permit-holders who comply with the law are not punished.

**Clause 103 - Offence - employee - supply liquor to child or young person**

This clause makes it a strict liability offence for an employee of a licensee or Permit-holder to supply liquor to a child or young person on licensed premises. Employees at licensed premises equally share the responsibility with licensees and permit-holders to prevent children and young people from consuming liquor. It will also be an offence for a licensee or permit-holder if their employees sell liquor to a child or young person on licensed premises. Licensees and permit-holders are accountable and responsible for the management of their licensed premises and must ensure that children and young people do not consume liquor on the premises. There is an exception to this offence where it can be shown that the young person was at least 16 years of age or older and had shown the defendant identification. This exception is included to ensure that employees who comply with the law are not punished.

**Clause 104 - Offence - other person – supply liquor to child or young person**

This clause makes it a strict liability offence for a patron to supply liquor to a minor on licensed or permitted premises. There is an exception to this offence where it can be shown that the young person was 16 years or older and had shown the defendant identification. This exception is included to ensure that people who comply with the law are not punished.

**Clause 105 - Licensee or permit-holder may refuse to supply liquor without identification document**

This clause empowers a licensee, a permit-holder and their employees to refuse to supply liquor to a person who refuses to show their evidence of age document. This is not intended to limit the common law power to refuse service in any way.

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

This clause facilitates the collection of evidence for the prosecution of offences relating to minors using false identification to enter and remain in licensed premises.

**Clause 107 - Offence – licensee or permit-holder – child or young person consume liquor**

This clause makes it a strict liability offence for a licensee to allow a child or young person to consume liquor on licensed premises. There is an exception for children and young people engaged in training programs, or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment. This exception is included to ensure that people who comply with the law are not punished.

**Clause 108 - Offence – child or young person consume liquor**

This clause makes it an offence for a child or young person to consumer liquor on licensed or permitted premises.

**Clause 109 - Offence –licensee or permit-holder – child or young person possess liquor**

This clause makes it a strict liability offence for a licensee or permit-holder to allow a child or a young people to possess liquor on licensed premises. There are exceptions for children and young people engaged in training programs, or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment. There is also an exception where the young person was at least 16 years or older and had shown the defendant identification. These exceptions are included to ensure that licensees and permit-holders who comply with the law are not punished.

**Clause 110 - Offence, child or young person possess liquor**

This clause makes it an offence for a child or young person to possess liquor on licensed premises. There is an exception to this offence where it can be shown that the young person was employed in another capacity other than supplying liquor. This exception is included to ensure that young people who comply with the law are not punished.

**Clause 111 - Offence – licensee - child or young person supply liquor**

This clause makes it a strict liability offence for a licensee or a permit-holder to employ a child or young person to supply liquor in an adults-only area of the licensed or permitted premises.

**Clause 112 - Offence – child or young person buy liquor**

This clause makes it an offence for a child or young person to purchase liquor. A police officer may caution a child or young person in relation to this offence.

**Clause 113 - Offence – child or young person use false identification to buy liquor**

This clause makes it an offence for a child or young person to use a false identification document to buy liquor. A police officer may caution a child or young person in relation to this offence.

**Clause 114 - Offence - send child or young person to obtain liquor**

This clause makes it an offence for anyone to send a child or young person to buy or collect liquor from licensed or permitted premises. There is an exception to this offence where it can be shown that the young person was employed in another capacity other than the supply of liquor or was undertaking a training program prescribed by regulation. This exception is included to ensure that people who comply with the law are not punished.

**Clause 115 - Offence – licensee – child or young person in adults-only area**

This clause makes it a strict liability offence for a licensee or permit-holder to allow a child or young person to be in an adults-only area of the licensed premises. There are four exceptions to this offence. The first is where it can be shown that the young person was in the care of a responsible adult as defined in section 115(3). The second is where the young person was employed at the licensed or permitted premises or undertaking a training program prescribed by regulation. The third is where the young person was attending an approved young people's event. The fourth is where

children and young people may be engaged in training programs, or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment. These exceptions are included to ensure that licensees and permit-holders who comply with the law are not punished.

**Clause 116 - Offence – child or young person in adults-only area**

This clause makes it a strict liability offence for a child or young person to be in an adults-only area on licensed premises. There are three exceptions to this offence. The first is where it can be shown that the young person was in the care of a responsible adult as defined in section 116(2). The second is where the young person was employed at the licensed or permitted premises in a capacity other than the supply of liquor or undertaking a training program prescribed by regulation. The third is where the young person was attending an approved young people's event. These exceptions are included to ensure that young people who comply with the law are not punished.

**Clause 117 - Offence – child or young person use false identification to enter adults-only area**

This clause makes it an offence for a child or young person to use false identification as evidence of age to enter or remain in an adults-only area at licensed premises. A police officer may caution a child or young person in relation to this offence.

**Clause 118 - Offence – not mark adults-only areas**

This clause makes it a strict liability offence for a licensee or permit-holder not to clearly mark adults-only areas within licensed and permitted premises in accordance with requirements prescribed by regulation.

**DIVISION 8.4      Occupancy loading**

**Clause 119 - Offence – licensee or permit-holder exceed occupancy loading**

This clause makes it a strict liability offence for a licensee or permit-holder to exceed the occupancy loading determined by the commissioner for the licensed or permitted premises. This is an important element of the new harm minimisation and community safety strategy, as overcrowded venues have the potential to become extremely dangerous. In case of a fire or incident that causes a rush, over-crowding can result in death and injury to patrons. This offence is designed to reflect the importance of maintaining safe numbers of patrons in licensed and permitted premises at all times.

**Clause 120 - Offence – not display occupancy loading sign**

This clause makes it a strict liability offence for a licensee or permit-holder not to display an occupancy loading sign at the licensed or permitted premises.

**DIVISION 8.5      Compliance with risk assessment management plan**

**Clause 121 - Offence – not comply with risk assessment management plan**

This clause makes it an offence for a licensee or commercial permit-holder not to comply with a risk assessment management plan (RAMP) approved by the commissioner. It is also an offence for a licensee or commercial permit-holder if their employees fail to comply with a risk assessment plan approved by the commissioner. There is an exception to this offence where it can be shown that the defendant was

complying with a condition on the licence or permit which was inconsistent with the approved RAMP. This exception is included to ensure that licensees and permit-holders who comply with the law are not punished.

**Clause 122 - Offence – not make risk assessment management plan available**

This clause makes it a strict liability offence for a licensee or commercial permit-holder to not make the risk assessment management plan for the licensed or permitted premises available for public inspection.

**Clause 123 - Offence – not display sign about risk assessment management plan**

This clause makes it an offence for the licensee or commercial permit-holder to fail to display a sign about the risk assessment management plan in the form as prescribed by regulation.

**DIVISION 8.6 Incidents**

**Clause 124 - What is an *incident*?**

This clause defines an “incident” for the purposes of the Act to include any violent or anti-social behaviour. This is intended to capture a wide range of disturbances on licensed premises relating to public safety and order. This will ensure that records are kept of incidents that give an accurate picture of the overall environment at Canberra’s licensed establishments.

**Clause 125 - Incident register**

This clause requires a licensee or permit-holder to keep a register on licensed premises of incidents which occur as defined in section 124 of the Act and specific details for each incident. Inspection of the register by the commissioner will assist the commissioner’s consideration of the need for additional regulation of the licensed or permitted premises.

**Clause 126 - Offence – fail to keep incident register**

This clause makes it an offence for a licensee or permit-holder not to keep an incident register for the licensed or permitted premises in accordance with section 125 of the Act.

**Clause 127 - Offence - sell petrol at licensed or permitted premises**

This clause makes it an offence for a licensee or permit-holder to sell petrol to another person at the licensed or permitted premises.

**DIVISION 8.7 Breath analysis instruments**

**Clause 128 - What is a *breath analysing instrument*?**

This clause defines what a breath analysing instrument is.

**Clause 129 - Offence – not display breath analysis instrument sign**

This clause makes it an offence for a licensee and permit-holder to not display a sign at the licensed or permitted premises in the way prescribed by regulation. The regulation will caution the public that the result displayed by the machine may be inaccurate and not accepted as evidence in legal proceedings.

### **Clause 130 - Evidence of breath analysis tests**

This clause explains that evidence of the results of a breath analysis test installed at licensed or permitted premises is not admissible in a civil or criminal proceeding against a licensee or permit-holder. There is an exception in civil proceedings if it can be shown that the machine did not comply with the Australian standard or that the licensee or permit-holder was aware or should have been aware that the instrument was not working correctly or the approved sign was not displayed.

## **DIVISION 8.8      Other offences**

### **Clause 131 - Offence – promotional or marketing activity promoting excessive liquor consumption**

This clause makes it an offence for a licensee or permit-holder to promote an activity at the licensed or permitted premises which encourages the excessive or rapid consumption of liquor through promotional practices or other means. This might include, for example, a drinking game that encourages participants to drink dangerous amounts of alcohol in a short amount of time. Drink promotions can encourage excessive and irresponsible consumption of alcohol, which in turn contributes to anti-social behaviour, alcohol-related violence and adverse health effects. Specific practices will be prohibited by regulation to supplement this general prohibition. It is also an offence for a licensee to allow another person to engage in such a proscribed activity.

### **Clause 132 - Offence – conduct prohibited promotional or marketing activity**

This clause makes it an offence for a licensee to conduct a promotional or marketing activity which has been prohibited by regulation.

### **Clause 133 - Offence – consume liquor at off licence premises**

This clause makes it a strict liability offence for a person (other than the licensee) to consume liquor at an off licence premises. It is also an offence for the licensee to allow another person to consume liquor in an off licence premises. This section does not apply to the licensee or an agent of the licensee, their employees or family members or people tasting free samples of liquor in a sampling area of the licensed premises.

### **Clause 134 - Offence – sexually explicit entertainment at licensed and permitted premises**

This clause makes it an offence for a licensee or permit-holder to allow sexually explicit entertainment at a licensed or permitted premises, unless the premises are in an area which is prescribed for that purpose or in a room on the premises used for accommodation.

### **Clause 135 - Offence – not keep licence or permit on premises**

This clause makes it an offence for a licensee or permit-holder not to keep their licence or permit at the licensed or permitted premises for inspection purposes.

### **Clause 136 - Offence – not keep records in required way**

This clause makes it an offence for a licensee or permit-holder who sell liquor and not record electronically and keep details of the sale for six years and be easily retrieved.

**Clause 137 - Offence – club licensee advertise for public attendance**

This clause makes it an offence and prohibits a club licensee from issuing a public invitation for people to attend the licensed club.

**PART 9                      DIRECTIONS, CLOSURE ORDERS AND CAUTIONS**

**DIVISION 9.1            Commissioner’s directions**

**Clause 138 - Commissioner may direct licensee, permit-holder, employee etc**

This clause gives the commissioner a broad power to issue written directions to licensees, permit-holders and their employees. These directions will be used to ensure that licensed and permitted premises are conducted at all times in accordance with the harm minimisation and community safety principles in the Act. The commissioner’s power would extend to directions prohibiting certain activities as well directions requiring certain positive activities to occur in the interests of responsible service of liquor and community safety. One example would be requiring a licensee to comply with an occupancy loading approved by the commissioner.

**Clause 139 - Offence fail to comply with commissioner’s direction**

This clause makes it an offence for a licensee or permit-holder to fail to comply with a direction given by the commissioner. Failure by licensees or permit-holders to comply with a direction from the commission would make them subject to prosecution in the courts or occupational disciplinary action by the ACAT, which could include amongst other things, suspension or cancellation of the licence or permit.

**DIVISION 9.2            Closure orders**

**Clause 140 - Emergency closure of premises for 24 hours.**

This clause gives ACT Policing a power to order emergency closure of a licensed or permitted premises for up to 24 hours in cases where misconduct results in a risk to public health or safety of the community or risk of substantial damage to property or the environment or a serious breach of ACT law. This power is intended to let senior police officials take emergency action in response to the threat of imminent harm to the community. If a closure notice is issued, licensees will have to remove all people from the premises and cease trading for the amount of time specified in the notice. 24 hours is a maximum amount of time for closure; shorter periods may be ordered where appropriate, at the discretion of the police officer issuing the notice.

**Clause 141 - Emergency closure notice**

This clause requires ACT policing to issue an emergency closure notice which must include specific details as outlined in section 141(2) to a licensee or permit-holder whose premises are to be closed in accordance with section 140. This provision is designed to ensure that before the closure takes effect, licensees and permit-holders will have notice and the opportunity to comply with the emergency closure notice.

**Clause 142 - Offence – fail to comply with closure order**

This clause makes it a strict liability offence for a licensee or permit-holder to fail to comply with a closure order. The offence is strict liability because licensees and permit-holders will have already been given a specific, written notice before the obligation to comply is imposed.

**DIVISION 9.3 Police cautions for children and young people****Clause 143 - What is a *caution offence*?**

This clause lists the offences in the Act which permit a police officer to issue a caution to the child or young person. A cautionary offence allows police to issue a caution as opposed to an infringement notice or instituting a prosecution in response to a minor breaching certain defined offences. These offences relate to a child or young person buying, possessing, or consuming liquor and using false identification to do any of the aforementioned.

**Clause 144 - Police may caution children and young people**

This clause creates a formal process for a police officer to issue a caution to children and young people in lieu of prosecution for an offence, but only in circumstances where the child or young person has not been cautioned in the preceding 12 months for this type of offence. If a child or young person is given a caution under the Act, the child or young person must not be prosecuted.

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

This clause requires a police officer who has cautioned a child or young person to arrange for the child or young person to be escorted home or arrange for a parent or guardian to collect them from the police station or release them.

**Clause 146 - Chief police officer may revoke cautions**

This clause gives the chief police officer discretion to revoke a caution issued to a child or young person in certain circumstances and where a caution is revoked, the chief police officer must undertake specific administrative actions. A revocation of the caution has effect as if the minor had never been cautioned.

**PART 10 ENFORCEMENT****DIVISION 10.1 General****Clause 147 - Definitions – pt 10**

This clause defines relevant terms used in Part 10 of the Act. The definitions are modelled on the investigators' powers in the *Fair Trading (Consumer Affairs) Act 1973*. Part 10 is intended to provide equivalent powers, with modifications where appropriate, for liquor investigators.



## **DIVISION 10.2 Powers of authorised people**

### **Clause 148 - Power to enter premises**

This clause outlines the conditions upon which investigators or police officers are authorised to enter licensed or permitted premises.

### **Clause 149 - Production of identity card**

This clause protects the privacy rights of a licensee or permit-holder to require an investigator or police officer to show their identification cards when they enter a licensed premises.

### **Clause 150 - Consent to entry**

This clause protects the right to privacy of a licensee or permit-holder by outlining various conditions which a police officer or investigator must comply with when seeking consent to enter a licensed premises.

### **Clause 151 - General powers on entry to premises**

This clause outlines the activities a police officer or investigator can undertake after entering licensed premises. Occupiers or anyone else at the premises will be obliged to provide reasonable assistance in carrying out these activities.

### **Clause 152 - Power to seize things**

This clause empowers a police officer or investigator who has entered licensed premises with consent, or under a warrant, or believing an offence against this Act has occurred, or where public safety or damage to property poses a risk to seize anything at the premises. The clause makes it a strict liability offence for a person to interfere with a seized or restricted item, as the police officer or investigator would have declared the item to be seized and not to be disturbed without the authorised person's approval.

## **DIVISION 10.3 Search warrants**

### **Clause 153 - Warrants generally**

This clause outlines the procedures a police officer or investigator must follow to obtain a warrant for entry to premises in connection with enforcement actions under this Act. It also prescribes when a magistrate may issue a warrant and what the contents of the warrant must contain.

### **Clause 154 - Warrants - application made other than in person**

This clause facilitates the obtaining of a warrant by an authorised person by means other than in person. This process allows for warrants to be obtained in urgent or special circumstances.

### **Clause 155 - Search warrants - announcement before entry**

This clause respects the right to privacy of licensees or permit-holders by requiring a police officer or investigator to undertake specific actions before executing a warrant under the Act. The exception applies only if a person's safety is at risk or someone attempts to frustrate the execution of the warrant.

**Clause 156 - Details of search warrant to be given to occupier etc**

This clause requires a police officer or investigator to hand a copy of the warrant and a document setting the rights and obligations of the occupier to them while the warrant is being executed.

**Clause 157 - Occupier entitled to be present during search etc**

This clause acknowledges the right of an occupier to be present at the licensed premises and observe the execution of the search except if the occupier's presence impedes the search or frustrates its objectives.

**DIVISION 10.4      Return and forfeiture of things seized****Clause 158 - Receipt for things seized**

This clause Provides that for any thing seized, a receipt must given in accordance with the requirements of this clause, giving details about what will happen to the thing after it is seized.

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

This clause facilitates the movement of things which are suspected of being able to be seized under the warrant to another location only for processing. The purpose is to allow investigators to move things for the purposes of determining if the terms of a search warrant apply.

**Clause 160 - Access to things seized**

This clause facilitates anyone who would be entitled to inspect a seized thing with a continuing power to do so after the thing is seized under this Act.

**Clause 161 - Return of things seized**

This clause provides that items seized must be returned or compensation paid unless certain circumstances apply.

**Clause 162 - Forfeiture of seized things**

This clause provides that seized things may be forfeited to the Territory under certain conditions.

**Clause 163 - Power to destroy unsafe things**

This clause gives authorised persons the power to destroy things that present a safety hazard. The strict liability offence is included to ensure that a direction is complied with to avoid a risk to public safety if there is a failure to comply.

**Clause 164 - Application for order disallowing seizure**

This clause provides an avenue for people who are entitled to claim a thing seized to apply to a Magistrate to have the thing returned.

**Clause 165 - Order for return of seized thing**

This clause provides guidance to the Magistrates Court for issuing orders to return a seized thing.

## **DIVISION 10.5      Enforcement - miscellaneous**

### **Clause 166 - Damage etc to be minimised**

This clause imposes a duty on a police officer or investigator to minimise damage as a result of enforcement action under the Act. There is also a duty to provide notice to the owner of any thing damaged, setting out the details of the damage and providing that compensation may be sought.

### **Clause 167 - Compensation for exercise of enforcement powers**

This clause allows a person to claim compensation from the Territory and a court to order compensation be paid to the owner of a thing that has been damaged through an enforcement action, if it would be just under the circumstances to do so.

## **PART 11                      COMPLAINTS AND OCCUPATIONAL DISCIPLINE**

### **DIVISION 11.1      General**

#### **Clause 168 - Who is a *licensee*? - pt 11**

This clause defines a licensee to also include a former licensee and an influential person for a corporation who is a licensee or former licensee for the purposes of being subject to occupational discipline under the Act. This clarifies that the jurisdiction of the ACAT extends even to people who held a licence, but allowed the licence to lapse or who relinquished the licence before occupational disciplinary proceedings were complete.

#### **Clause 169 - Who is *permit-holder*? - pt 11**

This clause defines a permit-holder to also include a former permit-holder and an influential person for a corporation who is also a former permit-holder for the purposes of being subject to occupational discipline under the Act. It applies a similar standard to that in section 168 to permit-holders, so that after a permit has expired, the ACAT may still discipline the person who held the permit at the time grounds for occupational discipline occurred. Permit-holders are included so that the ACAT may disqualify a person from holding permits in the future in relation to misconduct.

### **DIVISION 11.2      Complaints**

#### **Clause 170 - Who may complain?**

This clause gives anyone a right to complain about misconduct by a licensee or commercial permit-holder to the commissioner for consideration and, where appropriate, investigation.

#### **Clause 171 - Form of complaint**

This clause sets out the information which must be included in a written complaint.

#### **Clause 172 - Withdrawal of complaints**

This clause allows a complainant to withdraw their complaint and outlines options which the commissioner may consider in relation to the complaint.

**Clause 173 - Further information about complaint etc**

This clause allows the commissioner to seek additional information about the complaint.

**Clause 174 - Investigation of complaint**

This clause compels the commissioner to investigate to a reasonable standard each complaint accepted for consideration.

**Clause 175 - No further action on complaint**

This clause requires the commissioner not to consider vexatious, insubstantive or complaints which have already been dealt with.

**Clause 176 - Action after investigating complaint**

This clause outlines the process the commissioner must follow after investigating a complaint.

**DIVISION 11.3      Occupational discipline****Clause 177 - Grounds for occupational discipline - licensees**

This clause outlines the available grounds for the commissioner to seek an order for occupational discipline of a licensee by the ACAT.

**Clause 178 - Grounds for occupational discipline - commercial permit-holders**

This clause outlines the available grounds for the commissioner to seek an order for occupational discipline of a commercial permit-holder by the ACAT.

**Clause 179 - Application to ACAT for occupational discipline**

This clause gives the commissioner explicit authority to apply to the ACAT if satisfied that any of the grounds listed under section 178 exist in relation to a licensee or commercial permit-holder.

**PART 12                      RESPONSIBLE SERVICE OF ALCOHOL (RSA)  
TRAINING COURSES****DIVISION 12.1      Approval to provide RSA training courses****Clause 180 - Definitions - Division 12.1**

This clause defines certain terms used in Division 12.1 of the Act.

**Clause 181 - RSA training course approvals - application**

This clause requires a trainer to gain approval from the commissioner to provide a stated training course about the responsible service of alcohol.

**Clause 182 - RSA training course approvals - decision on application**

This clause gives the commissioner power to grant or not grant an application lodged under section 181 of the Act.

**Clause 183 - RSA training course approvals - form**

This clause outlines the criteria an applicant an RSA training course approval must comply with in writing.

**Clause 184 - RSA training course approvals - term**

This clause provides an end date for an RSA training course approval if it is not renewed or cancelled.

**DIVISION 12.2 RSA training course certificates****Clause 185 - What is an *RSA certificate*?**

This clause defines what an RSA certificate is. Certificates will be given by approved training providers as evidence that employees at licensed premises have completed training in the responsible service of alcohol in accordance with this Act.

**Clause 186 - RSA training course providers must give RSA certificates**

This clause requires RSA training providers to give certificates for courses. Licensees, commercial permit-holders and employees including security guards will be required to undertake a refresher RSA training course every three years.

**PART 13 LICENCE AND PERMIT REGISTER****Clause 187 - Licence and permit register**

This clause requires the commissioner to keep, maintain and make available, a public register of liquor licences and permits

**Clause 188 - Exception to public inspection**

This clause protects the privacy rights of a licensee or permit-holder who is subject to occupational discipline by the ACAT by prohibiting publication on the licence and permit register until all avenues of appeal have been exhausted.

**Clause 189 - Correction and keeping up-to-date register**

This clause facilitates amendments to the licence and permit register being made by the commissioner.

**PART 14 NOTIFICATION AND REVIEW OF DECISIONS****Clause 190 - What is a *reviewable decision*? - pt 14**

This clause defines what a reviewable decision is for the purposes of Part 14 of the Act. All decisions listed in Schedule 1, column 3 to the Act are decisions which are reviewable for the purposes of the *ACT Civil and Administrative Tribunal Act 2008*.

**Clause 191 - Reviewable decision notices**

This clause requires the commissioner to give a reviewable decision notice (as defined in the *ACT Civil and Administrative Tribunal Act 2008*) to each of the persons identified in column 4 of Schedule 1, in relation to a reviewable decision that has been made.

**Clause 192 - Applications for review**

Identifies the people who make an application to the ACAT for review of a listed reviewable decision.

**PART 15 MISCELLANEOUS****DIVISION 15.1 Public Places****Clause 193 - Temporary alcohol-free places**

This clause makes it a strict liability offence for a person to consume liquor in a temporary alcohol-free place declared by the commissioner. No consumption of liquor is allowed in these declared zones. This allows the commissioner to prohibit consumption of alcohol for defined periods in relation to specific events, for example, at or near a family-oriented festival in a public place where the consumption of alcohol would not ordinarily be prohibited.

**Clause 194 - Offence - consume liquor near bus interchange etc**

This is a public safety provision which makes it a strict liability offence for a person to consume liquor at a bus interchange or a place that is within 50 metres from a bus interchange or a shop or licensed premises or a place prescribed by regulation.

**Clause 195 - Offence - possess open container of liquor near bus interchange etc**

This is a public safety provision which makes it an offence for a person to possess an open container of liquor with the intent of consuming the liquor at a bus interchange or a place that is within 50 metres from a bus interchange or a shop or licensed premises or a place prescribed by regulation.

**Clause 196 - Seizure of liquor in public places**

This clause provides a power for a police officer or investigator to seize liquor in circumstances where they suspect that the seized liquor is in connection with the commission of an offence against section 193 -195 of the Act, but only if they have told the person why they are seizing the liquor. If the person from whom the liquor was seized challenges the grounds relied on to seize the liquor, the police officer or investigator must not dispose of the liquor and must proceed to either caution or charge the person. When the liquor has been disposed of, no proceedings may be commenced in relation to the liquor, nor may a caution be issued. This is intended to allow police and investigators to deal expeditiously with consumption of alcohol in prohibited public places, without commencing proceedings or issuing an infringement notice.

**Clause 197 - Offence – supply liquor to child or young person in public place**

This clause makes it an offence for a person to sell or supply liquor to a child or young person in a public place. There is an exception for children and young people engaged in training programs, or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment. This exception is included to ensure that people who comply with the law are not punished.

**Clause 198 - Offence – child or young person consume liquor in public place**

This clause makes it an offence for a child or young person to consume liquor in public. This is designed to support the prohibition on children and young people being supplied with alcohol in a public place. A police officer may caution the person in lieu of pursuing a prosecution of this offence.

**Clause 199 - Offence – child or young person possess liquor in public place**

This clause makes it an offence for a child or young person to possess liquor in a public place. There is an exception for children and young people engaged in training programs, or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment.

**DIVISION 15.2 Proof of age cards****Clause 200 - Proof of age cards**

This clause facilitates a person who is 18 years of age obtaining a proof of age card as evidence of their age. Proof of age cards are used as identification for the purposes of entering licensed premises and obtaining liquor.

**Clause 201 - Offence - child or young person use false identification to obtain proof of age card**

This clause makes it an offence for a child or young person to use false identification to obtain a proof of age card. This is intended to discourage young people from attempting to circumvent laws excluding them from licensed premises by obtaining false identification. The option of issuing a caution under this section, in lieu of prosecution for this offence, is available to a police officer.

**DIVISION 15.3 Other Provisions****Clause 202 - Acts and omissions of representatives**

This clause is an interpretative provision which sets out definitions and limitations in relation to a prosecution and punishment under the Act.

**Clause 203 - Proceedings for offences**

This clause limits the commencement of proceedings under the Act to the commissioner and a police officer.

**Clause 204 - Determination of fees**

This clause gives the Minister power to determine fees for the Act.

**Clause 205 - Approved forms**

This clause empowers the commissioner to approve forms for any purpose under the Act when a form is approved it must be used.

**Clause 206 - Regulation-making power**

This clause empowers the Executive to make regulations for the Act and lists various matters to which regulations may be made to guide the exercise of the regulation making power.