

2010

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

LIQUOR BILL 2010

**REVISED
EXPLANATORY STATEMENT**

**Circulated by authority of the
Attorney General
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Liquor Bill 2010

Explanatory Statement

This explanatory statement relates to the Liquor Bill 2010 as introduced in the ACT Legislative Assembly.

Overview of Bill

The Liquor Bill 2010 replaces the *Liquor Act 1975* with new legislation, the object of which is to regulate the sale, supply, promotion and consumption of liquor in a way that minimises harm associated with the consumption of liquor, and in a way that takes into account the safety of the community.

The Liquor Bill reforms fall under three core areas:

- strengthening the licensing regime to better reflect harm minimisation and community safety principles;
- stronger enforcement of ACT liquor laws to better ensure compliance; and
- streamlining the licensing regime to promote more efficient regulatory action.

The principal reforms made by the Bill are as follows:

- (a) to require a decision-maker under the Act (the Commissioner for Fair Trading (the commissioner), an authorised investigator or police officer) to take into account the harm minimisation and community safety principles as set out in section 10 of the Act.
- (b) to make compliance with the Act a condition of a liquor licence and a permit and give the commissioner power to impose a condition on a licence or permit at any time. Breach of a condition on a licence or permit would expose the licensee/permit-holder to occupational disciplinary action (including, amongst other things, suspension or cancellation of the licence/permit) by the ACT Civil and Administrative Tribunal (the ACAT).
- (c) to require an applicant for a liquor licence to give public notification of their intention to apply for a licence by placing a public notice on the proposed premises and in the Canberra Times. This will allow the community an opportunity to make written representations to the commissioner about the suitability of the proposed premises in that location, or suitability representations about the people who would have responsibility or influence managing the proposed premises.
- (d) to require the commissioner to decide an occupancy loading indicating the maximum number of people allowed in each public area at the proposed licensed premises, as a public safety measure. The commissioner's decision about the occupancy loading will be based on a recommendation from the Chief Officer (Fire Brigade).
- (e) to reclassify permits into two classes: commercial and non-commercial.
- (f) to give the commissioner a discretion to determine an occupancy loading for a permit where the premises are wholly or partly enclosed.
- (g) to instil a high level of integrity in the management of the liquor licence and permit by requiring a licensee/permit-holder to keep the commissioner updated about changes to the management of the premises and other suitability information.

- (h) to give the commissioner a discretion to require a police certificate at any time from a licensee or permit-holder when deciding the suitability of an entity to hold a licence or permit.
- (i) to require a licensee or permit-holder to notify the commissioner about changes to their personal or business circumstances.
- (j) to require a licensee to update the commissioner about changes to the licensed premises.
- (k) to require applicants for a licence and commercial permit to submit a risk-assessment management plan (RAMP) outlining details and arrangements for conducting the business of selling liquor at the premise or event. The commissioner may approve the RAMP only if satisfied that the RAMP is consistent with the harm minimisation and community safety principles.
- (l) to make provision for a licensee or permit-holder to seek amendment to their RAMP for approval by the commissioner.
- (m) to require licensees, commercial permit-holders, their staff including crowd controllers, to undertake responsible service of alcohol training (RSA) and obtain an RSA certificate.
- (n) to require licensees and commercial permit-holders to keep a copy of RSA certificates for all staff employed to supply liquor, including crowd controllers who work, on licensed or permitted premises.
- (o) to introduce a new strict liability criminal offence for licensees, permit-holders, their employees and members of the public who supply liquor to an intoxicated person on licensed premises.
- (p) to introduce a new strict liability public order offence for a patron or anyone to abuse, threaten, intimidate staff exercising the new RSA principles by refusing to sell an intoxicated patron liquor on licensed or permitted premises.
- (q) to require licensees and permit-holders to keep and maintain a register of incidents at their licensed or permitted premises.
- (r) to introduce a number of new criminal offences including breaching an occupancy loading, not complying with an approved RAMP, not making available a RAMP for regulatory inspection, failure to give up a suspended or cancelled licence, failure to keep an incident register, promoting or marketing liquor which encourages the excessive or rapid consumption of liquor, conducting prohibited promotional or marketing activities, supplying liquor without an RSA certificate, failing to keep RSA certificates on licensed and permitted premises, and a number of offences dealing with the supply of liquor to children and young people at licensed premises or permitted premises and in public places.
- (s) to give the commissioner a new power to issue a written binding direction to a licensee or permit-holder prohibiting certain activities or requiring certain activities to occur in the interests of harm minimisation and community safety.
- (t) to give ACT Policing a power to close down a licensed premise for up to 24 hours in an emergency.
- (u) to provide new enforcement powers for authorised investigators and police officers to exercise.
- (v) to require the commissioner to approve RSA trainers.
- (w) to allow the commissioner to prescribe public areas as temporary alcohol-free zones.
- (x) to allow a regulation to be prescribed under the Act to introduce standard and late night licensed and permitted times. The regulation will also prohibit specific promotional and marketing activities, set standard conditions for licences and permits,

prescribe permanent alcohol-free places, prescribe the contents of a RAMP and set strict conditions for young people's events. The regulation will also prescribe various licence forms and cumulative methodology for the commissioner to consider when making a decision about granting a new liquor licence or permit.

Strict Liability Offences

A number of the offences in the Bill are strict liability offences. A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for any of the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Subclause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

Strict liability offences do not have a mental element, or mens rea. However, the actus reus, the physical actions, do have a mental element of their own, for example, voluntariness. For this reason, the general common law defences of insanity and automatism still apply, as they go towards whether a person has done something voluntarily, as well as whether they intended to do the act.

In respect of the use of strict liability offences in the Bill, a number of rights contained in the *Human Rights Act 2004* are engaged. These are the right to a fair trial which states that “[e]veryone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing”, and the “right to be presumed innocent until proved guilty according to law”.

Strict liability offences intersect with the right to fair trial under section 21 of the Human Rights Act. Although the right is engaged, strict liability is not prohibited by the Human Rights Act, however, it is important that the strict liability offence is reasonable within the specific context of the offence, and demonstrably justifiable in a free and democratic society.

Strict liability also engages the presumption of innocence under section 22 of the Human Rights Act, because these types of offences can be interpreted as using reverse onus of proof. The Government acknowledges that while strict liability offences engage the presumption of innocence, strict liability offences are not inherently incompatible with human rights.

The inclusion of an averment or presumption in sections 198-199 (a marked container) and sections 105-106 and 110-111 that a substance supplied to a person in an unmarked container is liquor can be demonstrably justified on public interest grounds. The presumption for an unmarked container is limited to the extent that the liquor must be supplied to an intoxicated person or minor in an adults-only area on licensed premises, witnessed by a police officer, which the police officer believes on reasonable grounds to be liquor. The presumption is rebuttable and a defendant who wishes to deny criminal responsibility by asserting that the substance was not liquor has an evidential burden in relation to that matter pursuant to section 58 of the *Criminal Code 2002*.

It is important to have this limitation on the presumption of innocence because of the grave risks associated with the supply of liquor to vulnerable intoxicated people or minors on licensed premises. The limitation can be justified as a proportionate means of achieving the objects of the Bill and the least restrictive means of achieving the desired outcome of minimising harm associated with the abuse of alcohol and improving the safety of the ACT community.

The supply of liquor to intoxicated people contributes to anti-social behaviour, alcohol-related violence and can place young women and men at increased risk of indecent and sexual assault, the costs of which are borne by the individuals and the whole of the community.

The increasing prevalence of regulatory legislation, some of which contain strict liability offences, is also determined by community expectations of what activities should be regulated. As the values of a community change over time, the degree of moral blameworthiness attaching to certain conduct may change as well, as the moral blameworthiness of an action increases, the community's desire for increased regulation of that activity will also increase. This is particularly the case in relation to young people and the culture of drinking to excess, which communities around Australia today expect governments to address and regulate.

The offences for children and young people in adults-only areas in licensed premises can be justified in terms of section 28 of the HRA because limiting the rights of children in section 11(2) of the HRA, actually protects children by restricting their access to harmful situations. The limitation works to enshrine and uphold the right in section 11(2) by limiting harmful exposure of children to alcohol and potentially intoxicated people at the venue. There is also a direct relationship between the limitation and its purpose because the section is intended to remove children from harmful situations. For example, children and young people should not be exposed to damaging situations and allowed to consume alcohol. This is reinforced by the general prohibition that children and young people are not allowed to consume alcohol until they are 18 years of age.

The use of strict liability offences for liquor licensing can be justified on the basis that the offence applies to people who choose to engage in regulated activity, or are on notice that they are operating in a regulated context. People who elect to apply for a liquor licence or permit choose to do so and are on notice that they must abide by the laws that govern the licence. Licensees and permit-holders place themselves in a relationship of responsibility with their customers and the wider public. It is on this basis that the Government believes that the use of strict liability offences contained in this Bill is relevant to the policy objectives of harm minimisation and community safety, both of which are demonstrably justifiable and reasonable.

The new liquor licensing framework as set out in the Bill is a proportionate means of achieving the objects of the Bill and the least restrictive means of achieving the desired outcome of minimising harm associated with the abuse of alcohol and improving the safety of the ACT community.

Liquor Bill 2010

Outline of Provisions

PART 1 Preliminary

DIVISION 1.1 Introduction

Clause 1 - Name of Act

This clause names the Act as the *Liquor Act 2010*.

Clause 2 - Commencement

This clause notes that the Act will commence on the date decided by the Minister and notified in the Legislation Register.

Clause 3 - Dictionary

This clause explains that the dictionary at the end of the Act is part of the substantive provisions of the Act.

Clause 4 - Notes

This clause makes it clear that the notes in the Act are explanatory only and do not form part of the substantive provisions of the Act. By contrast, where the Act includes an example, the example is part of the substantive provisions of the Act having regard to section 132 of the *Legislation Act 2001*.

Clause 5 - Offences against Act – application of Criminal Code etc

This clause applies Chapter 2 of the *Criminal Code 2002* to all offences against this Act.

Clause 6 - Application of Act - generally

This clause creates exceptions to the operation of the Act. These exceptions are included because they are generally regulated by Commonwealth law, or because they occur in another similarly regulated context.

Clause 7 - Application of Act – sale of liquor

This clause disapplies the provisions of this Act relating to the sale of liquor in a number of specific circumstances.

Clause 8 - Application of Act – sale of liquor at universities

This clause disapplies the provisions of this Act relating to the sale of liquor in an exempt university building of the Australian National University (ANU) and the University of Canberra (UC), and makes it an offence for a person to sell or purchase liquor in an exempt university building in contravention of a university statute.

DIVISION 1.2 Objects and principles

Clause 9 - Object of Act

This clause sets out the object of the Act which is to minimise harm associated with the consumption of liquor and facilitate the responsible development of the liquor and hospitality industries taking into account the safety of the community when making regulatory decisions about the sale, supply, promotion and consumption of liquor.

Clause 10 - Harm minimisation and community safety principles

This clause sets out the new harm minimisation and community safety principles which the commissioner must take into account before making any decision under the Act, including a decision about issuing a liquor licence or permit

DIVISION 1.3 Important concepts

Clause 11 - What is *liquor*?

This clause defines the meaning of liquor for the purposes of the Act and provides that substances may be declared not to be liquor, despite having an alcohol content that meets the definition.

Clause 12 - Offence – sell liquor without licence or permit

This clause makes it a criminal offence for a person to sell liquor to another person without a liquor licence or permit with the exception of a private function at which 30 people or less are in attendance.

Clause 13 - Offence – fail to comply with condition of licence or permit

This clause makes it a criminal offence for a licensee or permit-holder to fail to comply with a condition on their licence or permit.

Clause 14 - Who is a *close associate*?

This clause defines the meaning of who a close associate is of an applicant for a licence or permit (or an existing licensee or permit-holder) for the purposes of providing suitability information to the commissioner for consideration. Applicants will be required to give information about close associates as well as themselves to assist with the commissioner's consideration of an application.

Clause 15 - Who is an *influential person* for a corporation?

This clause defines the meaning of who an influential person is for the purposes of dealing with an application by a corporation under the Act. The definition is central to regulating corporations applying for or holding a liquor licence or permit, as information about each influential person is also required to be provided for the commissioner's consideration in determining the suitability of a corporate application under the Act.

PART 2 LIQUOR LICENCES

DIVISION 2.1 Classes of licences

Clause 16 - What is a *licence*?

This clause sets out the five classes of liquor licences regulated by the Act.

Clause 17 - What is a *general licence*?

This clause describes the authority conferred on the holder of a general licence. Examples of a general licence would be a hotel or a winery which sells liquor for consumption on and off the premises.

Clause 18 - What is an *on licence*?

This clause describes the authority conferred on the holder of an on licence. Examples of an on licence include a bar, a nightclub or a restaurant and cafe, which sell liquor in open containers for consumption on the premises only at the stated times.

Clause 19 - What is an *off licence*?

This clause describes the authority conferred on the holder of an off licence. Examples of an off licence include wine cellars, bottle shops and supermarkets, which sell liquor for consumption off the premises.

Clause 20 - What is a *club licence*?

This clause describes the authority conferred on the holder of a club licence. This licence is used for registered clubs to sell liquor to members only or invited guests for consumption on and off the premises.

Clause 21 - What is a *special licence*?

This clause describes the authority conferred on the holder of a special licence. It allows the commissioner to respond to special market circumstances which may be subject to the imposition of conditions on the licence. It is intended to be used where an application does not readily fit any of the other licence classes, and where special licence conditions are necessary.

DIVISION 2.2 On licences – subclasses**Clause 22 - What is a *bar licence*?**

This clause defines the meaning of what a bar licence is and cites examples.

Clause 23 - What is a *nightclub licence*?

This clause defines the meaning of what a nightclub licence is.

Clause 24 – What is a *restaurant and café licence*?

This clause defines the meaning of what a restaurant and café licence is.

DIVISION 2.3 Licences – application and decision**Clause 25 - Licence - application**

This clause outlines the information which an applicant for a liquor licence must provide in writing to the commissioner with their application. Amongst other things, an applicant will be required to prepare a risk assessment management plan, which sets out how the applicant intends to manage risks associated with the proposed licensed venue.

Clause 26 - Licence – public consultation

This clause compels an applicant for a licence to comply with the public consultation provisions in Division 2.4.

Clause 27 - Licence – decision on application

This clause sets out the decision-making criteria which the commissioner must consider before issuing a liquor licence and the timeframe within which the licence must be determined.

Clause 28 – Licence – occupancy loading

This clause requires the commissioner to determine an occupancy loading for each public area within a licensed premise. The commissioner must also determine, where appropriate, an occupancy loading for any approved area outside a licensed premise, under the *Roads and Public Places Act 1937*.

Clause 29 - Licence – adults-only areas

This clause requires the commissioner to decide the appropriateness of minors being in all or parts of a licensed premise and those times when minors can be in certain areas of the licensed premises, including all classes of licences except in relation to an off licence.

Clause 30 - Licence - form

This clause sets out the information which the commissioner must include on a liquor licence.

Clause 31 - Licence - conditions

This clause makes it a condition of the licence that the licensee must comply with the Act and ensure that the licensed premise complies with the Act. The licensee is also required to comply with any condition imposed by regulation or by the commissioner. Breach of any of these conditions would expose the licensee to occupational disciplinary action (including amongst other things suspension or cancellation of the licence) by the ACT Civil and Administrative Tribunal (ACAT).

Clause 32 - Licence - term

This clause explains when a licence takes effect and expires and gives the commissioner discretion to extend the expiry date for particular classes of licence.

DIVISION 2.4

Licences – public consultation

Clause 33 – Definitions - div 2.4

This clause defines the meaning of an applicant for a licence and relevant premises.

Clause 34 - Licence – public notification of application

This clause requires an applicant for a liquor licence to place a sign at the proposed venue and publish a notice in The Canberra Times notifying the public and giving them an opportunity to comment on the proposed licensed venue at that location. Breach of this provision is a strict liability offence.

Clause 35 - Licence – representations

This clause gives the community an opportunity to make representations about the opening of a new liquor licensed premises. Representations by the community must relate to suitability information about the licensee or the premises.

Clause 36 - What is the *public consultation period*?

This clause defines the meaning of ‘public consultation period’ as it relates to how it will be prescribed and extended, where appropriate, by the commissioner.

DIVISION 2.5 Licences – amendment, transfer, renewal etc**Clause 37 - Licence - amendment initiated by commissioner**

This clause gives the commissioner power to amend a licence by written notice, but only if satisfied that certain criteria are met and the licensee has been given appropriate notice to comment on the amendment. Any decision by the commissioner to amend a licence must take into account the harm minimisation and community safety principles in section 9 of the Act.

Clause 38 - Licence - amendment on application by licensee

This clause gives a licensee an opportunity to apply to the commissioner to amend their licence. A licensee must apply and obtain approval from the commissioner before appointing a close associate, an influential person or a day-to-day manager. Where a licensee plans to apply for a different type of licence, the licensee must comply with the public consultation provisions in Division 2.4 of the Act. A decision by the commissioner must take into account the harm minimisation and community safety principles in section 10 of the Act.

Clause 39 – Licence - amendment for change to floor plan of licensed premises

This clause requires a licensee who intends to renovate, extend or reduce the size of the licensed premises to apply to the commissioner for approval to amend their licence prior to undertaking the structural alterations. It also sets out the criteria which the applicant must address in their application.

Clause 40 – Licence - application to transfer licence

This clause outlines the criteria a licensee must address when making an application to the commissioner to transfer a licence to someone else.

Clause 41 – Licence - decision on application to transfer licence

This clause outlines the criteria the commissioner must consider before agreeing to transfer a licence under section 40 of the Act.

Clause 42 – Licence - application for renewal

This clause sets out the criteria a licensee must meet and address when making an application to the commissioner to renew their licence.

Clause 43 – Licence - decision on application for renewal

This clause sets out the criteria the commissioner must consider before agreeing to renew a licence under section 42 of the Act. In deciding to renew a licence, the commissioner must take into account the harm minimisation and community safety principles in section 10 of the Act. The commissioner may request an applicant for renewal of a licence to provide a police certificate in accordance with section 71 of the Act.

Clause 44 – Licence - replacing when lost, stolen or destroyed

This clause makes provision for a licensee to obtain a replacement licence if their licence is lost, stolen or destroyed.

Clause 45 – Licence - surrender

This clause makes provision for a licensee to surrender their licence by written notice to the commissioner due to unforeseen personal or business related circumstances.

Clause 46 - Offence – fail to return licence

This clause makes it an offence for a licensee to fail to return their licence to the commissioner within seven days of ceasing to trade or where it has been suspended or cancelled.

PART 3 LIQUOR PERMITS

DIVISION 3.1 Classes of permits

Clause 47 - What is a *permit*?

This clause defines the meaning of a permit as a commercial or non-commercial permit for the purposes of the Act.

Clause 48 - What is a *commercial permit*?

This clause describes the authority conferred on the holder of a commercial liquor permit. A commercial liquor permit authorises the holder to sell liquor for profit for an approved value at times stated on the permit at the permitted premises.

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

This clause describes the authority conferred on the holder of a non-commercial or not-for-profit liquor permit. A non-commercial liquor permit authorises the holder to sell liquor in open containers for consumption on the premises or in sealed containers for consumption off the premises at an approved value at stated times at the event stated in the permit.

DIVISION 3.2 Permits – application and decision

Clause 50 - Permit - application

This clause outlines the information which an applicant for a permit must include in an application for a liquor permit. Where any aspect of an event is held within enclosed premises, additional information is required to manage potential risks associated with having large numbers of people consuming alcohol in a confined space.

Clause 51 – Permit - decision on application

This clause outlines the criteria that must be considered by the commissioner in deciding whether to grant a permit application. These considerations closely mirror those that must be considered for a licence application.

Clause 52 – Permit - occupancy loading

This clause gives the commissioner a discretionary power to determine an occupancy loading for a permitted premise, where appropriate. For example, in circumstances where the commissioner considers that a building where a permitted event is to be held is likely to become unsafe if too many patrons attend. Under this clause, the commissioner would have power to determine an occupancy loading limit for each public area in each enclosed part of the permitted event.

Clause 53 - Permit – adults-only areas

This clause gives the commissioner a power to determine an adults-only area within an area of a permitted premise which is wholly or partly enclosed where children are not allowed to enter.

Clause 54 - Permit - form

This clause outlines the minimum information which the commissioner must include on a permit.

Clause 55 - Permit - conditions

This clause makes it a condition of the permit that the permit-holder must comply with the Act and ensure that the permitted premise complies with the Act. The permit-holder is also required to comply with any condition imposed by regulation or by the commissioner. Breach of these conditions would expose the permit-holder to occupational disciplinary action (including amongst other things suspension or cancellation of the permit) by the ACT Civil and Administrative Tribunal (ACAT).

Clause 56 - Permit - term

This clause explains when a permit takes legal effect and expires and gives the commissioner discretion to extend the expiry date for the permit.

DIVISION 3.3 Permits – amendment, transfer, renewal, etc**Clause 57 - Permit - amendment initiated by commissioner**

This clause gives the commissioner power to amend a permit. This power is necessary to facilitate changes in circumstance between the time a permit is granted and the time of the event to which the permit will apply.

Clause 58 - Permit - amendment on application by permit-holder

This clause gives a permit-holder the opportunity to apply for an amendment. This power facilitates changes in the circumstances between the time the permit-holder receives the permit and the time the event is to be held.

Clause 59 - Permit - not transferable

This clause prohibits the transfer of commercial and non-commercial permits.

Clause 60 - Permit - commercial permit not renewable

This clause prohibits the renewal of a commercial permit which can only be issued for a period of up to one year.

Clause 61 - Permit - application for renewal of non-commercial permit

This clause allows a non-commercial liquor permit-holder to apply for renewal of their permit but only for a period of up to one year. Renewal of these permits will allow for yearly events for not-for-profit and social organisations who wish to sell alcohol on a limited basis.

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

This clause outlines the criteria which the commissioner must consider before renewing a non-commercial permit.

Clause 63 - Permit - replacing when lost, stolen or destroyed

This clause facilitates the replacement of a permit by the commissioner if it is lost, stolen, or destroyed.

Clause 64 - Permit - surrender

This clause makes provision for a permit-holder to surrender their permit by written notice to the commissioner.

Clause 65 - Non-commercial permit - cancellation

This clause allows the commissioner to cancel the permit if satisfied that the non-commercial permit holder has not complied with the permit. The decision to cancel the permit can be reviewed by the ACAT.

Clause 66 - Offence – fail to return permit

This clause makes it an offence for a permit-holder to not return the cancelled permit to the commissioner within seven days after the date when the permit was cancelled.

PART 4 SUITABILITY OF PEOPLE AND PREMISES FOR LICENCES AND PERMITS

DIVISION 4.1 Suitability of people for licences and permits

Clause 67 - Who is a *suitable person*?

This clause defines the meaning of a suitable person as any person the commissioner decides is suitable to hold a licence or permit under the Act.

Clause 68 - Commissioner must consider suitability information, etc

This clause outlines the criteria which the commissioner must consider in determining whether a person is suitable to hold a licence or permit under the Act.

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

This clause defines the meaning of what suitability information is for the purposes of section 68 above.

Clause 70 - What is an *eligible club*?

This clause defines the meaning of an eligible club for the purposes of the Act.

Clause 71 - Commissioner may require police certificate etc for person

This clause allows the commissioner to request a police certificate as a matter of discretion. Police certificates are generally required as part of the application process. However, this power gives the commissioner a discretion to require a police certificate at any time, as a means of ensuring (where there may be doubt) that a licensee or permit-holder continues to be a suitable person under the Act.

Clause 72 - Commissioner need not decide suitability if certificate etc not provided

This clause allows the commissioner to not decide an application or renewal for a licence or permit, if information necessary or required by the commissioner under section 71 is not provided by the person required to do so.

Clause 73 - Offence - ongoing duty to update person's suitability information

This clause makes it an offence for a licensee or permit-holder not to update the commissioner about changes to suitability information either before or after the commissioner decides the application. This will protect the integrity of the liquor licensing and permit system by ensuring that the commissioner remains up-to-date on the current status and conduct of all licensees and permit-holders. There is an exception to this offence at subsection (3).

DIVISION 4.2 Suitability of premises for licences and permits**Clause 74 - Who is the *responsible person* for premises?**

This clause defines who the responsible person is for a licensed premise and a permitted premise.

Clause 75 - What are *suitable premises*?

This clause defines the meaning of what suitable premises are for a licence or permit.

Clause 76 - Commissioner must consider suitability information, etc

This clause outlines the criteria which the commissioner must consider in deciding whether premises are suitable premises for a licence or permit under the Act.

Clause 77 - Commissioner must decide premises not suitable in some circumstances

This clause acknowledges that there will be times when the commissioner should not issue a licence or permit for stated premises, but makes provision to do so in certain circumstances.

Clause 78 - What is *suitability information* about premises?

This clause defines the meaning of what suitability information is for a licensed premise for the purposes of section 76 above.

Clause 79 - Commissioner may require certificate, plan, etc for premises

This clause gives the commissioner power to request information by written notice to the applicant to assist the commissioner decide the suitability of premises for a licence or permit under the Act.

Clause 80 - Commissioner may require inspection of premises

This clause acknowledges that the commissioner may need to inspect the premises before making a decision about its suitability for a licence or permit.

Clause 81 - Commissioner need not decide suitability if requirements not complied with

This clause allows the commissioner to refuse to decide an application for a licence or permit if information necessary or required by the commissioner is not provided.

Clause 82 - Offence - ongoing duty to update premises' suitability information

This clause makes it an offence for a licensee or permit-holder not to update the commissioner within seven days about changes to suitability information about the premises either before or after the commissioner decides the application. This will

protect the integrity of the liquor licensing and permit system by ensuring that the commissioner remains updated on the current status of the premises. There is an exception to this offence in subsection (3).

PART 5 OCCUPANCY LOADING FOR LICENSED PREMISES AND PERMITTED PREMISES

Clause 83 - What is *occupancy loading*?

This clause defines the meaning of an “occupancy loading” for the purposes of the Act as the maximum number of people allowed in any public area to which the determination applies. An occupancy loading is necessary to ensure the safety of people within a licensed premise or within a part or wholly enclosed area of a permitted premise.

Clause 84 - What is a *public area*?

This clause defines the meaning of a “public area” as an area at the premises which is open to the public.

Clause 85 - Occupancy loading decision

This clause outlines criteria which must be considered by the commissioner in determining an occupancy loading for a public area. While the recommendation of the chief fire officer must not be exceeded, the commissioner may determine an occupancy loading which allows fewer people to be within a public area.

Clause 86 - Fire engineering study and inspection

This clause sets out certain requirements which the commissioner must comply with before deciding the occupancy loading for a licence or permit. It also sets out certain requirements which the chief officer (fire brigade) must consider before making an occupancy loading recommendation to the commissioner.

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

This clause acknowledges that the commissioner must refuse to issue a licence or permit if an applicant for a licence or permit has failed to comply with an occupancy loading notice given by the chief officer (fire brigade) under subsection 86(3).

PART 6 RISK-ASSESSMENT MANAGEMENT PLANS FOR LICENSED PREMISES AND PERMITTED PREMISES

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

This clause defines the meaning of a risk-assessment management plan for the purposes of the Act.

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

This clause defines the meaning of an approved risk-assessment management plan for the purposes of the Act. The plan is designed to provide the commissioner with information about how the applicant for the licence or permit intends to manage and mitigate risks associated with the licensed or permitted premises. Applicants will be

required to provide the commissioner with details about the procedures, practices and arrangements for conducting the business to ensure that liquor sold, supplied and consumed is done so in a responsible manner.

The information which an applicant will be required to provide will be prescribed by regulation and will include, amongst other things, the type of premises for which a licence or permit is sought, that is, whether it will be a restaurant, bar or nightclub, the extent of security at the premises, transport arrangements for patrons to get home safely in the early hours of the morning if public transport is not available, and strategies in place to deal with intoxicated people and minors to ensure the responsible sale, supply and consumption of alcohol on the premises.

Clause 90 - Risk-assessment management plan - approval

This clause acknowledges that the commissioner may approve a risk-assessment management plan, but only if it is consistent with the harm minimisation and community safety principles in section 10 of the Act. The plan must address all matters prescribed by regulation.

Clause 91 - Risk-assessment management plan - amendment on application

This clause makes provision for a licensee or permit-holder to amend their risk-assessment management plan on application to the commissioner, subject to the commissioner's approval on harm minimisation and community safety grounds. Compliance with the plan is a condition on a licence and a permit.

Clause 92 - Risk-assessment management plan - decision on amendment

This clause requires the commissioner to consider the harm minimisation and community safety principles in deciding whether to amend a risk-assessment management plan. This will ensure that amendments maintain the integrity of the harm minimisation and community safety principles which shaped the commissioner's initial approval.

PART 7 AUDLTS-ONLY AREAS FOR LICENSED PREMISES AND PERMITTED PREMISES

DIVISION 7.1 Adults-only area decisions

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

This clause defines the meaning of an adults-only area as any area which the commissioner decides should be available only to adults aged 18 years or over.

Clause 94 - Adults-only areas decision

This clause sets out criteria which the commissioner must consider when deciding the adults-only area for licensed premises under section 29 or permitted premises under section 53 of the Act.

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

Clause 95 - Young people's event approval – application

This clause makes provision for a licensee to apply to the commissioner to hold an event in an adults-only area at which young people may attend. It also sets out strict criteria which a licensee must include in their application.

Clause 96 - Young people's event approval - decision

This clause allows the commissioner to approve an application to conduct a young people's event in an adults-only area only if satisfied that the applicant has met the criteria prescribed by regulation.

Strict measures are applied by regulation to ensure that young people are not exposed to or offered alcohol at these events and that their safety is maintained at all times while on the premises. Police checks for staff working at these events will be required along with full details about the event itself. These strict criteria are included to ensure that these events will only be approved in cases where all necessary precautions are taken to ensure the safety and well-being of minors.

Clause 97 - Young people's event approval – form

This clause outlines the minimum information which the commissioner must include on a young people's event approval form.

Clause 98 - Young people's event approval - conditions

This clause authorises the commissioner to impose conditions of any kind when approving an application for a young people's event under section 95. Conditions may also be prescribed by regulation for these events.

Clause 99 - Young people's event approval - term

This clause states the time periods for when an approval for an event in an adults-only area under section 96 is valid.

PART 8 CONDUCT AT LICENSED PREMISES AND PERMITTED PREMISES

DIVISION 8.1 Responsible service of alcohol

Clause 100 - Offence – supply liquor without RSA certificate – licensee or permit-holder

This clause makes it a strict liability offence for a licensee or permit-holder to supply liquor on licensed or permitted premises without having an RSA training certificate. It will also be an offence for a licensee or permit-holder if an employee supplies liquor to another person on licensed premises without having an RSA certificate.

Clause 101 - Offence - supply liquor without RSA certificate - employee

This clause makes it a strict liability offence for an employee of a licensee or commercial permit-holder to serve liquor on licensed or permitted premises without

having an RSA training certificate. The penalty is lower for an employee to reflect the employee's lower level of responsibility in relation to the licensed premises.

Clause 102 - Offence - crowd controller without RSA certificate

This clause makes it a strict liability offence for a crowd controller to work in a licensed or permitted premise and not hold an RSA certificate. It is also an offence for a licensee or commercial permit-holder to employ a crowd controller on licensed or permitted premises without them having a RSA training certificate. This requirement is essential to ensure that crowd controllers are properly trained to recognise and deal effectively with intoxicated patrons and minors on licensed and permitted premises. The required training of crowd controllers in the responsible service of alcohol should match that required of both licensees and their staff.

Clause 103 - Offence - fail to keep RSA certificates

This clause makes it a strict liability offence for a licensee or commercial permit-holder not to keep copies of RSA certificates for themselves and each employee employed to supply liquor at the premises. This offence is designed to allow for authorised investigators to easily determine whether the mandatory training requirements for RSA are being met by simply viewing a record of certificates for each licensee, permit-holder and employee on the licensed premises.

DIVISION 8.2 Intoxicated people

Clause 104 - What is *intoxicated*?

This clause defines the meaning of when a person is intoxicated for the purpose of prosecuting the offence of supplying alcohol to an intoxicated person.

Clause 105 - Offence – supply liquor to intoxicated person - licensee or permit-holder

This clause makes it a strict liability offence for a licensee or permit-holder to supply or sell liquor to an intoxicated person at licensed or permitted premises. The purpose of this offence is to ensure that public health, personal safety and social amenity are not put at risk by licensees or permit-holders selling liquor to intoxicated people on licensed premises, which can contribute to anti-social behaviour, physical assaults and more serious criminal behaviour.

It will also be a strict liability offence for a licensee or permit-holder to allow an employee to supply or sell liquor to an intoxicated patron at licensed premises.

In circumstances where subsection (6) applies under this offence, the substance will be presumed to be liquor provided that the police officer gives evidence to the effect that s/he saw the substance being supplied to the person and that s/he believed on reasonable grounds that the substance was liquor.

A defendant who wishes to deny criminal responsibility by asserting that the substance was not liquor has an evidential burden in relation to that matter pursuant to section 58 of the *Criminal Code 2002*.

Clause 106 - Offence – supply liquor to intoxicated person - employee

This clause makes it a strict liability offence for an employee of a licensee or permit-holder to supply or sell liquor to an intoxicated person on licensed premises. This offence carries a lesser penalty than the offence for a licensee, as the employee carries less responsibility for the management of licensed premises. The offence is included, however, to ensure that people who are employed to principally sell and supply liquor do so in a responsible way and not supply liquor to people who are already intoxicated.

In circumstances where subsection (4) applies under this offence, the substance will be presumed to be liquor provided that the police officer gives evidence to the effect that s/he saw the substance being supplied to the person and that s/he believed on reasonable grounds that the substance was liquor.

A defendant who wishes to deny criminal responsibility by asserting that the substance was not liquor has an evidential burden in relation to that matter pursuant to section 58 of the *Criminal Code 2002*.

Clause 107 - Offence – supply liquor to intoxicated person - other person

This clause makes it a strict liability offence for a person to supply liquor to an intoxicated person on licensed or permitted premises.

Clause 108 - Offence – abuse, threaten, intimidate staff

This clause makes it a strict liability offence for a patron to abuse, threaten or intimidate an employee on licensed or permitted premises who has refused to supply them or another person with liquor because they are intoxicated.

Clause 109 - Offence – fail to display sign about abuse offence

This clause makes it an offence for a licensee not to display a sign about the offence in section 108 as prescribed by regulation. The offence is designed to ensure that the public is made aware of the new offence for abusing, threatening or intimidating staff who are exercising RSA principles. As the offence of abusing staff is a strict liability offence, it is important that the public be made aware at every licensed premise.

DIVISION 8.3 Children and young people**Clause 110 - Offence – supply liquor to child or young person - licensee or permit-holder**

This clause makes it a strict liability offence for a licensee or permit-holder (including commercial and non-commercial permit-holders) to supply liquor to a child or young person on licensed premises. This offence is designed to protect the safety and well-being of children and young people.

It is also an offence for a licensee or permit-holder if their employees sell liquor to a child or young person on licensed premises. Licensees and permit-holders are responsible and accountable for the management of their licensed premises and must ensure that children and young people do not consume liquor on the premises. There is an exception to this offence where it can be shown that the young person was at least 16 years of age or older and had shown the defendant, the licensee/permit-holder

or a crowd controller identification. This exception is included to ensure that employees who comply with the law are not punished unjustly given the difficulty most people have accurately estimating someone else's age.

In circumstances where subsection (7) applies under this offence, the substance will be presumed to be liquor provided that the police officer gives evidence to the effect that s/he saw the substance being supplied to the person and that s/he believed on reasonable grounds that the substance was liquor.

A defendant who wishes to deny criminal responsibility by asserting that the substance was not liquor has an evidential burden in relation to that matter pursuant to section 58 of the *Criminal Code 2002*.

Clause 111 - Offence – supply liquor to child or young person - employee

This clause makes it a strict liability offence for an employee of a licensee or a permit-holder to supply liquor to a child or young person on licensed premises. Employees at licensed premises equally share the responsibility with licensees and permit-holders to prevent children and young people from consuming liquor on licensed premises. There is an exception to this offence where it can be shown that the young person was at least 16 years of age or older and had shown the defendant, the licensee/permit-holder or a crowd controller identification. This exception is included to ensure that employees who comply with the law are not punished unjustly given the difficulty most people have accurately estimating someone else's age.

In circumstances where subsection (6) applies under this offence, the substance will be presumed to be liquor provided that the police officer gives evidence to the effect that s/he saw the substance being supplied to the person and that s/he believed on reasonable grounds that the substance was liquor.

A defendant who wishes to deny criminal responsibility by asserting that the substance was not liquor has an evidential burden in relation to that matter pursuant to section 58 of the *Criminal Code 2002*.

Clause 112 - Offence - supply liquor to child or young person – other person

This clause makes it a strict liability offence for a patron to supply liquor to a minor on licensed or permitted premises. There is an exception to this offence where it can be shown that the young person was 16 years of age or older and had shown the defendant, the licensee/permit-holder, an employee or a crowd controller identification. The exception is included to ensure that people who comply with the law are not punished unjustly, given the difficulty most people have accurately estimating someone else's age.

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

This clause empowers a licensee, a permit-holder and their employees to refuse to supply liquor to a person who refuses to show their evidence of age document. This is not intended to limit the common law power to refuse service in any way.

Clause 114 - Offence – child or young person consume liquor – licensee or permit-holder

This clause makes it a strict liability offence for a licensee or permit-holder to allow a child or young person to consume liquor on licensed premises. There is an exception where the young person was at least 16 years of age or older and had shown the defendant, an employee or crowd-controller identification. The exception is included to ensure that licensees and permit-holders who comply with the law are not punished unjustly, given the difficulty most people have accurately estimating someone else's age.

Clause 115 - Offence – child or young person consume liquor

This clause makes it an offence for a child or young person to consume liquor on licensed or permitted premises.

Clause 116 - Offence – child or young person possess liquor – licensee or permit-holder

This clause makes it a strict liability offence for a licensee or permit-holder to allow a child or young person to possess liquor on licensed premises. There are exceptions for children and young people engaged in training programs, or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment. There is also an exception where the young person was at least 16 years of age or older and had shown the defendant, an employee or a crowd-controller identification. These exceptions are included to ensure that licensees and permit-holders who comply with the law are not punished unjustly, given the difficulty most people have accurately estimating someone else's age.

Clause 117 - Offence, child or young person possess liquor

This clause makes it an offence for a child or young person to possess liquor on licensed premises. There are exceptions to this offence for children and young people engaged in training programs, or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment. These exceptions are included to ensure that young people who comply with the law are not punished unjustly.

Clause 118 - Offence - child or young person supply liquor – licensee or permit-holder

This clause makes it a strict liability offence for a licensee or a permit-holder to employ a child or young person to supply liquor in an adults-only area of the licensed or permitted premises.

Clause 119 - Offence – send child or young person to obtain liquor

This clause makes it an offence for anyone to send a child or young person to buy or collect liquor from licensed or permitted premises. There is an exception to this offence where it can be shown that the young person was employed in another capacity other than the supply of liquor or was undertaking a training program prescribed by regulation. This exception is included to ensure that people who comply with the law are not punished unjustly.

Clause 120 - Offence – child or young person in adults-only area – licensee or permit-holder

This clause makes it a strict liability offence for a licensee or a permit-holder to allow a child or young person to be in an adults-only area of the licensed or permitted premises. There are four exceptions to this offence. The first is where it can be shown that the child or young person was in the care of a responsible adult as defined in subsection 120(4). The second is where the young person was employed at the licensed or permitted premises or undertaking a training program conducted by a declared training provider. The third is where the young person was attending an approved young people's event. The fourth is where the young person at the time of the offence was at least 16 years of age and had shown the defendant, an employee of the defendant or crowd-controller identification. These exceptions are included to ensure that licensees and permit-holders who comply with the law are not punished unjustly.

Clause 121 - Offence – child or young person in adults-only area

This clause makes it an offence for a child or young person to be in an adults-only area on licensed premises. There are three exceptions to this offence. The first is where it can be shown that the child or young person was in the care of a responsible adult. The second is where the young person was employed at the licensed or permitted premises in a capacity other than the supply of liquor or undertaking a training program prescribed by regulation. The third is where the young person was attending an approved young people's event. These exceptions are included to ensure that young people who comply with the law are not punished unjustly.

The intent of this clause is to protect children and young people. Children and young people in adults-only areas are placed at risk because of the presence of alcohol and potentially intoxicated people. Adults in adults-only areas can reasonably expect that children will not be present and may act in ways that they would not if they knew that children were present. This offence will place licensees and permit-holders in a stronger position to prohibit, in particular, young people who might be inclined to risk someone else incurring a penalty, but might think twice about incurring a penalty themselves.

Licensed and permitted premises are regulated. The licensee or permit-holder must have adequately sign-posted the adults-only area so that it is clear that the area is adults-only.

The low penalty of the offence reflects that, while it is an important offence, it is not serious in terms of the scheme.

Clause 122 - Offence – child or young person use false identification to enter adults-only area

This clause makes it an offence for a child or young person to use false identification as evidence of age to enter or remain in an adults-only area at licensed premises. A police officer may caution a child or young person in relation to this offence.

The intent of this clause is to protect children and young people. For the reasons stated above in clause 121, these provisions are necessary to protect the children and young people from being exposed to a harmful environment in adults-only areas on

licensed premises. In relation to children and young people using a false ID, by using someone else's ID, or deliberately creating a false ID to enter an adults-only area, a young person demonstrates a high degree of premeditation. The law needs to be clear and effective in protecting these children and young people from exposure to alcohol in licensed premises.

Licensees and permit holders will be required to place adults-only signs in licensed premises, and this together with generally available information that young people are not permitted on licensed premises, will further operate to protect children and young people from harmful exposure to liquor, and put them on notice that they are operating in a regulated environment.

The low penalty of the offence reflects that, while it is an important offence, it is not serious in terms of the scheme.

Clause 123 - Offence – fail to mark adults-only areas

This clause makes it a strict liability offence for a licensee or permit-holder not to clearly mark adults-only areas within licensed and permitted premises in accordance with requirements prescribed by regulation.

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

This clause facilitates the collection of evidence for the prosecution of offences relating to minors using false identification to enter and remain in licensed or permitted premises.

DIVISION 8.4 Occupancy loading

Clause 125 - Offence – exceed occupancy loading

This clause makes it a strict liability offence for a licensee or permit-holder to exceed the occupancy loading determined by the commissioner for the licensed or permitted premises. This is an important element of the new harm minimisation and community safety strategy, as overcrowded venues have the potential to become dangerous. In case of a fire or incident that causes a rush, over-crowding can result in death and injury to patrons. This offence is designed to reflect the importance of maintaining safe numbers of patrons in licensed and permitted premises at all times.

Clause 126 - Offence – not display occupancy loading sign

This clause makes it a strict liability offence for a licensee or permit-holder not to display an occupancy loading sign at the licensed or permitted premises.

DIVISION 8.5 Approved risk-assessment management plans

Clause 127 - Offence – fail to comply with approved risk-assessment management plan

This clause makes it an offence for a licensee or commercial permit-holder not to comply with a risk-assessment management plan (RAMP) approved by the commissioner. It is also an offence for a licensee or commercial permit-holder if their employees fail to comply with a RAMP approved by the commissioner. There is an exception to this offence where it can be shown that the defendant was complying with a condition on the licence or permit which was inconsistent with the approved

RAMP. This exception is included to ensure that licensees and permit-holders who comply with the law are not punished unjustly.

Clause 128 - Offence – fail to make risk-assessment management plan available

This clause makes it a strict liability offence for a licensee or commercial permit-holder not to make available for public inspection the risk-assessment management plan for the licensed or permitted premises in the form as prescribed by regulation.

DIVISION 8.6 Incidents

Clause 129 - What is an *incident*?

This clause defines the meaning of an “incident” for the purposes of the Act to include any violent, unlawful or anti-social behaviour at licensed or permitted premises or in the immediate vicinity, or incidents involving a person being removed from the premises or a person requiring medical attention. The definition is intended to capture a wide range of disturbances at or near licensed premises relating to public safety and order. This will ensure that incidents which occur at or near licensed or permitted premises can inform the commissioner’s consideration of the need for additional regulation at licensed premises.

Clause 130 - Incident register

This clause requires a licensee or permit-holder to keep a register on licensed premises containing specific details of each incident which occurs, as defined in section 129 of the Act. Inspection of the register by the commissioner will assist the commissioner’s consideration of the need for additional regulation of the licensed or permitted premises.

Clause 131 - Offence – fail to keep incident register

This clause makes it a strict liability offence for a licensee or permit-holder not to keep an incident register for the licensed or permitted premises in accordance with section 130 of the Act.

DIVISION 8.7 Breath testing machines

Clause 132 - What is a *breath testing machine*?

This clause defines the meaning of what a breath testing machine is.

Clause 133 - Offence – fail to display breath testing machine sign

This clause makes it an offence for a licensee and permit-holder to not display a sign at the licensed or permitted premises in the way prescribed by regulation.

Clause 134 - Evidence of breath tests

This clause explains that evidence of the results of a breath test from a machine installed at licensed or permitted premises is not admissible in a civil or criminal proceeding against a licensee or permit-holder. There is an exception, however, in civil proceedings if it can be shown that the machine did not comply with the Australian standard or that the licensee or permit-holder was aware or should have

been aware that the machine was not working correctly or the approved sign was not displayed.

DIVISION 8.8 Other offences

Clause 135 - Offence - sell petrol at premises

This clause makes it an offence for a licensee or permit-holder to sell petrol to another person at the licensed or permitted premises.

Clause 136 - Offence – conduct prohibited promotional activities

This clause makes it an offence for a licensee or permit-holder to conduct an activity at the licensed or permitted premises which encourages the excessive or rapid consumption of liquor through promotional practices or other means. This might include, for example, a drinking game that encourages participants to drink large quantities of alcohol in a short or rapid amount of time. Drink promotions can encourage excessive and irresponsible consumption of alcohol, which in turn can contribute to anti-social behaviour, alcohol-related violence and adverse health conditions. It is also an offence for a licensee to allow another person to engage in such a proscribed activity.

Clause 137 - Offence – fail to leave premises when directed

This clause makes it a strict liability offence for a person at licensed premises who has been requested to leave the premises by a licensee, permit-holder, an employee or crowd controller, and fails to do so.

Clause 138 - Offence – consume liquor at off licensed premises

This clause makes it a strict liability offence for an off-licensee to allow a person to consume liquor at an off licensed premise. It is also an offence for a person to consume liquor at an off licensed premise. This section does not apply to the licensee, their employees or family members or people tasting free samples of liquor in a sampling area of the licensed premises.

Clause 139 - Offence – sexually explicit entertainment

This clause makes it an offence for a licensee or permit-holder to allow sexually explicit entertainment at a licensed or permitted premise, unless the premises are in an area which is prescribed for that purpose or in a room on the premises used for accommodation.

Clause 140 - Offence – fail to keep licence or permit at premises

This clause makes it a strict liability offence for a licensee or permit-holder not to keep their licence or permit at the licensed or permitted premises for inspection purposes.

Clause 141 - Offence – fail to keep records in required way

This clause makes it a strict liability offence for a licensee or permit-holder to sell liquor and not record details of the sales of liquor electronically so that they are easily retrievable for at least six years.

Clause 142 - Offence – club licensee advertise for public attendance

This clause makes it an offence for a club licensee to issue a public invitation for people to attend the licensed club, as the nature of a club licence is restricted to their members and invited guests.

PART 9 DIRECTIONS, EMERGENCY CLOSURE ORDERS AND CAUTIONS

DIVISION 9.1 Commissioner's directions

Clause 143 - Commissioner may direct licensee, permit-holder, employee etc

This clause gives the commissioner a broad power to issue written directions to licensees, permit-holders and their employees. These directions will be used to ensure that licensed and permitted premises are conducted at all times in accordance with the harm minimisation and community safety principles in the Act. The commissioner's power would extend to directions prohibiting certain activities as well directions requiring certain positive activities to occur in the interests of the responsible service of liquor and community safety. Examples might include requiring a licensee to comply with an occupancy loading determined by the commissioner or requiring a licensee to reduce loud noise coming from the premises, or requiring a licensee to stop promoting liquor in contravention of the regulations.

Clause 144 - Offence - fail to comply with commissioner's direction

This clause makes it an offence for a licensee or permit-holder to fail to comply with a direction given by the commissioner. Failure by licensees or permit-holders to comply with a direction from the commissioner would make them subject to prosecution in the courts or occupational disciplinary action by the ACAT, which could include amongst other things, suspension or cancellation of the licence or permit.

DIVISION 9.2 Emergency closure orders

Clause 145 - Emergency closure of premises for 24 hours

This clause gives a senior police officer a power to order emergency closure of a licensed or permitted premise for up to 24 hours in cases where misconduct results in a risk to public health or safety of the community or risk of substantial damage to property or the environment or a serious breach of the Act. This power is intended to allow police officers to take emergency action in response to the threat of imminent harm to the community. If a closure order is made, licensees would be required to remove everyone from the premise and cease trading for the amount of time specified in the notice. A period of 24 hours is the maximum amount of time for closure; shorter periods may be ordered where appropriate, at the discretion of the senior police officer authorising the closure order. A police officer must tell the licensee or permit-holder in writing the name of the senior police officer who authorised the closure and when the closure order starts and ends.

Clause 146 - Emergency closure notice

This clause sets out the written information which must be included in an emergency closure notice issued by a senior police officer under section 145 to a licensee or permit-holder. This provision is designed to provide transparency about police procedures and ensure that proper public records are kept by the police and the commissioner.

Clause 147 - Offence – fail to comply with emergency closure order

This clause makes it a strict liability offence for a licensee or permit-holder to fail to comply with an emergency closure order made under section 145 of the Act.

DIVISION 9.3 Police cautions for children and young people

Clause 148 – Definitions – div 9.3

This clause defines the meaning of cautionary offences in the Act which permit a police officer to issue a caution to the child or young person. A cautionary offence allows police to issue a caution as opposed to an infringement notice or instituting a prosecution in response to a minor breaching certain defined offences. These offences relate to a child or young person being in an adults-only area, consuming, possessing or buying liquor and using false identification at licensed premises to do any of the aforementioned.

Clause 149 - Police may caution children and young people

This clause outlines a formal process for the issuing of a caution by a police officer to a child or young person, but only in circumstances where the child or young person has not been cautioned in the preceding 12 months for this type of offence. If a child or young person is given a written caution under the Act, the child or young person must not be prosecuted. Police are required to give a copy of the caution to the child or young person, their parents, or where appropriate, to the chief executive of the administrative unit responsible for the child or young person under the *Children and Young People Act 2008*.

The requirement for a written caution brings certain offences within the ACT Policing Guidelines on Cautions and Diversionary Programs. These guidelines provide police officers with advice on which offences may or may not be amenable to a caution.

In its construction, section 149 provides a police officer with the discretion to:

- take no action;
- issue an informal caution (which carries no legal sanction or force);
- issue an official caution; or
- charge the child or young person with the offence.

Clause 150 - Police must caution and release child or young person as soon as practicable

This clause requires a police officer who has cautioned a child or young person to arrange for the child or young person to be escorted home or arrange for a parent or guardian to collect them from the police station. In circumstances where a police officer releases the child, the police officer must advise the chief executive of the administrative unit for children and young people under the *Children and Young People Act 2008* as soon as practicable.

In relation to the child or young person returning home, collections by parent/guardian or release following the issue of an official caution, in the normal course of events, the child or young person would voluntarily agree to accompany the police officer to the police station as a condition precedent for the issue of the caution.

Clause 151 - Chief police officer may revoke cautions

This clause gives the chief police officer discretion to revoke a caution issued to a child or young person in certain circumstances and where a caution is revoked, the chief police officer must undertake specific administrative actions. A revocation of the caution has effect as if the minor had never been cautioned. The Chief Police Officer must tell the child or young person, the commissioner, and where appropriate, the child and young person chief executive, of the revocation

PART 10 ENFORCEMENT

DIVISION 10.1 General

Clause 152 - Definitions – pt 10

This clause defines the meaning of relevant terms used in Part 10 of the Act. The definitions are modelled on the investigators' powers in the *Fair Trading (Consumer Affairs) Act 1973*. Part 10 is intended to provide equivalent powers, with modifications where appropriate, for liquor investigators.

DIVISION 10.2 Powers of authorised people

Clause 153 - Power to enter premises

This clause outlines the conditions upon which investigators or police officers are authorised to enter licensed or permitted premises.

Clause 154 - Production of identity card

This clause protects the privacy rights of a licensee or permit-holder to require an investigator or police officer to show their identification cards when they enter a licensed premise.

Clause 155 - Consent to entry

This clause protects the right to privacy of a licensee or permit-holder by outlining various conditions which a police officer or investigator must comply with when seeking consent to enter a licensed premise.

Clause 156 - General powers on entry to premises

This clause outlines the activities a police officer or investigator can undertake after entering licensed premises. Occupiers or anyone else at the premises will be obliged to provide reasonable assistance in carrying out these activities.

Clause 157 - Power to seize things

This clause empowers a police officer or investigator who has entered licensed premises with consent, or under a warrant, or believing an offence against this Act has occurred, or where public safety or damage to property poses a risk, to seize anything at the premises related to an offence and of evidential value. The clause makes it a strict liability offence for a person to interfere with a seized or restricted item, as the police officer or investigator would have declared the item to be seized and not to be disturbed without the authorised person's approval. This power is not intended to limit any other power given to police in this or any other Act, and the power is only available to police officers and authorised inspectors.

DIVISION 10.3 Search warrants**Clause 158 - Warrants generally**

This clause outlines the procedures a police officer or investigator must follow to obtain a warrant for entry to premises in connection with enforcement actions under the Act. It also prescribes when a magistrate may issue a warrant and what the contents of the warrant must contain.

Clause 159 - Warrants - application made other than in person

This clause facilitates the obtaining of a warrant by an authorised person by means other than in person. This process allows for warrants to be obtained in urgent or special circumstances.

Clause 160 - Search warrants - announcement before entry

This clause protects the right to privacy of licensees or permit-holders by requiring a police officer or investigator to undertake specific actions before executing a warrant under the Act. The exception applies only if a person's safety is at risk or someone attempts to frustrate the execution of the warrant.

Clause 161 - Details of search warrant to be given to occupier etc

This clause requires a police officer or investigator to hand a copy of the warrant and a document setting out the rights and obligations of the occupier to them while the warrant is being executed.

Clause 162 - Occupier entitled to be present during search etc

This clause acknowledges the right of an occupier to be present at the licensed premises and to observe the execution of the search, except if the occupier's presence impedes the search or frustrates its objectives.

DIVISION 10.4 Return and forfeiture of things seized**Clause 163 - Receipt for things seized**

This clause provides that for any thing seized, a receipt must be given in accordance with the requirements of this clause, giving details about what will happen to the thing after it is seized.

Clause 164 - Moving things to another place for examination or processing under search warrant

This clause facilitates the movement of things which are suspected of being able to be seized under the warrant to another location only for processing. The purpose is to allow investigators to move things for the purposes of determining if the terms of a search warrant apply.

Clause 165 - Access to things seized

This clause facilitates anyone who would be entitled to inspect a seized thing or take extracts from it or make copies to continue do so after the thing is seized under this Act.

Clause 166 - Return of things seized

This clause confirms that items seized must be returned or compensation paid unless certain circumstances apply.

Clause 167 - Forfeiture of seized things

This clause provides that seized things may be forfeited to the Territory under certain conditions.

Clause 168 - Power to destroy unsafe things

This clause gives authorised people the power to destroy things that present a safety hazard. The strict liability offence is included to ensure that a direction is complied with to avoid a risk to public safety if there is a failure to comply.

Clause 169 - Application for order disallowing seizure

This clause provides an avenue for people who are entitled to claim a thing which has been seized to apply to a Magistrate to have the thing returned.

Clause 170 - Order for return of seized thing

This clause sets out specific criteria which the Magistrates Court must consider before issuing orders to return a seized thing.

DIVISION 10.5 Enforcement - miscellaneous

Clause 171 - Damage etc to be minimised

This clause imposes a duty on a police officer or investigator to minimise damage as a result of enforcement action under the Act. There is also a duty to provide notice to the owner of anything damaged, setting out the details of the damage and advising that compensation may be sought.

Clause 172 - Compensation for exercise of enforcement powers

This clause allows a person to claim compensation from the Territory and a court to order compensation be paid to the owner of a thing that has been damaged through an enforcement action, if it would be just under the circumstances to do so.

PART 11 COMPLAINTS AND OCCUPATIONAL DISCIPLINE

DIVISION 11.1 General

Clause 173 - Who is a *licensee*? - pt 11

This clause defines the meaning of a licensee to also include a former licensee and an influential person for a corporation who is a licensee or former licensee for the purposes of being subject to occupational discipline under the Act. The clause clarifies that the jurisdiction of the ACAT extends even to people who held a licence, but allowed the licence to lapse or who relinquished the licence before occupational disciplinary proceedings were complete.

Clause 174 - Who is a *commercial permit-holder*? - pt 11

This clause defines the meaning of a commercial permit-holder to also include a former commercial permit-holder and an influential person for a corporation who is also a former commercial permit-holder for the purposes of being subject to occupational discipline under the Act. After a commercial permit has expired, the ACAT may still discipline the person who held the permit at the time grounds for occupational discipline occurred. Commercial permit-holders are included so that the ACAT may disqualify a person from holding commercial permits in the future in relation to misconduct.

DIVISION 11.2 Complaints

Clause 175 - Who may complain?

This clause gives anyone a right to complain about misconduct by a licensee or commercial permit-holder to the commissioner for consideration and, where appropriate, investigation.

Clause 176 - Form of complaint

This clause sets out the information which must be included in a written complaint.

Clause 177 - Withdrawal of complaints

This clause allows a complainant to withdraw their complaint and outlines options which the commissioner may consider in relation to the complaint.

Clause 178 – Further information about complaint etc

This clause allows the commissioner to seek additional information about the complaint.

Clause 179 - Investigation of complaint

This clause compels the commissioner to investigate to a reasonable standard each complaint accepted for consideration.

Clause 180 - No further action on complaint

This clause prevents the commissioner from having to deal further with complaints which are frivolous, vexatious, disingenuous, insubstantive or which have already been adequately dealt with.

Clause 181 - Action after investigating complaint

This clause outlines the process the commissioner must follow after investigating a complaint.

DIVISION 11.3 Occupational discipline**Clause 182 - Grounds for occupational discipline - licensee**

This clause outlines the available grounds for the commissioner to seek an order for occupational discipline of a licensee by the ACAT.

Clause 183 - Grounds for occupational discipline - commercial permit-holder

This clause outlines the available grounds for the commissioner to seek an order for occupational discipline of a commercial permit-holder by the ACAT.

Clause 184 - ACAT must consider suitability information, etc about licensee or commercial-permit holder

This clause sets out the criteria which the ACAT must consider when deciding whether a licensee or permit-holder is a suitable person to hold a licence or permit.

Clause 185 - ACAT must consider suitability information, etc about premises

This clause sets out the criteria which the ACAT must consider when deciding whether licensed or permitted premises are suitable for the purpose of the licence or commercial permit.

Clause 186 - Application to ACAT for occupational discipline

This clause gives the commissioner explicit authority to apply to the ACAT if satisfied that any of the grounds listed under sections 182 and 183 exist in relation to a licensee or commercial permit-holder.

PART 12 RESPONSIBLE SERVICE OF ALCOHOL (RSA) TRAINING COURSES

DIVISION 12.1 Approval to provide RSA training courses

Clause 187 - Definitions - div 12.1

This clause defines the meaning of certain terms used in Division 12.1 of the Act.

Clause 188 - RSA training course approval - application

This clause requires a trainer to gain approval from the commissioner to provide a stated training course about the responsible service of alcohol.

Clause 189 - RSA training course approval - decision on application

This clause gives the commissioner power to grant or not grant an application lodged under section 188 of the Act.

Clause 190 - RSA training course approval - form

This clause outlines the information which the commissioner must set out in writing in an RSA training course approval form.

Clause 191 - RSA training course approval - term

This clause provides an end date for an RSA training course approval if it is not renewed or cancelled.

DIVISION 12.2 RSA training course certificates

Clause 192 - What is an *RSA certificate*?

This clause defines the meaning of what an RSA certificate is. Certificates will be given by approved training providers as evidence that employees at licensed premises have completed training in the responsible service of alcohol in accordance with this Act.

Clause 193 - RSA training course providers must give RSA certificates

This clause requires RSA training providers to give certificates for approved RSA training courses. Licensees, commercial permit-holders and employees including security guards will be required to undertake a refresher RSA training course every three years.

PART 13 LICENCE AND PERMIT REGISTER

Clause 194 - Licence and permit register

This clause requires the commissioner to keep, maintain and make available, a public register of liquor licences and permits

Clause 195 - Exception to public inspection

This clause protects the privacy rights of a licensee or permit-holder who is subject to occupational discipline by the ACAT by prohibiting publication on the licence and permit register until all avenues of appeal have been exhausted.

Clause 196 - Correction and keeping up-to-date register

This clause facilitates amendments to the licence and permit register being made by the commissioner.

PART 14 OTHER LIQUOR MATTERS

DIVISION 14.1 Alcohol-free public places

Clause 197 – Alcohol free places

This clause provides that a permanent alcohol-free place may be prescribed by regulation and a temporary alcohol-free place may be declared by the commissioner. No consumption of liquor is allowed in these declared zones. This allows the commissioner to prohibit consumption of alcohol for defined periods in relation to specific events, for example, at or near a family-oriented festival in a public place where the consumption of alcohol would not ordinarily be prohibited.

Clause 198 – Offence – consume liquor at certain public places

This clause makes it a strict liability offence for a person to consume liquor at a temporary or permanent alcohol-free place, at a bus interchange or bus station, at a place which is within 50 metres from a bus interchange or bus station or a shop or licensed or permitted premises or a place prescribed by regulation. A defendant who wishes to deny criminal responsibility by asserting that the substance was not liquor has an evidential burden in relation to the matter in subsection (4) pursuant to section 58 of the *Criminal Code 2002*.

Clause 199 - Offence - possess open container of liquor at certain public places

This clause makes it an offence for a person to possess an open container of liquor with the intent of consuming the liquor at a permanent or temporary alcohol-free place, at a bus interchange or bus station or a place that is within 50 metres from a bus interchange or bus station or a shop or licensed premises or a place prescribed by regulation. A defendant who wishes to deny criminal responsibility by asserting that the substance was not liquor has an evidential burden in relation to the matter in subsection (4) pursuant to section 58 of the *Criminal Code 2002*.

Clause 200 - Seizure of liquor in public places

This clause provides a power for a police officer or investigator to seize liquor in circumstances where they suspect that the seized liquor is in connection with the commission of an offence against sections 198 - 199 of the Act, but only if they have told the person why they are seizing the liquor. If the person from whom the liquor was seized challenges the grounds relied on to seize the liquor, the police officer or investigator must not dispose of the liquor and must proceed to either caution or charge the person. When the liquor has been disposed of, no proceedings may be commenced in relation to the liquor, nor may a caution be issued. This is intended to allow police and investigators to deal expeditiously with consumption of alcohol in prohibited public places, without commencing proceedings or issuing an infringement notice.

DIVISION 14.2**Children and young people****Clause 201 – Offence – child or young person buy liquor**

This clause makes it an offence for a child or young person to buy liquor.

Clause 202 – Offence – child or young person use false identification to buy liquor

This clause makes it a strict liability offence for a child or young person to use false identification to buy liquor. The option of issuing a caution to the child or young person under this section is available to a police officer.

Clause 203 – Offence – supply liquor to child or young person at public place

This clause makes it an offence for a person to sell or supply liquor to a child or young person in a public place. There is an exception to this offence where it can be shown that the young person was at least 16 years of age or older and had shown the defendant identification. This exception is included to ensure that people who comply with the law are not punished unjustly, given the difficulty most people have accurately estimating someone else's age.

Clause 204 – Offence – child or young person consume liquor in public place

This offence is designed to support the prohibition on children and young people from consuming liquor in a public place. A police officer may caution the child or young person for this offence.

Clause 205 – Offence – child or young person possess liquor in public place

This clause makes it an offence for a child or young person to possess liquor in a public place. There is an exception for children and young people engaged in training programs or employment, for example, at a licensed restaurant, where possession of liquor is incidental to the training or employment.

Clause 206 – Police officer may ask for identification document

This clause gives a police officer power to request a person to produce some identification if the officer believes on reasonable grounds that the person is committing an offence against the Act or is a child or young person.

Clause 207 – Offence – fail to comply with police officer's request for identification document

This clause makes it a strict liability offence for a person to fail to produce identification or produce false identification when requested to do so by a police officer. An exception applies if the police officer fails to comply with subsection 206(2).

Clause 208 – What is a *proof of age card*?

This clause defines the meaning of a proof of age card for the purposes of the Act.

Clause 209 – Proof of age cards

This clause facilitates a person who is 18 years of age or older obtaining a proof of age card as evidence of their age. Proof of age cards are used as identification for the purposes of entering licensed and permitted premises and obtaining liquor.

Clause 210 - Offence - child or young person use false identification to obtain proof of age card

This clause makes it an offence for a child or young person to use false identification to obtain a proof of age card. This is intended to discourage young people from attempting to circumvent laws excluding them from licensed premises by obtaining false identification. The option of issuing a caution under this section is available to a police officer.

DIVISION 14.3 Prohibited liquor products

Clause 211 – What is a prohibited liquor product?

This clause defines the meaning of what a prohibited liquor product is.

Clause 212 – Prohibited liquor products

This clause gives the Minister a declaratory power to prohibit the sale of a liquor product which has a special appeal to minors or which could be confused with confectionery or non-alcoholic beverages.

Clause 213 – Offence - supply prohibited liquor product

This clause makes it an offence for a person to supply a prohibited liquor product to someone else.

PART 15 NOTIFICATION AND REVIEW OF DECISIONS

Clause 214 - What is a *reviewable decision*? - pt 14

This clause defines the meaning of what a reviewable decision is for the purposes of Part 15 of the Act. All decisions listed in Schedule 1, column 3 under a provision of this Act mentioned in column 2 are decisions which are reviewable for the purposes of the *ACT Civil and Administrative Tribunal Act 2008*.

Clause 215 - Reviewable decision notices

This clause requires the commissioner to give a reviewable decision notice (as defined in the *ACT Civil and Administrative Tribunal Act 2008*) to each of the persons identified in column 4 of Schedule 1, in relation to a reviewable decision that has been made.

Clause 216 - Applications for review

This clause identifies those people who can make an application to the ACAT for review of a listed reviewable decision.

PART 16 MISCELLANEOUS

Clause 217 – Liquor guidelines

This clause gives the commissioner power to make guidelines for the Act.

Clause 218 - Declared training providers

This clause gives the Minister a power to declare a training provider for the purposes of the Act.

Clause 219 - Acts and omissions of representatives

This clause is an interpretative provision which sets out definitions and limitations in relation to a prosecution and punishment under the Act.

Clause 220 - Proceedings for offences

This clause limits the commencement of proceedings under the Act to the commissioner or a police officer.

Clause 221 - Determination of fees

This clause gives the Minister power to determine fees for the Act.

Clause 222 - Approved forms

This clause empowers the commissioner to approve forms for any purpose under the Act which must be used for that purpose.

Clause 223 - Regulation-making power

This clause empowers the Executive to make regulations for the Act and lists a number of examples of various matters for which regulations may be made to guide the exercise of the regulation-making power.

Clause 224 - Legislation repealed

This clause repeals the *Liquor Act 1975*, *Liquor Regulation 1979* and all other instruments under the Act as the Liquor Bill 2010 will replace the existing law.