Review of the *Liquor Act 1975*
DISCUSSION PAPER

Legislation and Policy Branch
Department of Justice & Community Safety
March 2008
Review of the *Liquor Act 1975*

DISCUSSION PAPER

Released for public consultation by

Simon Corbell MLA

ACT Attorney General
This paper reflects the state of ACT law as at March 2008.

ISBN 978 0 642 60440 8

© Australian Capital Territory, Canberra 2008
This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without written permission from Territory Records Office, Community and Infrastructure Services, Territory and Municipal Services, ACT Government.
GPO Box 158 Canberra City ACT 2601

Produced by Publishing Services
Publication No 08/0268
http://www.act.gov.au
Telephone: Canberra Connect 132 281

Submissions will be made publicly available, unless otherwise requested.
CONTENTS

How to lodge a submission _______________________________________________ 6
MINISTERIAL FOREWORD ..................................................................... 7
Reform Questions ______________________________________________________ 8
PART 1 – BACKGROUND ........................................................................ 13
Chapter 1 – Why Are We Undertaking this Review? _______________________ 14
Chapter 2 – Terms of Reference ________________________________________ 15
Chapter 3 – Context __________________________________________________ 17
PART 2 – CURRENT FRAMEWORK .......................................................... 19
Chapter 4 – Classification of Liquor Licences and Permits ________________ 20
  ACT classification of liquor licences ______________________________________ 20
  New South Wales classification of liquor licences ________________ 21
  Queensland classification of liquor licences ___________________________ 22
  High risk/low risk venues __________________________________________ 23
  Restriction on market competition ____________________________________ 23
  Disciplinary action __________________________________________________ 24
  ACT classification of liquor permits ____________________________________ 24
     Liquor permit ______________________________________________________________________ 25
     Non-profit organisation wine permit ______________________________________ 25
     Tourism wine permit ______________________________________ 25
  Reform questions ___________________________________________________ 26
Chapter 5 – Current Penalty Levels Under the Liquor Act ________________ 27
  Comparative analysis of penalties Australia-wide _________________________ 27
  Criminal proceedings ________________________________________________ 28
  Possible new offence under the Liquor Act _____________________________ 29
  Reform questions ___________________________________________________ 30
  Disciplinary proceedings _____________________________________________ 30
  Reform questions ___________________________________________________ 31
Chapter 6 – The Current Definition of “Liquor” and “Intoxication” in the Act ___________________________________________________________ 32
  Evidentiary requirements for proving a substance is liquor _______ 32
  Reform question ____________________________________________________ 32
  Definition of “intoxicated” ___________________________________________ 33
     New South Wales definition of “intoxicated” __________________________ 33
  Reform question ____________________________________________________ 34
  Admission of “judicial notice” of police officers’ observations ____ 34
<table>
<thead>
<tr>
<th>Chapter 7 – Apparent Anomalies in the Legislation</th>
<th>35</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application of the Liquor Act to certain alcoholic products</td>
<td>35</td>
</tr>
<tr>
<td>Reform questions</td>
<td>35</td>
</tr>
<tr>
<td>Mandatory police checks</td>
<td>35</td>
</tr>
<tr>
<td>Reform question</td>
<td>36</td>
</tr>
<tr>
<td>ACTPLA certificate</td>
<td>36</td>
</tr>
<tr>
<td>Reform question</td>
<td>36</td>
</tr>
<tr>
<td>Internet/mail order sales of liquor</td>
<td>37</td>
</tr>
<tr>
<td>Reform question</td>
<td>37</td>
</tr>
<tr>
<td>Structure and drafting style</td>
<td>37</td>
</tr>
<tr>
<td>Reform question</td>
<td>38</td>
</tr>
</tbody>
</table>

**PART 3 – LICENSING ISSUES**

<table>
<thead>
<tr>
<th>Chapter 8 – Current Scrutiny of Applicants for Liquor Licences</th>
<th>40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standards for licensees</td>
<td>40</td>
</tr>
<tr>
<td>Prior experience</td>
<td>41</td>
</tr>
<tr>
<td>Standards for managers and senior staff</td>
<td>42</td>
</tr>
<tr>
<td>Reform questions</td>
<td>42</td>
</tr>
</tbody>
</table>

| Chapter 9 – The Impact of ‘Clusters’ of Licensed Clubs and Pubs in     | 43 |
| Central Business Districts and Semi-Residential Areas                  |    |
| Pre-requisites for ACT liquor licence applications                     | 44 |
| Number of liquor licences                                              | 44 |
| The public interest test – NSW model (Social Impact Assessment)        | 45 |
| Community Impact Statement                                             | 46 |
| Heavy discounting of alcohol                                           | 46 |
| Reform questions                                                        | 47 |

| Chapter 10 – Timeframe For Assessment of Occupancy Loadings and        | 48 |
| Enforcement                                                            |    |
| Reform questions                                                        | 49 |

| Chapter 11 – Stand-Up Drinking in Outdoor Areas                         | 51 |
| Reform questions                                                        | 50 |

| Chapter 12 – Crowd Controllers: Role, Training and Incident Registers  | 53 |
| Training and discipline of crowd controllers                           | 53 |
| Requirement to maintain a register of incidents                        | 53 |
| Reform questions                                                        | 54 |

| Chapter 13 – Role of the Liquor Licensing Board                         | 55 |
Chapter 14 – Underage Drinking
Underage drinking
Reform questions

PART 4 – MOVING FORWARD WITH LIQUOR REGULATION IN THE ACT

Chapter 15 – Infringement Notices for Liquor Licensees, Permit Holders and Bar Staff for Offences Under the Liquor Act
Suitability of infringement notices for certain offences
Reform questions

Chapter 16 – Voluntary Breath-Testing of People Out Late in Canberra
Reform questions

Chapter 17 – Mandatory Staff Training in the Responsible Service of Alcohol (RSA) and Employment of Minors on Licensed Premises
Reform questions
Minors serving liquor on licensed premises
Reform question

Chapter 18 – Lockouts/Curfews
Experience of other jurisdictions
Empirical research
Reform question

Chapter 19 – Prescribed Alcohol-Free Areas
Reform questions

Chapter 20 – “Plimsoll Lines” on Glasses
Reform questions

Chapter 21 – The Development of a Code of Conduct and/or Liquor Accords for the Liquor and Licensed Hospitality Industry
Liquor accords
NSW framework
Evaluation of accords
ACT’s experience
Reform questions

PART 5 – REGULATORY RESOURCES

Chapter 22 – Adequacy of Existing Liquor Laws Regulatory/Operational Resources in the Territory
Reform questions

Glossary
How to lodge a submission

Interested parties are invited to lodge written submissions via post, email or facsimile.

Postal Address:

Liquor Review
Legislation and Policy Branch
Department of Justice and Community Safety
GPO Box 158
CANBERRA ACT 2601

Email Address:

liquor.review@act.gov.au

Facsimile Number:

(02) 6205 0937

The closing date for submissions is 30 June 2008.
MINISTERIAL FOREWORD

The ACT Government recognises the significant contribution made by the local liquor industry to Canberra’s economy, but this contribution needs to be assessed in conjunction with the growing financial and social costs associated with the misuse and abuse of alcohol.

The government is concerned about alcohol-related anti-social incidents in Canberra, especially at popular nightspots and at Summernats. Government involvement is needed to address these issues.

Government alone, however, cannot resolve all the issues arising from the misuse and abuse of alcohol, which impacts on the whole of society. Responsibility lies equally with the public and private sectors, with the liquor hospitality and advertising industries, with individuals, families and the wider community.

The government also recognises that there are limits to what the regulation of liquor licensees can achieve in addressing wider alcohol issues, such as binge drinking and minors being supplied with alcohol by parents, friends and siblings.

The Discussion Paper examines the current ACT liquor laws, raises various alcohol-related issues and puts forward possible reform options. The paper is intended to encourage broad community debate, and in particular, a greater awareness by liquor licensees, their employees and the wider public, about the significant social and health-related costs associated with the misuse and abuse of alcohol.

In parallel with this public consultation process, the government will continue to analyse developments in other jurisdictions and consider innovative programs to reduce alcohol-related violence and binge drinking. This process will create not only a healthier drinking culture that builds on the reform options suggested in this paper and other proposals emerging from public debate, but will also continue to make Canberra a safe and fair community in which to live.

I encourage you to consider the issues raised in the Discussion Paper and invite you to lodge a written submission expressing your views on how we should best move forward to ensure the responsible sale and safe consumption of liquor in the Territory.

Simon Corbell MLA
Attorney General
Review of the *Liquor Act* 1975

**Reform Questions**

**Chapter 4 – Classification of Licences**

1. Should the Liquor Act be amended to introduce a risk-based liquor licensing regime (for example, similar to the simple liquor licensing model proposed for Queensland) to better reflect the low level of risk and cost of government regulation for certain venues, such as small boutique bars, cafes and restaurants?

2. Should higher fees be imposed for trading after a certain time (for example, midnight) to reflect the higher risk/high regulatory cost to government which late trading venues tend to incur?

3. Should the Liquor Act be amended to permit a holder of an on-licence to also sell liquor for consumption off the premises?

4. Should licensees who have breached the Liquor Act be subject to disciplinary proceedings by the Liquor Licensing Board, such as disqualification for holding a licence? If so, for how long?

5. Similarly, should permit holders be subject to disciplinary proceedings by the Liquor Board?

**Chapter 5 – Current Penalty Levels Under the Liquor Act**

6. Should the Liquor Act be amended to increase criminal penalties which may be imposed by the Court?

7. Should the Liquor Act be amended to create a new offence for a patron who purchases liquor for, or supplies liquor to, an intoxicated person in a licensed premises? If so, should it be a defence for parents or guardians of minors, or persons authorised by parents or guardians, to obtain or supply liquor to a minor?

8. Should the Liquor Act be amended to create a new criminal offence for a licensee who allows a patron to purchase liquor for, or supply liquor to, an intoxicated person and/or minors in licensed premises?

9. Should the Liquor Act be amended to create a new criminal offence for bar staff working in licensed premises to sell or supply liquor to an intoxicated person? If so, should the penalty be less than for a licensee?

10. Should the Liquor Act be amended to create a new offence for a licensee to engage in practices or promotions, which encourage rapid or excessive consumption of liquor?

11. Should the Liquor Act be amended to empower the Registrar of Liquor Licences to automatically suspend the licence of a licensee in certain circumstances – for example, if convicted of two offences in relation to minors or intoxicated persons within a certain period? If so, how long should the period of disqualification be – for example, six months or one year?
12. Should a licensee pay a specified monetary penalty as a sanction in certain circumstances, for example linked to any financial benefit gained from systematic unlawful behaviour (such as selling alcohol to under-age people or intoxicated people)?

13. If so, should the specified monetary penalty be capped or should the level be determined on a case-by-case basis?

14. Should the Liquor Act be amended to permit the Registrar to disqualify a licensee or a defined influential person from certain types of work (for example, working in or managing licensed premises for a stated period)?

Chapter 6 – The Current Definition of “Liquor” and “Intoxication” in the Act

15. Should the Liquor Act be amended to extend the rebuttable presumption in the Crimes Amendment Bill 2008 to circumstances where police or ORS inspectors suspect on reasonable grounds that an unmarked glass or soft drink bottle contains an alcoholic beverage?

16. Should the Liquor Act be amended to lower the standard of proof for proving that a licensee or permit-holder has sold or supplied liquor to an intoxicated person?

Chapter 7 – Apparent Anomalies in the Legislation

17. Should the Liquor Act be amended to include a provision allowing for certain substances to be exempted from the operation of the Act? If so, should exemptions apply for all, or only limited purposes?

18. Should the definition of “liquor” in the Liquor Act be amended to include alcoholic products which are not beverages?

19. Should the Liquor Act be amended to require applicants for a licence to undertake a police check prior to lodging their application for a liquor licence? Should the costs of complying with the liquor licence application rules lie with the applicant?

20. Should the Liquor Act be amended to require an applicant for a liquor licence to obtain a certificate stating that the proposed premises are not in breach of any Crown lease conditions prior to lodging the application with ORS?

21. Should the Liquor Act be amended to create a subclass within the off-licence category to cater for internet/mail order sales of liquor?

22. Should the structure of the Liquor Act be updated to more clearly outline a licensee’s obligations and better reflect current drafting standards?

Chapter 8 – Current Scrutiny of Applicants for Liquor Licences

23. Should the Liquor Act be amended to require applicants for a liquor licence to demonstrate prior liquor industry experience?
24. Should the Liquor Act be amended to extend the licensing regime for liquor licensees to managers and senior staff of licensed premises?

Chapter 9 – The Impact of ‘Clusters’ of Licensed Clubs and Pubs in Central Business Districts and Semi-Residential Areas

25. Should the Liquor Act be amended to require new applicants for a liquor licence to undertake a “community impact statement” process before submitting their application for a liquor licence?

26. Should the ACT introduce restrictions on heavy discounting of alcohol? If so, how should these restrictions be regulated (for example, as part of an industry self-regulatory code of conduct or an offence under the Liquor Act)?

Chapter 10 – Timeframes for Assessment of Occupancy Loadings

27. Should the Liquor Act be amended to require the licensee to organise an occupancy loading assessment, and if so, when (for example within a specified timeframe, or prior to lodging their application for a liquor licence)?

28. Should the Liquor Act be amended to specify a timeframe within which the Registrar must determine an occupancy loading limit prior to the issue of a licence?

29. Should the Liquor Act be amended to require the Registrar to determine an occupancy loading prior to the issue of a licence?

30. Should the Liquor Act be amended to raise the level of penalties for licensees who breach their assessed occupancy loading?

Chapter 11 – Stand-Up Drinking in Outdoor Areas

31. Should the Liquor Act be amended to permit stand-up drinking in outdoor areas of licensed premises?

32. Is stand-up drinking in outdoor areas consistent with the harm minimisation principles in the Liquor Act?

Chapter 12 – Crowd Controllers: Role, Training and Incident Registers

33. Should the training requirements and disciplinary options for crowd controllers under the Security Industry Act 2003 be extended to include Responsible Service of Alcohol (RSA) training?

34. Should the Liquor Act or the Security Industry Act be amended to require all licensees to keep an incident register, irrespective of whether they hold a security master licence?

Chapter 14 – Underage Drinking

35. Should the Liquor Act be amended to raise the level of criminal penalty for selling, supplying alcohol to minors on licensed premises? If so, should the criminal penalties include a period of imprisonment (for example, similar to New South Wales)?
36. Should the Liquor Act be amended to change the sanction/s applicable where the licensee has been convicted of a number of offences relating to minors within a specified period? If so, should the regime be graduated (for example, escalating depending on the number of offences and the time period) and should there be a threshold for automatic suspension/cancellation of a licence?

37. Should the infringement notice scheme be extended to cover licensees and employees serving alcohol to minors?

Chapter 15 – Infringement Notices for Liquor Licensees and Bar Staff for Offences under the Liquor Act

38. Should the ACT infringement notice scheme be extended to apply to more Liquor Act offences? For example, should the relevant legislation be amended to introduce infringement notices for:

- licensees, employees and patrons selling or supplying liquor to an intoxicated person on licensed premises;
- licensees, employees and patrons selling or supplying liquor to a minor on licensed premises;
- overcrowding of premises;
- failing to complete incident registers;
- failing to comply with RSA requirements; and
- refusing to leave a licensed premises when directed to do so by the licensee.

Chapter 16 – Voluntary Breath-Testing of People Out Late in Canberra Night Life

39. Should the Liquor Act be amended to introduce voluntary breath-testing in licensed premises, for example, in Civic, Manuka and Kingston? If so, should the requirement extend to all licensed premises in the Territory?

40. If so, who should be responsible for enforcing the legislative requirement for licensees to purchase and properly maintain a breath-testing device?

Chapter 17 – Mandatory Staff Training in the Responsible Service of Alcohol (RSA) and Employment of Minors in Licensed Premises

41. Should ORS undertake a review of the contents of the approved RSA training courses?

42. Should the Liquor Act be amended to require all staff involved in the service of alcohol to undertake RSA training?

43. Should staff be required to undertake refresher courses? If so, within what period of time?
44. Should failure to comply with compulsory RSA training attract a criminal penalty or be subject to disciplinary proceedings?

45. Should the Liquor Act be amended to prohibit a licensee from causing or allowing a minor to sell, supply or serve liquor on licensed premises? If so, what exceptions and defences might be appropriate?

Chapter 18 – Lockouts/Curfews

46. Should the government introduce lockout/curfew times for licensed premises in the ACT? If so, what would be an appropriate lockout/curfew time?

Chapter 19 – Prescribed Alcohol-Free Areas

47. Should the Liquor Act be amended to introduce prescribed alcohol-free areas in the central business districts and at family events?

48. If so, which areas (for example, Civic, Manuka, Kingston) and which events should be targeted?

Chapter 20 – “Plimsoll Lines” on Glasses

49. Should the ACT trade measurement legislation be amended to require a plimsoll line on glasses of drinks sold in licensed premises?

50. If so, to what kind of drinks should the requirement extend?

Chapter 21 – The Development of a Code of Conduct for the Liquor and Licensed Hospitality Industry

51. Should an industry self-regulatory liquor accord including a Code of Conduct for the liquor and licensed hospitality industry be developed?

52. Should the Liquor industry, ACT Policing, ORS and other local community members develop and participate in a co-regulatory ACT liquor accord? If so, should it be modelled on the NSW liquor accord co-regulatory scheme?

Chapter 22 – Adequacy of Existing Liquor Law Regulatory/Operational Resources in the Territory

53. Are the existing liquor law regulatory/operational resources available through ORS and ACT Policing adequate to ensure the responsible sale and safe consumption of alcohol in the ACT?

54. Should the enforcement and compliance role of ACT liquor laws be undertaken by ORS or ACT Policing or both, or some other organisation?

55. What balance should be struck between the need for additional regulation of the use/service of alcohol, and the allocation of resources for competing regulatory/policing activity?
PART 1 – BACKGROUND
Chapter 1 – Why Are We Undertaking this Review?

The Attorney General has identified three factors as relevant to his decision to initiate the review of the Liquor Act:

- following meetings between the Australian Hotel Association (AHA) and the Attorney General in 2005 and 2006, the ACT government agreed to a review of the Act during its current term of government. The Chief Minister more recently confirmed his commitment to review the Liquor Act within the term of this government;

- in June 2007, the Auditor General released a performance audit report entitled Regulation of ACT Liquor Licences. The report contained a number of operational and legislative recommendations;

- the ACT government is concerned about reports of drunken, anti-social behaviour at night in public places around Canberra, most recently in Manuka, Civic and at Summernats and the impact of this behaviour on shop owners and the wider community. It is recognised that these activities are strongly linked to the effectiveness of liquor licensing and thus the development of sound policy, as a result of the review, can provide assurance for greater community safety and wellbeing. While the review is concentrated on the regulation of alcohol sales and consumption, it is nonetheless anticipated that it will generate innovation and ideas, which will be useful in the wider community safety context.
Chapter 2 – Terms of Reference

I, Simon Corbell, ACT Attorney General, request the Legislation and Policy Branch of the Department of Justice and Community Safety to undertake a review of the ACT Liquor Act 1975 to determine whether the current law is adequate in satisfying community expectations about the responsible sale and consumption of alcohol in the Territory.

As part of this process, the review will examine the legislation and regulatory regime of the current liquor laws within the ACT community.

In particular, the Liquor Act review will examine the appropriateness and effectiveness of the following:

**Current Framework**
- the classification of licences;
- current penalty levels under the Liquor Act;
- the current definition of ‘liquor’ and ‘intoxication’; and
- apparent anomalies in the legislation.

**Licensing Issues**
- current scrutiny of applicants for liquor licences;
- the impact of ‘clusters’ of licensed clubs and pubs in the central business district and semi-residential areas;
- a timeframe for assessment of occupancy loadings;
- stand-up drinking in outdoor areas;
- crowd controllers at licensed premises: role, training, incident registers; and
- the role of the Liquor Licensing Board.

**Moving Forward with Liquor Regulation in the ACT**
- on-the-spot fines for liquor licensees for offences under the Liquor Act, including fines for serving alcohol to intoxicated people;
- options to address overcrowding of premises;
- options to address underage drinking;
- voluntary breath-testing of people out late in Canberra night life;
- mandatory staff training in the Responsible Service of Alcohol (RSA) and employment of minors on licensed premises;
- lockouts or curfews to prevent patrons entering licensed premises after a certain time;
- prescribed alcohol-free areas in the central business district and at family events (such as the Australia Day Live Concert and Skyfire);
- ‘plimsoll’ lines on glasses; and
- the development of a Code of Conduct for the liquor and licensed hospitality industries, to promote a level of self-regulation within the industry.
**Regulatory Resources**

- the adequacy of existing liquor law regulatory/operational resources in the Territory to handle existing and possible future regulatory options.

The review will report on ways to improve the legislative and regulatory regime for the responsible sale and consumption of alcohol within the ACT community.

A review of the ACT *Liquor Act 1975* is timely given that it has not been the subject of a substantive review since its inception in 1975.

**Internal Scoping Paper**

An internal departmental scoping paper is to be prepared in early 2008, summarising the issues, which will be examined in the review.

**Release of Discussion Paper**

A discussion paper is to be released by the Department of Justice and Community Safety in March 2008 seeking comment and inviting submissions from interested parties and the general public over a three month period to expire end of June 2008.

After the consultation period has concluded, a final report will be prepared by 31 July 2008 for the Attorney General's consideration.
Chapter 3 – Context

The Office of Regulatory Services (ORS) in the Department of Justice and Community Safety (JACS) administers the Liquor Act 1975 (the Liquor Act) which regulates the sale and supply of liquor through the licensing of business people and the approval of suitable premises. The Liquor Act has not been formally reviewed since its inception in 1975.

The object of the Liquor Act is to promote and encourage responsibility in the sale and consumption of liquor through the establishment of a regulatory scheme of liquor licences and permits to ensure that the sale and supply of liquor in the ACT is consistent with minimising the costs to government and the community from the misuse and abuse of alcohol.

It is well documented that excessive consumption of alcohol can lead to serious health, social and economic problems. Alcohol abuse has been linked to a wide range of physical and mental health problems including brain damage, liver disease and various types of cancer. Relationships and work can also be compromised by alcohol. In addition, alcohol has been identified as a significant contributing factor to violence in Australia.

In July 2007, the AHA, representing the interests of the licensed hospitality industry in the ACT, released a discussion paper entitled “Liquor Licensing and Regulation”. The AHA’s discussion paper requested a review of the Liquor Act and also contained a number of recommendations for government to consider.

As part of increasing efficiency and cost effectiveness, the Liquor Licensing Board (the Liquor Board), which adjudicates matters under the Liquor Act, may be incorporated into a consolidated single tribunal. The ACT government’s 2006 budget papers announced that the “government will review tribunal structures, with a view to increasing efficiency and cost-effectiveness”. JACS has reviewed existing ACT tribunal structures and has proposed a new model which would lead to greater efficiency and cost-effectiveness.
PART 2 – CURRENT FRAMEWORK
Chapter 4 – Classification of Liquor Licences and Permits

The ACT has a comprehensive liquor licensing system which regulates who, where, how and when liquor can be sold.

The AHA has expressed a market competition concern about the ability of a holder of a club licence to sell packaged liquor over the counter for consumption away from the premises, in contrast with a holder of an on-licence who is prohibited from doing so. The AHA submits that further discussion is required on the possible merits of changes to current licence classifications.

ACT classification of liquor licences

Currently, the following types of licences are issued under the Liquor Act:

<table>
<thead>
<tr>
<th>Licence Category</th>
<th>Conditions/Description</th>
<th>Type of Venue</th>
<th>Number of Active Licences</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>sale of liquor for consumption either on or away from the premises</td>
<td>Premises with separate bottle shops</td>
<td>14</td>
</tr>
<tr>
<td>On</td>
<td>sale of liquor for consumption on the premises only</td>
<td>Restaurants, taverns, bars, discos, late night entertainment venues</td>
<td>311</td>
</tr>
<tr>
<td>Off</td>
<td>sale of liquor for consumption away from the premises only</td>
<td>Liquor shops, supermarkets</td>
<td>177</td>
</tr>
<tr>
<td>Special</td>
<td>sale of liquor subject to specified conditions</td>
<td>Educational facilities, wineries, adult entertainment venues, internet sales</td>
<td>40</td>
</tr>
<tr>
<td>Club</td>
<td>sale of liquor on the premises to members of the club and invited guests, and away from the premises</td>
<td>Licensed clubs (generally with gaming machines)</td>
<td>64</td>
</tr>
</tbody>
</table>

The Liquor Licensing Standards Manual (the Manual) promotes and encourages the responsible sale and consumption of alcohol by setting standards for:

• the construction of buildings to be used as licensed premises and the standard of fittings; and
• the conduct of licensed premises, particularly in relation to the responsible sale and consumption of liquor.

The Registrar of Liquor Licensing (the Registrar) determines the ‘primary purpose’ of a premises by reference to the layout of the premises, the various sizes of the areas of the premises being used for particular activities (i.e. meals, bar, dancing), the trading hours, how liquor is sold (beer on tap or bottled), the range of liquor sold, and the variety and types of food provided. For these purposes, the premises will be categorised as one of the following:

- Club
- Off
- Wholesale
- General
- Restaurant
- Restaurant/Tavern
- Tavern/Bar
- Nightclub.

**New South Wales classification of liquor licences**

The New South Wales Liquor Act 2007 which was recently amended (13 December 2007) introduced a number of reforms including a consolidation of over 20 licence categories down to six categories and one sub-category. These reforms were introduced to reduce costs on the regulator and people applying for licences, simplify overly prescriptive licence categories and provide greater flexibility for a wider variety of licensed venues – including special arrangements for small bars and tourism operators.²

<table>
<thead>
<tr>
<th>Licence Category</th>
<th>Subcategory</th>
<th>Conditions/Description</th>
<th>Type of Venue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel</td>
<td>General bar</td>
<td>sale of liquor for consumption on premises only. Gaming machines are not permitted.</td>
<td>bars, discos, late night entertainment venues</td>
</tr>
<tr>
<td>Hotel</td>
<td>General bar</td>
<td>sale of liquor for consumption either on or away from the premises. Gaming machines are permitted.</td>
<td></td>
</tr>
<tr>
<td>Club</td>
<td></td>
<td>sale of liquor on the premises to members of the club and invited guests, and away from</td>
<td>registered clubs (generally with gaming machines)</td>
</tr>
</tbody>
</table>

On-premises | the sale or supply of liquor must be ancillary to another product or service that is sold, supplied or provided to people on the licensed premises.

Packaged liquor | sale of packaged liquor for consumption away from the premises | liquor shops, supermarkets

Producer/wholesaler | Sale of liquor by wholesale, and for customer consumption on premises for tasting purposes | vineyards, producers’ markets and fairs, wine shows

Limited | Sale for consumption on premises only, in connection with a function

**Queensland classification of liquor licences**

Queensland is currently reviewing its licence classifications. As part of Queensland's current liquor reform, it is proposed to streamline its 14 current licence categories into two distinct licence types – commercial and community – with subcategories within each based on risk. The proposed subcategories under commercial licences would be hotel, casino and other, and the sub-categories under community licences would be club and other.

In categorising proposed licence types, Queensland has recognised both the varying risk factors associated with the different types of licensed venues and the need to ensure compliance with the basic objects of the Liquor Act and their capacity for being monitored and enforced. Queensland believes that this is best achieved by introducing a simplified licensing system to accommodate the supply of alcohol for lower risk community-based organisations such as RSL clubs and other community based cultural clubs.3

The Queensland model will scale licence fees according to risk and will contribute to harm minimisation as the first objective of the Queensland Liquor Act.

In the ACT, it has become apparent that some licence categories may be too broad to accommodate developing market trends for the responsible sale and consumption of alcohol. With the evolution of the popular café scene and smaller boutique bars Australia wide, liquor licence categories are currently under review in most Australian jurisdictions.

---

High risk/low risk venues

Many jurisdictions are now distinguishing between high risk and low risk venues to better target scarce regulatory resources. For example, Queensland has identified high risk venues which incur high cost regulation. In the ACT on-licence category, there is a broad variety of venues including restaurants, taverns, bars, nightclubs and discos, which require different levels of regulatory supervision involving ACT Policing and ORS liquor inspectors. For example, the level of alcohol-related risk associated with restaurants whose core business is the preparation and sale of meals, accompanied by an alcoholic beverage generally consumed before midnight, can be contrasted with night clubs and bars, whose core business is primarily the sale of alcohol for consumption on premises from between 10pm and 5am.

The ACT’s current on-licence categories do not distinguish between large bars and the growth of smaller, boutique style licensed venues. Both New South Wales and Queensland have responded to community preference for these smaller type venues (60 or less patrons), which enhance the ambience of a city and deliver lower regulatory impact. Both jurisdictions have introduced separate licence categories and lower licence fees for these types of venue.

Queensland is planning to introduce an extended hours trading approval to trade after 12am, which would incur increased financial cost to reflect the cost to government of regulating the industry during a period when there is a greater potential for the misuse and abuse of alcohol. In addition, Melbourne bars with a 24-hour licence could have their operating hours cut under measures the Victorian government is considering to address binge drinking and violence.4

A new sub-category for small bars and restaurants/cafes and a commensurate increase in fees for those venues which choose to trade after 12am might be appropriate for the ACT marketplace to reflect the low regulatory impact and cost of certain venues.

Restriction on market competition

Currently the holder of a club licence can sell liquor on the premises to its members and their guests, and also sell liquor for consumption by its members and guests away from the premises. In contrast, a holder of an on-licence can only sell liquor for consumption on the premises.

A holder of a general licence may sell liquor for consumption on and off the premises, but sales for consumption off-premises must be made through a separate area and not over the bar.

Review of the *Liquor Act 1975*

The AHA submits that the inability of on-licence holders to sell packaged liquor should be reviewed to create a level playing field in the liquor industry.

In the ACT, there are currently 311 on-licensees (more than any other licence category) who sell liquor in restaurants, taverns, bars, discos and nightclubs. These venues are predominantly concentrated in central business districts, for example, Civic, Manuka, Kingston, Dickson. Allowing patrons to consume liquor in the venue and purchase liquor to take away may encourage some patrons to consume the take-away alcohol, either on the public street or on the way to the next venue.

A relaxation of liquor licensing laws to create a level playing field in the liquor market may contribute to even greater levels of drunken, anti-social behaviour at night in public places around Canberra. It also raises significant issues of public health and safety, and may not be consistent with harm-minimisation principles and the responsible consumption and service of alcohol in the Territory.

**Disciplinary action**

At present, the Liquor Board cannot take action against former licensees for breaches of the Liquor Act. For example, in a recent matter heard by the Liquor Board, the Board could not hear a licence cancellation application filed by the Registrar, as the licensee had surrendered his licence. It has been submitted by some stakeholders that the Liquor Board should have the power, in those circumstances, to hear and determine the matter, and where appropriate, order that the licensee be disqualified from holding a licence in future.

Currently, there is no power under the Liquor Act for the Liquor Board to disqualify a person from holding a liquor licence. In South Australia, the licensing court has the power to disqualify individuals from being licensed or approved under the Act. Similar powers exist for liquor authorities in other jurisdictions including Victoria and NSW.

In other jurisdictions, such as Queensland, a person can be disqualified from holding a licence for a period of time where the person has committed liquor-related offences.

**ACT classification of liquor permits**

The Liquor Act also authorises three types of permits under the Act; liquor permits, non-profit organisation wine permits and tourism wine permits.

Permits can be obtained by making an application to the Registrar. The Registrar may make a decision whether to authorise or refuse to authorise the issue of a permit, or may refer the decision to the Liquor Board.
Liquor permit

A liquor permit authorises the holder to sell a stated dollar figure of liquor, at a stated event, at the time and places stated. Liquor permits do not allow the holder to sell liquor in closed containers, or in a container that has a means of being closed. For example, liquor sold in aluminium cans must be opened before they are sold to individuals. If liquor is sold in a bottle that can be closed by a lid, the lid must not be provided to individuals.

A liquor permit will only be issued where there will be adequate toilet facilities available at the event; the event is not likely to result in disturbance or inconvenience to people living near the event; the amount of liquor does not exceed an amount reasonably needed for the event; and, it is in the public interest to issue the permit.

Non-profit organisation wine permit

A non-profit wine organisation wine permit authorises the holder to sell, in closed containers, a stated dollar figure of liquor, at a stated event, at the time and places stated.

A non-profit organisation wine permit will only be issued where the applicant is or represents a non-profit organisation; all profits will benefit a non-profit organisation; the applicant is not a club licence holder; and, it is in the public interests to issue the permit.

Tourism wine permit

A tourism wine permit authorises the holder to sell, in closed containers, the amount of wine stated in the permit, at the event stated in the permit, a stated dollar figure of liquor, at a stated event, at the time and places stated.

A tourism wine permit will only be issued where an applicant holds a licence or permit under the Act, or under the law of another state or territory, to sell wine; the applicant was involved in the production or processing of wine; the wine is to be sold at a tourism or promotional event; and, it is in the public interest to issue the permit.

The amount of the fee payable for the issue of a permit is based on the purchase of alcohol products or the proposed wine sales. The maximum permit fee payable is $122 for purchases of alcohol products and proposed wine sales over $2,000.

To date no disciplinary proceedings have been taken against permit holders, as the permit invariably expires before action can be taken. The disciplinary action which could be taken against permit holders is limited to cancellation of a permit which, in most cases, would be ineffective occurring well after the event.

Currently, there is no power under the Liquor Act for the Liquor Board to disqualify a person from holding a permit. In South Australia, the licensing court has the power to discipline individuals from being licensed or approved
under the Act. Similar powers exist for liquor authorities in other jurisdictions, including Victoria and NSW.

Reform questions

1. Should the Liquor Act be amended to introduce a risk-based liquor licensing regime (for example, similar to the simple liquor licensing model proposed for Queensland) to better reflect the low level of risk and cost of government regulation for certain venues, such as small boutique bars, cafes and restaurants?

2. Should higher fees be imposed for trading after a certain time (for example, midnight) to reflect the higher risk/high regulatory cost to government which late trading venues tend to incur?

3. Should the Liquor Act be amended to permit a holder of an on-licence to also sell liquor for consumption off the premises?

4. Should licensees who have breached the Liquor Act be subject to disciplinary proceedings by the Liquor Board, such as disqualification for holding a licence? If so, for how long?

5. Similarly, should permit holders be subject to disciplinary proceedings by the Board?
Chapter 5 – Current Penalty Levels Under the Liquor Act

It has been suggested by some stakeholders that the Liquor Board should impose higher monetary penalties for licensees in response to serious breaches of the Liquor Act, in the interests of harm minimisation.

Harm minimisation has been a part of Australia’s National Drug Strategy since 1985 and refers to policies and programs aimed at reducing alcohol-related harms. Harm minimization aims to improve health, social and economic outcomes for both the community and the individual and encompasses a wide range of approaches, including abstinence-orientated strategies and other demand and supply reduction strategies.

**Comparative analysis of penalties Australia-wide**

<table>
<thead>
<tr>
<th></th>
<th>Selling or supplying liquor to a minor (licensee)</th>
<th>Allowing minor to enter licensed premises (except under certain specified circumstances)</th>
<th>Serving liquor to an underage person (bar staff)</th>
<th>Supplying liquor to an underage person on licensed premises (patron)</th>
<th>Consuming liquor on a licensed premises (minor)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACT</strong></td>
<td>Up to $5,000 for an individual, $25,000 for a corporation</td>
<td>Up to $5,000 for an individual, $25,000 for a corporation</td>
<td>Up to $5,000</td>
<td>Up to $5,000</td>
<td>Up to $500</td>
</tr>
<tr>
<td><strong>NSW</strong></td>
<td>Up to $11,000 and/or 12 months imprisonment or an infringement notice of $550</td>
<td>Up to $5,500</td>
<td>Up to $11,000 and/or 12 months imprisonment or an infringement notice of $550</td>
<td>Up to $11,000 and/or 12 months imprisonment or an infringement notice of $550</td>
<td>Up to $2,200</td>
</tr>
<tr>
<td><strong>Qld</strong></td>
<td>Up to $18,750 for a licensee, nominee or manager, or an infringement notice of $1,875</td>
<td>Up to $7,500</td>
<td>Up to $3,000 or an infringement notice of $600</td>
<td>Up to $3,000</td>
<td>Up to $1,875</td>
</tr>
<tr>
<td><strong>Vic</strong></td>
<td>Over $6,000</td>
<td>Over $6,000</td>
<td>Over $1,000</td>
<td>Over $6,000</td>
<td>Over $500</td>
</tr>
<tr>
<td><strong>WA</strong></td>
<td>$5,000 for a licensee or manager</td>
<td>$5,000 for a licensee or manager</td>
<td>$2,000</td>
<td>$2,000</td>
<td>$2,000</td>
</tr>
<tr>
<td><strong>SA</strong></td>
<td>Up to $20,000 for the licensee or the responsible person for the licensed premises</td>
<td>Up to $10,000 for the licensee or the responsible person for the licensed premises</td>
<td>Up to $5,000</td>
<td>Up to $2,500</td>
<td>Up to $2,500</td>
</tr>
<tr>
<td><strong>Tas</strong></td>
<td>Up to $2,400</td>
<td>No specific offence for a licensee (only)</td>
<td>Up to $1,200</td>
<td>Up to $1,200</td>
<td>Up to $1,200</td>
</tr>
</tbody>
</table>
Review of the *Liquor Act 1975*

| NT | $1,000 or imprisonment for six months for the first offence, $2,000 or imprisonment for twelve months for 2nd or subsequent offence | $1,000 or imprisonment for six months for the first offence, $2,000 or imprisonment for twelve months for 2nd or subsequent offence | $1,000 or imprisonment for 6 months for the first offence, $2,000 or imprisonment for 12 months for 2nd or subsequent offence | $1,000 or imprisonment for six months for the first offence, $2,000 or imprisonment for twelve months for 2nd or subsequent offence |

**Criminal proceedings**

In the ACT, criminal proceedings may be taken in the Magistrates Court, which might result in a fine for various offences under the Liquor Act. Currently, the maximum monetary penalty available for criminal offences dealt with by the Magistrates Court under the Liquor Act (including sale of liquor to minors and sale of liquor to intoxicated persons) is 50 penalty units ($5,000 for an individual and $25,000 for a corporation). A person is taken to be intoxicated if there are reasonable grounds for believing that the person’s speech, balance, coordination or behaviour is seriously affected by the consumption of liquor.

In NSW, the maximum criminal penalty for the sale of liquor to minors by anyone, and the supply of liquor to minors by anyone on licensed premises, is 100 penalty units ($11,000) or twelve months’ imprisonment (or both). The maximum criminal penalty for the sale or supply of liquor to an intoxicated person by a licensee or an employee or agent of a licensee on licensed premises is 100 penalty units ($11,000) (there are defences available for these offences). NSW may also issue a penalty notice for the sale and supply of liquor to a minor on licensed premises. In NSW there is a $550 penalty notice for licensees and bar staff who serve liquor to a minor.

NSW does allow a parent or guardian (or a person authorised by the parent or guardian) of a minor to supply them with liquor both off the licensed premises and on licensed premises.

In Queensland, there are various criminal penalties for unlawful service of alcohol by licensees, nominees or managers. The criminal penalty for a licensee/nominee or manager who sells liquor to a minor or gives liquor to a minor or allows liquor to be given to a minor or allows the minor to consume liquor is $18,750 or an infringement notice of $1,875 with a penalty of $3,000 for bar attendant or staff or an infringement notice of $600. Where a licensee, nominee or manager sells or gives liquor to an intoxicated person or allows liquor to be given to the patron and/or allows the patron to consume liquor, the penalty is $37,500 for a licensee, nominee or manager and $6,000 for a bar
attendant or staff. There is no infringement notices for serving intoxicated people.

Where a licensee engages in practices or promotions which encourage rapid or excessive consumption of liquor, the specified penalty for a licensee/nominee or manager is $7,500.

In Victoria, the maximum penalty for serving alcohol to an underage person is $6,600. A bartender may be fined in excess of $1,000 for supplying liquor to a minor. The maximum criminal penalty for a licensee supplying liquor to an intoxicated person is $6,627. A bartender or patron who procures liquor for an intoxicated person is liable to a penalty of over $2000.

At present, there is no provision in the ACT for the issuing of infringement notices under the Liquor Act to licensees or employees. Action against licensees can only be taken by the Liquor Board or the courts.

As noted above, the criminal penalties applying to offences relating to the sale or supply of liquor to minors and intoxicated people are noticeably higher in other jurisdictions than in the ACT and the use of infringement notices for some offences is also available as an effective deterrent in other jurisdictions. For further discussion on the issue of infringement notices please refer to Chapter 15.

Possible new offence under the Liquor Act

In Queensland, it is a criminal offence for a person on licensed premises to supply liquor to, or permit liquor to be supplied to, or allow liquor to be consumed by, a person who is unduly intoxicated or disorderly. The penalties associated with these criminal offences are lower for patrons and bar staff than for licensees and managers.

In NSW, it is a criminal offence for a licensee or an employee or agent of a licensee to sell or supply liquor on licensed premises to an intoxicated person.

In the ACT, it is a criminal offence for licensees to sell or supply liquor to intoxicated people, but not for bar staff or patrons who sell or supply liquor to intoxicated people.

From a policy perspective, it is difficult to justify a distinction between the offence of selling or supplying alcohol to minors by bartenders or patrons and the offence of selling or supplying alcohol to intoxicated people by bartenders or patrons, given the health, social and economic harms associated with excessive consumption of alcohol and binge drinking.

The Liquor Act allows for an act done or omitted to be done on behalf of a licensee by a representative or employee of the licensee within the scope of the representative’s or employee’s actual or apparent authority to also be taken to have been done or omitted to be done by the licensee. This section applies to all offences under the Liquor Act. Depending on the circumstances of each case involving an offence committed by a bartender, a decision to
prosecute either the licensee or the bartender would lie with the Registrar in ORS. A further issue arises as to whether the penalty applying to bar staff should be the same or less than the penalty applying to licensees.

**Reform questions**

6. Should the Liquor Act be amended to increase criminal penalties which may be imposed by the Court?

7. Should the Liquor Act be amended to create a new offence for a patron who purchases liquor for, or supplies liquor to, an intoxicated person in a licensed premises? If so, should it be a defence for parents or guardians of minors, or persons authorised by parents or guardians, to obtain or supply liquor to a minor?

8. Should the Liquor Act be amended to create a new criminal offence for a licensee who allows a patron to purchase liquor for, or supply liquor to, an intoxicated person and/or minors in licensed premises?

9. Should the Liquor Act be amended to create a new criminal offence for bar staff working in licensed premises to sell or supply liquor to an intoxicated person? If so, should the penalty be less than for a licensee?

10. Should the Liquor Act be amended to create a new offence for a licensee to engage in practices or promotions, which encourage rapid or excessive consumption of liquor?

**Disciplinary proceedings**

Sometimes, the nature of criminal and disciplinary proceedings is not well understood by some commentators. In the ACT, criminal proceedings are undertaken in the Magistrates Court by the DPP (the evidential burden on the DPP is the criminal standard – beyond reasonable doubt). On the other hand, disciplinary proceedings are undertaken in the Liquor Board by ORS (the evidential burden on ORS is the civil standard – on the balance of probabilities).

The Liquor Board may issue disciplinary orders about the conduct of people in the liquor and hospitality market. Under the Liquor Act, the Liquor Board may suspend or cancel a licence, issue a reprimand or give directions to licensees. The power to direct includes the power to direct a licensee to pay a specified monetary penalty to the Territory. The penalty the Liquor Board may direct a licensee to pay may not exceed $1,000 (or $5,000 for a corporation).

The Liquor Act does not indicate in what situations the power to direct a licensee to pay a specified monetary penalty may be used (although, the
general law would preclude a monetary penalty being imposed in relation to the same factual circumstances by both the Magistrates Court and the Liquor Board). The power cannot be used to levy a criminal penalty on a person – but may nonetheless be an important tool in changing market behaviour (and may have a far greater economic impact than a penalty in a single criminal proceeding).

In Queensland, licensees/nominees are liable to disciplinary action for irresponsible service practices as well as failing to comply with the Liquor Act and Regulations which may result in one or more of the following penalties: up to $10,000 fine, suspension of the licence, cancellation of the licence, formal reprimand of the licensee and/or disqualification of the licensee from holding a licence for up to 10 years. Where a licensee is convicted of two offences in relation to minors or intoxicated persons within a two-year period, the licence will be automatically suspended. In the ACT, the Liquor Board cannot disqualify a licensee or a “defined influential person” within a corporate licence from working in or managing licensed premises for a stated period.

The South Australian Liquor Licensing Act 1997 contains a provision which allows for recovery of financial advantage illegally obtained. If a person, by contravention of, or non-compliance with, a provision of the South Australian Act or a condition of a licence gains any financial advantage, the Licensing Court of South Australia may, on the application of the Commissioner, assess the amount of that advantage and the amount so assessed may be recovered from that person as a debt due to the Crown.

Reform questions

11. Should the Liquor Act be amended to empower the Registrar of Liquor Licences to automatically suspend the licence of a licensee in certain circumstances – for example, if convicted of two offences in relation to minors or intoxicated persons within a certain period? If so, how long should the period of disqualification be? For example, six months or a year?

12. Should a licensee pay a specified monetary penalty as a sanction in certain circumstances, for example linked to any financial benefit gained from systematic unlawful behaviour (such as selling alcohol to underage people or intoxicated people)?

13. If so, should the specified monetary penalty be capped or should the level be determined on a case-by-case basis?

14. Should the Liquor Act be amended to permit the Registrar to disqualify a licensee or a defined influential person from certain types of work (for example, working in or managing licensed premises for a stated period)? If so, for how long?
Chapter 6 – The Current Definition of “Liquor” and “Intoxication” in the Act

ORS and ACT Policing have requested that the review consider whether the requirements in the Liquor Act for determining whether liquid is alcohol should be changed, that the definition of “intoxicated” for the purpose of offences under the Liquor Act be reviewed, and that consideration be given to judicial notice of police officers’ observations.

Evidentiary requirements for proving a substance is liquor

Currently the Liquor Act requires that alcohol in a bottle or container must be marked or labelled as alcohol. From an evidentiary perspective, this definition requires the police and ORS inspectors to seize the marked bottle or container and have its contents analysed before it can be used in evidence.

On 12 February 2008, the Attorney General introduced the Crimes Amendment Bill 2008, which is due to be debated in the Assembly shortly. The Bill will amend section 159 of the Liquor Act to ensure that the evidence provision applies to people drinking alcohol in a prescribed public place. For example, if a container is of a type, which usually contains alcohol such as a beer bottle, then it will be deemed to contain alcohol (i.e. a rebuttable presumption). Drinking in a prescribed public place can now be dealt with by the police and ORS inspectors issuing infringement notices.

ACT Policing has also recommended that the proposed deeming provision above be extended to circumstances where police or ORS inspectors suspect on reasonable grounds that the contents of an unmarked glass or soft drink bottle contains an alcoholic beverage. Balanced against this consideration, however, is a need to ensure that individual rights are protected against inappropriate police or inspectorate conduct.

Reform question

15. Should the Liquor Act be amended to extend the rebuttable presumption in the Crimes Amendment Bill 2008 to circumstances where police or ORS inspectors suspect on reasonable grounds that an unmarked glass or soft drink bottle contains an alcoholic beverage?
Definition of “intoxicated”

Section 138 of the Liquor Act makes it an offence for a licensee or permit holder to sell or supply liquor to a person if there are reasonable grounds for believing that the person is intoxicated. For the purpose of this offence, subsection 138(3) of the Liquor Act defines “intoxicated” as:

“there are taken to be reasonable grounds for believing that a person is intoxicated if (irrespective of the actual belief of the licensee or permit-holder) there are reasonable grounds for believing that the person’s speech, balance, coordination or behaviour is seriously affected by the consumption of liquor.”

To prove the commission of an offence by the licensee, it does not appear to be necessary to prove a person’s level of intoxication. Instead, it is incumbent on the prosecution to show that:

• the licensee/bartender served alcohol to a person; and
• that there were reasonable grounds for believing that the person’s speech, balance, coordination or behaviour were seriously affected by the consumption of liquor.

It is not incumbent on licensees, bartenders or police/ORS inspectors to ask the patron for a scientific test to determine if the person is intoxicated. Instead, the only test is the observation that can be reasonably made by the licensee/bartender immediately before the alcohol is served. The offence is committed if those signs (impaired speech, balance, coordination or behaviour) exist and a reasonable person would assume that the person was intoxicated.

New South Wales definition of “intoxicated”

The recently introduced New South Wales Liquor Act 2007 (yet to commence) includes a new section, which defines the meaning of “intoxicated” for the purposes of the Act.

For the purposes of the NSW Liquor Act, a person is intoxicated if:

(a) the person’s speech, balance, co-ordination or behaviour is noticeably affected; and

(b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor.

The NSW Act also allows the Director of Liquor and Gaming to issue publicly, available guidelines to assist in determining whether or not a person is intoxicated for the purposes of the Act. The Act also provides that the guidelines may indicate circumstances in which a person may be assumed not to be intoxicated for the purposes of the Act.
In comparison with the ACT definition of “intoxicated”, the NSW definition requires a lower threshold of proof in terms of proving that a licensee or permit holder has served alcohol to an intoxicated patron (i.e. the ACT legislation uses the words ‘seriously affected’, compared with the words ‘noticeably affected’ in the NSW legislation).

Lowering the standard of proof would make it easier to convict licensees/permit holders who serve or supply liquor to intoxicated people.

Reform question

16. Should the Liquor Act be amended to lower the standard of proof for proving that a licensee or permit-holder has sold or supplied liquor to an intoxicated person?

Admission of “judicial notice” of police officers’ observations

ACT Policing has requested that consideration be given to allowing judicial notice of police officers’ observations in relation to people affected by excessive consumption of alcohol in the context of offences dealing with intoxicated offenders. As the scope of this review is limited to consideration of the Liquor Act, the ACT Policing request is here only considered in relation to the sale or supply of liquor to intoxicated people (section 138), which appears to be the only relevant offence in the Liquor Act.

Section 138 makes it an offence for a licensee or permit-holder to provide liquor to a person if there are reasonable grounds for believing that the person is intoxicated. Under the provision, the actual belief of the licensee or permit-holder is irrelevant. Instead, the test that "reasonable grounds for believing that a person is intoxicated" will be satisfied if there are reasonable grounds for believing that a person's speech, balance, coordination or behaviour is seriously affected by the consumption of liquor.

Proof of this element will rely on observations by police officers or other persons present at the time (these observations are admissible). In the ordinary course, a decision of the court would depend upon the credibility of the prosecution evidence. It would be subject to evidence presented by the other party, which might tend to establish that the reasonable grounds do not exist.
Chapter 7 – Apparent Anomalies in the Legislation

There is a number of anomalies in the legislation which would benefit from updating to better reflect the current regulatory environment.

**Application of the Liquor Act to certain alcoholic products**

Currently, there is no power under the Liquor Act to exempt certain products from the application of the legislation. An exemption from the Liquor Act might be appropriate for products such as an alcoholic cooking wine. An exemption provision would clarify for both retailers and ORS which products are regulated under the Liquor Act. If it becomes apparent that a product on the exemption list is being abused, the product could be removed from the exemption list.

Conversely, it may be argued that some alcoholic ice products available at special events may not be classified as “liquor” for Liquor Act purposes, since the current definition of liquor refers to a “beverage”. This could create enforcement difficulties for police and ORS inspectors and confusion for retailers and consumers.

**Reform questions**

17. Should the Liquor Act be amended to include a provision allowing for certain substances to be exempted from the operation of the Act? If so, should exemptions apply for all or only limited purposes?

18. Should the definition of “liquor” in the Liquor Act be amended to include alcoholic products which are not beverages?

**Mandatory police checks**

There is currently a requirement in the Liquor Act for decision-makers to consider whether applicants are fit and proper persons and whether they have been convicted of a defined criminal offence. ORS officers undertake police checks prior to granting a liquor licence. There is no formal requirement for applicants for a liquor licence to undertake a police check prior to lodging their application for a licence.

The Regulatory Services Legislation Amendment Bill 2007 proposes to introduce a mandatory police check pre-paid by applicants before they can

By inserting a mandatory police check provision into the Liquor Act, applicants would be required to obtain a police certificate from the police before lodging their application for a liquor licence. The police certificate may be required for all sole-trader applicants, all directors and secretaries of a corporation and for partners of a partnership. The police certificate would be a written statement indicating whether, according to police records, the applicant has been charged with, or convicted of, an offence against an Australian or overseas law and if so, the particulars of each offence.

**Reform question**

19. Should the Liquor Act be amended to require applicants for a licence to undertake a police check prior to lodging their application for a liquor licence? Should the costs of complying with the liquor licence application rules lie with the applicant?

**ACTPLA certificate**

There is currently a requirement under the Liquor Act for decision-makers to consider whether any conditions of the Crown lease are inconsistent for the purpose for which the licence is sought. Currently, applicants are given a form to go to the ACT Planning & Land Authority (ACTPLA) to obtain advice whether, in ACTPLA’s opinion, the lease purpose allows liquor to be sold for consumption on the premises or off the premises, as the licence type requires.

Under the *Sale of Motor Vehicles Act 1977*, applications for a grant of a licence must be accompanied by an ACTPLA certificate stating that in its opinion, the carrying on of the proposed business at the premises under the licence is not prohibited by a provision of the lease of the land or by the Territory plan. It is proposed that this mandatory requirement creates more certainty for decision-makers.

**Reform question**

20. Should the Liquor Act be amended to require an applicant for a liquor licence to obtain a certificate stating that the proposed premises are not in breach of any Crown lease conditions prior to lodging the application with ORS?
Internet/mail order sales of liquor

Off-licences have traditionally been used for licensed grocers and bottle shops where liquor is kept on a shop premises for sale for consumption off the premises. There is now an increasing proliferation of small boutique wineries and mail order/internet businesses. These businesses generally acquire a small storage area in premises where they store their products for sale, but the operation of the business, where orders are taken and processed, takes place from some other place, usually a home office or commercial office. There are no shop premises where clients can enter, visit or sample the products.

An issue arises for these types of operations as to whether the storage area or the home office is the ‘licensed premises’. Currently, the storage place is treated as the licensed premises. However, this can pose regulatory issues in relation to where a licence, or the records of liquor sales are kept. The Liquor Act requires the licence and records to be stored on the licensed premises, but for these types of operations, this is not practical.

Reform question

21. Should the Liquor Act be amended to create a subclass within the off-licence category to cater for internet/mail order sales of liquor?

Structure and drafting style

The current legislation, which was enacted in 1975, could be improved by reviewing its form and structure to better reflect current ACT Parliamentary Counsel’s drafting standards. One example relates to the historical drafting style of including requirements of licensees within the offences and penalties sections, rather than placing these provisions upfront in the legislation together with the licence eligibility and obligation sections of the Act.

Further, the language in the Liquor Act should be modernised to reflect plain English flexible and modern licensing laws. For example, the use of the words “members of both sexes” should be changed to reflect modern usage.

There is also a need to update and enhance the objects of the legislation to better reflect contemporary community standards. For example, the objects of the Liquor Act should recognise the importance of minimising alcohol-related harm, but also the social and cultural role played by responsible alcohol use.

Finally, consideration should be given to transferring the more substantive provisions of the Manual to the Liquor Act. For example, a major requirement
of a general licence (which allows for sale of alcohol for consumption both on and off premises) is the establishment of a separate bottle shop within the premises, with a separate entrance that does not require patrons to travel through a public area. This requirement is contained in the Manual, rather than within the Liquor Act under the description of the general licence class.

Reform question

22. Should the structure of the Liquor Act be updated to more clearly outline a licensee’s obligations and better reflect current drafting standards?
PART 3 – LICENSING ISSUES
Chapter 8 – Current Scrutiny of Applicants for Liquor Licences

The AHA submits that all new liquor licence applicants should be required to demonstrate prior experience in managing a licensed premises, or be able to nominate employees with such prior experience.

The AHA also submits that being able to operate with a degree of certainty with regard to competing venues creates a sense of value in the licence, placing increased importance on compliance with regulatory requirements. Further, the AHA has attributed a number of problems to the current “open” system of liquor licensing, including a high turnover of licensed premises, heavy discounting of alcohol and poor quality venues.

ACT Policing has recommended that managers and senior staff (other than licensees) be regulated to ensure that they are fit and proper people to manage a licensed premises.

Standards for licensees

Section 52 of the Liquor Act requires the Registrar to consider a number of matters before issuing a liquor licence, including matters relating to whether a person is suitable to hold a liquor licence:

- whether the applicant is a fit and proper person to hold a licence;
- the applicant’s age;
- the applicant’s understanding of the obligations of a licensee under the Liquor Act;
- whether the applicant has been convicted of a defined offence (being an offence against the Crimes Act 1901 or the Liquor Act);
- whether the applicant has contravened a provision of the Liquor Act or a direction;
- whether the applicant is an undischarged bankrupt; and
- if the applicant is a corporation, whether the applicant is in liquidation.

The Auditor-General’s June 2007 report on the regulation of liquor licences made a number of recommendations regarding operational aspects of assessing licence applications. ORS has already acted on a number of these recommendations to improve procedures around the assessment of licence applications, including improved consistency in assessment and compliance with legislative requirements.

Prior experience

The AHA submits that applicants should be required to demonstrate prior experience in managing a licensed premises, or be able to nominate employees with such prior experience. The AHA believes that the current open system of licensing has resulted in an oversupply of liquor licences in the ACT resulting in a culture of discounting schemes, which encourage rapid and excessive alcohol consumption. Limiting liquor licences to those people who have worked in the industry would result in fewer liquor venues in the marketplace, and could lead to a reduction of drunken, anti-social behaviour in Canberra’s nightspots.

Licensing laws, which prevent responsible sellers from entering an industry and discriminate between sellers of similar products and services and impose arbitrary restrictions on a seller’s behaviour, are potentially anti-competitive and non-compliant with national competition policy principles. It is arguable that this type of regulation does little to achieve harm-minimisation objectives.6

Requiring an applicant to demonstrate prior experience (or nominate an employee with such experience) may create a closed market, effectively preventing entry of people who may meet the ‘fit and proper person’ and related character tests listed above, and people who might have gained other relevant experience and skills outside of the hospitality industry.

Balanced against the economic principle of an open market, however, is the need to protect the public interest in minimising harm from excessive consumption of alcohol.

While applicants who have previous liquor industry experience may be well placed to ensure the safe and responsible service of alcohol, the current prerequisites for licensing already require potential licensees to demonstrate that they are fit and proper people, with an understanding of the obligations of a licensee under the Act.

In addition, section 53 of the Liquor Act currently allows the Registrar to issue the licence subject to the condition that the applicant undertakes a specified approved training program in relation to those obligations within a reasonable specified time after the issue of the licence. Similarly, section 65 of the Act allows the Registrar to make an order in the context of licence transfers and changes in licence-holding partnerships or changes of “influential persons” within licence-holding corporations.

Standards for managers and senior staff

Currently, the Liquor Act imposes no restrictions on who the holder of a liquor licence may employ as a manager or senior staff member. A corporation applying for a liquor licence is required to disclose the particulars of defined “influential persons” (that is, a director, secretary, person who is substantially concerned in the management of the corporation, or able to control, or to substantially influence, the corporation’s activities or internal affairs).

However, the person managing the day-to-day operations of a licensed premises may not be included in the definition of “influential persons”. Even if managers are included in the “influential persons” definition, there is no requirement under the current Liquor Act that they meet the character tests prescribed for licence applicants.

It has been evident to police on a number of occasions that persons known to them have been employed to manage licensed venues when they are obviously not ‘fit and proper’ persons. ACT Policing submits that this has resulted in an increase in police attendance at these venues for alcohol and drug-related offences.

Western Australia’s Liquor Control Act 1988 requires the appointment of approved managers during all trading hours, and licensees must apply to the Director of Liquor Licensing for approval of manager arrangements, which may involve multiple or single managers.

As part of the current Queensland Liquor Reforms, Queensland is proposing to introduce a manager’s licence. The manager’s licence would ensure a manager is held responsible for proven breaches and offences under the Queensland Liquor Act. All premises must have a licensed manager available for the majority of their trading hours, and when not on premises, must be reasonably available and contactable.\(^7\)

Reform questions

23. Should the Liquor Act be amended to require applicants for a liquor licence to demonstrate prior liquor industry experience?

24. Should the Liquor Act be amended to extend the licensing regime for liquor licensees to managers and senior staff of licensed premises?

Chapter 9 – The Impact of ‘Clusters’ of Licensed Clubs and Pubs in Central Business Districts and Semi-Residential Areas

The current liquor licensing regime provides an affordable means by which small businesses can provide a service, either as an off-licence or an on-licence, which creates consumer choice, convenience and amenity for local communities. There are many examples of licensed boutique venues or small restaurants, which contribute enormously to the vibrant culture of Canberra’s central business districts and the revitalisation of suburban community centres. In the recent past, Canberra has not witnessed a substantial increase in the number of licensed premises in the Territory. For example, in June 2005 there were 303 on-licences compared with 311 on-licences in December 2007.

ACT Policing submits that the ‘clustering’ of licensed premises has a propensity to exacerbate anti-social behaviour, as patrons are more likely to migrate from venue to venue spending more time on the public streets in an uncontrolled environment with other intoxicated persons. ACT Policing further submits that the clustering of licensed premises in semi-residential areas, for example in Dickson, O’Connor and Erindale in Wanniassa also contributes to an increased likelihood of property damage, as anonymity is assured in poorly lit and less frequented areas.

ACT Policing has recommended that an environmental assessment be legislated, as part of the liquor licensing regime to avoid clustering of liquor licensees and the ramifications it causes for police, ORS inspectors and local residents.

Similarly, the AHA has submitted that new applications for liquor licences should be required to satisfy a public interest test, similar to that required in New South Wales and other states.

Both the AHA and ACT Policing also submit that allowing a number of licensed premises in one area contributes to rivalry between businesses fostering an unhealthy competitive market environment with licensees competing for patrons through the advertisement of cheap drinks, happy hours and other promotional activities detrimental to the responsible service of alcohol.

Alcohol is widely available in Canberra, but most people sell and consume alcohol responsibly and safely. Canberra prides itself on being a modern, cosmopolitan urban environment, offering a wide variety of entertainment and cultural venues and a vibrant night life. Part of this economic environment is having an array of restaurants, cafes, trendy boutique bars and shops in city centres fostering a sense of local community and amenity.
Balanced against these concerns is the need to acknowledge the value of a competitive yet responsible liquor market, which delivers consumer choice of venue, high quality wining, dining and entertainment for the enjoyment of the ACT community.

**Pre-requisites for ACT liquor licence applications**

In the ACT, liquor licence applicants must comply with strict regulatory standards in relation to the construction of buildings and standard of fittings of premises before a liquor licence will be granted. While there is currently no explicit provision in the Liquor Act to allow the Registrar to refuse an application, which is not in the community’s interest, the Act does require the Registrar to consider a number of matters including matters relevant to the appropriateness of the premises for the service of alcohol including:

- whether the premises in relation to which the licence is sought are fit and proper premises for the purpose of the licence;
- whether the conditions of the Crown lease over the premises are appropriate conditions for the purpose of the licence applied for;
- whether the proposed licensed premises and any alterations to the premises have satisfied the conditions stated in the Manual. The Liquor Board is required under section 33 of the Liquor Act to issue the Manual, which sets out the standards of the licensed premises to meet the Building code of Australia and the licence facilities standards, including toilet facilities, signage, dancing areas, etc.

As mentioned in Chapter 8, the Registrar must also consider matters relevant to the applicant’s fitness to hold a licence, such as whether they are a ‘fit and proper person’ and whether they have any criminal history.

Arguably these existing provisions do require the Registrar to consider the social, community and health implications, which might arise with any new liquor licence application.

**Number of liquor licences**

A study conducted by the Allen Consulting Group in December 2005 found that since 1977, the number of liquor licences per 1,000 people in the ACT has remained steady. In 2005 there were 1.8 licences per 1,000 people in the ACT. By comparison in 2005, there were 2.0 licences per 1,000 people in Western Australia, 3.3 in South Australia, and 2.6 in Tasmania. In 2006 and 2007, the number of licences per capita remained steady in the ACT, at 1.8 licences per 1,000 people.

---


9 Source: Office of Regulatory Services.
The public interest test – NSW model (Social Impact Assessment)

In 2004 NSW introduced a “social impact assessment” (SIA) model, which requires applicants for new licences or licence transfers to submit an SIA addressing:

- the size, nature, location or internal layout of the proposed or existing premises;
- the number and nature of objections received;
- location of the proposed premises within a socio-economic area;
- sensitive facilities (churches, schools etc) within 200 metres of the proposed premises and the expected impact on residents, businesses within 200 metres;
- previous trading history of the applicants in licensed premises;
- the nature and type of the proposed premises and factors that distinguish it from existing premises in the locality;
- whether the application is for an area where there is a high concentration of licensed premises; and
- the estimated impact on the local community, including traffic, noise, changes in amenity of the area, and any cultural, recreational, employment or tourism benefits.

Although in 2004 the National Competition Council (NCC) assessed that NSW had met its Competition Principles Agreement obligations in relation to liquor licensing, the Council noted that NSW “has introduced a licence application procedure which appears to be significantly more complex, protracted and costly than that of other jurisdictions. The licence application procedure proposed by NSW adds considerable paperwork, six months or more of processing time, increased uncertainty and a higher cost to a licence application process that the review had already found to be time consuming and expensive”.

The NCC also stated that “governments can of course, have genuine public interest tests that focus on the social impacts of a liquor licence application: Victoria, Tasmania and the ACT, for example, have different ways of assessing liquor licence applicants yet all focus on the social, community and health implications”.

---

10 Assessment of governments' progress in implementing the National Competition Policy and related reforms, National Competition Council, 2004, para 11.22.

11 Ibid para 9.3.
On 25 September 2007, Cr Clover Moore introduced the Liquor Amendment (Small Bars and Restaurants) Bill 2007 into the NSW Legislative Assembly, under which establishments for up to 120 patrons would pay only $500 for a liquor licence (instead of up to $15,500) and could forgo the social impact assessment, which can cost $50,000 or more. The introduction of the Bill reignited the controversy surrounding the SIA process in NSW. In her introductory speech, Cr Moore stated that a recent Western Australian government report noted that according to the NSW Department of Gaming and Racing the quality of social impact assessments was generally poor and the quality and availability of research material made the process difficult for both applicants and assessors, leading Cr Moore to comment that the purpose and value of the social impact assessment is questionable.

Community Impact Statement

In December 2007, the NSW Parliament passed the Liquor Act 2007 (NSW) (not yet commenced), which replaced the SIA process with a simpler and cheaper Community Impact Statement (CIS). A CIS will be required for any application for the grant or removal of a hotel licence, club licence or packaged liquor licence, or any application for extended hours in relation to these licences, on-premises licence or a producer/wholesaler licence. Recent NSW media releases have indicated that:

- CISs will be prepared before liquor licence applications are made. Statements will summarise the results of consultation by applicants with local councils, police, health, Aboriginal representatives, community organisations and the public;
- there will be no fee payable to the liquor licensing authority for a CIS; and
- health, police and crime data will be taken into account by the NSW Office of Liquor, Gaming and Racing in forming an assessment.\(^\text{12}\)

While the introduction of a CIS may constitute a barrier to entry into the liquor and hospitality market, it can arguably be justified to be in the public interest, as it allows community stakeholders to participate in the licensing process and fosters harm minimisation principles.

Heavy discounting of alcohol

ACT Policing has also recommended the development of an industry code of conduct which could include restrictions on licensed premises promoting drinking games, serving alcohol in anything other than a standard measure or offering cheap “two for one” drinks.

\(^{12}\text{Major features of the liquor law reforms, NSW Office of Liquor, Gaming and Racing, January 2008, pp 3 – 4.}\)
While the Manual does exhort licensees not to engage in a practice or promotion that may encourage rapid or excessive consumption of liquor, it does not prohibit explicitly the discounting of alcohol.

Restrictions on licensed premises heavily discounting alcohol could be introduced through an industry self-regulatory code of conduct, or alternatively could be incorporated into the ACT Liquor Act, as an offence with a penalty attached.

Industry self-regulatory codes of conduct are often only effective if a large majority of market participants are members of the industry association and where the association operates an effective complaints and disciplinary system.

The Queensland liquor laws create an offence where a licensee engages in practices or promotions which encourage rapid or excessive consumption of liquor. Queensland has introduced a ban on the external advertising of free drinks, multiple drinks and/or discounted liquor at all licensed premises. The ban aims to curb inappropriate behaviour associated with alcohol use and in particular, binge drinking which dramatically increases the risk and incidence of injury, assault, public disorder, and other problems.

Reform questions

25. Should the Liquor Act be amended to require new applicants for a liquor licence to undertake a “community impact statement” process before submitting their application for liquor licence?

26. Should the ACT introduce restrictions on heavy discounting of alcohol? If so, how should these restrictions be regulated (for example, as part of an industry self-regulatory code of conduct or an offence under the Liquor Act)?
Chapter 10 – Timeframe For Assessment of Occupancy Loadings and Enforcement

The recommendations of the Auditor General’s report mainly concerned operational, rather than legislative, mechanisms in relation to liquor regulations.

The only recommendation that related to legislation was Recommendation 6, which suggested that the Department of Justice and Community Safety (JACS) should consider reviewing and amending the legislation to prescribe a timeframe for assessment of occupancy loadings, in order to enhance the integrity and accountability of the process.

The Audit Report has found that without determination of legally enforceable occupancy loadings, the regulation of overcrowding and protection of the safety and health of the patrons and the public may be more difficult and less effective.

Further, the report found that the assessment process of occupancy loadings was not conducted in a timely manner, or not conducted at all. Due to failure to manage the approval process for loading occupancy within a reasonable time, the intent of the legislation and the community expectation of a safe drinking environment were not met.\(^{13}\)

Part 3 of the Liquor Act currently requires the Registrar to determine the occupancy loadings for all licensed premises, except for those off-licences (which sell liquor for off-premises consumption). The Chief Officer (Fire Brigade) is currently required to make a recommendation to the Registrar, having regard to the Building Code of Australia.

Section 41(3) states that on receiving the recommendation of the Chief Officer (Fire Brigade), the Registrar must, by written notice given to the relevant licensee or applicant for a licence, decide the occupancy loading for each relevant indoor/outdoor public area. For example, the Registrar will take into account the number of toilets available and fire exits. Section 42(2) requires that if a relevant decision-maker has made a decision in relation to an outdoor public area under section 40(1), the Registrar must, by written notice, decide the occupancy loading for the area. The Liquor Act does not explicitly provide that the occupancy loading must be determined prior to the issue of a liquor licence.

Currently, an applicant for a liquor licence submits proposed and subsequently final approved plans of the premises to the Registrar and the Registrar identifies the relevant indoor public areas and outdoor public areas on the plans. The Registrar then notifies the Chief Officer (Fire Brigade) of the decision about the indoor public areas. The Chief Officer (Fire Brigade) then

\(^{13}\) ACT Auditor-General’s Office Performance Audit Report, Regulation of ACT Liquor Licenses, June 2007, p 27.
notifies the Registrar in writing of his recommendation about the occupancy loading for each indoor public area.

A more efficient alternative might be to reverse the onus and cost of determining the occupancy loading by placing an obligation on the licensee to organise an occupancy loading assessment within a specified timeframe, instead of the current situation where the preliminary obligation lies with the Registrar.

The licensee would be required to use the services of an independent, appropriately qualified occupancy loading assessor, who would be required to have regard to the Building Code of Australia and the Manual in making their assessment. A time limit could be imposed on the licensee, requiring the licensee to submit the occupancy loading assessment to the Registrar within a specified timeframe or to submit the occupancy loading assessment prior to lodging their liquor licence application.

Alternatively, the Liquor Act could be amended to specify a timeframe within which the Registrar must determine an occupancy loading prior to the issue of a licence.

**Enforcement**

A number of stakeholders have expressed concerns about overcrowding of licensed premises.

ACT Policing submits that overcrowded licensed premises can be a volatile environment when mixed with intoxicated patrons and is often the cause of anti-social behaviour and fighting inside and outside licensed premises. ACT Policing also submits that restricting the number of patrons permitted inside a licensed premises ensures a safer and positive social environment.

In addition to ensuring that appropriate occupancy loadings are established in a timely manner, it is imperative that sufficient government resources are made available to monitor compliance with occupancy loadings of licensed premises. This would require a presence by ACT Policing and inspectors from ORS at licensed premises and where appropriate, initiating disciplinary or prosecution proceedings against offending licensees.

Further discussion concerning the adequacy of existing liquor law regulatory and operational resources in the Territory is covered in Chapter 22.
**Reform questions**

27. Should the Liquor Act be amended to require the licensee to organise an occupancy loading assessment, and if so, when (for example, within a specified timeframe, or prior to lodging their application for a liquor licence)?

28. Should the Liquor Act be amended to specify a timeframe within which the Registrar must determine an occupancy loading prior to the issue of a licence?

29. Should the Liquor Act be amended to require the Registrar to determine an occupancy loading prior to the issue of a licence?

30. Should the Liquor Act be amended to raise the level of penalties for licensees who breach their assessed occupancy loading?
Chapter 11 – Stand-Up Drinking in Outdoor Areas

Currently, alfresco dining areas must only be used for sit-down dining or drinking. The AHA contends that this rule creates an unnecessary burden of enforcement on the licensee. The AHA submits that stand-up drinking should be permitted in outdoor café areas as long as occupancy loadings are observed.

The rule in relation to sit-down dining and drinking in outdoor areas is prescribed by the Manual:

- “Areas licensed for alfresco dining shall be used only by patrons for the purpose of sit-down dining or drinking and shall not be used as stand-up drinking areas”.

The Manual is written and maintained by the Liquor Board in accordance with the Liquor Act. Section 33(2) requires licensees to comply with the standards outlined in the Manual.

The government plans to further ban outdoor smoking at dining and drinking establishments where food or drink service is provided in an outdoor public place. No smoking will be allowed where service is provided.

The AHA submits that the sit-down dining and drinking standard was introduced to prevent overcrowding of outdoor areas, but is excessive and unnecessary because each outdoor area already has its own occupancy loading. Further, compliance has been made more difficult with the introduction of indoor smoking bans.

Balanced against these considerations is recent research which shows that bars which are primarily dedicated to “vertical” or stand-up drinking are more likely to generate problems of drunkenness and assaults. Other studies have found that the physical design and comfort levels of licensed premises can significantly impact on levels of alcohol-related problems such as violence and aggression. Factors including the spacing and comfort of chairs was identified as having a significant civilizing effect on licensed premises. The availability and consumption of food on licensed premises is also associated with a reduced risk of aggression. These factors are consistent with harm minimisation principles, that is, minimising the costs to government and the community from the misuse and abuse of alcohol.

---

14 Inside Out – Strategies for Licensees to manage Patron behaviour in open areas of a licensed venue, Victorian Department of Justice, December 2007, p.3.


In recent years, a number of pubs in the United Kingdom trialed a ban on vertical drinking in an attempt to curb excessive drinking and related violence. It was reasoned that requiring drinkers to sit down reduced the potential for overcrowding, boredom and consequent discomfort for patrons, thus reducing the risk of aggressive behaviour.

Other possible concerns might include increased difficulty for licensees in assessing whether occupancy loadings are being breached (particularly if more people are standing in the outdoor area), the safety of bystanders passing by and children accompanying parents at the venue, and the ability of licensees to monitor and regulate underage drinking.

Reform questions

31. Should the Liquor Act be amended to permit stand-up drinking in outdoor areas of licensed premises?

32. Is stand-up drinking in outdoor areas consistent with the harm minimisation principles in the Liquor Act?
Chapter 12 – Crowd Controllers: Role, Training and Incident Registers

The role and training of crowd controllers has come under scrutiny due to recent media reports of assaults on taxi drivers and other anti-social incidents of alcohol related violence.

**Training and discipline of crowd controllers**

ACT Policing submits that including security guards in mandatory RSA training is a proactive measure, which would enable the identification of intoxicated persons at the initial point of entry, where access can be refused (refer Chapter 17 for further discussion of this proposal).

In the ACT, there are already requirements in the *Security Industry Act 2003* for security guards to be trained and disciplined. Additional training is required under the Security Industry Act for crowd controllers, including crowd controllers working in a licensed premises. The regulations require applicants for a crowd-controller employee licence subclass to have completed a Certificate II in Security Operations with electives covering:

- controlling access to and from premises;
- monitoring and controlling individual and crowd behaviour; and
- protecting self and others using basic defensive tactics.

A security guard who holds a licence may be disciplined by the Consumer and Trader Tribunal, on application by the Commissioner for Fair Trading if:

- the licensee is not eligible to apply for, or be issued with, a licence of the class the licensee holds;
- the licensee supplied information which was false or misleading in a material particular in, or in relation to, the application for the licence;
- the licensee contravenes this Act, whether or not the licensee has been convicted of an offence for the contravention;
- the licensee contravenes a condition of the licence;
- the licensee has committed a criminal offence, whether or not the licensee has been convicted of the offence; or
- it is not otherwise in the public interest for the licensee to be licensed.

The Tribunal may impose a fine, reprimand, issue directions, suspend or cancel the crowd controller’s licence.

**Requirement to maintain a register of incidents**

The master licence holder is required to keep a register of incidents involving crowd controllers in accordance with the *Security Industry Regulations 2003*. However, this requirement does not extend to the licensee of a licensed premises where the liquor licensee contracts out security from a security industry master licence holder.
The advantages gained from maintaining a register of incidents are lost if the liquor licensee is not required to be involved in the process of recording the number of liquor-related incidents occurring on their premises. Recording the number of incidents places an obligation on licensees to respond effectively in terms of assessing irresponsible service of alcohol practices and allows licensees to be held accountable for incidents of anti-social and violent behaviour.

**Reform questions**

33. Should the training requirements and disciplinary options for crowd controllers under the Security Industry Act 2003 be extended to include RSA training?

34. Should the Liquor Act or the Security Industry Act be amended to require all licensees to keep an incident register, irrespective of whether they hold a security master licence?
Chapter 13 – Role of the Liquor Licensing Board

As part of a recent review of ACT Tribunals, which has already addressed the role of the Liquor Board, the Department has proposed that the disciplinary functions of the Liquor Board should be transferred to a new Division dealing with occupational licensing within a consolidated tribunal. It is also proposed that the related administrative functions of the Liquor Board should be transferred to the Commissioner for Fair Trading in ORS. It is also proposed that the current functions of the Registrar should be transferred to the ACT Commissioner for Fair Trading.

It is proposed that relevant provisions of the Liquor Act would be either repealed or amended to reflect the above legislative reforms. For example, sections 10-24 would be repealed, as these provisions establish the Liquor Board and deal with how the Board should meet and establish the office of Registrar and liquor licence inspectors. Instead, the licensing function would be undertaken by the Commissioner for Fair Trading and inspectors under the *Fair Trading (Consumer Affairs)* Act 1973. All references to the Registrar would be replaced with the Commissioner for Fair Trading.

Currently, the Liquor Board is established under section 10 of the Liquor Act. The functions of the Board as set out in section 11 include:

“The board must promote and encourage responsibility in the sale and consumption of liquor by—

(a) considering and deciding applications or other matters referred to it under this Act; and

(b) conducting inquiries, including hearings, in relation to applications or other matters referred to it under this Act; and

(c) advising the Minister, as required, on matters of policy and administration; and

(d) exercising the other functions given to it under this Act or any other Territory law.”

Included in these functions is the preparation of the Manual, within which the Board must set out in the Manual the general standards, approved in writing by the Minister, with which licensed premises and their licensees are required to comply (section 33).

It is proposed that the Commissioner, instead of the Registrar, should investigate a matter and where appropriate, seek an order by application to the new Tribunal. It is also proposed that responsibility for the Manual, which currently lies with the Board, would become the responsibility of the Commissioner.

The decisions of the Liquor Board will be preserved including disciplinary directions which continue to run, as well as decisions taken by the Registrar.
Review of the *Liquor Act 1975*

and Deputy Registrar, as they will have effect after the commencement of the new disciplinary and administrative legislative arrangements.
Chapter 14 – Underage Drinking

Concerns have been expressed within the community and amongst stakeholders that underage drinking is not being sufficiently regulated by government.

Young people under 18 who drink are exposed to a number of dangers in addition to those faced by adults who drink to excess, including increased risk of fatal and non-fatal injuries and brain damage, increased probability of engaging in risky behaviour, poor school results and increased risk of suicide. In addition, alcohol is the drug which is responsible for most vehicle accidents involving young drivers.  

Underage drinking

In the ACT, there is a number of offences under the Liquor Act dealing with underage drinking on licensed premises, including:

- A person must not sell or supply liquor to a person under 18 years old on premises where the sale or supply of liquor is authorised or in a public place. Further, a licensee or employee may refuse to sell or supply liquor to a person who refuses to show identification.

- A licensee commits an offence if a person under 18 years old possesses or consumes liquor on the licensed premises.

- The licensee commits an offence if a person under 18 years old is in a bar-room on the licensed premises, except in the care of a responsible adult.

There is also a number of offences which impose a fine on persons under 18 years of age found to be consuming liquor on licensed premises, or supplying fake identification. The current maximum penalty for minors buying, possessing or consuming alcohol in a licensed premises is $500.

In the ACT, the maximum criminal penalty for people who sell or supply liquor to underage people on licensed premises is up to $5,000 for an individual or $25,000 for a corporation. The Liquor Act also allows for an act done or omitted to be done on behalf of a licensee by a representative or employee of the licensee, within the scope of the representative’s or employee’s actual or apparent authority, is also taken to have been done or omitted to be done by the licensee. This section applies to all offences under the Liquor Act.

In Queensland, the maximum criminal penalty for licensees, nominees or managers who sell or give liquor to a minor or allow liquor to be given to a minor or allow a minor to consume liquor is 250 penalty units or $18,750 or an infringement notice of $1,875. The maximum criminal penalty for a bar attendant or staff member is $3,000 or an infringement notice of $600. In addition, if a licensee is convicted twice for offences relating to minors, their licence or permit can be suspended for up to two months.

In NSW, the maximum criminal penalty for selling or supplying liquor (on licensed premises) to a minor is 100 penalty units or $11,000 and/or 12 months imprisonment (or both) for an individual.

In response to growing problems with underage drinking in the United Kingdom, it plans to introduce a harsher policy involving a “two strikes and you’re out” penalty for any licensee caught selling alcohol to minors twice in three months. Currently, the United Kingdom threshold is three times in three months.\(^{18}\)

Over recent times, underage drinking has become a problem in some licensed venues in the Territory. Between July 2004 and April 2007 there were 347 breaches identified by ORS inspectors of which 15 per cent involved breaches of the underage drinking provisions in the Liquor Act.\(^{19}\)

The effect of raising the level of criminal penalties for selling and supplying liquor to minors on licensed premises would send a clear message to licensees, employees and patrons that this is unacceptable behaviour which will not be tolerated by the ACT community. Such messages are part of a cultural shift away from the misuse and abuse of alcohol.

Reform questions

35. Should the Liquor Act be amended to raise the level of criminal penalty for selling, supplying alcohol to minors on licensed premises? If so, should the criminal penalties include a period of imprisonment (for example, similar to New South Wales)?

36. Should the Liquor Act be amended to change the sanction/s applicable where the licensee has been convicted of a number of offences relating to minors within a specified period? If so, should the regime be graduated (for example, escalating depending on the number of offences and the time period) and should there be a threshold for automatic suspension/cancellation of licence?

37. Should the infringement notice scheme be extended to cover licensees and employees serving alcohol to minors?


\(^{19}\) ACT Auditor-General’s Office of Performance Audit Report, Regulation of ACT Liquor Licences, June 2007, pp 42-43.
PART 4 – MOVING FORWARD WITH LIQUOR REGULATION IN THE ACT
Chapter 15 – Infringement Notices for Liquor Licensees, Permit Holders and Bar Staff for Offences Under the Liquor Act

There have been calls from a number of stakeholders for the adoption of infringement notices for liquor licensees, permit holders and bar staff for offences under the Liquor Act, including fines for serving alcohol to intoxicated people, service of alcohol to underage persons, overcrowding of premises and failure to complete registers and security sign-in books.

The AHA has submitted that police should be given the power to issue on-the-spot fines to people who refuse to leave a licensed premises when directed by the licensee.

On 12 February 2008, in response to recent anti-social behaviour in various Canberra night spots, the Attorney General introduced the Crimes Amendment Bill 2008 which was passed in the Legislative Assembly on 6 March 2008. The new law introduced criminal infringement notices for offences, including defacement of premises, noise abatement directions, urination in public, and consumption of liquor in prescribed public places.

ACT Policing submits that the infringement notice scheme should be extended further to licensees who breach various provisions in the Liquor Act. This would significantly reduce the amount of time police spend off the road processing and charging intoxicated people or completing paperwork for legislative breaches of the Liquor Act. This would also free up front-line police to patrol alcohol ‘hot spots’ during peak periods.

Suitability of infringement notices for certain offences

In determining whether the criminal infringement notice scheme should be extended to cover additional Liquor Act offences, the question arises as to whether a penalty notice scheme is an appropriate response to these offences.

One consequence of such a system might be to disaffect individuals who come into contact with police, rather than to provide an opportunity for effective deterrence. ACT Policing currently has a range of options available to them for dealing with minor offences, including the issue of an offence notice, other non-judicial options such as issuing a caution and commencing proceedings in court by way of arrest or summons.

The Community Law Reform Commission’s report on Street Offences in 1997 recommended a number of issues of principle for determining suitability of offences to be dealt with by way of on-the-spot fines. The issues of principle include:

- exercise of judgement, proof of intention;
• seriousness of the offence;
• the attitude of enforcement authorities – i.e. will the introduction of on-the-spot fines build on an effective prosecution process;
• how common is the offence;
• public awareness of the offence;
• cost; and
• the availability of back-up sanctions.

These issues of principle are a useful guide for determining the suitability of adopting infringement notices for offences by liquor licensees. For example, NSW has trialled offence notices for minor criminal offences. In 2005, the NSW Ombudsman’s review of the Criminal Infringement Notice (“CIN”) scheme at recommendation 14 provided that similar principles to those set out by the CLRC’s report should form the basis of determining whether a particular criminal offence is suitable to be dealt with by way of a CIN.20

In Queensland, licensees or managers who sell or give liquor to a minor or who allow liquor to be given to a minor and/or allow a minor to consume liquor are subject to a maximum criminal penalty of $18,750 or an infringement notice of $1,875. Bar attendants or staff are subject to a maximum criminal penalty of $3,000 or an infringement notice of $600.

In NSW, the maximum criminal penalty for selling or supplying liquor (on licensed premises) to a minor is $11,000 for an individual.

Reform questions

38. Should the ACT infringement notice scheme be extended to apply to more Liquor Act offences? For example, should the relevant legislation be amended to introduce infringement notices for:

• licensees, permit holders, employees and patrons selling or supplying liquor to an intoxicated person;

• licensees, permit holders, employees and patrons selling or supplying liquor to a minor where the sale or supply of liquor is authorised or in a public place;

• overcrowding of premises;
• failing to complete incident registers;
• licensees and permit holders failing to comply with RSA requirements; and
• refusing to leave a licensed premises when directed to do so by the licensee.
Chapter 16 – Voluntary Breath-Testing of People Out Late in Canberra Night Life

There have been calls from a number of stakeholders that the Liquor Act review should include consideration of the merits of voluntary random breath testing in Civic, Manuka and Kingston.

It has been suggested that voluntary breath-testing would assist people to assess their own level of intoxication and capacity for safe driving, and would also provide an opportunity to distribute health information on the safe consumption of alcohol and where help can be sought.

Section 177A of the Liquor Act regulates breath analysis tests on licensed premises. The Act requires that at all times when a breath analysing instrument installed on a licensed premises is available for use by customers, a sign must be displayed stating “readings given by this instrument MAY NOT BE ACCURATE and are NOT ACCEPTED by the police or the courts. Your blood alcohol level can rise for one hour or more after your last drink”.

The use of voluntary breath-testing raises questions about the reliability of using such a device, which may or may not have been appropriately maintained and calibrated, creating a risk that some people might decide they can safely drive a vehicle, when in fact they may be over the applicable legal limit. The costs associated with purchasing and the on-going maintenance and calibration of breath-testing devices installed on licensed premises would ordinarily be a cost on licensees (noting that some licensees may pass on the cost of purchasing and servicing a breath-testing device to patrons).

ACT Policing submits that requiring licensed premises to purchase breath-testing devices in licensed venues raises a number of issues. ACT Policing is concerned that breath-testing devices in licensed premises may not send the right messages to patrons about either responsible drinking or drink-driving. For example, there could be circumstances in which such devices could contribute to excessive drinking by encouraging some patrons to compete in ‘drinking competitions’ by using the device to test levels of intoxication. A study conducted by Monash University found that two-thirds of self-testers used the machine because of curiosity or for fun, rather than to find out if it was safe to drive.\(^\text{21}\) The study also found that only 16 per cent of drivers who had intended driving home changed their minds after finding out their blood alcohol concentration was greater than the legally prescribed limit, although an equal amount of drivers did decide to modify their subsequent drinking behaviour.\(^\text{22}\)


\(^{22}\) Ibid p 3.
In addition, ACT Policing submits that relying on a device, which may or may not have been appropriately maintained regularly and calibrated, creates a risk that people will decide they can safely drive a vehicle when in fact they may be over the legal limit.

**Reform questions**

39. Should the Liquor Act be amended to introduce voluntary breath-testing in licensed premises, for example, in Civic, Manuka and Kingston? If so, should the requirement extend to all licensed premises in the Territory?

40. If so, who should be responsible for enforcing the legislative requirement for licensees to purchase and properly maintain a breath-testing device?
Chapter 17 – Mandatory Staff Training in the Responsible Service of Alcohol (RSA) and Employment of Minors on Licensed Premises

There is currently no statutory requirement for a licensee or their staff to have formal training, such as the RSA course.

A number of stakeholders have recommended that all persons serving alcohol in any licensed premises should be required to have completed an approved RSA course.

The Attorney General has recently announced the government’s intention to introduce RSA training for liquor licensees and bar staff to reinforce the broader harm minimisation principles embodied in the ACT Liquor Act.

In the ACT, it is relatively commonplace for bar staff to get the training contemplated by the government. The government’s proposal to require licensees and bar staff to undertake training will ensure that the workforce in this industry has a common understanding of the health and safety risks associated with excessive consumption of alcohol and the law as it relates to serving alcohol to minors and intoxicated people.

The Canberra Institute of Technology (CIT) offers a number of courses and qualifications, which incorporate an RSA component. For example, it offers an RSA course over three and a half hours which costs $95. It also offers other courses which include a Short Bar Course at a cost of $130 plus $12.50 for workbook, which is held one night a week for nine weeks. A number of other local training organisations and Job Network members also offer RSA courses.

ORS approves RSA training courses. The review of the Liquor Act may serve as a timely opportunity for ORS to review the content of the RSA training courses. For example, RSA courses might benefit from explaining the definition of “intoxicated” for the purposes of section 138, which deals with serving liquor to intoxicated people (please refer Chapter 6 for further commentary on this definition).

The cost of obtaining RSA training is reasonable and affordable and in these circumstances there is no basis upon which government would break with existing convention and fund such training courses. This is really a matter for the individuals who participate in the workforce. Government is simply saying that in the future, licensees and bar staff will undertake this training. Some commentators have queried the adequacy of the RSA courses on offer.

New South Wales, Victoria, Western Australia and Tasmania have a requirement for licensees and staff to complete training in the responsible serving of alcohol funded by staff and/or licensees.

As part of the Queensland Liquor Reforms, mandatory RSA may be extended to all staff involved in the sale or supply of liquor throughout the state,
including bartenders, glass collectors, floor hostesses, security providers, room service staff and bottle shop staff (currently RSA training is only mandatory for licensed premises in the Brisbane central business district).

ACT Policing has submitted that including security guards in mandatory RSA training would be a proactive measure, which would enable the identification of intoxicated persons at the initial point of entry, where access can be refused.

Reform questions

41. Should ORS undertake a review of the contents of the approved RSA training courses?

42. Should the Liquor Act be amended to require all staff involved in the service of alcohol to undertake RSA training?

43. Should staff be required to undertake a refresher course? If so, within what period of time?

44. What sanction should apply to failure to comply with compulsory RSA training (for example, a criminal penalty or disciplinary proceedings)?

Minors serving liquor on licensed premises

Some stakeholders have raised a concern about the employment of minors in licensed venues in the Territory.

The Liquor Act does not explicitly provide that a minor is or is not entitled to sell, supply or serve liquor in a licensed venue. However, the Liquor Act provides that a minor may possess alcohol or enter a bar-room if they do so in the course of their employment or in the course of a training program conducted by the Canberra Institute of Technology, or if the minor has been approved in writing by the Registrar.

The ACT Children and Young People Act 1999 prohibits the employment of a young child, except as provided by the Act. A young child is defined as someone who is not of school leaving age (15 years) or older. The Act provides that a young child can work in a family business, and in certain light work areas, such as babysitting, modelling, gardening and delivering newspapers, golf caddying and circus work, as long as the number of hours worked is limited to 10 hours per week, or longer if approval sought. Accordingly, children aged 15 years and over are legally entitled to be employed to serve alcohol in a licensed venue in the ACT.
The liquor legislation in other jurisdictions is varied with respect to the legality of a minor serving alcohol. In Western Australia, it is an offence for a minor to supply or serve alcohol on licensed premises. However, a minor may be employed to serve alcohol, ancillary to a meal if they are 16 years or older, their employment is approved, and their work is supervised at all times and is assessed for the purposes of a prescribed training course in which the juvenile is engaged.

A licensee in NSW must not cause or allow a minor to sell, supply or serve liquor on a licensed premises unless approval has been obtained from the Liquor Administration Board. While the board accesses applications for approval on a case-by-case basis, approval will only be obtained in exceptional cases. For example, approval might be obtained for minors who are members of a licensee’s family in licensed venues located in remote areas, where it would be difficult and expensive to employ additional staff.

Other jurisdictions such as Victoria, South Australia, Tasmania and the Northern Territory permit a minor to supply or serve liquor in licensed premises where certain conditions are met. These conditions range from the minor being engaged in approved training programs, the minor being approved by a liquor licensing authority, the minor being a child of the licensee, or the minor being under the direct and personal supervision of a person 18 years or over.

Allowing a minor, who cannot otherwise possess or drink alcohol in a licensed venue, to serve alcohol raises the following issues:

- minors may lack the maturity to determine intoxication levels of patrons;
- minors may be susceptible to intimidation to supply alcohol to intoxicated older patrons;
- minors may be exposed to potentially dangerous and violent environments, which they do not have the maturity to handle;
- minors may take the opportunity to consume alcohol, despite the existence of legislation and employment conditions, which prohibit the consumption of alcohol by minors; and
- minors might not be prepared to challenge other minors attempting to buy alcohol.

**Reform question**

45. Should the Liquor Act be amended to prohibit a licensee from causing or allowing a minor to sell, supply or serve liquor on licensed premises? If so, what exceptions/defences might be appropriate?
Chapter 18 – Lockouts/Curfews

ORS and ACT Policing have requested that consideration be given to adopting trading hour laws for liquor licensed venues, similar to those applying in parts of NSW, which include lockout/curfew provisions preventing patrons from re-entering licensed premises past a specified time.

Currently, the Liquor Regulation prescribes certain periods of time for the sale of liquor for each licence type. However, there are no prescribed venue closing times or lockout times.

**Current Trading Hours for ACT Licensed Premises**

<table>
<thead>
<tr>
<th>Licence Category</th>
<th>Condition</th>
<th>Permitted Hours of Trading</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>Selling for consumption on premises</td>
<td>between midnight and 4 am and between 7 am and midnight on any day</td>
</tr>
<tr>
<td></td>
<td>Selling for consumption on premises where notice given to Registrar</td>
<td>between midnight and 5 am and between 8 am and midnight on that day</td>
</tr>
<tr>
<td></td>
<td>Selling for consumption away from premises</td>
<td>between 7 am and 11 pm on any day</td>
</tr>
<tr>
<td>On</td>
<td>Selling for consumption on premises</td>
<td>between midnight and 4 am and between 7 am and midnight on any day</td>
</tr>
<tr>
<td></td>
<td>Selling for consumption on premises where notice given to Registrar</td>
<td>between midnight and 5 am and between 8 am and midnight on that day</td>
</tr>
<tr>
<td>Off</td>
<td>Selling in sealed containers to people for consumption away from premises</td>
<td>between 7 am and 11 pm on any day</td>
</tr>
<tr>
<td>Club</td>
<td>Selling for consumption on premises</td>
<td>between midnight and 4 am and between 7 am and midnight on any day</td>
</tr>
<tr>
<td></td>
<td>Selling for consumption on premises where notice given to Registrar</td>
<td>between midnight and 5 am and between 8 am and midnight on that day</td>
</tr>
<tr>
<td></td>
<td>Selling for consumption away from premises</td>
<td>between 7 am and 11 pm on any day</td>
</tr>
<tr>
<td>Special</td>
<td>At the time specified in the licence other than prescribed times</td>
<td>Prescribed times:</td>
</tr>
</tbody>
</table>
Lockouts restrict the migration of persons between licensed venues in entertainment precincts by disallowing entry to new patrons after a certain time. Patrons already inside a venue at the designated ‘lockout time’ are permitted to stay until they choose to leave, or the venue closes. ACT Policing submits that this reduces the interaction of intoxicated persons in uncontrolled environments and in turn contributes to a reduction in the number of street offences committed by intoxicated persons walking the streets to get from club to club.

ACT Policing’s call for a safe late night public transport arrangement has already been addressed by the government’s introduction of the Nightlink multi-user taxi option, which will provide an additional public transport option for patrons, similar to the Nightrider bus service, which operates during the Christmas/New Year period. This measure complements the introduction of curfews/lockouts, as there is the potential for persons locked out of nightclubs, who are not ready to go home, to congregate at public transport areas and contribute to anti-social behaviour. Curfews/lockouts would be enforced by ACT Policing and ORS inspectors.

**Experience of other jurisdictions**

Community “liquor accords” have been operating in other jurisdictions since the early 1990s and while they can deliver tangible benefits to the community, the success of an accord requires a high level of on-going commitment, participation and resources from all community stakeholders involved in the partnership.

The term “liquor accord” is mainly used in Australia to identify local, community-based initiatives, bringing together key stakeholders such as licensees, other businesses, local government authorities, community representatives and police to reduce alcohol-related violence and anti-social behaviour in late night entertainment areas. Strategies developed under accords can vary depending on the area’s own unique set of circumstances, and issues.

An accord is a voluntary agreement between stakeholders which sets out harm minimisation practices and a code of conduct to improve safety, without the need for mandatory legislation and enforcement. They complement the law, often going beyond the requirements of the law in representing standards to which participants agree.
Community and liquor accords have been used, or are currently being used, in a number of major Australian metropolitan cities as a means to address and change the anti-social behavioural dynamics of people in late night entertainment areas. A number of NSW liquor accords include provision to lockout patrons at specified times, for example, the Wagga Wagga and Lismore accords.

In NSW, the lockout/curfew strategy has as its primary objective the reduction of noisy patrons wandering between venues and causing disruption to the quiet and good order of the neighbourhood. The NSW Casino, Liquor and Gaming Authority, advises that in developing a lockout/curfew, accord members and stakeholders need to consider such things as fairness between venues, ensure venues’ compliance with the agreed lockout time and even transport strategies.23

Under the recently revised NSW liquor laws, the Director of Liquor and Gaming has been given a new power to make “late hour entry” declarations in respect of certain localities, classes of licences or a specific premises.

Curfew/lockout requirements are also being implemented in Queensland and Victoria. In June 2007, a number of Bendigo pubs and clubs opposing a curfew challenged a decision to impose a curfew in the Victorian Civil and Administrative Tribunal. The curfew, however, was introduced in October 2007 and licensees have since complained that they are losing customers as a result.24

In Queensland, since 2005 all licensed premises in the Brisbane City Council area have been subject to a 3 am lockout. Patrons who are inside licensed premises at the time the lockout commences may stay until the close of trade, but no other patrons are allowed to enter or re-enter after that time. Lockouts have also been implemented in many regional centres throughout Queensland.

**Empirical research**

A 2007 study by the Queensland University of Technology on the imposition of a 3 am lockout on the Gold Coast found a significant reduction in alcohol related incidents during peak alcohol times, such as on Saturday nights (9.5 per cent) and between 3 am and 6 am (12.3 per cent).25

---


The report stated that although some methodological limitations associated with the research should be borne in mind when interpreting the findings, the study contributes to a growing body of research which is indicating the implementation of restrictions on liquor trading hours has the potential to be employed as a major crime prevention technique to reduce alcohol-related incidents requiring police attendance.26

This body of research includes an evaluation study on the imposition of a 3 am lockout on all late night entertainment venues in the CBD of Ballarat in Victoria, in conjunction with increased lighting and extra police. The findings of the study saw the number of assaults in licensed premises decreasing by 47.5 per cent and there was a 33.3 per cent reduction in the number of assaults in public places.27

However, these findings should be considered against an evaluation of restricted liquor trading hours in the ACT in 1997, which found that crime and anti-social behaviour were not reduced in neighbourhoods of licensed premises where restricted liquor trading hours were introduced.28 The study, commissioned by the ACT government, found a number of additional negative results attributed to a 4 am closing time, including:

- residents or the business communities did not see this closing time as having reduced crime and anti-social behaviour;
- exacerbating problems for taxi drivers through increased levels of passenger aggression; and
- financial loss to the nightclubs and taverns affected by the restrictions.29

However, the study found some positive outcomes for a 4 am closing time including a possible contribution, along with other programs such as the designated driver scheme and diversionary conferencing, to a decline in the incidence of drink driving, cost savings for the police as a result of lower staffing requirements at weekend early morning shifts, and possible contribution to public perceptions of a cleaner and more orderly City area.30

It is important to note that the concept of a community liquor accord reinforces existing laws and regulations around the service and consumption of alcohol - liquor accords are not of themselves the solution - they provide support for local groups to try to work out their own solutions.

---

26 Ibid p 16.

27 Operation Link: Be Safe Late Program, 2004, Program Evaluation prepared by Centre of Health Research and Practice, Ballarat: University of Ballarat, Victoria.


29 Ibid.

30 Ibid.
Reform question

46. Should the government introduce lockout/curfew times for licensed premises in the ACT? If so, what would be an appropriate lockout/curfew time?
Chapter 19 – Prescribed Alcohol-Free Areas

In response to recent alcohol-related incidents in Civic, Manuka and Kingston, there have been calls to introduce prescribed alcohol-free areas in the central business districts and at family events such as the Australia Day live concert and Skyfire.

Introducing alcohol-free zones may be an effective way of reducing anti-social behaviour and making events in the city areas more attractive and enjoyable for families with small children. The ACT already prescribes alcohol-free areas for Summernats (in the Dickson and Lyneham areas), areas in Philip and skateboard areas.

Shellharbour City Council trialled a temporary alcohol-free zone during the “In the Bin” Film Festival. The Council argued that the imposition of a temporary alcohol-free zone for the duration of the event should encourage the targeted family audiences to participate and is likely to reduce the possibility of anti-social behaviour stemming from alcohol abuse. In 2007 the Council approved another temporary alcohol-free zone due to the success of the 2005 trial.

Other jurisdictions have areas, which are designated as alcohol-free zones for extended periods of time, including Manly in NSW and Boroondara in Victoria.

The requirements for the valid establishment of an alcohol-free zone in NSW are set out in the Local Government Act 1993 (NSW). The relevant provisions allow local residents and police officers to apply for an alcohol-free zone. The application must meet a number of requirements, and must include reasons supporting an alcohol-free zone, and indicate that consultation has occurred with the local Police Patrol Commander. After receiving a proposal to establish an alcohol-free zone, a council is required to undertake a public consultation process. Once it is decided to establish an alcohol-free zone, the council must publicly advise of the zone’s establishment, and must place signage in specified locations to inform the public. Once the alcohol-free zone has been set-up by the council, police officers are responsible for enforcing alcohol-free zones.

32 Shellharbour City Council Ordinary Council Meeting, 4 December 2007 – Subject 12.1.
33 Ministerial Guidelines on Alcohol-Free Zones, Department of Local Government, 22 December 1995.
Reform questions

47. Should the Liquor Act be amended to introduce prescribed alcohol-free areas in the central business districts and at family events?

48. If so, which areas (for example, Civic, Manuka, Kingston) and which events should be targeted?
Chapter 20 – “Plimsoll Lines” on Glasses

It has been submitted by a number of stakeholders that plimsoll lines should be required on glasses used in licensed premises.

ORS has suggested that requiring plimsoll lines on glasses would increase consumer awareness of how many standard drinks patrons are actually consuming.

Currently, the Commonwealth sets national standards through the National Trade Measurement Act 1960 and the States and Territories administer model Uniform Trade Measurement Legislation through their local trade measurement and administration legislation.

Under the Trade Measurement (Miscellaneous) Regulation 1991, the sale of non pre-packed beer and spirits in the ACT must be by volume measurement using beer glasses approved by the National Measurement Institute. Further, these beer glasses are required to be marked with a state or territory verification mark or a licensed certifier’s mark to show that the glass has been tested to NMI V13 and found to comply with the certificate of approval. The practical effect of these rules is that beer glasses may be any size, so long as they have been verified or certified and marked as such.

A jug of beer holds four standard drinks of full strength beer. According to the uniform national legislation, a jug must be defined by a capacity (plimsoll) line. However, people rarely drink from a jug alone and share the beer, making the assessment of a standard drink impossible.34

The trade measurement legislation does not require the sale of wine by volume, unless it is prepacked. Therefore, wine may be sold in an unmarked glass or carafe. Wine glasses need only be verified or certified and marked if a licensed premises sells wine by referring to a unit of measurement. In practice, this rarely occurs, as most licensed premises sell wine “by the glass”, rather than by a quantified volume.

While there may be costs to industry associated with the introduction of plimsoll lines on glasses, there may also be potential savings to industry from measuring servings more accurately.

It should be noted that jurisdictions have agreed that the Commonwealth will assume responsibility for Australia’s trade measurement system from 1 July 2010, which will lead to the repeal of State and Territory trade measurement legislation.

34 What Is Not An Australian Standard Drink, Drinkwise Australia
Reform questions

49. Should the ACT trade measurement legislation be amended to require a plimsoll line on glasses of drinks sold in licensed premises?

50. If so, to what kind of drinks should the requirement extend?
Chapter 21 – The Development of a Code of Conduct and/or Liquor Accords for the Liquor and Licensed Hospitality Industry

In response to alcohol-related violence and anti-social behaviour at Summernats and various Canberra night-spots, there have been calls for the development of a Code of Conduct for the liquor and hospitality industry to promote a level of self-regulation within the industry.

The AHA submits that there should be more consultation and communication between government and the industry both generally and specifically with respect to decisions made in respect of individual licences.

The AHA has recommended a number of measures to enhance communication between the industry and government:

- that meetings with particular licence groups be formally held twice yearly where ORS and ACT Policing would provide an overview of compliance activities, discuss areas of concern and answer questions from licensees;
- that the liquor licence register be published regularly along with all purchases, transfers, decisions of the Liquor Board, directions etc; and
- that the process of appointing members of the Liquor Board and the role of the Board itself, be better communicated to the industry.

The Auditor General’s observation in her June 2007 Audit Report was that benefits can flow from a collaborative approach with the liquor industry in minimising harm arising from the misuse and abuse of alcohol.

**Liquor accords**

Community liquor accords have also been operating in other jurisdictions since the early 1990s and while they can deliver tangible benefits to the community, the success of an accord requires a high level of on-going commitment, participation and resources from all community stakeholders involved in the partnership.

The term ‘liquor accord’ is mainly used in Australia to identify local, community-based initiatives, bringing together key stakeholders such as licensees, other businesses, local government authorities, community representatives and police to reduce alcohol-related violence and anti-social behaviour in late night entertainment areas. Generally, they are local strategies, and it is considered best practice that there must be the impetus at a local level to develop and implement accords. Strategies developed under accords can vary depending on the area’s own unique set of circumstances, and issues.
An accord is a ‘voluntary’ agreement between stakeholders that sets out harm minimisation practices and a code of conduct to improve safety, without the need for mandatory legislation and enforcement.

In using accords, however, it is the understanding that accords should not be a replacement for licensing and other laws, nor should they substitute for effective and consistent policing and enforcement. They should be regarded as complementing the law, often going beyond the requirements of the law in representing standards to which participants agree.

Community and liquor accords have been used, or are currently being used, in a number of major Australian metropolitan cities as a means to address and change the anti-social behavioural dynamics of people in late night entertainment areas.

Core accord principles can include a mix of the following:
- adoption of responsible service of alcohol practices;
- discouragement of ‘drinking games’ and price discounting and other activities that promote binge drinking;
- promotion of age identification checks to reduce underage drinking;
- promotion of ‘good neighbour’ behaviour by encouraging patrons to leave a premises quickly and quietly;
- provision of a safe and secure environment; and
- maintenance of an ‘incident’ register.  

**NSW framework**

The NSW Liquor Act establishes a co-regulatory scheme of local liquor accords. Any two or more eligible parties (that is, a licensee, the NSW Director of Liquor and Gaming, the NSW Police Force, a local council etc) may prepare a draft liquor accord in writing and submit it to the NSW Director of Liquor and Gaming and the Commissioner of Police for approval.

The NSW Director and Commissioner of Police must also approve any subsequent variations. The NSW Director may give a direction to any licensee in an accord area (even if the licensee is not party to the accord) to contribute to the costs of promoting or giving effect to the accord.

**Evaluation of accords**

Despite the proliferation of accords throughout Australia, very few have been formally evaluated to determine whether they have achieved reductions in alcohol-related violence, underage drinking and anti-social behaviour, and crime in and around premises.

---

**ACT’s experience**

The “Civic by Night” and “Manuka by Night” reviews of the mid 1990’s brought about some important crime prevention responses for these areas. Some of the more significant responses were “designing out crime” elements with streetscapes beautified, lighting improved, lines of sight cleared of obstructions, and ground level activities that provide informal surveillance were encouraged.

Other responses included licensee and community accords for both Civic and Manuka. The ACT’s experience in Civic and Manuka in attempting to establish and maintain community based voluntary liquor accords indicated that they required a dedicated resource commitment because the commercial partners tended to lose commitment after six to 12 months, resulting in non-attendance at forums and a loss of corporate knowledge with staff turnover. They required energy and ongoing commitment, particularly from the licensees and community representatives.

The ACT’s experience is that regular forums are important, and a written accord is insufficient in itself to maintain adherence of the participating licensees. Forums that include non-licensed traders and committed licensees act as powerful mechanisms for applying peer group pressure to irresponsible licensees.

The government’s recent responses to Civic late night entertainment issues involve a number of strategies, which normally would be found in the development of an accord, albeit in the absence of the formal overarching stakeholder forum. They include:

- more visible law enforcement presence, including plans to conduct more pro-active patrols of the Manuka/Kingston/Civic areas;

- more concerted joint operations involving police and liquor licensing inspectors, which also included discussions between the Australian Hotels Association (AHA) and a number of licensees, and police and Office of Regulatory Services to discuss the issues currently facing stakeholders and longer-term strategies around the theme of responsible serving of alcohol practices;

- trialing a new taxi program *Nightlink* in Civic, which commenced in late February 2008, to provide a safe and secure environment for taxi patrons and drivers by engaging security guards and marshals at the taxi rank; and

- investigating extending the public place CCTV system currently in place in areas of mass congregation such as Civic, the Jolimont Centre and the Canberra Stadium.

ACT experience with the former liquor Code of Practice in Civic and the Manuka Safety Committee suggests that, while they work well for a time, they must be constantly supported and refreshed so as not to succumb to a lack of commitment by the community and other stakeholders. Community liquor
accords are very community and jurisdictional specific and what works well in one community may not necessarily work as well in another.

ORS’s current Compliance Policy states that ORS’s preferred operating environment is not solely to focus on taking formal intervention and/or enforcement action. The preferred option is to regulate industry through regulation by consent and negotiated/agreed outcomes. It might be argued that increased consultation, communication and education within the industry would complement this policy agenda.

The Auditor General’s report also supports an appropriate level of self or co-regulation by the industry: “In particular, it would be useful to encourage a collaborative approach with the industry to jointly develop and promote a Code of Conduct for the liquor and licensed hospitality industries, and to implement other initiatives at the licensed premises to minimise harm arising from the misuse and abuse of alcohol. For example, a high level of cooperation between the industry and JACS could lead to a higher level of licensees and key staff attending relevant training to ensure a sound understanding of the licensee’s obligations under the Liquor Act”.

Encouraging an appropriate level of self-regulation within the industry supported by full industry participation and an effective complaints/disciplinary regime may reduce the enforcement burden on ORS and ACT Policing and lead to improved compliance outcomes.

Both ORS and ACT Policing have attempted at various times to conduct informative seminars or hold meetings with various groups of licensees. The AHA believes such meetings would have greater value for all parties if they were conducted regularly and with a formal supporting process. Specifically the AHA has suggested that meetings of particular licence groups could be held formally twice yearly where ORS and ACT Policing could provide an overview of compliance activities, discuss areas of concern and answer queries from licensees.

ORS has distributed several newsletters to all licensees, high schools and colleges in the ACT since October 2004, reporting on various issues in relation to the sale and consumption of alcohol. The newsletters mainly covered underage drinking and related topics.

Reform questions

51. Should an industry self-regulatory liquor accord including a Code of Conduct for the liquor and licensed hospitality industry be developed?


37 Ibid p 46.

52. Should the Liquor industry, ACT Policing, ORS and other local community members develop and participate in a co-regulatory ACT liquor accord? If so, should it be modelled on the NSW liquor accord co-regulatory scheme?
PART 5 – REGULATORY RESOURCES
Chapter 22 – Adequacy of Existing Liquor Laws
Regulatory/Operational Resources in the Territory

Recent alcohol-related anti-social incidents in Canberra nightspots have raised the question of whether the existing level of government regulatory and operational resources is adequate to ensure the safe and responsible consumption of alcohol in the Territory.

The AHA submits that ACT Policing should assume sole responsibility for liquor licensing compliance activities in relation to the Liquor Act in the Territory.

ACT Policing submits that significantly more resources are required for ORS to efficiently and effectively enforce liquor laws in the Territory.

Responsibility for compliance activities under the Liquor Act lies jointly with ORS and ACT Policing. Currently there are six inspectors employed by ORS to conduct compliance checks on licensed premises (but these inspectors are not engaged full-time on that task). ORS and ACT Policing have for the past three years been conducting joint inspections of licensed premises.

The Auditor General’s report found that “the level of regulatory activities, in particular, the number of inspections has been significantly reduced in recent years, partly reflecting inadequate resources. It is unlikely that the current regulatory strategies and activities are sufficient to provide assurance that compliance activities are effective”.39

Despite the reduction in inspections, the report found nearly 347 breaches were reported by ORS for the period July 2004 to April 2007. The Auditor General’s report noted “such high levels of non-compliance would appear to indicate that an extension of regulatory activities would be necessary to ensure better industry compliance with legislation and licensing conditions”.40

In addition to problems with respect to inadequate staffing resources, ORS inspectors may find themselves in dangerous situations when dealing with intoxicated patrons, as the inspectors have minimal training or experience in dealing with potentially hostile situations compared with police officers.

---


40 Ibid p 8.
Reform questions

53. Are the existing liquor law regulatory/operational resources available through ORS and ACT Policing adequate to ensure the responsible sale and safe consumption of alcohol in the ACT?

54. Should the enforcement and compliance role of ACT liquor laws be undertaken by ORS or ACT Policing or both, or some other organisation?

55. What balance should be struck between the need for additional regulation of the use/service of alcohol and the allocation of resources for competing regulatory/policing activity?
# Glossary

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFP</td>
<td>Australian Federal Police</td>
</tr>
<tr>
<td>AHA</td>
<td>Australian Hotels Association</td>
</tr>
<tr>
<td>Commissioner</td>
<td>Commissioner for Fair Trading</td>
</tr>
<tr>
<td>JACS</td>
<td>Department of Justice and Community Safety</td>
</tr>
<tr>
<td>Liquor Act</td>
<td><em>Liquor Act 1975 (ACT)</em></td>
</tr>
<tr>
<td>Liquor Board</td>
<td>Liquor Licensing Board</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>ORS</td>
<td>Office of Regulatory Services</td>
</tr>
<tr>
<td>Registrar</td>
<td>Registrar of Liquor Licensing</td>
</tr>
<tr>
<td>RSA</td>
<td>Responsible Service of Alcohol training course</td>
</tr>
</tbody>
</table>