LIQUOR PRACTICE MANUAL

THIS PRACTICE MANUAL

The practice manual has been developed to assist applicants, current licensees, current permit-holders and Office of Regulatory Services (ORS) staff in the interpretation and compliance with the Liquor Act 2010 (the Act). The Act commenced on 1 December 2010. This practice manual sets out information on the Act and provides information to assist applicants applying for a liquor licence or permit.

It is intended that this practice manual will operate as a living document, which will be improved upon as policy or the law is amended. This may also include capturing responses to issues as they arise in the application of the policy and the law.

We encourage all stakeholders (applicants, licensees, permit-holders, their staff and ORS staff) to feel comfortable in raising issues regarding this Manual, with a view to clarifying policy or legal issues, to improve the administration of the Act.

Written and published by the ACT Office of Regulatory Services
OUR CUSTOMER COMMITMENT

Who We Are:

We are the Office of Regulatory Services (ORS). The Office is made up of a variety of licensing, registration and compliance activities including:

- Liquor Licensing
- Security Industry Licensing
- Charitable Collections
- Business Names
- Associations
- Agents
- Land Titles
- Births, Deaths and Marriages
- Workplace Health and Safety
- Rental Bonds
- Outdoor Cafes
- Tobacco regulation
- Consumer protection
- Vehicle registration
- Parking operations
Objective:

Our mission is that we are a regulator of best practice, serving the ACT community, industry and government. Our objective is to register, licence and ensure compliance of activities against relevant legislation.

What you can expect from us:

As a customer you can expect high quality, responsive and respectful customer service.

Where to get more information:

Information relating to Liquor can be found at our website at: www.ors.act.gov.au

If you wish to make a complaint or you have a suggestion:

Please contact the ORS on (02) 6207 3000 or via email at ors@act.gov.au if you have enquiries or wish to lodge a complaint.

Or attend the office at:

255 Canberra Avenue FYSHWICK ACT 2609

Our office hours are:

9am - 4.30pm Monday to Friday (excluding Public Holidays)

You may also wish to refer to our Complaints Policy at Chapter 8.
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CHAPTER 1 - THE LEGISLATION

1.1 PURPOSE OF THE LEGISLATION

1.1.1 PURPOSE OF THE LIQUOR ACT 2010

The Liquor Act 2010 (the Act) provides for licensing and regulation of liquor in the Australian Capital Territory (ACT). The Act replaced the Liquor Act 1975. The Act was in response to growing community concerns about the anti-social and violent behaviour associated with abuse of alcohol, and recognition that wholesale reform of liquor laws was required.

The Act introduces a number of new concepts which affect how liquor is regulated in the ACT. The Act introduces new harm minimisation and community safety principles. The Act provides new regulatory powers for the Commissioner for Fair Trading (the Commissioner) and new powers for the Police. The Act introduces a new liquor licensing framework and strengthens the integrity of the liquor licences, including the introduction of new offences. The Act provides stronger protection for children and young people, including new offences.


1.2 IMPORTANT CONCEPTS

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

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.

Close Associate: A person is a close associate if:

(a) the person holds or will hold an executive position (however described) in the related person’s (applicant) business; or

(b) the Commissioner is satisfied that the person is, or will be, able to exercise a significant influence in relation to the conduct of the related person’s (applicant) business because the person holds, or will hold, a financial interest, or is entitled to exercise a relevant power, in the business.

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.
Corporation: includes all corporations as defined by the Corporations Act 2001 (C'Wlth).

Eligible Club: A club is eligible to hold a licence or permit if it:
(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; or
   (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.

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

Individual: includes sole traders working under a business name and individuals working under their own name.

Influential Person: An influential person is any of the following:
(a) an executive officer of the corporation;
(b) a person who may exercise a relevant power in relation to the corporation;
(c) a related corporation;
(d) an executive officer of a related corporation.

Investigators: These officers have powers to enter premises to ensure that the Act is being complied with; these include ORS authorised persons and Police officers.

Licensed Premises Plan: is a plan that will accompany the licence certificate upon approval of a licence application. The plan will identify: the licensed premises; each public area and the occupancy loading for that area; each adults-only area; and where there are any outdoor dining areas.

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.

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

Person: In this manual a person refers to an individual, corporation or partnership. Where the manual refers to an individual, partnership or corporation it is specific to those only.

Person with day-to-day control: is a person (other than the licensee) who has day-to-day control of the business operated under the licence. They must have significant decision making power in relation to the business.

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

Relevant power: in a business; is power to take part in a directorial, managerial or executive decision for the business; or to elect or appoint a person as an executive officer in the business.

: in a corporation; is power to take part in a directorial, managerial or executive decision for the business; or to elect or appoint a person as an executive officer in the corporation; or to exercise significant influence in relation to the conduct of the corporation.
CHAPTER 2 - LIQUOR LICENCES

2.1 REQUIREMENT FOR A LICENCE

Section 12 of the Act provides that it is an offence to sell liquor without a licence or permit authorising the sale. The maximum penalty is 100 penalty units, 12 months imprisonment or both. This maximum penalty currently equates to $11,000 for an individual and $55,000 for a corporation.

The offence does not apply if the sale happens at a private event at which there are 30 people or less present.

2.2 TYPES OF LICENCES

The Act provides for the following five types of licence:

- **general licence** - authorising 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** - authorising the licensee to sell liquor at a single licensed premises in open containers for consumption at the premises. This licence category includes bar licences, nightclub licences and restaurant/café licences.
  
  - **Bar licences** are licences for premises that predominantly serve liquor at the premises or are determined under the *Liquor Regulation 2010* (the Regulation).
  
  - **Nightclub licences** are premises that predominantly have dancing and entertainment or are determined under the Regulation.
  
  - **Restaurant and café licences** are premises that predominantly serve meals for consumption on the premises or are determined under the Regulation.

- **off licence** - authorising the licensee to sell liquor at a single licensed premises in sealed containers for consumption off the premises. For example, supermarkets which sell liquor and bottle shops.

- **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.
2.3 NEW LICENCES

2.3.1 LICENCE APPLICATION

To obtain a liquor licence a person must apply to the Commissioner for a stated licence for a stated premises. Forms for making an application are available from ORS or from the ORS website. The major requirements for an application are that it must include:

- Details of the licensee;
- Details of each close associate. These are:
  - People who hold an executive position in the business; or
  - People who the Commissioner is satisfied does, or will be able to, exercise significant influence in relation to the conduct of the related person’s business because they hold, or will hold, a financial interest; or are entitled to exercise a relevant power. (If you are unsure whether a person has significant influence, contact ORS for advice).
- 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.
- Details of any person (beside the licensee) who will have day-to-day control of the business operated under the licence.
- A police criminal history check (police certificate) for the proposed licensee, each close associate, each influential person or person with day-to-day control which is dated not earlier than 3 months before the date of the application.
- An ACT Planning and Land Authority (ACTPLA) certificate (lease advice) for the premises dated not earlier than 3 months before the date of the application.
- The final floor plans of the premises approved by ACTPLA in the development approval for the premises.
- A certificate of occupancy for the premises (and fit-out if applicable).
- 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.

The Act requires public consultation on every proposed licence and sets out how this is to occur. For more information about the public consultation requirements please see section 2.4 of this guide.

The Act sets out the maximum timeframe for making a decision on an application. Generally, the timeframe is 90 days after receiving the application or after receiving requested information or plans.
2.3.2 LICENCE APPLICATIONS WHERE THE PREMISES ARE NOT COMPLETE

In certain situations, at the discretion of ORS, an incomplete licence application may be accepted to allow public consultation to be conducted. If the completion of the building is likely to be within three (3) months, and no more than six (6) months away, an application may be submitted without all the required certificates for the premises. You must provide all available documents, and additional documents may be required before acceptance. This may include: development approval, building approval, and lease or head agreements for the use of the land.

Following provisional acceptance of the application, the applicant may commence public consultation for the application. Fulsome public consultation must occur, and ORS may require you to provide additional information in a public consultation notice or sign.

As soon as they are available, any outstanding certificates and documents, e.g. the certificates of occupancy and the ACTPLA lease advice certificates must be provided to ORS. Once a complete application has been received, all relevant information will be considered, including any public representations, in determining the outcome of the application.

If you believe that you may need to conduct public consultation prior to the completion of a premises, please contact ORS, Compliance on (02) 6207 3000 or via email at liquor@act.gov.au.

2.4 PUBLIC CONSULTATION ON LICENCE APPLICATIONS

2.4.1 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, community safety principles in the Act, and suitability information and may influence whether a licence application is approved or refused.

2.4.2 WHO NEEDS TO CONSULT THE PUBLIC REGARDING A LICENCE APPLICATION?

Public consultation is required following any application for a new licence or for an existing licensed premises applying to change the “on” 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 an on licence sub-class from one to another, the public must be notified about the proposal. Following submission of the application to ORS, the applicant must display a sign about the new application at the proposed premises or for a change of sub-class of licence, at the current licensed premises. There must also be a notice about the proposal published in The Canberra Times. Further information about the sign and notice is below.
2.4.3 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 sub-class to an existing licensed premises. 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 with day-to-day control (if not the licensee) of the business operated under the proposed licence; or
- the premises

is not suitable to be granted a licence or to change a sub-class 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 will 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.

2.4.4 SIGN AND NOTICE INFORMATION

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

- The class of licence applied for and for an on licence, the sub-class 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; and
- The 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 section 9(3).

The 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 placed prominently so that it can be easily seen by someone at or near the premises.

A template sign and notice have been developed by ORS and is available from the ORS website. 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 and an application may not be considered.

2.4.5 CONSIDERATIONS BY THE COMMISSIONER

If the Commissioner receives any written statements from the public expressing any concerns regarding suitability, these will be taken into consideration when deciding whether to grant a licence or change a sub-class of an on licence.

2.5 RISK-ASSESSMENT MANAGEMENT PLAN

2.5.1 APPROVING A RISK-ASSESSMENT MANAGEMENT PLAN (RAMP)

The Act provides for the Commissioner to approve a Risk-Assessment Management Plan (RAMP) for a premises. The RAMP will inform the Commissioner about how risks associated with the supply of liquor at a premises 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 in 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 in compliance with the Act.

A form for the RAMP and a guide on completing a RAMP are available from ORS or from the ORS website.

2.5.2 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.

The licensee is also required to ensure that any staff or crowd controllers who will be bound by the RAMP are aware of their responsibilities. Offences apply for failing to comply with an approved RAMP.

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2.5.3 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.

2.6 ELIGIBILITY FOR A LICENCE

2.6.1 ELIGIBILITY CRITERIA

The Commissioner can grant a licence only if the applicant is at least 18 years of age (in the case of an individual), complies with, and is likely to continue to comply with the Act, and the proposed licensed premises complies with the requirements of the Act.

Also, in deciding an application, the Commissioner must be satisfied that the applicant, close associates, influential people and people with day-to-day control of the premises are suitable people to hold a licence. In deciding this, the Commissioner will consider:

(a) any conviction of, or finding of guilt against, the person for an offence against a law regarding liquor, fair trading, gambling, criminal acts, or where the penalty was imprisonment for at least 1 year;

(b) any proven non-compliance by the person with a legal obligation in relation to the supply of liquor;

(c) any refusal of an application by the person for a licence, permit or other authority in relation to the supply of liquor;

(d) whether the person complies with the requirements of this Act;

(e) if the person is an individual—whether the person is, or during the preceding 5 years was—

(i) bankrupt or personally insolvent; or

(ii) involved in the management of a corporation when the corporation was insolvent;

(f) the person’s knowledge and understanding of the obligations under this Act applying in relation to the licence or permit; and

(g) any other matter relevant to the person’s ability to safely and responsibly supply liquor.

If the applicant is a corporation, then the following also applies:

(a) whether the person is, or during the preceding 5 years was, insolvent; or

(b) whether each influential person for the corporation is a suitable person to hold the licence or permit.

If the applicant is a club the Commissioner will consider whether the club is an eligible club for the purposes of the Act.
If the applicant is a non-profit organisation the Commissioner will consider whether the organisation operates on a not-for-profit basis.

In deciding whether the premises are suitable, the Commissioner will consider:

(a) any conviction of, or finding of guilt against, the responsible person for the premises; a close associate of the responsible person; or an influential person for the corporation for an offence against this Act involving the premises;

(b) any proven non-compliance of the premises with a legal obligation in relation to the supply of liquor while the responsible person for the premises; a close associate of the responsible person; or an influential person for the corporation was involved in a business operated at the premises;

(c) any refusal of an application for a licence, permit or other authority in relation to the supply of liquor at the premises;

(d) whether the premises comply with the requirements of—
   (i) this Act; and
   (ii) the Building Act 2004; and
   (iii) the Planning and Development Act 2007;

(e) whether use of the premises in accordance with the licence or permit would be within the purpose of the lease for the land on which the premises are located;

(f) the fire safety of the premises;

(g) the level of noise likely to emanate from the premises if used in accordance with the licence or permit;

(h) whether use of the premises in accordance with the licence or permit would be likely to attract a large number of people and, if so, the risk to community safety;

(i) whether use of the premises in accordance with the licence or permit 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, residential premises, or a school;

(j) any other matter relevant to the appropriateness of the premises in relation to the supply of liquor.
2.7 POLICE CRIMINAL HISTORY CHECKS

An application for a liquor licence or a young people’s event must be accompanied by a Police criminal history check (police certificate) issued by the Commonwealth CrimTrac agency (application can be made through the Australian Federal Police) indicating whether, according to the records held by the agency, the applicant has been charged with or convicted of an offence against a law of the Territory; the Commonwealth; a State or another country and if so, particulars of each offence. Police certificates are required for:

(a) the applicant (including a corporation);
(b) any close associate of the applicant;
(c) if the applicant is a corporation, any influential person;
(d) any person with day-to-day responsibility for the premises (if not the licensee); or
(e) in an application for a young people’s event; every person who will, or may, work at the event - regardless of whether a police certificate has been provided to ORS for another reason.

This certificate must have been issued within the three months prior to the date of applying for the licence. If it is too old, the applicant may be required to obtain another, more recent, certificate.

All corporations that apply for a licence are also required to supply a company police certificate issued by CrimTrac (application can be made through the Australian Federal Police) and a current company extract (issued by the Australian Securities and Investment Commission (ASIC) within the last 30 days).

2.8 OCCUPANCY LOADINGS FOR PUBLIC PLACES ON LICENSED PREMISES

The Act requires that licensed premises where liquor is consumed on the premises have an occupancy loading determined by the Commissioner indicating the maximum number of people allowed in each public place of 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 safely be in each public area of the premises. 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. The occupancy loading determined by the Commissioner may be less than that recommended by the Chief Officer (Fire Brigade) in certain circumstances.
Once an occupancy loading has been determined for a public area of the premises, the licensee must ensure that the entry and queuing procedures (as approved in the RAMP) maintain the occupancy loading for that area. A sign will be provided to the licensee identifying the occupancy loading for an area, this sign must be displayed at or near each entrance to the relevant public area.

2.9 ADULTS-ONLY AREAS ON LICENSED PREMISES

The Commissioner will determine if the premises is to contain any adults-only areas, where they are, and at what times they will have effect. 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 can responsibly supervise the child or young person.

It is an offence for a person under 18 to serve liquor in an adults-only area.

The licensee will be provided a “licensed premises plan” which will identify the adults-only areas. An adults-only area sign must be displayed at or near each entrance to an adults-only area.

2.10 MUTUAL RECOGNITION

The principle of mutual recognition does not apply to liquor licences or permits in the ACT, nor does it apply to Responsible Service of Alcohol training.

2.11 FURTHER INFORMATION

2.11.1 FURTHER INFORMATION

If the Commissioner requires further information on any aspect of the licence application, the applicant will be notified in writing. If more information is requested, the Commissioner will indicate a timeframe for provision of that information and until the information is provided the application will not be considered further. If the requested information is not provided within the required time, the Commissioner will write to the person indicating that the application is deemed incomplete and withdrawn from consideration.

2.11.2 FEES

Fees can be found on the ORS website and on the ACT Legislation Register at www.legislation.act.gov.au and then under the Liquor Act 2010.

Fees are payable at the time of application. To assist licensees in determining what fee is payable on application (including quarterly amounts) the ORS has a fee calculator available on its website.
2.11.3 DECISIONS ON APPLICATIONS

Within 90 days of receiving the application the Commissioner must decide the application. If the licence is refused, the applicant will be advised of the reasons for the refusal, the considerations of the Commissioner, and the rights of appeal.

2.12 ISSUE OF LICENCE

If the application for a licence is granted then the Commissioner will issue a licence that will include the following information:

(a) the class of the licence and, for an on licence, the sub-class of licence;
(b) the licensee’s name;
(c) the name under which the licensee carries on business;
(d) the licensed premises address;
(e) the licensed times when—
   (i) liquor to be consumed at the licensed premises may be sold (if any); and
   (ii) liquor to be consumed off the licensed premises may be sold (if any);
(f) the conditions on the licence;
(g) anything else prescribed by Regulation.

A licence is subject to a number of standard conditions as well as any condition imposed by the Commissioner. The Act imposes a condition that the licensee must comply with the Act, other standard conditions that can be found in the Regulation, and the premises must comply with the Act. Any extra conditions imposed by the Commissioner will be listed on the licence.

The licence will expire on 30 November the next year unless the licence only authorises the sale of liquor at standard times (i.e. until Midnight) or the premises to which the licence relates to has an occupancy loading of 80 or less, in which case it will expire on the date stated in the licence.

The licence will be issued on an A4 certificate and it will include the premises where the licensee is authorised to carry on business.

2.13 REPLACEMENT LICENCES

If you lose your licence, it is stolen or destroyed you can apply to the Commissioner for a replacement licence. This requires a statutory declaration in regard to the need for a replacement licence and a fee will be payable.
2.14 RENEWAL OF LICENCES

To renew a licence a person must submit an application for renewal 30 days before the licence expires. On online or hardcopy renewal form will be accessible through the ORS website. Licensees must have submitted their annual liquor purchase information to the Commissioner by 31 July for renewal to be finalised.

If the application is received by the required time, the licence will continue to operate until the Commissioner decides to renew the licence or deny the application.

In deciding the application, the Commissioner can request additional information from the applicant. If the information is not provided the application will not be considered and the current licence will expire.

In 2011 changes were made to the options for trading hours. Late night, extended late night and 5am trading times have been changed to standard (midnight), 1am, 2am, 3am, 4am and 5am licensed times. Licensees who wish to amend their current trading hours on renewal will be required to also submit an application to amend their licence. If no amendment is requested, on renewal the licence certificate will be reissued to reflect the equivalent closing time. Should trading times be amended by application, the approved RAMP will also require amendment.
CHAPTER 3 - TRANSFER OF LICENCES

To transfer a licence to someone else, the licensee must apply to the Commissioner. Forms for making an application are available from ORS or on the ORS website.

It should not be assumed that approval to the transfer will be given, as approval is dependent on assessment as to whether the proposed licensee (as well as proposed close associates and people with day-to-day control over the business) are suitable and that the proposed licensee is likely to comply with the requirements of the Act.

An application for a transfer will only be considered if the incoming licensee intends to continue trading consistent with the current licence. For example, an off licence will only be transferred if the business will continue to trade as an off licence. Or a current restaurant and cafe licence will only be transferred to a proposed licensee if they will be running a restaurant or cafe.

Should there be a proposed change to the operating business model of an on licence an application for amendment to the sub-class will be required and public consultation conducted. See section 4.1.4 for further information on changing the sub-class of an on licence.

If the proposed business will change the licence type, a new application is required to be lodged. For example, change from an off licence to a general licence.

The major requirements for an application are that it must include:

- Details of the proposed licensee;
- Details of each new close associate. These are:
  - People who hold an executive position in the business; or
  - People who the Commissioner is satisfied will be able to exercise significant influence on the conduct of the business because they have a financial interest or are entitled to exercise a relevant power.
- Details of each influential person for the licensee (if a corporation). These are:
  - Executive officers;
  - A person who can exercise a relevant power;
  - A related corporation; or
  - An executive officer of a corporation.
- A police criminal history check (police certificate) for the proposed licensee, each close associate, each influential person and person with day-to-day control (if not the licensee) which is dated not earlier than 3 months before the date of the application.
- For the transfer of an off licence - liquor purchase information for the financial year to the date of transfer.
CHAPTER 4- ONGOING REQUIREMENTS FOR LICENSEES

The Act and Regulation include a range of requirements that will affect licensees during the term of their licence. Licensees should familiarise themselves with both the Act and Regulation to avoid breaching the requirements.

4.1 REQUIREMENTS IN THE ACT

The Act includes a range of requirements that will affect licensees during the term of their licence. Generally, these include:

- mandatory Responsible Service of Alcohol training;
- complying with and amending the RAMP;
- amending a licence when there are changes;
- applying for approval to change an on licence sub-class;
- keeping an incident register;
- record keeping; and
- requirements for underage functions.

4.1.1 MANDATORY RESPONSIBLE SERVICE OF ALCOHOL (RSA) TRAINING

An important aspect of the Act, consistent with the objects of the Act and the harm minimization and community safety principles, is the introduction of mandatory Responsible Service of Alcohol (RSA) training for those working in the liquor industry. It will better educate licensees and staff to understand the risks and impact of serving alcohol in an irresponsible manner and provide training on how to identify when a patron is intoxicated and how to deal with an intoxicated person effectively.

The Act provides that licensees (except influential persons of a corporation when they are not involved in the supply of liquor), employees who supply liquor, and crowd controllers working at a licensed premise must undertake ACT approved RSA training and obtain an RSA certificate. The training must be undertaken every three years.

It is a requirement of the Act that licensees keep copies of RSA certificates for themselves, each employee who serves liquor and each crowd controller who works at the licensed premises. A copy of each RSA certificate must be kept on the premises and be made available for inspection by an appropriate person on request.
4.1.2 COMPLYING WITH THE RAMP

Once the RAMP is approved, it is an offence for a licensee not to 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 on application. Licensees must ensure that any employees and crowd controllers with responsibilities under the RAMP are aware of these and the contents of the RAMP generally.

Many of the applications for amendment of a licence (below) will require a RAMP to be amended. If a proposed amendment will also substantially change the way a business is operated (according to the RAMP), an application to amend the RAMP must also be submitted.

4.1.3 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 sub-class of on licence to another.

It is an offence for any person who has been deemed a suitable person by the Commissioner (i.e. licensee, close associates, influential persons (for a corporation) or people with day-to-day control) to fail to tell the Commissioner within 7 days of becoming aware of a change to their suitability information. Ensure all suitable people are aware of the requirement to keep the Commissioner informed of any changes to suitability information (which was supplied in the statutory declaration for the application).

You may also apply to amend the licence if you wish to change the licence in some regard, such as changing trading hours, 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.

4.1.4 CHANGE OF ON LICENCE SUB-CLASS

If amending an on licence from one sub-class to another in order to change business models (e.g. a restaurant to a nightclub), the licensee must undertake the public consultation requirements as explained in Part 2.4 in the same way as new applications for a licence. The RAMP will also require amendment.

4.1.5 KEEPING AN INCIDENT REGISTER

The Act requires that an incident register be kept by all licensed premises. The purpose of an incident register is to record all incidents that occur at or in the immediate vicinity of a licensed premises or any incident that may involve a licensed premises. In determining whether an incident should be recorded at the licensed premises, consider whether it occurred in a queue for the premises, was in direct line of sight of staff members or crowd controllers, or involved facilities associated with, or attached to, the premises.

Incidents that must be included in the incident register include incidents:

- involving violent, unlawful or anti-social behaviour at licensed premises; or
- involving violent or anti-social behaviour that—
  - occurs in the immediate vicinity of licensed premises; and
  - involves a person who has recently left, or been refused admission to, the premises; or
- resulting in a person being removed from licensed premises; or
- occurring after midnight and before closing time resulting in a person at licensed premises requiring medical assistance; or
- where false identification is seized.

If you are unable to obtain the details of the perpetrators involved, particularly if they fled prior to the arrival of Police, note this in the incident register.

Once the Police have arrived, the licensee must record the name of the Police officer and the time they took over the incident; no further details are required 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.

When the incident involved the seizure of false identification, a copy of the receipt given by the person who seized the ID must be attached to the incident register.
If you have electronic surveillance or monitoring devices for the premises, you must indicate on the incident register whether they recorded the incident.

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

4.1.6 RECORD KEEPING

There are a number of records that licensees must keep during the operation of their business. These include:

- Current RSA certificates for licensees, employees who supply liquor and crowd controllers (to be kept at the premises);

- Incident register;

- Liquor sales information (in an electronic form and kept for 6 years - this is provided to the Commissioner and the Chief Health Officer at the end of every financial year); and

- For an off licence - Liquor purchase information (gross wholesale data provided to the Commissioner at the end of every financial year).

4.1.7 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 at the function, even those who may have already given the Commissioner a 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; and

- Any information the Commissioner requests
After the event has been approved by the Commissioner, at least 7 days before the event the licensee must provide the Chief Police Officer with the young people’s event information prescribed in the Regulation.

A young people’s event is subject to conditions prescribed by Regulation.

4.2 REQUIREMENTS IN THE REGULATION

In addition to the condition to comply with the Act, a licence is subject to a number of standard conditions and requirements set out in the Regulation. These conditions and requirements are briefly set out below.

4.2.1 SIGNAGE

The Regulation requires certain signs to be displayed prominently at licensed and permitted premises. This includes signs about abuse, marking adults-only areas, indicating the occupancy loading for a specific public area and about breath analysis devices.

The abuse sign must be displayed in a way that it can be seen and read easily by people near each liquor serving counter.

A sign marking an adults-only area must be displayed so it can be seen at or near each entrance to the adults-only area.

A sign displaying the total occupancy loading must be displayed prominently so it can be seen and read by persons at or near a main entrance to the premises. In addition, a sign stating the occupancy loading for a public area must be displayed at or near the main entrance to each public area.

A breath analysis sign must be displayed so it can be seen and read by a person at or near each breath analysis instrument at the premises.

The signs are available from ORS and from the ORS website.

A sign displaying the name of the licensee for the premises must also be displayed so that it can be seen and read by a person at or near each liquor serving counter.

4.2.2 INCIDENT REGISTER

Licensees must keep an incident register which complies with the Act and the incident register must include information about electronic surveillance. A sample form for an incident register is available from ORS and from the ORS website.

4.2.3 PROMOTIONAL ACTIVITIES

The Act bans a range of promotional activities by licensees; these are set out in Regulation 29, and include advertising the sale of liquor in a way that encourages the
irresponsible consumption of liquor. Full guidelines on promotional activities are available from ORS and from the ORS website.

4.2.4 SEXUALLY EXPLICIT ENTERTAINMENT

Under section 140 of the Act it is an offence for a licensee to allow sexually explicit entertainment at licensed premises unless the premises is in Hume, Fyshwick or Mitchell.

4.2.5 TOILETS

The Regulation includes requirements for toilets at licensed premises. This includes requirements about the location and access to the toilets, surveillance of the toilets, condition of the toilets and items that must be available in the toilets.

For example, toilets in licensed premises must have toilet paper, a lock, a wash basin, product to enable hands to be cleaned, hand drying equipment, a mirror and a garbage bin. The full requirements are set out in Part 1.1, Schedule 1 of the Regulation.

4.2.6 DANCE FLOORS

The Regulation includes requirements for dance floors. A dance floor may be determined by the Commissioner and must be clearly identified by a barrier, floor surface or marking. The dance floor must not have any furnishings on it and the licensee must take reasonable steps to ensure that drinks are not taken onto a dance floor.

4.2.7 GENERAL PREMISES SALE AND CONSUMPTION LOCATIONS

At general licensed premises, the Regulation provides that there must be separate areas for the sale of liquor that will be consumed on the premises and off the premises. The liquor for each must only be sold in that area.

4.2.8 OFF LICENCE SUPERMARKETS

The Regulation provides that liquor at an off licence supermarket must only be displayed for sale in one part of the supermarket (the liquor display area).

4.2.9 OUTDOOR DINING AREAS

The Regulation provides that outdoor dining areas must be clearly defined by a wall or barrier and must have enough tables and chairs for the maximum number of people allowed in the area. In addition, the area must have at least half of the area protected from direct sunlight.

The Regulation provides that an outdoor dining area must not include a liquor serving counter and that if the area is on unleased Territory land the licensee must have a permit or licence to use the land. Where the licence or permit ceases to be in force the licensee must apply to the Commissioner to amend the licence to remove the outdoor area.
4.2.10 RESIDENTIAL ACCOMMODATION

The Regulation provides that where residential accommodation is provided at a licensed premises then there must be an entrance to the accommodation that doesn’t require guests to enter an adults-only area.

If residential accommodation is booked exclusively for use by people under the age of 18 years then liquor must be removed from any mini-bars in the accommodation.

4.2.11 EDUCATING STAFF ABOUT THE RAMP

Part 1.3 of the Regulation requires licensees to ensure that each staff member and crowd controller working at the premises is aware of the contents of the RAMP for the premises.

4.2.13 CHECKING IDENTIFICATION

The Regulation requires each licensee to ensure that staff members or crowd controllers who examine identification documents are establishing whether:

- the document has expired;
- the date of birth means that the person is an adult;
- the document has been forged or altered; and
- that the person presenting the document is the person in the photo.


4.2.14 RESPONSIBLE SUPPLY AND CONSUMPTION OF ALCOHOL

Part 1.4 of the Regulation requires licensees to engage in practices and promotions that encourage the responsible supply and consumption of liquor. Some examples of these practices are set out in Part 1.4 and include promoting the consumption of light or low-alcohol drinks.

The Commissioner has approved an Intoxication Guideline under section 223 of the Act to assist people involved in the service of liquor in determining whether someone is intoxicated and provided possible actions for dealing with such individuals. It is a condition of licences where liquor is consumed on the premises that the licensee ensures that they, their employees and the premises complies with the Intoxication Guideline.

4.2.15 SAFETY

The Regulation requires licensees to provide and maintain a safe environment at and around the licensed premises.

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4.2.16 TELEPHONES

The Regulation sets out requirements in regard to telephones at licensed premises. In particular, licensees must make a telephone available for use by people at the premises. The telephone must be located where a person can hear and be heard above the noise of the premises. Near the telephone must be telephone numbers for the police, ambulance, fire brigade and taxis servicing the premises.

4.2.17 DISPLAY OF LICENSEE’S NAME

The Regulation requires a sign to be displayed setting out the name of the licensee for the premises. This must be displayed prominently so it can be seen and read by a person at or near each liquor serving counter.

4.2.18 HARASSING BEHAVIOUR ETC MUST NOT BE ENCOURAGED

The Regulation provides that the licensee must ensure that activities carried out at the licensed premises do not encourage people at the premises to engage in harassing, abusive, threatening or intimidating behaviour towards other people at the premises.

4.2.19 REPORTING TO THE COMMISSIONER

It is a condition of an off licence that within one month of the end of each financial year the licensee must give the Commissioner information about liquor purchased during the year for sale.

The information must include:

(a) the name and address of the wholesaler from whom the licensee purchased the liquor; and

(b) the gross wholesale price paid or payable by the licensee for the liquor.

The gross wholesale price for liquor includes any duty, tax or other charge paid or payable for the liquor; but does not include the costs for freight, or packaging for freight, for the liquor.

The annual sales information described in 4.2.20 is required to be provided to the Commissioner.

4.2.20 REPORTING TO THE CHIEF HEALTH OFFICER

From 1 July 2012 the licensee will be required to report to the Chief Health Officer the liquor sold during the financial year. The report must be provided to the Chief Health Officer (ACT Health) not later than 1 month after the end of each financial year. The report must include:

(a) the volume in litres of the following kinds of liquor sold at the licensed premises during the financial year:

   (i) full-strength beer;
(ii) mid-strength beer;
(iii) low-strength beer;
(iv) regular-strength bottled wine;
(v) regular-strength cask wine;
(vi) low-strength wine;
(vii) low-strength cask wine;
(viii) fortified wine;
(ix) spirits;
(x) pre-mixed spirit based drinks;
(b) whether the licensee operates under the licence as—
   (i) a retailer; or
   (ii) a wholesaler; or
   (iii) a manufacturer.

A reporting template, with information on how to submit this information, is available on the ORS website.

### 4.3 ADDITIONAL CONDITIONS FOR PREMISES WHERE LIQUOR IS CONSUMED ON THE PREMISES

In addition to the above requirements, the Regulation sets out additional requirements for licensees who sell liquor in open containers for consumption on the premises.

#### 4.3.1 FOOD SERVICE

All licensees selling liquor in open containers for consumption on the premises must provide food service.

#### 4.3.2 WATER

Water must be available for consumption free of charge at each place at the premises where liquor is sold. For any premises with an occupancy loading of 300 people or more, water must also be available at another location in the premises.

Some examples of providing water include providing tap water in a tamperproof jug along with glasses or having a freestanding water dispenser.

#### 4.3.3 MAXIMUM GLASS SIZE

The maximum glass size for all liquor that is intended to be drunk from the container is 570ml.
4.3.4 DRIP TRAYS

If liquor is supplied on tap at the premises, the Regulation requires each tap to have a drip tray connected directly to a waste outlet underneath the tap.

4.3.5 GLASSWASHERS

The Regulation provides that a glasswasher must be located at or near each liquor serving counter at the premises. Glasses must be washed in the glasswasher. The Regulation provides that a combined dishwasher/glasswasher can be used in limited circumstances with the approval of the Commissioner.

4.3.6 LIQUOR GUIDELINES

Licensees must comply with any liquor guidelines and must ensure that their staff also comply with the guidelines. Guidelines will be available from ORS, on the ORS website, and the ACT Legislation Register.

4.3.7 HOURS OF TRADE

There are four timeframes during which licensees may supply liquor where the liquor is consumed on the premises:

- Standard licensed times* (7am until midnight);
- 1am licensed times (7am until 1am);
- 2am licensed times (7am until 2am);
- 3am licensed times (7am until 3am);
- 4am licensed times (7am until 4am); and
- 5am approval licensed times (7am until 5am).

* Standard licensed times on 25 April, 24 December and 31 December are 7am until 1am.

For any premises that sells liquor for consumption off the premises standard licensed times are between 7am and 11pm.
CHAPTER 5 - PERMITS

5.1 TYPES OF PERMITS

Under the 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 permit-holder 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.

For the purposes of applying for a commercial permit, an event must be identified in the application. Whether an “event” for a commercial permit will be considered as such will depend on a range of factors including:

- the nature of the event;
- regularity;
- frequency;
- duration;
- location; and
- event parameters.

An event must occur within a discrete, short timeframe and will usually be required to occur over consecutive days if more than a single day. A name for the event must be provided, and will help guide you in determining whether your application is for a single event or multiple events. If an event will regularly run over non-consecutive days at a single premises, discuss your circumstances with Compliance, ORS on (02) 6207 3000 to determine whether a single permit may be appropriate and its duration.

For example, a trader who sells liquor at a stall at a market every Sunday could lodge their application for a single event as it is regular, predictable and at the same location (which will require a RAMP). However, two festivals held on consecutive weekends by the same promoter would require separate permits as the names of the events would be different and there is no regularity to the initial event.
5.2 NEW PERMITS

To obtain a permit a person must apply to the Commissioner. In the case of a commercial permit, this must be for a stated event. For a non-commercial permit it may be for an event or for a period of up to 12 months. Forms for making an application are available on the ORS website. The major requirements for an application are that it must include:

- Details of the permit-holder;
- Details of each close associate. These are:
  - People who hold an executive position in the business; and
  - People who the commissioner is satisfied does, or will be able to, exercise a significant influence in relation to the conduct of the related person’s business because they hold, or will hold, a financial interest; or are entitled to exercise a relevant power. (If you are unsure whether a person has significant influence, contact the ORS for advice).
- 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.
- If the premises are wholly or partly enclosed and the following certificates are relevant to the premises:
  - an ACT Planning and Land Authority (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 ACTPLA 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 Risk-Assessment Management Plan (RAMP) for the premises.

The Act sets out the maximum timeframe for making a decision on an application. Generally, the timeframe is 90 days after receiving the application or after receiving requested information or plans.
5.3 RISK-ASSESSMENT MANAGEMENT PLAN

5.3.1 APPROVAL OF A RISK-ASSESSMENT MANAGEMENT PLAN (RAMP)

A Risk-Assessment Management Plan (RAMP) is required when applying for a Commercial Permit and is the primary mechanism for you to inform the Commissioner on how you will manage the event.

The Act provides for a RAMP 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, as a commercial permit-holder, you 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.

Further details on requirements for approval, compliance and amendments to RAMPs are outlined in section 2.5 of this Practice Manual. Commercial permit-holders are bound by the RAMP requirements in the same manner as licensees.

5.4 ELIGIBILITY FOR A PERMIT

5.4.1 ELIGIBILITY CRITERIA

The Commissioner can grant a permit only if the applicant is at least 18 years of age (in the case of an individual), complies with, and is likely to continue to comply, with the Act, and the proposed licensed premises complies with the requirements of the Act.

Also in deciding an application, the Commissioner must be satisfied that the applicant, close associates and influential people are suitable people to hold a permit. In deciding this, the Commissioner will consider:

(a) any conviction of, or finding of guilt against, the person for an offence against a law regarding liquor, fair trading, gambling, criminal acts, or where the penalty was imprisonment for at least 1 year;

(b) any proven non-compliance by the person with a legal obligation in relation to the supply of liquor;

(c) any refusal of an application by the person for a licence, permit or other authority in relation to the supply of liquor;

(d) whether the person complies with the requirements of this Act;

(e) if the person is an individual—whether the person is, or during the preceding 5 years was—

   (i) bankrupt or personally insolvent; or
(ii) involved in the management of a corporation when the corporation was insolvent;

(f) the person’s knowledge and understanding of the obligations under this Act applying in relation to the permit;

(g) any other matter relevant to the person’s ability to safely and responsibly supply liquor.

If the applicant is a corporation, then the following also applies:

(a) whether the person is, or during the preceding 5 years was, insolvent; or

(b) whether each influential person for the corporation is a suitable person to hold the licence;

If the applicant is a not-for-profit organisation the Commissioner will consider whether the organisation operates on a not-for-profit basis.

If the applicant is a club the Commissioner will consider whether the club is an eligible club for the purposes of the Act.

In deciding whether the premises are suitable, the Commissioner will consider:

(a) any conviction of, or finding of guilt against, the responsible person for the premises; a close associate of the responsible person; or an influential person for the corporation for an offence against this Act involving the premises;

(b) any proven non-compliance of the premises with a legal obligation in relation to the supply of liquor while the responsible person for the premises; a close associate of the responsible person; or an influential person for the corporation was involved in a business operated at the premises;

(c) any refusal of an application for a licence, permit or other authority in relation to the supply of liquor at the premises;

(d) whether the premises comply with the requirements of—
   (i) this Act; and
   (ii) the Building Act 2004; and
   (iii) the Planning and Development Act 2007;

(e) whether use of the premises in accordance with the permit would be within the purpose of the lease for the land on which the premises are located;

(f) the fire safety of the premises;

(g) the level of noise likely to emanate from the premises if used in accordance with the permit;

(h) whether use of the premises in accordance with the permit would be likely to attract a large number of people and, if so, the risk to community safety;

(i) whether use of the premises in accordance with the permit 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, residential premises, or a school;

(j) any other matter relevant to the appropriateness of the premises in relation to the supply of liquor.

### 5.5 POLICE CRIMINAL HISTORY CHECK

An application for a liquor permit is not required to be accompanied by a Police criminal history check (police certificate) issued by the Commonwealth CrimTrac agency. The Commissioner can request police certificates if appropriate and does not have to consider the application until they are provided. If the Commissioner does request a police certificate, application can be made to the Australian Federal Police.

### 5.6 ISSUE OF PERMIT

If the application for a permit is granted then the Commissioner will issue a permit certificate that includes the following information:

(a) the class of the permit;
(b) the permit-holder’s name;
(c) the name under which the permit-holder carries on business;
(d) the permitted premises address or location;
(e) the permitted times when—
   (i) liquor to be consumed at the permitted premises may be sold (if any); and
   (ii) liquor to be consumed off the permitted premises may be sold (if any);
(f) the conditions on the permit;
(g) anything else prescribed by Regulation.

A permit is subject to a number of standard conditions as well as any condition imposed by the Commissioner. The Act imposes a condition that the permit-holder must comply with the Act and other standard conditions which can be found in the Regulation. Any extra conditions imposed by the Commissioner will be listed on the permit.

The permit will expire on the date stated on the permit.

### 5.7 REPLACEMENT PERMIT

If you lose your permit or it is stolen or destroyed you can apply to the Commissioner for a replacement. This requires a statutory declaration in regard to the need for a replacement permit and fees will be payable.
5.8 RENEWAL OF NON-COMMERCIAL PERMITS

To be able to renew a non-commercial permit a person must submit an application for renewal 30 days before the permit expires.

If the application is received by the required date, the permit will continue to operate until the Commissioner decides to renew the permit or deny the application.

In deciding the application, the Commissioner can request additional information from the applicant. If the information is not provided the application will not be considered and the permit will expire.

5.9 CANCELLATION OF NON-COMMERCIAL PERMITS

The Commissioner may cancel a non-commercial permit at any time if satisfied that the permit-holder has failed to comply with the permit. The cancellation takes effect from the date and time stated in the notice.
CHAPTER 6 - ONGOING REQUIREMENTS FOR PERMIT-HOLDERS

The Act and Regulation include a range of requirements that will affect permit-holders and the permit may be subject to additional requirements stated on the permit. Permit-holders should familiarise themselves with both the Act and Regulation to avoid breaching the requirements.

6.1 REQUIREMENTS IN THE ACT

The Act includes a range of requirements that will affect permit-holders. Generally, these include:

- mandatory responsible service of alcohol training;
- complying with the RAMP if a RAMP is required;
- keeping an incident register; and
- record keeping.

6.1.1 MANDATORY RESPONSIBLE SERVICE OF ALCOHOL (RSA) TRAINING

An important aspect of the Act, consistent with the objects of the Act and the harm minimization and community safety principles, is the introduction of mandatory responsible service of alcohol (RSA) training for the liquor industry. It will better educate permit holders and their employees to understand the risks and impact of serving alcohol in an irresponsible manner and provide training on how to identify when a patron is intoxicated and how to deal with an intoxicated person effectively.

The Act provides that commercial permit-holders (except influential persons for a corporation if they are not involved in the supply of liquor) and people supplying liquor for them or acting as a crowd controller must undertake ACT-approved RSA training and obtain an RSA certificate. The training must be undertaken every three years.

It is a requirement of the Act that the permit-holder keep copies at the premises of all RSA certificates for the permit-holder, employees supplying liquor and crowd controllers.

The Commissioner has approved Intoxication Guidelines to assist people involved in the supply of liquor in identifying the signs of intoxication and provides methods for dealing with intoxicated individuals. The Guideline is available from the ORS, on the ORS website and the ACT Legislation Register.

6.1.2 COMPLYING WITH THE RAMP

Once the RAMP is approved, it is an offence for a commercial permit-holder 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.

A commercial permit-holder is required to ensure that employees and crowd controllers are aware of the contents of the approved RAMP and any responsibilities they may have under it.

6.1.3 KEEPING OF AN INCIDENT REGISTER

The Act requires that an incident register be kept by all permit-holders. The purpose of an incident register is to record all incidents that occur at or in the immediate vicinity of a permitted premises or any incident that may involve a permitted premises. In determining whether an incident should be recorded at the permitted premises, consider whether it occurred in a queue for the premises, was in direct line of sight of staff members or crowd controllers, or involved facilities associated with, or attached to, the premises.

Incidents that must be included in the incident register include incidents:

- involving violent, unlawful or anti-social behaviour at permitted premises; or
- involving violent or anti-social behaviour that—
  - occurs in the immediate vicinity of permitted premises; and
  - involves a person who has recently left, or been refused admission to, the premises; or
- resulting in a person being removed from permitted premises; or
- occurring after midnight and before closing time resulting in a person at permitted premises requiring medical assistance; or
- where false identification is seized.

If you are unable to obtain the details of the perpetrators involved, particularly if they fled prior to the arrival of Police, note this in the incident register.

Once the Police have arrived, the permit-holder 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 permit-holder is still required to keep details of the incident before the Police officer attended.

When the incident involved the seizure of false identification, a copy of the receipt given by the person who seized the ID must be attached to the incident register.

If you are a permit-holder and you do not keep an incident register, you have committed an offence and penalties will apply.
6.1.4 RECORD KEEPING

Permit-holders must keep the following documentation during the operation of the permit. These include:

- Current RSA certificates for the commercial permit-holder, employees who serve liquor and crowd controllers (to be kept at the premises);
- Incident register; and
- Liquor sales information (in an electronic form and to be kept for 6 years).

6.2 REQUIREMENTS IN THE REGULATION

In addition to the condition to comply with the Act, a permit is subject to a number of standard conditions and requirements set out in the Regulation. These conditions and requirements are set out below.

6.2.1 SIGNAGE

The Regulation requires certain signs to be displayed prominently at permitted premises. This includes signs about abuse, marking adults-only areas, about occupancy loadings and about breath analysis devices.

The abuse sign must be displayed in a way that it can be seen and read easily by people near each liquor serving counter.

A sign marking an adults-only area must be displayed so it can be seen at or near each entrance to the adults-only area.

A sign displaying the total occupancy loading for the premises must be displayed prominently so it can be seen and read by persons at or near a main entrance to the premises. In addition, a sign stating the occupancy loading for a public area must be displayed at or near the main entrance to the public area.

A breath analysis device sign must be displayed so it can be seen and read by a person at or near each breath analysis instrument at the premises.

The signs are available from ORS and from the ORS website.

6.2.2 INCIDENT REGISTER

Permit-holders must keep an incident register which complies with the Act and the incident register must include information about electronic video surveillance. A sample form for an incident register is available from ORS and from the ORS website. See section 6.1.3 for further information.
6.2.3 PROMOTIONAL ACTIVITIES

The Act bans a range of promotional activities by permit-holders. These are set out in Regulation 29 and include advertising the sale of liquor in a way that encourages the irresponsible consumption of liquor. Full guidelines on promotional activities are available from the ORS website and the ACT Legislation Register.

6.2.4 SEXUALLY EXPLICIT ENTERTAINMENT

Under section 140 of the Act it is an offence for a permit-holder to allow sexually explicit entertainment at permitted premises unless the premises is in Hume, Fyshwick or Mitchell.

6.2.5 WATER

Water must be available for consumption free of charge at each place at the premises where liquor is sold. For any premises with an occupancy loading of 300 people or more, water must also be available at another location in the premises.

Some examples of providing water include providing tap water in a tamperproof jug along with glasses or having a freestanding water dispenser.

6.2.6 SMOKING

The permit-holder must not allow a person to smoke in any part of the permitted premises that is an enclosed public place or an outdoor eating or drinking place.

6.2.7 HOURS OF TRADE

There are three timeframes during which permit-holders may supply liquor at the premises:

- Standard permitted times (7am until midnight);
- Late night permitted times (7am until 2am); and
- Extended late night permitted times (7am until 4am).

For any premises that sells liquor for consumption off the premises standard permitted times are between 7am and 11pm.
ORS undertakes a range of compliance activities to regulate licensed and permitted premises and patrons’ behaviour in accordance with the Act.

Inspectors are authorised to inspect licensed and permitted premises or any premises suspected of selling liquor on the premises and to exercise regulatory functions in accordance with the Act, including:

- conducting an occupancy loading check;
- inspection of the licensed or permitted premises for compliance with the requirements of the Act; and
- regulation of the conduct of licensees and permit-holders; such as security staff, signs/notices, provision of food and responsible practices in the service, supply and promotion of liquor.

The ORS compliance strategies include:

- education;
- monitoring and inspections;
- self-regulation;
- information sharing; and
- enforcement.

The ORS conducts both routine inspections and after hours inspections. The routine inspections are generally in response to complaints, follow-up on cancelled/suspended licences, underage functions, major event permits, and other general inspections of licensed premises. The after hours inspections are proactive and the focus is on responding to the risks identified below, including:

- Occupancy loadings
- Security
- The premises’ procedures for checking people’s proof of age
- Responsible service of alcohol
- Loss of amenity - noise, mess (cleanliness)
7.2 INSPECTIONS

Under the Act, authorised persons (Inspectors and Police officers) can enter a premises in a wide range of circumstances. These include:

- at any time the public is allowed into the premises (i.e. open for business);
- at any time if the person suspects on reasonable grounds that liquor is being sold;
- at any time with the occupier’s consent;
- in accordance with a licence or permit condition;
- in accordance with a search warrant; or
- at any time in an emergency.

Authorised persons must not remain at the premises if they do not produce evidence to show they are an Investigator or Police officer, such as their Identity Card or Badge. Authorised persons must also produce this evidence when seeking consent to enter the premises.

When at the premises an authorised person may:

- inspect or examine;
- take measurements or conduct tests;
- take samples;
- take photographs, films, or audio, video or other recordings;
- require the occupier, or anyone at the premises to give the Investigator or Police officers reasonable help to exercise a power for enforcement.

An authorised person who enters premises may seize anything if the authorised person is satisfied on reasonable grounds that the thing is connected with an offence against the Act or seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier’s consent.

An authorised person who enters premises under a warrant may seize anything at the premises that the authorised person is authorised to seize under the warrant.

Also, an authorised person who enters premises (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment.

If anything is seized, the authorised officer must give a receipt to the person from whom the thing was seized.
7.3 PENALTIES RESULTING FROM NON-COMPLIANCE WITH THE ACT OR REGULATION

7.3.1 TYPES OF PENALTIES

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

7.3.2 CRIMINAL PENALTIES

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

Licensee/Permit-holder

- Sell Liquor in an exempt university building in contravention of a university statute;
- Sell Liquor without a licence or permit unless to a private gathering of 30 or fewer people;
- Fail to comply with a condition of a licence or permit;
- Fail to display a public notification for a proposed new premises;
- Fail to publish a notice for a proposed new premises;
- Fail to return licence when ceasing to be a licensee;
- Fail to return permit when ceasing to be a permit holder;
- Fail to update a person’s suitability information;
- Fail to update a premises’ suitability information;
- Supply liquor without an RSA certificate;
- Work as a Crowd Controller at a licensed or permitted premises without an RSA certificate;
- Fail to keep a copy of RSA certificates at the premises;
- Supply liquor to an intoxicated person;
- Fail to display a sign about the offence on abusing staff members;
- Supply liquor to a child or young person;
- If a child or young person consumes or possesses liquor on licensed or permitted premises;
- Child or young person supply liquor in an adults-only area;
- Child or young person in an adults-only area, applies to both the licensee or permit holder and the child or young person;
- Fail to mark adults-only area;
- Exceed occupancy loading;
- Fail to display occupancy loading sign;
• Fail to comply with an approved Risk-Assessment Management Plan;
• Fail to keep incident register;
• Fail to display breath testing machine sign;
• Sell petrol at licensed or permitted premises;
• Conduct prohibited promotional activity;
• Have sexually explicit entertainment at a licensed or permitted premises unless the premises is in Hume, Fyshwick or Mitchell;
• Fail to keep licence or permit at licensed or permitted premises;
• Fail to keep records in an easily retrievable electronic form;
• Club advertises attendance by general public;
• Fail to comply with Commissioner’s Direction;
• Fail to comply with Emergency Closure Order;
• Fail to take reasonable steps to aid an authorised person on direction to do so;
• Interfere with a seized thing without approval;
• Fail to comply with a direction to destroy an unsafe thing;
• Supply a prohibited liquor product.

Employees

• Supply liquor without an RSA certificate;
• Work as a Crowd Controller at a licensed or permitted premises without an RSA certificate;
• Supply liquor to an intoxicated person;
• Supply liquor to a child or young person;
• Fail to give a seized false ID to the Commissioner within 7 days;
• Fail to comply with Commissioner’s Direction;

Patron/Individual

• Child or young person consume liquor at a public place;
• Child or young person possess liquor at a public place;
• Consume or possess liquor if a child or young person;
• Fail to comply with police officer’s request for ID;
• Child or young person use false ID to obtain a proof of age card;
• Consume liquor in prescribed public places and alcohol-free zones;
• Possess open container of liquor in prescribed public places and alcohol-free zones
• Child or young person buy liquor;
• Child or young person use false ID to buy liquor;
• Supply liquor to child or young person at a public place;
• Fail to leave a premises when directed;
• Consume liquor at off licensed premises;
• Child or young person use false ID to enter an adults-only area;
• Child or young person in an adults-only area, applies to both the licensee or permit holder and the child or young person;
• Send child or young person to obtain liquor;
• Abuse, threaten or intimidate staff for refusing service to an intoxicated person;
• Purchase Liquor in an exempt university building in contravention of a university statute;

7.3.3 DISCIPLINARY ACTION

The Act provides for the ACT Civil and Administrative Tribunal (ACAT) to take action against licensees or commercial permit-holders 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 investigators.

The grounds for disciplinary action are:

(a) the licensee/permit-holder has contravened, or is contravening, a provision of the Act;
(b) the licensed/ permitted premises do not comply with the requirements of the Act;
(c) the licensee/permit-holder is not a suitable person to hold a licence;
(d) the licensed/ permitted premises are not suitable premises for the licence;
(e) the commissioner has made a commissioner’s direction for the licensee/ permit-holder and they have not complied with the direction;
(f) a senior police officer has made an emergency closure order for the licensee/permit-holder and they have not complied with the order;
(g) the licensee/permit-holder has allowed the premises to be used in a way that causes undue disturbance or inconvenience to people—
   (i) lawfully at the premises; or
   (ii) occupying premises in the neighbourhood;
(h) a loss of amenity has arisen in the vicinity of the licensed/ permitted premises that is attributable to the premises and about which there has been a complaint;
(i) a licensee/permit-holder has allowed people to smoke in a part of the licensed/ permitted premises that is an enclosed public place;
(j) the licensee/permit-holder has failed to take reasonable steps to prevent smoke from another area occupied by the licensee/permit-holder entering an enclosed public place.

The ACAT can make a variety of decisions, including to suspend or cancel a licence, issue a direction or impose a monetary penalty. These actions usually happen following an inquiry by the ACAT where the applicant has the opportunity to be heard on the matter and can be represented by a legal practitioner.
The ACAT must consider all matters that come before it and the existence of facts relevant to those matters, on the basis of proof on the balance of probabilities.

Any decision made by the ACAT can be appealed to the Supreme Court, with leave of the Court.

7.4 RISK PROFILE

The ORS has identified what it considers to be the risks associated with conducting business where liquor is sold. In doing so, ORS will attend to risk in a structured and focussed manner.

Inspections deal with:
- The construction of licensed or permitted premises and their fittings, and
- The conduct of licensees and permit-holders at the premises.

Matters considered during an inspection include:
- Occupancy loadings
- Security
- Toilet facilities
- Entry and exit doors
- Lighting, heating, cooling and ventilation of premises
- Display of notices and signs
- Procedures for checking people’s proof of age
- Responsible Service of Alcohol
- Conduct of functions for people under 18 years
- Bars and counters for serving liquor
- Facilities and equipment for preparing or serving food
- Outdoor cafes/alfresco dining
- Areas for dancing
- Loss of amenity - noise, mess (cleanliness)
- Expired licenses
- Smoking
- Confiscated identification

ORS has identified the following areas as high risk and will therefore be ensuring compliance in these areas:
- Occupancy loadings
- Security
- Procedures for checking people’s proof of age
- Responsible service of alcohol
- Loss of amenity - noise, mess (cleanliness)
8.1 APPEALS AGAINST DECISIONS

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/](http://www.acat.act.gov.au/).

8.1.1 REVIEWABLE DECISIONS

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

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<th>Decision</th>
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8.2 COMPLAINTS

8.2.1 COMPLAINTS ABOUT AN ORS OFFICER

The ORS is committed to providing customer service in a professional, efficient and respectful manner. All people have the right to raise concerns and make legitimate complaints and expect that the issues raised will be handled in a fair, confidential and responsive manner and free from repercussion or prejudice.

The ORS Complaints Policy is available at the ORS shopfront and on the ORS website. The policy sets out the responsibility of the ORS to:

- Recognise, promote and protect the customer’s right to complain about their dealings with the ORS;
- Ensure an accessible and well publicised complaints procedure is in place;
- Recognise the need to be fair to both the complainant and the organisation or person complained about;
- Provide a mechanism for responding to complaints in a timely and courteous manner;
- Determine and implement remedies;
- Provide adequate resources to support the complaints management process;
- Record, assess and review complaints on a regular basis to ensure responsive and on-going commitment to service improvement.

8.2.2 COMPLAINTS ABOUT A LIQUOR LICENSEE OR PERMIT-HOLDER

The Act provides that 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.

A complaint should be in writing and should be signed by the person making the complaint. A complaint should also include the complainant’s name and address. Complaints can be made in writing to the ORS via email to ors@act.gov.au or post to

Commissioner for Fair Trading
GPO Box 158
CANBERRA ACT 2601

The Act requires the Commissioner to take reasonable steps to investigate each complaint that is accepted for consideration. However, further action is not needed on complaints that lack substance, are frivolous, are vexatious, are not genuine or have been adequately dealt with. Further information on how to make a complaint and the processing of complaints can be obtained via the External Complaints Policy available at the ORS shopfront and on the ORS website.
CHAPTE 9 RELEVANT LEGISLATION

There is other legislation in the ACT that may directly affect the way you conduct a business where liquor is sold. This may include:

- Building Act 2004
- Fair Trading (Australian Consumer Law) Act 1992
- Food Act 2001
- Roads and Public Places Act 1937
- Security Industry Act 2003
- Smoke-Free Public Places Act 2003
- Work Safety Act 2008

It is strongly recommended that if you are new to the liquor industry or are unaware of your obligations under ACT legislation that you obtain independent legal advice.