

2010

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

LIQUOR (CONSEQUENTIAL AMENDMENTS) BILL 2010

EXPLANATORY STATEMENT

**Circulated by authority of the
Attorney General
Simon Corbell MLA**

Liquor (Consequential Amendments) Bill 2010

Explanatory Statement

This explanatory statement relates to the Liquor (Consequential Amendments) Bill 2010, which will be introduced into the ACT Legislative Assembly.

Overview of Bill

The Liquor (Consequential Amendments) Bill 2010 (the Bill) amends legislation because of the enactment of the *Liquor Act 2010*. The Bill makes consequential amendments to various pieces of legislation including the *Liquor Act 2010* and makes transitional arrangements in Part 20 for the implementation of the *Liquor Act 2010*.

Schedule 1 of the Bill outlines technical amendments by updating or substituting references to the *Liquor Act 1975* with references to the *Liquor Act 2010*. It also makes consequential amendments to the *Liquor Act 2010* to clarify and remove ambiguity in certain provisions.

Schedule 2 of the Bill makes consequential technical amendments related to the *Smoking (Prohibition in Enclosed Public Places) Amendment Act 2009*.

Outline of Provisions

Clause 1 - Name of Act

This clause names the Act as the *Liquor (Consequential Amendments) Act 2010*.

Clause 2 - Commencement

This clause sets out the commencement dates for amendment 1.43 in Schedule 1, and Schedule 2. It also commences amendment 1.19 in Schedule 1 on the day after the notification day for this bill, once enacted. Amendment 1.19 changes the commencement day for the Liquor Act 2010 to delay the commencement of the responsible service of alcohol provisions to allow for training before the commencement of requirement to be trained. The remaining provisions in the Bill will commence on notification day.

Clause 3 - Legislation Amended

This clause notes that this Act amends all the legislation in Schedules 1 and 2.

SCHEDULE 1 CONSEQUENTIAL AMENDMENTS

PART 1.1 Associations Incorporation Regulation 1991

Clause 1.1 Section 12(3)(b)

This clause updates a reference to the new *Liquor Act 2010*.

PART 1.2 Boxing Control Act 1993

Clause 1.2 Section 8(4)(f)

This clause inserts a new paragraph (f) which includes licensed and permitted premises under the *Liquor Act 2010*.

Clause 1.3 New section 8(9)

This clause inserts a new subsection to reference the meaning of licensed and permitted premises to the dictionary in the *Liquor Act 2010*.

PART 1.3 Building (General) Regulation 2008**Clause 1.4 Section 22(2)(b)**

This clause substitutes a new paragraph (b) to better express the provision relating to licensed premises, and includes a new paragraph (ba) relating to occupancy loadings for public areas at permitted premises.

Clause 1.5 Section 22(6), new definitions

This clause inserts new definitions for various terms used in the *Liquor Act 2010*.

PART 1.4 Children and Young People Act 2008**Clause 1.6 Section 877(4), definition of *document of identification*, paragraph (a)(ii)**

This clause substitutes a new subparagraph to update the definition of *document of identification* to include a proof of age card under the *Liquor Act 2010*.

PART 1.5 Crimes Act 1900**Clause 1.7 Section 252F(3)(c)**

This clause removes paragraph (c) because under the new *Liquor Act 2010*, only police officers will be authorised to restrain a child or young person in connection with the investigation of an offence or possible offence under the *Liquor Act 2010*.

PART 1.6 Dangerous Substances (Explosives) Regulation 2004**Clause 1.8 Dictionary, definition of *identification papers*, example**

This clause replaces the reference to the old *Liquor Act 1975*, s.175 with the new *Liquor Act 2010*, s 210.

PART 1.7 Dangerous Substances (General) Regulation 2004**Clause 1.9 Dictionary, definition of *identification papers*, example**

This clause replaces the reference to the old *Liquor Act 1975*, section 175 with the new *Liquor Act 2010*, s 210.

PART 1.8 Discrimination Act 1991**Clause 1.10 Dictionary, definition of *club***

This clause replaces the definition of club in the dictionary with the new definition in the *Liquor Act 2010* and inserts a new definition of “club licence”.

PART 1.9 Electoral Act 1992

Clause 1.11 Section 232(4)(a)

This clause replaces the reference to the *Liquor Act 1975* with a reference to the new *Liquor Act 2010*.

PART 1.10 Exhibition Park Corporation Act 1976

Clause 1.12 Section 13(2)(a)

This clause omits the reference to the *Liquor Act 1975*.

Clause 1.13 New section 13(4)

This clause inserts a new subsection which uses the definition of liquor in the *Liquor Act 2010*.

PART 1.11 Fair Trading (Consumer Affairs) Act 1973

**Clause 1.14 Section 8(2), definition of *consumer and trader legislation*,
paragraph (c)**

This clause substitutes the reference to the *Liquor Act 1975* with a reference to the new *Liquor Act 2010*.

PART 1.12 Gaming Machine Act 2004

Clause 1.15 Section 63

This clause substitutes a new section to refer to the new *Liquor Act 2010* and the *ACT Civil and Administrative Tribunal Act 2008*, and where appropriate, improve the drafting style of the provision.

Clause 1.16 Section 64

This clause substitutes a new section to refer to the new *Liquor Act 2010* and the *ACT Civil and Administrative Tribunal Act 2008*.

Clause 1.17 Dictionary, definition of *general licence*

This clause substitutes a new definition of general licence in the dictionary to reflect the definition in section 17 of the *Liquor Act 2010*.

Clause 1.18 Dictionary, definition of *on licence* and note

This clause substitutes a new definition of on licence in the dictionary to reflect the definition in section 18 of the *Liquor Act 2010*.

PART 1.13 Liquor Act 2010

Clause 1.19 Section 2

This clause replaces section 2 of the Liquor Act with new commencement times for Division 8.1 and Part 12 of the *Liquor Act 2010*. The commencement time for the offences in Division 8.1 has been delayed to allow sufficient time for licensees, permit holders, their staff and crowd controllers, to undertake a responsible service of alcohol (RSA) course and obtain their RSA certificates.

Similarly, the commencement time for Part 12 has been delayed to allow sufficient time for RSA trainers to have their RSA courses approved by the Commissioner for Fair Trading under section 189 of the *Liquor Act 2010*. The remaining provisions of the new Liquor Act will commence on notification by the Minister.

Clause 1.20 Section 25(2)(f) and notes

This clause substitutes a new paragraph (f) which clarifies that only licensed premises, which sell liquor in open containers for consumption at the licensed premises, will need to include a risk-assessment management plan (RAMP) with their application for a liquor licence. Liquor licences which permit licensees to sell liquor for consumption at the premises include a general licence (hotel), on licence (bar, nightclub or restaurant and cafe), club or special licence, but do not include an off licence, which only sells liquor for consumption off the premises. Only licensees who sell liquor for consumption at the premises need to advise the Commissioner for Fair trading how they intend to manage the risks associated with the supply, sale and consumption of liquor at the premises.

Clause 1.21 Section 39(1), new notes

This clause inserts two new notes to inform the reader that if a form is approved for a particular purpose, it must be used, and that a fee may be charged for an amendment of the licence to change the approved floor plan of the licensed premises.

Clause 1.22 Section 50(2)(c)

This clause substitutes section 50 (2)(c) to deal with the fact that the documents mentioned are not applicable to all premises.

Clause 1.23 Section 55(2)(b)

This clause clarifies a reference to licence which should have referred to a permit.

Clause 1.24 Section 78, definition of *suitability information*, new note

This clause inserts a note indicating when the Commissioner for Fair Trading would need to consider *suitability information* about the premises, in contrast with section 69 which deals with *suitability information* about a person.

In deciding whether a premises is suitable for a liquor licence or permit, the Commissioner would need to consider any previous convictions or findings of guilt against a person for an offence against the Liquor Act involving the actual premises. When deciding the suitability of premises, the Commissioner needs to know about any past problems involving the premises, so that consideration can be given to ensuring that the same problems, which may have contributed to anti-social behaviour or alcohol-related violence, are not revisited on the licensee. The Commissioner, however, when considering the criteria set out in section 78 is limited to only taking into account relevant, not irrelevant, considerations.

Clause 1.25 Section 84, example

This clause substitutes a new example of a public area at a licensed or permitted premises.

Clause 1.26 Section 90(2)

This clause amends subsection 90(2) to remove the requirement for the commissioner to identify confidential provisions from an approved risk-assessment management plan which may endanger public safety. Due to the removal of section 128, the effect of which no longer requires a licensee and a commercial permit holder to make their risk-assessment management plans available to the public, section 90(2)(b) is no longer required.

Clause 1.27 Section 91, heading

This clause substitutes a new heading to reflect the purpose of the section by using the definition in section 89 of the *Liquor Act 2010*.

Clause 1.28 Section 92, heading

This clause substitutes a new heading to reflect the purposes of the section by using the definition in section 89 of the *Liquor Act 2010*.

Clause 1.29 Section 92(4), definition of *required time* paragraph (a)

This clause corrects a wrong reference to the word application in paragraph 92(4)(a) which should have been a reference to the additional information to documents as required under section 91(4).

Clause 1.30 Section 124(4)(c)

This clause substitutes a new paragraph (c) which removes the requirement for a crowd controller to give their name to a patron, and replaces it with a requirement for them to give their identification number issued by the Commissioner under the *Security Industry Regulation 2003*, to protect their privacy.

Clause 1.31 Section 125(2)

This clause substitutes a new subsection to clarify that the offence only applies to permitted premises which have a public area with a determined occupancy loading, as not all permitted premises have an area with an occupancy loading.

Clause 1.32 Section 126(2)

This clause substitutes a new subsection to clarify that the offence only applies to a permitted premises which have a public area with a determined occupancy loading, as not all permitted premises have an area with an occupancy loading.

Clause 1.33 Section 128

This clause removes the offence on a licensee or permit holder for not making their approved risk-assessment management plans available for public inspection. As a result of further industry consultation, it was decided that it would not be appropriate for licensees to disclose to the public how they intend to manage and mitigate risks associated with the sale and consumption of liquor on licensed premises. The removal of this requirement will ensure that procedures to deal with intoxicated people will remain confidential between the licensee and the regulator, including the police.

Clause 1.34 Section 129

This clause removes section 129 from the Liquor Act, which was inserted by the Legislative Assembly when the Bill was debated. The removal of section 128 above means that licensees and commercial permit holders will not be required to make their

risk-assessment management plans (RAMP) available for public inspection. Accordingly, the offence for disclosing confidential information about a RAMP in section 129 is now redundant.

Clause 1.35 New section 136(2A)

This clause was unintentionally omitted from the *Liquor Bill 2010*. It inserts an offence for a licensee who knows about and allows another person to conduct a prohibited promotional activity at the licensed premises.

Clause 1.36 New section 154(1)(ba)

This clause inserts a new paragraph to clarify the powers of entry for inspectors and police to enter licensed premises at any time when there are reasonable grounds for suspecting that liquor is being sold on the premises. This amendment removes ambiguity and provides clarity for authorised officers to know the extent of their powers of entry under the legislation for operational reasons, and puts licensees on notice about the entry power.

New paragraph (ba) removes any ambiguity in relation to the meaning of paragraph 154(1)(a) and subsection (5). Paragraph (1)(a) provides that an authorised person may at any reasonable time enter premises that the public is entitled to use or that are open to the public. Any reasonable time is defined in subsection (5) to include at any time when the public is entitled to use the premises or when the premises are open to or used by the public.

The consequential amendment to this section merely clarifies that an authorised person may enter premises at any time when there are reasonable grounds for suspecting that liquor is being sold on the premises. This amendment will clarify the policy intent of the section, so that there is no misunderstanding about the extent of the power and when it can be used.

A licensee engaged in trade and commerce, either as a corporation or a sole trader, is a legal entity under the *Liquor Act 2010*. Section 6 of the *Human Rights Act 2004* makes it clear that only natural people and not other legal entities are entitled to the civil and political rights under the Act. Notwithstanding, this amendment contributes to the objects of the *Liquor Act 2010*, 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.

By voluntarily entering into a licence agreement, licensees are clearly on notice of the regulatory functions that apply to that privilege. The exercise of powers of entry is limited to ‘at any reasonable time’, the definition of which includes when premises are ‘open to or used by the public’ (s 154(5)) and applies to business premises only, where there are lower expectations of privacy.

Clause 1.37 Section 156(1)

This clause substitutes a new subsection to correctly reference new section 154(1)(d) of the *Liquor Act 2010*.

Clause 1.38 Section 183(1)(a) and (b)

This clause substitutes new paragraphs to include critical pieces of legislation which, if not complied with, would subject licensees to the occupational disciplinary process under the *ACT Civil and Administrative Tribunal Act 2008*.

Clause 1.39 Section 184(1)(a) and (b)

This clause substitutes new paragraphs to include critical pieces of legislation which, if not complied with, would subject permit holders to the occupational disciplinary process under the *ACT Civil and Administrative Tribunal Act 2008*.

Clause 1.40 New section 187(2)

This clause clarifies the meaning of certain people such as a permit holder and a licensee, and a licence and a commercial permit for the purposes of the application of the *ACT Civil and Administrative Tribunal Act 2008*.

Clause 1.41 Section 207(1)

This clause clarifies the provision by including the word “to”.

Clause 1.42 New section 223(1A)

This clause cites a few examples of the types of liquor guidelines the Commissioner may make. The guidelines may cover anything within the long title of the Act that is consistent with its objects and principles. The addition of a list does not limit that, it just expressly states what may be covered.

Clause 1.43 New section 224A

This clause clarifies that a licence or permit is not personal property under the definition in the *Personal Property Securities Act 2009*. This clause’s commencement will be timed to coincide with the operational start of the new Commonwealth Personal Property Securities scheme, which is expected to occur in May 2011.

Clause 1.44 New part 20

This clause inserts a number of transitional provisions into the *Liquor Act 2010* to ensure a smooth transition of the licensing framework from the repealed *Liquor Act 1975* to the *Liquor Act 2010*.

New section 250 inserts a number of new definitions for Part 20.

New section 251 provides that licensees applying for a new licence before the old licence expires on 30 November 2010, will not be required to obtain a fresh police certificate if they had provided one on or after 1 July 2010. They will also not be required to provide ACTPLA certificates and floor plans. Other licensees will be required to provide a police certificate, but will have 90 days to provide it to the Commissioner for Fair Trading, as part of their licence application.

As part of a licensee’s new licence application, the licensee will be required to provide additional commercial information about liquor purchased for supply at the licensed premises during the term of the old licence. This new information will enable the Commissioner to better determine the level of licence fee each licensee should pay for their new licence.

New section 252 provides that a licensee who applies for a new licence before the old licence expires and before commencement day does not have to comply with the new public consultation provisions. The Commissioner will have 6 months after the day the Commissioner receives the application to make a decision. The old licence will continue to have the same legal effect until the application is decided.

New section 253 provides that for an application under section 252(1) where the Commissioner must decide an occupancy loading for the licensed premises, the Commissioner can use the occupancy loading issued for the public area at the licensed premises which was determined under the old licence for the area.

New section 254 provides temporary protection for old liquor permits under the repealed *Liquor Act 1975*. Old liquor permits will be recognised as commercial liquor permits in the same way as the former liquor permit, and will expire on the day stated in the permit, or if no date is stated, three months after the commencement day.

New section 255 provides that a non-profit wine permit held before commencement day is taken to be a non-commercial permit and subject to the same conditions as the non profit wine permit. It will expire on the day stated in the wine permit or if no date stated, three months after commencement day.

New section 256 provides that old tourism wine permits will be taken to be commercial permits on commencement day. They will be treated as tourism wine permits and subject to the same conditions as the former tourism wine permits. They will expire on the day stated in the tourism wine permit, or if no day is stated, three months after the commencement day.

New section 257 provides that a person who has been issued with an RSA certificate not more than two years before Division 8.1 commences, the old RSA certificate will be recognised as a new RSA certificate and will expire one year after Division 8.1 commences.

New section 258 provides a safety net to ensure that there is provision by regulation to address any transitional matters necessary or convenient to be prescribed because of the enactment of the new *Liquor Act 2010*.

New section 259 notes that the transitional provisions in Part 20 will expire three years after the day the part commences.

Clause 1.45 Schedule 1, item 11

This clause updates item 11 to include the word “approved” risk-assessment management plan.

Clause 1.46 Dictionary, new definition of ACAT Act

This clause inserts a definition of the ACAT Act in the dictionary.

Clause 1.47 Dictionary, definition of *confidential provision*

This clause removes the definition of confidential provision which is now redundant as a result of the removal of section 128.

Clause 1.48 Dictionary, new definition of *licensed premises*

This clause inserts a new definition of licensed premises which was omitted from the Liquor Bill.

Clause 1.49 Dictionary, definition of *low-alcohol liquor*

This clause updates the definition of low-alcohol liquor to be ethanol not ethyl alcohol.

Clause 1.50 Dictionary, new definition of *permitted premises*

This clause updates the definition of permitted premises.

PART 1.14 Medicines, Poisons and Therapeutic Goods Regulation 2008**Clause 1.51 Section 173(2), definition of *proof of age card***

This clause substitutes a new definition to update the reference in the *Liquor Act 2010*, section 210.

PART 1.15 Planning and Development Regulation 2008**Clause 1.52 Dictionary, definition of *community organisation*, paragraph (c)**

This clause replaces a reference to the old *Liquor Act 1975* with a reference to the *Liquor Act 2010*.

PART 1.16 Road Transport (Alcohol and Drugs) Act 1977**Clause 1.53 Section 4A(1), definition of *public place*, paragraph (b)**

This clause updates the reference to public place to include licensed and permitted premises in paragraph (b).

Clause 1.54 Section 4A(2), definition of *licensed premises*

This clause updates the definition of licensed premises in the *Liquor Act 2010*.

Clause 1.55 Section 4A(2), new definition of *permitted premises*

This clause includes a new definition of permitted premises as set out in the *Liquor Act 2010*, dictionary.

PART 1.17 Road Transport (Driver Licensing) Act 1999**Clause 1.56 Section 39(2)(a)**

This clause updates the reference to *the Liquor Act 2010*, section 210.

Clause 1.57 Section 39(3)(a)

This clause updates the reference to the *Liquor Act 2010*, section 210.

Clause 1.58 Dictionary, definition of *proof of age card*

This clause updates the definition of proof of age card as set out in the *Liquor Act*

2010.

PART 1.18 Road Transport (Driver Licensing) Regulation 2000

Clause 1.59 Section 138B(2)(c)

This clause updates the old reference to the *Liquor Act 1975* to the new *Liquor Act 2010*.

PART 1.19 Road Transport (Public Passenger Services) Regulation 2002

Clause 1.60 Dictionary, definition of *liquor*

This clause updates the old reference to the *Liquor Act 1975* to the new *Liquor Act 2010*.

PART 1.20 Second-hand Dealers Regulation 2002

Clause 1.61 Dictionary, definition of *proof of age card*

This clause updates the definition of proof of age card as set out in the *Liquor Act 2010*.

PART 1.21 Security Industry Regulation 2003

Clause 1.62 Section 6(1)(g)

This clause makes a consequential amendment to paragraph (g) to refer to an investigator under the *Fair Trading (Consumer Affairs) Act 1973*.

PART 1.22 Tobacco Act 1927

Clause 1.63 Section 8(4), definition of *licensed premises*

This clause updates the old reference to the new *Liquor Act 2010*.

Clause 1.64 Section 14(6), definition of *document of identification*, paragraph (a)(ii)

This clause updates the old reference to the new *Liquor Act 2010*.

PART 1.23 Trustee Act 1925

Clause 1.65 Section 36(6)

This clause updates the old reference to the former *Liquor Act* to the new *Liquor Act 2010*.

SCHEDULE 2 CONSEQUENTIAL AMENDMENTS RELATED TO THE SMOKING (PROHIBITION IN ENCLOSED PUBLIC PLACES) AMENDMENT ACT 2009

Part 2.1 Liquor Act 2010

Clause 2.1 Section 183(1)(a)(v)

This clause makes a consequential amendment to update a reference to the

Smoke-Free Public Places Act 2003.

Clause 2.2 Section 183(1)(b)(v)

This clause makes a consequential amendment to update a reference to the *Smoke-Free Public Places Act 2003*.

Clause 2.3 Section 183(1)(i) and (j)

This clause makes a consequential amendment to paragraphs (i) and (j) to include the smoking prohibition which a licensee must comply with in an outdoor eating or drinking place.

Clause 2.4 Section 184(1)(a)(v)

This clause makes a consequential amendment to update a reference to the *Smoke-Free Public Places Act 2003*.

Clause 2.5 Section 184(1)(b)(v)

This clause makes a consequential amendment to update a reference to the *Smoke-Free Public Places Act 2003*.

Clause 2.6 Section 184 (1)(i) and (j)

This clause makes a consequential amendment to paragraphs (i) and (j) to include the smoking prohibition which a permit holder must comply with in an outdoor eating or drinking place.

Clause 2.7 Dictionary, new definition of *designated outdoor smoking area*.

This clause makes a consequential amendment to update the reference to the new definition.

Clause 2.8 Dictionary, definition of *enclosed public place*

This clause makes a consequential amendment to update the reference to the new definition.

Clause 2.9 Dictionary, new definition of *outdoor eating or drinking place*

This clause makes a consequential amendment to update the reference to the new definition.

Clause 2.10 Dictionary, definition of *smoke*

This clause makes a consequential amendment to update the reference to the new definition.

PART 2.2 SMOKE-FREE PUBLIC PLACES ACT 2003

Clause 2.11 Section 9F(1)(a) and (b)

This clause updates the reference to the former Liquor Act to the new *Liquor Act 2010*.