



Australian Capital Territory

# **Liquor Act 2010**

**A2010-35**

**Republication No 2**

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Last amendment made by A2010-43  
(republication for new Act, modifications by SL2010-40  
as am by SL2010-48 and amendments by A2010-43)

Not all provisions and amendments are in force:  
see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Liquor Act 2010* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 December 2010. It also includes any commencement, amendment, repeal or expiry affecting the republished law to 1 December 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Liquor Act 2010

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
<b>Division 1.1</b>	<b>Introduction</b>
1	Name of Act 2
2	Commencement 2
3	Dictionary 3
4	Notes 3
5	Offences against Act—application of Criminal Code etc 3
6	Application of Act—generally 4
7	Application of Act—sale of liquor 4
8	Application of Act—sale of liquor at universities 5
<b>Division 1.2</b>	<b>Objects and principles</b>
9	Object of Act 6
10	Harm minimisation and community safety principles 6

---

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01/12/10

Liquor Act 2010  
Effective: 01/12/10-08/12/10

contents 1

	Page
<b>Division 1.3</b>	<b>Important concepts</b>
11	What is <i>liquor</i> ? 8
12	Offence—sell liquor without licence or permit 8
13	Offence—fail to comply with condition of licence or permit 8
14	Who is a <i>close associate</i> ? 9
15	Who is an <i>influential person</i> for a corporation? 10
<b>Part 2</b>	<b>Liquor licences</b>
<b>Division 2.1</b>	<b>Classes of licences</b>
16	What is a <i>licence</i> ? 12
17	What is a general licence? 12
18	What is an <i>on licence</i> ? 13
19	What is an <i>off licence</i> ? 13
20	What is a <i>club licence</i> ? 14
21	What is a <i>special licence</i> ? 14
<b>Division 2.2</b>	<b>On licences—subclasses</b>
22	What is a <i>bar licence</i> ? 15
23	What is a <i>nightclub licence</i> ? 15
24	What is a <i>restaurant and cafe licence</i> ? 16
<b>Division 2.3</b>	<b>Licences—application and decision</b>
25	Licence—application 16
26	Licence—public consultation 18
27	Licence—decision on application 18
28	Licence—occupancy loading 20
29	Licence—adults-only areas 21
30	Licence—form 21
31	Licence—conditions 22
32	Licence—term 23
<b>Division 2.4</b>	<b>Licences—public consultation</b>
33	Definitions—div 2.4 23
34	Licence—public notification of application 24
35	Licence—representations 25
36	What is the <i>public consultation period</i> ?—div 2.5 26

		Page
<b>Division 2.5</b>	<b>Licences—amendment, transfer, renewal, etc</b>	
37	Licence—amendment initiated by commissioner	26
38	Licence—amendment on application by licensee	28
39	Licence—amendment for change to floor plan of licensed premises	30
40	Licence—application to transfer licence	32
41	Licence—decision on application to transfer licence	33
42	Licence—application for renewal	35
43	Licence—decision on application for renewal	35
44	Licence—replacing when lost, stolen or destroyed	37
45	Licence—surrender	37
46	Offence—fail to return licence	38
<b>Part 3</b>	<b>Liquor permits</b>	
<b>Division 3.1</b>	<b>Classes of permits</b>	
47	What is a <i>permit</i> ?	39
48	What is a <i>commercial permit</i> ?	39
49	What is a <i>non-commercial permit</i> ?	39
<b>Division 3.2</b>	<b>Permits—application and decision</b>	
50	Permit—application	40
51	Permit—decision on application	41
52	Permit—occupancy loading	43
53	Permit—adults-only areas	43
54	Permit—form	44
55	Permit—conditions	44
56	Permit—term	45
<b>Division 3.3</b>	<b>Permits—amendment, transfer, renewal, etc</b>	
57	Permit—amendment initiated by commissioner	46
58	Permit—amendment on application by permit-holder	47
59	Permit—not transferable	49
60	Permit—commercial permit not renewable	49
61	Permit—application for renewal of non-commercial permit	49
62	Permit—decision on application for renewal of non-commercial permit	50
63	Permit—replacing when lost, stolen or destroyed	51

## Contents

---

		Page
64	Permit—surrender	52
65	Non-commercial permit—cancellation	52
66	Offence—fail to return permit	53
<b>Part 4</b>	<b>Suitability of people and premises for licences and permits</b>	
<b>Division 4.1</b>	<b>Suitability of people for licences and permits</b>	
67	Who is a <i>suitable person</i> ?	54
68	Commissioner must consider suitability information, etc	54
69	What is <i>suitability information</i> about a person?	55
70	What is an <i>eligible club</i> ?	57
71	Commissioner may require police certificate etc for person	59
72	Commissioner need not decide suitability if certificate etc not provided	60
73	Offence—ongoing duty to update person's suitability information	60
<b>Division 4.2</b>	<b>Suitability of premises for licences and permits</b>	
74	Who is the <i>responsible person</i> for premises?—div 4.2	61
75	What are <i>suitable premises</i> ?	61
76	Commissioner must consider suitability information, etc	62
77	Commissioner must decide premises not suitable in some circumstances	62
78	What is <i>suitability information</i> about premises?	63
79	Commissioner may require certificate, plan, etc for premises	65
80	Commissioner may require inspection of premises	66
81	Commissioner need not decide suitability if requirements not complied with	66
82	Offence—ongoing duty to update premises' suitability information	67
<b>Part 5</b>	<b>Occupancy loading for licensed premises and permitted premises</b>	
83	What is <i>occupancy loading</i> ?	69
84	What is a <i>public area</i> ?	69
85	Occupancy loading decision	69
86	Fire engineering study and inspection	70
87	Commissioner not to issue licence or permit if requirement not complied with	71

	Page
<b>Part 6</b>	<b>Risk-assessment management plans for licensed premises and permitted premises</b>
88	What is a <i>risk-assessment management plan</i> ? 72
89	What is an <i>approved risk-assessment management plan</i> ? 72
90	Risk-assessment management plan—approval 73
90A	Risk-assessment management plan—availability 73
91	Approved risk-assessment management plan—amendment on application 73
92	Approved risk-assessment management plan—decision on amendment 74
<b>Part 7</b>	<b>Adults-only areas for licensed premises and permitted premises</b>
<b>Division 7.1</b>	<b>Adults-only area decisions</b>
93	What is an <i>adults-only area</i> ? 76
94	Adults-only areas decision 76
<b>Division 7.2</b>	<b>Approvals for young people’s event in adults-only area at licensed premises</b>
95	Young people’s event approval—application 77
96	Young people’s event approval—decision 78
97	Young people’s event approval—form 79
98	Young people’s event approval—conditions 79
99	Young people’s event approval—term 79
<b>Part 8</b>	<b>Conduct at licensed premises and permitted premises</b>
<b>Division 8.1</b>	<b>Responsible service of alcohol</b>
100	Offence—supply liquor without RSA certificate—licensee or permit-holder 80
101	Offence—supply liquor without RSA certificate—employee 81
102	Offence—crowd controller without RSA certificate 82
103	Offence—fail to keep RSA certificates 83
<b>Division 8.2</b>	<b>Intoxicated people</b>
104	What is <i>intoxicated</i> ? 84

## Contents

---

	Page
105	Offence—supply liquor to intoxicated person—licensee or permit-holder 84
106	Offence—supply liquor to intoxicated person—employee 86
107	Offence—supply liquor to intoxicated person—other person 87
108	Offence—abuse, threaten, intimidate staff 88
109	Offence—fail to display sign about abuse offence 88
<b>Division 8.3 Children and young people</b>	
110	Offence—supply liquor to child or young person—licensee or permit-holder 89
111	Offence—supply liquor to child or young person—employee 91
112	Offence—supply liquor to child or young person—other person 93
113	Licensee, permit-holder, etc may refuse to supply liquor without identification document 95
114	Offence—child or young person consume liquor—licensee or permit-holder 95
115	Offence—child or young person consume liquor 96
116	Offence—child or young person possess liquor—licensee or permit-holder 97
117	Offence—child or young person possess liquor 98
118	Offence—child or young person supply liquor—licensee or permit-holder 99
119	Offence—send child or young person to obtain liquor 99
120	Offence—child or young person in adults-only area—licensee or permit-holder 100
121	Offence—child or young person in adults-only area 102
122	Offence—child or young person use false identification for adults-only area 103
123	Offence—fail to mark adults-only areas 104
124	Licensee, permit-holder, etc may seize false identification document 105
<b>Division 8.4 Occupancy loading</b>	
125	Offence—exceed occupancy loading 106
126	Offence—fail to display occupancy loading sign 107
<b>Division 8.5 Approved risk-assessment management plans</b>	
127	Offence—fail to comply with approved risk-assessment management plan 107



	Page
<b>Division 8.6</b>	<b>Incidents</b>
130	What is an <i>incident</i> ?—div 8.6 109
131	Incident register 109
132	Offence—fail to keep incident register 110
<b>Division 8.7</b>	<b>Breath testing machines</b>
133	What is a <i>breath testing machine</i> ?—div 8.7 111
134	Offence—fail to display breath testing machine sign 111
135	Evidence of breath tests 112
<b>Division 8.8</b>	<b>Other offences</b>
136	Offence—sell petrol at premises 113
137	Offence—conduct prohibited promotional activities 113
138	Offence—fail to leave premises when directed 114
139	Offence—consume liquor at off licensed premises 115
140	Offence—sexually explicit entertainment 116
141	Offence—fail to keep licence or permit at premises 117
142	Offence—fail to keep records in required way 118
143	Offence—club licensee advertise for public attendance 118
<b>Part 9</b>	<b>Directions, emergency closure orders and cautions</b>
<b>Division 9.1</b>	<b>Commissioner’s directions</b>
144	Commissioner may direct licensee, permit-holder, employee etc 120
145	Offence—fail to comply with commissioner’s direction 122
<b>Division 9.2</b>	<b>Emergency closure orders</b>
146	Emergency closure of premises for 24 hours 122
147	Emergency closure notice 123
148	Offence—fail to comply with emergency closure order 124
<b>Division 9.3</b>	<b>Police cautions for children and young people</b>
149	Definitions—div 9.3 124
150	Police may caution children and young people 125
151	Police must caution and release child or young person as soon as practicable 126
152	Chief police officer may revoke cautions 127

		Page
<b>Part 10</b>	<b>Enforcement</b>	
<b>Division 10.1</b>	<b>General</b>	
153	Definitions—pt 10	128
<b>Division 10.2</b>	<b>Powers of authorised people</b>	
154	Power to enter premises	129
155	Production of identity card	130
156	Consent to entry	130
157	General powers on entry to premises	131
158	Power to seize things	132
<b>Division 10.3</b>	<b>Search warrants</b>	
159	Warrants generally	133
160	Warrants—application made other than in person	134
161	Search warrants—announcement before entry	136
162	Details of search warrant to be given to occupier etc	136
163	Occupier entitled to be present during search etc	137
<b>Division 10.4</b>	<b>Return and forfeiture of things seized</b>	
164	Receipt for things seized	137
165	Moving things to another place for examination or processing under search warrant	138
166	Access to things seized	139
167	Return of things seized	139
168	Forfeiture of seized things	140
169	Power to destroy unsafe things	141
170	Application for order disallowing seizure	142
171	Order for return of seized thing	142
<b>Division 10.5</b>	<b>Enforcement—miscellaneous</b>	
172	Damage etc to be minimised	143
173	Compensation for exercise of enforcement powers	143
<b>Part 11</b>	<b>Complaints and occupational discipline</b>	
<b>Division 11.1</b>	<b>General</b>	
174	Who is a <i>licensee</i> ?—pt 11	145

	Page
175	145
Who is a <i>commercial permit-holder</i> ?—pt 11	
<b>Division 11.2</b>	<b>Complaints</b>
176	146
Who may complain?	
177	146
Form of complaint	
178	147
Withdrawal of complaints	
179	147
Further information about complaint etc	
180	148
Investigation of complaint	
181	148
No further action on complaint	
182	148
Action after investigating complaint	
<b>Division 11.3</b>	<b>Occupational discipline</b>
183	149
Grounds for occupational discipline—licensee	
184	150
Grounds for occupational discipline—commercial permit-holder	
185	152
ACAT must consider suitability information, etc about licensee or commercial-permit holder	
186	153
ACAT must consider suitability information, etc about premises	
187	154
Application to ACAT for occupational discipline	
<b>Part 12</b>	<b>Responsible service of alcohol (RSA) training courses</b>
<b>Division 12.1</b>	<b>Approval to provide RSA training courses</b>
188	155
Definitions—div 12.1	
189	155
RSA training course approval—application	
190	156
RSA training course approval—decision on application	
191	157
RSA training course approval—form	
192	157
RSA training course approval—term	
<b>Division 12.2</b>	<b>RSA training course certificates</b>
193	157
What is an <i>RSA certificate</i> ?	
194	158
RSA training course providers must give RSA certificates	
<b>Part 13</b>	<b>Licence and permit register</b>
195	159
Licence and permit register	
196	159
Exception to public inspection	
197	160
Correction and keeping up-to-date register	

	Page
<b>Part 14</b>	<b>Other liquor matters</b>
<b>Division 14.1</b>	<b>Alcohol-free public places</b>
198	Alcohol-free places 161
199	Offence—consume liquor at certain public places 161
200	Offence—possess open container of liquor at certain public places 163
201	Seizure of liquor in public places 164
<b>Division 14.2</b>	<b>Children and young people</b>
202	Offence—child or young person buy liquor 165
203	Offence—child or young person use false identification to buy liquor 166
204	Offence—supply liquor to child or young person at public place 166
205	Offence—child or young person consume liquor in public place 167
206	Offence—child or young person possess liquor in public place 167
207	Police officer may ask for identification document 168
208	Offence—fail to comply with police officer’s request for identification document 168
209	What is a <i>proof of age card</i> ?—div 14.2 168
210	Proof of age cards 169
211	Offence—child or young person use false identification to obtain proof of age card 169
<b>Division 14.3</b>	<b>Prohibited liquor products</b>
212	What is a <i>prohibited liquor product</i> ? 170
213	Prohibited liquor products 170
214	Offence—supply prohibited liquor product 170
<b>Part 15</b>	<b>Liquor advisory board</b>
215	Establishment of liquor advisory board 171
216	Membership of liquor advisory board 171
217	Liquor advisory board function 172
218	Liquor advisory board procedure 172
219	Reimbursement of expenses for liquor advisory board members 172
<b>Part 16</b>	<b>Notification and review of decisions</b>
220	What is a <i>reviewable decision</i> ?—pt 16 173
221	Reviewable decision notices 173

	Page
222 Applications for review	173
<b>Part 17</b>	
<b>Miscellaneous</b>	
223 Liquor guidelines	174
224 Declared training providers	174
224A Licences and permits not personal property—PPS Act	175
225 Acts and omissions of representatives	175
226 Proceedings for offences	176
227 Determination of fees	176
228 Approved forms	176
229 Regulation-making power	177
<b>Part 20</b>	
<b>Transitional</b>	
250 Definitions—pt 20	178
250A Modification—s 2 (Commencement)	178
251 Transitional—old licensees applying for new licences	178
252 Transitional—old licences and new applications	179
253 Transitional—old licences and occupancy loading	180
254 Transitional—old liquor permits taken to be commercial permits	181
255 Transitional—old non-profit organisation wine permits taken to be non-commercial permits	181
256 Transitional—old tourism wine permits taken to be commercial permits	182
257 Transitional—RSA certificates	182
258 Transitional regulations	183
259 Expiry—pt 20	183
<b>Schedule 1</b>	
<b>Reviewable decisions</b>	184
<b>Dictionary</b>	186
<b>Endnotes</b>	
1 About the endnotes	196
2 Abbreviation key	196

## Contents

---

		Page
3	Legislation history	197
4	Amendment history	198
5	Earlier republications	201
6	Modifications of republished law with temporary effect	202
7	Uncommenced provisions and amendments	203



Australian Capital Territory

# Liquor Act 2010

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An Act relating to the supply of liquor

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## Part 1 Preliminary

### Division 1.1 Introduction

#### 1 Name of Act

This Act is the *Liquor Act 2010*.

#### **M** 2 Commencement

- (1) Division 8.1 (Responsible service of alcohol) commences 12 months after this Act's notification day.
- (2) Part 12 (Responsible service of alcohol (RSA) training courses) commences 6 months after this Act's notification day.
- (3) The remaining provisions commence on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).



### **3 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*identity card*—see the *Fair Trading (Consumer Affairs) Act 1973*, dictionary.' means that the term 'identity card' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### **4 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### **5 Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Application of Act—generally

This Act does not apply to the following:

- (a) the administration, dispensing or sale of liquor for medicinal purposes—
  - (i) by or under the direction of a doctor; or
  - (ii) by a pharmacist;
- (b) the supply, possession, consumption or purchase of liquor that is authorised by a law in force in the Territory.

### Examples—par (b)

1 *Defence Act 1903* (Cwlth), s 123A

2 *Army and Air Force Canteen Service Regulations 1959* (Cwlth), s 27

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

## 7 Application of Act—sale of liquor

- (1) The provisions of this Act relating to the sale of liquor do not apply to the following:
  - (a) the duty-free sale of liquor;
  - (b) the sale of liquor for someone else by an auctioneer, by auction, in the ordinary course of the auctioneer's business;
  - (c) the sale by, or on behalf of, the Commonwealth or the Territory of liquor seized under a law in force in the ACT.
- (2) In this section:

***duty-free sale*** means a sale for which is given permission under the *Customs Act 1901* (Cwlth), section 96A (2).

**8 Application of Act—sale of liquor at universities**

- (1) The provisions of this Act relating to the sale of liquor do not apply to the sale of liquor in an exempt university building.
- (2) A person commits an offence if—
- (a) the person sells liquor; and
  - (b) the sale happens in an exempt university building; and
  - (c) the sale is in contravention of a statute of the university.

Maximum penalty: 10 penalty units.

- (3) A person commits an offence if—
- (a) the person purchases liquor; and
  - (b) the purchase happens in an exempt university building; and
  - (c) the purchase is in contravention of a statute of the university.

Maximum penalty: 10 penalty units.

- (4) In this section:

***exempt university building*** means a building—

- (a) that is occupied by—
  - (i) a university; or
  - (ii) a residential college affiliated with a university under a statute of the university; and
- (b) in which the sale of liquor is authorised by a statute of the university.

***university*** means the—

- (a) Australian National University; or
- (b) University of Canberra.

## Division 1.2 Objects and principles

### 9 Object of Act

The object of this 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.

### 10 Harm minimisation and community safety principles

In making a decision under this Act, a decision-maker must have regard to the following principles (the *harm minimisation and community safety principles*):

- (a) responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor should be encouraged;
- (b) community safety should not be jeopardised, particularly in relation to events involving large numbers of people;
- (c) the liquor industry should be regulated in a way that minimises harm caused by alcohol abuse, including—
  - (i) adverse effects on health; and
  - (ii) personal injury; and

- (iii) property damage; and
- (iv) violent or anti-social behaviour;
- (d) the sale of liquor should be regulated in a way that contributes to the responsible development of the liquor, tourism and hospitality industries;
- (e) community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor;
- (f) the safety, health and welfare of people using licensed premises and permitted premises should not be put at risk;
- (g) noise from licensed premises and permitted premises should not be excessive;
- (h) licensed premises and permitted premises should not be located where they would be likely to cause undue disturbance, inconvenience or offence to people—
  - (i) lawfully at adjacent or nearby premises; or
  - (ii) because of the premises' proximity to a place of public worship, a hospital or a school;
- (i) licences and permits should only be issued to people who comply with ACT law, and are likely to continue to comply with ACT law;
- (j) licences and permits should only be issued for premises that comply with ACT law, and are likely to continue to comply with ACT law.

**Examples—decisions**

- 1 a decision to issue a licence under s 27
- 2 a decision to issue a permit under s 51

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## Division 1.3 Important concepts

### 11 What is *liquor*?

(1) In this Act:

*liquor*—

- (a) means a substance that—
  - (i) is capable of being ingested; and
  - (ii) contains more than 1.15% by volume of ethanol; and
- (b) includes a substance prescribed by regulation; and
- (c) does not include a substance prescribed by regulation not to be liquor.

### 12 Offence—sell liquor without licence or permit

(1) A person commits an offence if the person—

- (a) sells liquor to someone else; and
- (b) does not hold a licence or permit authorising the sale.

Maximum penalty: 100 penalty units, 12 months imprisonment or both.

(2) This section does not apply if the sale happens at a private event at which not more than 30 people are present.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

### 13 Offence—fail to comply with condition of licence or permit

(1) A licensee commits an offence if—

- (a) the licence is subject to a condition; and

(b) the licensee fails to comply with the condition.

Maximum penalty: 50 penalty units.

(2) A permit-holder commits an offence if—

(a) the permit is subject to a condition; and

(b) the permit-holder fails to comply with the condition.

Maximum penalty: 50 penalty units.

#### **14 Who is a *close associate*?**

(1) In this Act:

***close associate***—a person is a ***close associate*** of someone (the ***related person***) if—

(a) the person holds or will hold an executive position (however described) in the related person's business; or

(b) the commissioner is satisfied that the person is or will be able to exercise a significant influence in relation to the conduct of the related person's business because the person holds or will hold a financial interest, or is entitled to exercise a relevant power, in the business.

(2) In this section:

***business*** includes—

(a) a business not carried on for profit; and

(b) a trade or profession.

***executive position***—a position (however described) in the related person's business is an ***executive position*** if the holder of the position is concerned with, or takes part in, the management of the business.

***exercise*** a power includes exercise the power on behalf of someone else.

***financial interest***, in a business, means—

- (a) a share in the capital of the business; or
- (b) an entitlement to receive income derived from the business, however the entitlement arises.

***hold*** a position includes hold the position on behalf of someone else.

***power*** means a power exercisable—

- (a) by voting or otherwise; and
- (b) alone or with others.

***relevant power***, in a business, means a power—

- (a) to take part in a directorial, managerial or executive decision for the business; or
- (b) to elect or appoint a person as an executive officer in the business.

## **15 Who is an *influential person* for a corporation?**

- (1) In this Act:

***influential person***, for a corporation, means any of the following:

- (a) an executive officer of the corporation;
- (b) a person who may exercise a relevant power in relation to the corporation;
- (c) a related corporation;
- (d) an executive officer of a related corporation.



(2) In this section:

*related corporation* means a related body corporate under the Corporations Act.

*relevant power*, for a corporation, means a power—

- (a) to take part in a directorial, managerial or executive decision for the corporation; or
- (b) to elect or appoint a person as an executive officer in the corporation; or
- (c) to exercise a significant influence in relation to the conduct of the corporation.

## Part 2                   Liquor licences

### Division 2.1           Classes of licences

#### 16           **What is a *licence*?**

In this Act:

*licence* means—

- (a) a general licence; or
- (b) an on licence; or
- (c) an off licence; or
- (d) a club licence; or
- (e) a special licence.

#### 17           **What is a general licence?**

In this Act:

*general licence* means a licence that authorises the licensee to sell liquor—

- (a) at a single licensed premises; and
- (b) in—
  - (i) open containers for consumption at the premises; or
  - (ii) sealed containers for consumption off the premises; and
- (c) at the licensed times.

*Note*       A licence may have different licensed times for the sale of liquor for consumption at the premises and the sale of liquor for consumption off the premises.

**18      What is an *on licence*?**

In this Act:

*on licence* means a licence that authorises the licensee to sell liquor—

- (a) at a single licensed premises; and
- (b) in open containers for consumption at the premises; and
- (c) at the licensed times.

**Examples—on licences**

- 1 bar licence
- 2 nightclub licence
- 3 restaurant and cafe licence

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**19      What is an *off licence*?**

In this Act:

*off licence* means a licence that authorises the licensee to sell liquor—

- (a) at a single licensed premises; and
- (b) in sealed containers for consumption off the premises; and
- (c) at the licensed times.

**20           What is a *club licence*?**

In this Act:

*club licence* means a licence that authorises a club to sell liquor—

- (a) in stated parts of a single licensed premises; and
- (b) in—
  - (i) open containers for consumption at the premises; or
  - (ii) sealed containers for consumption off the premises; and
- (c) at the licensed times; and
- (d) to an adult—
  - (i) who is a member of the club; or
  - (ii) who is—
    - (A) at the licensed premises at the invitation of an adult member of the club who is also at the premises; and
    - (B) authorised by the club to be at the premises.

**21           What is a *special licence*?**

In this Act:

*special licence* means a licence that authorises the licensee to sell liquor—

- (a) at a single licensed premises; and
- (b) at the licensed times.

## **Division 2.2            On licences—subclasses**

### **22            What is a *bar licence*?**

(1) In this Act:

*bar licence* means an on licence for premises that are a bar.

(2) In this section:

*bar*—

(a) means premises where the predominant activity at the licensed times is the serving of liquor for consumption at the premises; and

(b) includes premises prescribed by regulation to be a bar.

#### **Example**

- 1 a pub
- 2 a tavern

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **23            What is a *nightclub licence*?**

(1) In this Act:

*nightclub licence* means an on licence for premises that are a nightclub.

(2) In this section:

*nightclub*—

(a) means premises where the predominant activity at the licensed times is dancing and entertainment; and

(b) includes premises prescribed by regulation to be a nightclub.

**24           What is a *restaurant and cafe licence*?**

(1) In this Act:

*restaurant and cafe licence* means an on licence for premises that are a restaurant or cafe.

(2) In this section:

*restaurant or cafe*—

- (a) means premises where the predominant activity at the licensed times is the serving of meals for consumption on the premises; and
- (b) includes premises prescribed by regulation to be a restaurant or cafe.

**Division 2.3                   Licences—application and decision**

**25           Licence—application**

(1) A person (a *proposed licensee*) may apply to the commissioner for a stated licence for stated premises.

(2) The application must—

- (a) be in writing; and
- (b) state the class of licence applied for and, for an on licence, the subclass of licence applied for; and
- (c) include complete details of suitability information about—
  - (i) the proposed licensee; and
  - (ii) each close associate of the proposed licensee; and
  - (iii) if the proposed licensee is a corporation—each influential person for the proposed licensee; and

(iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and

(v) the proposed licensed premises; and

*Note* *Suitability information*, about a person—see s 69.  
*Suitability information*, about premises—see s 78.

(d) include a police certificate for each of the following people, dated not earlier than 3 months before the date of the application:

(i) the proposed licensee;

(ii) each close associate of the proposed licensee;

(iii) each influential person for the proposed licensee;

(iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and

(e) include—

(i) an ACTPLA certificate for the premises dated not earlier than 3 months before the date of the application; and

(ii) the final floor plans of the premises approved by the planning and land authority in the development approval for the premises; and

(iii) a certificate of occupancy for the premises; and

(f) if the application is for a licence that authorises the licensee to sell liquor in open containers for consumption at the licensed premises—include a risk-assessment management plan for the premises.

*Note 1*   A general licence, on licence, club licence or special licence may authorise the sale of liquor in open containers for consumption at the licensed premises—see div 2.1.

*Note 2*   ***Risk-assessment management plan***, for licensed premises or permitted premises—see s 88.

*Note 3*   Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 4*   If a form is approved under s 228 for this provision, the form must be used.

*Note 5*   A fee may be determined under s 227 for this provision.

## **26           Licence—public consultation**

A proposed licensee must comply with the public consultation provisions in division 2.4 (Licences—public consultation).

## **27           Licence—decision on application**

- (1) This section applies if the commissioner receives an application for a licence under section 25.
- (2) The commissioner must issue the licence to the proposed licensee only if satisfied that—
  - (a) if the proposed licensee is an individual—the proposed licensee is an adult; and
  - (b) each of the following people is a suitable person to hold the licence:
    - (i) the proposed licensee;
    - (ii) each close associate of the proposed licensee;
    - (iii) if the proposed licensee is a corporation—each influential person for the proposed licensee;
    - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the



licence—each person who is to have day-to-day control;  
and

- (c) the proposed licensed premises are suitable premises for the licence; and
- (d) the proposed licensee complies, and is likely to continue to comply, with the requirements of this Act; and
- (e) the proposed licensed premises comply with the requirements of this Act.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

*Note 2* **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 3* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 4* A decision under this subsection is a reviewable decision (see s 220).

- (3) The commissioner must, not later than the required time—
  - (a) decide the application; and
  - (b) tell the proposed licensee about the decision on the application.

- (4) In this section:

**required time** means the latest of the following:

- (a) if the commissioner receives a representation about a person or premises under section 35 (Licence—representations)—90 days after the commissioner receives the representation;
- (b) if the commissioner requires the proposed licensee to provide a police certificate or other information under section 71 (Commissioner may require police certificate etc for person)—90 days after the day the commissioner receives the certificate or information;

- (c) if the commissioner requires the proposed licensee to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—90 days after the day the commissioner receives the certificate, plan or information;
- (d) if the commissioner asks the proposed licensee to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—90 days after the day the commissioner inspects the premises;
- (e) 90 days after the day the commissioner receives the application.

*Note*     Failure to issue a licence within the required time is taken to be a decision not to issue the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

## 28                   **Licence—occupancy loading**

- (1) This section applies if the commissioner decides to issue a licence that authorises the licensee to sell liquor in open containers for consumption at the licensed premises.

*Note*     A general licence, on licence, club licence or special licence may authorise the sale of liquor in open containers for consumption at the licensed premises—see div 2.1.

- (2) The commissioner must also decide the occupancy loading for each public area at the proposed licensed premises.

*Note*     **Occupancy loading**, for a public area at licensed premises or permitted premises—see s 83.

## **29 Licence—adults-only areas**

- (1) This section applies if the commissioner decides to issue a licence that authorises the licensee to sell liquor in open containers for consumption at the licensed premises.

*Note* A general licence, on licence, club licence or special licence may authorise the sale of liquor in open containers for consumption at the licensed premises—see div 2.1.

- (2) The commissioner must also decide the adults-only areas (if any) for the licensed premises.

*Note 1* **Adults-only area**, for licensed premises or permitted premises—see s 93.

*Note 2* If the commissioner decides that licensed premises are to include an adults-only area, the commissioner may decide when the area is to be used as an adults-only area (see s 94 (3)).

## **30 Licence—form**

- (1) A licence must—
- (a) be in writing; and
  - (b) include the following information:
    - (i) the class of the licence and, for an on licence, the subclass of licence;
    - (ii) the name of the licensee;
    - (iii) if the licensee carries on business under a name other than the licensee's name—the name under which the licensee carries on business;
    - (iv) the address of the licensed premises;
    - (v) the licensed times when—
      - (A) liquor to be consumed at the licensed premises may be sold (if any); and

- (B) liquor to be consumed off the licensed premises may be sold (if any);
  - (vi) the conditions on the licence;
  - (vii) anything else prescribed by regulation.
- (2) A licence may include anything else the commissioner considers relevant.

### **31           Licence—conditions**

- (1) A licence is subject to the condition that—
- (a) the licensee must comply with this Act; and
  - (b) the licensed premises must comply with this Act.
- (2) A licence is also subject to any other condition—
- (a) prescribed by regulation; or
  - (b) imposed by the commissioner when the licence is issued, renewed or amended.

#### **Examples—conditions**

- 1 that stated requirements about inspection must be complied with
- 2 that stated requirements about reporting must be complied with
- 3 that stated records must be kept
- 4 that stated levels of security must be used for stated events
- 5 that the licensee must not allow people to enter the licensed premises after a stated time
- 6 that the licensee must comply with any liquor guidelines made by the commissioner under s 223

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

*Note 2* Licences may be amended under s 37, s 38 or s 39.  
Licences may be renewed under s 43.

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **32 Licence—term**

- (1) A licence comes into force on the day it is issued.
- (2) A licence expires on the day prescribed by regulation.
- (3) However, the commissioner may decide on reasonable grounds that a licence expires on another day.
- (4) If the commissioner makes a decision under subsection (3) for a class or subclass of licence, the decision is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **Division 2.4 Licences—public consultation**

### **33 Definitions—div 2.4**

In this division:

*applicant* means—

- (a) for an application for a licence under section 25 (Licence—application)—the proposed licensee; or
- (b) for an application to amend a licence from 1 subclass of on licence to another subclass of on licence under section 38 (Licence—amendment on application by licensee)—the licensee.

*relevant premises* means—

- (a) for an application for a licence under section 25 (Licence—application)—the proposed licensed premises; or

- (b) for an application to amend a licence from 1 subclass of on licence to another subclass of on licence under section 38 (Licence—amendment on application by licensee)—the licensed premises.

**34 Licence—public notification of application**

- (1) The applicant must—
  - (a) display a sign about the application at the relevant premises; and
  - (b) publish a notice about the application in a daily newspaper.
- (2) A sign and notice must—
  - (a) state the class of licence applied for and, for an on licence, the subclass of licence applied for; and
  - (b) comply with the requirements prescribed by regulation.
- (3) A person commits an offence if the person—
  - (a) is an applicant; and
  - (b) fails to—
    - (i) display a sign in accordance with this section; or
    - (ii) publish a notice in accordance with this section.

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.

### **35 Licence—representations**

- (1) If an applicant displays a sign or publishes a notice under section 34, anyone may give a written representation to the commissioner about how—
- (a) 1 or more of the following people is not a suitable person to hold the licence:
    - (i) the applicant;
    - (ii) a close associate of the applicant;
    - (iii) if the applicant is a corporation—an influential person for the applicant;
    - (iv) if someone other than the applicant is to have day-to-day control of the business operated under the licence—a person who is to have day-to-day control; or
  - (b) the relevant premises are not suitable premises for the licence.

*Note* **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

- (2) A representation about an application may be given to the commissioner only during the public consultation period for the application.

*Note* **Public consultation period**, for an application—see s 36.

- (3) A person who gives the commissioner a representation about an application may, in writing, withdraw the representation at any time before the application is decided.

*Note* In deciding whether a person or premises are suitable for a licence, the commissioner must consider public consultation representations received under this section (see s 68 and s 76).

**36           What is the *public consultation period*?—div 2.5**

- (1) In this division:

*public consultation period*, for an application, means—

- (a) the period prescribed by regulation; or
  - (b) if the period prescribed is extended under subsection (2)—the prescribed period as extended.
- (2) The commissioner may, by notice published in a daily newspaper, extend the public consultation period for an application.

*Note*       The commissioner may extend the public consultation period after it has ended (see Legislation Act, s 151C).

- (3) If the commissioner extends the public consultation period under subsection (2), the commissioner must give the applicant written notice of the extension.

**Division 2.5                   Licences—amendment, transfer,  
   renewal, etc**

**37           Licence—amendment initiated by commissioner**

- (1) The commissioner may, by written notice (an *amendment notice*) given to a licensee, amend the licence if satisfied that—
- (a) each of the following people is a suitable person to hold the licence as amended:
    - (i) the licensee;
    - (ii) each close associate of the licensee;
    - (iii) if the licensee is a corporation—each influential person for the licensee;



- (iv) if someone other than the licensee has, or is to have, day-to-day control of the business operated under the licence—each person who has, or is to have, day-to-day control; and
- (b) the licensed premises are suitable premises for the licence as amended.

*Note 1* **Amend** includes amend, impose or remove a licence condition—see the dictionary.

*Note 2* **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 3* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

- (2) However, the commissioner may amend the licence only if—
  - (a) the commissioner has given the licensee written notice (a **proposal notice**) of the proposed amendment; and
  - (b) the proposal notice states that written comments on the proposal may be made to the commissioner before the end of a stated period of at least 14 days after the day the proposal notice is given to the licensee; and
  - (c) after the end of the stated period, the commissioner has considered any comments made in accordance with the notice.
- (3) Subsection (2) does not apply if the licensee applied for, or agreed in writing to, the amendment.
- (4) The amendment takes effect on the day the amendment notice is given to the licensee or a later day stated in the notice.

### **38           Licence—amendment on application by licensee**

- (1) A licensee may apply to the commissioner to amend the licence.

*Note 1*   If a form is approved under s 228 for an application, the form must be used.

*Note 2*   A fee may be determined under s 227 for this provision.

- (2) A licensee must apply to the commissioner for amendment of the licence if someone else is to—

- (a) become a close associate of the licensee; or
- (b) if the licensee is a corporation—become an influential person for the licensee; or
- (c) have day-to-day control of the business operated under the licence.

- (3) If a licensee applies to the commissioner to amend an on licence from 1 subclass to another, the licensee must comply with the public consultation provisions in division 2.4 (Licences—public consultation).

**Example—amendment from 1 subclass to another**

Restaurant and cafe licence to nightclub licence

*Note*     An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The commissioner may amend the licence only if satisfied that—

- (a) each of the following people is a suitable person to hold the licence as amended:
  - (i) the licensee;
  - (ii) each close associate of the licensee;
  - (iii) if the licensee is a corporation—each influential person for the licensee;

- (iv) if someone other than the proposed licensee has, or is to have, day-to-day control of the business operated under the licence—a person who has, or is to have, day-to-day control; and
- (b) the licensed premises are suitable premises for the licence as amended.

*Note 1* **Amend** includes amend, impose or remove a licence condition—see the dictionary.

*Note 2* **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 3* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 4* A decision under this subsection is a reviewable decision (see s 220).

- (5) The commissioner must, not later than the required time—
  - (a) decide the application for amendment; and
  - (b) tell the licensee about the decision on the application.
- (6) In this section:

**required time** means the latest of the following:

- (a) if the commissioner receives a representation about a person or premises under section 35 (Licence—representations)—90 days after the commissioner receives the representation;
- (b) if the commissioner requires the licensee to provide a police certificate or other information under section 71 (Commissioner may require police certificate etc for person)—30 days after the day the commissioner receives the certificate or information;

- (c) if the commissioner requires the licensee to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—30 days after the day the commissioner receives the certificate, plan or information;
- (d) if the commissioner asks the licensee to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—30 days after the day the commissioner inspects the premises;
- (e) 30 days after the day the commissioner receives the application.

*Note* Failure to amend a licence within the required time is taken to be a decision not to amend the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

### **39 Licence—amendment for change to floor plan of licensed premises**

- (1) A licensee must apply to the commissioner for amendment of the licence if the licensee intends to change the floor plan of the licensed premises.

*Note 1* If a form is approved under s 228 for an application, the form must be used.

*Note 2* A fee may be determined under s 227 for this provision.

- (2) The application must—
  - (a) be in writing; and
  - (b) include—
    - (i) an ACTPLA certificate for the premises, as intended to be changed, dated not earlier than 3 months before the date of the application; and

- (ii) the final floor plans of the premises, as intended to be changed, approved by the planning and land authority in the development approval for the premises; and
  - (iii) if the licence is a general licence, an on licence, a club licence or a special licence—a risk-assessment management plan for the altered licensed premises.
- (3) The commissioner may amend the licence only if satisfied that the premises as intended to be changed are suitable premises for the licence.

*Note 1* **Amend** includes amend, impose or remove a licence condition—see the dictionary.

*Note 2* **Suitable premises**, for a licence or permit—see s 75.

*Note 3* A decision under this subsection is a reviewable decision (see s 220).

- (4) If the commissioner amends a general licence, on licence, club licence or special licence because of the intended changes to the floor plan, the commissioner must also decide—
  - (a) the occupancy loading for each public area at the licensed premises as intended to be changed; and
  - (b) the adults-only areas (if any) for the licensed premises as intended to be changed.

*Note 1* **Occupancy loading**, for a public area at licensed premises or permitted premises—see s 83.

*Note 2* **Adults-only area**, for licensed premises or permitted premises—see s 93.

- (5) The commissioner must, not later than the required time—
  - (a) decide the application for amendment for alteration of licensed premises; and
  - (b) tell the licensee about the decision on the application.

(6) In this section:

***required time*** means the latest of the following:

- (a) if the commissioner requires the licensee to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—30 days after the day the commissioner receives the certificate, plan or information;
- (b) if the commissioner asks the licensee to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—30 days after the day the commissioner inspects the premises;
- (c) 30 days after the day the commissioner receives the application.

*Note*     Failure to amend a licence within the required time is taken to be a decision not to amend the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

#### **40           Licence—application to transfer licence**

- (1) A licensee may apply to the commissioner to transfer the licence to someone else (the ***proposed new licensee***).
- (2) The application must—
  - (a) be in writing; and
  - (b) include complete details of suitability information about—
    - (i) the proposed new licensee; and
    - (ii) each close associate of the proposed new licensee; and
    - (iii) if the proposed new licensee is a corporation—each influential person for the proposed new licensee; and

- (iv) if someone other than the proposed new licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and
- (c) include a police certificate for each of the following people, dated not earlier than 3 months before the date of the transfer application:
  - (i) the proposed new licensee;
  - (ii) each close associate of the proposed new licensee;
  - (iii) if the proposed new licensee is a corporation—each influential person for the proposed new licensee;
  - (iv) if someone other than the proposed new licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control.

*Note 1* **Suitability information**, about a person—see s 69.

*Note 2* Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 3* If a form is approved under s 228 for an application, the form must be used.

*Note 4* A fee may be determined under s 227 for this provision.

#### **41 Licence—decision on application to transfer licence**

- (1) This section applies if the commissioner receives an application to transfer a licence under section 40.
- (2) The commissioner must transfer the licence to the proposed new licensee only if satisfied that—
  - (a) each of the following people is a suitable person to hold the licence:
    - (i) the proposed new licensee;

- (ii) each close associate of the proposed new licensee;
  - (iii) if the proposed new licensee is a corporation—each influential person for the proposed new licensee;
  - (iv) if someone other than the proposed new licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and
- (b) the proposed new licensee complies, and is likely to continue to comply, with the requirements of this Act.

*Note 1*   **Suitable person**, to hold a licence or permit—see s 67.

*Note 2*   In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 3*   A decision under this subsection is a reviewable decision (see s 220).

- (3) The commissioner must, not later than the required time—
- (a) decide the application for transfer; and
  - (b) tell the licensee about the decision on the application.
- (4) In this section:

**required time** means the latest of the following:

- (a) if the commissioner requires the proposed new licensee to provide a police certificate or other information under section 71 (Commissioner may require police certificate etc for person)—30 days after the day the commissioner receives the certificate or information;
- (b) 30 days after the day the commissioner receives the application.

*Note*       Failure to transfer a licence within the required time is taken to be a decision not to transfer the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).



## **42 Licence—application for renewal**

- (1) A licensee may apply to the commissioner to renew the licence for a period not longer than the period prescribed by regulation.
- (2) The application must be—
  - (a) in writing; and
  - (b) received by the commissioner at least 30 days before the licence expires.
- (3) However, the commissioner may extend the time for making an application.

*Note 1* A licensee may apply to the commissioner for the time to be extended, and the commissioner may extend the time, even though the time has ended (see Legislation Act, s 151C).

*Note 2* If a form is approved under s 228 for an application, the form must be used.

*Note 3* A fee may be determined under s 227 for this provision.

- (4) If a licensee applies to renew a licence under this section, the licence remains in force until the application is decided.

## **43 Licence—decision on application for renewal**

- (1) This section applies if the commissioner receives an application for renewal of a licence under section 42.
- (2) The commissioner must renew the licence only if satisfied that—
  - (a) each of the following people continues to be a suitable person to hold the licence:
    - (i) the licensee;
    - (ii) each close associate of the licensee;
    - (iii) if the licensee is a corporation—each influential person for the licensee;

- (iv) if someone other than the licensee has day-to-day control of the business operated under the licence—each person who has day-to-day control; and
- (b) the licensed premises continue to be suitable premises for the licence.

*Note 1* **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 2* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 3* A decision under this subsection is a reviewable decision (see s 220).

- (3) The commissioner must, not later than the required time—
  - (a) decide the application for renewal; and
  - (b) tell the licensee about the decision on the application.
- (4) In this section:

**required time** means the latest of the following:

- (a) if the commissioner requires the licensee to provide a police certificate or other information under section 71 (Commissioner may require police certificate etc for person)—30 days after the day the commissioner receives the certificate or information;
- (b) if the commissioner requires the licensee to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—30 days after the day the commissioner receives the certificate, plan or information;
- (c) if the commissioner asks the licensee to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—30 days after the day the commissioner inspects the premises;

- (d) 30 days after the day the commissioner receives the application.

*Note* Failure to renew a licence within the required time is taken to be a decision not to renew the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

#### **44 Licence—replacing when lost, stolen or destroyed**

- (1) The commissioner may issue a replacement licence to a licensee if satisfied that the licensee's original licence has been lost, stolen or destroyed.
- (2) For subsection (1), the commissioner may require the licensee to give the commissioner a statutory declaration signed by the licensee, stating that the original licence has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 227 for this provision.

*Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

#### **45 Licence—surrender**

- (1) A licensee may surrender the licence by giving written notice (a ***surrender notice***) of the surrender to the commissioner.
- (2) The surrender notice must be accompanied by—
- (a) the licence; or
  - (b) if the licence has been lost, stolen or destroyed—a statutory declaration signed by the licensee stating that the licence has been lost, stolen or destroyed.

*Note 1* If a form is approved under s 228 for this provision, the form must be used.

*Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

**46 Offence—fail to return licence**

- (1) A person commits an offence if the person—
- (a) ceases to be a licensee before the licence expires under section 32 (Licence—term); and
  - (b) fails to return the licence to the commissioner as soon as practicable, but not later than 21 days, after ceasing to be a licensee.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## **Part 3**                      **Liquor permits**

### **Division 3.1**              **Classes of permits**

#### **47**              **What is a *permit*?**

In this Act:

*permit* means—

- (a) a commercial permit; or
- (b) a non-commercial permit.

#### **48**              **What is a *commercial permit*?**

In this Act:

*commercial permit* means a permit that authorises the permit-holder to sell liquor—

- (a) at a single permitted premises; and
- (b) of a retail value not exceeding the value stated in the permit; and
- (c) at the event stated in the permit; and
- (d) at the permitted times.

#### **49**              **What is a *non-commercial permit*?**

In this Act:

*non-commercial permit* means a permit that authorises a non-profit organisation to sell liquor—

- (a) at a single permitted premises; and
- (b) of a retail value not exceeding the value stated in the permit; and

- (c) that is—
  - (i) in open containers for consumption at the premises; or
  - (ii) in sealed containers for consumption off the premises;  
and
- (d) if the permit relates to an event—at the event stated in the permit; and
- (e) at the permitted times.

## Division 3.2 Permits—application and decision

### 50 Permit—application

- (1) A person (a *proposed permit-holder*) may apply to the commissioner for a permit for stated premises.
  - (2) The application must—
    - (a) be in writing; and
    - (b) include complete details of suitability information about—
      - (i) the proposed permit-holder; and
      - (ii) each close associate of the proposed permit-holder; and
      - (iii) if the proposed permit-holder is a corporation—each influential person for the proposed permit-holder; and
      - (iv) the proposed permitted premises; and
- Note* *Suitability information*, about a person—see s 69.  
*Suitability information*, about premises—see s 78.
- (c) if the premises are wholly or partly enclosed, include the following documents (if applicable in relation to the premises):
    - (i) an ACTPLA certificate for the premises dated not earlier than 3 months before the date of the application;

- (ii) the final floor plans of the premises approved by the planning and land authority in the development approval for the premises;
- (iii) a certificate of occupancy for the premises; and
- (d) if the application is for a commercial permit—include a risk-assessment management plan for the premises.

*Note 1* Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 2* If a form is approved under s 228 for this provision, the form must be used.

*Note 3* A fee may be determined under s 227 for this provision.

## **51 Permit—decision on application**

- (1) This section applies if the commissioner receives an application for a permit under section 50.
- (2) The commissioner must issue the permit to the proposed permit-holder only if satisfied that—
  - (a) if the proposed permit-holder is an individual—the proposed permit-holder is an adult; and
  - (b) each of the following people is a suitable person to hold the permit:
    - (i) the proposed permit-holder;
    - (ii) each close associate of the proposed permit-holder;
    - (iii) if the proposed permit-holder is a corporation—each influential person for the proposed permit-holder; and
  - (c) the proposed permitted premises are suitable premises for the permit; and
  - (d) the proposed permit-holder complies, and is likely to continue to comply, with the requirements of this Act; and

- (e) the proposed permitted premises comply with the requirements of this Act.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

*Note 2* **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 3* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 4* A decision under this subsection is a reviewable decision (see s 220).

- (3) The commissioner must, not later than the required time—
  - (a) decide the application; and
  - (b) tell the proposed permit-holder about the decision on the application.

- (4) In this section:

**required time** means the latest of the following:

- (a) if the commissioner requires the proposed permit-holder to provide a police certificate or information under section 71 (Commissioner may require police certificate etc for person)—90 days after the day the commissioner receives the certificate or other information;
- (b) if the commissioner requires the proposed permit-holder to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—90 days after the day the commissioner receives the certificate, plan or information;
- (c) if the commissioner asks the proposed permit-holder to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—90 days after the day the commissioner inspects the premises;



- (d) 90 days after the day the commissioner receives the application.

*Note* Failure to issue a permit within the required time is taken to be a decision not to issue the permit (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

## **52 Permit—occupancy loading**

- (1) This section applies if the commissioner decides to issue a permit for premises that are wholly or partly enclosed.
- (2) The commissioner may also decide the occupancy loading for each public area in each enclosed part of the premises.

*Note* **Occupancy loading**, for a public area at licensed premises or permitted premises—see s 83.

## **53 Permit—adults-only areas**

- (1) This section applies if the commissioner decides to issue a permit for premises that are wholly or partly enclosed.
- (2) The commissioner must also decide the adults-only areas (if any) for the permitted premises.

*Note* **Adults-only areas**, for licensed premises or permitted premises—see s 93.

**54 Permit—form**

- (1) A permit must be—
  - (a) in writing; and
  - (b) include the following information:
    - (i) the class of the permit;
    - (ii) the name of the permit-holder;
    - (iii) if the permit-holder carries on business under a name other than the permit-holder's name—the name under which the permit-holder carries on business;
    - (iv) the address or location of the permitted premises;
    - (v) the permitted times when—
      - (A) liquor to be consumed at the permitted premises may be sold (if any); and
      - (B) liquor to be consumed off the permitted premises may be sold (if any);
    - (vi) the conditions on the permit;
    - (vii) anything else prescribed by regulation.
- (2) A permit may include anything else the commissioner considers relevant.

**55 Permit—conditions**

- (1) A permit is subject to the condition that—
  - (a) the permit-holder must comply with this Act; and
  - (b) the permitted premises must comply with this Act.
- (2) A permit is subject to any other condition—
  - (a) prescribed by regulation; or

- (b) imposed by the commissioner when the permit is issued, renewed or amended.

**Examples—conditions**

- 1 that stated requirements about inspection must be complied with
- 2 that stated requirements about reporting must be complied with
- 3 that stated records must be kept
- 4 that stated levels of security must be used for stated events
- 5 that the permit-holder must not allow people to enter the permitted premises after a stated time
- 6 that the permit-holder must comply with any liquor guidelines made by the commissioner under s 223

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

*Note 2* Permits may be amended under s 57 or s 58.  
Non-commercial permits may be renewed under s 62.

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**56 Permit—term**

- (1) A permit comes into force on the day stated in the permit.
- (2) The commissioner must not issue a permit for longer than 1 year.
- (3) A permit expires on the day stated in the permit.
- (4) However, the commissioner may decide on reasonable grounds that a permit expires on another day.
- (5) If the commissioner makes a decision under subsection (4) for a class of permit, the decision is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## Division 3.3           Permits—amendment, transfer, renewal, etc

### 57           Permit—amendment initiated by commissioner

- (1) The commissioner may, by written notice (an *amendment notice*) given to a permit-holder, amend the permit if satisfied that—
  - (a) each of the following people is a suitable person to hold the permit as amended:
    - (i) the permit-holder;
    - (ii) each close associate of the permit-holder;
    - (iii) if the permit-holder is a corporation—each influential person for the permit-holder; and
  - (b) the permitted premises are suitable premises for the permit as amended.

*Note 1*    **Amend** includes amend, impose or remove a permit condition—see the dictionary.

*Note 2*    **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 3*    In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

- (2) However, the commissioner may amend the permit only if—
  - (a) the commissioner has given the permit-holder written notice (a *proposal notice*) of the proposed amendment; and
  - (b) the proposal notice states that written comments on the proposal may be made to the commissioner before the end of a stated period of at least 14 days after the day the proposal notice is given to the permit-holder; and
  - (c) after the end of the stated period, the commissioner has considered any comments made in accordance with the notice.

- (3) Subsection (2) does not apply if the permit-holder applied for, or agreed in writing to, the amendment.
- (4) The amendment takes effect on the day the amendment notice is given to the permit-holder or a later day stated in the notice.

**58 Permit—amendment on application by permit-holder**

- (1) A permit-holder may apply to the commissioner to amend the permit.

*Note 1* If a form is approved under s 228 for an application, the form must be used.

*Note 2* A fee may be determined under s 227 for this provision.

- (2) A permit-holder must apply to the commissioner for amendment of the permit if someone else is to become—
  - (a) a close associate of the permit-holder; or
  - (b) if the permit-holder is a corporation—an influential person for the permit-holder.
- (3) The commissioner may amend the permit only if satisfied that—
  - (a) each of the following people is a suitable person to hold the permit as amended:
    - (i) the permit-holder;
    - (ii) each close associate of the permit-holder;
    - (iii) if the permit-holder is a corporation—each influential person for the permit-holder; and

- (b) the permitted premises are suitable premises for the permit as amended.

*Note 1*   **Amend** includes amend, impose or remove a permit condition—see the dictionary.

*Note 2*   **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 3*   In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 4*   A decision under this subsection is a reviewable decision (see s 220).

- (4) The commissioner must, not later than the required time—
- (a) decide the application for amendment; and
- (b) tell the permit-holder about the decision on the application.

- (5) In this section:

**required time** means the latest of the following:

- (a) if the commissioner requires the permit-holder to provide a police certificate or other information under section 71 (Commissioner may require police certificate etc for person)—30 days after the day the commissioner receives the certificate or information;
- (b) if the commissioner requires the permit-holder to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—30 days after the day the commissioner receives the certificate, plan or information;
- (c) if the commissioner asks the permit-holder to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—30 days after the day the commissioner inspects the premises;

(d) 30 days after the day the commissioner receives the application.

*Note* Failure to amend a permit within the required time is taken to be a decision not to amend the permit (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

**59 Permit—not transferable**

A permit is not transferable.

**60 Permit—commercial permit not renewable**

A commercial permit is not renewable.

**61 Permit—application for renewal of non-commercial permit**

- (1) A non-commercial permit-holder may apply to the commissioner to renew the permit for a period not longer than 1 year.
- (2) The application must be—
  - (a) in writing; and
  - (b) received by the commissioner at least 30 days before the permit expires.
- (3) However, the commissioner may extend the time for making an application.

*Note 1* A non-commercial permit-holder may apply to the commissioner for the time to be extended, and the commissioner may extend the time, even though the time has ended (see *Legislation Act*, s 151C).

*Note 2* If a form is approved under s 228 for an application, the form must be used.

*Note 3* A fee may be determined under s 227 for this provision.

- (4) If a non-commercial permit-holder applies to renew a permit under this section, the permit remains in force until the application is decided.

**62 Permit—decision on application for renewal of non-commercial permit**

- (1) This section applies if the commissioner receives an application for renewal of a non-commercial permit under section 61.
- (2) The commissioner must renew the permit only if satisfied that—
  - (a) each of the following people continues to be a suitable person to hold the permit:
    - (i) the permit-holder;
    - (ii) each close associate of the permit-holder;
    - (iii) if the permit-holder is a corporation—each influential person for the permit-holder; and
  - (b) the permitted premises continue to be suitable premises for the permit.

*Note 1* **Suitable person**, to hold a licence or permit—see s 67.  
**Suitable premises**, for a licence or permit—see s 75.

*Note 2* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 3* A decision under this subsection is a reviewable decision (see s 220).

- (3) The commissioner must, not later than the required time—
  - (a) decide the application for renewal; and
  - (b) tell the permit-holder about the decision on the application.
- (4) In this section:  
**required time** is the latest of the following:
  - (a) if the commissioner requires the permit-holder to provide a police certificate or other information under section 71 (Commissioner may require police certificate etc for person)—30 days after the day the commissioner receives the certificate or information;



- (b) if the commissioner requires the permit-holder to provide a certificate, plan or other information under section 79 (Commissioner may require certificate, plan, etc for premises)—30 days after the day the commissioner receives the certificate, plan or information;
- (c) if the commissioner asks the permit-holder to allow the commissioner to inspect the premises under section 80 (Commissioner may require inspection of premises)—30 days after the day the commissioner inspects the premises;
- (d) 30 days after the day the commissioner receives the application.

*Note* Failure to renew a permit within the required time is taken to be a decision not to renew the permit (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

### **63 Permit—replacing when lost, stolen or destroyed**

- (1) The commissioner may issue a replacement permit to a permit-holder if satisfied that the permit-holder's original permit has been lost, stolen or destroyed.
- (2) For subsection (1), the commissioner may require the permit-holder to give the commissioner a statutory declaration signed by the permit-holder, stating that the original permit has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 227 for this provision.

*Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

## 64           **Permit—surrender**

- (1) A permit-holder may surrender the permit by giving written notice (a *surrender notice*) of the surrender to the commissioner.

*Note*       If a form is approved under s 228 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—

- (a) the permit; or
- (b) if the permit has been lost, stolen or destroyed—a statutory declaration signed by the permit-holder stating that the permit has been lost, stolen or destroyed.

*Note*       The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

## 65           **Non-commercial permit—cancellation**

- (1) The commissioner may, by written notice (a *cancellation notice*), given to a permit-holder, cancel the permit if satisfied that the non-commercial permit-holder has failed to comply with the permit.

*Note 1*     A decision under this subsection is a reviewable decision (see s 220).

*Note 2*     In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

- (2) The cancellation takes effect on the day the cancellation notice is given to the permit-holder or a later day stated in the notice.

**66 Offence—fail to return permit**

- (1) A person commits an offence if the person—
- (a) ceases to be a permit-holder before the permit expires under section 56 (Permit—term); and
  - (b) fails to return the permit to the commissioner as soon as practicable, but not later than 21 days, after ceasing to be a permit-holder.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## Part 4 Suitability of people and premises for licences and permits

### Division 4.1 Suitability of people for licences and permits

#### 67 Who is a *suitable person*?

In this Act:

*suitable person*, to hold a licence or permit, means a person who the commissioner is satisfied is a suitable person to hold the licence or permit.

#### 68 Commissioner must consider suitability information, etc

In deciding whether a person is a suitable person to hold a licence or permit, the commissioner must consider each of the following:

- (a) suitability information about the person;
- (b) any police certificate or other information about the person given to the commissioner under—
  - (i) section 25 (Licence—application); or
  - (ii) section 40 (Licence—application to transfer licence); or
  - (iii) section 71 (Commissioner may require police certificate etc for person);
- (c) any public consultation representation about the person received by the commissioner under section 35 (Licence—representations).

*Note* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

**69 What is *suitability information* about a person?**

(1) In this Act:

*suitability information*, about a person, means information about the following:

- (a) any conviction of, or finding of guilt against, the person for an offence against 1 or more of the following:
  - (i) this Act;
  - (ii) a law of another jurisdiction corresponding, or substantially corresponding, to this Act;
  - (iii) the *Crimes Act 1900*;
  - (iv) the Criminal Code;
  - (v) the *Crimes Act 1914* (Cwlth);
  - (vi) the *Criminal Code Act 1995* (Cwlth);
  - (vii) the *Unlawful Gambling Act 2009*;
  - (viii) the *Trade Practices Act 1974* (Cwlth);
  - (ix) the *Fair Trading Act 1992*;
  - (x) a law of another jurisdiction corresponding, or substantially corresponding, to the *Fair Trading Act 1992*;
  - (xi) a law in force in Australia or elsewhere relating to the supply or consumption of liquor;
  - (xii) a law of the ACT with a maximum penalty of imprisonment for 1 year or more;

- (xiii) a law elsewhere that, if the offence were committed in the ACT, would have a maximum penalty of imprisonment for 1 year or more;

*Note* A reference to an Act (including a Commonwealth Act) includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (b) any proven noncompliance by the person with a legal obligation in relation to the supply of liquor;

**Examples**

- 1 a commissioner's direction has been made against the licensee
- 2 an emergency closure order has been made against the licensee
- 3 the person has had a licence suspended

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (c) any refusal of an application by the person for a licence, permit or other authority (however described) in relation to the supply of liquor;
- (d) whether the person complies with the requirements of this Act;
- (e) if the person is an individual—whether the person is, or during the preceding 5 years was—
- (i) bankrupt or personally insolvent; or
  - (ii) involved in the management of a corporation when the corporation was insolvent;

*Note* **Bankrupt or personally insolvent**—see the Legislation Act, dict.

- (f) if the person is a corporation—
- (i) whether the person is, or during the preceding 5 years was, insolvent; or

- (ii) whether each influential person for the corporation is a suitable person to hold the licence or permit;
- (g) if the person is a club—whether the club is an eligible club;
- (h) if the person is a non-profit organisation—whether the organisation operates on a not-for-profit basis;
- (i) the person's knowledge and understanding of the obligations under this Act applying in relation to the licence or permit;
- (j) any other matter relevant to the person's ability to safely and responsibly supply liquor.

*Note* **Supply** includes sell (see dict).

(2) In this section:

**insolvent**—a corporation is taken to be **insolvent** if the corporation—

- (a) is being wound up; or
- (b) has had a receiver or other controller appointed; or
- (c) has entered into a deed of company arrangement with its creditors; or
- (d) is otherwise under external administration under the Corporations Act, chapter 5.

## **70 What is an *eligible club*?**

In this Act:

**eligible club** means a club that—

- (a) is established for 1 or more of the following purposes:
  - (i) recreation;
  - (ii) promoting social, religious, political, literary, scientific, artistic, sporting or athletic purposes;

- (iii) a purpose prescribed by regulation; and
- (b) has a constitution or set of rules that—
  - (i) requires the nomination or election of financial members or foundation members to manage the affairs of the club; and
  - (ii) requires the club to keep records of nominations and elections for 2 years or more; and
  - (iii) requires the club to hold a meeting of its members at least once every 3 years to nominate or elect members to manage the affairs of the club; and
  - (iv) prohibits the supply of liquor to a person who is not a member of the club unless the person is on the club premises—
    - (A) at the invitation of a club member who is also on the club premises; and
    - (B) with the consent of the club; and
  - (v) prohibits the payment of a commission, profit or allowance from, or on receipts from, the supply of liquor at the club premises; and
- (c) has a membership of at least—
  - (i) 200 adult financial members; or
  - (ii) if the club has held a club licence continuously since before 1 June 1979 under the *Liquor Act 1975* or this Act—150 adult financial members.



**71 Commissioner may require police certificate etc for person**

- (1) This section applies if the commissioner is making a decision about whether a person is a suitable person to hold a licence or permit.
- (2) The commissioner may, by written notice given to the person (a *personal information notice*), require the person to give the commissioner 1 or more of the following not later than a stated reasonable time:
  - (a) a police certificate for 1 or more of the following people, dated not earlier than 3 months before the date of the personal information notice:
    - (i) the person;
    - (ii) a close associate of the person;
    - (iii) if the person is a corporation—an influential person for the person;
    - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence and the decision relates to suitability for a licence—each person who is to have day-to-day control;
  - (b) other stated information about the person.
- (3) A personal information notice must also tell the person that giving false or misleading information is an offence against the Criminal Code, section 338 (Giving false or misleading information).

**72 Commissioner need not decide suitability if certificate etc not provided**

- (1) This section applies if—
  - (a) the commissioner has given a person a personal information notice under section 71; and
  - (b) the person does not give the commissioner the certificate or information in accordance with the notice.
- (2) The commissioner need not decide whether the person is a suitable person to hold a licence or permit.

**73 Offence—ongoing duty to update person’s suitability information**

- (1) This section applies to a person if—
  - (a) the commissioner—
    - (i) is deciding whether the person is a suitable person to hold a licence or permit; or
    - (ii) has decided that the person is a suitable person to hold a licence or permit and the person is operating under the licence or permit; and
  - (b) the person has given the commissioner suitability information about the person.

*Note* **Suitability information**, about a person—see s 69.

- (2) A person commits an offence if—
  - (a) the person’s suitability information changes; and
  - (b) the person does not tell the commissioner about the change as soon as practicable, but not later than 7 days after the change happens.

Maximum penalty: 20 penalty units.

- (3) This section does not apply if the person—
- (a) was not aware of the change until later than 7 days after the change happened; and
  - (b) told the commissioner about the change as soon as the person became aware of the change.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

## **Division 4.2 Suitability of premises for licences and permits**

### **74 Who is the *responsible person* for premises?—div 4.2**

In this part:

*responsible person*, for premises, means—

- (a) for a licence for the premises—the licensee or proposed licensee; or
- (b) for a permit for the premises—the permit-holder or proposed permit-holder.

### **75 What are *suitable premises*?**

In this Act:

*suitable premises*, for a licence or permit, means premises that the commissioner is satisfied are suitable premises for the licence or permit.

## **76 Commissioner must consider suitability information, etc**

In deciding whether premises are suitable premises for a licence or permit, the commissioner must consider each of the following:

- (a) suitability information about the premises;
- (b) any certificate, plan or other information about the premises given to the commissioner under—
  - (i) section 25 (Licence—application); or
  - (ii) section 39 (Licence—amendment for change to floor plan of licensed premises); or
  - (iii) section 50 (Permit—application); or
  - (iv) section 79 (Commissioner may require certificate, plan, etc for premises);
- (c) any public consultation representation about the premises received by the commissioner under section 35 (Licence—representations);
- (d) the results of any inspection of the premises by the commissioner under section 80 (Commissioner may require inspection of premises).

*Note* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

## **77 Commissioner must decide premises not suitable in some circumstances**

- (1) The commissioner must decide that premises are not suitable premises for a licence or permit if—
  - (a) the premises do not comply with the requirements of—
    - (i) this Act; or
    - (ii) the *Building Act 2004*; or

(iii) the *Planning and Development Act 2007*; or

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (b) use of the premises in accordance with the licence or permit would not be within the purpose of the lease for the land on which the premises are located; or
- (c) if a risk-assessment management plan is required under section 25 (Licence—application), section 50 (Permit—application), or section 79 (Commissioner may require certificate, plan, etc for premises)—the commissioner does not approve the risk-assessment management plan.

*Note* The commissioner approves risk-assessment management plans under s 90.

- (2) However, the commissioner may decide that the premises are suitable premises for the licence or permit if satisfied that, in all the circumstances, it would be unreasonable to find the premises unsuitable.

## **78 What is *suitability information* about premises?**

In this Act:

*suitability information*, about premises, means information about the following:

- (a) any conviction of, or finding of guilt against, 1 or more of the following people for an offence against this Act involving the premises:
- (i) the responsible person for the premises;
  - (ii) a close associate of the responsible person for the premises;
  - (iii) if the responsible person for the premises is a corporation—an influential person for the corporation;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (b) any proven noncompliance of the premises with a legal obligation in relation to the supply of liquor while 1 or more of the following people was involved in a business operated at the premises:
  - (i) the responsible person for the premises;
  - (ii) a close associate of the responsible person for the premises;
  - (iii) if the responsible person for the premises is a corporation—an influential person for the corporation;

**Example**

the premises are licensed premises and the licence has been suspended

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (c) any refusal of an application for a licence, permit or other authority (however described) in relation to the supply of liquor at the premises;
- (d) whether the premises comply with the requirements of—
  - (i) this Act; and
  - (ii) the *Building Act 2004*; and
  - (iii) the *Planning and Development Act 2007*;
- (e) whether use of the premises in accordance with the licence or permit would be within the purpose of the lease for the land on which the premises are located;
- (f) the fire safety of the premises;

- (g) the level of noise likely to emanate from the premises if used in accordance with the licence or permit;
- (h) whether use of the premises in accordance with the licence or permit would be likely to attract a large number of people and, if so, the risk to community safety;
- (i) whether use of the premises in accordance with the licence or permit would be likely to cause undue disturbance, inconvenience or offence to people—
  - (i) lawfully at adjacent or nearby premises; or
  - (ii) because of the premises' proximity to a place of public worship, a hospital, residential premises, or a school;
- (j) any other matter relevant to the appropriateness of the premises in relation to the supply of liquor.

*Note 1* **Supply** includes sell (see dict).

*Note 2* The commissioner must consider the suitability information for premises when deciding to issue, amend or renew a licence or permit. The commissioner does not consider the suitability information for premises when deciding an application to transfer a licence to someone else (see s 41).

## **79 Commissioner may require certificate, plan, etc for premises**

- (1) This section applies if the commissioner is making a decision about whether premises are suitable premises for a licence or permit.
- (2) The commissioner may, by written notice given to the responsible person for the premises (a ***premises information notice***), require the person to give the commissioner 1 or more of the following, not later than a stated reasonable time:
  - (a) an ACTPLA certificate for the premises, dated not earlier than 3 months before the date of the premises information notice;

- (b) the final floor plans of the premises approved by the planning and land authority in the development approval for the premises;
- (c) a certificate of occupancy for the premises;
- (d) a risk-assessment management plan for the premises;

*Note 1* See pt 6 (Risk-assessment management plans for licensed premises and permitted premises).

*Note 2* If the commissioner does not approve the risk-assessment management plan, the commissioner must also decide that the premises are not suitable premises for the licence or permit (see s 77).

- (e) other stated information about the premises.

- (3) A premises information notice must also tell the person that giving false or misleading information is an offence against the Criminal Code, section 338 (Giving false or misleading information).

## **80 Commissioner may require inspection of premises**

- (1) This section applies if the commissioner is making a decision about whether premises are suitable premises for a licence or permit.
- (2) The commissioner may, by written notice given to the responsible person for the premises (an *inspection notice*), require the person to allow the commissioner to inspect the premises within a stated reasonable time.

## **81 Commissioner need not decide suitability if requirements not complied with**

- (1) This section applies if—
  - (a) the commissioner has given a person a premises information notice under section 79 and the person does not give the commissioner the certificate, plan or information in accordance with the notice; or



- (b) the commissioner has given a person an inspection notice under section 80 and the person does not allow the commissioner to inspect the premises in accordance with the notice.
- (2) The commissioner need not decide whether the premises are suitable premises for the licence or permit.

**82 Offence—ongoing duty to update premises’ suitability information**

- (1) This section applies to a responsible person for premises if—
  - (a) the commissioner—
    - (i) is deciding whether the premises are suitable premises for a licence or permit; or
    - (ii) has decided that the premises are suitable premises for a licence or permit and the premises are being used under the licence or permit; and
  - (b) the responsible person has given the commissioner suitability information about the premises.

*Note* **Suitability information**, about premises—see s 78.

- (2) A responsible person commits an offence if—
  - (a) the premises’ suitability information changes; and
  - (b) the responsible person does not tell the commissioner about the change as soon as practicable, but not later than 7 days after the change happens.

Maximum penalty: 20 penalty units.

- (3) This section does not apply if the responsible person—
  - (a) was not aware of the change until later than 7 days after the change happened; and

(b) told the commissioner about the change as soon as the person became aware of the change.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

## Part 5                                  Occupancy loading for licensed premises and permitted premises

### 83            What is *occupancy loading*?

In this Act:

*occupancy loading*, for a public area at licensed premises or permitted premises, means the maximum number of people allowed in the area.

### 84            What is a *public area*?

In this Act:

*public area*, at licensed premises or permitted premises, means an area at the premises that is open to the public.

#### **Example**

an outdoor dining area

*Note*        An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 85            Occupancy loading decision

- (1) This section applies if the commissioner must decide the occupancy loading for a public area at licensed premises or permitted premises.

*Note*        Section 28, s 39 and s 52 require the commissioner to decide the occupancy loading for public areas.

- (2) In deciding the occupancy loading for a public area, the commissioner must consider—
- (a) the chief officer’s (fire brigade) occupancy loading recommendation for the area under section 86; and
  - (b) the building code.

- (3) However, the commissioner must not decide an occupancy loading for an area that exceeds the occupancy loading for the area recommended under section 86 by the chief officer (fire brigade).

## **86 Fire engineering study and inspection**

- (1) This section applies if the commissioner must decide the occupancy loading for a public area at licensed premises or permitted premises.
- (2) The commissioner must ask the chief officer (fire brigade) to recommend an occupancy loading for the area as soon as practicable after deciding to—
- (a) issue the licence under section 27 (Licence—decision on application); or
  - (b) amend the licence under section 39 (Licence—amendment for change to floor plan of licensed premises); or
  - (c) issue the permit under section 51 (Permit—decision on application).
- (3) To prepare the recommendation, the chief officer (fire brigade) may, by written notice (an *occupancy loading notice*) given to the responsible person for the premises, require the person to—
- (a) give the chief officer (fire brigade) a fire engineering study for the area not later than a stated reasonable time; or
  - (b) allow the chief officer (fire brigade) to inspect the area within a stated reasonable time.

*Note* A fee may be determined under s 227 for this provision.

- (4) In making the recommendation, the chief officer (fire brigade) must consider—
- (a) if the chief officer (fire brigade) has required the responsible person for premises to provide a fire engineering study—the fire engineering study; and

- (b) if the chief officer (fire brigade) has required the responsible person for premises to allow an inspection—the results of the inspection; and
  - (c) the building code, part D1.13.
- (5) The chief officer (fire brigade) must give the commissioner the officer's occupancy loading recommendation for an area as soon as practicable after—
- (a) the commissioner's request; and
  - (b) the responsible person for the premises—
    - (i) provides the study (if required); and
    - (ii) allows the inspection (if required).

**87 Commissioner not to issue licence or permit if requirement not complied with**

- (1) This section applies if the chief officer (fire brigade) has given a person an occupancy loading notice for premises and the person does not comply with the notice.
- (2) The commissioner must not issue or amend the licence, or issue the permit, for the premises until the notice is complied with.

## Part 6 Risk-assessment management plans for licensed premises and permitted premises

### 88 What is a *risk-assessment management plan*?

In this Act:

*risk-assessment management plan*, for licensed premises or permitted premises, means a plan that—

- (a) details procedures, practices and arrangements for conducting the business of selling liquor at the premises; and
- (b) includes anything prescribed by regulation.

#### Examples—what risk-assessment management plan may contain

- 1 how the premises are lit
- 2 what noise mitigation measures are in place
- 3 what security measures are in place

*Note 1* If a form is approved under s 228 for this provision, the form must be used.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 89 What is an *approved risk-assessment management plan*?

In this Act:

*approved risk-assessment management plan*, for licensed premises or permitted premises, means a risk-assessment management plan approved under section 90 for the premises.

**90 Risk-assessment management plan—approval**

- (1) The commissioner may approve a risk-assessment management plan for licensed premises or permitted premises only if satisfied that the procedures, practices and arrangements in the plan are consistent with the harm minimisation and community safety principles.
- (2) If the commissioner decides to approve a risk-assessment management plan for licensed premises or permitted premises, the commissioner must give the licensee or permit-holder written notice that the plan has been approved.

**90A Risk-assessment management plan—availability**

The commissioner must not make a risk-assessment management plan, or an approved risk-assessment plan, for licensed premises or permitted premises available to anyone, other than the licensee or permit-holder, unless required to do so by this Act or another law in force in the Territory.

**91 Approved risk-assessment management plan—amendment on application**

- (1) This section applies if an approved risk-assessment management plan is in force for licensed premises or permitted premises.
- (2) The licensee or permit-holder may apply to the commissioner to amend the approved risk-assessment management plan.

**Example—amendment**

to change a procedure about how the licensee is to deal with intoxicated people

*Note 1* If a form is approved under s 228 for an application, the form must be used.

*Note 2* A fee may be determined under s 227 for this provision.

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In applying to amend an approved risk-assessment management plan, the applicant must comply with any requirement prescribed by regulation.
- (4) The commissioner may, in writing, require the applicant to—
  - (a) give the commissioner additional information or documents that the commissioner reasonably needs to decide the application; or
  - (b) allow the commissioner to inspect the premises within a stated reasonable time.
- (5) If the applicant does not comply with a requirement under subsection (3) or (4), the commissioner may refuse to consider the application.

**92 Approved risk-assessment management plan—decision on amendment**

- (1) This section applies if the commissioner receives an application to amend an approved risk-assessment management plan under section 91.
- (2) The commissioner may amend the approved risk-assessment management plan only if satisfied that—
  - (a) the plan as amended would include procedures, practices and arrangements consistent with the harm minimisation and community safety principles; and
  - (b) any requirements prescribed by regulation have been complied with.

*Note* A decision under s (2) is a reviewable decision (see s 220).

- (3) The commissioner must, not later than the required time—
  - (a) decide the application for amendment; and
  - (b) tell the licensee about the decision on the application.



(4) In this section:

***required time*** means the latest of the following:

- (a) if the commissioner requires the applicant to give the commissioner additional information or documents under section 91—90 days after the day the commissioner receives the additional information or documents;
- (b) if the commissioner requires the applicant to allow the commissioner to inspect the premises under section 91—90 days after the day the commissioner inspects the premises;
- (c) 90 days after the day the commissioner receives the application.

*Note* Failure to amend an approved risk-assessment management plan within the required time is taken to be a decision not to amend the plan (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

## Part 7 Adults-only areas for licensed premises and permitted premises

### Division 7.1 Adults-only area decisions

#### 93 What is an *adults-only area*?

In this Act:

*adults-only area*, for licensed premises or permitted premises, means an area decided by the commissioner to be an adults-only area under section 94.

#### 94 Adults-only areas decision

- (1) This section applies if the commissioner must decide the adults-only areas for licensed premises or permitted premises.

*Note* Section 29, s 39 and s 53 require the commissioner to decide adults-only areas for premises.

- (2) In deciding the adults-only areas of premises, the commissioner must consider—

- (a) the purpose of the licensed premises or permitted premises; and
- (b) the layout of the licensed premises or permitted premises.

- (3) If the commissioner decides that licensed premises are to include an adults-only area, the commissioner may also decide the times when the area is to be used as an adults-only area.

*Note* In making a decision under this Act, a decision-maker must have regard to the harm minimisation and community safety principles (see s 10).

## Division 7.2                      Approvals for young people's event in adults-only area at licensed premises

### 95                      Young people's event approval—application

- (1) A licensee may apply to the commissioner for approval to conduct a young people's event in an adults-only area of the licensed premises.
- (2) The application must—
  - (a) be in writing; and
  - (b) include details of—
    - (i) the day and time when the event is to start; and
    - (ii) the day and time when the event is to end; and
    - (iii) the name of each person who is to work at the event; and
    - (iv) a police certificate for each person who is to work at the event, dated not earlier than 3 months before the date of the application; and
    - (v) anything else prescribed by regulation.

*Note 1* Giving false or misleading information is an offence against the Criminal Code, s 338.

*Note 2* If a form is approved under s 228 for this provision, the form must be used.

*Note 3* A fee may be determined under s 227 for this provision.

- (3) The commissioner may, in writing, require the applicant to—
  - (a) give the commissioner additional information or documents that the commissioner reasonably needs to decide the application; or
  - (b) allow the commissioner to inspect the premises within a stated reasonable time.

- (4) If the applicant does not comply with a requirement under subsection (3), the commissioner may refuse to consider the application.

**96 Young people's event approval—decision**

- (1) This section applies if the commissioner receives an application for approval to conduct a young people's event under section 95.
- (2) The commissioner may issue the approval to the applicant only if satisfied that the applicant satisfies the criteria prescribed by regulation.
- (3) The commissioner must, not later than the required time—
- (a) decide the application for approval; and
  - (b) tell the licensee about the decision on the application.
- (4) In this section:

*required time* means the latest of the following:

- (a) if the commissioner requires the applicant to give the commissioner additional information or documents under section 95—90 days after the day the commissioner receives the application;
- (b) if the commissioner requires the applicant to allow the commissioner to inspect the premises under section 95—90 days after the day the commissioner inspects the premises;
- (c) 90 days after the day the commissioner receives the application.

*Note* Failure to approve the conduct of a young people's event within the required time is taken to be a decision not to approve the event (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

**97 Young people's event approval—form**

- (1) A young people's event approval must—
  - (a) be in writing; and
  - (b) include the following information:
    - (i) the name of the licensee;
    - (ii) the day and time when the event is to start;
    - (iii) the day and time when the event is to end;
    - (iv) the name of each person approved to work at the event;
    - (v) the conditions on the approval;
    - (vi) anything else prescribed by regulation.
- (2) A young people's event approval may include anything else the commissioner considers relevant.

**98 Young people's event approval—conditions**

A young people's event approval is subject to any condition—

- (a) prescribed by regulation; or
- (b) imposed by the commissioner when the approval is issued.

**99 Young people's event approval—term**

- (1) A young people's event approval comes into force on the day and at the time stated in the approval.
- (2) An approval expires at the earlier of the following times:
  - (a) the day and time stated in the approval;
  - (b) 24 hours after the approval comes into force.

## Part 8 Conduct at licensed premises and permitted premises

### U Division 8.1 Responsible service of alcohol

#### U 100 Offence—supply liquor without RSA certificate—licensee or permit-holder

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the person supplies liquor to someone else; and
  - (c) the supply happens at the licensed premises; and
  - (d) the person does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

*Note* **Supply** includes sell—see dict.

- (2) A person commits an offence if—
- (a) the person is a commercial permit-holder; and
  - (b) the person supplies liquor to someone else; and
  - (c) the supply happens at the permitted premises; and
  - (d) the person does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) an employee of the person supplies liquor to someone else; and
  - (c) the supply happens at the licensed premises; and

(d) the employee does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if—
- (a) the person is a commercial permit-holder; and
  - (b) an employee of the person supplies liquor to someone else; and
  - (c) the supply happens at the permitted premises; and
  - (d) the employee does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.

**U** 101 **Offence—supply liquor without RSA certificate—employee**

- (1) A person commits an offence if—
- (a) the person is an employee of a licensee; and
  - (b) the person supplies liquor to someone else; and
  - (c) the supply happens at the licensed premises; and
  - (d) the person does not hold an RSA certificate.

Maximum penalty: 10 penalty units.

*Note* **Supply** includes sell (see dict).

- (2) A person commits an offence if—
- (a) the person is an employee of a commercial permit-holder; and
  - (b) the person supplies liquor to someone else; and
  - (c) the supply happens at the permitted premises; and

(d) the person does not hold an RSA certificate.

Maximum penalty: 10 penalty units.

(3) An offence against this section is a strict liability offence.

**U 102 Offence—crowd controller without RSA certificate**

(1) A person commits an offence if—

(a) the person is a licensee; and

(b) a crowd controller is working as a crowd controller at the licensed premises; and

(c) the crowd controller does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is a commercial permit-holder; and

(b) a crowd controller is working as a crowd controller at the permitted premises; and

(c) the crowd controller does not hold an RSA certificate.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if the person—

(a) is a crowd controller; and

(b) is working as a crowd controller at licensed premises; and

(c) does not hold an RSA certificate.

Maximum penalty: 10 penalty units.

(4) A person commits an offence if the person—

(a) is a crowd controller; and

(b) is working as a crowd controller at permitted premises; and



(c) does not hold an RSA certificate.

Maximum penalty: 10 penalty units.

(5) An offence against this section is a strict liability offence.

*Note* Crowd controllers are regulated under the *Security Industry Act 2003*.

**U 103 Offence—fail to keep RSA certificates**

(1) A person commits an offence if the person—

- (a) is a licensee; and
- (b) fails to keep a copy of an RSA certificate for each of the following people:
  - (i) the licensee;
  - (ii) each person employed to supply liquor at the licensed premises;
  - (iii) each crowd controller working as a crowd controller at the licensed premises.

Maximum penalty: 20 penalty units.

*Note* **Supply** includes sell (see dict).

(2) A person commits an offence if the person—

- (a) is a commercial permit-holder; and
- (b) fails to keep a copy of an RSA certificate for each of the following people:
  - (i) the permit-holder;
  - (ii) each person employed to supply liquor at the permitted premises;

- (iii) each crowd controller working as a crowd controller at the permitted premises.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

## Division 8.2 Intoxicated people

### 104 What is *intoxicated*?

For this Act, a person is *intoxicated* if—

- (a) the person's speech, balance, coordination or behaviour is noticeably affected; and
- (b) it is reasonable in the circumstances to believe that the affected speech, balance, coordination or behaviour is the result of the consumption of liquor.

### 105 Offence—supply liquor to intoxicated person—licensee or permit-holder

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the person supplies liquor to another person; and
  - (c) the other person is intoxicated; and
  - (d) the supply happens at the licensed premises.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) the person supplies liquor to another person; and
  - (c) the other person is intoxicated; and

(d) the supply happens at the permitted premises.

Maximum penalty: 50 penalty units.

(3) A person commits an offence if—

(a) the person is a licensee; and

(b) an employee of the licensee supplies liquor to another person; and

(c) the other person is intoxicated; and

(d) the supply happens at the licensed premises.

Maximum penalty: 50 penalty units.

(4) A person commits an offence if—

(a) the person is a permit-holder; and

(b) an employee of the permit-holder supplies liquor to another person; and

(c) the other person is intoxicated; and

(d) the supply happens at the permitted premises.

Maximum penalty: 50 penalty units.

(5) An offence against this section is a strict liability offence.

(6) In a prosecution for an offence against this section, a substance supplied to a person is presumed to be liquor if—

(a) the substance is supplied to the person in an adults-only area at the premises; and

(b) a police officer gives evidence—

(i) that the police officer saw the substance being supplied to the person; and

- (ii) that the police officer believes on reasonable grounds that the substance is liquor.

*Note* A person rebutting the presumption in s (6) bears an evidential burden in relation to the rebuttal (see Criminal Code, s 58).

**106 Offence—supply liquor to intoxicated person—employee**

- (1) A person commits an offence if—
- (a) the person is an employee of a licensee; and
  - (b) the person supplies liquor to another person; and
  - (c) the other person is intoxicated; and
  - (d) the supply happens at the licensed premises.
- Maximum penalty: 10 penalty units.
- (2) A person commits an offence if—
- (a) the person is an employee of a permit-holder; and
  - (b) the person supplies liquor to another person; and
  - (c) the other person is intoxicated; and
  - (d) the supply happens at the permitted premises.
- Maximum penalty: 10 penalty units.
- (3) An offence against this section is a strict liability offence.
- (4) In a prosecution for an offence against this section, a substance supplied to a person is presumed to be liquor if—
- (a) the substance is supplied to the person in an adults-only area at the premises; and
  - (b) a police officer gives evidence—
    - (i) that the police officer saw the substance being supplied to the person; and

- (ii) that the police officer believes on reasonable grounds that the substance is liquor.

*Note* A person rebutting the presumption in s (4) bears an evidential burden in relation to the rebuttal (see Criminal Code, s 58).

**107 Offence—supply liquor to intoxicated person—other person**

- (1) A person commits an offence if—
- (a) the person supplies liquor to another person; and
  - (b) the other person is intoxicated; and
  - (c) the supply happens at—
    - (i) licensed premises; or
    - (ii) permitted premises.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to—
- (a) for supply at licensed premises—
    - (i) the licensee; or
    - (ii) an employee of the licensee; or
  - (b) for supply at permitted premises—
    - (i) the permit-holder; or
    - (ii) an employee of the permit-holder.

*Note 1* A licensee or permit-holder commits an offence if the licensee or permit-holder supplies liquor to an intoxicated person (see s 105).

*Note 2* An employee of a licensee or permit-holder commits an offence if the employee supplies liquor to an intoxicated person (see s 106).

**108 Offence—abuse, threaten, intimidate staff**

- (1) A person commits an offence if—
- (a) a staff member at premises refuses to supply liquor to the person because the person is intoxicated; and
  - (b) the person engages in abusive, threatening or intimidating behaviour towards the staff member; and
  - (c) the behaviour is because of the refusal.

Maximum penalty: 10 penalty units.

*Note* *Supply* includes sell (see dict).

- (2) A person commits an offence if—
- (a) a staff member refuses to supply liquor to an intoxicated person; and
  - (b) the person engages in abusive, threatening or intimidating behaviour towards the staff member; and
  - (c) the behaviour is because of the refusal.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

**109 Offence—fail to display sign about abuse offence**

- (1) A person commits an offence if the person—
- (a) is a licensee; and
  - (b) fails to display signs about the offence in section 108 at the licensed premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person—
- (a) is a permit-holder; and

(b) fails to display signs about the offence in section 108 at the permitted premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

(3) An offence against this section is a strict liability offence.

### **Division 8.3 Children and young people**

#### **110 Offence—supply liquor to child or young person—licensee or permit-holder**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the person supplies liquor or low-alcohol liquor to another person; and
  - (c) the other person is a child or young person; and
  - (d) the supply happens at licensed premises.

Maximum penalty: 50 penalty units.

*Note* **Supply** includes sell (see dict).

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) the person supplies liquor or low-alcohol liquor to another person; and
  - (c) the other person is a child or young person; and
  - (d) the supply happens at permitted premises.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—
- (a) the person is a licensee; and

- (b) an employee of the licensee supplies liquor or low-alcohol liquor to another person; and
- (c) the other person is a child or young person; and
- (d) the supply happens at the licensed premises.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if—

- (a) the person is a permit-holder; and
- (b) an employee of the permit-holder supplies liquor or low-alcohol liquor to another person; and
- (c) the other person is a child or young person; and
- (d) the supply happens at the permitted premises.

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.

- (6) This section does not apply in relation to a young person if the young person—

- (a) was at least 16 years old at the time of the offence; and
- (b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:
  - (i) the defendant;
  - (ii) an employee of the defendant;
  - (iii) a crowd controller working as a crowd controller at the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (6) (see Criminal Code, s 58).



- (7) In a prosecution for an offence against this section, a substance supplied to a person is presumed to be liquor if—
- (a) the substance is supplied to the person in an adults-only area at the premises; and
  - (b) a police officer gives evidence—
    - (i) that the police officer saw the substance being supplied to the person; and
    - (ii) that the police officer believes on reasonable grounds that the substance is liquor.

*Note* A person rebutting the presumption in s (7) bears an evidential burden in relation to the rebuttal (see Criminal Code, s 58).

**111 Offence—supply liquor to child or young person—employee**

- (1) A person commits an offence if—
- (a) the person is an employee of a licensee; and
  - (b) the person supplies liquor or low-alcohol liquor to another person; and
  - (c) the other person is a child or young person; and
  - (d) the supply happens at the licensed premises.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person is an employee of a permit-holder; and
  - (b) the person supplies liquor or low-alcohol liquor to another person; and
  - (c) the other person is a child or young person; and

(d) the supply happens at the permitted premises.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply in relation to a young person at licensed premises if the young person—
- (a) was at least 16 years old at the time of the offence; and
  - (b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:
    - (i) the defendant;
    - (ii) the licensee;
    - (iii) a crowd controller working as a crowd controller at the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

- (5) This section does not apply in relation to a young person at permitted premises if the young person—
- (a) was at least 16 years old at the time of the offence; and
  - (b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:
    - (i) the defendant;
    - (ii) the permit-holder;
    - (iii) a crowd controller working as a crowd controller at the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (5) (see Criminal Code, s 58).

- (6) In a prosecution for an offence against this section, a substance supplied to a person is presumed to be liquor if—
- (a) the substance is supplied to the person in an adults-only area at the premises; and
  - (b) a police officer gives evidence—
    - (i) that the police officer saw the substance being supplied to the person; and
    - (ii) that the police officer believes on reasonable grounds that the substance is liquor.

*Note* A person rebutting the presumption in s (6) bears an evidential burden in relation to the rebuttal (see Criminal Code, s 58).

**112 Offence—supply liquor to child or young person—other person**

- (1) A person commits an offence if—
- (a) the person supplies liquor or low-alcohol liquor to another person; and
  - (b) the other person is a child or a young person; and
  - (c) the supply happens at—
    - (i) licensed premises; or
    - (ii) permitted premises; and
  - (d) the person is a person other than—
    - (i) for supply at licensed premises—
      - (A) a licensee; or
      - (B) an employee of the licensee; or
    - (ii) for supply at permitted premises—
      - (A) a permit-holder; or

(B) an employee of the permit-holder.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply in relation to a young person at licensed premises if the young person—
  - (a) was at least 16 years old at the time of the offence; and
  - (b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:
    - (i) the defendant;
    - (ii) the licensee;
    - (iii) an employee of the licensee;
    - (iv) a crowd controller working as a crowd controller at the premises.
- (4) This section does not apply in relation to a young person at permitted premises if the young person—
  - (a) was at least 16 years old at the time of the offence; and
  - (b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:
    - (i) the defendant;
    - (ii) the permit-holder;
    - (iii) an employee of the permit-holder;

- (iv) a crowd controller working as a crowd controller at the premises.

*Note 1* The defendant has an evidential burden in relation to the matters mentioned in ss (3) and (4) (see Criminal Code, s 58).

*Note 2* It is an offence to supply liquor to a child or young person in a public place (see s 204).

**113 Licensee, permit-holder, etc may refuse to supply liquor without identification document**

- (1) A staff member at premises may refuse to supply liquor or low-alcohol liquor to a person if, when asked, the person does not show the staff member an identification document identifying the person as an adult.
- (2) This section does not limit the circumstances in which a person may refuse to supply liquor or low-alcohol liquor.

**114 Offence—child or young person consume liquor—licensee or permit-holder**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) another person consumes liquor or low-alcohol liquor at the licensed premises; and
  - (c) the other person is a child or young person.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) another person consumes liquor or low-alcohol liquor at the permitted premises; and

(c) the other person is a child or young person.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply in relation to a young person at premises if the young person—
- (a) was at least 16 years old at the time of the offence; and
  - (b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:
    - (i) the defendant;
    - (ii) an employee of the defendant;
    - (iii) a crowd controller working as a crowd controller at the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

### **115 Offence—child or young person consume liquor**

A person commits an offence if the person—

- (a) is a child or young person; and
- (b) consumes liquor or low-alcohol liquor at—
  - (i) licensed premises; or
  - (ii) permitted premises.

Maximum penalty: 5 penalty units.

*Note* A police officer may caution a child or young person in relation to this offence (see s 150).

**116 Offence—child or young person possess liquor—licensee or permit-holder**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) another person possesses liquor or low-alcohol liquor at the licensed premises; and
  - (c) the other person is a child or young person.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) another person possesses liquor or low-alcohol liquor at the permitted premises; and
  - (c) the other person is a child or young person.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply in relation to a young person if the young person possesses the liquor or low-alcohol liquor in the course of—
- (a) the young person's employment at the licensed premises or permitted premises; or
  - (b) a training program conducted by a declared training provider.
- (5) This section does not apply in relation to a young person at premises if the young person—
- (a) was at least 16 years old at the time of the offence; and

(b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:

- (i) the defendant;
- (ii) an employee of the defendant;
- (iii) a crowd controller working as a crowd controller at the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in ss (4) and (5) (see Criminal Code, s 58).

**117 Offence—child or young person possess liquor**

- (1) A person commits an offence if the person—
- (a) is a child or young person; and
  - (b) possesses liquor or low-alcohol liquor at—
    - (i) licensed premises; or
    - (ii) permitted premises.

Maximum penalty: 5 penalty units.

- (2) This section does not apply to a young person if the young person possesses the liquor or low-alcohol liquor in the course of—
- (a) the young person's employment at the licensed premises or permitted premises; or
  - (b) a training program conducted by a declared training provider.

*Note 1* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

*Note 2* A police officer may caution a child or young person in relation to this offence (see s 150).



**U 118 Offence—child or young person supply liquor—licensee or permit-holder**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the person employs a child or young person; and
  - (c) the child or young person supplies liquor; and
  - (d) the liquor is supplied in an adults-only area of the licensed premises.

Maximum penalty: 50 penalty units.

*Note* **Supply** includes sell (see dict).

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) the person employs a child or young person; and
  - (c) the child or young person supplies liquor; and
  - (d) the liquor is supplied in an adults-only area of the permitted premises.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

**119 Offence—send child or young person to obtain liquor**

- (1) A person commits an offence if—
- (a) the person sends another person to buy liquor or low-alcohol liquor at—
    - (i) licensed premises; or
    - (ii) permitted premises; and

(b) the other person is a child or young person.

Maximum penalty: 10 penalty units.

(2) A person commits an offence if—

(a) the person sends another person to collect liquor or low-alcohol liquor at—

(i) licensed premises; or

(ii) permitted premises; and

(b) the other person is a child or young person.

Maximum penalty: 10 penalty units.

(3) This section does not apply in relation to a young person if the young person is sent to obtain liquor or low-alcohol liquor in the course of—

(a) the young person's employment at the licensed premises or permitted premises; or

(b) a training program conducted by a declared training provider.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

**120 Offence—child or young person in adults-only area—licensee or permit-holder**

(1) A person commits an offence if—

(a) the person is a licensee; and

(b) a child or young person is in an adults-only area of the licensed premises.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the person is a permit-holder; and

- (b) a child or young person is in an adults-only area of the permitted premises.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply if the child or young person is in the care of an adult who—
- (a) is a parent, step-parent, guardian, person acting in place of a parent, domestic partner or carer of the child or young person; and
  - (b) could reasonably be expected to responsibly supervise the child or young person.

*Note* For the meaning of *domestic partner*, see the Legislation Act, s 169.

- (5) This section does not apply in relation to a young person if the young person is in the adults-only area in the course of—
- (a) the young person's employment at the licensed premises or permitted premises; or
  - (b) a training program conducted by a declared training provider.
- (6) This section does not apply in relation to a young person if—
- (a) the young person is attending an approved young people's event in the adults-only area; and
  - (b) the event is conducted in accordance with the young people's event approval.

*Note* Young people's event approvals are made under s 95 (3).

- (7) This section does not apply in relation to a young person if the young person—
- (a) was at least 16 years old at the time of the offence; and

(b) had, before the time of the offence, shown 1 or more of the following people an identification document identifying the young person as an adult:

- (i) the defendant;
- (ii) an employee of the defendant;
- (iii) a crowd controller working as a crowd controller at the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in ss (4), (5), (6) and (7) (see Criminal Code, s 58).

**121 Offence—child or young person in adults-only area**

(1) A person commits an offence if the person is—

- (a) a child or young person; and
- (b) in an adults-only area at—
  - (i) licensed premises; or
  - (ii) permitted premises.

Maximum penalty: 5 penalty units.

(2) This section does not apply to a child or young person if the child or young person is in the care of an adult who—

- (a) is a parent, step-parent, guardian, person acting in place of a parent, domestic partner or carer of the child or young person; and
- (b) could reasonably be expected to responsibly supervise the child or young person.

*Note* For the meaning of *domestic partner*, see the Legislation Act, s 169.

- (3) This section does not apply to a young person if the young person is in the adults-only area in the course of—
- (a) the young person's employment at the licensed premises or permitted premises; or
  - (b) a training program conducted by a declared training provider.

*Note 1* Employment of children is dealt with in the *Children and Young People Act 2008*.

*Note 2* Children and young people must not serve liquor (see s 118).

- (4) This section does not apply to a young person if—
- (a) the young person is attending an approved young people's event in the adults-only area; and
  - (b) the event is conducted in accordance with the young people's event approval.

*Note 1* The defendant has an evidential burden in relation to the matters mentioned in ss (2), (3) and (4) (see Criminal Code, s 58).

*Note 2* A police officer may caution a child or young person in relation to this offence (see s 150).

*Note 3* Young people's event approvals are made under s 95 (3).

## **122 Offence—child or young person use false identification for adults-only area**

- (1) A person commits an offence if the person—
- (a) is a child or young person; and
  - (b) uses a false identification document to obtain entry to an adults-only area at—
    - (i) licensed premises; or

(ii) permitted premises.

Maximum penalty: 5 penalty units.

*Note* A police officer may caution a child or young person in relation to this offence (see s 149).

- (2) A person commits an offence if the person—
- (a) is a child or young person; and
  - (b) uses a false identification document to remain in an adults-only area at—
    - (i) licensed premises; or
    - (ii) permitted premises.

Maximum penalty: 5 penalty units.

*Note* A police officer may caution a child or young person in relation to this offence (see s 150).

- (3) An offence against this section is a strict liability offence.

**123 Offence—fail to mark adults-only areas**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) an adults-only area at the licensed premises is not clearly marked for the public in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and

- (b) an adults-only area at the permitted premises is not clearly marked for the public in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

## **124 Licensee, permit-holder, etc may seize false identification document**

- (1) If a staff member or crowd controller working at licensed premises or permitted premises believes on reasonable grounds that a document shown to the person is a false identification document, the staff member or crowd controller may seize the document.

*Note* A seizure of a document is an incident under s 130.

- (2) However, a staff member or crowd controller working at licensed premises or permitted premises must not seize a document that purports to be a passport.
- (3) As soon as practicable after a staff member or crowd controller working at licensed premises or permitted premises seizes a document, the staff member or crowd controller must give a receipt for it to the person from whom it was seized.
- (4) A receipt under this section must include the following:
- (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the date and time the thing was seized;
  - (d) the name and address of the premises where the thing was seized;
  - (e) if the thing is moved from the premises where it is seized—where the thing is to be taken.

*Note* If a form is approved under s 228 for this provision, the form must be used.

- (5) To remove any doubt, a staff member or crowd controller giving a receipt under this section need not sign it.
- (6) A person commits an offence if the person—
  - (a) is a staff member or crowd controller working at licensed premises or permitted premises; and
  - (b) seizes a document under subsection (1); and
  - (c) does not give the document to the commissioner within 7 days after the document is seized.

Maximum penalty: 5 penalty units.

## **Division 8.4**                    **Occupancy loading**

### **125**                    **Offence—exceed occupancy loading**

- (1) A person commits an offence if—
  - (a) the person is a licensee; and
  - (b) the number of people in a public area at the licensed premises is more than the number allowed under the occupancy loading for the area.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
  - (a) the person is a permit-holder; and
  - (b) the commissioner has decided an occupancy loading for a public area at the permitted premises; and
  - (c) the number of people in the public area is more than the number allowed under the occupancy loading for the area.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.



**126 Offence—fail to display occupancy loading sign**

- (1) A person commits an offence if the person—
- (a) is a licensee; and
  - (b) fails to display a sign about the occupancy loading at the licensed premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) the commissioner has decided an occupancy loading for a public area at the permitted premises; and
  - (c) the person fails to display a sign about the occupancy loading at the permitted premises in the way prescribed by regulation.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

**Division 8.5 Approved risk-assessment management plans****127 Offence—fail to comply with approved risk-assessment management plan**

- (1) A person commits an offence if the person—
- (a) is a licensee; and
  - (b) fails to comply with an approved risk-assessment management plan in force for the licensed premises.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person—
- (a) is a commercial permit-holder; and

**Part 8** Conduct at licensed premises and permitted premises

**Division 8.5** Approved risk-assessment management plans

Section 127

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- (b) fails to comply with an approved risk-assessment management plan in force for the permitted premises.

Maximum penalty: 20 penalty units.

- (3) A person commits an offence if—
  - (a) the person is a licensee; and
  - (b) an employee of the licensee fails to comply with an approved risk-assessment management plan in force for the licensed premises.

Maximum penalty: 10 penalty units.

- (4) A person commits an offence if—
  - (a) the person is a commercial permit-holder; and
  - (b) an employee of the permit-holder fails to comply with an approved risk-assessment management plan in force for the permitted premises.

Maximum penalty: 10 penalty units.

- (5) This section does not apply if—
  - (a) a term in the approved risk-assessment management plan for the premises is inconsistent with a condition on the licence, or commercial permit, for the premises; and
  - (b) the defendant complies with the condition.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (5) (see Criminal Code, s 58).

## Division 8.6 Incidents

### 130 What is an *incident*?—div 8.6

In this division:

*incident* means an incident—

- (a) involving violent, unlawful or anti-social behaviour at licensed premises or permitted premises; or
- (b) involving violent or anti-social behaviour that—
  - (i) occurs in the immediate vicinity of licensed premises or permitted premises; and
  - (ii) involves a person who has recently left, or been refused admission to, the premises; or
- (c) resulting in a person being removed from licensed premises or permitted premises; or
- (d) occurring after midnight and before the time prescribed by regulation resulting in a person at licensed premises or permitted premises requiring medical assistance; or
- (e) involving the seizure of a document under section 124 (1) (Licensee, permit-holder, etc may seize false identification document); or
- (f) prescribed by regulation.

### 131 Incident register

- (1) A licensee or permit-holder must keep a register (an *incident register*) of incidents that occur at the licensed premises or permitted premises.
- (2) The incident register must include the following details for each incident:
  - (a) a description of the incident;

- (b) the date and time the incident happened;
- (c) the name, address and contact details of each person connected with the incident including—
  - (i) each employee of the licensee or permit-holder connected with the incident; and
  - (ii) each crowd controller working as a crowd controller at the premises connected with the incident; and
  - (iii) each police officer connected with the incident;
- (d) for a document seized under section 124 (1)—
  - (i) the date and time when the document was given to the commissioner; and
  - (ii) a copy of the receipt given under section 124 (3);
- (e) any action taken in relation to the incident.

*Note* An incident must be included in the register as soon as possible after the incident occurs (see Legislation Act, s 151B).

- (3) However, if a police officer deals with the incident, the incident register—
  - (a) must include—
    - (i) the contact details for the police officer; and
    - (ii) the time the police officer started dealing with the incident; and
  - (b) need not include any further details about the incident that happened after that time.

**132 Offence—fail to keep incident register**

- (1) A person commits an offence if the person—
  - (a) is a licensee; and

- (b) does not keep an incident register for the licensed premises in accordance with section 131.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person—
- (a) is a permit-holder; and
- (b) does not keep an incident register for the permitted premises in accordance with section 131.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

## Division 8.7                      Breath testing machines

### 133                      What is a *breath testing machine*?—div 8.7

In this division:

*breath testing machine* means a machine that is—

- (a) designed to measure, by analysing a person's breath, the concentration of alcohol present in the person's blood; and
- (b) of a type specified in AS 3547-1997 (*Breath Alcohol Testing Devices for Personal Use*) as in force from time to time.

*Note*                      This standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

### 134                      Offence—fail to display breath testing machine sign

- (1) A person commits an offence if—
- (a) the person is a licensee; and
- (b) a breath testing machine is installed at the licensed premises; and

- (c) the person fails to display a sign about the breath testing machine in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
  - (a) the person is a permit-holder; and
  - (b) a breath testing machine is installed at the permitted premises; and
  - (c) the person fails to display a sign about the breath testing machine in the way prescribed by regulation.

Maximum penalty: 20 penalty units.

### **135 Evidence of breath tests**

- (1) This section applies to evidence of the results of a test that indicates the presence or concentration of alcohol in the blood of a person, performed on a breath testing machine installed at licensed premises or permitted premises.
- (2) The evidence is not admissible—
  - (a) in a civil proceeding against the licensee or permit-holder; or
  - (b) in a criminal proceeding.
- (3) However, this section does not prevent the admission into evidence in a civil proceeding of the results of the test if it is established that at the time of the test—
  - (a) the breath testing machine did not comply with AS 3547-1997; or
  - (b) the licensee or permit-holder was aware, or should have been aware, that the breath testing machine was not operating correctly; or

- (c) a sign about the breath testing machine was not displayed as required under section 134.

## **Division 8.8            Other offences**

### **136            Offence—sell petrol at premises**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the person sells petrol to another person; and
  - (c) the sale happens at the licensed premises.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) the person sells petrol to another person; and
  - (c) the sale happens at the permitted premises.

Maximum penalty: 20 penalty units.

- (3) This section does not apply to the sale of petrol at licensed premises prescribed by regulation.

### **137            Offence—conduct prohibited promotional activities**

- (1) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) the person conducts a prohibited promotional activity; and
  - (c) the activity is conducted at the licensed premises.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—

- (a) the person is a permit-holder; and
- (b) the person conducts a prohibited promotional activity; and
- (c) the activity is conducted at the permitted premises.

Maximum penalty: 50 penalty units.

- (3) A person commits an offence if—
- (a) the person is a licensee; and
  - (b) another person conducts a prohibited promotional activity; and
  - (c) the person knows about the activity; and
  - (d) the activity is conducted at the licensed premises.

Maximum penalty: 50 penalty units.

- (4) A person commits an offence if—
- (a) the person is a permit-holder; and
  - (b) another person conducts a prohibited promotional activity; and
  - (c) the person knows about the activity; and
  - (d) the activity is conducted at the permitted premises.

Maximum penalty: 50 penalty units.

- (5) In this section:

*prohibited promotional activity* means an activity that—

- (a) encourages excessive or rapid consumption of liquor; or
- (b) is prescribed by regulation.

### **138 Offence—fail to leave premises when directed**

- (1) A person commits an offence if—
- (a) the person is at licensed premises; and



(b) 1 of the following people directs the person to leave the premises:

- (i) the licensee;
- (ii) an employee of the licensee;
- (iii) a crowd controller working as a crowd controller at the premises; and

(c) the person fails to comply with the direction.

Maximum penalty: 20 penalty units.

(2) A person commits an offence if—

- (a) the person is at permitted premises; and
- (b) 1 of the following people directs the person to leave the premises:
  - (i) the permit-holder;
  - (ii) an employee of the permit-holder;
  - (iii) a crowd controller working as a crowd controller at the premises; and

(c) the person fails to comply with the direction.

Maximum penalty: 20 penalty units.

(3) An offence against this section is a strict liability offence.

### **139 Offence—consume liquor at off licensed premises**

(1) A person commits an offence if—

- (a) the person is an off licensee; and
- (b) another person consumes liquor at the off licensed premises.

Maximum penalty: 20 penalty units.

(2) A person commits an offence if—

- (a) the person consumes liquor; and
- (b) the consumption happens at off licensed premises.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply if the person consuming the liquor at the premises is—
  - (a) the off licensee; or
  - (b) an employee of the licensee; or
  - (c) a family member of the licensee.
- (5) This section does not apply if the person consuming the liquor at the premises was supplied with the liquor for consumption as a sample of liquor available for sale and—
  - (a) there was no charge for the sample; and
  - (b) the sample was consumed at the premises in an area stated to be a sampling area.

*Note* The defendant has an evidential burden in relation to the matters mentioned in ss (4) and (5) (see Criminal Code, s 58).

#### **140 Offence—sexually explicit entertainment**

- (1) A person commits an offence if—
  - (a) the person is a licensee; and
  - (b) there is sexually explicit entertainment at the licensed premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if—
  - (a) the person is a permit-holder; and

(b) there is sexually explicit entertainment at the permitted premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) This section does not apply if—

(a) the premises are in a prescribed location; or

(b) the entertainment is in a room at the premises used for accommodation.

(4) In this section:

*sexual intercourse*—see the *Crimes Act 1900*, section 50.

*sexually explicit entertainment*—

(a) means a performance or other entertainment—

(i) in which a person displays genitalia; or

(ii) that includes sexual intercourse; and

(b) includes a performance, or other entertainment, prescribed by regulation.

## **141 Offence—fail to keep licence or permit at premises**

(1) A person commits an offence if the person—

(a) is a licensee; and

(b) fails to keep the licence at the licensed premises.

Maximum penalty: 5 penalty units.

(2) A person commits an offence if the person—

(a) is a permit-holder; and

(b) fails to keep the permit at the permitted premises.

Maximum penalty: 5 penalty units.

(3) An offence against this section is a strict liability offence.

**142 Offence—fail to keep records in required way**

(1) A person commits an offence if the person—

(a) is a licensee or permit-holder; and

(b) sells liquor; and

(c) does not record the sale—

(i) in electronic form; and

(ii) in a way that is easily retrievable.

Maximum penalty: 20 penalty units.

(2) A person commits an offence if the person—

(a) is a licensee or permit-holder; and

(b) sells liquor; and

(c) makes a record of the sale; and

(d) does not keep the record for at least 6 years.

Maximum penalty: 50 penalty units.

(3) An offence against this section is a strict liability offence.

**143 Offence—club licensee advertise for public attendance**

A person commits an offence if—

(a) the person is a club licensee; and

(b) the person publishes a statement; and

(c) the statement—

- (i) constitutes an invitation to the public to attend the licensed premises; or
- (ii) could reasonably be understood as an invitation to the public to attend the licensed premises.

Maximum penalty: 10 penalty units.

## Part 9 Directions, emergency closure orders and cautions

### Division 9.1 Commissioner's directions

#### 144 Commissioner may direct licensee, permit-holder, employee etc

- (1) This section applies if the commissioner believes on reasonable grounds that there is, or is likely to be—
- (a) a contravention of this Act; or
  - (b) a breach of a licence or permit.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The commissioner may direct (a *commissioner's direction*) 1 or more of the following people to take action to prevent the contravention or breach:
- (a) a licensee;
  - (b) an employee of a licensee;
  - (c) a person working at the licensed premises;
  - (d) a permit-holder;
  - (e) an employee of a permit-holder;

(f) a person working at the permitted premises.

**Examples—commissioner's direction**

- 1 to a licensee to require people to leave a public area of the licensed premises because the occupancy loading for the area has been exceeded
- 2 to a licensee to reduce loud noise coming from premises

*Note 1* In making this decision, the commissioner must have regard to the harm minimisation and community safety principles (see s 10).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) A commissioner's direction must—

(a) be in writing; and

(b) either—

(i) state—

(A) the action to be taken; and

(B) when the direction must be complied with; or

(ii) state—

(A) the conduct not to be undertaken; and

(B) how long the direction is in force.

(4) A commissioner's direction must not state a day or time for compliance that is earlier than the day or time the person is given the commissioner's direction.

*Note* Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument.

**145 Offence—fail to comply with commissioner’s direction**

A person commits an offence if—

- (a) a commissioner’s direction is in force for the person; and
- (b) the person fails to take reasonable steps to comply with the direction.

Maximum penalty: 100 penalty units, 12 months imprisonment or both.

**Division 9.2 Emergency closure orders**

**146 Emergency closure of premises for 24 hours**

- (1) A senior police officer may order (an *emergency closure order*) a licensee, or permit-holder, to close licensed premises, or permitted premises, if the officer believes on reasonable grounds that—
  - (a) a breach of this Act has happened, or is likely to happen; and
  - (b) the closure of the premises is necessary to prevent or reduce a significant threat or significant risk to the safety of the community.
- (2) Without limiting subsection (1), the circumstances in which there may be a significant threat or significant risk to the safety of the community include circumstances in which there is—
  - (a) a threat to public health or safety; or
  - (b) a risk of substantial damage to property; or
  - (c) a significant threat to the environment; or
  - (d) a risk of an offence against a law of the ACT, with a maximum penalty of imprisonment for 2 years or more, being committed at the premises.
- (3) An emergency closure order must not require the closure of premises for longer than a continuous period of 24 hours.



- (4) If an emergency closure order is made under subsection (1), a police officer must, in writing, tell the licensee or permit-holder—
- (a) the name of the senior police officer making the order; and
  - (b) when the order starts; and
  - (c) when the order ends.

*Note* An emergency closure notice for the emergency closure order must be given to the licensee or permit-holder as soon as practicable after the order is made (see s 147 (1)).

- (5) If an emergency closure order is in force for licensed premises, or permitted premises, the licence, or permit, is suspended for the period of the order.

#### **147 Emergency closure notice**

- (1) If a senior police officer makes an emergency closure order for licensed premises or permitted premises the officer must, as soon as practicable, give a notice (an *emergency closure notice*) to the licensee or permit-holder.
- (2) An emergency closure notice must—
- (a) be in writing; and
  - (b) state—
    - (i) the date of issue of the notice; and
    - (ii) when the order starts; and
    - (iii) when the order ends; and
    - (iv) the breach of this Act that the senior police officer believes has happened or is likely to happen; and
    - (v) the grounds for the officer's belief; and
  - (c) be signed by the senior police officer.

- (3) The senior police officer must also—
- (a) keep a record of the emergency closure notice in the police records; and
  - (b) give a copy of the notice to the commissioner.

**148 Offence—fail to comply with emergency closure order**

- (1) A person commits an offence if—
- (a) the person is—
    - (i) a licensee; or
    - (ii) a permit-holder; and
  - (b) an emergency closure order is in force for the person; and
  - (c) the person fails to comply with the emergency closure order.
- Maximum penalty units: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

**Division 9.3 Police cautions for children and young people**

**149 Definitions—div 9.3**

In this division:

*caution offence* means any of the following offences:

- (a) section 115 (Offence—child or young person consume liquor);
- (b) section 117 (Offence—child or young person possess liquor);
- (c) section 121 (Offence—child or young person in adults-only area);
- (d) section 122 (Offence—child or young person use false identification for adults-only area);

- (e) section 202 (Offence—child or young person buy liquor);
- (f) section 203 (Offence—child or young person use false identification to buy liquor);
- (g) section 211 (Offence—child or young person use false identification to obtain proof of age card).

**CYP chief executive** means the chief executive of the administrative unit responsible for the *Children and Young People Act 2008*.

## **150 Police may caution children and young people**

- (1) A police officer may caution a child or young person for a caution offence if—
  - (a) the police officer believes on reasonable grounds that the child or young person is committing, or has committed, the offence; and
  - (b) the child or young person has not been cautioned in the preceding 12 months for a caution offence.
- (2) A caution must—
  - (a) be in writing; and
  - (b) state—
    - (i) the date of issue of the caution; and
    - (ii) the caution offence that the police officer believes the child or young person is committing, or has committed; and
    - (iii) the grounds for the police officer's belief; and
  - (c) warn the child or young person that if the child or young person engages in behaviour that constitutes a further caution offence within 12 months after the date of issue of the caution, the child or young person may be prosecuted for the further offence; and

(d) be signed by the police officer.

(3) A police officer who issues a caution must—

(a) keep the caution in the police records; and

(b) give a copy of the caution to—

(i) the child or young person; and

(ii) a person with parental responsibility for the child or young person; and

(iii) if the CYP chief executive has parental responsibility (whether shared or otherwise) for the child or young person—the CYP chief executive; and

(iv) the commissioner.

*Note* A copy of the caution must be given to the person as soon as possible (see Legislation Act, s 151B).

(4) If a child or young person is cautioned for an offence, the child or young person must not be prosecuted in a court for the offence.

**151 Police must caution and release child or young person as soon as practicable**

(1) If a police officer intends to caution a child or young person, the police officer must—

(a) take the child or young person to a police station; and

(b) issue the caution within a reasonable time after the child or young person is taken to the station.

(2) If a police officer cautions a child or young person, the police officer must as soon as practicable after the caution is issued—

(a) arrange for the child or young person to be escorted by a police officer to the child's or young person's home; or

- (b) arrange for a person with parental responsibility for the child or young person to come to the police station to collect the child or young person; or
  - (c) release the child or young person.
- (3) If a police officer releases a child or young person under subsection (2) (c), the police officer must tell the CYP chief executive about the release as soon as practicable after the release.

## **152 Chief police officer may revoke cautions**

- (1) The chief police officer may revoke a caution issued to a child or young person if satisfied that the police officer who issued the caution did not act in accordance with section 150 or section 151.
- (2) If the chief police officer revokes a caution, the chief police officer must—
- (a) destroy the caution kept in the police records; and
  - (b) take reasonable steps to tell the child or young person that the caution is revoked; and
  - (c) if the CYP chief executive was given a copy of the caution under section 150 (3) (b)—tell the CYP chief executive that the caution is revoked; and
  - (d) tell the commissioner that the caution is revoked.

## Part 10 Enforcement

### Division 10.1 General

#### 153 Definitions—pt 10

In this part:

***connected***—a thing is ***connected*** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

***occupier***, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

***offence*** includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

***warrant*** means a warrant issued under division 10.3 (Search warrants).

## Division 10.2 Powers of authorised people

### 154 Power to enter premises

- (1) For this Act, an authorised person may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time when the premises is open for business, enter the premises; or
  - (c) enter premises at any time when there are reasonable grounds for suspecting that liquor is being sold on the premises; or
  - (d) at any time, enter premises with the occupier's consent; or
  - (e) enter premises in accordance with a licence or permit condition; or
  - (f) enter premises in accordance with a search warrant; or
  - (g) at any time, enter premises if the authorised person believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.
- (2) However, subsection (1) (a) and (b) do not authorise entry into a part of premises that is being used only for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised person may enter premises under subsection (1) without payment of an entry fee or other charge.

- (5) In this section:

*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

### 155 Production of identity card

- (1) An investigator must not remain at premises entered under this part if the investigator does not produce his or her identity card when asked by the occupier.
- (2) A police officer must not remain at premises entered under this part if the officer does not produce evidence that the officer is a police officer when asked by the occupier.

### 156 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter premises under section 154 (1) (d), an authorised person must—
- (a) either—
- (i) if the person is an investigator—produce his or her identity card; or
- (ii) if the person is a police officer—produce evidence that he or she is a police officer; and
- (b) tell the occupier—
- (i) the purpose of the entry; and
- (ii) that anything found and seized under this part may be used in evidence in court; and
- (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—



- (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the authorised person under this part if—
- (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

### **157 General powers on entry to premises**

- (1) An authorised person who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) inspect or examine;
  - (b) take measurements or conduct tests;
  - (c) take samples;
  - (d) take photographs, films, or audio, video or other recordings;

- (e) require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

## **158 Power to seize things**

- (1) An authorised person who enters premises under this part with the occupier's consent may seize anything at the premises if—
  - (a) the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises under a warrant under this part may seize anything at the premises that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that—
  - (a) the thing is connected with an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing from being—
    - (i) concealed, lost or destroyed; or
    - (ii) used to commit, continue or repeat the offence.
- (4) Also, an authorised person who enters premises under this part (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if

satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.

- (5) The powers of an authorised person under subsections (3) and (4) are additional to any powers of the authorised person under subsections (1) or (2) or any other territory law.
- (6) Having seized a thing, an authorised person may—
  - (a) remove the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.
- (7) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (6); and
  - (b) the person does not have an authorised person's approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (8) An offence against this section is a strict liability offence.

*Note* See also s 201 about disposal of liquor seized in public places.

## **Division 10.3 Search warrants**

### **159 Warrants generally**

- (1) An authorised person may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the

magistrate requires about the application in the way the magistrate requires.

- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity connected with an offence against this Act; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
  - (a) that an authorised person may, with any necessary assistance and force, enter the premises and exercise the authorised person's powers under this part; and
  - (b) the offence for which the warrant is issued; and
  - (c) the things that may be seized under the warrant; and
  - (d) the hours when the premises may be entered; and
  - (e) the date, within 7 days after the day of the warrant's issue, the warrant ends.

## **160 Warrants—application made other than in person**

- (1) An authorised person may apply for a warrant by phone, fax, email, radio or other form of communication if the authorised person considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

- (3) The authorised person may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the authorised person—
  - (a) the magistrate must tell the authorised person—
    - (i) the terms of the warrant; and
    - (ii) the date and time the warrant was issued; and
  - (b) the authorised person must complete a form of warrant (the *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the authorised person's powers under this part.
- (7) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised person completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised person was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and

- (b) the warrant is not produced in evidence; and
- (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**161 Search warrants—announcement before entry**

- (1) An authorised person must, before anyone enters premises under a search warrant—
  - (a) announce that the authorised person is authorised to enter the premises; and
  - (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required to ensure—
  - (a) the safety of anyone (including the authorised person or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**162 Details of search warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised person or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

**163 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or
  - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**Division 10.4 Return and forfeiture of things seized****164 Receipt for things seized**

- (1) As soon as practicable after an authorised person seizes a thing under this part, the authorised person must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must leave the receipt, secured conspicuously, at the place of seizure under section 158 (Power to seize things).
- (3) A receipt under this section must include the following:
  - (a) a description of the thing seized;
  - (b) an explanation of why the thing was seized;
  - (c) the authorised person's name, and how to contact the authorised person;

- (d) if the thing is moved from the premises where it is seized—  
where the thing is to be taken.

*Note* If a form is approved under s 228 for this provision, the form must be used.

**165 Moving things to another place for examination or processing under search warrant**

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
- (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
  - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
- (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.



- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
- (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
  - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

#### **166 Access to things seized**

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

#### **167 Return of things seized**

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, unless—
- (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or
  - (b) an application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003* or another territory law within 1 year after the day the seizure is made; or

- (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.
- (2) However, this section does not apply to a thing—
- (a) if the chief executive believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
  - (b) if possession of it by its owner would be an offence.

**168 Forfeiture of seized things**

- (1) This section applies if—
- (a) anything seized under this part has not been returned under section 167; and
  - (b) an application for disallowance of the seizure under section 170—
    - (i) has not been made within 10 days after the day of the seizure; or
    - (ii) has been made within the 10-day period, but the application has been refused or withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
- (a) it is forfeited to the Territory; and
  - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

**169 Power to destroy unsafe things**

- (1) This section applies to anything inspected or seized under this part by an authorised person if the authorised person is satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (2) The authorised person may direct a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.
- (3) The direction may state 1 or more of the following:
  - (a) how the thing must be destroyed or otherwise disposed of;
  - (b) how the thing must be kept until it is destroyed or otherwise disposed of;
  - (c) the period within which the thing must be destroyed or otherwise disposed of.
- (4) A person in charge of the premises where the thing is commits an offence if the person contravenes a direction given to the person under subsection (2).

Maximum penalty: 100 penalty units.

- (5) Alternatively, if the thing has been seized under this part, the authorised person may destroy or otherwise dispose of the thing.
- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
  - (a) the person who owned the thing;
  - (b) each person in control of the premises where the thing was.
- (7) An offence against this section is a strict liability offence.

**170 Application for order disallowing seizure**

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the chief executive.
- (3) The chief executive is entitled to appear as respondent at the hearing of the application.

**171 Order for return of seized thing**

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 170 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
  - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
  - (b) the thing is not connected with an offence against this Act; and
  - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.
- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
  - (a) an order directing the chief executive to return the thing to the applicant or to someone else who appears to be entitled to it;
  - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;

- (c) an order about the payment of costs in relation to the application.

## **Division 10.5          Enforcement—miscellaneous**

### **172          Damage etc to be minimised**

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take all reasonable steps to ensure that the person causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised person damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) The notice must state that—
  - (a) the person may claim compensation from the Territory if the person suffers loss or expense because of the damage; and
  - (b) compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction; and
  - (c) the court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

### **173          Compensation for exercise of enforcement powers**

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised person.

**Part 10** Enforcement

**Division 10.5** Enforcement—miscellaneous

Section 173

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- (2) Compensation may be claimed and ordered in a proceeding for—
  - (a) compensation brought in a court of competent jurisdiction; or
  - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

## Part 11                      Complaints and occupational discipline

### Division 11.1              General

#### 174              **Who is a *licensee*?—pt 11**

In this part:

*licensee*—

- (a) means a licensee or former licensee; and
- (b) includes an influential person for a corporation that is a licensee or former licensee.

#### 175              **Who is a *commercial permit-holder*?—pt 11**

In this part:

*commercial permit-holder*—

- (a) means a commercial permit-holder or former commercial permit-holder; and
- (b) includes an influential person for a corporation that is a commercial permit-holder or former commercial permit-holder.

## Division 11.2 Complaints

### 176 Who may complain?

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.

**Examples—people who may complain**

- 1 a member of the public
- 2 a user of a service

*Note 1* **Ground for occupational discipline**, for a licensee—see s 183.  
**Ground for occupational discipline**, for a commercial permit-holder—see s 184.

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 177 Form of complaint

- (1) A complaint must—
  - (a) be in writing; and
  - (b) be signed by the person (the **complainant**) making the complaint; and
  - (c) include the complainant's name and address.
- (2) However, the commissioner may accept a complaint for consideration even if it does not comply with subsection (1).
- (3) If the commissioner accepts for consideration a complaint that is not in writing, the commissioner must require the complainant to put the complaint in writing unless there is a good reason for not doing so.



**178 Withdrawal of complaints**

- (1) A complainant may withdraw the complaint at any time by written notice to the commissioner.
- (2) If the complainant withdraws the complaint, the commissioner—
  - (a) need not take further action on the complaint; and
  - (b) may take further action on the complaint if the commissioner considers it appropriate to do so; and
  - (c) need not report to the complainant under section 182 (Action after investigating complaint) on the results of taking the action.

**179 Further information about complaint etc**

- (1) The commissioner may, at any time, require a complainant—
  - (a) to give the commissioner further information about the complaint; or
  - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the commissioner must give the complainant a reasonable period of time to satisfy the requirement and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement under subsection (1), the commissioner need not, but may, take further action in relation to the complaint.

**180 Investigation of complaint**

The commissioner must take reasonable steps to investigate each complaint the commissioner accepts for consideration.

**181 No further action on complaint**

The commissioner must not take further action on a complaint if satisfied that the complaint—

- (a) lacks substance; or
- (b) is frivolous, vexatious or was not made genuinely; or
- (c) has been adequately dealt with.

*Note* The commissioner may also take no further action on a complaint if the complainant has not complied with a requirement made under s 179 (see s 179 (3)).

**182 Action after investigating complaint**

- (1) After investigating a complaint against a licensee or commercial permit-holder, the commissioner must—
  - (a) if satisfied on reasonable grounds that a ground for occupational discipline exists in relation to the complaint—
    - (i) apply to the ACAT for an occupational discipline order in relation to the licensee or commercial permit-holder; and
    - (ii) tell the complainant, in writing, that the application has been made; or
  - (b) if not satisfied that a ground for occupational discipline exists in relation to the complaint—
    - (i) tell the complainant, in writing, that the commissioner will not take further action on the complaint; and
    - (ii) not take further action on the complaint.

- (2) Subsection (1) (b) (ii) does not prevent the commissioner from taking further action in relation to a complaint if the commissioner becomes satisfied that a ground for occupational discipline exists in relation to the complaint.

*Note* The commissioner need not notify the complainant under s (1) if the complainant has withdrawn the complaint (see s 178).

## Division 11.3 Occupational discipline

### **U** 183 Grounds for occupational discipline—licensee

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensee:

- (a) the licensee has contravened, or is contravening, a provision of this Act;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (b) the licensed premises do not comply with the requirements of this Act;

- (c) the licensee is not a suitable person to hold a licence;

*Note* For what ACAT must consider in deciding suitability—see s 185.

- (d) the licensed premises are not suitable premises for the licence;

*Note* For what ACAT must consider in deciding suitability—see s 186.

- (e) the commissioner has made a commissioner's direction for the licensee and the licensee has not complied with the direction;

*Note* *Commissioner's direction*—see s 144.

- (f) a senior police officer has made an emergency closure order for the licensee and the licensee has not complied with the order;

*Note* *Emergency closure order*—see s 146.

- (g) the licensee has allowed the licensed premises to be used in a way that causes undue disturbance or inconvenience to people—
    - (i) lawfully at the premises; or
    - (ii) occupying premises in the neighbourhood;
  - (h) a loss of amenity has arisen in the vicinity of the licensed premises that is attributable to the premises and about which there has been a complaint;
  - (i) a licensee has allowed people to smoke in a part of the licensed premises that is an enclosed public place;
  - (j) the licensee has failed to take reasonable steps to prevent smoke from another area occupied by the licensee entering an enclosed public place.
- (2) There are grounds to suspend a licence if—
- (a) the licensee has—
    - (i) contravened a commissioner’s direction; or
    - (ii) breached a condition of the licence; and
  - (b) it is in the public interest to suspend the licence; and
  - (c) it is not appropriate to cancel the licence.

**U 184**      **Grounds for occupational discipline—commercial permit-holder**

- (1) Each of the following is a *ground for occupational discipline* in relation to a commercial permit-holder:
- (a) the permit-holder has contravened, or is contravening, a provision of this Act;

*Note*      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(b) the permitted premises do not comply with the requirements of this Act;

(c) the permit-holder is not a suitable person to hold a permit;

*Note* For what ACAT must consider in deciding suitability—see s 185.

(d) the permitted premises are not suitable premises for the permit;

*Note* For what ACAT must consider in deciding suitability—see s 186.

(e) the commissioner has made a commissioner's direction for the permit-holder and the permit-holder has not complied with the direction;

*Note* **Commissioner's direction**—see s 144.

(f) a senior police officer has made an emergency closure order for the permit-holder and the permit-holder has not complied with the order;

*Note* **Emergency closure order**—see s 146.

(g) the permit-holder has allowed the permitted premises to be used in a way that causes undue disturbance or inconvenience to people—

(i) lawfully at the premises; or

(ii) occupying premises in the neighbourhood;

(h) a loss of amenity has arisen in the vicinity of the permitted premises that is attributable to the premises and about which there has been a complaint;

(i) a permit-holder has allowed people to smoke in a part of the permitted premises that is an enclosed public place;

(j) the permit-holder has failed to take reasonable steps to prevent smoke from another area occupied by the permit-holder entering an enclosed public place.

- (2) There are grounds to suspend a commercial permit if—
- (a) the permit-holder has—
    - (i) contravened a commissioner’s direction; or
    - (ii) breached a condition of the permit; and
  - (b) it is in the public interest to suspend the permit; and
  - (c) it is not appropriate to cancel the permit.

**185 ACAT must consider suitability information, etc about licensee or commercial-permit holder**

In deciding whether a licensee or commercial permit-holder is a suitable person to hold a licence or commercial permit, the ACAT must consider the following:

- (a) suitability information about the licensee or permit-holder;  
*Note* **Suitability information**, about a person—see s 69.
- (b) any police certificate or other information about the person given to the commissioner under—
  - (i) section 25 (Licence—application); or
  - (ii) section 40 (Licence—application to transfer licence); or
  - (iii) section 71 (Commissioner may require police certificate etc for person);
- (c) any public consultation representation about the person received by the commissioner under section 35 (Licence—representations);
- (d) any information or documents given to the commissioner under—
  - (i) section 91 (4) (Risk-assessment management plan—amendment on application); or

- (ii) section 95 (3) (Young people's event approval—application).

**186 ACAT must consider suitability information, etc about premises**

In deciding whether premises are suitable premises for a licence or permit, the ACAT must consider the following:

- (a) suitability information about the premises;
- (b) any certificate, plan or other information about the premises given to the commissioner under—
  - (i) section 25 (Licence—application); or
  - (ii) section 39 (Licence—amendment for change to floor plan of licensed premises); or
  - (iii) section 50 (Permit—application); or
  - (iv) section 79 (Commissioner may require certificate, plan, etc for premises);
- (c) any public consultation representation about the premises received by the commissioner under section 35 (Licence—representations);
- (d) any information or documents given to the commissioner under—
  - (i) section 91 (4) (Risk-assessment management plan—amendment on application); or
  - (ii) section 95 (3) (Young people's event approval—application);
- (e) results of any inspection of the premises by the commissioner under—
  - (i) section 80 (Commissioner may require inspection of premises); or

(ii) section 91 (4) (Risk-assessment management plan—amendment on application); or

(iii) section 95 (3) (Young people’s event approval—application).

**187 Application to ACAT for occupational discipline**

- (1) If the commissioner believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee or commercial permit-holder, the commissioner may apply to the ACAT for an occupational discipline order in relation to the licensee or permit-holder.

*Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

- (2) For an application in relation to a permit-holder, the ACAT Act applies as if a reference in the ACAT Act to—
- (a) a person who is licensed includes a reference to a person who is a commercial permit-holder; and
  - (b) a licence includes a reference to a commercial permit.



**U** **Part 12**                      **Responsible service of alcohol  
(RSA) training courses**

**U** **Division 12.1**                **Approval to provide RSA training  
courses**

**U** **188**                      **Definitions—div 12.1**

In this division:

*approved RSA training course*, for an approved RSA training provider, means a training course for which the RSA training provider holds an RSA training course approval under section 190.

*approved RSA training provider* means a registered training organisation that holds an RSA training course approval under section 190.

*registered training organisation*—see the *Training and Tertiary Education Act 2003*, dictionary.

**U** **189**                      **RSA training course approval—application**

- (1) A registered training organisation may apply to the commissioner for approval (an *RSA training course approval*) to provide a stated training course about the responsible service of alcohol.

*Note 1* If a form is approved under s 228 for this provision, the form must be used.

*Note 2* A fee may be determined under s 227 for this provision.

- (2) 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.

**Example—information or documents**

information about the proposed training course

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**U 190 RSA training course approval—decision on application**

- (1) This section applies if the commissioner receives an application for approval under section 189.
- (2) The commissioner may issue the approval to the applicant only if satisfied that it is in the public interest to issue the approval.
- (3) The commissioner must, not later than the required time—
- (a) decide the application for approval; and
  - (b) tell the applicant about the decision on the application.
- (4) In this section:

***required time*** means the latest of the following:

- (a) if the commissioner requires the applicant to give the commissioner additional information or documents under section 189—90 days after the day the commissioner receives the additional information or documents;
- (b) 90 days after the day the commissioner receives the application.

*Note* Failure to issue an approval within a reasonable period is taken to be a decision not to grant the approval (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

**U 191 RSA training course approval—form**

An RSA training course approval must—

- (a) be in writing; and
- (b) state the name of the registered training organisation to which it is issued; and
- (c) identify the training course to which it applies; and
- (d) if the approval is conditional—state the conditions to which the approval is subject; and
- (e) state when the approval was issued; and
- (f) state when the approval expires; and
- (g) include anything prescribed by regulation.

**U 192 RSA training course approval—term**

An RSA training course approval, unless renewed or cancelled, remains in force until the end of 30 June after the day it is issued.

**U Division 12.2 RSA training course certificates****U 193 What is an *RSA certificate*?**

In this Act:

***RSA certificate***, for a person, means a certificate by an approved RSA training course provider for an approved RSA training course—

- (a) certifying that the person satisfactorily completed the course on a stated day; and
- (b) stating when the certificate expires.

*Note* The certificate expires 3 years after the day on which the person satisfactorily completed the course—see s 194.

**U 194 RSA training course providers must give RSA certificates**

- (1) If an approved RSA training course provider is satisfied that a person has satisfactorily completed an approved RSA training course provided by the provider, the provider must give the person an RSA certificate for the course.
- (2) An RSA certificate expires 3 years after the day the person satisfactorily completes the course.

## Part 13 Licence and permit register

### 195 Licence and permit register

- (1) The commissioner must keep a register of licences and permits (the *licence and permit register*).
- (2) The register may include licence and permit information given to the commissioner under this Act.
- (3) The register may be kept in any form, including electronically, that the commissioner decides.
- (4) The register may be kept in 1 or more parts, as the commissioner considers appropriate.
- (5) The commissioner must make information in the register available for public inspection.

**Example**

the register may be available on a website

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (6) This section is subject to section 196.

### 196 Exception to public inspection

- (1) This section applies to an occupational discipline order in relation to a licensee or permit-holder if a record of that order is made in the licence and permit register.

*Note* An occupational discipline order is a decision of the ACAT that may be appealed under the *ACT Civil and Administrative Tribunal Act 2008*, pt 8.

- (2) A matter included in the register in relation to the occupational discipline order may be open for public inspection under section 195 only if—
  - (a) the time for any appeal of the decision has ended and no application for appeal has been made; or
  - (b) an application for appeal has been made, the decision has been confirmed on appeal and the time for further appeal has ended.
- (3) If the decision has been reversed or set aside, a matter included in the register in relation to the decision must not be open for public inspection.
- (4) If the decision has been changed (for example, by substitution), this section applies to a matter included in the register in relation to the decision as changed.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### **197 Correction and keeping up-to-date register**

- (1) The commissioner may correct a mistake, error or omission in the licence and permit register.
- (2) The commissioner may change a detail included in the register to keep the register up-to-date.

## **Part 14                      Other liquor matters**

### **Division 14.1              Alcohol-free public places**

#### **198              Alcohol-free places**

- (1) A regulation may prescribe a place to be a place where liquor and low-alcohol liquor must not be consumed (a *permanent alcohol-free place*).
- (2) The commissioner may declare a public place to be a place where liquor and low-alcohol liquor must not be consumed for a stated period not longer than 1 month (a *temporary alcohol-free place*).
- (3) A declaration is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the Legislation Act.

#### **199              Offence—consume liquor at certain public places**

- (1) A person commits an offence if—
  - (a) the person consumes liquor or low-alcohol liquor; and
  - (b) the liquor or low-alcohol liquor is consumed at—
    - (i) a bus interchange; or
    - (ii) a bus station; or
    - (iii) a place that is within 50m from—
      - (A) a bus interchange; or
      - (B) a bus station; or
      - (C) a shop; or
      - (D) licensed premises or permitted premises; or
    - (iv) a permanent alcohol-free place; or

(v) a temporary alcohol-free place.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to the consumption of liquor or low-alcohol liquor—
- (a) at licensed premises or permitted premises; or
  - (b) at premises where food is sold for consumption at the premises; or
  - (c) at a place that is within 50m from premises mentioned in paragraph (a) or (b) by a person using furniture or other facilities provided by the proprietor or lessee of the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) In a prosecution for an offence against this section, a substance is presumed to be liquor if—
- (a) the substance is in a container; and
  - (b) a label or other mark on the container describes the contents as liquor.

**Examples—label or mark that describes container contents as liquor**

- 1 ‘2.6% Alc/Vol’ printed on a can
- 2 ‘14% Alc/Vol’ printed on the label of a bottle

*Note 1* A person rebutting the presumption in s (4) bears an evidential burden in relation to the rebuttal (see Criminal Code, s 58).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



**200      Offence—possess open container of liquor at certain public places**

- (1) A person commits an offence if—
- (a) the person possesses an open container of liquor or low-alcohol liquor; and
  - (b) the liquor or low-alcohol liquor is possessed at—
    - (i) a bus interchange; or
    - (ii) a bus station; or
    - (iii) a place that is within 50m from—
      - (A) a bus interchange; or
      - (B) a bus station; or
      - (C) a shop; or
      - (D) licensed premises or permitted premises; or
    - (iv) a permanent alcohol-free place; or
    - (v) a temporary alcohol-free place; and
  - (c) the person intends to consume the liquor or low-alcohol liquor at the place.

Maximum penalty: 5 penalty units.

- (2) This section does not apply to the possession of liquor or low-alcohol liquor—
- (a) at licensed premises or permitted premises; or
  - (b) at premises where food is sold for consumption at the premises; or

- (c) at a place that is within 50m from premises mentioned in paragraph (a) or (b) by a person using furniture or other facilities provided by the proprietor or lessee of the premises.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) In a prosecution for an offence against this section, a substance is presumed to be liquor if—
- (a) the substance is in a container; and
  - (b) a label or other mark on the container describes the contents as liquor.

**Examples—label or mark that describes container contents as liquor**

- 1 ‘2.6% Alc/Vol’ printed on a can
- 2 ‘14% Alc/Vol’ printed on the label of a bottle

*Note 1* A person rebutting the presumption in s (3) bears an evidential burden in relation to the rebuttal (see Criminal Code, s 58).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) In this section:
- open***, for a container, includes—
- (a) a container with the manufacturer's seal broken; and
  - (b) a container where the contents are accessible.

## 201 Seizure of liquor in public places

- (1) This section applies if an authorised person suspects on reasonable grounds that—
- (a) a person (the ***possessor***) is in possession of liquor or low-alcohol liquor; and
  - (b) the liquor or low-alcohol liquor is connected with the commission of an offence against section 199 or section 200.

- (2) The authorised person may seize the liquor or low-alcohol liquor from the possessor if the authorised person has told the possessor—
  - (a) that the authorised person suspects the liquor or low-alcohol liquor is connected with the commission of an offence against section 199 or section 200; and
  - (b) the grounds for the suspicion.
- (3) If an authorised person seizes liquor or low-alcohol liquor under subsection (2), the authorised person may dispose of the liquor or low-alcohol liquor.
- (4) However, the authorised person must not dispose of the liquor or low-alcohol liquor under subsection (3) if the possessor indicates in any way that the possessor believes the authorised person's grounds for the suspicion are incorrect.
- (5) If an authorised person disposes of liquor or low-alcohol liquor under subsection (3)—
  - (a) the possessor must not be prosecuted for an offence in relation to the liquor or low-alcohol liquor; and
  - (b) a caution must not be issued to the possessor in relation to any act done in relation to the liquor or low-alcohol liquor.

## **Division 14.2      Children and young people**

### **202      Offence—child or young person buy liquor**

A person commits an offence if the person—

- (a) is a child or young person; and
- (b) buys liquor or low-alcohol liquor.

Maximum penalty: 5 penalty units.

*Note*      A police officer may caution a child or young person in relation to this offence (see s 150).

**203 Offence—child or young person use false identification to buy liquor**

- (1) A person commits an offence if the person—
- (a) is a child or young person; and
  - (b) uses a false identification document to buy liquor or low-alcohol liquor.

Maximum penalty: 5 penalty units.

*Note* A police officer may caution a child or young person in relation to this offence (see s 150).

- (2) An offence against this section is a strict liability offence.

**204 Offence—supply liquor to child or young person at public place**

- (1) A person commits an offence if—
- (a) the person supplies liquor or low-alcohol liquor to another person; and
  - (b) the other person is a child or young person; and
  - (c) the supply happens in a public place.

Maximum penalty: 20 penalty units.

- (2) This section does not apply in relation to a young person if the young person—
- (a) was at least 16 years old at the time of the offence; and
  - (b) had, before the time of the offence, shown the defendant an identification document identifying the young person as an adult.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

**205 Offence—child or young person consume liquor in public place**

A person commits an offence if—

- (a) the person is a child or young person; and
- (b) the person consumes liquor or low-alcohol liquor in a public place.

Maximum penalty: 5 penalty units.

**206 Offence—child or young person possess liquor in public place**

(1) A person commits an offence if—

- (a) the person is a child or young person; and
- (b) the person possesses liquor or low-alcohol liquor at a public place.

Maximum penalty: 5 penalty units.

(2) This section does not apply to a young person if the young person possesses the liquor or low-alcohol liquor in the course of—

- (a) the young person's employment at licensed premises or permitted premises; or
- (b) a training program conducted by a declared training provider.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

**207 Police officer may ask for identification document**

- (1) A police officer may ask a person to show the officer an identification document for the person if the police officer believes on reasonable grounds that the person is—
  - (a) committing an offence against this Act; and
  - (b) a child or young person.
- (2) A police officer must produce evidence that the officer is a police officer if asked to do so by the person.

**208 Offence—fail to comply with police officer’s request for identification document**

- (1) A person commits an offence if—
  - (a) a police officer asks the person to show the officer an identification document under section 207; and
  - (b) the person—
    - (i) fails to comply with the request; or
    - (ii) shows the police officer a false identification document.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply if the police officer fails to comply with section 207 (2).

**209 What is a *proof of age card*?—div 14.2**

In this division:

*proof of age card*, for a person, means a card that includes the following about the person:

- (a) the name of the person;

- (b) a photo of the person;
- (c) the date of birth of the person.

**210 Proof of age cards**

- (1) A person who is an adult may apply, in writing, to the road transport authority for a proof of age card.

*Note 1* If a form is approved under s 228 for this provision, the form must be used.

*Note 2* A fee may be determined under s 227 for this provision.

- (2) The road transport authority may issue the applicant with a proof of age card if satisfied of the applicant's identity and that the applicant is an adult.

**211 Offence—child or young person use false identification to obtain proof of age card**

A person commits an offence if the person—

- (a) is a child or young person; and
- (b) uses a false identification document to obtain a proof of age card under section 210.

Maximum penalty: 10 penalty units.

*Note* A police officer may caution a child or young person in relation to this offence (see s 150).

## Division 14.3 Prohibited liquor products

### 212 What is a *prohibited liquor product*?

In this Act:

*prohibited liquor product* means a thing declared by the Minister to be a prohibited liquor product under section 213.

### 213 Prohibited liquor products

- (1) 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) a non-alcoholic drink.

#### Examples

- 1 a thing with packaging that would appeal to children
- 2 a thing with a name that could be confused with confectionary

- (2) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 214 Offence—supply prohibited liquor product

A person commits an offence if—

- (a) the person supplies something to someone else; and
- (b) the thing is a prohibited liquor product.

Maximum penalty: 50 penalty units.



## Part 15                      Liquor advisory board

### 215            Establishment of liquor advisory board

The liquor advisory board is established.

### 216            Membership of liquor advisory board

- (1) The liquor advisory board is made up of—
- (a) the commissioner; and
  - (b) the following members appointed by the Minister:
    - (i) 1 member appointed to represent the Australian Federal Police;
    - (ii) 1 member appointed to represent liquor consumers;
    - (iii) 1 member appointed to represent Aboriginal people and Torres Strait Islanders;
    - (iv) 1 member appointed to represent small businesses;
    - (v) 1 member appointed to represent Clubs ACT;
    - (vi) 1 member appointed to represent the Australian Hotels Association (ACT branch).

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The chair of the board is the commissioner.

**217 Liquor advisory board function**

The liquor advisory board has the function of advising the Minister about matters associated with the operation of this Act.

**218 Liquor advisory board procedure**

- (1) Meetings of the liquor advisory board are to be held when and where it decides.
- (2) However—
  - (a) the liquor advisory board must meet at least twice each year; and
  - (b) the commissioner may, by reasonable written notice given to the other liquor advisory board members, call a meeting.
- (3) The liquor advisory board may conduct its proceedings (including its meetings) as it considers appropriate.

**219 Reimbursement of expenses for liquor advisory board members**

- (1) A member of the liquor advisory board appointed under section 216 (1) (b) is not entitled to be paid for the exercise of the member's functions.
- (2) However, the member may apply to the commissioner for reimbursement of expenses reasonably incurred by the member for the purpose of attending a meeting of the liquor advisory board.

## Part 16 Notification and review of decisions

### 220 What is a *reviewable decision*?—pt 16

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 221 Reviewable decision notices

If the commissioner makes a reviewable decision, the commissioner must give a reviewable decision notice to each person mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The commissioner must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 222 Applications for review

The following people may apply to the ACAT for a review of a reviewable decision:

- (a) a person mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 17                            Miscellaneous

### 223            Liquor guidelines

- (1) The commissioner may make guidelines (the *liquor guidelines*) for this Act consistent with the objects of this Act and the harm minimization and community safety principles.
- (2) Without limiting subsection (1), a liquor guideline may make provision in relation to the following:
  - (a) advertising liquor;
  - (b) intoxication;
  - (c) crowd management at and near licensed premises;
  - (d) RSA training.
- (3) A liquor guideline is a notifiable instrument.

*Note 1*    A notifiable instrument must be notified under the Legislation Act.

*Note 2*    It is a condition of a licence or permit that the licensee or permit-holder must comply with the guidelines—see s 31 (1) (a) and s 55 (1) (a).

### 224            Declared training providers

- (1) The Minister may declare a person to be a training provider for this Act (a *declared training provider*).
- (2) A declaration is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the Legislation Act.

**U 224A Licences and permits not personal property—PPS Act****225 Acts and omissions of representatives**

- (1) In this section:

*person* means an individual.

*Note* See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

*representative*, of a person, means an employee or agent of the person.

*state of mind*, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for an offence against this Act.
- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

- (6) A person who is convicted of an offence cannot be punished by imprisonment for the person if the person would not have been convicted of the offence without subsection (3) or (4).

**226            Proceedings for offences**

A proceeding in relation to an offence against this Act must not be begun except by the commissioner or a police officer.

**227            Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note*        The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note*        A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) In this section:

***Minister*** means the Minister for the time being administering the provision of the Act for which the fee, charge or other amount is determined.

**228            Approved forms**

- (1) The commissioner may approve forms for this Act.

- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*        For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the Legislation Act.

**229 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision in relation to the following:
- (a) licensed times and permitted times;
  - (b) the calculation of fees based on 1 or more of the following:
    - (i) the class or subclass of a licence or permit;
    - (ii) licensed times and permitted times;
    - (iii) the term of a licence or permit;
    - (iv) the nature and scale of the activities being carried out at the licensed premises or permitted premises;
    - (v) the occupancy loading for the licensed premises or permitted premises;
    - (vi) the history of compliance of licensees and permitted premises with this Act;
    - (vii) anything else consistent with the objects of this Act and the harm minimisation and community safety principles;
  - (c) how fees may be paid;
  - (d) the circumstances in which the commissioner may waive or reduce fees.
- (3) A fee mentioned in subsection (2) may be an amount that is not a fee for a service.
- (4) A regulation may create offences and fix maximum penalties of not more than 20 penalty units for the offences.

## Part 20 Transitional

### 250 Definitions—pt 20

In this part:

*commencement day* means the day section 3 commences.

*new licence* means a licence under this Act.

*old licence* means a licence under the repealed Act.

*repealed Act* means the *Liquor Act 1975*.

### **M** 250A Modification—s 2 (Commencement)

### **M** 251 Transitional—old licensees applying for new licences

- (1) This section applies if a person—
  - (a) holds an old licence before the commencement day; and
  - (b) applies for a new licence—
    - (i) before the old licence expires; and
    - (ii) before the commencement day.
- (2) The application need not include—
  - (a) a police certificate for the licensee, required under section 25 (2) (d) (i) (Licence—application), if the licensee has provided a police certificate for the licensee to the commissioner on or after 1 July 2010; or
  - (b) the certificates and plans required under section 25 (2) (e).
- (3) At the time of making the application, the application need not include any other police certificate that is required under section 25 (2) (d), however—



- (a) the commissioner must not decide the application until the police certificate is provided; and
  - (b) the *required time* for the application under section 27 (4) (b) (Licence—decision on application) is taken to include a police certificate to be provided under this subsection.
- (4) The application must include the following information about liquor purchased by the licensee during the previous financial year to be sold at the licensed premises:
- (a) the name and address of the wholesaler from whom the licensee purchased the liquor;
  - (b) the gross wholesale price paid or payable by the licensee for the liquor.

*Note* If a form is approved under the Act, s 228, for this provision, the form must be used.

- (5) In this section:
- gross wholesale price*, for liquor—
- (a) includes any duty, tax or other charge paid or payable for the liquor; but
  - (b) does not include the costs for freight, or packaging for freight, for the liquor.

## **252 Transitional—old licences and new applications**

- (1) This section applies if a person applies for a new licence in accordance with section 251 (1).
- (2) The licensee need not comply with the public consultation provisions required under section 26 (Licence—public consultation).
- (3) The *required time* for the application under section 27 (4) (e) (Licence—decision on application) is taken to be 6 months after the day the commissioner receives the application.

- (4) The old licence remains in force until the application is decided and is, on the commencement day, taken to be a new licence of the same class and—
- (a) the new licence is taken to be—
    - (i) in the same terms as the old licence; and
    - (ii) subject to the same conditions as the old licence; and
  - (b) a bar room at the licensed premises under the old licence is taken to be an adults-only area at the licensed premises under the new licence; and
  - (c) an occupancy loading for the licensed premises under the old licence is taken to be an occupancy loading for the licensed premises under the new licence.

**253 Transitional—old licences and occupancy loading**

- (1) This section applies if—
- (a) a person applies for a new licence in accordance with section 251 (1); and
  - (b) the commissioner decides to issue the new licence under section 27 (Licence—decision on application); and
  - (c) the commissioner must decide the occupancy loading for each public area at the licensed premises under section 28 (Licence—occupancy loading).
- (2) The following sections do not apply to the decision under section 28:
- (a) section 85 (Occupancy loading decision);
  - (b) section 86 (Fire engineering study and inspection).
- (3) In deciding the occupancy loading for a public area at the licensed premises, the commissioner must consider—

- (a) the occupancy loading under the old licence for the area; and
- (b) anything else the commissioner considers relevant.

**254 Transitional—old liquor permits taken to be commercial permits**

- (1) This section applies if a person holds a liquor permit under the repealed Act immediately before the commencement day.
- (2) The liquor permit is, on the commencement day, taken to be a commercial permit—
  - (a) in the same terms as the liquor permit; and
  - (b) subject to the same conditions as the liquor permit.
- (3) The commercial permit is taken to expire—
  - (a) on the day stated in the liquor permit; or
  - (b) if no date is stated in the liquor permit—3 months after the commencement day.
- (4) The commercial permit must not be amended, transferred or renewed.

**255 Transitional—old non-profit organisation wine permits taken to be non-commercial permits**

- (1) This section applies if a person holds a non-profit organisation wine permit under the repealed Act immediately before the commencement day.
- (2) The non-profit organisation wine permit is, on the commencement day, taken to be a non-commercial permit—
  - (a) in the same terms as the non-profit organisation wine permit; and
  - (b) subject to the same conditions as the non-profit organisation wine permit.

- (3) The non-commercial permit is taken to expire—
  - (a) on the day stated in the non-profit organisation wine permit; or
  - (b) if no date is stated in the non-profit organisation wine permit—3 months after the commencement day.
- (4) The non-commercial permit must not be amended, transferred or renewed.

**256 Transitional—old tourism wine permits taken to be commercial permits**

- (1) This section applies if a person holds a tourism wine permit under the repealed Act immediately before the commencement day.
- (2) The tourism wine permit is, on the commencement day, taken to be a commercial permit—
  - (a) in the same terms as the tourism wine permit; and
  - (b) subject to the same conditions as the tourism wine permit.
- (3) The commercial permit is taken to expire—
  - (a) on the day stated in the tourism wine permit; or
  - (b) if no date is stated in the tourism wine permit—3 months after the commencement day.
- (4) The commercial permit must not be amended, transferred or renewed.

**257 Transitional—RSA certificates**

- (1) This section applies if—
  - (a) a person holds an old RSA certificate immediately before division 8.1 (Responsible service of alcohol) commences; and
  - (b) the certificate was issued to the person not more than 2 years before division 8.1 commences.

- (2) The old RSA certificate is, on the commencement of division 8.1, taken to be a new RSA certificate that expires 1 year after division 8.1 commences.
- (3) In this section:
- new RSA certificate*, for a person, means an RSA certificate issued under this Act for the person.
- old RSA certificate*, for a person—
- (a) means a certificate stating—
- (i) that the person satisfactorily completed a course about the responsible service of alcohol on a stated day; and
- (ii) when the certificate was issued to the person; but
- (b) does not include a new RSA certificate.

## **258 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

## **259 Expiry—pt 20**

This part expires 3 years after the day it commences.

## Schedule 1 Reviewable decisions

(see s 220)

column 1 item	column 2 section	column 3 decision	column 4 person
1	27 (2)	refuse to issue licence	applicant for licence
2	38 (4)	refuse to amend licence	licensee
3	39 (3)	refuse to amend licence (change to floor plan)	licensee
4	41 (2)	refuse to transfer licence	licensee
5	43 (2)	refuse to renew licence	licensee
6	51 (2)	refuse to issue permit	applicant for permit
7	58 (3)	refuse to amend permit	permit-holder
8	62 (2)	refuse to renew permit	permit-holder
9	65 (1)	cancel non-commercial permit	permit-holder
10	90 (1)	refuse to approve risk-assessment management plan	licensee or permit-holder
11	92 (2)	refuse to amend approved risk-assessment management plan	licensee or permit-holder

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 person</b>
12	96 (2)	refuse to approve young people's event	applicant
13	190 (2)	refuse to approve RSA training course	applicant

## **U** Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- Act
- adult
- Australian driver licence
- bankrupt or personally insolvent
- building code
- business day
- chief officer (fire brigade)
- chief police officer
- commissioner for fair trading
- corporation
- Corporations Act
- planning and land authority
- police officer.

*ACAT Act* means the *ACT Civil and Administrative Tribunal Act 2008*.

*ACTPLA certificate*, for a licence or permit at premises, means a certificate by the planning and land authority stating that the authority considers the operation of a business at the premises under the licence or permit either—

- (a) complies with—
  - (i) the lease where the premises are located; and
  - (ii) the Territory plan; or
- (b) does not comply with a stated provision of—



- (i) the lease where the premises are located; or
- (ii) the Territory plan.

**adults-only area**, for licensed premises or permitted premises—see section 93.

**amend**, a licence or permit, includes the following:

- (a) amend an existing licence condition;
- (b) impose a new licence condition;
- (c) remove an existing licence condition.

**applicant**, for division 2.4 (Licences—public consultation)—see section 33.

**approved risk-assessment management plan**, for licensed premises or permitted premises—see section 89.

**approved RSA training course**, for an approved RSA training provider, for division 12.1 (Approval to provide RSA training courses)—see section 188.

**approved RSA training provider**, for division 12.1 (Approval to provide RSA training courses)—see section 188.

**at** premises includes in or on the premises.

**authorised person** means—

- (a) an investigator; or
- (b) a police officer.

**bar licence**—see section 22.

**breath testing machine**, for division 8.7 (Breath testing machines)—see section 133.

**caution offence**, for division 9.3 (Police cautions for children and young people)—see section 149.

**certificate of occupancy**, for premises—see the *Building Act 2004*, dictionary.

**child**—see the *Children and Young People Act 2008*, section 11.

**class**—each of the following is a **class** of licence:

- (a) general licence;
- (b) on licence;
- (c) off licence;
- (d) club licence;
- (e) special licence.

**close associate**—see section 14.

**club licence**—see section 20.

**commercial permit**—see section 48.

**commercial permit holder** means—

- (a) a person who holds a commercial permit; or
- (b) for part 11 (Complaints and occupational discipline)—see section 175.

**commissioner** means the commissioner for fair trading.

**commissioner's direction**—see section 144 (2).

**complainant**, for division 11.2 (Complaints)—see section 177.

**connected**, for part 10 (Enforcement)—see section 153.

**crowd controller** means a person who is a crowd controller for the purposes of the *Security Industry Act 2003*, section 7.

**CYP chief executive**, for division 9.3 (Police cautions for children and young people)—see section 149.

**declared training provider**—see section 224.

***eligible club***—see section 70.

***emergency closure notice***—see section 147.

***emergency closure order***—see section 146.

***enclosed***, for premises, means enclosed as prescribed by regulation.

***enclosed public place***—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

***false identification document***, for a person, means an identification document that—

- (a) was fraudulently obtained; or
- (b) was issued to someone else; or
- (c) is forged; or
- (d) is fraudulently altered; or
- (e) has expired.

***foreign driver licence*** means a licence to drive a motor vehicle (however described) issued under the law of an external Territory or a foreign country.

***general licence***—see section 17.

***ground for occupational discipline***, for division 11.3 (Occupational discipline)—

- (a) in relation to a licensee—see section 183; or
- (b) in relation to a commercial permit-holder—see section 184.

***harm minimisation and community safety principles***—see section 10.

***identification document***, for a person, means a document that—

- (a) is—
  - (i) an Australian driver licence or foreign driver licence; or

- (ii) a proof of age card or interstate proof of age card; or
- (iii) a passport; and
- (b) contains a photograph that could reasonably be taken to be the person; and
- (c) states the person's date of birth.

**identity card**—see the *Fair Trading (Consumer Affairs) Act 1973*, dictionary.

**incident**, for division 8.6 (Incidents)—see section 130.

**incident register**, for division 8.6 (Incidents)—see section 131.

**influential person**, for a corporation—see section 15.

**interstate proof of age card** means a document corresponding to a proof of age card that has been issued under the law of a State.

**intoxicated**—see section 104.

**investigator**—see the *Fair Trading (Consumer Affairs) Act 1973*, dictionary.

**lease**—see the *Planning and Development Act 2007*, section 235.

**licence**—see section 16.

**licence and permit register**—see section 195.

**licensed premises** means premises that are the subject of a licence.

**licensed times**, for the sale of liquor at licensed premises, means the times stated in the licence for the sale of liquor at the premises.

**licensee**—

- (a) means a person who holds a licence; or
- (b) for part 11 (Complaints and occupational discipline)—see section 174.

**liquor**—see section 11.

**liquor guidelines**—see section 223 (1).

**low-alcohol liquor** means a drink that is not liquor but contains more than 0.5% by volume of ethanol.

**nightclub licence**—see section 23.

**non-commercial permit**—see section 49.

**non-profit organisation** means an organisation that—

- (a) is not carried on for profit or gain to its individual members; and
- (b) does not make any distribution, whether in money, property or otherwise, to its members.

**occupancy loading**, for a public area at licensed premises or permitted premises—see section 83.

**occupancy loading notice**, for part 5 (Occupancy loading for licensed premises and permitted premises)—see section 86 (3).

**occupier**, of premises, for part 10 (Enforcement)—see section 153.

**offence**, for part 10 (Enforcement)—see section 153.

**off licence**—see section 19.

**on licence**—see section 18.

**permanent alcohol-free place**—see section 198 (1).

**permit**—see section 47.

**permit-holder**, for part 11 (Complaints and occupational discipline)—see section 175.

**permitted premises** means premises that are the subject of a permit.

**permitted times**, for the sale of liquor at permitted premises, means the times stated in the permit for the sale of liquor at the premises.

**person**—a reference to a **person** in relation to a non-commercial permit includes a reference to a non-profit organisation.

***personal information notice***—see section 71.

***police certificate***, for a person, means a written statement by the Commonwealth CrimTrac agency indicating—

- (a) whether, according to the records held by the agency, the person has been charged with, or convicted of, an offence against a law of—
  - (i) the Territory; or
  - (ii) the Commonwealth; or
  - (iii) a State; or
  - (iv) another country; and
- (b) if so—particulars of each offence.

*Note* A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

***premises*** includes land, structure, vehicle or boat.

***premises information notice***—see section 79.

***prohibited liquor product***—see section 212.

***proof of age card***, for division 14.2 (Children and young people)—see section 209.

***proposed licensee***—see section 25.

***proposed new licensee***—see section 40.

***proposed permit-holder***—see section 50.

***public area***, at licensed premises or permitted premises—see section 84.

***public consultation period***, for an application for division 2.4 (Licences—public consultation)—see section 36.

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

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

**registered training organisation**, for division 12.1 (Approval to provide RSA training courses)—see section 188.

**relevant premises**, for division 2.4 (Licences—public consultation)—see section 33.

**responsible person**, for premises, for part 4 (Suitability of people and premises for licences and permits)—see section 74.

**restaurant and cafe licence**—see section 24.

**reviewable decision**, for part 14 (Notification and review of decisions)—see section 220.

**risk-assessment management plan**, for licensed premises or permitted premises—see section 88.

**RSA certificate**, for a person—see section 193.

**RSA training course approval**, for division 12.1 (Approval to provide RSA training courses)—see section 189.

**sell** includes—

- (a) sell by wholesale, retail, auction or tender; and
- (b) barter or exchange; and
- (c) supply for profit; and

- (d) offer for sale, receive for sale or expose for sale; and
- (e) consign or deliver for sale; and
- (f) have in possession for sale.

**senior police officer** means the chief police officer or another police officer of or above the rank of superintendent.

**smoke**—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

**special licence**—see section 21.

**staff member**, for part 8 (Conduct at licensed premises and permitted premises), means—

- (a) for licensed premises—
  - (i) the licensee; or
  - (ii) an employee of the licensee; or
- (b) for permitted premises—
  - (i) the permit-holder; or
  - (ii) an employee of the permit-holder.

**subclass**—each of the following is a **subclass** of on licence:

- (a) bar licence;
- (b) nightclub licence;
- (c) restaurant and cafe licence.

**suitability information**—

- (a) about a person—see section 69; and
- (b) about premises—see section 78.

**suitable person**, to hold a licence or permit—see section 67.

**suitable premises**, for a licence or permit—see section 75.



*supply* includes sell.

*temporary alcohol-free place*—see section 198 (2).

*warrant*, for part 10 (Enforcement)—see section 153.

*young person*—see the *Children and Young People Act 2008*, section 12.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

#### **Liquor Act 2010 A2010-35**

notified LR 6 September 2010

s 1, s 2 commenced 6 September 2010 (LA s 75 (1))

div 8.1 commences 1 December 2011 (s 2 (1) (as am by A2010-43 amdt 1.19), as mod by SL2010-40 mod 4.1 (as am by SL2010-48))

s 118 commences 1 June 2011 (s 2 (1A) (ins as mod by SL2010-40 mod 4.1 (as am by SL2010-48))

pt 12 commences 1 June 2011 (s 2 (2) (as am by A2010-43 amdt 1.19), as mod by SL2010-40 mod 4.1 (as am by SL2010-48))

remainder commenced 1 December 2010 (s 2 (3) (as am by A2010-43 amdt 1.19) and CN2010-14)

as amended by

#### **Liquor (Consequential Amendments) Act 2010 A2010-43 sch 1 pt 1.13, sch 2 pt 2.1**

notified LR 8 November 2010

s 1, s 2 commenced 8 November 2010 (LA s 75 (1))

amdt 1.19 commenced 9 November 2010 (s 2 (1))

amdt 1.49 commences on the commencement of Personal Property Securities Act 2010 A2010-15 amdt 1.1 (s 2 (2))

sch 1 pt 1.13 remainder commenced 1 December 2010 (s 2 (4) and see A2010-35, s 2 (3) (as am by A2010-43 amdt 1.19) and CN2010-14)

sch 2 pt 2.1 commences 9 December 2010 (s 2 (3) and see Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009 A2009-51, s 2 (1) (b) and CN2010-4)

as modified by

#### **Liquor Regulation 2010 SL2010-40 sch 4 (as am by SL2010-48)**

notified LR 20 October 2010

s 1, s 2 commenced 20 October 2010 (LA s 75 (1))

sch 4 commenced 1 December 2010 (s 2 (1) and see A2010-35, s 2 (3))

## Endnotes

4 Amendment history

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### **Liquor Amendment Regulation 2010 (No 1) SL2010-48**

notified LR 30 November 2010

s 1, s 2 commenced 30 November 2010 (LA s 75 (1))

commenced 1 December 2010 (s 2 and see A2010-35, s 2 (3))

*Note* This regulation only amends the Liquor Regulation 2010 SL2010-40.

## 4 Amendment history

### **Commencement**

s 2 sub A2010-43 amdt 1.19  
mod SL2010-40 mod 4.1 (as am by SL2010-48 s 5)  
mod exp 1 December 2013 (SL2010-40 s 101 (2))

### **Licence—application**

s 25 am A2010-43 amdt 1.20

### **Licence—amendment for change to floor plan of licensed premises**

s 39 am A2010-43 amdt 1.21

### **Permit—application**

s 50 am A2010-43 amdt 1.22

### **Permit—conditions**

s 55 am A2010-43 amdt 1.23

### **What is *suitability information* about premises?**

s 78 am A2010-43 amdts 1.24-1.26

### **What is a *public area*?**

s 84 am A2010-43 amdt 1.27

### **Risk-assessment management plan—approval**

s 90 am A2010-43 amdt 1.28

### **Risk-assessment management plan—availability**

s 90A ins A2010-43 amdt 1.29

### **Approved risk-assessment management plan—amendment on application**

s 91 hdg sub A2010-43 amdt 1.30

### **Approved risk-assessment management plan—decision on amendment**

s 92 hdg sub A2010-43 amdt 1.31

s 92 am A2010-43 amdt 1.32

### **Licencee, permit-holder, etc may seize false identification document**

s 124 am A2010-43 amdts 1.33-1.36; pars and ss renum R2 LA

### **Offence—exceed occupancy loading**

s 125 am A2010-43 amdt 1.37

**Offence—fail to display occupancy loading sign**

s 126 am A2010-43 amdt 1.38

**Offence—fail to make risk-assessment management plan available**

s 128 om A2010-43 amdt 1.39

**Offence—disclose confidential provision of risk-assessment management plan**

s 129 om A2010-43 amdt 1.40

**What is an *incident*?—div 8.6**

s 130 am A2010-43 amdt 1.41; pars renum R2 LA

**Incident register**

s 131 am A2010-43 amdt 1.42; pars renum R2 LA

**Offence—conduct prohibited promotional activities**

s 137 am A2010-43 amdt 1.43; ss renum R2 LA

**Power to enter premises**

s 154 am A2010-43 amdt 1.44; pars renum R2 LA

**Consent to entry**

s 156 am A2010-43 amdt 1.45

**Grounds for occupational discipline—licensee**s 183 am A2010-43 amdt 2.1-2.3**Grounds for occupational discipline—commercial permit-holder**s 184 am A2010-43 amdt 2.4-2.6**Application to ACAT for occupational discipline**

s 187 am A2010-43 amdt 1.46

**Police officer may ask for identification document**

s 207 am A2010-43 amdt 1.47

**Liquor guidelines**

s 223 am A2010-43 amdt 1.48; ss renum R2 LA

**Licences and permits not personal property—PPS Act**s 224A ins A2010-43 amdt 1.49**Legislation repealed**

s 230 om LA s 89 (3)

**Transitional**pt 20 hdg ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)**Definitions—pt 20**s 250 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

## Endnotes

4 Amendment history

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def **commencement day** ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

def **new licence** ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

def **old licence** ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

def **repealed Act** ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Modification—s 2 (Commencement)**

s 250A ins as mod SL2010-40 mod 4.1 (as am by SL2010-48 s 5)  
mod exp 1 December 2013 (SL2010-40 s 101 (2))

### **Transitional—old licensees applying for new licences**

s 251 ins A2010-43 amdt 1.50  
mod SL2010-40 mod 4.2 (as am by SL2010-48 s 5) mod exp 1  
December 2013 (SL2010-40 s 101 (2))  
exp 1 December 2013 (s 259)

### **Transitional—old licences and new applications**

s 252 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Transitional—old licences and occupancy loading**

s 253 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Transitional—old liquor permits taken to be commercial permits**

s 254 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Transitional—old non-profit organisation wine permits taken to be non-commercial permits**

s 255 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Transitional—old tourism wine permits taken to be commercial permits**

s 256 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Transitional—RSA certificates**

s 257 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Transitional regulations**

s 258 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

### **Expiry—pt 20**

s 259 ins A2010-43 amdt 1.50  
exp 1 December 2013 (s 259)

**Reviewable decisions**

sch 1 am A2010-43 amdt 1.51

**Dictionary**

dict

def **ACAT Act** ins A2010-43 amdt 1.52def **confidential provision** om A2010-43 amdt 1.53def **designated outdoor smoking area** ins A2010-43  
amdt 2.7def **enclosed public place** sub A2010-43 amdt 2.8def **licensed premises** ins A2010-43 amdt 1.54def **low-alcohol liquor** am A2010-43 amdt 1.55def **outdoor eating or drinking place** ins A2010-43 amdt 2.9def **permitted premises** ins A2010-43 amdt 1.56def **smoke** sub A2010-43 amdt 2.10**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 9 Nov 2010	9 Nov 2010– 30 Nov 2010 (not in force)	<u>A2010-43</u>	amendments by A2010-43 to commencement section only

## Endnotes

6 Modifications of republished law with temporary effect

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### 6 Modifications of republished law with temporary effect

The following modifications have not been included in this republication:

<b>Liquor Regulation 2010 SL2010-40 sch 4 (as am by SL2010-48 s 5)</b>
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## Schedule 4 Modification of Act

(see s 101)

### [4.1] New section 250A

*insert*

#### 250A Modification—s 2 (Commencement)

Section 2 (1) and (2) apply as if they were omitted and the following substituted:

- ‘(1) Division 8.1 (Responsible service of alcohol) commences 12 months after the day section 3 commences.
- (1A) Section 118 (Offence—child or young person supply liquor—licensee or permit holder) commences 6 months after the day section 3 commences.
- (2) Part 12 (Responsible service of alcohol (RSA) training courses) commences 6 months after the day section 3 commences.’



**[4.2] New section 251 (4A)**

*insert*

- (4A) However, if the new licence is an off licence and the gross wholesale price paid or payable by the licensee for liquor purchased by the licensee during the previous financial year to be sold at the licensed premises was more than \$3 000 000, the application need not include the name and address of the wholesaler from whom the licensee purchased the liquor.

**7 Uncommenced provisions and amendments**

Section 118, div 8.1 and pt 12 were uncommenced at the republication date but have been included in this republication with the symbol **U** immediately before the provision headings.

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Liquor (Consequential Amendments) Act 2010 A2010-43  
amdt 1.49, sch 2 pt 2.1****[1.49] New section 224A**

*insert*

**224A Licences and permits not personal property—PPS Act**

For the *Personal Property Securities Act 2009* (Cwlth), section 10, definition of *personal property*, a licence or permit is not personal property.

## Part 2.1 Liquor Act 2010

### [2.1] Section 183 (1) (a) (vi)

*substitute*

(vi) the *Smoke-Free Public Places Act 2003*;

### [2.2] Section 183 (1) (b) (vi)

*substitute*

(vi) the *Smoke-Free Public Places Act 2003*;

### [2.3] Section 183 (1) (i) and (j)

*substitute*

- (i) the licensee has allowed people to smoke in a part of the licensed premises that is—
  - (i) an enclosed public place; or
  - (ii) an outdoor eating or drinking place (other than a designated outdoor smoking area);
- (j) the licensee has failed to take reasonable steps to prevent smoke from another area occupied by the licensee entering—
  - (i) an enclosed public place; or
  - (ii) an outdoor eating or drinking place (other than a designated outdoor smoking area).

### [2.4] Section 184 (1) (a) (vi)

*substitute*

(vi) the *Smoke-Free Public Places Act 2003*;

**[2.5] Section 184 (1) (b) (vi)**

*substitute*

- (vi) the *Smoke-Free Public Places Act 2003*;

**[2.6] Section 184 (1) (i) and (j)**

*substitute*

- (i) the permit-holder has allowed people to smoke in a part of the permitted premises that is—
- (i) an enclosed public place; or
  - (ii) an outdoor eating or drinking place;
- (j) the permit-holder has failed to take reasonable steps to prevent smoke from another area occupied by the permit-holder entering—
- (i) an enclosed public place; or
  - (ii) an outdoor eating or drinking place.

**[2.7] Dictionary, new definition of *designated outdoor smoking area***

*insert*

*designated outdoor smoking area*—see the *Smoke-Free Public Places Act 2003*, section 9F (2).

**[2.8] Dictionary, definition of *enclosed public place***

*substitute*

*enclosed public place*—see the *Smoke-Free Public Places Act 2003*, dictionary.

## Endnotes

7 Uncommenced provisions and amendments

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**[2.9] Dictionary, new definition of *outdoor eating or drinking place***

*insert*

*outdoor eating or drinking place*—see the *Smoke-Free Public Places Act 2003*, section 9A.

**[2.10] Dictionary, definition of *smoke***

*substitute*

*smoke*—see the *Smoke-Free Public Places Act 2003*, section 5B.

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