

PROPOSALS FOR REGULATORY IMPROVEMENTS
**Identified in two-year Review report and through stakeholder
consultation**

FOR CONSULTATION

Released by the Justice and Community Safety Directorate

August 2015

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To make a submission email: ACTLiquorReview@act.gov.au

or write to:

Liquor: Proposals for Regulatory Improvements

Legislation, Policy and Programs

Justice and Community Safety Directorate

GPO Box 158

CANBERRA ACT 2601

The closing date for submissions is 2 October 2015.

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Introduction

2010 reforms and review

Liquor legislation and regulation in the ACT was reformed in 2010, in part, to respond to growing concerns about the levels of violent and anti-social behaviour associated with the abuse of alcohol. As part of these reforms, the *Liquor Act 2010* (the Act) adopted a new focus on harm minimisation and community safety. It sought to provide clear guidance to the regulator, licensees and the community about the purpose and objectives of the new laws to minimise the overall level of harm caused by the use of alcohol.

In 2013, the Justice and Community Safety Directorate engaged ACIL Allen Consulting to undertake an independent review of the 2010 reforms (the Review). The Review examined relevant data and included consultation with key stakeholders, including industry, health service providers, police and the regulator. The Review found that the majority of stakeholders consider the reforms to have made a positive contribution to community safety, and that the adoption of a risk-based approach to licensing is also seen as a positive step. However, the Review identified a number of issues that remain of concern:

- the persistent level of alcohol-related violence, in spite of the reforms that have been put in place;
- young people needing ambulance treatment for alcohol-related problems and an increasing level of acute alcohol-related emergency department presentations; and
- a reported culture of pre-loading.

The Review identified a number of opportunities to further reform the ACT's licensing regime in the pursuit of a safer community and a more efficient hospitality sector. These opportunities have been extracted at [Appendix A](#).

Government response

Potential changes identified in the Review report vary in complexity and their potential impact on a range of stakeholders. Changes need to be considered in detail, in collaboration with industry and other stakeholders. Many of the suggestions for change made in the Review report will also be of interest to the broader ACT community.

Alcohol policy reform addresses a range of objectives, including:

- ensuring public health and safety;

- ensuring the community is aware of the nature and level of alcohol-related harm and effective measures for preventing and reducing these harms, including the reduction of alcohol-related violence or anti-social behaviour;
- enabling the responsible development and growth of business;
- implementing best practice principles for regulation; and
- upholding competition policy.

The policy responses to meet some of these objectives may sometimes conflict with the achievement of the other objectives. Specifically, policy measures aimed at ensuring public health and safety can sometimes be at odds with competition policy.

Reform of alcohol policy needs a multi-faceted approach involving the key stakeholders, the broader ACT community, and whole-of-government.

To facilitate an in-depth consideration of the broad range of measures identified in the Review report, the Government is proceeding in a number of stages.

Stage one involved the introduction and passage of the *Liquor Amendment Bill 2015* (the Bill). The Bill amends the Liquor Act to:

- expand the function and membership of the Liquor Advisory Board;
- make it an offence to supply liquor to children and young people on private premises in certain circumstances; and
- strengthen the ability of the Commissioner for Fair Trading to determine who is a 'suitable person' under the Act when considering licence applications.

The Bill was passed by the ACT Legislative Assembly on 6 August 2015. The amending Act and accompanying explanatory statement, can be accessed on the ACT Legislation Register at:

http://www.legislation.act.gov.au/b/db_51860/default.asp.

Stage two involved the release of the *Issues Paper: addressing alcohol-related harm* to provide the community and stakeholders with an opportunity to consider and provide views on proposals for further reform to reduce the incidence of alcohol-related harms.

Specifically, the Issues Paper discusses the following measures:

- limiting the physical availability of alcohol through reduced trading hours and liquor outlet density restrictions;
- limiting the economic availability of alcohol through taxation and pricing policies; and
- reducing exposure to alcohol through the regulation of advertising and promotions.

The Issues Paper can be accessed at the following link:

<http://www.justice.act.gov.au/review/view/35/title/issues-paper-addressing-alcohol-related-harm>

Submissions were requested by 31 August 2015.

This paper represents **stage three**, and invites key stakeholders to consider proposals for further legislative reform which have been suggested to streamline the Act and make it more effective. These proposals were either identified in the two-year Review report or through subsequent representation from, or discussions with, stakeholders (e.g. issues raised by the Liquor Advisory Board, directly by Access Canberra or ACT Policing, by individual members of the ACT community, or through submissions to the ACT Government's Regulatory Reform Panel (previously known as the Red Tape Reduction Panel)).

In addition to providing comments on the proposals in this paper, stakeholders are welcome to identify other proposals for reform.

Further stages will consider, in no particular order:

- aspects of the liquor licence fee structure as identified in the Review report; and
- enhancements to data collection and reporting.

The paper does not represent the policy of the ACT Government. By releasing this paper, the Government is not committing itself to any of the proposals for regulatory improvements discussed in it. To the extent that this paper seeks views on proposals which could require additional funding, any such funding would need to be considered in the context of other government priorities, as part of future budget processes.

Proposals identified in the two-year Review report

Section 1: Proposals to streamline the Act and make it more effective

Proposal (1)(a): Review the object of the Act

Type: Legislative – amendment to section 9 of the Liquor Act

Source: Review report, p. 62

As part of the consultation that occurred through the Review, health services stakeholders, such as ACT Health and New South Wales ACT Alcohol Policy Alliance (NAAPA), as well as ACT Policing, recommended that the object of the Act be amended to provide for harm minimisation to be given explicit primacy over the objects about industry and consumer responsibility.

Section 9 of the *Liquor Act 2010* provides:

The object of the Act is to regulate the sale, supply, promotion and consumption of liquor-

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

Objects clauses generally outline the underlying purpose of legislation and can be used to resolve uncertainty and ambiguity. They can be used to assist the courts and others in the interpretation of legislation. Where harm minimisation is one of several primary objects or one of several equally ranked objects, its presence in liquor licensing legislation has implications for how decisions are made about licences. Where harm minimisation is the primary object, it becomes the fundamental principle on which the decisions under the legislation are made.

The Victorian Court of Appeal¹ has held that the Victorian Parliament intended that harm minimisation should be the primary object of the Victorian legislation. While harm minimisation is one of a number of objects, the presence of the following subsection makes harm minimisation the primary purpose:

Section 4(2), Liquor Control Reform Act (1998) – It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act

¹ *Kordister Pty Ltd v Director of Liquor Licensing & Anor* [2012] VSCA 325 (19 December 2012).

must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.

In New Zealand, section 4 of the *Sale and Supply of Alcohol Act 2012* provides:

The object of this Act is that-

- a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and*
- b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.*

Section 4 further provides that the harm caused by excessive or inappropriate consumption of alcohol includes:

- any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
- any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described above.

Issues for consideration:

1. Should the object of the Act be amended to provide for harm minimisation to be given explicit primacy over the objects about industry and consumer responsibility?
2. If so, how could this be achieved (i.e. adopt the Victorian or New Zealand approach, or through another approach)?

Proposal (1)(b): Application of Act to small businesses

Type: Legislative – amendment to existing sections 6 and 7 of the *Liquor Act* or new provisions to provide for exemptions

Source: Review report, p. 62

As part of the consultation that occurred through the Review, stakeholders identified a number of potential inconsistencies in the Act regarding how certain traders were treated.

For example, Access Canberra (previously the Office of Regulatory Services) made the point that the Act is relatively silent on how to treat florists and hairdressers that provide alcoholic beverages as part of their services. Access Canberra recommended that the Act provide an exemption for these businesses as is done in other jurisdictions.

It is proposed that businesses, such as these, where the supply of liquor is only a small part and ancillary to the primary products or services on offer be exempt from the requirement to hold a liquor licence, provided certain criteria are met. The criteria could include, for example, limits on the quantity of liquor supplied, providing that the liquor must be supplied at no cost etc.

Examples of the types of businesses that could be exempt from the requirement to hold a liquor licence, provided certain criteria are met, include:

- florists;
- hairdressers (and other businesses in limited circumstances where liquor is supplied free of charge);
- hospitals;
- nursing homes/residential care services;
- bed and breakfast businesses;
- limousine businesses;
- tour operators; and
- retirement villages.

Issues for consideration:

1. What types of businesses should be exempt from the requirement to hold a liquor licence?
2. What criteria should apply to businesses to enable them to be appropriately exempted from the requirement to hold a liquor licence?

Proposal (1)(c): Application of Act to bring your own (BYO) venues

Type: Legislative – new provisions

Source: Review report, p. 62

There is currently no regulation in the ACT for businesses that permit patrons to BYO. As part of the consultation that occurred through the Review, Access Canberra noted that the principles of responsible service of alcohol do not apply to BYO venues.

Owners and staff of these venues do not have the same responsibilities as licensees or permittees for controlling the behaviour of patrons at these venues, which may impact on

patron and public safety. For example, the offences regarding service of alcohol to an intoxicated person or service to minors do not apply in these BYO venues (if not a public or private place in relation to minors).

In addition, the requirements to engage in practices and promotions that encourage the responsible supply and consumption of liquor, and to provide and maintain a safe environment at and around the premises do not apply.

Since the Review, and associated with the recent growth in Canberra's hospitality sector in certain suburbs, including Braddon, some licensed venues have expressed concerns about the consumption of alcohol and the behaviour of patrons at BYO venues.

In Victoria, there is a requirement to have a BYO permit, which authorises the consumption, possession and control of liquor at a restaurant or a club or a party bus.² Holders of a BYO permit need to adhere to a code of conduct that complies with the standards of patron and operator behaviour expected by the Victorian Commission for Gambling and Liquor Regulation (VCGLR). The VCGLR has the discretion to impose conditions on a BYO permit. In addition, the offences of supplying alcohol to minors or intoxicated people apply to BYO permits.³

Alternatively, a more simple approach to addressing the issue has been adopted in New South Wales, where there is no licensing of a BYO restaurant, but the offence of serving liquor to a minor applies to these venues.⁴

It is proposed that while there may not be a need to licence or permit BYO venues in the ACT, the offences of supplying alcohol to minors or intoxicated people should apply to these venues. In addition, the requirements to engage in practices and promotions that encourage the responsible supply and consumption of liquor, and to provide and maintain a safe environment at and around the premises could be applied to these venues. This could be achieved through a Code of Conduct or Guidelines. While section 154 of the Act provides broad powers which would enable investigators or police to enter BYO venues open to the public to ensure compliance, consideration may need to be given to strengthening enforcement provisions in relation to BYO events occurring on private land.

Issues for consideration:

1. Is the proposal outlined above (no licensing or permitting of BYO venues, but applying certain offences and responsible practice principles to these venues, potentially through a Code of Conduct or Guidelines) considered appropriate for regulating BYO venues in the ACT?

² Section 15, *Liquor Control Reform Act 1998*.

³ Section 119, 108(4)(a), *Liquor Control Reform Act 1998*.

⁴ Section 117 *Liquor Act 2007*.

2. If not, what approach would you consider more appropriate and why?

Proposal (1)(d): Application of Act to caterers

Type: Legislative – amendment to section 21 of the Liquor Act and associated provisions, or new provisions

Source: Review report, p. 14, 69

The Liquor Act doesn't provide a licence for caterers who provide liquor at functions away from their premises. Currently, commercial permits are issued for these businesses.

As part of the consultation that occurred through the Review, Access Canberra reported that there appears to be a slight trend towards 'General' liquor licences being taken out mainly by caterers (instead of taking out commercial permits) because there is no caterers licence category under the Act. The Review report recommended reviewing the application of the Act regarding licence or permit categories to clarify the treatment of caterers.

There are some varied approaches to treating caterers in other Australian jurisdictions.

In New South Wales, a caterer is required to hold an on-premises licence and must obtain an authorisation to sell liquor on premises where they provide catering services, other than their own permanent licensed premises.⁵

In South Australia caterers use a special circumstances licence which authorises the licensee to sell liquor for consumption on or off the licensed premises in accordance with the terms and conditions of the licence.⁶

In Western Australia a special facility licence can be granted for the purpose of allowing the sale, by a caterer, of liquor supplied at premises at which the caterer has agreed to provide liquor (whether with or without food), for consumption by persons at that premises.⁷

In Queensland, caterers need a commercial other licence to operate. Approval can be obtained to cater for functions held away from the main licensed premises (known as a catering endorsement on licence).

It is proposed to amend the special licence category to provide that the licence applies at the licensed premises and at premises where the caterer has agreed to provide liquor for consumption by persons at those premises.

⁵ Section 25(6), *Liquor Act 2007*.

⁶ Section 40, *Liquor Licensing Act 1997*.

⁷ Section 46(2), *Liquor Control Act 1988* and regulation 9A(13), *Liquor Control Regulations 1989*.

Issues for consideration:

1. Is the proposal outlined above (amending the special licence category to provide that the licence applies at the licensed premises and at premises where the caterer has agreed to provide liquor for consumption by persons at those premises) considered appropriate for regulating caterers?
2. If not, what approach would you consider more appropriate and why?

Proposal (1)(e): Review the requirement that all company directors need responsible service of alcohol (RSA) training

Type: Legislative – clarification of existing provisions

Source: Review report, p. 63, 70

Section 100 of the Liquor Act provides that a licensee commits an offence if they do not hold a RSA certificate and they supply liquor to someone else and the supply happens at the licensed premises. While Access Canberra hold the view that directors of a corporation, who may never practically work behind a bar or serve patrons, should not be required to undertake RSA training, it is arguable that the definition of supply in the Act means that all directors are captured.

In other Australian jurisdictions, the requirement for RSA training, in relation to corporate licences, only applies to those staff who are directly involved in the service of supply of liquor at the premises, or to at least one of the directors.

Issues for consideration:

1. Should RSA training be mandated for all directors of a corporation?
2. If not, should there be a requirement for at least one director to have the training, or should the requirement only exist where there is a direct link for people who are involved in supplying liquor for retail purposes on the premises?

Proposal (1)(f): Flexibility to change trading hours for special events

Type: Legislative – new provisions

Source: Review report, p. 68

As part of the consultation that occurred through the Review a stakeholder suggested that there should be greater flexibility to change trading hours for special events. For example, it was suggested that licences with a 12am closing time should be able to negotiate with

Access Canberra on an ongoing basis to have the flexibility to trade until 1am for special events. This could include for the purpose of having live music.

Under the Regulations, the standard licensed times for general licences (liquor sold for consumption at the premises) and on licences are currently extended until 1am on Anzac day, Christmas Eve and New Years Eve.

While a licensee could apply for a permit, under the Act, as a means of extending their trading hours, consideration could be given to introducing a new category of permit which is designed specifically for this purpose. For example, it is arguable that the one-off fee for a permit may not appropriately consider the risks associated with extended trading hours beyond 12am for some venues.

A number of Australian jurisdictions have specific provisions that would allow a licensee to vary their trading hours for one-off events.

In Queensland, one-off extensions to trading hours are available upon approval. One-off extensions for trading from 12 midnight to 5am are available for all licences (not including takeaway liquor sales and community other licences), but the number of extensions that can be issued in a 12 month period is limited to 12.

In Victoria, temporary limited licences can be sought to hold a one-off event, or for existing licensees to hold a one-off event which requires extended trading hours. A maximum of 6 can only be granted in a 12 month period.

In Western Australia, a short-term extended trading permit can be granted to allow trading past the normal trading hours for a special occasion or function. There is no limit on the number of permits that can be granted in a 12 month period. Permits will only be granted where there are sufficient facilities and expertise to ensure that liquor will be sold and consumed in a responsible manner, and that adequate measures will be taken to ensure that trading is not conducted in a manner detrimental to the public interest (i.e. there must be means to prevent the sale of liquor to juveniles and to prevent public disorder).

In New South Wales, section 13 of the *Liquor Act 2007* provides for extended trading periods for hotels and clubs to be prescribed by regulation for special events. Special events are defined to include events that the Minister considers to be of regional, State or national significance. Examples of events have included the 2008 Olympic Games, the Soccer Asian Cup, one-day cricket matches involving Australia, and the Tamworth Country Music festival.

In addition, extended trading authorisations can be obtained for licensed premises to allow them to trade after midnight occasionally to meet local demand for late-night functions. This extended trading is subject to an annual fee and allows late-night trading outside of the

standard trading period (but no later than 3am) on up to 12 occasions over a 12 month period.⁸

Consideration would need to be given to ensuring that any fee associated with this proposal is appropriate to acknowledging the risks associated with late night trading and does not result in licensees using this system as a means to avoiding the higher fees associated with trading outside of standard hours.

Issues for consideration:

1. Should there be greater flexibility to change trading hours for one-off events?
2. If so, what model should be adopted (i.e. should there be limits on the number of times a venue can vary hours, should there be a limit on the latest trading hour that can be applied for or should this be discretionary, should venues have to provide specific evidence to demonstrate that the extended trading will be consistent with the harm minimisation principles of the Act)?
3. What fees should apply?
4. Are there other options for providing venues with flexibility to amend conditions to support one-off events, including live music?
5. Are there opportunities to improve how temporary licensing is issued to support one-off events?

Proposal (1)(g): Remove the requirement for a risk-assessment management plan for low-risk venues

Type: Legislative – amendment to Part 6 of the Liquor Act 2010

Sources: Review report, p. 54, 69-70. Recommendation 4 – AHA submission to Red Tape Reduction Panel

A risk-assessment management plan (RAMP) details procedures, practice and arrangements for conducting the business of selling liquor at the premises.

All applications for a licence which authorise liquor to be sold and consumed on the premises (general, on, club or special licences), or a commercial permit, require a RAMP to be provided to the Commissioner for Fair Trading for approval.

As part of the consultation that occurred through the Review, some representatives of on premises licensees reported that RAMPs are an administrative burden for restaurants and

⁸ Section 49(5)(c), *Liquor Act 2007*.

cafes and small venues. The Review report suggested that the ACT Government should review the application of the Liquor Act regarding the administrative burden of RAMPs for restaurants and cafes and small venues.

In Queensland, a RAMP is not required when applying for subsidiary on-premises meals and cafe licences (where liquor is sold for consumption on-premises as a secondary function of the business), provided the premises are low risk because the:

- premises will not be open past 12 midnight;
- licensee does not hold an adult entertainment permit; and the
- venue is not in a restricted area.

Issues for consideration:

1. Should the requirement for a RAMP be removed for certain licence or permit types?
2. If so, which licence or permit types should be considered?
3. Should there be any additional criteria that is considered before the requirement for a RAMP is removed (i.e. approach in Queensland – dependent on trading hours and location)?
4. If the requirement for a RAMP is removed for certain licence or permit types, should the Commissioner for Fair Trading have a discretion to impose a RAMP in certain circumstances (e.g. where a venue has had a number of reported incidents)?
5. Is there a different approach that could be considered that may reduce the administrative burden for some licence or permit types in preparing a RAMP?

Section 2: Proposals to improve public consultation

In the Liquor Act, division 2.4 provides for members of the public to be able to comment on applications for new liquor licences. When an application for a new liquor licence is lodged, the applicant is required to post a sign at the proposed premises and publish a notice in *The Canberra Times*. At this point, a 30 day public consultation period commences, during which time members of the public can comment to the Commissioner for Fair Trading, as set out in the notices.

Proposal (2)(a): Improve how the community is consulted about new licence applications

Type: Legislative – amendments to Division 2.4

Source: Review report – p. 69

As part of the consultation that occurred through the Review, some stakeholders raised concerns about the consultation process involved with licence applications. Specifically, the Review suggested that there is scope to improve how the community is consulted about new licence applications.

In recent years there has been increasing community concern about alcohol-related harm and amenity issues, and accordingly increasing community interest in being engaged as part of the liquor licensing process. In response, some Australian jurisdictions have implemented improvements to their consultation processes to ensure that decision-making is more responsive to the public interest.

It was suggested that Access Canberra, or applicants, could employ a more proactive approach in informing local residents and interested stakeholders to improve the consultation process.

For example, some stakeholders recommended that automatic written notification should be provided to specific stakeholders within 24 hours of the application's lodgement.

The specific stakeholders identified included: ACT Policing, ACT Health, local hospitals, places of worship, educational institutions, facilities for vulnerable persons and managers of alcohol-free zones, public parks and sporting grounds.

It was also noted that there is no central repository of lodged licence applications which the community could access and comment on. It was recommended that consultation notices of licence and permit applications and amendments should be placed on the Access Canberra website.

It is worth noting that the *Red Tape Reduction Legislation Amendment Bill 2015* (introduced in the Legislative Assembly on 4 June 2015) contains an amendment that will facilitate consultation notices being placed on an ACT government website.

One stakeholder commented that the assumption of harm should be a starting point, i.e. it should be the responsibility of the applicant to demonstrate that no harm will result as a consequence of their venue.

In Queensland, applicants for a licence, or extended trading hours, are required to submit a community impact statement (CIS). A key part of a full CIS is the requirement for a minimum of eight interviews with a representative sample of community advisers for the locality. The advisers may include local government authority personnel, human services workers, police, health workers, educators or community organisation personnel who are qualified to speak on behalf of the community. This consultation process must be rigorous and transparent, and be evidenced by the names and qualifications or professional positions of any key advisers consulted, the timing and duration of consultation, and the methodology for undertaking any interviews.

A CIS is also required to be prepared by a potential applicant for a liquor licence in New South Wales. A full CIS must involve the following stakeholders:

- the local consent authority;
- the local police;
- the Department of Health;
- the Department of Community Services;
- the Roads and Traffic Authority;
- recognised leaders of the local Aboriginal community in the area;
- occupier of any neighbouring premises (buildings within 100m or situated on land adjoining the boundary);
- special interest groups or individuals (for example, indigenous communities, people from culturally and linguistically diverse backgrounds, people with disabilities, young people, local schools or colleges, older Australians, and socio-economically disadvantaged groups).

The CIS must show how stakeholder concerns have been resolved and describe any changes that have been made to the proposal as a result of stakeholder discussions. If resolution could not be reached, the CIS must note the issues raised and include a brief description of the attempts that were made to resolve the concerns.

In order to facilitate community awareness and consultation, it was recommended by some stakeholders that data be made publicly available on the Access Canberra website in relation to:

- police and ambulance activity and alcohol-related hospital presentations;
- sanctions for breaches of the Liquor Act and its subordinate legislation; and
- a breakdown of the numbers of occupational discipline complaints made under the Act and the outcomes of them.

In considering improvements to community consultation, it is worthwhile considering how any new processes can be streamlined to ensure that any additional regulatory requirements are appropriate for the purpose. For example, consideration could be given to having different levels of requirements depending on the potential impact or level of risk associated with licence type/venue type.

Issues for consideration:

1. Should the existing public consultation process be amended in the ACT?
2. If so, please comment on the appropriateness of the proposals noted above (i.e. automatic written notification to certain stakeholders, requiring the applicant to demonstrate no harm, including data on the Access Canberra website).
3. Are there other suggestions for improving the public consultation process?
4. What options are available for ensuring that any improvements to the public consultation process are streamlined?

Proposal (2)(b): Improve the mechanism for the community to make complaints or objections

Type: Non-legislative

Source: Review report – p. 69

As part of the consultation that occurred through the Review, Health services stakeholders commented that there was no simple avenue through which a complaint could be made. These stakeholders referred to other jurisdictions, where the regulators provide an online portal through which complaints about promotions and venues can be made.

Generally, Access Canberra can accept complaints over the phone, through email, and by post. In addition, the ACT Government, through Canberra Connect, already operates a feedback and complaints portal, which can be used by the community to make complaints or objections. It is proposed that the Access Canberra website could be updated to provide a link to this portal.

Under the Liquor Act specifically, a person who believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee or commercial permit-holder may complain to the Commissioner for Fair Trading. Currently, the form of the complaint must be in writing, signed by the person making the complaint, and include the complainant's name and address. While the Commissioner can accept for consideration a complaint not made in writing, the Commissioner must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

Consideration could be given to removing the strict requirement for complaints to be in writing. The Commissioner would still be obligated to investigate and have sufficient evidence to be able to take disciplinary action. The Commissioner would also have the discretion to not pursue complaints which are frivolous or vexatious.

Issues for consideration:

1. How could the existing general complaints process for liquor issues be improved?

Section 3: Proposals to address underage drinking

Proposal (3)(a): Remove defence to the supply of liquor to underage person over 16 who used fake ID

Type: Legislative – repeal section 110(6) of the Liquor Act 2010

Source: Review report, p. 59-60

During the Review, some stakeholders suggested the removal of the defence in the Act in relation to the supply of liquor, by a licensee or permit-holder and employees, to a person who was at least 16 years old and showed false documentation identifying the person as an adult.⁹

The defence has been included to ensure that licensees, permit-holders or employees who comply with the law are not punished unjustly given the difficulties involved in accurately estimating age.

Most Australian jurisdictions (with the exception of Queensland and Tasmania) have a similar defence. In New South Wales the minor must be at least 14 years old, and in South Australia and Victoria, there is no threshold age limit.

Issues for consideration:

1. Should the defence to the supply of liquor to underage people over the age of 16 years who used false identification be removed?

Proposal 3(b): Legalise controlled purchase operations

Type: Legislative – new provisions

Source: Review report, p. 60

Controlled purchased operations involve supervised minors attempting to buy liquor from licensed premises to test licensees' compliance with supply laws. The ACT does not currently have a legislative framework which would enable testing compliance with laws relating to the sale or supply of liquor to minors. During the Review, stakeholders noted that the existing model under the *Tobacco Act 1927* that enables compliance testing, using test purchases of tobacco products by trained and supervised young people, could be used as an example for a liquor model.

⁹ Section 110(6), *Liquor Act 2010*.

Alcohol controlled purchase operations have been utilised in Scotland, New Zealand and the UK to monitor and enforce the provisions relating to the sale of liquor to minors. A High Court appeal in 2005 reinforced that controlled purchase operations are a fair test of licensees' responsibilities under liquor legislation and that if in the course of the operation the minor misrepresented their age, it was an irrelevant consideration.¹⁰

Currently, no Australian jurisdiction has legislated to permit controlled purchase operations for liquor. Consideration would need to be given to the cost implications of undertaking compliance testing.

Issues for consideration:

1. Should consideration be given to allowing controlled purchase operations?
2. If yes/no, please provide reasons.

¹⁰ *Scenic Cellars Partnership Ltd* LLA PH 210-211/2005.

Section 4: Miscellaneous proposals

Proposal (4)(a): Disincentives/incentives to alter licensed premises' risk profiles

Type: Legislative

Source: Review report, pp. vii, 68

Two additional risk factors to be included in the determination of licence fees

As part of the 2010 reforms, the ACT adopted a risk based model to determine liquor licensing fees. Fees are structured around three key risk factors: venue type, trading hours and venue capacity, which have been found to be associated with increased levels of alcohol-related harm.

The two additional risk factors contemplated in the Review report are:

1. compliance history (i.e. a poor compliance record would signify an increase in a venue's risk profile); and
2. best practice management (i.e. venues should be encouraged to invest in mitigation strategies (including added security, CCTV, transport services, chill out rooms, food service or responsible promotions policies) and these investments should be reflected in a venue's risk profile).

An additional risk factor that also could be considered is the number of alcohol-related violent incidents occurring on and within the vicinity of licensed premises.

While the focus of the discussion in the Review report was on the scope for the inclusion of these risk factors to reduce the fees of compliant, best practice licensees, a primary focus should be the scope for these factors to contribute to reduced violence and anti-social behaviour. If improved compliance and best practice management led to improvements in the levels of alcohol-related violence, this approach would benefit the allocation of police resources.

While the Review report suggested that these risk factors could apply as incentives to reduce a licensee's risk profile and consequently fees, it should be acknowledged that a number of stakeholders disagreed with that approach. This was on the basis that the community has a reasonable expectation of good compliance and best practice, and this should be the standard applied by all venues. Expanding the risk factors to include compliance history, best practice management and violent incidents would also add to the complexity of the fee scheme, and would require additional resourcing.

Disciplinary scheme: suspension and special licence conditions

An alternative model that could be considered is adopting a disciplinary scheme which penalises licensees for non-compliance, an approach used in other jurisdictions.

It is acknowledged that not all venues are problematic and a small number of outlets can be responsible for a disproportionate number of problem incidents. Identifying and targeting venues associated with greater numbers of problems is an evidence-based strategy to reduce alcohol-related violence.

Under the Victorian system introduced in 2011, one demerit point is incurred for one non-compliance incident (presence on licensed premises, and service of, minors and intoxicated patrons) with:

- 5 demerit points leading to an automatic 24-hour suspension;
- 10 demerit points leading to an automatic 7-day suspension; and
- 15 demerit points leading to an automatic 28-day suspension.

Demerit points apply to the licence for a period of three years. The Victorian Commission for Gambling and Liquor Regulation maintains a demerits register and publishes the register on its website.

Under the New South Wales scheme, introduced in 2011, strikes are incurred for convictions for the following prescribed serious offences:

- permitting intoxication or indecent, violent or quarrelsome conduct on licensed premises;
- selling or supplying alcohol to an intoxicated person or a minor;
- allowing alcohol to be sold or supplied to a minor on licensed premises;
- selling or supplying alcohol outside authorised trading hours;
- permitting the use or sale of illicit drugs;
- non-compliance with director-general directions or closure orders; and
- breach of key liquor licence conditions applying to violent venues or conditions imposed on a venue following the imposition of a strike.

Under the scheme, a first strike will be an automatic outcome of a conviction for a serious offence and is active for three years.

The decision that a second or third strike is incurred is at the discretion of the Director-General or the Independent Liquor and Gaming Authority, respectively, if the licensee or manager commits an offence during the three year period in which the first or second strike is in force.

The relevant factors considered by the Director-General or the Authority, when deciding whether strike two or three should be recorded, include:

- size and patron capacity;
- history and nature of the commission of previous prescribed offences;
- history and nature of violent incidents that have occurred;
- change of ownership or management; and
- changes to business practice.

Where a first or second strike is incurred, the Director-General has the discretion to impose conditions on a licence, including:

- the use of plans of management and incident registers;
- prohibiting the use of glass;
- engaging persons to promote the responsible service of alcohol; and
- in the case of a club licence – requiring members of the governing body of the club to undergo training.

The Director-General can also impose further conditions where two strikes are in force, including:

- restricting who can be appointed as a manager;
- implementing security measures;
- prohibiting the sale of alcohol during certain times;
- implementing lockouts; and
- prohibiting the sale of certain types of alcohol or the provision of certain types of entertainment.

Declared premises: special licence conditions

Another option that could be considered is providing special licence conditions only for those premises that have high levels of assaults and other violent incidents and which have been declared as high-risk. In New South Wales premises with 12 or more incidents, based on data compiled by the New South Wales Bureau of Crime Statistics and Research, become 'declared premises'.

'Declared premises' may be subject to the following special licence conditions:

- mandatory 1:30am lockout of patrons;
- cessation of alcohol service 30 minutes prior to close;
- no glass or breakable plastic containers to be used after midnight;
- no shots and drink limit restrictions (no more than 4 alcohol drinks or one bottle of wine sold to the same person at any one time) after midnight;
- 10 minute alcohol sales time out every hour after midnight or active distribution of water and/or food;
- one or more additional security measures (providing security staff, training for security staff, closed-circuit television, digital video and audio recording devices, electronic ID scanning, systems for recording and retaining patron particulars, inter-venue communication network); and
- keeping and maintaining of incident register, recording details and actions taken in response during the standard trading period.

Displaying public safety notices or risk ratings

It has been suggested that licensed premises should be made to display a notice or symbol at each public entrance indicating a 'risk' or 'compliance' rating for the premises. This could be based on the number of confirmed incidents involving violent, unlawful or anti-social behaviour at the premises, as well as other incidents of non-compliance (for example, service to intoxicated persons or minors).

It is intended that this would provide greater awareness to consumers of the potential risks at a particular location, allowing them to make informed choices about the premises they choose to patronise. This in turn would provide an incentive to licensees to ensure that no incidents of alcohol-related violence occur on the premises.

This approach is similar to the 'Scores on Doors' scheme that applies in the food industry, in relation to food hygiene. The 'Scores on Doors' scheme has been trialled in some states in

Australia and has been implemented in some cities internationally. There is robust evidence from international experience that suggests that 'Scores on Doors' schemes have a positive impact on food safety compliance.¹¹ In some cases, a reduction in reported foodborne illness has also been demonstrated.¹²

However, there is no evidence available as to whether outcomes in the food industry would translate over to the liquor industry. The Directorate is not aware of instances of the scheme being used in the liquor industry elsewhere.

Declaration of a 'risk zone'

ACT Policing have suggested consideration be given to providing a power for the Minister to declare a 'risk zone' based on factors such as frequency and severity of alcohol-related incidents of assault and other violent or anti-social behaviour, the volume of ambulance attendances and hospital presentations, and the number of high-risk licensed venues in close proximity. The Chief Police Officer, Commissioner for Fair Trading, or Minister for Health could have the ability to make a recommendation to the Minister for such a declaration.

The consequences for licensed venues located in a declared 'risk zone' could include the following:

- higher level of penalties for certain alcohol-related offences by patrons and licensees (similar to the concept of 'double-demerits' for driving offences);
- additional conditions placed on licensees (for example, security measures, lockouts, restrictions on the use of glass etc.).

A 'risk zone' declaration would be temporary in nature – subject to a time limit - and easily revoked should the risks giving rise to the declaration abate.

¹¹ Reported citations in the KPMG report for the ACT Government Health Directorate, 'Scores on Doors' Regulatory Impact Statement on options for improving transparency of food regulation in the ACT (2012): Worsfold, D, Journal for Foodservice, Consumer information on hygiene inspections of food premises, April 2006; Toronto Public Health, Toronto Food Inspection and Disclosure Program, March 2011; Berman, G, Evaluation of Scores On The Doors, Final Main Report for the Food Standards Agency, 2008.

¹² Reported citations in the KPMG report for the ACT Government Health Directorate, 'Scores on Doors' Regulatory Impact Statement on options for improving transparency of food regulation in the ACT (2012): Zhe Jin, G and Leslie, P, The effect of information on product quality: evidence from restaurant hygiene grade cards. Quarterly Journal of Economics, 2003.

It is acknowledged that careful consideration would need to be given to defining the area of the declared 'risk zone'. The area should only include those areas where there is clear evidence based nexus to the risk, but should also consider the effects of displacement on nearby lower risk venues. Consideration should also be given to whether the small size of Canberra would mean that the problems would migrate from declared 'risk zones' to other areas.

Issues for consideration:

1. How should licensees be encouraged to achieve compliance and reduce the risk profiles for their licensed premises:
 - a. reduce fees for compliance/implementation of best practice; or
 - b. impose higher fees or financial penalties for non-compliance; or
 - c. impose other sanctions on trading (including suspension of trade, lockouts etc.) which increase with the seriousness or number of compliance failures;
or
 - d. impose special licence conditions on premises with high levels of violent incidents.
2. Should the ACT adopt a risk rating scheme similar to the 'Scores on Doors' scheme applying in some jurisdictions in the food industry?
3. Should the Minister have the power to declare 'risk zones'?
4. If so, what guidelines should be in place for making this type of declaration?
5. What should the effect of a declared risk zone be (i.e. higher level of penalties for offences, additional conditions etc.)?

Other Proposals

Section 5: Proposals to reduce regulatory burden

Proposal (5)(a): Reviewing responsible service of alcohol (RSA) competency in the ACT

Type: Legislative – amendment to part 12

Source: Access Canberra, Recommendation 3 – AHA submission to Red Tape Reduction Panel

The Act requires licensees and commercial permit holders, employees supplying liquor and crowd controllers to have successfully completed an ACT approved RSA training course. The individual approval of each RSA course is time consuming for Access Canberra and can result in differences in material depending on each provider. In relation to commercial permit holders, this regulatory burden may serve to discourage interstate wine and beer producers attending one-off events held in the ACT.

In line with other Australian jurisdictions, consideration could be given to referring to a unit of competency or module of a course delivered by a registered training organisation under the National Vocational Education and Training (VET) system (currently 'provide responsible service of alcohol' (SITHFAB201)).

The benefit of this approach is that it would also make it easier to allow for the recognition of RSA training in the ACT that has been conducted in other jurisdictions.

Adopting the VET competencies may raise concerns that staff are not being educated about the specifics of the ACT liquor regulatory regime. However, these concerns could be negated by Access Canberra preparing a document that sets out the main obligations and offences specific to the ACT and making this available to staff on the Access Canberra website.

Issues for consideration:

1. Should consideration be given to changing the RSA training requirements to accept a nationally recognised course, thereby allowing RSA training completed in other jurisdictions to be recognised in the ACT?
2. If so, should consideration be given to Access Canberra preparing a document that sets out the main obligations and offences specific to the ACT and making this available to staff on the Access Canberra website? Or is it considered that a more substantive requirement is needed to ensure that staff are sufficiently educated?

Proposal (5)(b): Amend licence terms

Type: Legislative – amendment to the Act or the Regulation

Source: Access Canberra, Recommendation 2 – AHA submission to Red Tape Reduction Panel

The Act provides for licences to expire on 30 November in the year after the licence is granted and for some licences to expire in three years. A three year licence can only be granted if the licence is for standard times, or the premises has an occupancy loading of 80 or less. An amendment could be made to allow all licences to be issued for up to three years. This would enable expiry dates to be staggered throughout the year, and to be moved from the Christmas period and longer licences to be issued to licensees. This will also allow licensees to bring their liquor licence term into line with other Territory licences, leases or permits.

Extending the licence term may raise concerns about losing an opportunity to more regularly reconsider the suitability of people or premises. However, the Commissioner already has existing powers that would allow him or her to take action in relation to non compliance or other issues (e.g. amendments, occupational discipline). In addition, any changes to the premises need to occur by an amendment, and would be subject to an assessment of suitability at that time.

Consequential amendments would be required to the fees instrument in line with any change to ensure that a licensee is paying a fee commensurate with the length of their licence, and to deal with indexation of fees.

Issues for consideration:

1. Should consideration be given to allowing for three-year term licences and removal of the standard licensing date?

Proposal (5)(c): Removal of restriction on clubs, without gaming machines, to only sell liquor to members and guests

Type: Legislative – amendments to sections 20 and 70 of the Liquor Act

Source: Recommendation 1 – ClubsACT submission to Red Tape Reduction Strategy

Section 20 of the Liquor Act defines a club licence in the following manner:

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

- (a) in stated parts of a single licensed premises; and
- (b) in—

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

Section 70 of the Liquor Act defines what an eligible club is for the purposes of determining suitability for a licence.

eligible club means a club that—

- (a) is established for 1 or more of the following purposes:
 - (i) recreation;
 - (ii) promoting social, religious, political, literary, scientific, artistic, sporting or athletic purposes;
 - (iii) a purpose prescribed by regulation; and
- (b) has a constitution or set of rules that—
 - (i) requires the nomination or election of financial members or foundation members to manage the affairs of the club; and
 - (ii) requires the club to keep records of nominations and elections for 2 years or more; and
 - (iii) requires the club to hold a meeting of its members at least once every 3 years to nominate or elect members to manage the affairs of the club; and
 - (iv) prohibits the supply of liquor to a person who is not a member of the club unless the person is on the club premises—
 - (A) at the invitation of a club member who is also on the club premises; and
 - (B) with the consent of the club; and

- (v) prohibits the payment of a commission, profit or allowance from, or on receipts from, the supply of liquor at the club premises; and
- (c) has a membership of at least—
 - (i) 200 adult financial members; or
 - (ii) if the club has held a club licence continuously since before 1 June 1979 under the *Liquor Act 1975* or this Act—150 adult financial members.

It has been proposed to remove the requirement for non-gaming clubs to identify members and their guests as part of their operation as it is prohibitive in attracting occasional patrons, interstate guests or non-members to the facility and /or for functions held at the club.

Issues for consideration:

1. Should consideration be given to removing the restriction on clubs, without gaming machines, to sell liquor to members and guests?

Proposal (5)(d): Removal of the offence for a club to advertise for public attendance

Type: Legislative – repeal of section 143 of the *Liquor Act*

Source: Recommendation 2 – ClubsACT submission to Red Tape Reduction Strategy

Section 143 of the *Liquor Act* provides that it is an offence for a club licensee to issue a public invitation for people to attend the licensed club, as the nature of a club licence is restricted to their members and invited guests.

In 2006, New South Wales removed the requirement that clubs include the statement ‘for the information of members and their guests’ on all visible and audible promotional and advertising material relating to club facilities. The second reading speech for the amendment explains the reason for the amendment:

This requirement was introduced at a time when there were concerns about some clubs operating an open door policy. Clubs are now more vigilant about this issue and many clubs are proactive in promoting membership requirements through their web sites. Also, there is now more of a focus on the sign-in procedures at clubs. As a result, the broader community is better informed about the need to be a club member if they live within five kilometres of a registered club. It is considered that this statement no longer serves any real purpose and is little more than a compliance burden for the clubs. The bill removes this outdated requirement.

Issues for consideration:

1. Should the offence for a club to advertise for public attendance be removed?

Proposal (5)(e): Removing the requirement for maintaining an incident register for specific licence types/venues

Type: Legislative – amendment to section 131

Source: Clubs ACT

It has been suggested that because there are some premises which, due to the nature of their business and clientele (e.g. restaurants and cafes), do not ever have cause to note anything in an incident register, the Act be amended to remove the requirement for such registers for certain low risk venues. It would be intended that the Commissioner would retain a power to require an incident register to be maintained if there was a breach.

In South Australia, Western Australia and Queensland, an incident register must be maintained on all licensed premises. In Victoria and Northern Territory, it is not mandatory to maintain an incident register, but these may be mandated under a liquor accord. In New South Wales, it is a condition of the licence that the licensee maintains an incident register if the sale or supply of liquor after midnight on licensed premises is authorised at least once a week on a regular basis.

It is worth noting that Access Canberra are currently in the process of exploring the use of electronic incident registers. Electronic registers would negate the need for premises to maintain a 'book' on the premises, and accordingly may be an alternative solution to this issue.

Issues for consideration:

1. Should consideration be given to removing the requirement for maintaining an incident register for specific licence types/venues?
2. If so, what licence types/venues should be considered (for example, licences with an occupancy loading of less than 100 or venues operating within standard trading hours)?

Proposal (5)(f): Reduce the number of signs licensed premises must display

Type: Legislative – various

Source: Liquor Advisory Board

The Liquor Act and Regulation includes the requirements in relation to the display of a number of signs in different parts of licensed premises. The Liquor Board has raised concerns about the number of signs and their locations because of aesthetics and whether some serve a useful purpose. The required signs relate to:

- abuse of staff;
- occupancy loading;
- breath analysis machines;
- adults-only areas;
- young peoples' events;
- location of toilets;
- name of licensees; and
- public consultation for new licensee or for changes to the licence class.

It has been suggested that the number of signs could be reduced by removing the signage requirements for licensees and replacing it with a provision which indicates that licensees must display the signage required by the Commissioner for Fair Trading. The required signage would then be linked with the type of premises. For example, the abuse sign might only be displayed by nightclubs and premises operating after midnight.

Alternatively, the following specific amendments could be made to reduce the number of signage requirements:

- section 22 of the Regulation could be amended to permit the abuse offence sign to be displayed at the front of the premises (instead of at or near each liquor serving counter) where it could be combined with other signs;
- section 1.17 of schedule 1 of the Regulation could be amended to remove the requirement for a sign displaying the name of the licensee to be displayed at or near each liquor serving counter. Alternatively it could be amended to state that it must be displayed once. With this amendment the name of the licensee could be displayed at the front of the premises along with other signage;
- section 1.2 of schedule 1 of the Regulation could be amended to remove the requirement for a toilet sign.

Issues for consideration:

1. Should consideration be given to reducing the number of signs that need to be displayed?
2. What signs should remain?
3. What signs are appropriate for removal and why?

Proposal (5)(g): Reviewing prescribed requirements in the Liquor Regulation 2010**Type: Legislative - various****Source: Access Canberra**

The following provisions in the Regulation have been suggested as potentially suitable for removal to reduce regulatory burden, on the basis that their removal would not compromise the achievement of the fundamental objectives of the liquor legislation:

1. section 6(1)(a) and(b): removing the requirement to include the licensee's ABN or ACN (if the licensee is a corporation) on a licence;
2. part 1.1 of schedule 1: reviewing some of the requirements for toilets. For example, removing the requirement to provide a mirror in a toilet facility or toilet room in licensed premises and the requirement to provide a clothes hook in a toilet cubicle or toilet room for licensed premises, replacing sections 1.4 and 1.5 with a clause that allows for small licensed premises which trade only standard hours to use toilets, whether on the premises or not, subject to the Commissioner's approval.
3. part 1.2 of schedule 1: removing the requirement for outdoor dining areas to have at least half of the area protected from direct sunlight.
4. part 1.16 of schedule 1: removing the requirement to make a telephone available for patrons and displaying numbers of the police, ambulance, fire and rescue and taxis near the phone.
5. part 1.26 of schedule 1: removing the requirement for glasses used at the premises to be washed in a glasswasher. Removing the requirement would not remove a licensee's obligation to ensure that glasses are effectively cleaned and sanitised in accordance with relevant food safety standards.

Issues for consideration:

1. Should consideration be given to reviewing the prescribed requirements in the Liquor Regulation?
2. If so, what are your views on the proposals outlined above?
3. Are there any other provisions that should be reviewed, why?

Proposal (5)(h): Streamlining approval processes for events**Type: Legislative****Source: Government Reform, Chief Minister, Treasury and Economic Development Directorate**

The Government is committed to streamlining the approval process for events in Canberra and has established an Event Approval Team in Access Canberra to provide a single point of contact for event organisers.

As part of this process, it would be worthwhile considering the operation of liquor permits under the Liquor Act.

Issues for consideration:

1. What opportunities exist for considering how the process for issuing liquor permits for an event interacts with other approval processes required for the event?

Section 6: Proposals for regulatory improvements

Proposal (6)(a): Power for the Commissioner for Fair Trading to modify licence conditions and occupancy loadings, and request amendments to Risk Assessment Management Plans at any time

Type: Legislative – insert new provisions

Source: Access Canberra

Licence conditions and occupancy loadings

Section 31(2)(b) of the Liquor Act provides that the Commissioner for Fair Trading can only impose conditions on a licence when it is issued, renewed or amended. It is proposed to provide the Commissioner with the power to impose conditions on a licence at any time.

The Liquor Act only contemplates the Commissioner deciding occupancy loadings when a licence or permit is issued, or when there is a change to the floor plan. It is proposed to provide the Commissioner with the power to amend occupancy loadings at any time.

It is proposed that conditions would only be imposed, varied or revoked provided that the licensee has had a reasonable opportunity to make submissions and the Commissioner has taken submissions into consideration. This would be the same for any changes to occupancy loadings. Modified licence conditions and occupancy loadings would be reviewable decisions.

Risk Assessment Management Plans

For licensed premises where liquor is consumed on the premises or commercial permit premises, the licensee or permit holder must complete a Risk Assessment Management Plan (RAMP). RAMPs are approved by Access Canberra prior to issuing a liquor licence. The RAMP may be reassessed by Access Canberra if it does not adequately address issues.

There is currently no legal mechanism to require a change to a licensee's/permit holder's RAMP. This is problematic because, over time, some RAMPs do need to be amended to address changes in the circumstances and performance of premises. There is no incentive for licensees/permit holders to be proactive in changing their RAMP because there is a fee associated with this action.

Consideration could be given to enabling the Commissioner for Fair Trading to require the amendment of a RAMP to address changes, specifically in relation to the management of alcohol-related violence on premises. It would be intended that appropriate administrative appeal rights would apply.

Issues for consideration:

1. Should there be a power for the Commissioner for Fair Trading to modify licence conditions at any time provided there is an obligation to consult with licensees and that licensees have the ability to seek review of the decision?
2. Should the Commissioner for Fair Trading be able to require the amendment of a RAMP to address changes?
3. Are there other measures, in addition to appropriate administrative appeal rights, that need to be considered as part of such an arrangement?

Proposal (6)(b): Clarify the distinction between licence subclasses

Type: Legislative

Source: Access Canberra

The definitions of licence categories in the Act do not preclude a licensee from trading in other subclasses, provided this does not become their predominant purpose. Currently, Access Canberra reports that there are a number of licensees who trade with one subclass licence (their predominant purpose), but also trade in other subclasses. For example, a business may trade for seven days as a restaurant, but two nights a week they also trade as a nightclub. In this example, the business only pays for the restaurant licence and does not have approval to operate as a nightclub. Importantly, the community would not have been consulted on the operation of this business as a nightclub. This creates inequity between licensees who are paying different fees to trade in the same way.

Different Australian jurisdictions have different approaches to dealing with this issue. For example, in Tasmania, there is no separate subclass for restaurants in the on licence category. However, in approving an on licence for a restaurant, the Board must be satisfied that the premises are intended to be used as a restaurant, where the principal activity is serving food for consumption on the premises. The Commissioner can apply to the Board for a hearing to cancel or suspend a liquor licence if the Commissioner is satisfied that the licensee is no longer using the premises as a restaurant.

Issues for consideration:

1. Should consideration be given to clarifying the distinction between licence subclasses?
2. What approaches would be considered appropriate to achieve this?

Proposal (6)(c): Extension of presumption of liquor to prosecutions under the Act and disciplinary actions

Type: Legislative – new provision

Source: Access Canberra

For the following offences under the Act there is a presumption that a substance is liquor if the substance is supplied in an adults-only area at the premises, and a police officer gives evidence that they saw the substance being supplied to the person, and they believe on reasonable grounds that the substance is liquor:

- Section 105 – supplying liquor to intoxicated person – licensee or permit-holder;
- Section 106 – supplying liquor to intoxicated person – employee;
- Section 110 – supplying liquor to minor – licensee or permit-holder;
- Section 111 – supplying liquor to minor – employee.

For the following offences, there is a presumption that a substance is liquor if the substance is in a container and a label or other mark on the container described the contents as liquor.

- Section 199 – consume liquor at certain public places;
- Section 200 – possess open container of liquor at certain public places.

It is proposed that a presumption is applied to all offences (for example, the following additional sections have ‘liquor’ as a component of an offence – ss 8, 12, 100, 101, 107, 112-118, 120, 139, 202-6, 214).

Most Australian jurisdictions have a presumption that a substance is liquor that applies in proceedings for an offence.

Issues for consideration:

1. Should consideration be given to amending the Liquor Act to provide that the presumption that a substance is liquor applies in proceedings for all offences under the Act?

Proposal (6)(d): Insert a provision dealing with evidentiary certificates to be used in court proceedings

Type: Legislative – new provision

Source: Access Canberra

Under the previous *Liquor Act 1975*, section 160 assisted in the efficient running of prosecutions for offences under the Act. If it is an element of an offence that the person was licensed or held a permit, then the prosecution could prove this element of the offence by tendering a certificate signed by the Commissioner stating that evidence. In the absence of evidence to the contrary from the accused, the certificate would be conclusive evidence of that element of the offence.

There is not a similar provision in the current Act. A provision to this effect would assist when making occupational discipline applications, in prosecutions and in any private actions where licence information is relevant.

Issues for consideration:

1. Should the Act include a provision dealing with evidentiary certificates to be used in court proceedings?

Proposal (6)(e): Strengthening incident reporting requirements

Type: Legislative – amendment to schedule 1 of the *Liquor Regulation* to include a new condition on a licence

Source: ACT Policing and Access Canberra

Section 131 of the *Liquor Act* requires licensees and permit-holders to keep an incident register and specifies the information to be included. Incidents that must be noted in the register include:

- violent, unlawful or anti-social behaviour at licensed or permitted premises;
- violent, unlawful or anti-social behaviour in the immediate vicinity of the licensed or permitted premises where it involves a person who has recently left, or been refused entry to the premises;
- removal of a person from licensed or permitted premises;
- medical assistance required for a person at the licensed or permitted premises after midnight and before the time prescribed by regulation; and
- the seizure of false identification.¹³

¹³ Section 130, *Liquor Act* 2010.

An incident register serves many purposes. For a venue it can be a useful way for staff to communicate with other staff members, including management or board of directors for companies. It can also be useful for monitoring problem patrons. Incident registers can also demonstrate a venue's compliance with the RSA principles, especially in situations where a more serious incident occurs offsite involving a person who was a patron of the venue earlier. An incident register is also useful for police and the regulator for investigatory and compliance purposes.

While it is an offence for a licensee or permit-holder not to keep an incident register, the Act is silent in relation to how regularly incident registers must be updated.

It is proposed to amend the Liquor Regulation to provide that it is a condition on a licence or permit that incident registers are maintained at all times – i.e. ensuring that incidents are reported as soon as is reasonable after they occur (consideration could be given to whether a specific timeframe could be set in the legislation – for example, prior to the end of the trading period within which the incident occurred, or within 24 hours of the incident occurring). A breach of a condition would trigger the occupational disciplinary process and enable the Commissioner to make a direction, a breach of which is an offence. A similar obligation has been imposed on certain venues in Sydney and is known as a 'round the clock' incident register.¹⁴

Issues for consideration:

1. Should consideration be given to strengthening incident reporting requirements?

Proposal (6)(f): Require independent alcohol supervisors at venues with powers to make decisions about early closing

Type: Legislative – new provision

Source: ACT Policing

It has been proposed that independent alcohol supervisors should be required to be present at licensed premises and that these supervisors should have powers to make decisions about early closing.

No other Australian jurisdiction has this requirement. However, a number of jurisdictions do provide for 'marshals', employed by licensees, to monitor the behaviour and consumption of alcohol by patrons.

¹⁴ Section 531 *Liquor Regulation 2008*.

In New South Wales, as part of the special licence conditions that apply in the Kings Cross precinct, there is a requirement for 1 or 2 RSA marshals to be on the premises at all times between midnight and 3am (or earlier if premises otherwise required to close) on any Friday, Saturday or public holiday night or night before a public holiday.¹⁵

An RSA marshal is required to:

- monitor responsible service of alcohol practices by staff members who are selling, supplying or serving liquor;
- engage with those staff, and with patrons on the premises, for the purposes of encouraging responsible attitudes and practices in relation to the promotion, sale, supply, service and consumption of liquor;
- monitor alcohol consumption by patrons and their behaviour for signs of irresponsible, rapid or excessive consumption of alcohol and for signs of intoxication;
- intervene at an early stage to assist in the prevention of intoxication and anti-social behaviour (such intervention may include suggesting that patrons moderate their alcohol consumption by consuming food or non-alcoholic beverages).

In South Australia, as part of the Late Night Code of Practice, licensees trading after 3am until 7am or closing time (whichever is earlier) must have a drink marshal present from 12:01am where there are more than 200 patrons on the premises. A drink marshal's duty is to patrol the licensed premises, monitor the behaviour and consumption of alcohol by patrons. The drink marshal must alert bar and serving staff to any concerning customer behaviour on the licensed premises. If a drink marshal suspects that a person is intoxicated, or observes someone behaving in a disorderly, offensive, abusive or violent manner, they must immediately report this to the licensee or the manager/supervisor on duty for appropriate action to be taken.

It is acknowledged that this proposal would have cost implications for licensees and accordingly would only be considered for those licence types/specific venues where it would be justified.

Issues for consideration:

1. Should consideration be given to requiring independent alcohol supervisors at for certain licence types/specific venues based on risk profile?
2. If so, what powers or functions should this position hold?

¹⁵ Section 53G, *Liquor Regulation 2008*.

3. Alternatively, should consideration be given to adopting the model of a 'drink marshal' used in other jurisdictions?
4. If so, what role should these positions have?

Proposal (6)(g): Amend the timing of reporting of liquor sales by off licences

Type: Legislative – amendment to section 1.19 of the Liquor Regulation

Source: Access Canberra

Section 1.19 of the Liquor Regulation requires reporting of liquor sales by off licensees two months before the earlier of the day the licence is to expire, or the day the next annual fee is due for the licence. This data is required by Access Canberra to enable the calculation of the liquor licence renewal fee for the following year. This timeframe provides insufficient time for Access Canberra to assist or follow up on licensees who have failed to provide the requested information. This could in turn lead to a delay in providing licensees with information on their renewal fees prior to the expiry of the licence. The timeframe also creates issues for licensees as they are providing data out of sync with usual reporting times, for example, not in line with financial year calculations. It is proposed that the requirement for reporting be changed to be no later than 1 month after the end of the financial year, i.e. 31 July.

Issues for consideration:

1. Should consideration be given to amending the timing of reporting of liquor sales by off licences?
2. If so, is the proposal identified above (i.e. requirement to report no later than one month after of the end of the financial year) considered appropriate? If not, what is considered an appropriate timeframe?

Proposal (6)(h): Alcohol-free places

Type: Legislative – amendment to section 31 of the Liquor Regulation

Source: Access Canberra

Section 31 of the Liquor Regulation prescribes the permanent alcohol-free places in the ACT by reference to block and section number in divisions. In order to ensure the information in this regulation is kept up to date, a preferable option may be to refer to public parks, car parks and skate parks by reference to name and/or street address, similar to the approach adopted in New South Wales and Victoria.

Issues for consideration:

1. Should the approach to prescribing permanent alcohol-free places in the Regulation be amended?
2. If so, is the proposal outlined above (prescribing by name and/or street address) considered appropriate?

Proposal (6)(i): Clarifying obligations in relation to consumption of liquor off premises

Type: Legislative – new provisions

Source: Access Canberra

In relation to on licences, concerns have been raised that the Act lacks clarity around the obligations of licensees in relation to patrons taking liquor away from the licensed premises.

Section 18 of the Liquor Act provides that an on licence authorises a licensee to sell liquor in open containers for consumption at the premises. Additionally, it is a condition on a licence for a licensee to provide and maintain a safe environment at and around the licensed premises. Accordingly, it is considered that a licensee would be in breach of their licence if patrons are taking liquor away from the licensed premises.

If patrons are taking open containers away from licensed premises onto the streets, there is potential risk to community safety from broken glass litter, or physical assaults involving glass. Accordingly, it has been suggested that the Liquor Act would benefit from some clarity about this position.

There are a number of ways this could be achieved. Currently, if a person consumes liquor at off licensed premises, it is an offence both for the licensee and for the person. The offences are strict liability offences, with a penalty of \$2,800 for the licensee and \$1,400 for the person. A similar offence could be inserted for on licences. For example, it could be a strict liability offence for the licensee to fail to take reasonable steps to prevent patrons from taking alcohol out of their licensed area. Acknowledging patron responsibility, it could also be an offence for a person to take alcohol outside of a licensed area.

Another way would be to make it a ground for occupational discipline if a licensee has failed to take reasonable steps to prevent patrons from taking alcohol out of their licensed area. This would enable the Commissioner for Fair Trading to apply to the ACT Civil and Administrative Tribunal (the ACAT) for an occupational discipline order in relation to the

licensee. Among the orders the ACAT could make is to cancel or suspend the licence or disqualify a person from applying for a licence for a stated period.

Consideration needs to be given to ensuring that the above responses are proportionate to the risks involved, and whether it is necessary for this measure to apply to all venues. For example, it may only be necessary to focus on venues with outside areas forming part of their licensed premises which operate beyond midnight.

Issues for consideration:

1. Should clarity be given to the obligations of licensees in relation to patrons taking liquor away from the licensed premises?
2. If so, what is the best way to achieve clarity (i.e. imposing offences for licensees or patrons or through occupational discipline)?

Section 7: Miscellaneous proposals

Proposal (7)(a): 'Remote' sale of alcohol

Type: Legislative – new provisions

Source: Member of the ACT community

An individual has raised concerns about the potential 'remote' sale of alcohol offers for the delivery of alcohol to persons under the age of 18 years.

'Remote' sale of alcohol includes the ordering of alcohol by telephone, facsimile and the internet where payment is made by credit or debit card, and where the order is delivered subsequently to nominated premises, usually private residences.

In New South Wales, section 114 of the *Liquor Act 2007* imposes a number of obligations on licensees who sell liquor through the internet or other communication media. These obligations include requiring the purchaser to confirm their date of birth, and giving written instructions to the person responsible for the delivery of the liquor requiring that it be delivered to an adult. If delivery of any liquor sold through the internet or other communication media is taken by a minor, the licensee, and the person delivering the liquor are subject to an offence.

In Victoria, the Liquor Licensing Code of Conduct for packaged liquor licensees provides that a licensee must ensure that liquor is purchased by a person aged 18 years or over. The licensee must ensure that delivery arrangements including requiring proof of age be sighted where appropriate.

Currently in the ACT, licensees who sell liquor online must address the issue of minors accessing alcohol in this way in their Risk Assessment Management Plans. Section 29(1)(f) of the Liquor Regulation also prohibits advertising the supply of liquor on the internet without a statement, clearly displayed in the advertisement so that it can be seen and read easily by a person viewing the advertisement, that contains at least the following information:

IT IS AN OFFENCE TO SUPPLY ALCOHOL TO A PERSON UNDER THE AGE OF 18 YEARS
PENALTIES APPLY

Issues for consideration:

1. Is it necessary to legislate further to impose additional obligations on licensees selling liquor online aimed at preventing minors from accessing alcohol in this way?
2. If so, what measures could be adopted?

Proposal (7)(b): Mandating the provision of non-alcoholic and low-alcoholic options

Type: Legislative – amendment to part 1.6 of the Liquor Regulation 2010

Source: Member of the ACT community

An individual has suggested that one way of ensuring the responsible service of alcohol is for venues to offer a range of non-alcoholic and low-alcoholic beverages. Indeed, advertising discounts and promotions for low-alcoholic beverages is recognised as an appropriate harm minimisation measure under RSA guidelines in the ACT and in other jurisdictions. Despite this, there is no mandated obligation for liquor venues to stock and promote non-alcoholic and low-alcoholic beverages.

It has been suggested that the ACT should consider requiring venues to stock and promote non-alcoholic and low-alcoholic beverages.

Starting on 18 December 2013, all on licences in New Zealand were required to supply or make available low and non-alcohol beverages.

One possible method in adopting this proposal in ACT would be to amend the Regulation to prescribe this requirement as an additional condition on a licence. The Regulation currently prescribes additional conditions that apply to licences to sell liquor in open containers for consumption at licensed premises (general licence, on licence, club licence or special licence). Two of these conditions are that food service must be provided, and water must be available for consumption free of charge.

Issues for consideration:

1. Should the liquor legislation mandate the availability of low and non-alcohol beverages?
2. If so, should this apply to all licence types?
3. If so, is the proposal outlined above (prescribing this as an additional condition on a licence in the Regulation) considered appropriate, or is there another way this could be implemented?

Proposal (7)(c): Identification scanners

Type: Legislative – new provisions

Source: Member of ACT community

A number of Australian jurisdictions have trialled or are in the process of implementing trials for mandatory digital identification (ID) scanning in liquor venues.

ID scanners operate at the point of entry into a licensed venue, collecting data on a person's name and address, date of birth, driver licence number or equivalent details from other identification documents such as passports, or in some cases their fingerprint. This information is then stored within a computer database, at the venue, or to a server operated by the system manufacturer.

Basic ID scanners collect data on a person's name and address, date of birth, drivers licence number or equivalent details from other identification documents such as passports. More sophisticated ID scanners, can also scan and store photographic identification within a computer database, which can be accessed and matched with existing records for future reference. ID scanners provide for the capacity to flag warnings to the operator such as that a person has been banned from the venues, and offer the possibility of sharing data regarding patrons banned from other venues, either manually or in real time with a networked computer system.

In New South Wales, high risk venues in the Kings Cross precinct are required to operate an approved linked ID scanning system. The purpose of this system is to assist licensees and staff to prevent the entry of any person who has been banned (for 48 hours up to 12 months) from Kings Cross licensed venues under the banning laws introduced in 2013. The 12 month trial of the ID scanning system commenced in July 2014.

In Queensland, it was proposed that licensees authorised to operate in 'safe night precincts' after midnight, or other venues as determined by the Commissioner for Liquor and Gaming, would be required to use networked ID scanners (unless they are designated 'low risk' or exempt). The networked ID scanners were scheduled to commence from 1 July 2015, but this has been postponed pending further consideration.

The use of ID scanners is a largely untested policy initiative, and there is a lack of empirical research into their effectiveness in preventing alcohol-related harm.

The report of the research study into the introduction of ID scanners in 'high risk' entertainment venues in Geelong, Victoria was presented to the Criminology Research Council in August 2011.¹⁶ The study found that health and crime data pre and post ID scanner indicated that the introduction of the scanners did not lead to a decrease in alcohol-related assaults. However, this finding must also be interpreted alongside other findings such as inconsistent practices in individual venues concerning the use of ID scanners and variability of the quality of scanners, the limits to the data collected and the broader context of multiple and ongoing interventions.

¹⁶ D Palmer, I Warren & P Miller, 'ID scanners in the night-time economy: social sorting or social order?', Australian Institute of Criminology, Canberra, 2013.

Issues for consideration:

1. Should consideration be given to implementing ID scanning in the ACT and if so, in what circumstances should it be required or used?

Proposal (7)(d): Closed circuit television (CCTV) for licensed premises

Type: Legislative – new provisions

Source: ACT Policing

CCTV can be used as a deterrent to anti-social behaviour and criminal activity. It has been proposed that the Liquor Act be amended to include a requirement for some licensed premises to have a functional CCTV recording system, and where premises have CCTV (whether mandated or not) that they meet a certain standard (including, but not limited to capacity to cover specific areas of the licensed premises (i.e. internal access areas, external to a set boundary, service areas etc.), access to, and copies of, recordings for Police and inspectors on request, quality, storage and access to recordings for Police and inspectors, and maintenance).

Similar to other jurisdictions, and acknowledging the burden such a requirement would place on premises, it is considered that CCTV would only need to be mandated for those premises where it would be justified. These could include either:

- licensed premises in specific entertainment precincts, such as the City, where alcohol-related violence or anti-social behaviour continue to occur;
- particular types of licensed premises (i.e. those trading outside standards hours); or
- individual licensed premises based on their risk profiles (i.e. having regard to incidents in or near the premises).

Alternatively, if there is no justification for mandating CCTV for some licensed premises, consideration could be given to imposing a standard (as described above) for those premises which already have CCTV.

Liquor legislation in Queensland requires CCTV to be operated by venues located within the Brisbane City Council area that are authorised to trade past 1am. Additionally, other venues in the state may be subject to those requirements, as a result of a condition on their licence.

In Western Australia, some licensees are required to have security and crowd control measures in place, which include CCTV.

In the Northern Territory, the Commissioner has issued camera surveillance guidelines that apply to all licensed premises that are subject to a licence condition for their use.

In New South Wales, CCTV is a special licence condition for licensed venues in the Kings Cross precinct.

In Victoria, the Commission may impose a condition on a licence requiring the licensee to fit security cameras that comply with prescribed standards. Standards for the minimum frame rate for security cameras and the quality of stored images have been prescribed by regulation.

Issues for consideration:

1. Should the Liquor Act include a requirement for CCTV for some licensed premises?
2. If so, should CCTV requirements apply to:
 - a. licensed premises in specific entertainment precincts, such as the City, where alcohol-related violence or anti-social behaviour is prevalent; or
 - b. particular types of licensed premises (i.e. those trading outside standards hours); or
 - c. individual licensed premises based on their risk profiles (i.e. having regard to incidents in or near the premises)?
3. What standards should apply for the operation of CCTV to those licensed premises which have CCTV (mandated or not)?
4. Should consideration only be given to imposing standards as opposed to mandating the use of CCTV by some licensed premises?

Proposal (7)(e): Wall mounted breathalysers

Type: Legislative – new provisions

Source: Member of ACT community

An individual has suggested an amendment to the Liquor Act to require that all licensed premises, which allow or serve alcohol for consumption on their premises, have an Alcohol Breath Testing unit, meeting Australian Standards, available for public use. It has been argued that the units would assist in reducing incidents of drink-driving and street-violence by allowing people to make informed decisions about their ability to drive or perform other functions.

However, there are some problems associated with the use of these machines. A person's blood alcohol level is a dynamic factor. After taking a test, a person's blood alcohol level could continue to rise, leading to a mistaken belief that their blood alcohol level was under the legal limit, when in fact later evidential analysis could show that they are over the limit.

There is also a concern that the machines may not send the right messages to patrons about responsible drinking or drink-driving. Indeed, the proposal may be seen to be inconsistent with the Government's 'drink or drive' messaging.

Consideration of mandating the provision of such facilities in licensed premises would need to take account of the evidence of their impact on drink driving or other anti-social behaviours, including in the context of the costs associated with maintaining and recalibrating the machines.

No other Australian jurisdiction has mandated the use of breathalysers. Individual venues are free to implement breath-testing as a condition of entry or monitoring intoxication levels if they choose.

Issues for consideration:

1. Should consideration be given to mandating the availability of Alcohol Breath Testing units?

Proposal (7)(f): Strengthen consideration of impact on nearby premises, places of worship, hospitals or schools

Type: Legislative – amendment to section 10 of the Liquor Act

Source: Access Canberra

Section 10 of the Act requires a decision-maker to take into account a number of harm minimisation and community safety principles. One of these principles is:

*(h) licensed premises and permitted premises should not be located where they would be likely to cause **undue disturbance, inconvenience or offence** to people—*

(i) lawfully at adjacent or nearby premises; or

(ii) because of the premises' proximity to a place of public worship, a hospital or a school

In all other Australian jurisdictions that have a similar requirement when making decisions under their Acts¹⁷, annoyance is an additional factor that must be considered. For example, in Western Australia an application for a licence will not be granted where the licensing authority is satisfied that an undue degree of offence, annoyance, disturbance or inconvenience to people residing or working in the vicinity, or to people in, or travelling to or from, places of worship, hospital or school would be likely to occur. In South Australia, as well as considering the likelihood of undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises, consideration must be given to whether the safety of welfare of children attending school in the vicinity of the premises is prejudiced.

Issues for consideration:

1. Should consideration be given to strengthening consideration of the impact on nearby premises, places of worship, hospitals or schools when determining licence applications?
2. If so, is the addition of ‘annoyance’ as a factor an appropriate proposal, or is there another way this could be achieved (i.e. a specific reference to considering the welfare of children)?

Proposal (7)(g): Statutory right to refuse entry and evict intoxicated people

Type: Legislative – new provision

Source: Access Canberra

While licensees have a common law right to refuse entry, or evict people from their venues, the Liquor Act is currently silent on these rights. The ability of licensees to exercise this right is essential to ensuring a safe and responsible drinking environment within licensed premises for patrons and staff.

In response to industry feedback about the prevalence of patrons who ‘pre-load’ off premises but are a major contributor to violent and anti-social behaviour in and within the vicinity of licensed premises, consideration could be given to including an explicit statutory provision in the Liquor Act, similar to legislation in New South Wales.

In New South Wales a licensee, police officer, or employee or agent may refuse to admit, and may turn out, any person who is at the time intoxicated, violent, quarrelsome or disorderly.

¹⁷ Tasmania, Western Australia, Queensland, Northern Territory and South Australia.

The New South Wales legislation reinforces patron responsibility by making it an offence for a person who has been refused entry, or has been turned out, to re-enter or attempt to re-enter the premises within 24 hours of being refused entry or turned out. It is also an offence for the person to remain in the vicinity of the premises (less than 50m from the boundary of the premises), or re-enter the vicinity of the premises within 6 hours, without a reasonable excuse. A person has a reasonable excuse if:

- the person reasonably fears for his or her safety if he or she does not remain in, or re-enter, the vicinity of the premises; or
- the person needs to remain in, or re-enter, the vicinity of the premises in order to obtain transport; or
- the person resides in the vicinity of the premises.

While New South Wales, like the ACT, has laws prohibiting the sale and supply of alcohol to intoxicated people, New South Wales additionally imposes a legal obligation on licensees to prevent intoxication on their premises. Failure to do so is an offence unless the licensee and employees took the following steps:

- asked the intoxicated person to leave the premises;
- contacted, or attempted to contact, police for assistance in removing the person from the premises;
- refused to serve the person any alcohol after becoming aware that the person was intoxicated;
- complied with guidelines issued by the Secretary, New South Wales Trade & Investment (these guidelines are available at: www.olgr.nsw.gov.au/pdfs/intox_guidelines.pdf).

Issues for consideration:

1. Are statutory rights to refuse and evict intoxicated people, in addition to common law rights, necessary?
2. Are additional obligations on licensees to prevent intoxication on their premises necessary?

Opportunity to raise other proposals

Issues for consideration:

1. What other proposals, not mentioned in this paper, should the ACT Government consider to streamline the Act and make it more effective?

Appendix A - Review findings

1. **Operating hours and outlet density in Civic** — the Review finds there is some merit to the ACT Government exploring how to address the specific problems in the City through possible amendments to operating hours and outlet density. Recommendations by health services with respect to these two issues could be explored in greater detail but this should be conducted in close collaboration with industry.
2. **Licence fees** — the Review finds that there is a large degree of concern amongst industry regarding liquor licence fee levels in the ACT. In particular, there is concern that the risks associated with takeaway liquor are higher than is reflected in the fee structure, and this may need to be addressed.
3. **Risk factors** — the Review finds that there is a case for the inclusion of two additional risk factors in the determination of licence fees to assist with the sustainability of the liquor market. These are compliance history and best practice management.
4. **Pricing and promotions** — the Review finds that the Act should be expanded to allow for a more prescriptive approach as to what might be deemed an inappropriate promotion. The Act should be strengthened to prohibit the harmful discounting and promotion of alcohol products.
5. **Public consultation and complaints** — the Review finds that there is scope to improve how the community is consulted about new licence applications. Requiring ORS (or applicants) to employ a more proactive approach in informing local residents and interested stakeholders would improve this process significantly. The ORS should provide easily accessible information on the ORS website on how community members can make complaints or objections.
6. **Secondary supply laws and controlled purchase operations** — the Review finds that the ACT's approach to secondary supply is out of synch with other jurisdictions. The lack of effective secondary supply laws may limit the efficacy of the Act and should be addressed in a way that is consistent with community views. The ACT Government could consider the feasibility of the recommendations made by NAAPA.
7. **Liquor Advisory Board** — the Review finds that there is a lack of clarity around the role of the Liquor Advisory Board and therefore its operational functionality is compromised. The Review finds that there may be a need to revisit the function, charter, activities and membership of the Liquor Advisory Board.

8. **Clarity in the Act and administrative burden** — the Review finds that there is a strong view amongst some stakeholders that the object of the Act needs to be clarified to give explicit primacy to harm minimisation over the objects related to industry and consumer responsibility. The Review also finds that the Act is unclear or cumbersome in its application for certain licence types or venues. The ACT Government should Review the application of the Act regarding several issues. The process should not undermine the Act's integrity or compromise its ability to meet its objectives.

9. **Data** — A number of possible improvements to data collection were identified. ACT Government agencies should continue to collect data to support further analysis and research. Agencies should look to share data on a regular basis in an effort to support and coordinate activities.