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

TENTH ASSEMBLY

LIQUOR (NIGHT-TIME ECONOMY) AMENDMENT BILL 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Tara Cheyne MLA
Minister for Government Services and Regulatory Reform**

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LIQUOR (NIGHT-TIME ECONOMY) AMENDMENT BILL 2024

The Bill is **not** a Significant Bill. Significant Bills are Bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Bill relates to amendments to the *Liquor Act 2010* (the Act). The amendments have been developed in collaboration with external stakeholders and multiple ACT Government agencies with the aim of creating a more flexible regulatory framework for businesses operating in the night-time economy (NTE), as well as giving the Regulator, Access Canberra, greater flexibility in administering the Act.

A key intent of the Bill is to enliven and diversify Canberra's night-time and entertainment economy. This intent is reflected through the proposed amendment of the Objects of the Act to specifically reference the responsible development of the Territory's night-time economy and related industries such as the live music, entertainment, tourism and hospitality industries. To give full effect to this intent, consideration of the responsible development of the Territory's night-time economy and related industries will also be included as one of harm minimisation and community safety principles that a decision maker must have regard to in making a decision under the Act.

The Bill includes two new event types (*licensee events* and *special events*) to support business growth and encourage greater participation in the NTE by the Canberra community. The Bill enables licensees to access free authorisations for extensions to trading hours and changes to floor plans for short, time limited events. Provisions in the Bill:

- allow licensees to obtain 10 authorisations a year to temporarily extend their trading hours for licensee events;
- automatically temporarily extend trading hours where a special event is declared, for the period specified in the special event declaration; and
- make it easier and cheaper for licensees to temporarily change floor plans up to 10 times a year for a licensee and/or special event.

The Bill also allows for a reduction in annual licence fees for venues that showcase artists, musicians, and other cultural activities. Businesses will need to demonstrate they have held a number of eligible events per year to receive the licence fee reduction. *Eligible event* is defined widely to encourage business to showcase a diversity of NTE entertainment, and cultural and artistic events. Ministerial guidelines will support the reform, including by setting out requirements for eligibility.

The Bill will also help new venues establish more quickly by allowing the commissioner to issue an interim licence for any applicant where there is a delay relating to suitability of premises preventing the licence from being issued, but the

commissioner is satisfied from a risk and safety perspective that the premises can still provide alcohol.

The Bill also allows the Minister to determine additional business types are exempt from the liquor licensing framework. Businesses such as hair salons are already exempt. Future exemptions could include nail salons and beauty parlours, as well as raffles and lotteries for charitable fundraising.

Growth in the NTE will translate into sizeable economic gains, additional employment, and significant wellbeing gains. On the consumer side, a more diverse set of offerings and experiences drives demand and adds to wellbeing. Regulatory reform can be seen as a necessary condition for growth, lowering business costs and reducing barriers to entry. More flexible and responsive regulatory arrangements also enable businesses to experiment and innovate, which can lead to changed operating models and an increase to the resilience of small businesses in the NTE.

CONSULTATION ON THE PROPOSED APPROACH

The ACT Government committed to undertake a review of the regulatory and non-regulatory settings for the NTE as part of a two-year work program, the Better Regulation Agenda (Agenda). This Agenda is contained in *Better Regulation: A report on how we are improving business regulation in the ACT*, released in June 2022.

Public consultation on the NTE was conducted between July and October 2023 via three business workshops and two community workshops.

The Taskforce engaged external provider Communication Link to hold three 3-hour workshops with a curated panel of business owners and targeted stakeholders, in addition to two community stakeholder workshops with peak bodies and community councils. Each panel workshop focused on specific areas of reform as follows:

- Workshop 1: Liquor reform, including proposed amendments to the *Liquor Act 2010*, and changes to liquor licensing categories and fees to encourage a greater diversity of business models and support for licensed venues.
- Workshop 2: Urban management, safety and governance, including an exploration of Purple Flag Accreditation, and the consideration of NTE governance models used in other local and international jurisdictions.
- Workshop 3: Core and Frame approach to the City Centre Entertainment Precinct, including proposed boundaries; Noise Management Plans (NMPs); Risk Assessment Management Plans (RAMPs) as well as seeking insights into how the ACT Government can support small businesses to increase their participation in the NTE.

In addition to the public consultation, extensive analysis of the legislative frameworks for the NTE has been undertaken by the Better Regulation Taskforce, the Justice and Community Safety Directorate, Access Canberra, and other ACT Government agencies. The reforms in the Bill are a component of a tranche of reforms to better

support businesses and help with the diversification of the NTE in Canberra, contributing to additional employment, as well as wellbeing benefits for consumers of night-time offerings.

Finally, as part of its work engaging with the community about the NTE, the Better Regulation Taskforce initiated a YourSay Community Survey on Canberra's nightlife, which received 1,864 survey responses, comprising of 1,171 responses from YourSay Panel members, and 693 responses from those who completed the survey via the open link on social media posts. Respondents ranged across age groups from 18-75+ and captured different genders and residing suburbs across Canberra. Among the top improvements that Canberrans wanted to see included more live music/live music venues (11 per cent), more events/festivals (10 per cent), later opening hours/more venues open late (10 per cent), and more activities/things to do/fun recreational activities/entertainment (9 per cent). It was considered that all of these would be supported by a more diverse and dynamic NTE.

CONSISTENCY WITH HUMAN RIGHTS

The compatibility of the Liquor (Night-Time Economy) Amendment Bill 2024 with the *Human Rights Act 2004* (HR Act) was considered during its development.

An assessment of the Bill against the rights protected by the HR Act is provided below.

Rights engaged

The Liquor (Night-Time Economy) Amendment Bill 2024 engages the following right:

- Right to work and other work-related rights (s27B of the HR Act).

The primary source of the economic, social and cultural right outlined in Part 3A of the HR Act is the International Covenant on Economic, Social and Cultural Rights. S27B (1) of the HR Act provides that everyone has the right to work, including the right to choose their occupation or profession freely. S27B (2) provides that everyone has the right to the enjoyment of just and favourable conditions of work.

The right to work outlined in the HR Act is engaged by the Bill which introduces new provisions to the liquor licensing scheme. As individuals can be licensed under the scheme, the Bill engages the right to work by amending provisions relating to interim licences. The Bill does not make any changes to the criteria for applying for and being granted a licence.

The reform to section 27 of the Act will provide the commissioner with the power to issue an interim licence. Currently, under section 76 of the Act, the commissioner must consider suitability information about the premises for a licence or permit, and must consider any certificates, plans, public consultation, and the results of any inspections of the premises. However, a delay in approving a licence could arise because of an issue that is in relation to a lease, not the suitability of the licensee to

operate. Providing the commissioner with the express authority under the Act to issue an interim licence will therefore provide the regulator with a flexible framework and provide businesses with an avenue to operate, while still ensuring the Objects of the Act, and the harm minimisation and community safety principles are maintained. This new provision will only be considered in relation to an issue about the suitability of premises only, and not suitability of applicants or associates which remain unchanged by the Bill.

Liquor (Night-Time Economy) Amendment Bill 2024

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Liquor (Night-Time Economy) Amendment Bill 2024**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

Clause 1 – Name of Act

This clause states the name of the Act as the *Liquor (Night-Time Economy) Amendment Act 2024*.

Clause 2 – Commencement

This clause states the Act referred to in clause 1 will commence on the day after its notification day.

Clause 3 – Legislation amended

This clause states that the Act referred to in clause 1 amends the *Liquor Act 2010*.

Clause 4 – Application of Act – sale of liquor – Section 7 (2)

Section 7 of the Act provides that provisions of the Act relating to the sale of liquor do not apply to duty free sale of liquor.

This clause amends the provision to update the current definition of *duty-free sale* to add *by a Collector* and inserts a new definition for *Collector* as per section 8 of the *Customs Act 1901* (Cwlth).

This amendment clarifies that *duty-free sale* means a sale for which permission is given by a Collector under section 96A (2) of the *Customs Act 1901* (Cwlth).

Clause 5 – Application of Act – supply of liquor by exempt business – New Section 8A (1A)

Clauses 5 and 6 establish a power for additional business to be made exempt from the provisions of the Act for the supply of liquor.

Clause 5 inserts a new provision providing that any declaration of *exempt business* by the Minister in accordance with new section 8A (2) (f) for the purpose of the Act is a disallowable instrument.

Clause 6 – Section 8A (2), definition of *exempt business*, new paragraph (f)

Clause 6 inserts a new provision providing that the Minister with portfolio responsibility under current Administrative Arrangements for the *Liquor Act 2010* has the power to declare a business exempt from the Act.

In keeping with the exemptions that are currently provided for in the Act, the new exemptions will focus on businesses where the supply of alcohol is a complimentary service, supply is ancillary to the primary purpose of the business and/or the volume of liquor supplied is limited. Examples could include nail salons that supply liquor at the salon as an ancillary to the business' services and without charge; as well as raffles and lotteries for charitable fundraising.

Clause 7 – Object of Act – New section 9 (d)

Section 9 of the Act outlines that the Object of the Act is to regulate the sale, supply, promotion and consumption of liquor:

- (a) to minimise the harm associated with the consumption of liquor; and
- (b) to facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety; and
- (c) in a way that encourages and supports liquor consumers to take responsibility for (i) their consumption of liquor; and (ii) their behaviour if it is affected by the consumption of liquor.

This clause inserts a new Object of the Act which is to contribute to the responsible development of the ACT's night-time economy; and industries related to the night-time economy, including the liquor, live music, entertainment, tourism and hospitality industries.

Clause 8 – Harm minimisation and community safety principles – Section 10 (d)

This clause amends section 10 (d) to align with the new section 9 (d) and provides that when making a decision under the Act, the decision-maker must have regard to the principle that the sale of liquor should be regulated in a way that contributes to the responsible development of the ACT's night-time economy; and the liquor, live music, entertainment, tourism and hospitality industries.

Clause 9 – What is a *licence*? Section 16, definition of *licence*, new note

Clauses 9 to 14 establish the framework for an interim licence. The commissioner may issue an interim licence where there is a delay relating to the suitability of the premises preventing the licence from being issued, but the commissioner is satisfied from a risk and safety perspective that the premises can still provide alcohol.

Clause 9 inserts a note to section 16 of the Act to note that new section 27A (3) deals with the status of an interim licence.

Clause 10 – Licence – decision on application – Section 27 (3)

Clause 10 amends the provision to provide that the commissioner must decide an application for a licence under section 25 and tell the proposed licensee about the decision on application not later than the required time *unless circumstances relating to the suitability of the premises under the proposed licence have delayed or prevented the commissioner from deciding the application.*

This is to align with the new section 27A which provides the commissioner with the power to issue an interim licence where circumstances relating to the suitability of premises has caused a delay. Clause 10 makes it clear that in these circumstances only, the commissioner is not required to decide the application within the required time (see section 27 (4)).

The period during which an interim licence is in force and the required time in which the commissioner must decide the application are provided in new section 32AA.

Clause 11 – New section 27A

This clause inserts a new provision to provide the commissioner with the power to issue a temporary licence (an *interim licence*) if the commissioner receives an application under section 25 of the Act but is delayed or prevented from deciding the application by the required time that relate to the suitability of the premises. An example would be a delay caused by a lease variation of a Crown lease for the premises under the proposed licence.

The provision does not apply in circumstances relating to the suitability of other matters relevant to consideration of the application which may cause a delay, such as suitability of the proposed licensee and close associates.

New section 27A (3) provides an interim licence must be for the class, and any subclass, applied for by the proposed licensee and all applications will still have to comply with the requirements under section 25.

New section 27A (4) provides that a proposed licensee who is issued with an interim licence is taken to be a licensee. Therefore, all provisions of the Act that apply to licensees also apply to those issued with an interim licence.

The period during which an interim licence is in force and the required time in which the commissioner must decide the application are provided in new section 32AA.

Clause 12 – Licence – period in force – Section 32 (2)

Clauses 12 and 13 clarify that the period in which an interim licence is in force is different to the period in which a licence is in force.

Clause 12 amends section 32 (2) to add *other than an interim licence* after the word *licence* so that it provides that a licence other than an interim licence continues in force until it is cancelled or surrendered. This is to provide for the fact that an interim licence is only temporary.

Clause 13 – New section 32 (3)

Clause 13 inserts a new section to provide that an interim licence continues in force in accordance with the new section 32AA.

Clause 14 – New section 32AA

This clause inserts a new section to provide that any interim licence provided under the new section 27A will be in force for a period of 6 months, unless it is cancelled or surrendered before the end of that 6-month period. If it is cancelled or surrendered, the application for a licence under section 25 is taken to be withdrawn. During the 6-month interim period, if the interim licence is not cancelled or surrendered before the

end of that 6-month period, the commissioner must decide the application for the licence under section 27 as if the commissioner is deciding the application within the required time. However, the commissioner is provided with the power under new section 32AA (2) to extend the period for which an interim licence is in force.

Clause 15 – New section 32B

Clause 15 inserts a new section to provide that a licensee who regularly holds eligible events, an *eligible licensee*, may apply to the commissioner for a reduction in the annual fee payable for the licence. This clause inserts a note to clarify that if particular information is to be included in the form for an application, or a particular document must be attached to or given with the form, the form is properly completed only if the requirement is complied with.

The new section provides that the commissioner may, in writing, require the applicant to give the commissioner additional information or documents that the commissioner reasonably needs to decide the application.

The new section provides that the commissioner must decide the application and inform the eligible licensee about the decision on the application not later than the required time. The required time is defined to mean 20 working days after the day the applicant applies for a reduction in the annual fee payable or if the commissioner requires the applicant to give the commissioner additional information or documents, 20 working days after the commissioner receives the additional information or documents.

The new section provides that the Minister may make guidelines in relation to reducing the annual fee payable for a licence and also what provisions the guideline may have, including who is an eligible licensee, the criteria that must be addressed in an application, how the reduction is applied for, and how the commissioner may make a decision.

The new section provides that a guideline in relation to reducing the annual fee payable for a licence is a disallowable instrument.

The new section also provides the definition for *eligible event* which is defined to mean a live music performance, a performance arts event, a visual arts event, a literary arts event, a cultural performance or arts event, or another event prescribed by regulation. Examples of eligible events are provided to assist with understanding of the definition such as a theatre performance, an art exhibition and a planned performance of traditional dancing or signing.

Clause 16 – Licence – notice of application of certain entities – Section 33A (5), definition of *registered proprietor*

This clause amends the provision to move the definition of *registered proprietor* from section 33A (5) to the dictionary.

Clause 17 – Licence – amendment for change to floor plan of licensed premises – New section 39 (1A)

The Bill introduces two new event types: *licensee events* and *special events* (Clause 20). The Bill provides a more flexible framework for licence holders to make changes to floor plans of licensed premises for those temporary events.

Section 39 of the Act currently sets out the requirements for amending the licence to change the floor plan.

Clause 17 amends section 39 to stipulate that the provisions for an amendment for a change to the floor plan of a licensed premise do not apply if the licensee intends to change the floor plan for a *licensee event* or *special event*.

New section 214G provides for changes to the floor plan of the licensed premises for a *licensee event* or *special event* (Clause 20).

Clause 18 – Section 39 (2) (b) (ii)

This clause makes a minor technical amendment to section 39 (2) (b) (ii) to correct a drafting error by removing the word *or* and substituting it with *and*. This is to make it clear that any application to change the floor plan of the licensed premises must be in writing and include evidence that the operation of the business under licence at the premises, as intended to be changed by way of the new application, complies with the lease where the premises are located and the Territory Plan, and the application must include the evidence requirement under section 39 (2) (c). This will not have any effect on the operation of the Regulator which already administers applications for a change to the floor plan in the way outlined in the Bill.

Clause 19 – Fire engineering study and inspection – Section 86 (2) (a)

This clause amends section 86 (2) (a) to provide that the commissioner must ask the chief officer (fire and rescue service) to recommend an occupancy loading for the licensed premises as soon as practicable after deciding to issue an interim licence under the new section 27A or a licence under section 27. This is specifically in relation to the new provision which provides the commissioner with the power to issue an interim licence under section 27A (2). This does not affect any decision the chief officer may make in relation to occupancy loading limits.

Clause 20 – Division 14.4

This clause amends division 14.4 of the Act. It deletes Division 14.4 *Authorisation for Extended trading* and substitutes it with Division 14.4 *Licensee events and special event*.

This clause introduces new sections 214A to 214G into the Act which includes:

- 214A Application – div 14.4
- 214B Definitions – div 14.4
- 214C Meaning of *licensee event* and *special event*
- 214D Declaration of special event
- 214E Extended trading for special event
- 214F Extended trading for licensee event
- 214G Change to floor plan of licensed premises

These new sections provide for the head of Access Canberra to declare a special event and for licensees of those licence types specified at section 214A to apply for extended trading for licensee events and and/or change of floor plans for licensee events and special events.

New section 214A provides that division 14.4 applies to a licensee who holds any of the licences specified therein including a general licence, an on licence, a club licence, a special licence.

New section 214B provides definitions in division 14.4:

- *Access Canberra*, as per the *Public Sector Management Act 1994*, section 21 (8).
- *Changed floor plan authorisation*, for licensed premises, means an authorisation approved by the commissioner for the floor plan of the premises to be changed – (a) from the floor plan of the premises under the licence to the floor plan stated in the authorisation; and (b) on the date and during the hours stated in the authorisation.
- *Extended trading authorisation*, for licensed premises, means an authorisation approved by the commissioner for the licensee to supply liquor at the premises on the date and during the extended hours stated in the authorisation.
- *Extended trading period means* (a) for a licensee event – the hours states in an extended trading authorisation for a licensee to supply liquor at the licensed premises during the event; or (b) for a special event – the hours state in a special event declaration for a licensee to supply liquor at the licensed premises during the event.
- *head, of Access Canberra*, as per the *Public Sector Management Act 1994*, section 21 (8).
- *Special event declaration* – as defined in section 214D (1).

New section 214C defines *licensee event and special event* for the Act.

- *Licensee event*, for licensed premises, means an event to be celebrated or marked on the premises for any reason as decided by the licensee.
- *Special event* means an event declared to be a special event by the head of Access Canberra under section 214D.

New section 214D provides for the declaration of a special event. This declaration is made by the head of Access Canberra.

The effect of a special event declaration will be to automatically allow licensees to supply liquor during extending trading hours, subject to any conditions of the declaration.

The special event declaration can only be made if the head of Access Canberra is satisfied that the event is significant at an international, national, State, Territory or local level. A *special event declaration* must also be in the public interest. In deciding whether to make a *special event declaration*, the head of Access Canberra must consider any other matter determined by the Minister. The new section also provides that the head of Access Canberra must not declare a public protest or demonstration to be a special event.

Any special event declaration must describe the event; state the proposed date and time of the event; state the date and any extended hours during which a licensee for licensed premises may supply liquor at the premises for the event; and may include conditions with which a licensee for licensed premises must comply for the event. A special event declaration is a notifiable instrument.

A special event declaration could be made to include annual events on the ACT event calendar and could also be made for one-off events.

The new section 214D provides that a determination made by the Minister under new section 214D (6) is a disallowable instrument.

New section 214E provides for extended trading for a special event. It provides that a licensee may supply liquor at the licensed premises during any extended trading period stated in a special event declaration and must comply with any conditions stated in the special event declaration.

New section 214F provides for extended trading for a licensee event. It provides that a licensee may apply to the commissioner for an extended trading authorisation in relation to a licensee event at the licensed premises.

This application must be in writing and include:

- description of the event,
- proposed date and time of the event
- the date and period during which the person intends to sell liquor under the authorisation,
- how the licensee intends to limit the impact of the extended trading on occupants of premises near the licensed premises.

The application must be given to the commissioner at least 5 business days before the day of the event or if the licensee is also applying for a changed floor plan authorisation for the event under new section 214G – 10 business days before the day of the event.

New section 214F provides that the commissioner may only approve an application if satisfied that:

- the licensee is capable of managing any additional risks involved in the sale of liquor during the extended trading period,
- the licensee is capable of minimising the impact of the extended trading on occupants of premises near the licensed premises; and
- not more than 9 extended trading authorisations for the licensed premises have been approved by the commissioner during the 12 month period before the application is made.

New section 214F provides that an extended trading authorisation for a licensee event may authorise a licensee to supply liquor at the licensed premises during any extended trading period stated in the authorisation and state any conditions with which the licensee must comply.

New section 214G provides that a licensee may apply to the commissioner for a changed floor plan authorisation for the licensed premises if the licensee intends to change the floor plan of the premises for a licensee event or special event (where the special event declaration has been made at least 10 business days before the day of the special event, and the licensee is able to provide the application to the commissioner at least 10 business days before the day of the event (as required by 214G (2) (d)).

This application must be in writing and include:

- for a licensee event – a description of the event;
- the floor plan, as intended to be changed (*the changed floor plan*);
- the period during which the changed floor plan would be in effect at the premises under the authorisation;
- if the premises are leased - written agreement to the changed floor plans from the registered proprietor of the lease for the premises;
- if the changed floor plan proposes to extend the licensed premises to include a place that adjoins the licensed premises (an adjoining place) –
 - if the adjoining place is on leased land – written agreement to the changed floor plan from the registered proprietor of the lease for the land; or
 - if the adjoining place is on public unleased land – written approval for the licensee to use the public unleased land for the event;
- evidence that the licensee has appropriate insurance for the changed floor plan.

This application with all required information must be provided to the commissioner at least 10 business days before the date of the event.

New section 214G provides that the commissioner may only approve an application if satisfied that:

- the changed floor plan would not put at risk the safety, health and welfare of people using the licensed premises or the community generally; and
- not more than 9 changed floor plan authorisations for the licensed premises have been approved by the commissioner during the 12 month period before the application is made.

New section 214G provides definitions for this section including:

- *adjoins* – a place adjoins licensed premises if the place touches the premises, or is separated from the premises only by a road, reserve, river, watercourse or similar division.
- public unleased land – see the *Public Unleased Land Act 2013*, section 8.

Clause 21 – Liquor guidelines – New section 223 (2) (e)

Section 223 (1) of the Act provides that the commissioner may make liquor guidelines for the Act consistent with the objects of the Act and the harm minimisation and community safety principles.

This clause introduces a new provision under section 223 (2) of the Act which allows the commissioner to make liquor guidelines which make provision in relation to *licensee events* and *special events*.

Liquor guidelines already provided for under section 223 of the Act for advertising liquor, intoxication, crowd management at and near licensed premises, and responsible service of alcohol (RSA) training remain unaffected by this new section.

Clause 22 – Dictionary, new definition of *Access Canberra*

This clause inserts a definition for division 14.4 (Licensee events and special events) – see the *Public Sector Management Act 1994*, section 21 (8).

Clause 23 – Dictionary, definition of *class*, new paragraph (da)

This clause adds *catering licence* to the list of licences under *class* in the Dictionary.

Clause 24 – Dictionary, new definitions

This clause will insert the new definitions, as outlined in this explanatory statement, into the dictionary of the Act including:

- *Changed floor plan authorisation*, for licensed premises, for division 12.4 (Licensee events and special events) – see section 214C.
- *Extended trading authorisation*, for licensed premises, for division 14.4 (Licensee events and special events) – see section 214C.
- *Extended trading period*, for division 14.4 (Licensee events and special events) – see section 214C.
- *Head, of Access Canberra*, for division 14.4 (Licensee events and special events) – see the *Public Sector Management Act 1994*, section 21 (8).
- *Interim licence*
- *Licensee event*, for licensed premises – see section 214B.

- *Registered proprietor*, in relation to a lease, means the person who is registered under the *Land Titles Act 1925* as proprietor of the lease.
- *Special event* – see section 214B.