



OFFICE OF REGULATORY SERVICES
DEPARTMENT OF JUSTICE & COMMUNITY SAFETY

GUIDE TO THE LIQUOR ACT 2010

(An information guide for liquor licensees, liquor permit holders, staff and crowd controllers who work at licensed premises, and also for members of the public)



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INTRODUCTION

The *Liquor Act 2010* (the Act, the new Act) replaces the *Liquor Act 1975*.(the old Act) The Act is in response to growing community concerns about the antisocial and violent behaviour associated with abuse of alcohol, and recognition that wholesale reform of liquor laws was required.

This guide is designed to assist liquor licensees and permit holders, staff and crowd controller who work at licensed premises, patrons and the community to understand the new requirements in the Act.

The Act was developed through a public consultation process which included a publicly released discussion paper, exposure draft bill and exposure draft regulations.

The Act is designed to balance the needs of the community and the liquor industry by requiring licensees to better manage the risks associated with the sale and consumption of liquor within the framework of the expectations and aspirations of our community.

The Liquor Act introduces a number of new concepts which will affect how liquor is regulated in the Territory. First and foremost among these are the new harm minimisation and community safety principles. The Act also provides new regulatory powers for the Commissioner for Fair Trading and new powers for the police. The integrity of the liquor licensing framework has been strengthened by requiring more information to be provided to the Commissioner and through the introduction of new offences. In addition, the Act provides stronger protection for children and young people including new offences.

While reasonable steps have been taken to ensure the information in this guide is accurate, you should not rely solely on that information and no liability will be accepted for any loss or damage if you do so. This is a guide only and does not take the place of sound legal advice. You should seek legal advice if you need assistance in relation to your particular circumstances.

CONCEPTS YOU SHOULD BE AWARE OF

There are a number of important concepts in the Act that you should be aware of:

The Object: The object of the Act gives context to the provisions in the Act.

Harm Minimisation and Community Safety Principles: These principles must be considered by the Commissioner in all decisions.

The Commissioner: The Commissioner is responsible for issuing of licences and permits and for taking disciplinary action against licensees. The Commissioner has delegated responsibilities for issuing and refusing licences to a number of officers in ORS.

Investigators: These officers have powers under the *Fair Trading (Consumer Affairs) Act 1973* to enter premises to ensure that the Act is being complied with.

Police officers: Police also have powers under the Act to enter premises to ensure that the Act is being complied with.

ACAT: The ACT Civil and Administrative Tribunal (ACAT) is able to review licensing decisions made by the Commissioner (or the Commissioner's delegate) and can make decisions in regard to what disciplinary action is taken against a licensee following an application for disciplinary action made by the Commissioner.

Liquor: means a substance that—

- (i) is capable of being ingested; and
- (ii) contains more than 1.15% by volume of ethanol.

The definition of liquor can be expanded or narrowed in response to new market products by regulation.

SIGNIFICANT CHANGES

Significant changes from the old Act to the new Act are:

- the introduction of a new risk-based liquor licensing framework;
- mandatory Responsible Service of Alcohol (RSA) training for licensees, their employees and crowd controllers working at a licensed premise;
- a new licensee Risk Assessment Management Plan (RAMP) to be approved by the Commissioner for Fair Trading which will inform the government about how risks associated with the supply of liquor will be mitigated;
- power for Commissioner for Fair Trading to impose and vary conditions on a licence at any time;
- provision for public comment on new liquor licence applications and change of business licence models;
- new criminal offences for supplying liquor to intoxicated people; promoting liquor which encourages excessive and rapid consumption of alcohol; new public order offence to protect employees who refuse service under RSA principles;
- emergency power for ACT Policing to close a premises for up to 24 hours;
- power for the Minister to declare a lockout by regulation.

These significant changes are discussed further in this guide.

HOW THE CHANGES AFFECT EXISTING LICENSEES AND PERMIT HOLDERS

Licensees

From 1 December 2010, all persons wanting to supply liquor in the ACT must hold a licence or permit under the new Act. Persons currently licensed under the old Act who wish to continue supplying liquor in the ACT after 1 December 2010, are required to submit a **new licence** application under the new Act on or before 30 November 2010. The application pack will initially not need to include some requirements that the government will already have access to.

It is anticipated that the Commissioner will have 6 months to approve licences for licensees who already have a licence under the current act and are seeking to continue to trade. This means that licensees (provided they have submitted the application form before 1 December) will be allowed to continue trading under the same terms and conditions as their **old licence**, without a new licence under the Act, until a decision is made by the Commissioner. The application form is available on the Office of Regulatory Services (ORS) website www.ors.act.gov.au. Further information is provided on the new licence application form regarding what is required to be supplied with the application.

The Act inserts a number of new requirements as well as retaining some requirements from the old Act. Mandatory RSA requirements for all licensees, staff supplying liquor and crowd controllers have been introduced into the new Act. The transitional arrangements will mean that courses are approved 6 months after the new Act commences on 1 December 2010. The offences dealing with RSA certificates will not commence until 1 December 2011.

The new Act also creates new offences for employees of licensees serving intoxicated people, as well as retaining the offence for a licensee to serve intoxicated people. These offences take effect at the commencement of the new Act on 1 December 2010.

There will be a new offence on patrons who abuse staff who refuse to serve liquor to a person because the person is drunk. Licensees must display a sign about this offence at liquor serving counters so that patrons are aware of their obligations under law.

Licensees are still required to display particular signs on the premises and in particular ways. A licensee will need to display signs including adults-only area signs, occupancy loading signs, breath testing machine signs etc.

A new requirement is that Licensees must keep an incident register on the premises. Licensees must record incidents that occur at or near the premises (eg just outside the

front door). If the police attend and deal with an incident, the Licensee will record the police officer's details.

The police have a power where they are able to close a premises for up to 24 hours in an emergency. If a licensee fails to comply with this order it is a serious offence.

When do staff need to obtain an RSA certificate?

Any licensee, their employees who serve liquor and the crowd controllers working on the licensed premises will have a transition period of 12 months to obtain an RSA certificate to comply with the Act.

Existing RSA certificates

If a licensee, employee of a licensee, or a crowd controller has a current RSA certificate less than 1 year old when the Act commences, it is anticipated that they will not be required to complete another RSA course to comply with the Act until 1 December 2012. A licensee, employee of a licensee who serves liquor, or a crowd controller with an RSA certificate more than 1 year old at commencement or having no RSA certificate will be required to undertake an approved RSA training course by 1 December 2011.

Permit-holders

Under the transitional provisions of the Act, liquor permits and tourism wine permits are taken to be commercial permits on 1 December 2010; non-profit organisation wine permits will become non-commercial permits.

To continue supplying liquor after 1 December 2010, current permit-holders will not be required to submit an application for approval for the duration of their current permit or until 1 March 2011 (at which point all permits issued under the old Act will expire). Permit-holders will be allowed to continue trading under the same terms and conditions as their old permit, without a new permit, until the old permit's expiry date or 1 March 2011, whichever occurs first.

Once the current permit expires, or by 1 March 2011, applicants wishing to supply liquor at premises under a commercial permit or a non-commercial permit will be required to submit a new application. The application form for a permit is available on the ORS website at www.ors.act.gov.au. Further information is provided on the permit application forms regarding what is required to be supplied with the application.

More specific changes affecting existing licensees and permit holders will be addressed under each of the specified headings throughout the remainder of this guide.

AN INTRODUCTION ON LICENCES AND PERMITS

The introduction of a new risk-based liquor licensing framework

One of the major changes to liquor laws brought about by the new Act is the introduction of a new liquor licensing framework. This framework encompasses a change to licence types and a new information sharing model with the community, industry and regulator. The process and procedures for obtaining a licence have changed according to the framework and take into account harm minimisation and community safety principles in all procedures and decision-making.

The new liquor licensing framework includes the following:

- The introduction of a sub-class of licence
- Changes to the types of liquor permits
- Public consultation on new licence applications and change of business licence models
- Introduction of a Risk Assessment Management Plan (RAMP)
- Mandatory Responsible Service of Alcohol (RSA) training
- Determination of an occupancy loading for all public areas of a premises

The types of liquor licence

The Act provides for the following **five types of licence**, all of which are limited to liquor being sold at the licensed times:

- **general licence:** Authorises the licensee to sell liquor at a single licensed premises in open containers for consumption at the premises and in sealed containers for consumption off the premises
- **on licence:** Authorises the licensee to sell liquor at a single licensed premises in open containers for consumption at the premises. This licence category includes three subclasses of licence:
 - **Bar licences:** Licences for premises that predominantly serve liquor at the premises or are determined under the Regulations.
 - **Nightclub licences:** Licences for premises that predominantly have dancing and entertainment or are determined under the Regulations.
 - **Restaurant and café licences:** Licences for premises that predominantly serve meals for consumption on the premises or are determined under the Regulations.
- **Off licence:** Authorises the licensee to sell liquor at a single licensed premises in sealed containers for consumption off the premises.

- **Club licence:** authorises a club to sell liquor in stated parts of a single licensed premises in open containers for consumption on the premises or in sealed containers for consumption off the premises to members and invited guests of the club; and
- **Special licence:** authorises the licensee to sell liquor at a single licensed premises.

The types of liquor permits

The new Act provides for a change in the types of liquor permits available to proposed liquor permit holders. Previously there were three types of permits; a liquor permit, a non-profit organisation wine permit and a tourism wine permit. Under the new Act, there are now two types of liquor permit available to proposed permit holders.

These permit types are the commercial permit and a non-commercial permit, which authorise the sale of liquor at the permitted times.

- **Commercial permit:** Authorises the permittee to sell liquor at a single permitted premises, at an event stated in the permit and not exceeding a retail value stated in the permit.
- **Non-commercial permit:** Authorises a not-for-profit organisation to sell liquor at a single licensed premises in open containers for consumption at the premises or sealed containers for consumption off the premises. If this permit relates to an event, the permit authorises the sale of the liquor at that event.

APPLYING FOR A NEW LIQUOR LICENCE

The Act has strengthened the liquor licensing framework allowing the Commissioner to consider a range of additional factors which take into account the harm minimisation and community safety principles. This will mean that licences will be granted in circumstances where the risks to the local area can be mitigated. The Commissioner can now consider input from the community about the opening of a licensed venue. However, a prospective licensee is protected from possible vexatious complaints as the Commissioner can only consider representations limited to particular criteria.

The Risk Assessment Management Plan (RAMP) is another new requirement for an application. This plan will highlight the risks associated with the licensed premises that you will need to turn your mind to in opening a licensed venue. The RAMP will also provide the Commissioner with information relating to how risks will be adequately managed, as well as providing general information such as trading times, if you will employ crowd controllers and the type of food you will supply.

To obtain a liquor licence, a person may apply to the Commissioner for a particular licence for stated premises. Forms for making application will be available on the ORS website. The major requirements for an application are that it must include:

- Detail of the licensee;
- Details of each close associate. These are:
 - People who hold an executive position in the business; and
 - People who the Commissioner is satisfied that they will be able to exercise significant control in the business. This will include a person who has day-to-day control of a premises (eg a manager).
- details of each influential person for the licence. These are related to corporations and are:
 - Executive officers;
 - A person who can exercise a relevant power;
 - A related corporation; and
 - An executive officer of a corporation.
- a police criminal history check (police certificate) for the proposed licensee, each close associate and each influential person which is dated not earlier than 3 months before the date of the application;
- an ACTPLA certificate for the premises dated not earlier than 3 months before the date of the application
- the final floor plans of the premises approved by the ACT Planning and Land Authority in the development approval for the premises
- a certificate of occupancy for the premises; and

- If the application is for a licence that authorises the sale of liquor for consumption on the premises—the application must include a Risk-Assessment Management Plan (RAMP) for the premises.

Risk Assessment Management Plan (RAMP)

The Act provides for Risk Assessment Management Plans (RAMPS) to be approved by the Commissioner for Fair Trading which will inform the Commissioner about how risks associated with the supply of liquor will be mitigated. It is also important that you as a licensee have turned your mind to the specific risks associated with the sale of liquor and have a plan of action to deal with any difficult situations.

The RAMP will cover a range of information from trading hours and type of food provided, to consideration of how to deal with difficult people and how to identify minors on adults-only areas.

A RAMP is required when applying for a new licence and is the primary mechanism for you to inform the Commissioner on how you will run your business.

Consultation on new licence applications

A major component of the new liquor licensing framework and information sharing model is the provision for the community to comment about potential concerns that a proposed new business premises may raise in the local community. Legitimate and reasonable concerns are then considered by the Commissioner with regard to the harm minimisation and community safety principles in the Act, including consideration of public amenity, and may influence whether a licence application is approved or refused.

Who needs to consult the public regarding a licence application?

The Act requires public consultation at the time of licence applications and when changes to the type of business carried out by a licensee are being sought. Public consultation is required for any new licence application or for any existing licensed premises intending to change the licence from one sub-class to another, such as from a restaurant and café licence to a bar or a night club licence.

As part of the process to apply for a new liquor licence or to change a licence subclass from one to another, the public must be notified about the proposal. The applicant must display a sign about the new application at the proposed premises or for a change of subclass of licence, at the current licensed premises. There must also be a notice about the proposal published in the Canberra Times.

Opportunity for public comment

Under the Act, the public is afforded the opportunity to comment on the licence application to raise any concerns they may have about the opening of a new licensed premises or a change of subclass to an existing licensed premise. Anyone may comment and raise their concerns on the application by writing to the Commissioner and stating why they believe:

- The applicant
- A close associate of the applicant
- An influential person, if the applicant is a corporation
- A person who is to have responsibility or influence managing the proposed business if they are not the applicant; or
- The location of the premises

is not suitable to be granted a licence or to change a subclass of licence. Anyone wishing to raise their concerns in writing to the Commissioner must do so within the 30-day public consultation period which begins after the application is made. The Commissioner also has the power to extend a public consultation period and if so, must put a notice in *The Canberra Times* and notify the licence applicant in writing of the extension.

If a person has written to the Commissioner to raise any concerns about a licence application, that person is allowed to withdraw their statement at any time before the application is decided, if they so wish.

Sign and notice information

A sign displayed or notice published by an applicant must include the following information:

- State the class of licence applied for and for an on licence, the subclass of licence
- The name of the applicant
- The date the application was made
- The address of the proposed licensed premises
- The name of the business
- The proposed opening days and times for the premises
- The proposed times liquor will be sold for consumption on and off the premises
- A written representation statement explaining that anyone may write into the Commissioner for Fair Trading with their concerns about why an application is unsuitable. The exact wording for the written representation statement can be found in the *Liquor Regulation 2010 s 9(3)*

In addition, a sign displayed at the proposed premises must also:

- State the start and end date for the public consultation period
- Be printed in a colour that contrasts with the background of the sign
- Be printed in Arial font size 14 or larger
- Be A3 size or larger; and
- Be easily seen at or near the premises.

A template sign will be developed by ORS and will be available for use. If an applicant does not display a sign or publish a notice with the relevant information and in the appropriate way as outlined in the Act, penalties may apply.

Considerations by the Commissioner

If the Commissioner receives any written statements from the public expressing any concerns, these will be taken into consideration when deciding whether to grant a licence or change a subclass of a licence.

Occupancy loadings for public places on licensed premises

The Act requires that all liquor licensees have an occupancy loading determined by the Commissioner indicating the maximum number of people allowed in each public place on the licensed premises.

Upon receiving an application the Commissioner will refer the matter to the Chief Officer (Fire Brigade) to make a recommendation about the maximum number of people that can be in each public area of the premises safely. After the Commissioner receives this recommendation, the Commissioner will determine the occupancy loading for each public area taking into account the harm minimisation and community safety principles and the needs of the licensee, and facilities available to patrons at the licensed premises.

Adults-only areas on licensed premises

The Commissioner will determine if the premises contains any adults-only areas, where they are, and at what times they are adults-only areas. Children and Young people are not allowed in adults-only areas unless they are being supervised by a parent, step-parent, guardian, person acting in place of a parent, domestic partner or carer of the child or young person and who could reasonably be expected to responsibly supervise the child or young person.

Granting of a Licence

The Commissioner must issue a liquor licence only if satisfied that:

- (a) if the proposed licensee is an individual—the proposed licensee is an adult; and
- (b) each of the following people is a suitable person to hold the licence:
 - (i) the proposed licensee;
 - (ii) each close associate of the proposed licensee;
 - (iii) if the proposed licensee is a corporation—each influential person for the proposed licensee;
 - (iv) if someone other than the proposed licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and
- (c) the proposed licensed premises are suitable premises for the licence; and
- (d) the proposed licensee complies, and is likely to continue to comply, with the requirements of this Act; and
- (e) the proposed licensed premises comply with the requirements of this Act.

The Act sets out the maximum time frame for making a decision on an application. Generally, the timeframe is 90 days after receiving the application or after requesting further information or plans.

MAINTAINING A LIQUOR LICENCE

Mandatory Responsible Service of Alcohol (RSA) Training

An important aspect of the new liquor licensing framework is the introduction of mandatory responsible service of alcohol training for the liquor industry. This training will support the new Act's objects of responsible service of alcohol as well as the harm minimisation and community safety principles. It will better educate staff and employees to understand the risks and impact of serving alcohol in an irresponsible manner and to identify when a patron is intoxicated and how to deal with an intoxicated person effectively.

Requirement to have an RSA certificate

Section 100 of the Act provides that licensees, employees who supply liquor, and crowd controllers working at a licensed premise must undertake responsible service of alcohol training (RSA) and obtain an RSA certificate.

Licensees who serve liquor to another person need to have undertaken an RSA training course and obtain an RSA certificate. If a licensee serves liquor to another person without an RSA certificate, penalties will apply.

Employees of licensees also need to hold an RSA certificate to be able to serve liquor to patrons and other people. If an employee serves liquor and does not hold an RSA certificate, penalties will apply for both the employee and the licensee.

Licensees must also ensure that any crowd controller working at their licensed premises holds an RSA certificate to be able to carry on their work. Penalties will apply to both the licensee and the crowd controller if the crowd controller is working at the licensed premises and does not hold an RSA certificate.

Keeping copies of RSA certificates

It is a requirement of the Act that licensees keep copies of RSA certificates for the following people:

- The licensee
- Each employee who serves liquor at the licensed premises
- Each crowd controller working at the licensed premises.

All copies of RSA certificates should be kept on the premises and be made available for inspection by an appropriate person on request.

Undertaking an approved RSA training course

A licensee, employee of a licensee or a crowd controller may complete an RSA training course provided by an approved training provider. A training course and the training provider offering the course must also both be approved by the Commissioner.

If a person satisfactorily completes an approved RSA training course, they will be presented with an RSA certificate which states what date the course was completed and the date the certificate expires. RSA certificates will expire 3 years after the day the course was completed.

Keeping of an incident register

The Act requires that an incident register be kept by all licensees and permit-holders. The purpose of an incident register is to record all incidents that occur at or in the close vicinity of a licensed or permitted premises or any incident that may involve a licensed or permitted premises. This is in keeping with the information sharing model underpinned in the Act and allows the Commissioner to have access to more information to carry out better regulatory action.

What is an incident?

The Act explains that an incident means a confrontation or event that involves violent, unlawful or anti-social behaviour. If this incident:

- occurs on or in close proximity to the licensed or permitted premises
- involves a person who has recently left or has been refused entry to the premises
- results in a person being removed from the premises
- occurs after midnight and before the time stated in the Regulations,

then the licensee or permit holder should record this incident in their incident register. The following details should be kept by a licensee or permit holder when an incident occurs:

- the description of the incident
- the date and time of the incident
- the name, address and contact details of each person involved in the incident including each employee, crowd controller and police officer
- what action was taken in relation to the incident.

However, it may not be reasonable to expect to obtain the details of the perpetrator of the incident, especially if they fled prior to the arrival of a police officer.

Once the police have arrived, the licensee must record the name of the police officer and the time they took over the incident and no further details from that point. It is important to note that the licensee is still required to keep details of the incident before the police officer attended.

If you are a licensee or a permit holder and you do not keep a copy of an incident register, you have committed an offence and penalties will apply.

Complying with the RAMP

Once the RAMP is approved, it is an offence for a licensee to not comply with the RAMP. This means that anything stated in the RAMP such as trading hours, type of food provided and security arrangements cannot be changed unless the Commissioner approves an amendment to the RAMP.

Amending the RAMP

If you wish to change any aspect of the RAMP, you must apply to the Commissioner to do so. Until the application is decided, you will be operating under and must continue to comply with the un-amended RAMP. The Commissioner may request additional information or to inspect the premises in deciding the application to amend the RAMP. If this information is not provided or the request to inspect is refused, the Commissioner does not need to make a decision on the application.

Amending a Licence

You must apply to amend a licence if:

- someone else is to become a close associate of the licensee;
- if the licensee is a corporation and someone else is to become an influential person for the licensee;
- someone else is to have day-to-day control of the business operated under the licence;
- the licensee intends to change the floor plan of the premises; or
- the licensee wishes to change from one subclass of on licence to another.

You may also apply to amend the licence if you wish to change the licence in some regard such as removing or amending a condition on your licence.

In deciding an application to amend a licence, the Commissioner may amend the licence only if satisfied that the licensee, close associates, influential people and premises are still suitable to hold a licence.

The Commissioner may also propose an amendment to a licence by issuing an amendment notice to the licensee. The licensee then has a period of time to provide comments, at the end of which the Commissioner will consider any representation by the licensee and make a decision on the proposed amendment.

Change of licensed business models

If amending a licence from one subclass to another in order to change business models (eg a restaurant to a nightclub), the licensee must undertake the public notice requirements as explained on page 13 in the same way as new applications for a licence.

Transfer of a licence

You may apply to transfer your licence to a proposed new licensee. The transfer application must include details of

- include complete details of suitability information about—
 - the proposed new licensee; and
 - each close associate of the proposed new licensee; and
 - if the proposed new licensee is a corporation—each influential person for the proposed new licensee; and
 - if someone other than the proposed new licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control; and
- include a police criminal history check (police certificate) for each of the following people, dated not earlier than 3 months before the date of the transfer application:
 - the proposed new licensee;
 - each close associate of the proposed new licensee;
 - if the proposed new licensee is a corporation—each influential person for the proposed new licensee;
 - if someone other than the proposed new licensee is to have day-to-day control of the business operated under the licence—each person who is to have day-to-day control.

Renewal of a licence

An application for a renewal of a licence must be received by the Commissioner at least 30 days before the licence expires. In deciding a renewal the Commissioner must be satisfied

that the licensee, close associates, influential people and premises are still suitable to hold a licence.

APPLYING FOR A LIQUOR PERMIT

The strengthening of the liquor licensing framework will also mean that permits will be granted in circumstances where the risks to the local area can be mitigated. Commercial permit applicants will need to complete a RAMP to show how they will manage the risks of selling liquor to the community and may need to obtain an occupancy loading determination or adults-only area decision from the Commissioner.

Requirements on Commercial Permits such as the RAMP and mandatory RSA training are new requirements that have been introduced in the new Act.

To obtain a liquor permit a person may apply to the Commissioner for a stated permit for stated event. Forms for making application will be available on the ORS website. The major requirements for an application are that it must include:

- Detail of the permittee;
- Details of each close associate. These are:
 - People who hold an executive position in the business; and
 - People who the Commissioner is satisfied will be able to exercise significant control in the business. This will include a person who has day-to-day control of a premises (eg a manager).
- details of each influential person for the permit. These are related to corporations and are:
 - Executive officers;
 - A person who can exercise a relevant power;
 - A related corporation; and
 - An executive officer of a corporation.
- If applicable and the premises is wholly or partly enclosed:
 - an ACTPLA certificate for the premises dated not earlier than 3 months before the date of the application
 - the final floor plans of the premises approved by the planning and land authority in the development approval for the premises
 - a certificate of occupancy for the premises; and
- If the application is for a commercial permit—the application must include a RAMP for the premises.

The Commissioner must issue a permit only if satisfied that:

- (a) if the proposed permit-holder is an individual—the proposed permit-holder is an adult; and
- (b) each of the following people is a suitable person to hold the permit:
 - (i) the proposed permit-holder;
 - (ii) each close associate of the proposed permit-holder;
 - (iii) if the proposed permit-holder is a corporation—each influential person for the proposed permit-holder; and
- (c) the proposed permitted premises are suitable premises for the permit; and

- (d) the proposed permit-holder complies, and is likely to continue to comply, with the requirements of this Act; and
- (e) the proposed permitted premises comply with the requirements of this Act.

The Act sets out the maximum time frame for making a decision on an application. Generally, the timeframe is 90 days after receiving the application or after requesting further information or plans.

Risk Assessment Management Plan (RAMP)

The Act provides for Risk Assessment Management Plans (RAMPS) to be approved by the Commissioner for Fair Trading which will inform the government about how risks associated with the supply of liquor and the operation of the licensed premises will be mitigated. It is also important that you as a commercial permit holder have turned your mind to the specific risks associated with the sale of liquor and have a plan of action to deal with any difficult situations.

The RAMP will cover a range of information from trading hours and type of food provided to consideration of how to deal with difficult people and how to identify minors in adults-only areas.

A RAMP is required when applying for a commercial permit and is the primary mechanism for you to inform the Commissioner on how you will run your business at the event.

Occupancy loadings for public places on permitted premises

A permit holder may also be required to have an occupancy loading determined by the Commissioner if the premises is partly or wholly enclosed and the Commissioner deems it necessary.

Adults-only areas on permitted premises

The Commissioner will determine if the premises contains any adults-only areas, where they are and at what times they are adults-only areas. Children and Young people are not allowed in adults-only areas unless they are being supervised by a parent, step-parent, guardian, person acting in place of a parent, domestic partner or carer of the child or young person and who could reasonably be expected to responsibly supervise the child or young person.

MAINTAINING A LIQUOR PERMIT

Mandatory Responsible Service of Alcohol (RSA) Training

An important aspect of the new liquor licensing framework is the introduction of mandatory RSA training for the liquor industry. This training will support the new Act's objects of responsible service of alcohol as well as the harm minimisation and community safety principles. It will better educate staff and employees to understand the risks and impact of serving alcohol in an irresponsible manner and to identify when a patron is intoxicated and how to deal with an intoxicated person effectively.

Requirement to have an RSA certificate

Section 100 of the Act provides that commercial permit holders, employees who supply liquor and crowd controllers working at a permitted premise must undertake responsible service of alcohol training (RSA) and obtain an RSA certificate.

Commercial permit holders who serve liquor to another person need to have undertaken an RSA training course and obtained an RSA certificate. If a commercial permit holder serves liquor to another person without an RSA certificate, penalties will apply.

Employees of commercial permit holders also need to hold an RSA certificate to be able to serve liquor to patrons and other people. If an employee serves liquor and does not hold an RSA certificate, penalties will apply for both the employee and the permit holder.

Commercial permit holders must also ensure that any crowd controller working at their permitted premises holds an RSA certificate to be able to carry on their work. Penalties will apply to both the commercial permit holder and the crowd controller if the crowd controller is working at the permitted premises and does not hold an RSA certificate.

Keeping copies of RSA certificates

It is a requirement of the Act that commercial permit holders keep copies of RSA certificates for the following people:

- The permit holder
- Each employee who serves liquor at the permitted premises
- Each crowd controller working at the permitted premises

All copies of RSA certificates should be kept on the premises and be made available for inspection by an appropriate person on request.

Undertaking an approved RSA training course

Anyone required to be RSA trained may complete an RSA training course provided by an approved training provider. A training course and the training provider offering the course must also both be approved by the Commissioner.

If a person satisfactorily completes an approved RSA training course, they will be presented with an RSA certificate which states what date the course was completed and the date the certificate expires. RSA certificates will expire 3 years after the day the course was completed.

Keeping of an incident register

The Act requires that an incident register be kept by all licensees and permit-holders. The purpose of an incident register is to record all incidents that occur at or in the close vicinity of a licensed or permitted premises or any incident that may involve a licensed or permitted premises. This is in keeping with the information sharing model underpinned in the Act and allows the Commissioner to have access to more information to carry out better regulatory action.

What is an incident?

The Act explains that an incident means a confrontation or event that involves violent, unlawful or anti-social behaviour. If this incident:

- occurs on or in close proximity to the licensed or permitted premises
- involves a person who has recently left or has been refused entry to the premises
- results in a person being removed from the premises
- occurs after midnight and before the time stated in the Regulations,

then the licensee or permit holder should record this incident in their incident register. The following details should be kept by a licensee or permit holder when an incident occurs:

- the description of the incident
- the date and time of the incident
- the name, address and contact details of each person involved in the incident including each employee, crowd controller and police officer
- what action was taken in relation to the incident.

However, it may not be reasonable to expect to obtain the details of the perpetrator of the incident, especially if they fled prior to the arrival of a police officer.

Once the police have arrived, the licensee must record the name of the police officer and the time they took over the incident and no further details from that point. It is important to note that the licensee is still required to keep details of the incident before the police officer attended.

If you are a licensee or a permit holder and you do not keep a copy of an incident register, you have committed an offence and penalties will apply.

Complying with the RAMP

For commercial permit holders, once the RAMP is approved, it is an offence to not comply with the RAMP. This means that anything stated in the RAMP such as trading hours, type of food provided and security arrangements cannot be changed unless the Commissioner approves an amendment the RAMP.

Amending the RAMP

If you wish to change any aspect of the RAMP, you must apply to the Commissioner to do so. Until the application is decided, you will be operating under and must continue to comply with the un-amended RAMP. The Commissioner may request additional information or to inspect the premises in deciding the application to amend the RAMP. If this information is not provided or the request to inspect is refused, the Commissioner does not need to make a decision on the application.

Amending a Permit

You must apply to amend a permit if:

- someone else is to become a close associate of the permit holder;
- if the permit holder is a corporation and someone else is to become an influential person for the permit holder;

You may also apply to amend the permit if you wish to change the permit in some regard such as removing or amending a condition.

In deciding an application to amend a permit, the Commissioner may amend the permit only if satisfied that the permit holder, close associates, influential people and premises are still suitable to hold a permit.

The Commissioner may also propose an amendment to a permit by issuing an amendment notice to the permit holder. The permit holder then has a period of time to provide comments, at the end of which the Commissioner will consider any representation by the permit holder and make a decision on the proposed amendment.

Transfer of a Permit

Permits are not transferable.

Renewal of a Permit

Commercial permits are not renewable. However, non-commercial permit holder can apply for renewal each year.

Cancellation of a Permit

Non-commercial permits can be cancelled by the Commissioner if he is satisfied that the permit holder has not complied with the permit.

NEW REGULATORY POWERS

As part of the new Act, new regulatory powers have been created to be able to deal promptly with any alcohol-related incidents or any other situations of concern at a licensed premises. This is in keeping with the objects of the act, such as responsibly service and consumption of alcohol, and the harm minimisation and community safety principles underpinning the Act.

Some of the new powers include:

- Imposing and varying conditions on a licence
- Issue a written direction
- Declare temporary alcohol-free zones
- Police power to close a premises for up to 24 hours
- Standard conditions on a licence.

Imposing and varying conditions on a Licence

As part of new regulatory powers under the new Act, the Commissioner will be able to impose, amend or remove a condition on a licence at any time in an effort to minimise certain alcohol-related issues occurring at a licensed premises. These powers will also extend to any other matters of concern at a licensed premises which may be in contradiction of harm minimisation and community safety principles. For example, the Commissioner may impose a condition on an existing licence stating that certain drinks will be prohibited from sale for a certain period of time.

If the Commissioner wishes to amend, remove, or impose a condition, the Commissioner will issue a proposal notice to a licensee setting out the condition that will be altered, removed or added. The Commissioner is required to issue the notice in writing and allow at least 14 days for the licensee to provide any written comments on the proposed change. After this period, the Commissioner must consider any comments made by the licensee before making a decision on the condition. However this does not apply if the licensee agrees in writing to the proposed change.

Issue a written binding direction

Under the new Act, the Commissioner now has the power to issue a written binding direction to a licensee, permit holder or any of their staff. This power would be used in response to any alcohol-related or other incident of concern occurring at the premises and require the licensee or permit holder to *immediately* take action. The written direction may prohibit or require certain activities to occur at the premises in the interest of harm minimisation and community safety principles.

This direction will occur if the Commissioner believes on reasonable grounds that there has been or will be a breach of the Act or of the licence or permit and will instruct the licensee, permit holder or one of their staff instructing to take action to prevent the breach or likely breach occurring. For example, the Commissioner can issue a written direction to a licensee to reduce the noise level coming from the premises.

The Commissioner is required to issue this direction in writing and it must state the action to be taken or what must not occur, and also state when the direction must be complied with or how long the direction applies for.

It is a serious offence not to comply with a direction from the Commissioner under the act which could result in a fine of up to \$11,000 (\$55,000 for corporations), 12 months imprisonment or both.

Temporary alcohol-free zones

Among other new powers, the Act provides for the Commissioner to declare certain public places as temporary alcohol-free zones. This may be necessary to protect nearby areas when large outdoor events are taking place where there may be a risk of alcohol-related incidences to community wellbeing.

Under the Act, the Commissioner can declare a certain public place to be a temporary alcohol-free zone for up to one month. If a person consumes liquor or possesses an open container of liquor and intends to consume it in a temporary alcohol-free zone declared by the Commissioner, that person will be committing an offence and penalties will apply. These penalties are the same penalties that apply when a person consumes liquor or possesses an open container of liquor with the intention of consuming it in a permanent alcohol-free place outlined in the Act and the Regulation.

24 hour suspension of licence

New powers for ACT Policing provides the ability to deal with an incident of such a scale or nature that it seriously impacts on community safety by closing a premises for up to 24 hours. This power is an emergency power and will only be used in situations where the closure of the premises will prevent or reduce a significant threat to community safety.

Power to make standard conditions on a licence

A liquor licence or permit granted to an applicant is subject to any conditions placed on the licence or permit. Under the new Act, the general conditions on the licence are that the licensee and the licensed premises must comply with the Act, with anything in the

Regulation and with any other conditions imposed on the licence by the Commissioner. If a licensee or licensed premises breaches any of these conditions, penalties may apply.

As part of complying with the Act, a licensee must comply with a number of conditions as specified in the Regulation. Previously, some of these conditions were set out as standards in the old Liquor Licensing Standards Manual 2004. In the new Act, similar standards from the manual have now become part of the conditions that are imposed on every licence and are enforceable should any of the conditions be breached.

Lockouts

The Act provides for the Minister to declare a lockout by regulation. If this were to occur, a standard condition would be placed on all licences that new patrons are not to be admitted to a licensed premises after a particular time. This would mean that patrons already on the premises can remain there but no new customers are to be admitted and any patrons who leave are not to be re-admitted.

PATRON RESPONSIBILITIES

Under the new Act, patrons have a number of obligations and responsibilities in relation to their conduct and the supply of liquor. The below offences aim to address patron behaviour when they are out on the town as it is everyone's responsibility to create a safe and vibrant nightlife in Canberra.

Failing to leave

The new Act has a strict liability offence on a patron who fails to leave a premises at the direction of the licensee, an employee or a crowd controller working at the premises. Once directed to leave and refusing to do so, the Police may issue an on-the-spot fine of \$440 to the patron.

Abuse of staff

Any patron who abuses a staff member who refuses to serve a drink to an intoxicated person will be guilty of an offence under the new Act. This offence will mean that the police will be able to give the patron an on-the-spot fine of \$220.

Supply liquor to intoxicated patron

If one patron supplies liquor to another patron who is intoxicated, the police can issue the supplier with a \$110 on-the-spot fine.

UNDERAGE FUNCTIONS

A licensee with an adults-only area may apply to the Commissioner to host a young people's event on the premises.

These functions attract a higher level of scrutiny as the function involves vulnerable people. As such, an application for a young people's event must include a police criminal history check (police certificate) for each person to work at the function dated not more than 3 months before the date of the application. These certificates are required for all staff, including current staff, at the function, even those who may have already given the Commissioner a police criminal history check (police certificate) in some other capacity. In addition to this, the application is required to have written details of:

- The date and time the event starts
- The date and time the event ends
- The name of each person working at the event
- Any other information prescribed by regulation
- Any information the Commissioner requests

A young people's event is subject to conditions prescribed by regulation.

DISPUTE RESOLUTION

There are a number of decisions made by the Commissioner under the Act that can be appealed. Appeals of decisions are heard by the ACT Civil and Administrative Tribunal (ACAT). The ACAT is the review body for the majority of government decisions in the ACT. There are time limits to appeal decisions and fees apply. For more information on ACAT or the appeals process go to <http://www.acat.act.gov.au/>.

Below are listed decisions made by the Commissioner that are reviewable.

Decision	Who can Appeal	Relevant section of the Act
refuse to issue licence	applicant for licence	27 (2)
refuse to amend licence	licensee	38 (4)
refuse to amend licence (change to floor plan)	licensee	39 (3)
refuse to transfer licence	licensee	41 (2)
refuse to renew licence	licensee	43 (2)
refuse to issue permit	applicant for permit	51 (2)
refuse to amend permit	permit-holder	58 (3)
refuse to renew permit	permit-holder	62 (2)
cancel non commercial permit	permit-holder	65 (1)
refuse to approve risk-assessment management plan	licensee or permit-holder	90 (1)
refuse to amend risk-assessment management plan	licensee or permit-holder	92 (2)
refuse to approve young people's event	applicant	96 (2)
refuse to approve RSA training course	applicant	190 (2)

COMPLAINTS AND ENFORCEMENT ACTION

ORS and ACT Policing undertake a range of compliance activities to regulate the sale and consumption of liquor. Inspections of licensed and permitted premises deal specifically with:

- the construction of licensed premises and their fittings;
- the conduct of licensed premises by licensees; and
- the conduct of patrons.

There are a broad range of matters that can be considered during inspections. Under the new Act the initial focus will be on:

- Responsible Service of Alcohol;
- Compliance with RAMPs (where approved);
- Occupancy loadings
- Loss of amenity - noise, mess (cleanliness)
- Checking people's proof of age
- Follow up on expired licenses
- The conduct of young people's events

The Act provides for a range of penalties resulting from non-compliance with the Act or Regulations. In particular the Act provides for a series of criminal offences, infringement notices and for disciplinary action to be taken.

The Act includes a number of offences that licensees should be aware of and can be prosecuted for. These are all set out in the Act, but below are the basic offences in the Act:

Section 12 of the Act provides that it is an offence to sell liquor without a licence or permit authorising the sale (excluding sale at a private event with 30 or less people present). The maximum penalty is 100 penalty units, 12 months imprisonment or both. This maximum penalty equates to \$11,000 for an individual and \$55,000 for a corporation.

The Act provides for the Tribunal to take action against licensees following an application by the Commissioner. The Commissioner will apply for disciplinary action to be taken either following a complaint or following an investigation by ORS investigators or ACT Policing. The full grounds for disciplinary action are set out in the Act, but include contravening the Act, the licensee or premises being unsuitable to hold a licence and allowing the premises to be used in a way that causes undue disturbance or inconvenience to neighbours.

USEFUL CONTACTS

Office of Regulatory Services:

**255 Canberra Avenue
Fyshwick ACT 2609
www.ors.act.gov.au
(02) 6207 3000**

ACT Civil and Administrative Tribunal: