

STANDING COMMITTEE ON PUBLIC ACCOUNTS

# **Review of Auditor-General's Report No 4 of 2007: Regulation of ACT Liquor Licences**

AUGUST 2008



## **Committee Membership**

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## Resolution of Appointment<sup>1</sup>

The Legislative Assembly appointed the Standing Committee on Public Accounts on 7 December 2004 to:

- (i) examine:
  - (A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and
  - (B) all reports of the Auditor-General which have been presented to the Assembly;
- (ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;
- (iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and
- (iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue and sustainability.

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<sup>1</sup> Legislative Assembly for the ACT, Sixth Assembly, Minutes of Proceedings, 7 December 2004, p. 12.

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## RECOMMENDATIONS

### RECOMMENDATION 1

2.11 The Committee recommends that the ACT Government investigate amending the *Liquor Act 1975* to require the Registrar and the Deputy Registrar of the Liquor Licensing Board to refer all liquor licence applications to ACT Policing for further consideration and report.

### RECOMMENDATION 2

2.17 The Committee recommends that the *Liquor Act 1975* be amended to require community impact statements for any applications for a new liquor licence, or any applications for renewals of licences granted prior to this amendment, and to provide members of the public with greater opportunity to comment on licence applications.

### RECOMMENDATION 3

3.5 The Committee recommends that the *Liquor Act 1975* be amended to require that a register of all licensees, permit holders and current applicants, and all decisions of the Liquor Licensing Board, be publicly available.

### RECOMMENDATION 4

4.6 The Committee recommends that the ACT Government publicise the right to lodge a complaint about a licensed premise.

### RECOMMENDATION 5

4.10 The Committee recommends that the Office of Regulatory Services inspect all licensed entities at regular intervals, while using risk assessment to determine which licensed premises require additional inspections.

### RECOMMENDATION 6

4.11 The Committee recommends that the ACT Government investigate granting the rights and powers of liquor inspectors to all ACT police officers

### RECOMMENDATION 7

4.15 The Committee recommends that the Liquor Licensing Board issue directions or impose conditions on a licence for a certain period when a licensee repeatedly exceeds the occupancy loading for a licensed premise.

**RECOMMENDATION 8**

4.22 The Committee recommends that the ACT Government consider applying the same approach to addressing underage alcohol purchases as its does to underage cigarette purchases.

**RECOMMENDATION 9**

4.29 The Committee recommends that the *Liquor Act 1975* be amended to include consumer offence provisions similar to those in the New South Wales *Liquor Act 2007*.

**RECOMMENDATION 10**

5.7 The Committee recommends that the ACT Government consult with the New South Wales Government on the effectiveness of the incident register requirements in the NSW Liquor Act and, if effective, include similar provisions in the ACT Liquor Act.

**RECOMMENDATION 11**

5.13 The Committee recommends that the ACT Government consult with the Victorian Government on the effectiveness of the police powers to issue banning notices to consumers under the Victorian Liquor Act and, if effective, include similar provisions in the ACT Liquor Act.

**RECOMMENDATION 12**

5.15 The Committee recommends that, following completion of the 12 month review, the Attorney-General report to the Legislative Assembly on the effectiveness of the new “on the spot” fines and whether this option should be extended to other alcohol related and disorderly behaviour offences.

**RECOMMENDATION 13**

5.20 The Committee recommends that the Liquor Licensing Board, in consultation with ACT Policing and licensees, develop a code or guidelines for licensees on appropriate promotions.

**RECOMMENDATION 14**

5.21 The Committee recommends that the ACT Government consult with the New South Wales Government on the effectiveness of the powers in the NSW Liquor Act to ban irresponsible promotions and products that encourage excessive drinking of alcohol and, if effective, include such powers in the ACT Liquor Act.

## **RECOMMENDATION 15**

5.24 The Committee recommends that the *Liquor Act 1975* be amended to include provisions for the compulsory training in the responsible service of alcohol for all service staff employed in the liquor industry and that evidence of having completed this training be available for inspection at premises.

## **RECOMMENDATION 16**

6.13 The Committee recommends that the ACT Government investigate amending the *Liquor Act 1975* to provide for the establishment of Liquor Accords.



# 1 INTRODUCTION AND CONDUCT OF INQUIRY

- 1.1 This report is about the regulation of ACT liquor licences but naturally draws upon the broader issue of the use and abuse of alcohol in our community. The Committee does not view regulation as the only, or even the most important, method of addressing problem drinking. Community attitudes, parental responsibility, education campaigns and taxation are just some of the other issues that must be looked at to create a comprehensive picture of the problems and possible solutions. In the end, personal responsibility is the ultimate decider. This report primarily focuses upon the role licensees play because this is the area that was subject to review by the Auditor-General.

## **Auditor-General's Report No 4 of 2007:** ***Regulation of ACT Liquor Licences***

- 1.2 Auditor-General's Report No 4 of 2007: *Regulation of ACT Liquor Licences* (the Auditor-General's Report) was tabled in the Legislative Assembly on 21 August 2007. The objective of the audit was to:
- provide an independent opinion to the Legislative Assembly on whether the department of Justice and Community safety has an effective and efficient regulatory program to encourage and promote responsibility in the sale and consumption of liquor.<sup>2</sup>
- 1.3 The audit opinions in the report concluded that the "licensing procedures adopted by JACs were not sufficiently robust" and that there was "significant scope to improve the effectiveness of assessment process of application for licences and permits". In examining the monitoring of compliance of liquor licensees the report found that "it is doubtful that the current limited compliance activities were effective in promoting responsible consumption and sale of liquor."

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<sup>2</sup> Auditor-General's Report, p. 4.

- 1.4 In March 2008 the Attorney-General released a discussion paper on a review of the Liquor Act 1975. The Committee hopes that its recommendations will be considered as part of the government's consideration of that review.
- 1.5 On 8 May 2008 the Attorney-General introduced the *ACT Civil and Administrative Tribunal Bill 2008* into the Legislative Assembly. This Bill has consolidated a number of tribunals, including the Liquor Licensing Board, into a single tribunal. As this Bill was introduced, debated and passed while this inquiry was underway, the Committee has referred to the Liquor Licensing Board throughout. The Committee considered that any recommendation it has made regarding the Liquor Licensing Board could be applied to the Civil and Administrative Tribunal.

## Referral of the inquiry

- 1.6 The Auditor-General's Report was presented to the Legislative Assembly on 21 August 2007 and subsequently referred to the Committee for inquiry.<sup>3</sup>

## Terms of reference

- 1.7 The Committee's terms of reference were to examine the issues raised by the Auditor-General's Report and report to the Legislative Assembly for the ACT.

## Conduct of the inquiry

- 1.8 On 12 September 2007 the Committee received a briefing from the Auditor-General on the Report. The Committee resolved on 28 February 2008 to inquire further into the report.
- 1.9 The Committee advertised its inquiry and called for submissions in *The Canberra Times* on 5 April 2007, in *The Chronicle* on 8 April 2007 and in *City News* on 10 April 2008.

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<sup>3</sup> Minutes of Proceedings, 21 August 2007, p. 1068.

## **Submissions**

- 1.10 The Committee received 2 submissions. The individuals and organisations that lodged submissions are listed at **Appendix A**.

## **Public hearing**

- 1.11 The Committee held a public hearing on 8 July 2008. Witnesses who attended the public hearing are listed at **Appendix B**.
- 1.12 The Committee met on 25 August 2008 to discuss the Chair's draft report, and was adopted the report on 27 August 2008.

## **Acknowledgements**

- 1.13 The Committee thanks those who contributed to the inquiry by making submissions, providing additional information or appearing before it to give evidence.



## 2 LIQUOR LICENCE APPLICATION PROCESS

### Purpose of the Liquor Act 1975 (ACT)

- 2.1 The object of the *Liquor Act 1975 (ACT)* is to promote and encourage responsibility in the sale and consumption of liquor through the establishment of a scheme of liquor licences and permits. This scheme is overseen by the Registrar, Deputy Registrar and Board of Liquor Licences.<sup>4</sup>

### Liquor Licence Application Process

- 2.2 The liquor licence application procedures are contained in Part 4 of the Act which establishes the process for applying for any class of liquor licence. At present, there are five classes of liquor licence: general licence, on-licence, off-licence, club- licence and special licence.<sup>5</sup> Each class of licence is defined separately in the Act<sup>6</sup> and described in the Liquor Licensing Practice Manual.<sup>7</sup>
- 2.3 An application for a liquor licence is made to the Registrar of the Liquor Licensing Board.<sup>8</sup> The Registrar must make a decision as soon as reasonably practicable. In addition, the Registrar has the discretion to refer the application to the Deputy Registrar for further investigation.<sup>9</sup> The Deputy Registrar must compile a report, and this report is to be considered by the Registrar when deciding whether or not to issue the licence.<sup>10</sup> The Registrar's decision must be given in writing<sup>11</sup>. The Registrar must either: grant the licence if there are no substantial grounds for refusing; refuse to grant the licence if there are

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<sup>4</sup> *Liquor Act 1975 (ACT)* s 2, Part 2, Part 4 and Part 12.

<sup>5</sup> *Liquor Act 1975 (ACT)* s 44.

<sup>6</sup> *Liquor Act 1975 (ACT)* ss 45-49.

<sup>7</sup> ACT Government, Office of Regulatory Services, 'Liquor Licensing Practice Manual', May 2008, 2.2.

<sup>8</sup> *Liquor Act 1975 (ACT)* s 50(1).

<sup>9</sup> *Liquor Act 1975 (ACT)* s 50(2).

<sup>10</sup> *Liquor Act 1975 (ACT)* s 50(2), (3).

<sup>11</sup> *Liquor Act 1975 (ACT)* s 50(1).

substantial grounds for doing so; or refer the application to the Liquor Licensing Board for further consideration.<sup>12</sup>

2.4 The *Liquor Act* directs the Registrar, or relevant decision maker, to consider particular factors and characteristics of the applicant when deciding whether to grant the particular class of liquor licence. Factors that must be considered include:<sup>13</sup>

- Whether the applicant is a fit and proper person to hold a licence;
- Whether the premises are fit and proper for the purpose of the licence;
- The applicant's age;
- The applicant's understanding of the obligations of a licensee under the Act; and
- Any prior convictions of the applicant and whether they have previously contravened any provision of the Liquor Act.

The application form is reproduced in **Appendix C**.

2.5 The Ministerial Council on Drug Safety in its *National Alcohol Strategy 2006-2009* has recognised that strategies for reducing incidences of intoxication and binge drinking should include responsible licensing procedures. The Council recommended that effective policing of licensed drinking environments start by ensuring that liquor licence decisions consider community and patron safety.<sup>14</sup>

2.6 The AHA noted that the ACT's licensing scheme is viewed as "the most liberal licensing scheme in the country in terms of how new licences are issued".<sup>15</sup> Liquor licensing systems in some other Australian jurisdictions involve the police force in scrutinising community impact statements of liquor licence applications. In addition, some jurisdictions provide community members with the opportunity to comment on the proposed licence. The opinions and

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<sup>12</sup> *Liquor Act 1975 (ACT)* s 50(3).

<sup>13</sup> *Liquor Act 1975 (ACT)* s 52(1).

<sup>14</sup> Commonwealth of Australia, Ministerial Council on Drug Safety, 'National Alcohol Strategy 2006-2009', 2006, p. 17.

<sup>15</sup> Legislative Assembly for the Australian Capital Territory, *Transcript of Evidence*, Mr Steven Fanner, General Manager, Australian Hotels Association, ACT Branch, 8 July 2008, p. 1.

concerns of community members are taken into consideration when reviewing the application.

### **Review of Licence Applications by Police**

- 2.7 In Victoria, the Director of Liquor Licensing must give a copy of the application to the Chief Commissioner of Police<sup>16</sup> who may object to the grant of the licence on “any grounds he or she thinks fit.”<sup>17</sup> The police must provide a written response to the Director within 28 days.<sup>18</sup>
- 2.8 Tasmania’s *Liquor Licensing Act 1990* was amended in May 2008. Amendments included granting the Commissioner for Licensing the power to give a copy of a liquor licence application to the Commissioner of Police<sup>19</sup> seeking a report from the Commissioner on whether the applicant is a fit and proper person to hold a licence, and the character of any person likely to be involved in the management of the proposed business.<sup>20</sup> Involving the Police Commissioner in the licensing application process is a strategy for ensuring that the responsibility for providing alcohol to the community rests with appropriate persons.<sup>21</sup>
- 2.9 As in Tasmania, the new legislative scheme in New South Wales, which came into force on 1 July 2008, grants the Director of Liquor and Gaming the power to refer a liquor licence application to the Commissioner of Police if he or she considers it to be appropriate.<sup>22</sup> The Commissioner of Police may inquire into the application and report to the Director.<sup>23</sup>
- 2.10 The Committee agrees that involving the police in the application process is desirable. Police involvement is unlikely to be greatly demanding upon police

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<sup>16</sup> *Liquor Control Reform Act 1998* (Vic) s 33(1).

<sup>17</sup> *Liquor Control Reform Act 1998* (Vic) s 39(1).

<sup>18</sup> Consumer Affairs Victoria ‘Liquor Licence Application Process’ *Flowchart Diagram* <[http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV\\_Publications\\_Liquor\\_Licensing\\_2/\\$file/liquor\\_chart\\_application\\_process.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Liquor_Licensing_2/$file/liquor_chart_application_process.pdf)> 8 August 2008.

<sup>19</sup> *Liquor Licensing Act 1990* (Tas), s 24(1B)(a).

<sup>20</sup> *Liquor Licensing Act 1990* (Tas) s 24(1B)(b) (i), (ii).

<sup>21</sup> Parliament of Tasmania, *Hansard* ‘Liquor Licensing Amendment Bill 2008 (No 5) Second Reading (Part 2), 1 April 2008, (Mr Hodgman), pp. 31-98.

<sup>22</sup> *Liquor Act 2007* (NSW) s 42(4).

<sup>23</sup> *Liquor Act 2007* (NSW) s 42(5).

resources but could assist in avoiding the granting of licences to unsuitable persons.

## RECOMMENDATION 1

- 2.11 **The Committee recommends that the ACT Government investigate amending the *Liquor Act 1975* to require the Registrar and the Deputy Registrar of the Liquor Licensing Board to refer all liquor licence applications to ACT Policing for further consideration and report.**

### Community Impact Statements

- 2.12 Community impact assessments facilitate consideration by the relevant authority of the impact certain liquor licences may have on the local community.<sup>24</sup> The ACT liquor licensing regime does not require or invite consultation with the public on the appropriateness of the grant of a particular licence.<sup>25</sup> The new liquor licensing regime in New South Wales has incorporated a social consideration component when reviewing licence applications.<sup>26</sup>
- 2.13 New South Wales' recent legislative package strengthened the community impact statement requirements of its liquor licensing regime.<sup>27</sup> Section 48 of the *Liquor Act 2007* prescribes that 'A relevant application must be accompanied by a community impact statement.'<sup>28</sup> The applicant is responsible for preparing the impact statement.<sup>29</sup> Section 48 stipulates that a liquor licence must not be granted unless the Authority has considered the community impact statement and is satisfied that the 'social impact of the licence will not be detrimental to the well-being of the local or broader community.'<sup>30</sup>

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<sup>24</sup> *Liquor Act 2007* (NSW) s 48(1)(a), (b).

<sup>25</sup> *Transcript of Evidence*, (Mr Phillips & Mr Corbell), 8 July 2008, p. 24.

<sup>26</sup> NSW Parliament, Hansard, 7 April 2008, (Mr West) p. 4632.

<sup>27</sup> NSW Parliament, Hansard, 7 April 2008, p. 4632.

<sup>28</sup> *Liquor Act 2007* (NSW) s 48(3).

<sup>29</sup> *Liquor Regulations 2008* (NSW) r 11(1).

<sup>30</sup> *Liquor Act 2007* (NSW) s 48(5).

Stakeholders must be given the opportunity to consult with the applicant about the proposed licence.<sup>31</sup> Relevant stakeholders include:<sup>32</sup>

- the local police;
- occupiers of the neighbouring premises; and
- other interested groups or individuals identified or referred to in guidelines prepared by the Authority.

2.14 In some instances, depending on the class of licence applied for, the following stakeholders may also need to be consulted:<sup>33</sup>

- Department of Health;
- Department of Community Services;
- Roads and Traffic Authority; and
- recognised leaders or representatives of the local Aboriginal community.

2.15 The purpose of the community impact statement is to gauge potential impacts on the surrounding community.<sup>34</sup> Furthermore, in New South Wales any member of the public is permitted to comment on licence applications.<sup>35</sup> This submission must be made within 30 days from the day the application was made.<sup>36</sup>

2.16 Community involvement is a crucial part of the application process. Community impact statements provide a mechanism for community involvement and can assist prospective licensees in developing a business that is consistent with community expectations.

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<sup>31</sup> *Liquor Regulations 2008* (NSW) r 11(1).

<sup>32</sup> *Liquor Regulations 2008* (NSW) r 11(2).

<sup>33</sup> *Liquor Regulations 2008* (NSW) r 11 (3).

<sup>34</sup> NSW Parliament, Hansard, 7 April 2008, p. 4632.

<sup>35</sup> *Liquor Regulation 2008* (NSW) r 12(1).

<sup>36</sup> *Liquor Regulation 2008* (NSW) R 12(2).

**RECOMMENDATION 2**

- 2.17 The Committee recommends that the *Liquor Act 1975* be amended to require community impact statements for any applications for a new liquor licence, or any applications for renewals of licences granted prior to this amendment, and to provide members of the public with greater opportunity to comment on licence applications.

### 3 REGULATION OF THE ACT LIQUOR INDUSTRY

- 3.1 The *Liquor Act 1975* establishes the Liquor Licensing Board (LLB), administered by the Office of Regulatory Services (ORS) which is located within the Department of Justice and Community Safety (JACS).<sup>37</sup> The LLB oversees the grant of liquor licences and permits, ensures that licensees comply with licence obligations and provisions of the Act, responds to complaints, and conducts hearings into allegations of breach.<sup>38</sup> Decisions of the LLB are reviewable by the Administrative Appeals Tribunal (AAT).<sup>39</sup> The Australian Hotels Association said that the LLB is important to the effective regulation of the liquor industry.<sup>40</sup> However it expressed concern that the decisions of the LLB are not publicly available and therefore accountability and transparency is minimal.<sup>41</sup>
- 3.2 This can be contrasted with the approach in other jurisdictions. All decisions of the Tasmanian Licensing Board are available to the public via its website.<sup>42</sup> This includes decisions relating to the grant or refusal of licence applications, amendment of licence conditions, suspension and cancelation of licences.
- 3.3 In Queensland the Chief Executive of the Licensing Administration Unit, located within the Liquor Licensing Division, must keep a register of all liquor licences, permits and applications.<sup>43</sup> This register must include all contact details of the licensee, permit holder or applicant and must be available for public inspection.<sup>44</sup> Furthermore, the Chief Executive has discretionary power

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<sup>37</sup> *Liquor Act 1975* (ACT) s 10.

<sup>38</sup> *Liquor Act 1975* (ACT) s 11.

<sup>39</sup> *Liquor Act 1975* (ACT) s 173.

<sup>40</sup> Australian Hotels Association, (AHA) ACT Branch, *Submission*, 30 May 2008, p. 5.

<sup>41</sup> AHA, *Submission*, 30 May 2008, p. 5.

<sup>42</sup> <<http://www.treasury.tas.gov.au/domino/DTF/DTF.nsf/6f7ab9ece723e864ca25728a00129307/ad52b5e7bc-e73e57ca257354001f9b6f?OpenDocument>>

<sup>43</sup> *Liquor Act 1992* (Qld) s 43(1).

<sup>44</sup> *Liquor Act 1992* (Qld) s 43(2).

to make any information it considers appropriate and important for the effective regulation of the liquor industry available via the internet.<sup>45</sup>

- 3.4 The Committee believes that the liquor industry and the Canberra community should be kept informed of decisions made by the LLB. Availability of decisions of the Board has the potential to increase awareness amongst the public, licensees and employees of the importance of compliance with liquor laws and licence conditions.

### RECOMMENDATION 3

- 3.5 **The Committee recommends that the *Liquor Act 1975* be amended to require that a register of all licensees, permit holders and current applicants, and all decisions of the Liquor Licensing Board, be publicly available.**
- 3.6 The *ACT Civil and Administrative Tribunal Act 2008*, passed in August 2008, incorporates the LLB within the ACT Civil and Administrative Appeals Tribunal. The AHA expressed concern that a multi-purpose tribunal performing the functions of the LLB would lead to technical and specific decisions about alcohol 'being made by individuals without an appropriate level of experience.'<sup>46</sup> On raising the issue with the Attorney-General, he told the Committee that 'whilst we are consolidating all of those statutory bodies into a single entity, they will still perform their functions discreetly and separately. For example, the tribunal will meet as the Liquor Licensing Board for the purposes of dealing with liquor licensing and disciplinary actions.'<sup>47</sup>
- 3.7 This proposal is not dissimilar to the developments in Queensland. In July 2003 the Commercial and Consumer Tribunal was established under the *Commercial and Consumer Tribunal Act 2003*, replacing the Liquor Appeals Tribunal. The Commercial and Consumer Tribunal has jurisdiction in relation to liquor licensing under Part 2 of the *Liquor Act 1992* and the *Commercial and Consumer Tribunal Act 2003* and can review the decisions of the Chief Executive

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<sup>45</sup> *Liquor Act 1992 (Qld)* s 47A.

<sup>46</sup> AHA, *Submission*, 30 May 2008, p. 5.

<sup>47</sup> *Transcript of Evidence*, Mr Corbell. 8 July 2008, p. 19.

of the Liquor Licensing Division<sup>48</sup> and discipline licensees.<sup>49</sup> The Committee acknowledges the array of liquor licence decisions that the Commercial and Consumer Tribunal has made relating to: the grant of a licence,<sup>50</sup> suspension of a licence,<sup>51</sup> noise complaints,<sup>52</sup> refusal to extend trading hours<sup>53</sup> and imposition of licence conditions.<sup>54</sup> This demonstrates the high degree of competence a one-stop Tribunal establishment can apply to liquor licences and liquor related issues.

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<sup>48</sup> *Liquor Act 1992 (Qld)* ss 21.

<sup>49</sup> *Commercial and Consumer Tribunal Act 2003 (Qld)* ss 106, 107.

<sup>50</sup> *Mclaughlin & Pacific Paradise Progress Association Inc v Chief Executive, Liquor Licensing Division Tourism, Fair Trading & Wine Industry Development and Padstow Holdings Pty Ltd Atf Wheldon Family Trust* [2006] QCCTL 14.

<sup>51</sup> *Pickering v Chief Executive, Liquor Licensing Division DTFTWID* [2005] QCCTL 21.

<sup>52</sup> *Queensland Resorts P/L v Chief Executive, Liquor Licensing Division and Halter, S.* [2004] QCCTL 2; *Queensland Resorts Pty Ltd v Chief Executive, Liquor Licensing Division* [2003] QCCTL 4.

<sup>53</sup> *Moroccan Nites Pty Ltd v Chief Executive, Liquor Licensing Division* [2005] QCCTL 6.

<sup>54</sup> *Fame and Fever Nite Club Pty Ltd, et al v Chief Executive Liquor Licensing Division & Gold Coast City Council & Assistant Commissioner Melville* [2004] QCCTL 5.



## 4 REGULATION, ENFORCEMENT AND PENALTIES

- 4.1 Licensees are responsible for ensuring that their premises comply with the requirements of the *Liquor Act* and the *Standards Manual*. Monitoring a licensee's compliance rests with members of the community, ACT Policing and the LLB. Monitoring and regulatory mechanisms are provided for in the Act.

### Regulating licensees: provisions in the *Liquor Act 1975*

- 4.2 A member of the community is permitted to lodge a written complaint with the Registrar about the conduct of a licensee or other issues concerning premises that have disturbed or offended the complainant.<sup>55</sup> All complaints must be investigated, a written report prepared and a decision made by the Registrar.<sup>56</sup> The Registrar can issue a reprimand or direct the licensee to take action to remedy the situation. Reprimands and directions are appropriate remedies for breaches relating to conduct of the licensee, offences relating to minors and disturbances to the amenity of the area.<sup>57</sup> Reprimands or directions may also be appropriate for breaches of standards and safety requirements under the Licensing Standards Manual.<sup>58</sup>
- 4.3 The LLB has exclusive power to suspend a licence.<sup>59</sup> The Board will make such a decision after investigating the facts and has the power to suspend a licence if a licensee fails to comply with a direction.<sup>60</sup> The Board has the power to cancel a licence on reasonable grounds,<sup>61</sup> including premises that are not fit

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<sup>55</sup> *Liquor Act 1975* (ACT) s 77.

<sup>56</sup> *Liquor Act 1975* (ACT) s 78.

<sup>57</sup> *Liquor Act 1975* (ACT) ss 79, 82. See *Jacksons on Northbourne* for an example of directions issued to a licensee in relation to underage persons on the licensed premises.

<sup>58</sup> *Liquor Act 1975* (ACT) s 82(2).

<sup>59</sup> *Liquor Act 1975* (ACT) s 88.

<sup>60</sup> *Liquor Act 1975* (ACT) s 86.

<sup>61</sup> *Liquor Act 1975* (ACT) s 91.

and proper for the type of licence or where the licensee is no longer a fit and proper person to hold a liquor licence.<sup>62</sup>

- 4.4 The LLB's decision and reasoning on a complaint should be made available to licensees to make them aware of the importance of adhering to the Act, Standards Manual and licence conditions.
- 4.5 The Committee observes that the new provisions of the NSW Act. Part 5 Division 3 of the *Liquor Act 2007* (NSW) provides interested persons, including police, residents and local councils, with the opportunity to lodge a complaint with the Authority about licensed premises.<sup>63</sup>

## RECOMMENDATION 4

- 4.6 **The Committee recommends that the ACT Government publicise the right to lodge a complaint about a licensed premise.**

### Inspections

- 4.7 Inspection of licensed premises by liquor inspectors from the Office of Regulatory Services is the principle way that breaches of the Act and licence conditions are detected. The position of liquor inspector is created by Section 23 of the Act. The rights and powers of liquor inspectors are established under section 25 of the Act. Liquor inspectors may:

- (1) *at any time when the sale of liquor is authorised by a licence or a permit, enter and inspect the premises in relation to which the licence or permit was issued.*
- (2) *An inspector may enter and inspect any premises at any time when there are reasonable grounds for suspecting that liquor is being sold on the premises.*
- (3) *An inspector who enters premises under this section is not entitled to remain on the premises if, on request by the occupier or licensee of the premises, the inspector does not produce his or her identity card.*
- (4) *An inspector who enters premises under this section may-*

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<sup>62</sup> *Liquor Act 1975* (ACT) s 91.

<sup>63</sup> *Liquor Act 2007* (NSW) Part 5, Division 3.

- a. *Examine, take stock of and take samples of any liquor on the premises; and*
- b. *Inspect any books, documents or other papers on the premises; and*
- c. *remove any books, documents or papers from the premises for the purpose of having copies made; and*
- d. *Take reasonable measures to count the people in a public area within the premises.*<sup>64</sup>

4.8 The report of the Auditor-General raised concerns that inspections were not being carried out frequently enough.<sup>65</sup> Inspections that did occur specifically “targeted higher risk premises, such as nightclubs or pubs in the major entertainment precincts.”<sup>66</sup> The Committee also heard that the vast majority of inspections “take place out of hours in relation to pubs and clubs” indicating that inspections follow a “risk-based approach” focusing on “those premises that present the most risk in terms of harm to individuals, harm to others, [and] damage to property.”<sup>67</sup>

4.9 The approach of the ORS to inspections of licensed premises, through random inspections focusing on high risk areas, is likely to identify many premises and licensees in breach of the Act and licence conditions.<sup>68</sup> However, the Committee is of the opinion that all licensed entities need to be inspected at regular intervals to ensure that premises remain compliant with the Liquor Licensing Standards Manual and Occupational Health and Safety requirements.

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<sup>64</sup> *Liquor Act 1975 (ACT)* s 25.

<sup>65</sup> Auditor-General’s Report (2007), p. 27.

<sup>66</sup> *Transcript of Evidence*, Mr Phillips, 8 July 2008, p. 26.

<sup>67</sup> *Transcript of Evidence*, Mr Corbell, 8 July 2008, p. 27.

<sup>68</sup> See for example opinion of the Administrative Appeals Tribunal in *Rocks Pty Limited and Registrar of Liquor License* 1996] ACTAAT 148 (24 June 1996). The Tribunal praised and further encouraged the Board to send out its inspectors on busy nights. The Tribunal decided that this was a sensible use of the Board’s resources.

## RECOMMENDATION 5

- 4.10 **The Committee recommends that the Office of Regulatory Services inspect all licensed entities at regular intervals, while using risk assessment to determine which licensed premises require additional inspections.**

## RECOMMENDATION 6

- 4.11 **The Committee recommends that the ACT Government investigate granting the rights and powers of liquor inspectors to all ACT police officers**

### Occupancy loading

- 4.12 Licensees are responsible for ensuring that the maximum occupancy loading of a licensed premises is not exceeded.<sup>69</sup> Exceeding the maximum occupancy loading can result in a monetary penalty or directions being issued to the licensee.<sup>70</sup>
- 4.13 The Committee appreciates the challenges facing licensees and employees of licensed premises when it comes to accurately calculating and monitoring the number of patrons inside a licensed pub or club.
- 4.14 The Committee has observed that fines are issued to licensees for exceeding the occupancy limit.<sup>71</sup> When a licensee is sanctioned or directed to take particular action to remedy the situation they may appeal the fine to the Administrative Appeals Tribunal.<sup>72</sup> The Committee believes that the LLB should take firmer action against licensees who frequently exceed occupancy limits.

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<sup>69</sup> *Liquor Act 1975 (ACT)* s 148.

<sup>70</sup> See for example, Chief Minister Jon Stanhope, *Media Release 'Six Liquor Licensees to face Licensing Board'*, 14 February 2008.

<sup>71</sup> Chief Minister Jon Stanhope, *Media Release 'Six Liquor Licensees to face Licensing Board'*, 14 February 2008.

<sup>72</sup> For example *Jacksons on Northbourne Pty Ltd and Registrar of Liquor Licences* [2000] ACTAAT 33 (26 September 2000).

## RECOMMENDATION 7

- 4.15 **The Committee recommends that the Liquor Licensing Board issue directions or impose conditions on a licence for a certain period when a licensee repeatedly exceeds the occupancy loading for a licensed premise.**

### Underage drinking

- 4.16 It is important to have effective and efficient regulation to discourage underage drinking. Liquor licensing laws need to be firm, sending clear messages to consumers and the community. The Committee acknowledges that licensees and employees of licensees face a constant challenge today identifying those who are over the legal drinking age of 18 and those who are not.
- 4.17 It is an offence under section 157 of the *Liquor Act* for a licensee to permit a person under-18 years to enter and remain in a licensed pub or bar room.<sup>73</sup> An individual licensee may be fined up to \$5000 if found in breach of this provision.<sup>74</sup> However, it is a defence under this provision if the licensee can prove that the person was at least 16 years old<sup>75</sup> and had shown identification to the licensee or an employee when entering, or after entering, the premises.<sup>76</sup>
- 4.18 The decisions of the Administrative Appeals Tribunal show that licensees are being penalised for allowing minors to enter and remain in licensed pubs and clubs. For instance, in one case the licensee was fined \$4000 and the licence was suspended for 5 days for allowing two teenage girls aged 16 and 17 to enter and remain on the premises.<sup>77</sup> In another case the club was fined \$2000 for admitting four teenage boys to the club, one of whom "produced a card in a false name".<sup>78</sup> More recently, the Office of Regulatory Services (ORS) and the AFP conducted a blitz of licensed premises over a three night period in the

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<sup>73</sup> *Liquor Act 1975 (ACT)* s 157(1).

<sup>74</sup> *Liquor Act 1975 (ACT)* s 157(1).

<sup>75</sup> *Liquor Act 1975 (ACT)* s 157(3)(a).

<sup>76</sup> *Liquor Act 1975 (ACT)* s 157(3)(b).

<sup>77</sup> *Jacksons on Northbourne Pty Ltd and Registrar of Liquor Licences* [2000] ACTAAT 33 (26 September 2000)

<sup>78</sup> *Akuna Club Limited and Liquor Licensing Board* [2002] ACTAAT 47 (20 November 2002), p. 5.

Manuka, Kingston and Civic areas with a focus on under-age patrons, among other things. Six licensees were referred to the LLB.<sup>79</sup>

- 4.19 Whilst penalties are being imposed by the Board, and affirmed by the Administrative Appeals Tribunal, the Tribunal has found that there is a "lack of consistency in the approach taken by the [Board] in the imposition of control measures under the Act."<sup>80</sup> The Committee shares the Tribunal's concerns about consistency and hopes that it will be addressed in the review of the *Liquor Act*.
- 4.20 In addition, the Committee acknowledges that there is justifiable concern about the prevalence of excessive unsupervised drinking of alcohol by minors. The Committee heard that most underage drinking occurs away from licensed premises, at home, private parties and sporting events.<sup>81</sup> In most instances, alcohol consumed by minors is obtained from adults. The Committee was advised that '88 per cent of minors of who reported consuming alcohol indicated that it was obtained from an adult.'<sup>82</sup> The Committee supports the strict enforcement of laws prohibiting the provision of alcohol to minors and believes that additional scrutiny of liquor stores may be required.
- 4.21 Vigilant scrutiny of every consumer's or purchaser's identification needs to be promoted. The ACT should adopt a similar strategy to NSW:

*That means not only checking the identification of people suspected to be under the age of 18, but checking any person who appears to be under the age of 25 and asking them to provide accepted proof of age. This principle also pledges the prompt reporting to police of incidents of false identification presentations and tracking these occurrences, confiscating false identification when deemed appropriate.<sup>83</sup>*

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<sup>79</sup> Australian Capital Territory, Chief Minister Jon Stanhope, *Media Release 'Six Liquor Licensees to face Licensing Board'*, 14 February 2008.

<sup>80</sup> *Jacksons on Northbourne Pty Ltd and Registrar of Liquor Licences* [2000] ACTAAT 33 (26 September 2000), 15.

<sup>81</sup> *Transcript of Evidence*, Australian Hotels Association, ACT Branch, 8 July 2008, p. 5.

<sup>82</sup> White, V. & Hayman, J. (2006): *Australian Secondary School Students' Use of Alcohol in 2005*, Department of Health and Ageing, p. 15.

<sup>83</sup> NSW Parliament, Legislative Assembly, 'Liquor Accords' *Hansard*, August 2004, p. 10523.

## RECOMMENDATION 8

- 4.22 **The Committee recommends that the ACT Government consider applying the same approach to addressing underage alcohol purchases as it does to underage cigarette purchases.**

### Consumer offences and penalties

- 4.23 The Committee heard from the AHA that there is too much focus on the conduct of licensees and how they might be curtailed or punished.<sup>84</sup> The Committee believes that, while the conduct of licensees is vital in addressing drinking behaviour, more responsibility does need to be placed on consumers. Therefore, the Committee supports introducing consumer penalties into the *Liquor Act*, including penalties for minors and underage drinkers.

- 4.24 Consumers have a duty to behave responsibly and to respect the well-being of fellow consumers, the licensee and employees of the licensee. Queensland Premier Anna Bligh said:

Liquor licensing laws exist to protect the entire community- the people who work at liquor outlets, the people who drink there and the people they go home to.<sup>85</sup>

- 4.25 The ACT *Liquor Act* presently has few provisions imposing an obligation on consumers to behave responsibly. The Committee heard that:

...if we are going to bring about a safer, more secure area in our cities late at night, that we look not just at the responsible service of alcohol but at the responsible consumption of alcohol...more could be done to make individuals accountable for their own behaviour when they are out at night.<sup>86</sup>

- 4.26 The Committee draws attention to the consumer offences provisions in the NSW *Liquor Act 2007*. These reinforce the need for consumers to behave responsibly and places responsibilities on consumers to assist licensees with

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<sup>84</sup> *Transcript of Evidence*, Australian Hotels Association, ACT Branch, 8 July 2008, p. 1.

<sup>85</sup> Queensland Parliament *Hansard* 'Record of Proceedings', Hon A Bligh, p. 222, 30 May 2008.

<sup>86</sup> *Transcript of Evidence*, Australian Hotels Association, ACT Branch, 8 July 2008, p. 1.

troublesome patrons.<sup>87</sup> Section 73(3) of the NSW Act makes it an offence for a consumer to supply liquor to an intoxicated person. Section 77 of the NSW Act makes it an offence for a consumer who has been ejected or refused entry due to factors such as intoxication, to attempt to re-enter the licensed premises for a maximum period of 24 hours. A person who has been removed from the premises or denied entry:<sup>88</sup>

...because the person was intoxicated, violent, quarrelsome or disorderly, must not, without reasonable excuse:

- (a) remain in the vicinity of the premises; or
- (b) re-enter the vicinity of the premises within 6 hours of being refused admission or being turned out.

Maximum penalty: 50 penalty units.

4.27 These provisions of the NSW Act endeavour to address safety issues in and around licensed premises. For instance, when denied entry or removed from premises, people attempt to enter or re-enter. This causes problems for licensees, staff and patrons on the premises.<sup>89</sup>

4.28 The Committee believes that consumers should be held accountable for their actions. This could be accomplished by amending the *Liquor Act* to create consumer offences and by expanding the authority of ACT Police to issue on-the-spot fines<sup>90</sup> and granting the power to issue banning orders to consumers who behave in a disorderly manner.

## RECOMMENDATION 9

4.29 **The Committee recommends that the *Liquor Act 1975* be amended to include consumer offence provisions similar to those in the New South Wales *Liquor Act 2007*.**

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<sup>87</sup> NSW Parliament, Hansard, 7 April 2008, (Mr West), p. 4632.

<sup>88</sup> *Liquor Act 2007* (NSW) s 77(8).

<sup>89</sup> NSW Parliament, Hansard, 7 April 2008, (Mr West), p. 4632.

<sup>90</sup> *Transcript of Evidence*, Australian Hotels Association, ACT Branch, 8 July 2008, p. 2.

## 5 THE RESPONSIBILITIES OF LICENSEES

- 5.1 Licensee responsibilities are detailed and well established. Licensees are obliged to act in accordance with the purpose of the *Liquor Act*, *Liquor Regulations* and the *Liquor Licensing Standards Manual*. Licensees act in accordance with the purpose of the Act, Regulations and the Standards Manual by meeting structural requirements for premises and by ensuring that alcohol is served responsibly, thereby providing patrons and staff alike with a safe environment to work and socialise.
- 5.2 Licensed premises are part of the frontline in promoting responsible drinking and the Committee believes it is important that they understand their obligations and are provided with tools to combat problem behaviour and suffer penalties for failing to do so.

### **Risk assessment and minimisation**

- 5.3 Incidents of drunken and disorderly behaviour, violence and public disturbance are most likely to occur in the early hours of the morning when patrons leave the premises and are on the street, moving between premises. The Committee was told that when people who have consumed alcohol migrate onto the streets around licensed premises, there is the potential for anti-social behaviour such as: graffiti, property damage, urinating in public, and unreasonable levels of noise or offensive behaviour.<sup>91</sup> Better mechanisms for dealing with drunken and disorderly behaviour are needed as is stricter enforcement of existing laws.

### **Incident register**

- 5.4 Section 56 of the NSW *Liquor Act 2007* requires licensees to keep an 'Incidents Register'. This section obliges licensees to maintain an incident register if they are licensed to supply or sell liquor after midnight. The incident register must record details of any violence or antisocial behaviour that occurs on the

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<sup>91</sup> *Transcript of Evidence*, Mr Colbran, Acting Deputy Chief Police Officer, 8 July 2008, p. 12.

premises<sup>92</sup> or in the immediate vicinity which involves a person or persons who were on the premises<sup>93</sup> and document any action taken in response to the incident.<sup>94</sup> This section of the NSW Act reinforces the responsible service of alcohol and places an obligation on licensees and staff to regulate and monitor the environment.

- 5.5 In the ACT, licensees have been penalised for disturbance caused by patrons. In 2006 the Administrative Appeals Tribunal (AAT) substituted the decision of the LLB and fined a licensee for allowing, on at least four occasions, his “premises to be used so as to cause undue disturbance or inconvenience to people occupying the premises in the neighbourhood”.<sup>95</sup> In reaching this decision, the AAT heard evidence from staff and people working and living in the apartment block near the premises.<sup>96</sup>
- 5.6 Requiring licensees to keep an ‘Incidents Register’ may improve management, regulation and enforcement of license obligation and may encourage licensees and their employees to carefully monitor the behaviour of patrons on and near the premises. A register may also contribute to the minimisation of harm and neighbourhood disturbances associated with the consumption of alcohol. This register should be available for inspection, on reasonable demand, by the Director or agents of the LLB. An incident register could serve the dual purpose of demonstrating that a licensee is complying with their obligations and alerting authorities to areas with a high incidence of problem behaviour.

## RECOMMENDATION 10

- 5.7 **The Committee recommends that the ACT Government consult with the New South Wales Government on the effectiveness of the incident register requirements in the NSW Liquor Act and, if effective, include similar provisions in the ACT Liquor Act.**

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<sup>92</sup> *Liquor Act 2007* (NSW) s 56 (2)(a).

<sup>93</sup> *Liquor Act 2007* (NSW) s 56(2)(b).

<sup>94</sup> *Liquor Act 2007* (NSW) s 56(3).

<sup>95</sup> *Fitzpatrick and the Liquor Licensing Board* [2006] ACTAAT 25 (4 August 2006), p. 12.

<sup>96</sup> *Fitzpatrick and the Liquor Licensing Board* [2006] ACTAAT 25 (4 August 2006), p. 13.

## Police Presence and Power to issue Penalties

- 5.8 Police officers play an important role in controlling crowds and individuals around licensed premises. The Attorney-General informed the Legislative Assembly that, "The government has already increased and improved police resources to provide for a better policing presence in a range of locations around the city."<sup>97</sup>
- 5.9 The Committee heard that police in Canberra provide services around licensed venues "as a matter of course".<sup>98</sup> Acting Deputy Chief Police Officer Colbran told the Committee that "'Friday morning, Saturday morning and Sunday morning in the very early hours are very busy times, particularly around the clusters of licensed premises that we have in Canberra.'" <sup>99</sup> At these times, the police "have a lot of issues in relation to alcohol consumption."<sup>100</sup> The Police maintain that they generally have a "very good relationship with most of the licensees and licensed premises around Canberra,"<sup>101</sup> carry out targeted patrols, and respond to information received from members of the community as well as anything officers observe "on the beat."<sup>102</sup>
- 5.10 ACT Police are granted powers under the Liquor Act to: request to view a licence or permit whilst on the premises,<sup>103</sup> inspect a premises<sup>104</sup> seize liquor if they reasonably suspect that it is connected with an offence under the Act,<sup>105</sup> view a consumer's identification including those they suspect are underage,<sup>106</sup> seize identification, issue cautions to consumers<sup>107</sup> and institute proceedings under the Act.<sup>108</sup> ACT Police are involved in devising responsible drinking

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<sup>97</sup> Legislative Assembly for the ACT, *Hansard*, Mr Corbell, 4 March 2008. p. 418.

<sup>98</sup> *Transcript of Evidence*, Mr Colbran, Acting Deputy Chief Police Officer, 8 July 2008, p. 11.

<sup>99</sup> *Transcript of Evidence*, Mr Colbran, Acting Deputy Chief Police Officer, 8 July 2008, p. 11.

<sup>100</sup> *Transcript of Evidence*, Mr Colbran, Acting Deputy Chief Police Officer, 8 July 2008, p. 11.

<sup>101</sup> *Transcript of Evidence*, Mr Colbran, Acting Deputy Chief Police Officer, 8 July 2008, p. 11.

<sup>102</sup> *Transcript of Evidence*, Mr Issa, ACT Policing, 8 July 2008, p. 12.

<sup>103</sup> *Liquor Act 1975 (ACT)* s 26.

<sup>104</sup> *Liquor Act 1975 (ACT)* s 25.

<sup>105</sup> *Liquor Act 1975 (ACT)* s 27.

<sup>106</sup> *Liquor Act 1975 (ACT)* s 30.

<sup>107</sup> *Liquor Act 1975 (ACT)* ss 31, 32.

<sup>108</sup> *Liquor Act 1975 (ACT)* s 178.

campaigns endeavouring to heighten awareness about dangerous drinking,<sup>109</sup> patrolling licensed areas and carrying out operations in concert with liquor licensing inspectors.<sup>110</sup> ACT Police also have powers not related to the Liquor Act to deal with disorderly behaviour and violence.

- 5.11 Recent changes to Victorian legislation have given police the authority to issue banning notices to persons who they suspect of committing an offence within a 'designated area'. Police can issue notices that ban the person from the designated area and/or all licensed premises within the designated area for 24 hours.<sup>111</sup>
- 5.12 Most drunk and disorderly conduct can be adequately addressed through active enforcement using existing police powers. The Committee suggests, however, that police in the ACT should be able to issue 'banning notices' to patrons to diffuse situations as required. This would assist in addressing the serious occupational health and safety issues that bar staff face when confronted by disorderly patrons. Bar staff who feel threatened could call police who would be able to issue a banning notice which enables an immediate response compared to the delays involved in gaining such an order via the courts.

## RECOMMENDATION 11

- 5.13 **The Committee recommends that the ACT Government consult with the Victorian Government on the effectiveness of the police powers to issue banning notices to consumers under the Victorian Liquor Act and, if effective, include similar provisions in the ACT Liquor Act.**
- 5.14 During the course of the inquiry legislation was passed that empowered police to issue infringement notices to individuals for offences including urinating in public, failing to follow a noise abatement direction and consuming alcohol within 50 metres of a bus interchange, a shop, licensed premises or a place prescribed by regulation. The Committee notes that the Attorney-General

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<sup>109</sup> See for example; AFP 'Police focus on responsible drinking campaign' *Media release* 2 May 2007.

<sup>110</sup> Australian Capital Territory, Chief Minister Jon Stanhope, *Media Release* 'Six Liquor Licensees to face Licensing Board', 14 February 2008.

<sup>111</sup> Consumer Affairs Victoria, 'Changes to the Liquor Control Reform Act 1998' *Factsheet* 2008.

intends to seek a review of the effectiveness of these measures after 12 months of their operation.<sup>112</sup>

## RECOMMENDATION 12

- 5.15 **The Committee recommends that, following completion of the 12 month review, the Attorney-General report to the Legislative Assembly on the effectiveness of the new “on the spot” fines and whether this option should be extended to other alcohol related and disorderly behaviour offences.**

### **Power to ban irresponsible promotions and products**

- 5.16 Substantial discounting and promoting of alcoholic beverages can encourage excessive consumption and binge drinking.<sup>113</sup> In the Government’s discussion paper on the review of the *Liquor Act*, ACT Policing recommended devising an industry code or guidelines restricting the promotion of drinking games and unreasonable discounts.<sup>114</sup> The Committee believes that the Registrar and Deputy Registrar should be granted powers to ban the irresponsible promotion or unreasonable discounting of alcoholic beverages. This would contribute to the promotion of responsible service and consumption of alcohol within the ACT community.
- 5.17 The Australian Hotels Association (AHA) informed the Committee in its written submission that approximately 70% of drinking occurs away from licensed premises.<sup>115</sup> The AHA believes that heavy retail discounting contributes to excessive consumption of alcohol and anti-social behaviour. In its submission the AHA drew the Committee’s attention to the increased number of discount liquor stores and claimed that this has contributed to a

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<sup>112</sup> Mr Simon Corbell MLA, Attorney-General, Media Release, “New ‘on the spot’ fines in force for anti-social behaviour”, 17 April 2008.

<sup>113</sup> Parliament of New South Wales, *Liquor Bill 2007*, ‘Agreement in Principle’, Mr G. West, p. 4632.

<sup>114</sup> ACT Government, Department of Justice and Community Safety ‘Review of the *Liquor Act 1975*’ Discussion Paper March 2008, p 46.

<sup>115</sup> AHA Submission, 30 May 2008, p. 3.

consumer tendency to drink packaged alcoholic drinks at home or in public places before venturing out to clubs and pubs.<sup>116</sup>

5.18 The new NSW *Liquor Act* expands the powers of the Director of Liquor & Gaming granting the Director the power to ban undesirable products and promotions. The Committee recognises that the new NSW *Liquor Act* introduces mechanisms for regulating the sale and promotion of alcoholic beverages. Under sections 100 and 101, a licensee may be prohibited from promoting or selling a liquor product that is declared an undesirable product.<sup>117</sup> The licensee must be given the opportunity to respond to the proposed restriction following written notification of the Director's proposed ban.<sup>118</sup>

5.19 The Director or Minister may ban a product or promotion on the following grounds:<sup>119</sup>

*(a) the name of the liquor product, or its design or packaging, is indecent or offensive, or*

*(b) the name of the liquor product, or its design or packaging, encourages irresponsible, rapid or excessive consumption of the product; or*

*(c) the name of the liquor product, or its design or packaging, is likely to be attractive to minors; or*

*(d) the liquor product is likely, for any reason, to be confused with soft drinks or confectionary; or*

*(e) the liquor product is for any reason, likely to have a special appeal to minors, or;*

*(f) it is otherwise in the public interest to declare the liquor product to be an undesirable product.*

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<sup>116</sup> AHA Submission, 30 May 2008, p. 2.

<sup>117</sup> *Liquor Act 2007* (NSW) ss 100(2); 101(1).

<sup>118</sup> *Liquor Act 2007* (NSW) ss 100(4); 101(4).

<sup>119</sup> *Liquor Act 2007* (NSW) ss 100(3); s 101(2).

### RECOMMENDATION 13

- 5.20 **The Committee recommends that the Liquor Licensing Board, in consultation with ACT Policing and licensees, develop a code or guidelines for licensees on appropriate promotions.**

### RECOMMENDATION 14

- 5.21 **The Committee recommends that the ACT Government consult with the New South Wales Government on the effectiveness of the powers in the NSW Liquor Act to ban irresponsible promotions and products that encourage excessive drinking of alcohol and, if effective, include such powers in the ACT Liquor Act.**

### Employee training

- 5.22 In February the Attorney-General announced that the ACT Government would be introducing mandatory responsible service of alcohol training for liquor licensees and bar staff.<sup>120</sup> The Committee welcomes this decision. Currently training in the responsible service of alcohol is only required of licensees and staff if, at the time of applying for a liquor licence, the relevant decision maker reasonably believes that the applicant does not fully comprehend his or her obligations under the *Liquor Act*.<sup>121</sup> Mandatory training for all bar staff will promote vigilance and awareness when serving patrons alcoholic beverages and assist them to better manage situations involving intoxicated people.
- 5.23 The ACT *Liquor Act* should be amended making it compulsory for all bar staff to be appropriately qualified in the service of alcohol.

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<sup>120</sup> Legislative Assembly for the ACT, *Hansard*, Mr Corbell, 4 March 2008. p. 417.

<sup>121</sup> *Liquor Act* 1975 (ACT) s 53.

**RECOMMENDATION 15**

- 5.24 **The Committee recommends that the *Liquor Act 1975* be amended to include provisions for the compulsory training in the responsible service of alcohol for all service staff employed in the liquor industry and that evidence of having completed this training be available for inspection at premises.**

## 6 COMMUNITY INVOLVEMENT

### Planning and transport

- 6.1 The location, number and opening hours of licensed premises can have a significant influence on the type of drinking behaviour that is encouraged. When drinking establishments are physically separated from other night-time activity locations, such as cinemas and restaurants, a “drinking ghetto” atmosphere can be created. While licence conditions can be used to control some of these impacts, it is also important that planning decisions take into account the impact of licensed premises and consider ways of integrating them with the surrounding amenities.
- 6.2 Proper lighting, signage and access routes can all assist in discouraging anti-social behaviour. The Committee notes the Territory Plan’s *Crime Prevention Through Environmental Design General Code* and considers it to be particularly applicable to areas with a concentration of licensed premises.
- 6.3 Canberra tends to have areas with clusters of licensed premises, most notably Manuka and Civic. On busy nights these areas frequently have large numbers of patrons waiting for public transport and interacting with other patrons moving between venues. Ensuring that patrons are able to leave the area promptly can contribute to reducing the incidence of disorderly behaviour. The Committee has previously welcomed the introduction of the Nightlink Taxi pilot scheme<sup>122</sup> and looks forward to its evaluation and possible expansion.

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<sup>122</sup> Standing Committee on Public Accounts, *Appropriation Bill 2007-2008 (No 2)*, Report 12, p. 15.

## Liquor accords

- 6.4 Liquor accords are an attempt to involve communities in addressing alcohol-related issues. The NSW Office of Liquor, Gaming and Racing describes liquor accords as:

voluntary industry-based partnerships working in local communities to introduce practical solutions to liquor-related problems. They reach agreements on ways to improve the operation of licensed venues so that entertainment venues and precincts are safe and enjoyable.

Most liquor accords include members from the local business community, local councils, police, government departments and other community organisations.<sup>123</sup>

- 6.5 In its submission to the Committee the AHA identified that whilst regulation of licensees is a necessary aspect of improving and monitoring the liquor industry, “any discussion of alcohol-related issues should include a commitment from Government to address the root cause of risky drinking- a desire by certain people to drink excessively.”<sup>124</sup> The AHA identified cultural and educational issues as being central to community concerns about alcohol availability, consumption and regulation.<sup>125</sup> Liquor Accords would provide an environment to identify and discuss these concerns.
- 6.6 Part 8 of the New South Wales *Liquor Act 2007* provides detailed provisions for the establishment and purpose of local liquor accords. The NSW Liquor Accords are permitted to formulate codes of practice or memoranda of understanding that are effective against any licensee who is party to the accord. Liquor accords can make provisions relating to the service of alcohol and public access to licensed premises. Also, NSW accords can make provisions relating to the running of licensed premises, including restricting the use of glass, maintenance of an incident register and provision of security staff.<sup>126</sup> There are no restrictions on who can belong to a NSW liquor accord.<sup>127</sup>

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<sup>123</sup> <[http://www.olgr.nsw.gov.au/liquor\\_liqaccrds\\_home.asp](http://www.olgr.nsw.gov.au/liquor_liqaccrds_home.asp)> accessed on 21 August 2008.

<sup>124</sup> AHA Submission, 30 May 2008, p. 3.

<sup>125</sup> AHA Submission, 30 May 2008, p. 3.

<sup>126</sup> *Liquor Act 2007 (NSW)*, s 134(1).

In NSW there are 143 liquor accords with widespread participation in conferences to improve the NSW liquor industry.<sup>128</sup>

- 6.7 The Eastern Suburbs Liquor Accord has collaborated with the Waverley Council which funds a community transport service titled “Beach Runner Bus”. For a small fee of 80 cents this service assists in getting patrons home safely when taxis and buses are unavailable.<sup>129</sup>
- 6.8 Albury Liquor Accord member clubs, hotels, nightclubs and bottle shops voluntarily contribute \$100 whilst restaurants, cafes and sports clubs contribute \$50. Along with funding from the Albury City Council and external grants, money is used for promotions including posters, coasters, street banners, media releases and advertising. The Albury liquor accord is considered to be a successful and effective accord boasting a strong relationship with police, security firms and transport groups. It also has strong support from schools and colleges in the area, and the Albury Council.<sup>130</sup>
- 6.9 In Victoria, members of liquor accords pledge a commitment to achieving certain objectives and strategies formalising their commitment in writing documenting the Liquor Licence Accord.<sup>131</sup>
- 6.10 The Goondiwindi Liquor Accord is an example of a successful Queensland liquor accord. It places a heavy emphasis on its “Think the Drink” education campaign for school leavers that promotes responsible service of alcohol and binge drinking awareness. The accord also has provision for whole of community six month bans for under aged drinkers and universal bans on identified trouble makers.

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<sup>127</sup> *Liquor Act 2007 (NSW)*, s 132.

<sup>128</sup> New South Wales Government, Department of the Arts, Sport and Recreation, *Annual Report 2006-2007* ‘Review of Operations, Office of Liquor, Gaming and Racing’, p. 31.

<sup>129</sup> Office of Liquor, Gaming & Racing ‘*Industry News*’ Volume 2, Edition 4 2007, p. 10.

<sup>130</sup> ‘Liquor Accords: Are they successful?’ Presentation by Albert Gardner, Assistant Director, NSW Department of Gaming and Racing.  
<<http://www.algwa.org.au/presentation/LiquorAccordsPresentation.pps>> accessed 22 August 2008.

<sup>131</sup> Consumer Affairs Victoria, Municipal Association of Victoria ‘Guidelines for the establishment of Liquor Licensing Forums & Accords: A joint initiative Supported by Victoria Police, Consumer Affairs Victoria & Local Government’, p. 3.

- 6.11 Liquor Licensing Accords provide a discussion forum drawing on the experiences, expertise, knowledge and ideas of a variety of individuals and professionals, including those from the liquor industry. The Committee believes that liquor accords could benefit the Canberra liquor industry. Accords would give the public the opportunity to contribute to the improvement of services that the industry supplies by providing a forum for conversations between consumers, other community members, licensees and the ORS. These conversations can contribute to improving monitoring and regulation of the industry.
- 6.12 The Committee notes the existence of liquor accords in Cooma and Queanbeyan and believes that there may be benefits in forming a dialogue with these accords.

#### RECOMMENDATION 16

- 6.13 **The Committee recommends that the ACT Government investigate amending the *Liquor Act 1975* to provide for the establishment of Liquor Accords.**

## 7 CONCLUSION

- 7.1 The Committee wishes to thank the organisations that, and individuals who, participated in this inquiry.
- 7.2 The Committee has made 16 recommendations in relation to its review of the Auditor-General's Report No 4 of 2007: *Regulation of Act Liquor Licences*.

Dr Deb Foskey

Chair

27 August 2008



## **APPENDIX A: Submissions received by the Committee**

1. ACT Government
2. Australian Hotels Association ACT



## **APPENDIX B: Committee hearing and witnesses**

### **8 July 2008**

- Mr Simon Corbell, Attorney-General and Minister for Police and Emergency Services
- Mr Brett Phillips, Executive Director, Office of Regulatory Services, Department of Justice and Community Safety
- Ms Tania Manuel, Senior Manager, Policy and Community Relations, Office of Regulatory Services, Department of Justice and Community Safety
- Ms Erin Anderson, Legal Policy Officer, Legislation and Policy Branch, Department of Justice and Community Safety
- Mr Steven Fanner, General Manager, Australian Hotels Association, ACT Branch
- Mr Mark Colbran, Acting Deputy Chief Police Officer, ACT Policing
- Mr Edward Issa, Coordinator, Policy Performance and Planning, ACT Policing



## **APPENDIX C: Application form for ACT Liquor Licence**