

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Liquor Amendment Bill 2015

Contents

| | Page |
|--|------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| 3 Legislation amended | 2 |
| 4 Licence—decision on application New section 27 (2) (ba) | 2 |
| 5 Licence—amendment initiated by commissioner New section 37 (1) (aa) | 3 |
| 6 Licence—amendment on application by licensee New section 38 (4) (aa) | 3 |
| 7 Licence—decision on application to transfer licence New section 41 (2) (aa) | 3 |
| 8 Licence—decision on application for renewal New section 43 (2) (aa) | 3 |

J2014-635

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

| | Page |
|--|------|
| 9 Permit—decision on application New section 51 (2) (ba) | 4 |
| 10 Permit—amendment initiated by commissioner New section 57 (1) (aa) | 4 |
| 11 Permit—amendment on application by permit-holder New section 58 (3) (aa) | 4 |
| 12 Permit—decision on application for renewal of non-commercial permit New section 62 (2) (aa) | 4 |
| 13 Section 71 heading | 5 |
| 14 New section 71 (2) (c) | 5 |
| 15 New section 204A | 5 |
| 16 Membership of liquor advisory board New section 216 (1) (aa) and (ab) | 7 |
| 17 Section 216 (1) (b) (ii) | 7 |
| 18 New section 216 (1) (b) (vii) to (ix) | 8 |
| 19 Section 216 (1), new note | 8 |
| 20 Section 216 (2) | 8 |
| 21 Section 217 | 8 |
| 22 Sections 218 (2) (b) and 219 (2) | 9 |
| 23 New part 16A | 9 |
| 24 New part 21 | 15 |
| 25 Dictionary, new definitions | 16 |
| 26 Further amendments, mentions of (<i>Commissioner may require police certificate etc for person</i>) | 17 |

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Liquor Amendment Bill 2015

A Bill for

An Act to amend the *Liquor Act 2010*

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

1 Name of Act

This Act is the *Liquor Amendment Act 2015*.

2 Commencement

- (1) This Act (other than section 15) commences on the day after its notification day.

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

- (2) Section 15 commences on a day fixed by the Minister by written notice.

- (3) If section 15 has not commenced within 12 months beginning on this Act's notification day, it automatically commences on the first day after that period.

- (4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Liquor Act 2010*.

**4 Licence—decision on application
New section 27 (2) (ba)**

insert

- (ba) if the commissioner requires the proposed licensee to give information about another person under section 71 (2) (c)—the information does not affect the proposed licensee's suitability to hold the licence; and

5 Licence—amendment initiated by commissioner
New section 37 (1) (aa)

insert

(aa) if the commissioner requires the licensee to give information about another person under section 71 (2) (c)—the information does not affect the licensee’s suitability to hold the licence; and

6 Licence—amendment on application by licensee
New section 38 (4) (aa)

insert

(aa) if the commissioner requires the licensee to give information about another person under section 71 (2) (c)—the information does not affect the licensee’s suitability to hold the licence; and

7 Licence—decision on application to transfer licence
New section 41 (2) (aa)

insert

(aa) if the commissioner requires the proposed new licensee to give information about another person under section 71 (2) (c)—the information does not affect the proposed new licensee’s suitability to hold the licence; and

8 Licence—decision on application for renewal
New section 43 (2) (aa)

insert

(aa) if the commissioner requires the proposed licensee to give information about another person under section 71 (2) (c)—the information does not affect the proposed licensee’s suitability to continue to hold the licence; and

9 Permit—decision on application
New section 51 (2) (ba)

insert

(ba) if the commissioner requires the proposed permit-holder to give information about another person under section 71 (2) (c)—the information does not affect the proposed permit-holder's suitability to hold the permit; and

10 Permit—amendment initiated by commissioner
New section 57 (1) (aa)

insert

(aa) if the commissioner requires the permit-holder to give information about another person under section 71 (2) (c)—the information does not affect the permit-holder's suitability to hold the permit; and

11 Permit—amendment on application by permit-holder
New section 58 (3) (aa)

insert

(aa) if the commissioner requires the permit-holder to give information about another person under section 71 (2) (c)—the information does not affect the permit-holder's suitability to hold the permit; and

12 Permit—decision on application for renewal of non-commercial permit
New section 62 (2) (aa)

insert

(aa) if the commissioner requires the permit-holder to give information about another person under section 71 (2) (c)—the information does not affect the permit-holder's suitability to continue to hold the permit; and

| | | |
|----|-------------|--|
| 1 | 13 | Section 71 heading |
| 2 | | <i>substitute</i> |
| 3 | 71 | Commissioner may require police certificate or |
| 4 | | information for person etc |
| 5 | 14 | New section 71 (2) (c) |
| 6 | | <i>insert</i> |
| 7 | | (c) a police certificate or other stated information about anyone |
| 8 | | else the commissioner suspects on reasonable grounds is in a |
| 9 | | position to exercise significant influence over the conduct of |
| 10 | | the person. |
| 11 | | Examples—par (c) |
| 12 | 1 | domestic partner, parent, child or sibling of, or a member of the same |
| 13 | | household as the person |
| 14 | 2 | close friend of the person |
| 15 | 3 | someone else who has regular contact with the related person |
| 16 | <i>Note</i> | An example is part of the Act, is not exhaustive and may extend, |
| 17 | | but does not limit, the meaning of the provision in which it |
| 18 | | appears (see Legislation Act , s 126 and s 132). |
| 19 | 15 | New section 204A |
| 20 | | <i>insert</i> |
| 21 | 204A | Offence—supply liquor to child or young person by |
| 22 | | parent etc—private place |
| 23 | (1) | A person commits an offence if— |
| 24 | (a) | the person supplies liquor or low-alcohol liquor to another |
| 25 | | person; and |
| 26 | (b) | the other person is a child or young person; and |

- 1 (c) the supply happens at a private place.
- 2 Maximum penalty: 20 penalty units.
- 3 (2) Subsection (1) does not apply if the supply is by a person who is—
- 4 (a) a parent or guardian of the child or young person; or
- 5 (b) authorised by a parent or guardian of the child or young person
- 6 to supply liquor or low-alcohol liquor to the child or young
- 7 person.
- 8 *Note* The defendant has an evidential burden in relation to the matters
- 9 mentioned in s (2) (see [Criminal Code](#), s 58).
- 10 (3) A person commits an offence if—
- 11 (a) the person is—
- 12 (i) a parent or guardian of a child or young person; or
- 13 (ii) authorised by a parent or guardian of a child or young
- 14 person to supply liquor or low-alcohol liquor to the child
- 15 or young person; and
- 16 (b) the person supplies liquor or low-alcohol liquor to the child or
- 17 young person; and
- 18 (c) the supply happens at a private place.
- 19 Maximum penalty: 20 penalty units.
- 20 (4) Subsection (3) does not apply if the supply is consistent with
- 21 responsible supervision of the child or young person.
- 22 (5) For subsection (4)—
- 23 (a) the following are relevant to whether the supply of liquor to a
- 24 child or young person is consistent with responsible
- 25 supervision of the child or young person:
- 26 (i) the age of the child or young person;

- 1 (ii) whether the child or young person is consuming food
 2 with the liquor;
 3 (iii) the level of supervision the supplier has of the child or
 4 young person;
 5 (iv) the kind of liquor supplied to the child or young person;
 6 (v) the quantity of, and the time in which, the liquor is
 7 supplied to the child or young person; and
 8 (b) the supply of liquor to a child or young person who is
 9 intoxicated is not consistent with the responsible supervision of
 10 the child or young person.

11 *Note* For offences about the supply of liquor to a child or young person at
 12 licensed premises and permitted premises, see div 8.3 (Children and
 13 young people).

14 (6) In this section:

15 *private place* means a place that is not—

- 16 (a) a public place; or
 17 (b) permitted premises.

18 **16 Membership of liquor advisory board**
 19 **New section 216 (1) (aa) and (ab)**

20 *insert*

- 21 (aa) the director-general; and
 22 (ab) the Victims of Crime Commissioner; and

23 **17 Section 216 (1) (b) (ii)**

24 *substitute*

- 25 (ii) 1 member appointed to represent the community;

18 New section 216 (1) (b) (vii) to (ix)

before the notes, insert

(vii) 1 member appointed to represent young people;

(viii) 1 member appointed to represent off licensees;

(ix) 1 member with knowledge or expertise in the area of health and the effects of alcohol.

Examples—par (b) (ix)

1 health practitioner

2 member of an organisation that provides advocacy or information services about the effects of alcohol

3 member of a health consumer or health promotion body

19 Section 216 (1), new note

insert

Note 4 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).

20 Section 216 (2)

substitute

(2) The chair of the board is the director-general.

21 Section 217

substitute

217 Liquor advisory board function

The liquor advisory board has the function of advising the Minister about—

(a) matters associated with the operation and effectiveness of this Act; and

(b) measures, including legislative measures, that support the harm minimisation and community safety principles.

Examples—par (a)

1 the achievement of the objects of the Act

2 the effectiveness of the harm minimisation and community safety principles

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).

22 Sections 218 (2) (b) and 219 (2)

omit

commissioner

substitute

director-general

23 New part 16A

insert

Part 16A Criminal intelligence

222A Definitions—pt 16A

In this part:

criminal intelligence means information relating to actual or suspected criminal activity (whether in the ACT or elsewhere) the disclosure of which could reasonably be expected to—

(a) prejudice a criminal investigation; or

(b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or

- 1 (c) endanger anyone's life or physical safety.
- 2 ***maintain***—an entity ***maintains*** the confidentiality of information in
3 relation to an applicant for a licence or permit or a licensee or
4 permit-holder only if—
- 5 (a) the information is not used by the entity for a purpose other
6 than exercising a function mentioned in this part; and
- 7 (b) the information is not disclosed to the applicant, licensee or
8 permit-holder, representatives of the applicant, licensee or
9 permit-holder or any member of the public; and
- 10 (c) evidence and submissions about the information are received
11 and heard in private in the absence of the applicant, licensee or
12 permit-holder and representatives of the applicant, licensee or
13 permit-holder, and are not disclosed to any member of the
14 public; and
- 15 (d) the information is not disclosed in any reasons for a decision.
- 16 **222B Disclosure of criminal intelligence—chief police officer**
- 17 (1) Information that is classified by the chief police officer as criminal
18 intelligence must not be disclosed for this Act to anyone other than
19 the commissioner, the Minister, a court or an entity to whom the
20 chief police officer authorises its disclosure.
- 21 (2) The chief police officer may only disclose the information to the
22 commissioner if the chief police officer believes on reasonable
23 grounds that the information is relevant to the making of a decision
24 by the commissioner about—
- 25 (a) issuing a licence or permit to an applicant; or
- 26 (b) whether to apply to the ACAT for an occupational discipline
27 order in relation to a licensee or permit-holder.
- 28 (3) Subsection (1) does not prevent the chief police officer from
29 disclosing the information for another lawful purpose.

1 **222C Disclosure of criminal intelligence—commissioner for fair**
2 **trading and ACAT**

3 (1) This section applies—

4 (a) if—

5 (i) the commissioner refuses to issue a licence or permit to
6 an applicant; or

7 (ii) the commissioner applies to the ACAT for an
8 occupational discipline order in relation to a licensee or
9 permit-holder; or

10 (iii) the ACAT makes an occupational discipline order in
11 relation to a licensee or permit-holder; and

12 (b) if a thing mentioned in paragraph (a) is done because, or partly
13 because, of information that is classified by the chief police
14 officer as criminal intelligence.

15 (2) The commissioner or the ACAT must not give any reason for doing
16 the thing other than the following:

17 (a) for subsection (1) (a) (i)—that issuing the licence or permit
18 would not be in the public interest;

19 (b) for subsection (1) (a) (ii)—that disclosing the reason for the
20 application would not be in the public interest;

21 (c) for subsection (1) (a) (iii)—that disclosing the reason for the
22 order would not be in the public interest.

222D Whether information is criminal intelligence—application and decision

- (1) This section applies if the commissioner—
- (a) refuses to issue a licence or permit to an applicant because, or partly because, of information that is classified by the chief police officer as criminal intelligence, and the applicant applies to the ACAT for review of the decision (the *proceeding*); or
 - (b) applies to the ACAT for an occupational discipline order in relation to a licensee or permit-holder because, or partly because, of information that is classified by the chief police officer as criminal intelligence (the *proceeding*).
- (2) The commissioner or chief police officer must apply to the ACAT for a decision about whether the information is criminal intelligence.
- (3) The application need not be served on anyone unless the ACAT otherwise orders on its own initiative.
- (4) The ACAT may decide that the information is, or is not, criminal intelligence.
- (5) If the ACAT proposes to decide that the information is not criminal intelligence, the applicant must be told about the proposal and given the opportunity to withdraw the information from the proceeding.

222E Appeal—applicant may withdraw information

- (1) This section applies to the following proceedings:
- (a) if—
 - (i) the ACAT has made a decision that information is not criminal intelligence, and there is an appeal to the Supreme Court from that decision; and
 - (ii) the court proposes to find that the information is not criminal intelligence;

- 1 (b) if—
- 2 (i) the applicant mentioned in section 222D (1) (a) appeals
- 3 the ACAT's decision to the Supreme Court; and
- 4 (ii) the court proposes to find that the information is not
- 5 criminal intelligence;
- 6 (c) if—
- 7 (i) the licensee or permit-holder mentioned in
- 8 section 222D (1) (b) appeals the ACAT's decision to the
- 9 Supreme Court; and
- 10 (ii) the court proposes to find that the information is not
- 11 criminal intelligence.
- 12 (2) The applicant mentioned in section 222D (2) must be told about the
- 13 court's proposal and given the opportunity to withdraw the
- 14 information from the proceeding.
- 15 **222F Confidentiality of criminal intelligence—commissioner**
- 16 **and ACAT**
- 17 (1) The commissioner must maintain the confidentiality of information
- 18 classified by the chief police officer as criminal intelligence when
- 19 deciding whether to—
- 20 (a) issue a licence or permit to an applicant; or
- 21 (b) apply to the ACAT for an occupational discipline order in
- 22 relation to a licensee or permit-holder.
- 23 (2) The commissioner and the ACAT must maintain the confidentiality
- 24 of information that is the subject of an application mentioned in
- 25 section 222D (2)—
- 26 (a) until the tribunal makes a decision about whether the
- 27 information is criminal intelligence; or

- 1 (b) that the tribunal decides—
2 (i) is criminal intelligence; or
3 (ii) is not criminal intelligence, if there is an appeal from that
4 decision and the appeal is upheld.
- 5 (3) The commissioner and the ACAT must maintain the confidentiality
6 of information that is the subject of an application mentioned in
7 section 222D (2) if the information is withdrawn.
- 8 (4) The commissioner or the ACAT may take any steps the
9 commissioner or tribunal considers appropriate to maintain the
10 confidentiality of the information.
- 11 (5) However, if the Supreme Court finds that the information is not
12 criminal intelligence, and the information is not withdrawn, the
13 commissioner or the ACAT need not maintain the confidentiality of
14 the information.

15 **222G Confidentiality of criminal intelligence—courts**

- 16 (1) This section applies if a court deals (on appeal or otherwise) with—
17 (a) a decision by the ACAT about whether information is criminal
18 intelligence; or
19 (b) the question of whether information classified by the chief
20 police officer as criminal intelligence is criminal intelligence.
- 21 (2) The court must maintain the confidentiality of the information.
- 22 (3) The court may take any steps it considers appropriate to maintain
23 the confidentiality of the information.
- 24 (4) The court must not give any reason for making a finding in relation
25 to the information, other than the public interest.

- 1 (5) However, if the Supreme Court finds that information is not
 2 criminal intelligence, and the information is not withdrawn—
 3 (a) the court need not maintain the confidentiality of the
 4 information and may give reasons for the finding; and
 5 (b) any other court need not maintain the confidentiality of the
 6 information and may give reasons for making a finding in
 7 relation to the information.

8 **222H Delegation by chief police officer**

- 9 (1) The chief police officer may delegate a function under this part to a
 10 senior police officer.

11 *Note* For the making of delegations and the exercise of delegated functions,
 12 see the [Legislation Act](#), pt 19.4.

- 13 (2) In this section:

14 *senior police officer* means a police officer of or above the rank of
 15 superintendent.

16 **24 New part 21**

17 *insert*

18 **Part 21 Transitional**

19 **260 Meaning of *commencement day*—pt 21**

20 In this part:

21 *commencement day* means the day the *Liquor Amendment*
 22 *Act 2015*, section 17 commences.

1 **261 Liquor advisory board member representing liquor**
2 **consumers**

- 3 (1) This section applies to a person who was appointed as a board
4 member of the liquor advisory board to represent liquor consumers
5 under section 216 (1) (b) (ii) immediately before the commencement
6 day.
- 7 (2) The person is, on the commencement day, taken to be a member of
8 the liquor advisory board appointed under this Act, section 216 as
9 the member appointed to represent the community.
- 10 (3) The person's appointment ends at the end of the period stated in the
11 appointment unless it is ended earlier.

12 **262 Expiry—pt 21**

13 This part expires 6 months after the commencement day.

14 *Note* Transitional provisions are kept in the Act for a limited time. A
15 transitional provision is repealed on its expiry but continues to have
16 effect after its repeal (see [Legislation Act](#), s 88).

17 **25 Dictionary, new definitions**

18 *insert*

19 *criminal intelligence*, for part 16A (Criminal intelligence)—see
20 section 222A.

21 *maintain*, for part 16A (Criminal intelligence)—see section 222A.

| | | |
|----|-----------|---|
| 1 | 26 | Further amendments, mentions of (<i>Commissioner may</i> |
| 2 | | <i>require police certificate etc for person</i>) |
| 3 | | <i>omit</i> |
| 4 | | (Commissioner may require police certificate etc for person) |
| 5 | | <i>substitute</i> |
| 6 | | (Commissioner may require police certificate or information for |
| 7 | | person etc) |
| 8 | | <i>in</i> |
| 9 | | • section 27 (4), definition of <i>required time</i> , paragraph (b) |
| 10 | | • section 38 (6), definition of <i>required time</i> , paragraph (b) |
| 11 | | • section 41 (4), definition of <i>required time</i> , paragraph (a) |
| 12 | | • section 43 (4), definition of <i>required time</i> , paragraph (a) |
| 13 | | • section 51 (4), definition of <i>required time</i> , paragraph (a) |
| 14 | | • section 58 (5), definition of <i>required time</i> , paragraph (a) |
| 15 | | • section 62 (4), definition of <i>required time</i> , paragraph (a) |
| 16 | | • section 68 (b) (iii) |
| 17 | | • section 185 (b) (iii) |

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 4 June 2015.

2 Notification

Notified under the [Legislation Act](#) on 2015.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2015