

**2015**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**LIQUOR AMENDMENT BILL 2015**

**EXPLANATORY STATEMENT**

Presented by  
Simon Corbell MLA  
Attorney-General



# LIQUOR AMENDMENT BILL 2015

## Overview of the Bill

The *Liquor Amendment Bill 2015* (the Bill) amends the *Liquor Act 2010* (Liquor Act) to:

- reform the function and membership of the Liquor Advisory Board;
- make it an offence for a person to supply liquor to a child or young person, at a private place, unless the person is the parent or guardian of the child or young person, or has been authorised by the parent or guardian to supply the liquor;
- make it an offence for a parent or guardian, or a person authorised by the parent or guardian to supply liquor to a child or young person, at a private place, unless the supply is consistent with the responsible supervision of the child or young person; and
- strengthen the ability of the Commissioner for Fair Trading to determine who is a suitable person to hold a licence or permit under the Act by including protections in relation to the disclosure of criminal intelligence and expanding the Commissioner's power to request information about people suspected to be able to significantly influence a licensee or permit-holder.

## Human Rights Implications

The Bill may engage the following rights under the *Human Rights Act 2004*:

1. Section 11 – the right to protection of the family;
2. Section 12 – the right to privacy;
3. Section 15 – the right to freedom of association;
4. Section 21 – the right to fair trial.

Each of these limitations is addressed below.

### *Secondary supply offences*

#### *Section 11 – Protection of the family and children*

Section 11 provides that the family is the natural and basic group unit of society and is entitled to be protected by society. Section 11 also provides that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.

Clause 15 inserts new section 204A which provides offences for the supply of liquor or low-alcohol liquor to a child or young person at a private place.

These new secondary supply offences support the right in section 11 as the offences seek to ensure that children and young people are protected, and are not subjected to the risks that alcohol consumption can have on the developing brain. Research has

shown that alcohol may adversely affect brain development and lead to alcohol-related problems in later life.<sup>1</sup>

The provisions will strengthen the role of parents in making decisions regarding children and young people and the consumption of alcohol.

### ***Section 12 – Privacy***

Section 12 provides that:

Everyone has the right –

- a) not to have his or her privacy... interfered with unlawfully or arbitrarily.

The new secondary supply offences engage the right to privacy as the offences attempt to regulate the behaviour of individuals in private residences.

#### *Importance and purpose of limitation*

The purpose of the offence is to address the problems associated with the consumption of liquor by minors at private premises, and assist in preventing harm associated with the misuse and abuse of alcohol.

Consumption of alcohol by children and young people is a cause for community concern due to the range of health and social harms that arise, both in the short-term and long-term. In particular, research has shown that alcohol may adversely affect brain development and lead to alcohol-related problems in later life.<sup>2</sup>

Young people have a significantly lower tolerance to alcohol, meaning that they are more physically sensitive to the effects of alcohol consumption.<sup>3</sup> The following are the short and long term risks associated with early alcohol consumption:

- physical injury;
- increased risk taking and anti-social behaviour;
- risky sexual behaviours;
- poor academic performance;
- permanent damage to the structure and function of the developing brain;
- mental health issues such as depression;
- increased likelihood of illicit drug use, whether at the same time as the alcohol use or later in life; and
- increased likelihood of later alcohol addiction.<sup>4</sup>

Alcohol consumption also contributes to the three leading causes of death among adolescents – unintentional injuries, homicide and suicide.<sup>5</sup>

On this basis, the National Health & Medical Research Council national guidelines state that children under the age of 15 should not drink at all as they are at the greatest

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<sup>1</sup> NHMRC (National Health & Medical Research Council) 2009. Australian Guidelines to reduce health risks from drinking alcohol. Canberra: NHMRC.

<sup>2</sup> NHMRC (National Health & Medical Research Council) 2009. Australian Guidelines to reduce health risks from drinking alcohol. Canberra: NHMRC.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

risk of harm from drinking, and that for young people aged 15 to 17 years, the safest option is to delay the initiation of drinking as long as possible.<sup>6</sup> These guidelines are based on the best available evidence about alcohol-related harm and young people.

Despite it being illegal to sell alcohol to people under the age of 18, it is clear that many young people have access to alcohol. Despite the above guidelines, the average age at which young people try alcohol was 15.7 in 2013.<sup>7</sup> Underage drinkers were more likely to consume alcohol at private parties (62%) and mainly source their alcohol from a friend (45%).<sup>8</sup> Nearly half of people aged 12 or older had their first glass of alcohol supplied by a friend (47%) compared to one-quarter which was supplied by their parent (24%).<sup>9</sup>

#### *Nature and extent of the limitation*

The extent to which privacy is limited and whether such interference is permissible depends on the context and whether there is an expectation of privacy.

The proposed amendment does not interfere with the rights of parents to make decisions in relation to their children. The amendments ensure that parents and guardians are ultimately responsible for determining when and how their children are exposed to alcohol. The offences are not designed to restrict the practice within the Australian society where some parents choose to permit the occasional consumption of limited amounts of alcohol, under supervision within the family environment. Supply of alcohol by a parent would only be an offence under the amendments, if it was not consistent with responsible supervision of the child.

The proposed amendment also places a responsibility on people, who are not parents or guardians, to ensure that they have parental authorisation before supplying alcohol to children or young people and they supply alcohol in accordance with responsible supervision in this situation. It is not considered that there would be an expectation of privacy in these circumstances.

#### *Relationship between the limitation and its purpose*

The relationship between alcohol consumption and alcohol harm is clear, as is the specific impact that alcohol consumption can have on developing brains. The limitation is directly linked to the purpose.

#### *Any less restrictive means available to achieve the purpose*

There is no other, less restrictive way to achieve the required purpose.

#### ***Strengthening the suitable person test for liquor licensees***

### ***Section 12 – Privacy and reputation***

Section 12 provides that:

Everyone has the right –

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<sup>6</sup> Ibid.

<sup>7</sup> Australian Institute of Health and Welfare 2011. ‘2010 National Drug Strategy Household Survey report’. Drug Statistics series no. 28. Cat. No. PHE 183. Canberra: AIHW.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

- a) not to have his or her privacy... interfered with unlawfully or arbitrarily; and
- b) not to have his or her reputation unlawfully attacked.

The amendments in the Bill which aim to strengthen the ability of the Commissioner for Fair Trading to determine who is a suitable person to hold a licence or permit under the Act by:

- including protections in relation to the disclosure of criminal intelligence; and
- expanding the Commissioner's power to request information about people suspected to be able to significantly influence a licensee or permit holder provisions;

engage the right to privacy and reputation as they involve the exchange and use of personal information of which the applicant is not aware, and allow the Commissioner to request information about people suspected to be in a position to influence a licensee or permit-holder.

#### *Importance and purpose of limitation*

The purpose of authorising the Chief Police Officer to disclose criminal intelligence to the Commissioner for his or her consideration in making a licensing decision, and providing an expanded power to the Commissioner, is to ensure that all relevant facts may be considered when determining the suitability of an applicant to hold a licence or permit.

These measures will help to prevent criminal infiltration of the liquor industry, and consequently ensure that the community is protected when patronising licensed venues. Elements of the liquor industry, like a number of other industries – such as the security industry, have been susceptible to providing an opportunity to conduct illegal activity such as drug dealing and money laundering.

Association with, and control of, licensed premises can provide an opportunity for the control and expansion of these illegal activities. This can occur in an environment of intimidation, threats and violence.

#### *Nature and extent of the limitation*

The extent to which privacy is limited and whether such interference is permissible depends on the context and whether there is an expectation of privacy. It is generally agreed that there is a diminished expectation of privacy during the course of regulated activities (*R v Jarvis* [2002] 3 SCR 757). As stated in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 “The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should ... be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.”

Participants in the liquor industry have a clear understanding that this is, and has long been, a regulated industry. In addition, participants are aware at the time of application of the information that criminal intelligence and information about people suspected to be influential will be considered to determine their suitability for a licence or permit.

Section 12 of the Human Rights Act includes a qualifier that privacy is not to be interfered with ‘unlawfully or arbitrarily’. The interference with privacy in this instance is in no way unlawful or arbitrary as the Bill clearly defines:

- the type of information that may constitute criminal intelligence, and requires the Commissioner to clearly identify the information required about people suspected to be influential;
- the circumstances in which the information may be provided – that is it must be relevant to the making of a decision about issuing/amending/renewing a licence or permit to an applicant; and
- provides that the information must be kept confidential to ensure the security of the information itself as well as the identity of the source of information.

*Relationship between the limitation and its purpose*

As discussed above, the liquor industry is one that is an attractive target for criminal infiltration and where this occurs there are significant risks to the community.

The ability to provide and consider criminal intelligence, and seek further information about people suspected to be influential, is clearly necessary to ensure the ongoing fitness of licensees to work in the liquor industry and integrity of the industry as a whole.

*Any less restrictive means available to achieve the purpose*

There is no other, less restrictive way to achieve the required purpose. There are no other means available for determining the fitness of an applicant or current licensee to participate in the private liquor industry.

The Bill contains a number of safeguards to minimise the limitations on privacy in relation to the use of criminal intelligence.

The definition of what constitutes criminal intelligence (new section 222A) is limited to information that could reasonably be expected to prejudice a criminal investigation; enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or endanger anyone’s life or physical safety.

The Bill limits the circumstances in which the information may be disclosed to the Commissioner to where the information is relevant to the making of a decision about issuing a licence or permit to the applicant or whether to apply to the ACAT for an occupational discipline order (new section 222B(2)).

The Bill includes an external review mechanism for information provided as criminal intelligence. Where the applicant seeks a review of an adverse decision, the Commissioner or CPO must apply to the ACAT for a determination of whether the information is criminal intelligence and must therefore remain confidential (new section 222D). If the ACAT determines that information is not criminal intelligence, the Commissioner or CPO may withdraw the information, thereby removing it from the decision-making process (new section 222E).

The Commissioner's expanded power to request a police statement or other stated information about people suspected to be influential is limited in its scope. A threshold is provided, requiring the Commissioner to suspect, on reasonable grounds, that the person they are requesting information about is someone in a position to exercise significant influence over the conduct of an applicant.

### ***Section 21 – right to fair trial***

Section 21 provides:

- (1) Everyone 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.

The right to fair trial is engaged by the new part 16A which limits the disclosure of criminal intelligence and the reasons that may be given for a decision not to approve an application, based on that information. The Bill prohibits the Commissioner disclosing to the applicant any consideration of criminal intelligence.

#### *Nature of the right affected*

An element of a right to fair trial is equality before the court, or 'equality of arms' meaning that each party must have a reasonable opportunity to present their case in a way that doesn't significantly disadvantage them.

The new part 16A allows the Commissioner to consider an application without disclosing to the applicant information provided by the CPO as criminal intelligence. It requires an entity to maintain the confidentiality of information classified as criminal intelligence. If the Commissioner makes an adverse finding based on criminal intelligence, the only reason that may be given is public interest (new section 222C).

In addition, a court must not give any reason for making a finding in relation to the information, other than the public interest (new section 222G).

#### *Importance of the purpose of the limitation*

The importance of the Commissioner being able to consider all relevant information in the public interest is discussed at length above.

In addition to ensuring the suitability of licensees or permit-holders, these provisions protect information, the disclosure of which would prejudice a criminal investigation or enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger anyone's life or physical safety.

#### *Nature and extent of the limitation*

The extent of any limitation to section 21 of the Human Rights Act must be considered against the measures contained in the Bill to minimise the impact on the right to fair trial.



Such measures include:

- the ability of a court to review all information used in making a decision to refuse a licence, providing a safeguard against use of irrelevant information in decision-making;
- the ability of the ACAT to assess whether particular information meets the criteria for ‘criminal intelligence’ and, if it does not, the information must either be withdrawn from consideration or disclosed;
- the CPO is only authorised to disclose criminal intelligence where he or she believes on reasonable grounds that the information is relevant to the issuing of a licence or permit or to a decision about whether to apply for an occupational discipline order.

One of the limitations imposed is the provision that ‘public interest’ is the only reason able to be given for an adverse decision based on criminal intelligence, either by the Commissioner or a court. While this precludes the court from delivering a reasoned decision to the applicant, upon which an appeal may be based, it does not preclude the court from coming to a reasoned decision based on all the available information.

Such a provision was considered by the High Court of Australia in *K-Generation Pty Limited v Liquor Licensing Court* [2009] HCA 4, a case involving similar provisions under the *Liquor Licensing Act 1997* (SA).

In *K-Generation*, it was held that “by limiting access to information, s 28A [relating to criminal intelligence] would place the applicant for a licence at a disadvantage and might prevent the Court from giving full reasons for its decision. While such departures from established rules of fairness were of concern, it remained the duty of the Court to assess the matter objectively and subject classified material to scrutiny as part of the process” (para 22).

It was also held that “The terms of section 28A(5) [relating to the reasons for an order] ... does not require [the court] to receive or act upon criminal intelligence classified as such by the Commissioner of Police. It does not deprive the Court of a discretion as to how confidentiality is to be maintained. Nor does it mandate a general exclusion in all circumstances of legal representative from access to the information (para 98).”

#### *Relationship between the limitation and its purpose*

The relationship between the limitation and its purpose is discussed in detail above.

#### *Any less restrictive means reasonably available to achieve the purpose*

To ensure the least restrictive means reasonably available to achieve this purpose, the Bill incorporates a number of measures, including a narrow definition of what constitutes criminal intelligence, retention of the review power by the courts and the ability of the ACAT to determine whether information provided is criminal intelligence. The CPO may only provide such information to the Commissioner when it is considered necessary to ensure the probity of individuals working in the liquor industry.

By limiting the scope of information able to be provided, the circumstances in which it can be provided and by including judicial safeguards, these provisions reflect the least restrictive means of achieving the purpose.

The provisions contain a number of important measures to safeguard the necessary confidentiality of criminal intelligence as well as providing appropriate external checks and balances against the misuse of such information.

### *Section 15 – freedom of association*

Section 15 provides that everyone has the right to freedom of association.

The right to freedom of association is the right to associate with others for the purpose of protecting common interests. These interests may be economic, professional, political, cultural or recreational.

Section 15 is engaged by the amendments which provide the Commissioner with the power to require an applicant to give a current police certificate or other stated information in relation to an expanded range of people.

#### *Nature of the right affected*

While the amendment does not prohibit people from associating with others, it does mean that the Commissioner can inquire into the relationships a proposed licensee or permit holder has with other people, in limited circumstances. The information obtained may impact on the decision to grant a licence or permit.

#### *Importance of the purpose of the limitation*

The purpose of the amendment is to ensure that all relevant facts may be considered when determining the suitability of an applicant to hold a licence or permit.

This measure is designed to ensure that in determining the suitability of an applicant, the Commissioner may inquire into those people the Commissioner suspects would be in a position to exercise significant influence over the conduct of the applicant. In effect, the amendment is designed to ensure that those who have control over the operation of a liquor business, whether nominated as the proposed licensee or permit holder, or not, are suitable.

The amendment, in association with the criminal intelligence amendments, is designed to help prevent criminal infiltration of the liquor industry, and consequently ensure that the community is protected when patronising licensed venues. This industry is considered particularly attractive for infiltration, especially in licensed venues that tend to be patronised by young people.

Elements of the liquor industry have been susceptible, to providing an opportunity to conduct illegal activity such as drug use or drug dealing and money laundering.

The association with and control of licensed premises can provide an opportunity for the control and expansion of these illegal activities, with the associated environment of intimidation, threats and violence.

#### *Relationship between the limitation and its purpose*

As discussed above, the liquor industry is one that is attractive for criminal infiltration.

The ability to provide and consider criminal intelligence, and seek further information about influential people, is clearly necessary to ensure the ongoing fitness of licensees to work in the liquor industry and integrity of the industry as a whole.

*Any less restrictive means reasonably available to achieve the purpose*

The amendment limits the circumstances in which information about people suspected to be influential can be requested. A threshold is provided, requiring the Commissioner to suspect, on reasonable grounds, that the person they are requesting information about is someone in a position to exercise significant influence over the conduct of an applicant.

In addition, if the information obtained about a person suspected to be influential is unfavourable, it does not guarantee that an applicant will be found unsuitable on that basis. It merely provides the Commissioner with additional information that can be taken into account in relation to the broader question of an applicant's suitability.

Any decision by the Commissioner where the information has been obtained to determine suitability will continue to be subject to review, under the existing mechanism in the Act.

By limiting the scope of information able to be provided, the circumstances in which it can be provided and by including judicial safeguards, these provisions reflect the least restrictive means of achieving the purpose

## **CLAUSE NOTES**

### **Clause 1      Name of Act**

This clause names the Act as the *Liquor Amendment Act 2015*.

### **Clause 2      Commencement**

This clause provides for the commencement of the Act.

Clause 15 commences on a day fixed by the Minister by written notice. If clause 15 hasn't commenced within 12 months beginning on the day that the Act is notified, it will automatically commence on the first day after that period.

Clause 15 amends the *Liquor Act 2010* to insert a 'secondary supply' offence that will apply at private places (not public places, licensed or permitted premises). This delayed commencement date is designed to allow an information and education strategy to be developed and implemented to promote awareness of the offence and the issues associated with underage drinking.

The remaining provisions of the Act commence on the day after its notification day.

This clause also provides that section 79 of the *Legislation Act 2001* (Automatic commencement of postponed law) does not apply to this Act. This is designed to allow for the possible commencement of clause 15 later than 6 months after notification, as an awareness and education strategy may not have been completed within the first six months after notification.

### **Clause 3      Legislation amended**

This clause provides that the Act amends the Liquor Act.

### **Clause 4      Licence-decision on application New section 27 (2) (ba)**

Clause 4 inserts new section 27(2)(ba) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 27 applies if the Commissioner receives an application for a licence. The Commissioner must issue the licence to the proposed licensee only if satisfied about a number of stated issues.

New section 27(2)(ba) additionally provides that the Commissioner must issue the licence only if satisfied that the information given about another person under new section 71(2)(c) does not affect the proposed licensee's suitability to hold the licence.

**Clause 5      Licence-amendment initiated by commissioner**  
**New section 37 (1) (aa)**

Clause 5 inserts new section 37(1)(aa) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 37 enables the Commissioner to amend a licence on their own initiative if satisfied about a number of stated issues.

New section 37(1)(aa) additionally provides that the Commissioner can amend a licence if satisfied that the information given about another person under new section 71(2)(c) does not affect the licensee's suitability to hold the licence.

**Clause 6      Licence-amendment on application by licensee**  
**New section 38 (4) (aa)**

Clause 6 inserts new section 38(4)(aa) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 38 provides that a licensee can apply to the Commissioner to amend a licence. The Commissioner may amend the licence only if satisfied about a number of stated issues.

New section 38(4)(aa) additionally provides that the Commissioner may amend the licence only if satisfied that the information given about another person under section 71(2)(c) does not affect the licensee's suitability to hold the licence as amended.

**Clause 7      Licence-decision on application to transfer licence**  
**New section 41 (2) (aa)**

Clause 7 inserts new section 41(2)(aa) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 41 applies if the Commissioner receives an application to transfer a licence. The Commissioner must transfer the licence to the proposed new licensee only if satisfied about a number of stated issues.

New section 41(2)(aa) additionally provides that the Commissioner must transfer the licence only if satisfied that the information given about another person under new section 71(2)(c) does not affect the proposed new licensee's suitability to hold the licence.

**Clause 8      Licence-decision on application for renewal**  
**New section 43 (2) (aa)**

Clause 8 inserts new section 43(2)(aa) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 43 applies if the Commissioner receives an application for renewal of a licence. The Commissioner must renew the licence only if satisfied about a number of stated issues.

New section 43(2)(aa) additionally provides that the Commissioner must renew the licence only if satisfied that the information given about another person under new section 71(2)(c) does not affect the proposed licensee's suitability to continue to hold the licence.

**Clause 9      Permit-decision on application**  
**New section 51 (2) (ba)**

Clause 9 inserts new section 51(2)(ba) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 51 applies if the Commissioner receives an application for a permit. The Commissioner must issue the permit to the proposed permit-holder only if satisfied about a number of stated issues.

New section 51(2)(ba) additionally provides that the Commissioner must issue the permit only if satisfied that the information given about another person under new section 71(2)(c) does not affect the proposed permit-holders' suitability to hold the permit.

**Clause 10      Permit-amendment initiated by commissioner**  
**New section 57 (1) (aa)**

Clause 10 inserts new section 57(1)(aa) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 57 enables the Commissioner to amend a permit on their own initiative if satisfied about a number of stated issues.

New section 57(1)(aa) additionally provides that the Commissioner may issue the permit only if satisfied that the information given about another person under new section 71(2)(c) does not affect the permit-holders' suitability to hold the permit.

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

Clause 11 inserts new section 58(3)(aa) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 58 provides that a permit-holder can apply to the Commissioner to amend a licence. The Commissioner may amend the permit only if satisfied about a number of stated issues.

New section 58(3)(aa) additionally provides that the Commissioner must issue the permit only if satisfied that the information given about another person under new section 71(2)(c) does not affect the permit-holders' suitability to hold the permit.

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

Clause 12 inserts new section 62(2)(aa) into the Liquor Act. This amendment is a consequence of the amendment made in clause 14.

Existing section 62 applies if the Commissioner receives an application for renewal of a non-commercial permit. The Commissioner must renew the permit only if satisfied about a number of stated issues.

New section 62(2)(aa) additionally provides that the Commissioner must issue the permit only if satisfied that the information given about another person under new section 71(2)(c) does not affect the permit-holders' suitability to continue to hold the permit.

**Clause 13      Section 71 heading**

Clause 13 substitutes a new heading for section 71 to more appropriately describe the content of the section as a consequence of the amendment made by clause 14.

**Clause 14      New section 71 (2) (c)**

Clause 14 inserts new section 71(2)(c) into the Liquor Act.

The amendment is one of the amendments in the Bill designed to strengthen the provisions which ensure that those who obtain liquor licences are suitable having regard to their character and associations.

It is important for the Commissioner, when considering applications for licences or permits, to have visibility as to those people in a position to exercise control or significant influence over the conduct of a licensee or permit-holder, particularly if this may present a risk to the proper conduct of licensed or permitted premises.

To address this issue, clause 14 expands the Commissioner's existing power in section 71 to allow the Commissioner to request information about people suspected to be able to significantly influence a licensee or permit-holder. This will provide greater visibility to the Commissioner in relation to the suitable person test under the Act.

Existing section 71 applies if the Commissioner is making a decision about whether a person is a suitable person to hold a licence or permit. The Commissioner may, by written notice given to the person, require the person to give the Commissioner 1 or more of the following:

- A recent police certificate for 1 or more of the following people:
  - the person;
  - a close associate of the person;
  - if the person is a corporation – an influential person for the person;

- if someone other than the propose licensee is to have day-to-day control of the business operated under the license and the decision related to suitability of a licence – each person who is to have day-to-day control;
- other stated information about the person.

Clause 14 inserts new paragraph (c) to provide that the Commissioner may also require a person to give the Commissioner a police certificate or other stated information about anyone else the Commissioner suspects, on reasonable grounds, is in a position to exercise significant influence over the conduct of the person.

The following examples of relationships where this may occur are included:

- domestic partner, parent, child or sibling of, or a member of the same household as the person;
- close friend of the person;
- someone else who has regular contact with the related person.

## **Clause 15      New section 204A**

Clause 15 inserts new section 204A into the Liquor Act to address a gap in the ACT's laws about 'secondary supply' to children and young people.

Currently, the Act prohibits the supply of liquor to children and young people on licensed or permitted premises, or in public places, but does not prohibit the supply of liquor on private premises.

Most Australian jurisdictions have secondary supply laws that prohibit the supply of liquor to people under the age of 18 years by anyone other than a parent or guardian or someone authorised by a parent or guardian. NSW, Queensland, Tasmania and the Northern Territory<sup>10</sup>, also have irresponsible supply laws in place which prohibit the unsafe provision of alcohol (e.g. excessive amounts) or the inadequate supervision of a minor's alcohol consumption.

The consumption of alcohol by children and young people is a cause for community concern due to the range of health and social harms that arise, both in the short-term and long-term. In particular, research has shown that alcohol may adversely affect brain development and lead to alcohol-related problems in later life.<sup>11</sup> On this basis, the National Health & Medical Research Council national guidelines state that children under the age of 15 should not drink at all as they are at the greatest risk of harm from drinking, and that for young people aged 15 to 17 years, the safest option is to delay the initiation of drinking as long as possible.<sup>12</sup>

New section 204A inserts two offences into the Liquor Act.

<sup>10</sup> Section 117(4), *Liquor Act 2007 (NSW)*; section 156A, *Liquor Act 1992 (QLD)*; section 26, *Police Offences Act 1935 (TAS)*; and section 106C, *Liquor Act 2013 (NT)*.

<sup>11</sup> NHMRC (National Health & Medical Research Council) 2009. Australian Guidelines to reduce health risks from drinking alcohol. Canberra: NHMRC.

<sup>12</sup> Ibid.



The first offence (subsection (1)) provides that it is an offence for a person to supply liquor or low-alcohol liquor to a child or young person at a private place.

New section 204A(2) provides that it is not an offence if the supply is by a parent or guardian of the child or young person, or is by a person authorised by a parent or guardian of the child or young person to supply the liquor or low-alcohol liquor.

**Private place** is defined to mean a place that is not a public place or permitted premises. **Public place** is currently defined in the Act in the following way:

**public place** means any street, road, public park, reserve or other place that the public is entitled to use or that is open to, or used by, the public (whether or not for payment), including—

- (a) a shop, and any place occupied in relation to a shop; and
- (b) a factory, and any place occupied in relation to, a factory; and
- (c) a building or part of a building occupied by a club, and any place occupied in relation to a club; and
- (d) any private property that is commonly used by the public, whether as trespassers or otherwise.

Accordingly, the offence will apply where alcohol is supplied at private residences or on private land, and will not apply in public places, which includes licensed premises, or permitted premises. It is already an offence to supply liquor to children and young people in public places and licensed or permitted premises (existing section 204 and sections 110-112).

The maximum penalty for this new offence is 20 penalty units.

The second offence (subsection (3)) provides that it is an offence for a person who is a parent or guardian of a child or young person, or is authorised by a parent or guardian of a child or young person to supply liquor or low-alcohol liquor, to supply liquor or low alcohol liquor to a child or young person at a private place.

New section 204(4) provides that it is not an offence under section 204(3) if the supply is consistent with the responsible supervision of the child or young person. In this way, the proposed amendments are not intended to restrict the practice within the Australian society where some parents choose to permit the occasional consumption of limited amounts of alcohol, under supervision within the family environment.

New section 204A(5) provides a range of matters which would be relevant to determining whether the supply is consistent with responsible supervision of the child or young person. It makes clear that supply to a child or young person who is intoxicated (as defined in section 104 of the Act) is not consistent with the responsible supervision of the child or young person.

The maximum penalty for this new offence is 20 penalty units.

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

Clause 16 inserts new paragraphs (aa) and (ab) into section 216(1) of the Liquor Act.

The new paragraphs provide for the liquor advisory board to include the following new members:

1. the Director-General of the Justice and Community Safety Directorate; and
2. the Victims of Crime Commissioner.

Broadening the membership of the liquor advisory board was a proposal in the report of the review of the Liquor Act.

This and the amendments made by clause 18 will change the membership of the liquor advisory board to include the two additional members listed above and one member to represent young people, one member to represent off licensees, and one member with knowledge or expertise in the area of health and the effects of alcohol.

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

Clause 17 substitutes a new section 216(1)(b)(ii) into the Liquor Act.

Section 216(1)(b)(ii) currently provides that the liquor advisory board includes one member appointed to represent liquor consumers.

Clause 17 will replace this member with one member appointed to represent the community. This will more appropriately recognise the community's broader interest in the operation and impact of liquor regulation than simply as liquor consumers.

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

Clause 18 inserts new subparagraphs (vii), (viii) and (ix) into section 216(1)(b).

The new subparagraphs provide for the liquor advisory board to be made up of the following new members:

1. one member appointed to represent young people (new section 216(1)(b)(vii));
2. one member appointed to represent off licensees (new section 216(1)(b)(viii));  
and
3. one member with knowledge or expertise in the area of health and the effects of alcohol (new section 216(1)(b)(ix)). Examples of the type of person who would be suitable to fill this position are provided for guidance.

**Clause 19      Section 216 (1), new note**

Clause 19 inserts a new note into section 216(1) as a consequence of the amendment made in clause 18. The note explains the nature of examples provided in the Act in accordance with the *Legislation Act 2001*.

## **Clause 20      Section 216 (2)**

Clause 20 substitutes a new section 216(2) into the Liquor Act.

Section 216(2) currently provides that the chair of the liquor advisory board is the Commissioner for Fair Trading.

Clause 20 will provide that the chair of liquor advisory board is the Director-General of the Justice and Community Safety Directorate.

To assist the liquor advisory board in undertaking its new function (see clause 21 below), which will involve consideration of policy issues as well as operational issues, it is more appropriate for the chair of the board to be the Director-General. The Commissioner of Fair Trading will remain as a member of the board.

## **Clause 21      Section 217**

Clause 21 substitutes a new section 217 into the Liquor Act.

Section 217 currently provides that the liquor advisory board has the function of advising the Minister about matters associated with the operation of the Act.

Given the breadth of alcohol-related issues which are relevant to achieving the Act's harm minimisation objectives, new section 217 provides that the liquor advisory board has the function of advising the Minister about:

- a) matters associated with the operation and effectiveness of the Act; and
- b) measures, including legislative measures, that support the harm minimisation and community safety principles (as set out in section 10 of the Act).

The clause inserts the following examples which are relevant to a) above:

1. the achievement of the objects of the Act;
2. the effectiveness of the harm minimisation and community safety principles.

## **Clause 22      Sections 218 (2) (b) and 219 (2)**

Clause 22 replaces references to 'commissioner' wherever occurring in sections 218(2)(b) and 219(2) with references to 'director-general'. This is consistent with the amendment in clause 20 which provides that the liquor advisory board will now be chaired by the Director-General of the Justice and Community Safety Directorate, instead of the Commissioner for Fair Trading.

Clause 22 amends section 218(2)(b) to provide that the Director-General may call a meeting of the liquor advisory board, by reasonable written notice given to the other members.

Clause 22 amends section 219(2) to provide that a member may apply to the Director-General for reimbursement of expenses reasonably incurred by the member for the purpose of attending a meeting of the liquor advisory board.

## Clause 23      New part 16A

Clause 23 inserts new part 16A into the Liquor Act.

The amendment is one of the amendments in the Bill designed to strengthen the provisions which ensure that those who obtain liquor licences are suitable having regard to their character and associations.

There are arrangements in place for the Commissioner to seek ACT Policing comment in relation to licence or permit decisions. Under these arrangements, there are limited protections available to ACT Policing in disclosing certain types of information which is highly sensitive or confidential in nature (for example, information which may prejudice a criminal investigation, enable the discovery of the existence or identity of a confidential source of information, or otherwise endanger anyone's life or physical safety).

To address this issue, the Bill includes amendments to provide protections in relation to the disclosure of criminal intelligence by incorporating provisions mirroring those already in place in the *Security Industry Act 2003*, part 2A (Criminal intelligence).

This amendment would enable the Commissioner to rely on criminal intelligence information from ACT Policing and provide ACT Policing with the relevant protections in relation to the disclosure of this information.

New section 222A includes definitions relevant for part 16A, including ***criminal intelligence*** which is defined as information relating to actual or suspected criminal activity the disclosure of which could reasonably be expected to prejudice a criminal investigation, expose a confidential source of information, or endanger a person's life or safety.

New section 222B provides that information that is classified as criminal intelligence can only be disclosed to the Commissioner if the information is relevant to the making of a decision about issuing licences or permits, or whether to apply to the ACT Civil and Administrative Tribunal (the ACAT) for an occupational discipline order.

New section 222C provides that the Commissioner or the ACAT may not disclose any reason for a decision involving criminal intelligence other than a reason specified in the section. For example, if the Commissioner refuses to issue a licence or permit based on criminal intelligence, the only reason the Commissioner can give is that the issuing of the licence or permit would not be in the public interest.

New section 222D requires that, if an applicant is refused a licence or permit due to reliance on criminal intelligence and the applicant seeks a review of that decision, or the Commissioner seeks an occupational discipline order based on criminal intelligence, the Commissioner or Chief Police Officer must apply to the ACAT for a determination about whether the information is criminal intelligence. If the ACAT decides that the information is not criminal intelligence, the Commissioner or Chief Police Office must be given the opportunity to withdraw the information from the proceeding.

New section 222E similarly provides that the Commissioner or Chief Police Office must be given the opportunity to withdraw the information from a Supreme Court proceeding which is an appeal from the ACAT, if the Supreme Court proposes to find that the information is not criminal intelligence.

New sections 222F and 222G set out when and how the information must remain confidential.

New section 222H allows the Chief Police Officer to delegate functions under part 16A to a senior police officer (a police officer of or above the rank of superintendent).

#### **Clause 24      New part 21**

Clause 24 inserts new part 21 into the Liquor Act to provide transitional arrangements for the amendment in clause 17 (replacing the liquor consumer representative with a community representative).

Part 21 has the effect of ensuring that the person who was appointed as a member of the liquor advisory board to represent liquor consumers, immediately before commencement, is taken to be appointed as a member of the liquor advisory board to represent the community. The appointment will end at the end of the period stated in the appointment (15 March 2016 evidenced in NI2013-545) unless it is ended earlier, in accordance with the Act.

The existing appointee has the relevant background and skills to perform in the role as ‘community representative’ and therefore it is appropriate for the appointee to continue to serve out the balance of their current term of appointment.

While this clause will have effect immediately on the day that the amendment in clause 17 commences (the day after notification of the Act), part 21 will remain in the Liquor Act for a period of 6 months to provide for transparency in relation to the status of the appointment.

#### **Clause 25      Dictionary, new definitions**

Clause 25 inserts a cross-reference to the new definitions of *criminal intention* in section 222A and *maintain* in section 222A into the dictionary of the Liquor Act.

#### **Clause 26      Further amendments, mentions of (*Commissioner may require police certificate etc for person*)**

Clause 26 replaces references to the heading of section 71 appearing in a number of sections throughout the Act as a consequence of the amendment in clause 13 which amends the heading of the section.