

**2017**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**EXPLANATORY STATEMENT**

**LIQUOR AMENDMENT BILL 2017**

Presented by  
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## LIQUOR AMENDMENT BILL 2017

### Introduction

This explanatory statement relates to the Liquor Amendment Bill (the Bill) as presented to the ACT Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### Overview of the Bill

The Bill makes a number of amendments to the *Liquor Act 2010* (the Act) and the *Liquor Regulation 2010* (the Regulation) to reduce alcohol related harm, support a vibrant night-time economy, improve the administration of the liquor legislation and reduce unnecessary regulatory burden.

More specifically, the Bill:

- creates a statutory power for licensees and other authorised individuals to evict or refuse entry to people who are intoxicated, violent, quarrelsome or disorderly;
- makes it an offence for a person who has been evicted or refused entry to a venue to remain within the vicinity of the venue or attempt to re-enter the vicinity of the venue, unless they have a reasonable excuse;
- clarifies the type of conditions that may be imposed on a licence by the Commissioner for Fair Trading (the Commissioner), including a condition requiring the licensee to fit security cameras on or around the licensed premises;
- identifies technical standards for security cameras and confirms that the Commissioner or a senior police officer may direct a licensee to provide footage recorded by the cameras;
- clarifies that the Commissioner can require a licensee to discontinue an active promotion that is a prohibited promotional activity;
- allows for controlled purchase operations, to test licensee compliance with laws relating to the sale of alcohol to minors and reduce harms arising from underage drinking;
- strengthens the consultation requirements relating to key stakeholders and adjoining residents of existing and proposed licensed premises;
- allows all licensees other than off-licensees to have six extended trading authorisations each year for special events;
- replaces the current requirement for licensees to maintain incident registers with a requirement to instead report an incident through appropriate avenues and within 24 hours of an incident occurring;
- extends the Attorney-General's power to declare prohibited alcohol products to encompass products that are indecent or offensive, likely to encourage irresponsible consumption, or are otherwise not in the public interest;

- amends the definition of ‘intoxicated’ in the Act to include intoxication arising from drugs, or a combination of drugs and alcohol, to ensure that provisions such as those relating to a refusal of service or entry on grounds of intoxication also apply to a person who is intoxicated because of the consumption of drugs or a combination of alcohol and drugs;
- makes it an offence for an on-licensee to permit patrons to remove liquor from the licensed area to provide clarity around the obligations of licensees with an on-licence;
- clarifies that company directors who are not directly involved in the sale or supply of liquor are not required to hold a responsible service of alcohol (RSA) certificate;
- recognises interstate RSA qualifications as being valid for the purposes of the Act;
- allows for the use of evidentiary certificates relating to the holding of a licence or permit in court proceedings, to remove the requirement for the Commissioner to attend court personally to give evidence on these matters;
- removes unnecessary signage requirements but ensures the Commissioner has the power to require a licensee to display particular signage if he or she considers that it is necessary for that venue;
- removes the requirement for certain low risk restaurants and cafés to provide a Risk-Assessment Management Plan (RAMP);
- provides power for the Commissioner to require a licensee to complete or amend a RAMP;
- provides that certain businesses that supply small quantities of alcohol ancillary to their main service are exempt from the operation of the Act;
- allows the Commissioner to issue perpetual liquor licences and clarifies that the Commissioner may suspend the operation of a liquor licence if licence fees are not paid;
- amends the timing of reporting of liquor sales by off-licensees;
- facilitates the supply of alcohol by caterers who provide alcohol away from their primary licensed premises;
- removes references in the Act to an ACT Planning and Land Authority (ACTPLA) certificate, which does not exist;
- removes unnecessary regulatory requirements relating to toilets, telephones and glass washing;
- relaxes the current requirement for complaints to be in writing to make it easier for members of the community to raise concerns related to existing and proposed licensed venues; and
- ensures that clubs are authorised to sell alcohol to ‘temporary members’.

## Human rights implications of the Bill

Several of the amendments being made by the Bill engage rights in the *Human Rights Act 2004* (the HRA). These are:

- right to equality and freedom from discrimination, section 8;
- children’s right to protection, section 11;
- right to privacy, section 12;
- freedom of movement, section 13;
- right to freedom of expression, section 16; and
- right to a fair trial, section 21.

The preamble to the HRA notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights. Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

### ***Statutory power for a licensee or other authorised person to evict or refuse entry in certain situations***

The Bill (clause 75) amends the Act to provide that an authorised person for a venue (a licensee, a permit-holder, an employee or agent of a licensee or permit-holder, or a police officer) may refuse entry to, or evict from licensed or permitted premises any person who is intoxicated, violent, quarrelsome or disorderly.

#### *Nature of the right affected*

The amending provisions engage section 8 of the HRA (right to equality before the law and freedom from discrimination).

‘Equality before the law’ has been essentially held to mean that judges and administrative officials must not act arbitrarily in enforcing laws.<sup>1</sup> The non-discrimination provisions in the HRA are founded on articles 2 (1) and 26 of the International Covenant on Civil and Political Rights (‘the ICCPR’). ‘Discrimination’ as the term appears in the ICCPR is understood as meaning ‘any distinction, exclusion, restriction or preference which is based on any

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<sup>1</sup> Nowak, M *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised edition, N.P Engel, Publisher, 2005 at 606.

ground which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms’.

The amendment could be seen to engage the freedom from discrimination based on the ground of a person’s state of intoxication or other behaviour.

#### *The importance of the purpose of the limitation*

The right to evict an intoxicated, violent, quarrelsome or disorderly person is important to ensure the safety and amenity of the licensed or permitted venue for the benefit of the patrons and staff of the venue.

#### *The nature and extent of the limitation*

The amendment does not create new rights of exclusion or eviction. Under the common law, there is an implied invitation for patrons to enter licensed premises, which can be revoked by a licensee in relation to any person, provided the reason is not discriminatory. The amendment simply clarifies that common law right of eviction or refusal of entry in relation to certain common situations where it is likely to be necessary and warranted to exercise the right, for the safety and comfort of other patrons and the staff of the venue.

Certain provisions of the liquor legislation also attempt to minimise any possibility of unlawful discrimination. For example, the *Liquor (Intoxication) Guidelines 2010 (No 1)* developed by the Commissioner reduce the likelihood of a person with a mental or physical disability being mistaken by a licensee or the staff of a licensed venue for a person who is intoxicated. The Guidelines set out a number of signs of intoxication, relating to behaviour (including aggression, using offensive language and vomiting), speech (including slurred or incoherent speech), coordination (including spilling or dropping drinks) and balance (including falling down or staggering) and encourage licensees to both observe and talk to the person thought to be possibly intoxicated before making that determination. The Guideline states ‘It should be noted that there are some medical conditions that may cause signs mirroring some of those listed. Respectful discussion with the person, and or their friends, might well assist in determining whether a person is intoxicated.’

The Act’s definition of intoxication also requires the licensee or staff member to consider whether it is reasonable in the circumstances to believe that the indicative signs relating to behaviour, speech, coordination and balance result from the consumption of alcohol (or following the amendments made by this Bill, consumption of alcohol, drugs or a combination of alcohol and drugs).

#### *The relationship between the limitation and its purpose*

The statutory right of a licensee, permit-holder or other authorised person to refuse entry to, or evict, a person, on the grounds set out in the amendment is directly and logically connected with the purpose of the amendment, which is to reduce alcohol related harm. The amendment seeks to support harm reduction by ensuring that patrons who are intoxicated, disorderly, violent or quarrelsome do not enter or remain on the premises where they may pose a risk to themselves and/or other patrons by becoming further intoxicated, and/or engaging in violent or disorderly behaviour. It also seeks to improve the amenity of the licensed venue for all patrons and ensure a safe and pleasant environment. Any limitation of the right under section 8 of the HRA that may occur from the application of

this provision is reasonable and proportionate, noting the public interest benefits that arise from improving the safety and amenity of licensed and permitted venues in this manner.

*Less restrictive means reasonably available to achieve the purpose*

It is not considered that there are any less restrictive means available to achieve the purpose of reducing alcohol related harm and ensuring the safety of patrons of licensed and permitted venues. Similar provisions exist in NSW<sup>2</sup> and Queensland.<sup>3</sup>

***Offence for a person who has been evicted or refused entry to a venue to remain within the vicinity of the venue or attempt to re-enter the vicinity of the venue***

The Bill (clause 72) amends the Act to provide that it is an offence for a person who has been refused entry to, or evicted from, a venue to remain within the vicinity of the venue or attempt to re-enter the vicinity of the venue within six hours of being evicted or refused entry. The offence does not apply if the person reasonably fears for his or her safety if he or she does not remain in, or re-enter, the vicinity of the premises, if the person needs to remain in, or re-enter, the vicinity of the premises in order to obtain transport, or if the person resides in the vicinity of the premises. ‘Vicinity of the premises’ means any place less than 50 metres from any point on the boundary of the premises.

*Nature of the right affected*

Section 13 of the HRA provides that everyone has the right to move freely within the ACT. Insofar as a person who is evicted or refused entry to a venue may not remain in or move around the vicinity of the venue for a six hour period, the amendment may limit the right to freedom of movement.

However, this right is not an absolute right, as it has inherent limitations, which are acknowledged at subsection (3) of article 12 of the ICCPR (the equivalent right to section 13 of the HRA): ‘the rights to liberty and freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights or freedoms of others and are consistent with the other rights recognised in the Covenant’.

*The importance of the purpose of the limitation*

The purpose of the limitation is to ensure the safety of other patrons and staff of a venue, by ensuring that a person who has been evicted or refused entry because they are intoxicated, violent, quarrelsome or disorderly does not remain around the venue causing trouble. Reducing alcohol related violence is an important objective of the Act.

*The nature and extent of the limitation*

Any limitation in relation to section 13 of the HRA (freedom of movement) is minimal as it applies only to those patrons who are refused entry to or evicted from a venue. The amendment provides safeguards to ensure that individuals who have a reasonable excuse for remaining in the area (for example, they live nearby or need to catch transport from the area) can do so. It also does not limit the movement of individuals within the vicinity of the venue after the six hour period has passed.

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<sup>2</sup> Section 77 of the *Liquor Act 2007* (NSW).

<sup>3</sup> Sections 165 and 165A of the *Liquor Act 1992* (Qld).

### *The relationship between the limitation and its purpose*

The amendment seeks to improve the safety of the ACT's night-time precincts by ensuring that individuals who have been refused entry to or evicted from venues for legitimate reasons do not remain nearby causing trouble for, or threatening the safety of, other patrons or staff. Any limitation of the right under section 13 of the HRA is therefore reasonable and proportionate, noting the public interest benefits that arise from improving safety.

### *Less restrictive means reasonably available to achieve the purpose*

Any less restrictive means would not achieve the purposes of the provisions as effectively.

### ***Clarification of the Commissioner's right to require a licensee to discontinue or remove an active alcohol promotion that is a prohibited promotional activity under the Act***

Under section 137 of the Act, it is an offence for a licensee or the employee of a licensee to conduct a prohibited promotional activity on licensed premises. Prohibited promotional activity is defined as an activity that encourages excessive or rapid consumption of liquor or is prescribed by regulation. The Regulation sets out various other prohibited promotional activities – for example, promoting the supply of liquor using images, symbols or figures that are degrading, sexist or otherwise offensive; by associating the consumption of alcohol with risk-taking or violent, dangerous or anti-social behaviour; and encouraging intoxication or anti-social behaviour. The penalty for conducting a prohibited promotional activity is 50 penalty units.

Under section 144 of the Act the Commissioner, if he or she believes on reasonable grounds that there is, or is likely to be, a contravention of the Act or breach of a licence, may direct the licensee or other relevant person to take action to prevent the contravention or breach. Examples of directions include directing a licensee to reduce loud noise coming from the premises. Clause 78 of the Bill adds a further example to section 144 to clarify that the Commissioner, if he or she believes that a licensee is conducting a prohibited promotional activity in contravention of section 137, may direct the licensee to remove or discontinue the prohibited promotional activity.

### *Nature of the right affected*

Both the existing section 137 and the new example under section 144 engage the right to freedom of expression under section 16 of the HRA by limiting the type of alcohol promotions that a licensee may engage in.

The section 16 HRA right to freedom of expression protects expression in any medium, including written and oral communication, the media, public protest, broadcasting and artistic works. The right not only protects favourable information and ideas but also unpopular or inflammatory sentiments. The right includes the freedom to receive and impart information by a wide variety of means including posters, pamphlets and dress. Commercial expression and advertising may fall within the definition although the right is vested in the individual rather than a corporation. However, the right to freedom of expression can be limited on several grounds. Under article 19 (3) of the ICCPR (from which section 16 derives), freedom of expression may be limited as provided for by law and in



circumstances where it is necessary to protect the rights or reputations of others, national security, public order, public health or morals.

#### *The importance of the purpose of the limitation*

There is a significant body of research demonstrating that alcohol advertising impacts upon awareness and acceptance of alcohol (including amongst non-drinking adults and minors) and levels of alcohol consumption.<sup>4</sup> The public health benefits of ensuring that advertising does not encourage irresponsible or dangerous drinking, including drinking by minors, or violent or anti-social behaviour, are of clear importance. The limitation also protects the rights of members of the community (including women and children) to not be exposed to alcohol advertising that is sexist, demeaning or offensive; and protects public order, by ensuring that promotional activities are not encouraging violence or anti-social behaviour.

#### *The nature and extent of the limitation*

Any limitation created by existing section 137 and the amendment is minimal. It would apply only to individual licensees (the right to freedom of expression not being vested in licensee corporations) who engage in prohibited promotional activities on the licensed premises. These provisions do not otherwise limit the ability of a licensee to express their views about a particular product, or to otherwise advertise or promote a product. They also do not limit the ability of licensees to fully express themselves in other forums.

#### *The relationship between the limitation and its purpose*

The limitation ensures that the types of advertising that would be most damaging to the community in terms of alcohol related harm, because they would encourage a dangerous level or manner of consumption of alcohol or consumption by minors, are prohibited. The limitation also ensures that promotions that are likely to be demeaning or offensive to the community or large sectors of the community (for example, women) do not occur or remain in licensed venues that are open to the public.

#### *Less restrictive means reasonably available to achieve the purpose*

There are no less restrictive means available to reasonably achieve the purpose.

#### ***Extension of the Attorney-General's power to declare prohibited alcohol products***

Section 213 of the Act provides that the Minister may declare a thing containing liquor to be a prohibited liquor product if satisfied that the thing is likely to:

- (a) have a special appeal to children or young people; or
- (b) be confused with:
  - i. confectionery; or
  - ii. (ii) a non-alcoholic drink.

The application of this provision has been discussed in relation to products that may not fall within the categories set out above, but nonetheless may be harmful or inappropriate for

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<sup>4</sup> T. Babor et al. *Alcohol: No Ordinary Commodity. Research and Public Policy*. 2<sup>nd</sup> edition, Oxford University Press, 2010, chapter 12.

other reasons. An example is powdered alcohol, which raises health concerns that it may be snorted, and safety concerns that it may be more easily hidden than liquid alcohol and therefore taken into places where alcohol is not permitted, for example schools and underage events.

Clause 84 of the Bill amends section 213 to provide that the Minister may also declare a thing containing liquor to be a prohibited liquor product if satisfied that the name of the liquor product, or its design or packaging, is indecent or offensive; or the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product; or it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.

It is an offence under the Act to supply a prohibited liquor product.

#### *Nature of the right affected*

The amendment may engage the right to freedom of expression under section 16 of the HRA by limiting the manner in which a licensee who is a natural person can promote alcohol products that a licensee may supply. As noted above this right can be limited to protect the rights or reputations of others, national security, public order, public health or morals.

#### *The importance of the purpose of the limitation*

The purpose of the limitation is to protect public health, a matter of high importance, and to protect members of the community (with regards to any product with an indecent or offensive name, design or packaging).

#### *The nature and extent of the limitation*

Again, any limitation created by this amendment is minimal. It would apply only to individual licensees who wish to supply a liquor product that falls within the expanded categories of prohibited products. It does not limit the supply of any other product. Any limitation is reasonable and proportionate having regard to the important purpose of the amendment.

#### *The relationship between the limitation and its purpose*

The limitation is directly related to the purpose, to protect public health and morals.

#### *Less restrictive means reasonably available to achieve the purpose*

Without these amendments, the Government is limited in its power to prevent the supply of dangerous or offensive liquor products. Similar provisions exist in NSW,<sup>5</sup> Queensland<sup>6</sup> and Victoria.<sup>7</sup>

#### **Controlled purchase operations**

Clause 82 provides a controlled purchase operation scheme (also known as a compliance testing scheme) for the purposes of the Act. Controlled purchase operations involve

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<sup>5</sup> Section 100 of the *Liquor Act 2007* (NSW).

<sup>6</sup> Section 156B of the *Liquor Act 1998* (Qld).

<sup>7</sup> Section 118B of the *Liquor Control Reform Act 1998* (Vic).

supervised minors attempting to buy liquor from licensed premises to test licensees' compliance with supply laws. The amendment is based on the existing model under the *Tobacco Act 1927* that enables compliance testing, using test purchases of tobacco products by trained and supervised young people.

#### *Nature of the right affected*

Section 11 of the HRA 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.

The compliance testing scheme may engage this right because it is placing minors in a situation which is by law limited to adults – that is, purchasing alcohol. However a number of safeguards are in place to limit any risk that may otherwise result. These safeguards are discussed in more detail below. The scheme also supports this right as it will encourage compliance with laws prohibiting the sale of alcohol to minors, which 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.

Section 21 of the HRA provides that 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. Section 21 of the HRA gives effect to article 14 of the ICCPR and promotes procedural fairness and natural justice in proceedings against a person. The right to a fair trial is central to the operation of a democratic society based on the rule of law. The right to a fair trial guarantees access to the court and a fair and public hearing.

The compliance testing scheme itself does not limit the right to a fair trial. However, this right may become relevant if a licensee sells alcohol to a minor (who is purchasing it under the scheme) and is then found to have committed an offence under section 110 of the Act (licensee/permittee supply liquor to child or young person). Such an offence would then be dealt with before the courts or by the ACT Civil and Administrative Tribunal (ACAT) in accordance with procedures already established in legislation.

#### *The importance of the purpose of the limitation*

The purpose of any limitation of these rights is to encourage compliance with laws prohibiting supply of alcohol to minors, to protect children and young people in accordance with section 11 of the HRA.

The following are the short and long term risks associated with alcohol consumption by children and young people: 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>8</sup>

The protection of children from these harms is of clear importance.

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<sup>8</sup> NHMRC (National Health & Medical Research Council) 2009. *Australian Guidelines to reduce health risks from drinking alcohol*. Canberra: NHMRC.

### *The nature and extent of the limitation*

Again, any limitation of rights created by the liquor compliance testing scheme is minimal. The scheme itself contains a number of safeguards aimed at protecting the rights of the minors engaged as purchase assistants. For example, the Minister may not approve compliance testing procedures unless satisfied that the procedures: provide that, in carrying out a compliance test, a purchase assistant's welfare is paramount; appropriately protect a purchase assistant's health and safety; and allow a purchase assistant to stop taking part in a compliance test at any time during the test. The young person and at least one parent or guardian must give also informed and written consent before the young person may be engaged as a purchase assistant.

As noted above, the scheme itself does not limit an individual's right to a fair trial. Any engagement with this right would only occur if a licensee sold liquor to a minor and was prosecuted for an offence under section 110 of the Act. The matter would be dealt with by the courts or ACAT. The right to a fair trial relating to any matter before the courts or ACAT would be protected by existing criminal procedure legislation.

### *The relationship between the limitation and its purpose*

Any limitation of rights that may be created by the scheme is directly related to the purpose of protecting children.

### *Less restrictive means reasonably available to achieve the purpose*

It is not considered that there are any less restrictive means reasonably available to achieve the purpose.

### ***Power for the Commissioner to require a licensee to install security cameras***

Clause 21 of the Bill amends section 31 of the Act to explain the type of conditions that may be imposed by the Commissioner. Section 31 (3) (i) provides that the Commissioner may impose a condition that security cameras must be fitted on or around licensed premises.

### *Nature of the right affected*

Section 12 of the HRA states that 'Everyone has the right not to have his or her privacy interfered with unlawfully or arbitrarily'. This section is based upon article 17 of the ICCPR.

However, the right to privacy is not an absolute right. General comment 16 from the Office of the High Commissioner for Human Rights describes the right under article 17 as the right of every person to be protected against arbitrary or unlawful interference with their privacy.<sup>9</sup> The comment states that the term 'unlawful' means that no interference can take place except in cases envisaged by the law, and that the term 'arbitrary interference' is intended to guarantee that even interference provided by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances.<sup>10</sup> Therefore, it is reasonable to suggest that a person's right to privacy can be interfered with, provided the interference is both lawful (allowed for by the law) and not arbitrary (reasonable in the circumstances).

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<sup>9</sup> CCPR General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, clause 1.

<sup>10</sup> Ibid, clause 4.

Clause 21 of the Bill may interfere with the privacy of non-corporate licensees, patrons of licensed premises and potentially members of the public, if those individuals had a reasonable expectation of privacy in an area in which a security camera was operating.

#### *The importance of the purpose of the limitation*

The purpose of any limitation that may be created by this amendment is to protect the safety of licensees, their staff, patrons and members of the public. There is some evidence that the use of security cameras deters crime<sup>11</sup>. Security camera footage is also valuable for the investigation and prosecution of crime.

#### *The nature and extent of the limitation*

Section 61B of the *Crimes Act 1900* ensures that those areas of a licensed venue where people would reasonably expect privacy (for example, a toilet cubicle) are protected from surveillance. However, licensees, patrons and members of the public are unlikely to have reasonable expectations of privacy in relation to the more public areas in and around licensed venues where security cameras would be installed. If individuals did have a reasonable expectation of privacy in relation to those areas, and the use of security cameras constituted an interference with privacy, the interference would be reasonable and justified, given the role of the security cameras in protecting the safety of licensees, staff, patrons and members of the public. Any interference would also be lawful and not arbitrary. Businesses with an annual turnover of over \$3 million would be required to comply with the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth). Compliance with these principles will further reduce any interference with the right to privacy.

#### *The relationship between the limitation and its purpose*

Any limitation of the right to privacy is directly related to the purpose, which is to protect the safety of licensees, their staff, patrons and the public.

#### *Less restrictive means reasonably available to achieve the purpose*

It is not considered that there are any less restrictive means available to achieve the purpose. Similar legislative provisions in Victoria were considered with regards to the right to privacy and found to be compatible with the *Charter of Human Rights and Responsibilities Act 2006* (Vic).<sup>12</sup>

#### **Requirement to report incidents**

Section 131 of the Act requires a licensee or permit holder to keep a register of incidents that occur at the licensed or permitted premises (an incident register). Under section 130, an incident means an incident involving violent, unlawful or anti-social behaviour at the premises, involving violent or anti-social behaviour that occurs in the immediate vicinity of the premises and involves a person who has recently left, or been refused admission to, the premises, or occurring after midnight resulting in a person at the premises requiring medical

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<sup>11</sup> B. Welsh and D. Farrington, *Closed-Circuit Television Surveillance and Crime Prevention A Systematic Review*, Report prepared for The Swedish National Council for Crime Prevention, 2007; S. McLean, R. Worden, and M. Kim, *Here's Looking at You: An Evaluation of Public CCTV Cameras and Their Effects on Crime and Disorder*.

Criminal Justice Review 2013 38: 303-334.

<sup>12</sup> Liquor Control Reform Amendment (Enforcement) Bill 2009, Statement of compatibility.

assistance. The incident register must include, for each incident, a description of the incident, the date and time the incident happened and the name, address and contact details of each person connected with the incident. If a police officer deals with the incident, the incident report must include the contact details for the police officer and the time the police officer started dealing with the incident but does not need to include any further details about the incident that happened after that time.

Clause 69 amends the Act to replace the current requirement to keep an incident register with a requirement to report an incident. This lessens the administrative burden on licensees and permit-holders by not requiring them to keep a physical register (particularly those who never or rarely have an incident occur on their premises) but ensures that the licensing authority and police, where necessary, are made aware of any incidents in a timely manner.

#### *Nature of the right affected*

Both the existing requirement to maintain an incident register recording any incidents, and the amendment instead requiring a licensee or permit-holder to report an incident will engage the right to privacy under section 12 of the HRA. However, as noted above, the right to privacy is not an absolute right. Any interference with the right to privacy must be lawful and not arbitrary.

#### *The importance of the purpose of the limitation*

The limitation will achieve the important purpose of protecting the safety of licensees, staff, patrons and members of the community by ensuring that the Commissioner and the police if necessary can take appropriate action in relation to any violent or antisocial incidents. Incident information also informs the Commissioner's consideration of the need for additional regulation at licensed or permitted premises.

#### *The nature and extent of the limitation*

The extent of the limitation is proportionate to the aim. Any interference with privacy will apply only to those individuals who are involved in an incident, as that term is defined in the legislation. The provision does not compel an individual involved in an incident to provide their details. However, where police are involved and the incident involves the commission or possible commission of an offence, police have an existing power under the *Crimes Act 1900* to require the name and/or address of any person that may be able to assist in inquiries about the offence. The extent of disclosure is also minimal, as the information would be provided only to the licensing authority and, if necessary, to police.

#### *The relationship between the limitation and its purpose*

The limitation is directly related to the purpose of ensuring that the Commissioner and the police if necessary are aware of violent, unlawful or antisocial incidents in or around licensed and permitted premises and can take appropriate action to protect the safety of patrons, staff and the community.

#### *Less restrictive means reasonably available to achieve the purpose*

There are no less restrictive means available to achieve the purpose.

### **Climate Change Considerations**

The climate change impacts of these amendments have been considered and no impacts have been identified.

## CLAUSE NOTES

### **Part 1**                      **Preliminary**

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

This clause specifies the name of the Bill, once enacted, as the *Liquor Amendment Act 2017*.

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

This clause provides that the following provisions will commence on 1 July 2017:

- section 6
- sections 8 and 9
- section 11
- sections 14 to 16
- section 19
- sections 22 to 27
- sections 31 and 32
- section 46, 48 and 50
- sections 52 to 54
- sections 56 to 71
- sections 76 and 77
- sections 85 and 90
- sections 92 to 94
- sections 100 to 106
- sections 108 to 110
- sections 115, 116, 118 and 119.

This is to allow time for operational changes relevant to these provisions.

The remaining provisions will commence on the day after the Act's notification day.

#### **Clause 3**                      **Legislation amended**

This clause names the legislation amended by this Bill. This Bill will amend the *Liquor Act 2010* (the Act) and the *Liquor Regulation 2010* (the Regulation). The Bill also makes consequential amendments to the *Magistrates Court (Liquor Infringement Notices) Regulation 2010* and the *Major Events Act 2014*, as set out in schedule 1.



**Part 2**                      **Liquor Act 2010**

**Clause 4**                      **Application of Act—generally**

**Section 6, example 2**

This clause amends an example in section 6 of the Act to reflect the fact that the *Army and Air Force Canteen Service Regulation 1959* (Cth) has been replaced by the *Army and Air Force (Canteen) Regulation 2016* (Cth). The Act does not apply to the supply, possession, consumption or purchase of liquor authorised under that Regulation.

**Clause 5**                      **New section 8A**

Clause 5 inserts a new section 8A which relates to the supply of liquor by exempt businesses. The section will create an exemption from the provisions of the Act relating to the supply of liquor for certain businesses, provided the liquor is not supplied to a child or young person. ‘Exempt business’ is defined to mean businesses providing accommodation that supply liquor in accommodation units (for example, in a mini bar or through room service), florist or gift maker businesses that package liquor together with flowers, food or other gifts, hairdressing or barber businesses, various hospital, residential care and retirement village businesses and limousine and tour businesses, provided certain criteria are met.

These businesses will be able to supply small amounts of liquor, ancillary to their main goods or services and in accordance with the section, without requiring a licence or permit. This reflects the low level of risk associated with the supply of alcohol in these circumstances and supports red tape reduction.

**Clause 6**                      **What is a licence?**

**Section 16, definition of licence, new paragraph (da)**

Clause 6 amends the definition of licence to include a catering licence, a new licence type created by the Bill.

**Clause 7**                      **What is a club licence?**

**Section 20, definition of club licence, new paragraph (d) (ia)**

Clause 7 amends the definition of club licence to clarify that a club may sell alcohol to a person who is at the club as a ‘temporary member’ of the club under the *Gaming Machine Act 2004*.

This reflects a recent change to the *Gaming Machine Act 2004* made by the *Gaming and Racing (Red Tape Reduction) Legislation Amendment Act 2016* to introduce a ‘temporary membership’ category for clubs, which is available to interstate guests.

**Clause 8**                      **New section 20A**

This clause inserts a new section 20A which defines a catering licence, to mean a licence that authorises the licensee to sell liquor in the course of a catering business, at premises where the catering business is being conducted. This is to facilitate the supply of alcohol at catered events held away from the caterer’s main premises.

**Clause 9**                      **Licence-application**

**New section 25 (2) (c) (v)**

Clause 9 amends the licence application provisions in section 25 to clarify that suitability information about a proposed licensed premises is not required in an application for a catering licence. This is because catered events will be held at a variety of premises which are unlikely to be known at the time of the caterer's licence application.

**Clause 10**                      **New section 25 (2) (da)**

Clause 10 amends section 25 of the Act, which sets out the requirements for a licence application. Clause 10 inserts a new subsection (2) (da) to provide that a licence application must include evidence that the operation of the business at the licensed premises complies with both the lease where the premise is located and the Territory plan. This replaces the previous requirement to submit an 'ACTPLA certificate' with a licence application. This replacement has been made because ACTPLA certificates do not exist.

**Clause 11**                      **Section 25 (2) (da)**

Clause 11 makes an amendment to the new section 25 (2) (da) to provide that the requirements of that section relating to documents and information about a proposed premises that must be provided with a licence application, do not apply to catering licences. This is because catered events, over the course of the catering licence, will be held at a variety of premises which are unlikely to be known at the time of the caterer's licence application.

**Clause 12**                      **Section 25 (2) (e) (i)**

Clause 12 omits existing section 25 (2) (e) (i) which imposes a requirement for an ACTPLA certificate. This is replaced by new section 25 (2) (da).

**Clause 13**                      **Section 25 (2) (f)**

This clause facilitates a red tape reduction measure which removes the need for applicants for restaurant and café licences with standard licensed hours to submit a risk-assessment management plan. This reduces unnecessary red tape for a large sector of the ACT's hospitality industry.

Under clause 13, applications prescribed by regulation must include a risk-assessment management plan. Clause 98 inserts a new section 5A into the Regulation, which prescribes that applications for other on-premise licence types must include a risk-assessment management plan.

**Clause 14**                      **Licence-decision on application**

**Section 27 (2) (d) and (f)**

This clause clarifies that when determining an application for a catering licence, the Commissioner is not required to consider suitability of premises. This is because caterers are likely to operate from a number of premises for catered functions, the details of which would not be known at the time of the licence application.

**Clause 15**                      **Licence-form**

**Section 30 (1) (b) (iv)**

Clause 15 amends section 30 to provide that the address of the licensed premises is not required for a catering licence application. As noted above, this information will vary and is unlikely to be known at the time of the application.

**Clause 16**                      **Section 30 (1) (b) (v)**

Section 30 sets out the information that must be included in a licence. This clause amends section 30 to include a requirement that a catering licence must include details of the licensed times for the licence.

**Clause 17**                      **Licence-conditions**

**Section 31 (1), new note**

Section 31 (1) of the Act provides that a licence is subject to the condition that the licensee and licensed premises must comply with the Act. Clause 17 amends section 31 to insert a note after subsection (1) stating that a reference to the Act includes a reference to statutory instruments made under the Act, including any regulation. This reflects the changes made by clauses 18 to 21.

**Clause 18**                      **Section 31 (2), examples and note 1**

This clause omits the examples in section 31 (2). These examples are replicated and expanded upon in new section 31 (3). It also omits note 1 which is currently placed after the examples in section 31 (2). Clause 17 amends section 31 to place note 1 directly after subsection (1).

**Clause 19**                      **Section 31 (2), note 2**

Clause 19 omits note 2 in section 31 which refers to licence renewal. This is to reflect changes to the Act and the Regulation to facilitate perpetual licences. Once all licensees hold perpetual licences, licence renewals will no longer be required.

**Clause 20**                      **Section 31 (2), note 3**

Clause 20 omits note 3 in section 31 which provides that an example in an Act is not exhaustive, and may extend but does not limit the meaning of the provision in which it appears. This is to reflect the changes made by clause 18 to remove the examples from section 31 (1).

**Clause 21**                      **New section 31 (3) and (4)**

This clause inserts a new section 31 (3) which identifies conditions that may be imposed by the Commissioner on a licence. Conditions include those that were provided as examples in section 31 (2). It also inserts new conditions related to community and patron safety, including: a condition that liquor must not be served in glass after midnight; a condition that shots of liquor must not be served after midnight; a condition that the licensee must fit security cameras on licensed premises or other land under the control of the licensee or in the vicinity of the licensed premises; a condition that stated requirements about security cameras must be complied with; a condition that the licensee must engage security guards

or additional security guards; and a condition that the licensee must ensure staff and security guards are trained to a required level of competency.

Section 31 (3) provides some guidance on the types of conditions that may be imposed by the Commissioner when a licence is issued, renewed or amended.

Section 31 (4) states that a regulation may prescribe requirements in relation to a security camera mentioned in section 31 (3).

**Clause 22                      Licence-term**

**Section 32 (2) and (3)**

This clause will facilitate the granting of perpetual liquor licences. Previously, liquor licences have been granted for one year or three years. From the commencement of this section, liquor licences will instead be granted in perpetuity, and will continue in force until cancelled or surrendered. Existing term licences will expire on the day prescribed by regulation, at which time licensees who wish to continue to hold a licence will need to submit a licence renewal application. If approved, the licensee will then be granted a perpetual licence. This will result in the gradual phasing out of term licences.

**Clause 23                      New section 32 (5)**

This clause clarifies that commencement day, for the purposes of section 22 relating to perpetual licences, means the day that section 22 commences.

**Clause 24                      Division 2.4 heading**

Clause 24 changes the heading of division 2.4 from ‘Licences-public consultation’ to ‘Licences-notification and public consultation’ to account for new notification requirements.

**Clause 25                      Section 33**

This clause replaces the current definition of ‘applicant’ (which includes only applicants for new licences or changes to licence subclasses) in section 33 with a more extensive definition of ‘application’ which will facilitate consultation about applications for other significant changes to existing licences, including increases to a venue’s occupancy loading or licensed times.

This will ensure that public consultation occurs in relation to all applications which are likely to have a significant impact on individuals or businesses located near the relevant licensed venue, or on entities with a particular interest in licence applications (for example, health and policing authorities).

**Clause 26                      New sections 33A and 33B**

Clause 26 inserts new sections 33A and 33B which relate to consultation.

Section 33A (1) requires the Commissioner to give written notice of an application (as that term is defined in section 33) to the Chief Police Officer, the Chief Health Officer, the Directors-General of the administrative units responsible for the *Education Act 2004*, the *Children and Young People Act 2008*, the *Environmental Protection Act 1997*, the *Litter Act 2004* and the *Road Transport (Public Passenger Services) Act 2001*, as well as any other person prescribed by regulation. This ensures that relevant government entities have

awareness of liquor licence applications that may affect their functions, and an opportunity to make comment on those applications under section 35 of the Act.

Section 33A (2) requires the Commissioner to give notice of an application to the registered proprietor of the lease of an adjoining premises. This ensures neighbouring residents or businesses are made aware of applications relating to proposed licensed venues and significant changes to the licensed times, occupancy or licence sub-class (for example, a change from a restaurant/café licence to a bar licence) of existing premises.

Section 33B ensures that the Commissioner has authority to request contact information from the Commissioner for Revenue, in order to notify nearby residents of a licensed venue or proposed licensed venue of the relevant application.

These amendments will ensure that relevant entities, directorates, individuals and businesses have visibility of applications relating to new licences and significant changes to existing licences, and the opportunity to comment on those that may affect them.

**Clause 27                      Sections 37 (1) (c) and 38 (4) (c)**

These amendments provide that when deciding whether to amend a licence, the Commissioner is not required to be satisfied as to the suitability of the premises if the licence is a catering licence.

**Clause 28                      Licence – amendment for change to floor plan of licensed premises  
New section 39 (2) (aa)**

Section 39 of the Act specifies the requirements for an application for a change to the floor plan of an existing licensed premise. This clause inserts a new paragraph (aa) to require evidence that the business complies with the relevant lease and the Territory Plan. This replaces the requirement under section 39 (2) (b) (i) to submit an ACTPLA certificate, which does not exist.

**Clause 29                      Section 39 (2) (b) (i)**

This clause omits section 39 (2) (b) (i) which references an ACTPLA certificate. As noted above, this is replaced by new paragraph (aa).

**Clause 30                      Section 39 (2) (b) (iii)**

Clause 30 amends section 39 (2) (b) (iii) to clarify that a licensee applying for an amendment of a licence based on a change of floor plan is not required to include a risk-assessment management plan if the licensee holds a restaurant and café licence that is not subject to a condition requiring a risk-assessment management plan. This provision is one of several which aim to reduce red tape for low risk restaurants and cafés.

**Clause 31                      Licence-application for renewal  
Section 42 (1)**

This clause reflects the changes made to facilitate the issuing of perpetual licences. It clarifies that the licence renewal provisions in section 42 apply to the holder of a licence issued before the commencement of section 31 (i.e. a term licence) but do not apply to the holder of a perpetual licence.

**Clause 32**                      **New section 42 (5)**

Clause 32 provides the meaning of commencement date for the purposes of section 31.

**Clause 33**                      **New section 46A**

This clause creates a new section 46A which sets out the consequences of failing to pay a licence fee. If a licensee fails to pay their licence fee within seven days of being notified that the fee is due and payable, the Commissioner may issue an immediate suspension notice, suspending the licensee's licence until the fee is paid.

**Clause 34**                      **Permit-application**  
**New section 50 (2) (ba)**

Clause 34 amends section 50 (2) to provide that an applicant for a liquor permit, must, if the permitted premises are wholly or partly enclosed, include in the application evidence that the operation of the business at the premises complies with both the lease where the premise is located and the Territory Plan.

**Clause 35**                      **Section 50 (2) (c) (i)**

Clause 35 omits section 50 (2) (c) (i) which references an ACTPLA certificate which does not exist. This has been replaced by the requirement in new section 50 (2) (ba), as outlined above.

**Clauses 36 - 38**              **Permit conditions**  
**Section 55**

These clauses make similar changes to section 55 (relating to permit conditions) as are made to section 31 (licence conditions) by clauses 17 to 21. Conditions include those that were provided as examples in section 55 (2), as well as conditions that liquor must not be served in glass or by shots after midnight. Other conditions set out in new section 31 (3) are not relevant to permits, given the temporary nature of functions held under a permit.

**Clause 39**                      **What is an *eligible club*?**  
**Section 70, definition of *eligible club*, paragraph (b) (iv)**

Section 70 (b) (iv) of the Act provides that an eligible club is one that has a constitution or set of rules that prohibits the sale of alcohol to anyone who is not a member or guest of a member. Clause 39 amends this section, to clarify that it is subject to new paragraph (ba) which states that an eligible club may allow the supply of liquor to a person who is at the premises as a temporary member of a club under the *Gaming Machine Act 2004*. This reflects the recent changes made to the *Gaming Machine Act 2004* to introduce a 'temporary membership' category.

This clause does not require clubs to amend existing constitutions to specifically permit the sale of alcohol to temporary members, but instead ensures that existing club constitutions, which may prohibit the sale of alcohol to anyone other than a member or guest, do not prevent clubs from selling alcohol to temporary members.

**Clause 40**                      **Section 70, definition of *eligible club*, new paragraph (ba)**

This clause inserts new paragraph (ba) which, as noted above, states that an eligible club may allow the supply liquor to a temporary member of a club.

**Clause 41**                      **Section 79 heading**

This clause replaces the previous heading ‘Commissioner may require certificate, plan, etc for premises’ with a new heading ‘Commissioner may require plan etc for premises’, to reflect changes made to the Act to remove references to ACTPLA certificates.

**Clause 42**                      **Section 79 (2) (a)**

Clause 42 amends section 79 (2) (a) to provide that the Commissioner, when making a decision about whether premises are suitable premises for a licence or permit, may require evidence that the operation of the business at the premises complies with both the lease where the premise is located and the Territory Plan. This replaces the previous requirement in section 79 (2) (a) for an ‘ACTPLA certificate’, which does not exist.

**Clause 43**                      **Risk-assessment management plan—availability**  
**Section 90A**

Clause 43 corrects a typographical error in section 90A by inserting the omitted word ‘management’ into the term ‘risk-assessment plan’ so that it correctly reads ‘risk-assessment management plan’.

**Clause 44**                      **New sections 90B and 90C**

Clause 44 inserts a new section 90B to provide that the Commissioner may require a licensee who holds a restaurant or café licence and does not have a risk-assessment management plan to prepare and submit a risk-assessment management plan. In most cases, licensees with restaurant and café licences with standard licensed times will be very low risk and will not require a risk-assessment management plan; however, if circumstances change (for example, a restaurant or café begins to experience high levels of alcohol related violence), this section will ensure that the Commissioner can require the venue to submit a risk-assessment management plan.

New section 90C provides that the Commissioner may also require a licensee to amend an existing risk-assessment management plan.

In both cases, the Commissioner must give the licensee at least 14 days notice and the licensee must comply with any requirements prescribed by regulation. The Commissioner may also require the licensee to allow the Commissioner to inspect the premises within a reasonable time.

These amendments will improve community safety by ensuring that venues requiring a risk-assessment management plan have one that is current and appropriate.

**Clause 45**                      **New sections 92A and 92B**

Clause 45 inserts new section 92A which provides that it is an offence for a licensee to fail to comply with a direction to prepare a risk-assessment management plan under section 90B. The maximum penalty is 20 penalty units.

Clause 45 also inserts new section 92B which similarly provides that it is an offence for a licensee or permit-holder to fail to comply with a direction to prepare a risk-assessment management plan under section 90C. Again, the maximum penalty is 20 penalty units.

**Clause 46                      Offence—supply liquor without RSA certificate—licensee or permit-holder**

**Section 100 (1) (c) and (3) (c)**

Clause 46 amends the current offence of a licensee or permit-holder supplying liquor without an RSA certificate to ensure that it captures licensees with catering licences. In keeping with the harm minimisation focus of the Act, these licensees are also required to hold a current RSA certificate.

**Clause 47                      New section 100 (6)**

Clause 47 inserts new section 100 (6) to provide that a licensee or commercial permit holder that is a corporation is taken to hold a RSA certificate if each person in the corporation who has day-to-day control of the licensed or permitted business holds a current RSA certificate.

This amendment reduces the regulatory burden on industry by clarifying that directors of body corporate licensees or permittees, who may have no direct involvement in the sale or supply of liquor to individuals, and in some cases, are based overseas, are not required to hold an RSA certificate.

**Clause 48                      Offence-supply liquor without RSA certificate—employee**

**Section 101 (1) (c)**

Clause 48 makes the same change as clause 46 (to ensure RSA requirements apply to catering licenses as they apply to other licence types), but in relation to employees, rather than licensees and permit-holders.

**Clause 49                      Offence-fail to keep RSA certificates**

**Section 103 (1) (b) and (2) (b)**

Clause 49 amends the current offences under section 103 relating to licensees who fail to keep RSA certificates to clarify that they relate only to current RSA certificates.

**Clause 50                      Section 103 (1) (b) (ii)**

This clause further amends section 103 to provide that the licensee offence of failing to keep current RSA certificates for employees also applies to licensees with catering licences.

**Clause 51                      What is *intoxicated*?**

**Section 104 (b)**

Clause 51 replaces the current definition of intoxicated in section 104 of the Act, which focuses only on consumption of liquor, with a new definition that recognises that intoxication can be caused by liquor, a drug, or a combination of liquor and a drug.



Clause 51 relies upon the definition of ‘drug’ in paragraphs (a) and (b) in the definition of drug in the *Road Transport (Alcohol and Drugs) Act 1977*. This covers both illegal and prescription drugs that may affect a person’s behaviour.

This will enable provisions, such as those relating to refusal of service or entry to premises based on a patron’s intoxication, to apply irrespective of whether the intoxication is due to consumption of alcohol, drugs or a combination of both.

**Clause 52                      Sections 105 (1) (d) and (3) (d) and 106 (1) (d)**

Clause 52 amends existing offences relating to supply of liquor to an intoxicated person to include supply by catering licensees and their employees at catered functions.

**Clause 53                      Offence—supply liquor to intoxicated person—other person  
New section 107 (1) (c) (ia)**

Clause 53 amends the existing offences relating to supply of liquor to an intoxicated person by another person to include supply at catered functions.

**Clause 54                      Section 107 (3) (a)**

This clause provides that the offence in section 107 relating to supply of liquor by a person to an intoxicated person at a licensed premises or premises where a catering business is being conducted, does not apply to a licensee or their employee. This is because this offence is aimed at people other than licensees and their employees – for example, friends of the intoxicated person. Separate offences exist for licensees and employees who supply liquor to intoxicated persons.

**Clause 55                      Offence—fail to display sign about abuse offence  
Section 109**

Clause 55 omits section 109 of the Act which provides that a licensee or permit holder commits an offence if the licensee or permit-holder fails to display signage about the abuse of staff offence in section 108 of the Act.

This aims to reduce the regulatory burden on industry, particularly low risk venues like restaurants and cafés that are unlikely to experience offences of this nature.

Clause 74 of the Bill, however, inserts a new provision which makes it an offence if a licensee fails to comply with a written direction by the Commissioner requiring the licensee to display particular signage. Such a requirement might be made, for example, if the risk profile of a particular venue changes.

**Clauses 56 to 65              Offences relating to supply, possession and consumption of liquor-at catered premises**

Clauses 56 to 65 amend the existing offences under sections 110, 111, 112, 114, 115, 116 and 117 relating to the supply to and possession and consumption of liquor by intoxicated people, children and young people to ensure that those offences (and relevant exemptions, such as those applying to young people who may possess alcohol in the course of their employment) also apply at premises where a catering business is being conducted. This reflects new section 20A which introduces catering licences as a new type of licence.

**Clause 66                      Section 117 (2) (a)**

This clause reflects the amendments made to introduce catering licences and clarifies that it is not an offence under section 117 for a young person to possess liquor if the young person is doing so in the course of their employment with a licensee holding a catering licence. The same exemption already applies in relation to young people who possess liquor in their course of their employment at a licensed or permitted place.

**Clause 67                      Offence-send child or young person to obtain liquor**

**New section 119 (1) (a) (ia) and (2) (a) (ia)**

This clause amends the existing offence of sending a child or young person to buy liquor at licensed or permitted premises to include premises where a licensee is conducting a catering business.

**Clause 68                      Section 119 (3) (a)**

Clause 68 clarifies that it is not an offence under section 119 to send a young person to obtain liquor if the young person is doing so in the course of their employment with a licensee holding a catering licence. This would allow, for example, a young person working with a caterer to collect cases of wine intended for a catered event from a wholesaler. A similar exemption already applies in relation to young people being sent to obtain liquor in their course of their employment at a licensed or permitted place.

**Clause 69                      Section 131**

Clause 69 substitutes a new section 131 replacing the current requirement for a licensee or permit-holder to maintain an incident register at the licensed or permitted premises with a requirement to report in writing any incident that happens at licensed or permitted premises. The incident must be reported to the Commissioner within 24 hours of it occurring.

Under new subsection 131 (2), the incident report must contain the same details that were required to be recorded in the incident register, including a description of the incident, when the incident occurred, and the details of each person connected with the incident. If the licensee seizes a false identification document under section 124 of the Act, the licensee must also note in the incident report the time and date of seizure of the document.

This will facilitate electronic reporting of incidents and mean that licensees are no longer required to keep a physical register at the licensed venue, while ensuring that all incidents are still appropriately reported.

**Clause 70                      Section 132 heading**

Clause 70 replaces the current heading of section 132 'Offence-fail to keep incident register' with a new heading, 'Offence-fail to report incident' to reflect the changes to section 131.

**Clause 71                      Section 132 (1) (b) and (2) (b)**

Clause 71 amends section 132 (1) to replace the existing licensee and permit-holder offences of failing to keep an incident register with a new offence of failing to report an

incident within 24 hours of the incident occurring to reflect the changes to section 131. The penalty remains the same - a maximum of 10 penalty units.

**Clause 72                      Section 138**

Clause 72 replaces the current offence of failing to leave a premises when directed with a new section 138 dealing more broadly with individuals who are refused entry to or turned out of premises.

The new section 138 provides that it is an offence for a person who has been refused entry or turned out of premises to remain in the vicinity of the premises or re-enter the vicinity of the premises, within 6 hours of exclusion from the premises. This offence does not apply if the person reasonably fears for their safety if they do not remain in or re-enter the vicinity of the premises, must remain in or re-enter the vicinity of the premises to get transport, or lives in the vicinity of the premises. Vicinity of the premises is defined as meaning any place that is less than 50 metres from any point on the boundary of the premises.

An offence against this section is a strict liability offence. The maximum penalty is 20 penalty units.

This amendment protects the safety of other patrons and staff of a venue, by ensuring that a person who may have been evicted or refused entry because they are intoxicated, violent, quarrelsome or disorderly does not remain around the venue causing trouble.

**Clause 73                      New section 139A**

Clause 73 inserts a new section 139A to clarify rules around the removal of alcohol from on-licence venues.

New section 139A (1) provides that an on-licensee commits an offence if another person buys liquor at the on-licensed premises and takes it away from the premises. New section 139A (2) provides that an offence is also committed by the person who takes the liquor away from the on-licensed premises.

There are several exceptions to the offences set out in new subsection 139A (3).

The offences will not apply to the licensee or other person if the person taking the liquor away from the on-licensed premises is the licensee, an employee or family member of the licensee. This aligns with existing offences relating to the consumption of alcohol at off-licensed premises.

The new offence also will not apply if the liquor is the unconsumed portion of wine that the person bought to consume on the premises with a meal. This is to allow for the situation where diners may purchase a bottle of wine to enjoy with dinner but not finish the bottle. Given that a bottle of wine generally contains around seven or eight standard drinks, and is of a significantly higher value than a single drink, not allowing a partially consumed bottle to be removed from the premises for later consumption may encourage individuals to consume several more drinks on the premises than they had intended to.

**Clause 74                      New section 143A**

Clause 74 inserts a new section 143A which makes it an offence for a licensee to fail to comply with a written direction from the Commissioner to require particular signage to be displayed in the licensee's venue.

An offence against this section is a strict liability offence. The maximum penalty is 10 penalty units.

**Clause 75**                      **New division 8.9**

Clause 75 inserts new division 8.9, consisting of section 143B.

New section 143B provides a statutory right for an authorised person (a licensee or permit-holder, police officer, crowd controller, or employee or agent of a licensee or permit-holder) to refuse to admit, or to eject, any person who is intoxicated, violent, quarrelsome or disorderly. If a person fails to leave when required by an authorised person, the authorised person may use necessary and reasonable force to remove the person.

This provision will not limit a licensee or permit-holder's common law right to refuse entry to, or evict persons from, their venue for any reason (provided it is not discriminatory), but simply clarifies those rights in relation to certain common situations where eviction or refusal of entry of a patron is likely to be necessary and warranted, for the safety and comfort of other patrons and the staff of the premises.

**Clause 76**                      **Section 143B (1) to (3)**

This clause provides that the statutory right in new section 143B for an authorised person to refuse to admit, or to eject, any person who is intoxicated, violent, quarrelsome or disorderly, also applies in respect of catered premises. This will take effect following the commencement of new section 20A.

**Clause 77**                      **Section 143B (4), definition of *authorised person***

Clause 77 amends the definition of authorised person in new section 143B to clarify that an authorised person, for a catering licence, is a police officer, the licensee, an employee or agent of the licensee, or a crowd controller working at the licensed premises. This too will take effect after commencement of new section 20A.

**Clause 78**                      **Commissioner may direct licensee, permit-holder, employee etc  
Section 144 (2), new example**

Section 144 of the Act applies if the Commissioner believes on reasonable grounds that there is, or is likely to be, a contravention of the Act or a breach of a licence or permit. In these circumstances, the Commissioner may direct a licensee or other relevant person to take action to prevent the contravention or breach. Clause 78 amends section 144 to add a further example of a direction the Commissioner may give to a licensee, being a direction to remove or discontinue a promotion that is a prohibited promotional activity under section 137 of the Act.

Under section 137 of the Act, it is an offence for a licensee or the employee of a licensee to conduct a prohibited promotional activity on licensed premises. Prohibited promotional activity is defined as an activity that encourages excessive or rapid consumption of liquor or is prescribed by regulation. The Regulation provides that further types of prohibited promotional activities includes activities that promote or encourage intoxication or anti-social behaviour, promote the sale of alcohol to children or young people, or use images, symbols or figures that are directly or indirectly sexual, degrading, sexist or otherwise offensive in nature.

This amendment ensures that the Commissioner can take action when he or she becomes aware that a licensee is conducting a prohibited promotional activity.

**Clause 79                      New division 9.1A**

Clause 79 inserts a new division 9.1A dealing with directions to provide security camera footage.

New section 31 (3) (i) of the Act provides that the Commissioner may impose a licence condition requiring a licensee to fit security cameras on the licensed premises or on other land under the control of the licensee in the vicinity of the licensed premises.

New section 145A provides that if the Commissioner, or a senior police officer (as that term is defined in the dictionary to the Act) believes on reasonable grounds that there is, or is likely to be, a contravention of the Act or breach of licence, the Commissioner or senior police officer may in writing direct the licensee to provide security camera footage within five days after the direction is given.

New section 145B makes it an offence to fail to take reasonable steps to comply with a Commissioner's or senior police officer's directions under section 145A. Failure by licensees to comply with a direction from the Commissioner or senior police officer 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. The penalty aligns with the existing penalty in section 145 for failing to comply with a Commissioner's direction under section 144 on a matter other than security cameras.

**Clause 80                      Form of complaint**  
**Section 177 (3)**

Under section 177 of the Act, a person who believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee or commercial permit-holder may complain to the Commissioner.

Subsection 177 (1) provides that the complaint must be in writing, signed by the person making the complaint, and include the complainant's name and address. Under subsections 177 (2) and (3), the Commissioner can accept for consideration a complaint that does not comply with subsection (1), but must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

Clause 80 amends section 177 to omit subsection (3), so that the Commissioner may accept a complaint that is not in writing without further limitations. This will make it easier for members of the community to raise concerns related to existing and proposed licensed and permitted venues.

**Clause 81                      Grounds for occupational discipline—licensee**  
**New section 183 (3)**

This clause provides that a failure to pay licence fees within 28 days of receiving an immediate suspension notice under section 46A is a basis for cancellation of a licence by the ACAT under the existing occupational discipline provisions set out in the Act.

## Clause 82                      New part 11A

Clause 82 inserts new part 11A, comprising sections 187A to 187G, in the Act, to establish a compliance testing regime to support compliance by licensees with laws relating to the sale of alcohol to minors and reduce harms arising from underage drinking.

New section 187A sets out definitions for several terms used in new part 11A.

New section 187B explains that a **compliance test** involves a young person (a **purchase assistant**), under supervision, purchasing or trying to purchase liquor from a licensee, and that the compliance test is carried out to obtain evidence that may lead to prosecution for the offence of supplying liquor to a child or young person.

Compliance testing is sometimes also referred to as controlled operations and is a tool which can be used by regulatory authorities to support compliance and detect non-compliance with regulatory requirements. It is generally not the primary means of achieving compliance or taking action against non-compliant regulated businesses. Access Canberra, as the liquor regulator, will continue to have a strong focus on working proactively with licensees to ensure that they are aware of their obligations under liquor legislation, including in relation to the supply of liquor to children or young people.

New section 187C provides for the Minister to approve a program of compliance testing.

The Minister can only approve such a program where:

- satisfied it is necessary to deter the sale of liquor to children or young people in the area where the program will operate;
- there is a statement of the area where the program will operate and when it will begin and end;
- the program is not longer than three months; and
- the Minister has approved procedures for the program.

New section 187D provides for the Minister to approve procedures for carrying out approved programs of compliance testing. The Minister can only approve procedures where satisfied as to a number of matters. These are matters directed at ensuring the welfare and safety of a purchase assistant is protected and that the testing will be conducted in a fair and effective manner.

New section 187E provides that an authorised person may carry out a compliance test in accordance with the approved program and the approved procedures, but only if the purchase assistant and at least one person with parental responsibility for the young person have given informed consent, in writing, to the young person being a purchase assistant.

New sections 187F and 187G provide protections for an authorised person and a purchase assistant, in respect of conduct, which would otherwise be unlawful, that is conduct engaged in for the purpose of the compliance test. These provisions include protection from criminal and civil liability. However, they do not prevent action being taken against an authorised person in relation to the failure of the authorised person or the purchase assistant to comply with approved procedures.

## **Clause 83**                      **Section 193**

Clause 83 substitutes a new section 193 dealing with the definition of an RSA certificate.

The abbreviation RSA stands for responsible service of alcohol. Existing section 193 defines an RSA certificate to mean a certificate by an approved RSA training course provider for an approved RSA course. The Act further defines approved RSA training course. The result of the relevant definitions in the Act is that only an RSA certificate relating to a course approved by the Commissioner is a valid RSA certificate in the ACT. This means that a current RSA certificate issued by a course provider approved in another jurisdiction is not valid for the purposes of the Act.

This imposes a time and financial burden on hospitality staff who have current RSA qualifications in other jurisdictions who must retake RSA training in the ACT, and may discourage interstate wine and beer producers attending one-off events held in the ACT. Responsible service of alcohol principles across Australian jurisdictions are very similar. Therefore, a person who holds an RSA certificate from another jurisdiction within Australia will have a sufficient understanding of the RSA principles which underpin the Act.

The amendment made by clause 83 will allow for the recognition of a current interstate RSA certificate.

## **Clause 84**                      **Prohibited liquor products**

### **Section 213 (1) and examples**

Section 213 of the Act provides for the Minister to declare a thing containing liquor to be a prohibited liquor product where the Minister is satisfied that the thing is likely to have a special appeal to children or young people or to be confused with confectionery or a non-alcoholic drink.

Some alcoholic products may not fall within these categories, but nonetheless may be harmful or inappropriate for other reasons. An example is powdered alcohol, which raises health concerns that it may be snorted, and safety concerns that it may be more easily hidden than liquid alcohol and therefore taken into places where alcohol is not permitted, for example schools and underage events.

Clause 84 amends section 213 to provide that the Minister may also declare a thing containing liquor to be a prohibited liquor product if satisfied that the name of the liquor product, or its design or packaging, is indecent or offensive; or the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product; or it is otherwise in the public interest to declare the liquor product to be an undesirable liquor product.

## **Clause 85**                      **New division 14.4**

Clause 85 inserts a new division 14.4, comprising new sections 214A and 214B, in the Act to provide for the authorisation of extended trading for on-licensees.

New section 214A allows the holder of a general licence, on-licence, club licence or special licence to apply to the Commissioner for extended trading hours for a special event. The written application must include information about how the licensee intends to manage any additional risk arising from the sale of liquor in the extended trading hours and how the

licensee intends to limit the impact of the extended trading hours on occupants of nearby premises.

Special event is defined to mean ‘a unique or infrequent event of significance in the ACT, the region or nationally that people independent of the licensee and anyone connected with the licensee wish to celebrate or mark on the licensed premises.’ Examples of such events would be televised sporting matches, local cultural events and festivals, visiting bands or DJs and New Years’ Eve.

New section 214B provides that the Commissioner may approve an application where satisfied that the licensee can manage any additional risks or impacts on occupants of nearby premises. A maximum of six extending trading authorisations may be approved for a licensee in a 12 month period.

#### **Clause 86                      New section 224B**

Clause 86 inserts new section 224B providing for the use of evidentiary certificates.

Section 160 of the repealed *Liquor Act 1975* contained a provision which allowed for the use of evidentiary certificates in court proceedings. That provision stated ‘In a court proceeding, a certificate signed by the commissioner stating any of the following matters is evidence of the matters: (a) that, on each stated day, a stated person was or was not the holder of a licence of the stated kind in relation to the stated premises; (b) that, on each stated day, a stated person was or was not the holder of a permit in relation to the stated premises.’

Clause 86 amends the Act to include a similar provision.

Similar evidentiary certificate provisions are included in many pieces of ACT legislation and support the efficiency of court and other proceedings by avoiding the need for personal attendance at proceedings to give evidence on matters that are not at issue. A provision to this effect will assist when making occupational discipline applications, in prosecutions and in any private actions where licence status information is relevant, by negating the requirement for the Commissioner to personally attend to give evidence.

#### **Clause 87                      Dictionary, definition of *ACTPLA certificate* and *applicant***

Clause 87 omits the definitions of *ACTPLA certificate* and *applicant* from the dictionary. *ACTPLA certificate* is no longer used in the Act, and *applicant* has been replaced with *application* in relevant sections.

#### **Clause 88                      Dictionary, new definitions**

Clause 88 provides that certain new definitions relating to controlled purchase operations are set out in section 187A.

#### **Clause 89                      Dictionary, definition of *authorised person***

This clause replaces the current dictionary definition of *authorised person* with an expanded definition which includes a person who is an authorised person under section 187A for the purposes of the controlled purchase operations framework.



**Clause 90                      Dictionary, new definitions**

Clause 90 provides new definitions of *catered premises* and *catering licence*, for the purposes of provisions of the Act relating to catering licences. These definitions will take effect on the commencement of new section 20A.

**Clause 91                      Dictionary, new definition of *compliance test***

Clause 91 provides that the definition of *compliance test* is set out in section 187B of the Act.

**Clause 92                      Dictionary, definition of *incident register***

Clause 92 omits the current definition of *incident register* because physical incident registers are being replaced with a requirement to report incidents.

**Clauses 93 and 94        Dictionary, definition of *licensed premises and licensed times***

These clauses reflect changes made to introduce catering licences.

**Clause 95                      Dictionary, new definition of *purchase assistant***

Clause 95 clarifies that the definition of *purchase assistant*, as that term relates to controlled purchase operations, is set out in section 187B (a).

**Clause 96                      Further amendments, mentions of *hold an RSA certificate***

These amendments replace reference to ‘RSA certificate’ with ‘current RSA certificate’ in sections 100 to 102 of the Act so as to require licensees and employees of licensed and permitted premises to hold RSA certificates that are current.

**Clause 97                      Further amendments, mentions of *section 79***

Clause 97 replaces references in several sections of the Act to the current heading of section 79 ‘Commissioner may require certificate, plan, etc for Premises’ with ‘Commissioner may require plan etc for premises’, to reflect the amendment made to section 79 by clause 42.

**Part 3                          Liquor Regulation 2010**

Part 3 comprises clauses 98 to 119 which make amendments to the Regulation, many of which are intended to reduce unnecessary regulatory burden.

**Clause 98                      New section 5A**

This clause inserts a new section 5A which identifies which licence types require risk-assessment management plans. This relates to section 25 (2) (f) of the Act which outlines the details and documents that must be included in a licence application. New section 5A (b) excludes restaurant/café licences with standard licensed times. This means that an application for this type of licence does not require a risk-assessment management plan. This reflects the fact that this is a particularly low risk venue type.

**Clause 99**                      **New section 7A**

Clause 99 inserts new section 7A, which sets out a number of technical and performance requirements that security cameras must comply with, if a licensee is required by the Commissioner to fit security cameras under section 31 (3) (i) of the Act. These are intended to ensure the utility of images captured for the purpose of investigation of incidents occurring on the premises.

**Clause 100**                      **Licence term—Act, s 32 (2)**

**Section 8 (1)**

This clause reflects the changes made to the Act to facilitate perpetual liquor licences and clarifies that section 8, which relates to the expiry of licences, applies only to existing term licences issued before the commencement of the provisions allowing for perpetual licences.

**Clause 101**                      **New section 8 (3)**

Clause 101 provides that commencement day, for the purposes of section 8, means the day of commencement of section 100 of the Act.

**Clause 102**                      **Public notice requirements—Act, s 34 (2) (b)**

**Section 9 (2)**

This clause provides that the public notice requirements set out in section 9 of the Regulation and applying to notices published under section 34 of the Act also apply to notices issued by the Commissioner under new section 33A (1) of the Act.

**Clause 103**                      **Licence maximum renewal period—Act, s 42 (1)**

**Section 12**

This clause provides that the renewal provisions of section 12 apply only to term licences issued before the commencement of the perpetual licence provisions in the Act.

**Clause 104**                      **Section 12 (2)**

This clause clarifies the definition of commencement day for the purposes of section 12.

**Clause 105**                      **Suitability of premises—cumulative impact**

**Section 15 (2) (c)**

Clause 105 reflects the changes made to section 131 of the Act to replace the requirement for licensees to keep incident registers with a requirement to instead report any relevant incidents to the Commissioner.

Section 15 of the Regulation provides a list of matters to be considered by the Commissioner when deciding if proposed premises are suitable premises to hold a liquor licence or permit.

One of these matters is the number of incidents recorded in incident registers (before the commencement date) or reported to the Commissioner (after the commencement date) for existing premises near the proposed premises.

**Clause 106**                      **New section 15 (3)**

Clause 106 clarifies that incident register means the incident register required by section 131 of the Act as in force immediately before the commencement of section 105 of the *Liquor Amendment Act 2017*.

**Clauses 107, 108, 111, 112, 113, 114 and 117**                      **Omission of unnecessary provisions**

Clauses 107, 108, 111, 112, 113, 114 and 117 omit unnecessary provisions:

- relating to the display of signage;
- imposing regulatory requirements which are not necessary to achieve the objects of the Act; and
- which are no longer required, consequentially on other amendments made by the Bill.

**Clause 109**                      **Section 32**

Section 32 provides the definitions of licensed times and permitted times, with reference to the tables set out in Schedule 2 of the Regulation. Clause 109 makes consequential amendments to section 32, to reflect minor changes made to those tables as a result of the inclusion of a new column to establish an early licensed time category for off licences. This is to support a different fee for certain off-licences with early licensed times as opposed to standard licensed times.

**Clause 110**                      **Licensed times and permitted times—Act, s 229 (2) (a)**

**New section 33 (2) (aa)**

Clause 110 creates a new licensed time category of ‘early licensed times’. This category will apply to off-licences only.

**Clauses 115 and 116**      **Purchase report to commissioner – off licensees**

**Schedule 1, sections 1.19 (2) and 1.19 (3), definitions of *relevant date and reporting period***

Clause 115 amends item 1.19 of schedule 1, relating to the requirement for an off licensee to report annually the gross price paid or payable by the licensee for liquor.

Currently, the Regulation requires reporting of liquor sales by off licensees two months before the earlier of the day the licence is to expire, or the day the next annual fee is due for the licence. This data is required by the Commissioner to enable the calculation of the liquor licence renewal fee for the following year. This timeframe provides insufficient time for the Commissioner to assist or follow up on licensees who have failed to provide the requested information. This could in turn lead to a delay in providing licensees with information on their renewal fees prior to the expiry of the licence. The timeframe also creates problems for licensees as they are providing data out of alignment with usual reporting times, for example, the financial year.

Clause 115 amends the Regulation to require reporting no later than two months after the end of the financial year.

Clause 116 makes consequential amendments to omit two definitions in item 1.19.

**Clause 118**                      **Schedule 2, part 2.1**

This clause replaces the table of licensed times in Part 2.1 with a new table which includes an additional column relating to the new licensed time category of ‘early licensed times’. This category will apply only to off-licences and means that licensees in that category can sell liquor between the hours of 7am and 6pm. Off-licensees can also operate in standard licensed times, which allow the sale of liquor between 7am and 11pm.

**Clause 119**                      **Dictionary, note 3**

This clause omits a reference to incident register from the dictionary of the Regulation, to reflect changes made to the Act to replace the requirement for licensees to maintain an incident register, with a requirement to report a relevant incident.

**Schedule 1**                      **Consequential Amendments**

**Part 1.1**                      **Magistrates Court (Liquor Infringement Notices) Regulation 2010**

This part amends Schedule 1 of the *Magistrates Court (Liquor Infringement Notices) Regulation 2010* to reflect changes to the Act which modify an existing infringement notice offence and introduce new offences which may be dealt with by way of an infringement notice under the Regulation.

The new offences are relatively minor in nature and have infringement notice penalties ranging from \$220 to \$440. Breaches of these offences should be readily apparent without the need for further inquiry, or the need to weigh up competing or contradictory evidence.

**Clause [1.1]**                      **Schedule 1, item 38**

This clause omits item 38 of Schedule 1 of the *Magistrates Court (Liquor Infringement Notices) Regulation 2010* which identifies section 138 (2) of the Act (which makes it an offence for a person to fail to leave a permitted place when directed) as an infringement notice offence and sets out the relevant penalty.

This reflects the changes made to the Act by clause 72 to replace the offences under section 138 (1) and (2) of failing to leave a licensed or permitted premises when directed, with a new offence under replacement section 138 (1) of remaining in the vicinity of a licensed or permitted premises or re-entering that premises within 6 hours of being refused entry or turned out under new section 143B.

**Clause [1.2]**                      **Schedule 1, new items 40A and 40B**

This clause inserts new items 40A and 40B into Schedule 1 of the *Magistrates Court (Liquor Infringement Notices) Regulation 2010*, to clarify that new sections 139A (1) and 139A (2) are infringement notice offences.

New section 139A (1) provides that it is an offence for an on-licensee to allow a person to take liquor away from the on-licensed premises. New section 139A (2) makes it an offence for a customer to take liquor away from an on-licensed premises.

**Clause [1.3]                      Schedule 1, new items 44A and 44B**

Clause [1.3] inserts new items 44A and 44B into Schedule 1 of the *Magistrates Court (Liquor Infringement Notices) Regulation 2010*. This establishes new sections 143A (1) and 143A (2) as infringement notice offences.

Under these sections, it is an offence for a licensee or permit-holder to fail to display a sign when directed to do so by the Commissioner.

**Part 1.2                              Major Events Act 2014**

**Clause [1.4]                      Section 24 (8), definition of *ban order offence*, paragraph (c) (ii)**

Section 24 of the *Major Events Act 2014* allows an interested person to apply to the Magistrates Court for an order banning a person who has been found guilty of a 'ban order offence' from entering a particular event or venue. Ban order offence is defined to include an offence against section 138 of the Act (fail to leave premises when directed) committed in an event venue during the period of the event.

Clause [1.4] amends section 24 of the *Major Events Act 2014* to reflect the changes made by clause 72 to section 138 of the Act, to replace the offence of failing to leave a premises when directed with the new offence of remaining in the vicinity of a licensed or permitted premises or re-entering the premises after being evicted or refused entry under new section 143B.