Justice and Community Safety Directorate

Authorised 18/01/12

FINAL REPORT

REVIEW OF LIQUOR LICENSING FEES

Released by
Simon Corbell MLA
Attorney General

September 2011

The data used in this review relates to the first six months of operation of the new liquor licensing regime.

This Paper reflects the state of ACT law as at September 2011.

GPO Box 158 Canberra City ACT 2601.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 7

KEY FINDINGS 13

1. INTRODUCTION 14

1.1 Why are we undertaking this review now? 14

1.2 Terms of Reference 14

1.3 Guiding Principles 15

1.4 Current Liquor Licensing Fee Structure 15

1.4.1 Liquor (Fees) Determination 2010 (No 1) 15

2. CONSULTATION 17

2.1 The consultative process 17

2.2 Submissions to the Liquor Fees Review 17

2.3 Release of Interim Options Paper 19

2.4 Ministerial roundtable consultations 19

3. LITERATURE REVIEW 21

3.1 Statistical Evidence on Alcohol-related Harms 21

3.1.2 The Australian Institute of Criminology (AIC) 21

3.1.3. Australian Alcohol Education and Research Foundation (AAERF) 21

3.1.4. City of Sydney Council 21

3.1.5. Joint Australian Universities 22

3.2 Other risk-based liquor licensing fee models 22

3.2.1 Victorian liquor licences 22

3.2.2 Queensland liquor licences 22

4. LIQUOR DATA ANALYSES 24

4.1 Effect of New Liquor Fees on ACT Liquor Market 24

4.1.1 ACT Liquor Market 24

4.2 Standard fee 24

4.3 Break-up of Liquor Licence Classes 25

4.4 On Licensees (On, Club, General, Special) 25

4.5 Break-up by Size 27

4.6 Break-up by Size and Trading Hours 27

4.7 Off licensees 28

5. CHAPTER THREE – MARKET PARTICIPATION 2011 29

5.1 Liquor Licensees 29

6. ALCOHOL-RELATED INCIDENT DATA 32

6.1 ACT Policing 32

6.2 Break-up of incidents by licence type 32

6.3 Average incidents at venue type 32

6.4 Break-up of incidents by trading times 33

6.5 Break-up of incidents by occupancy loading at each premises 34

6.6 Average break-up of incidents by premises 35

7. $100,000 THRESHOLD 36

7.1 Standard liquor licensing fee 36

8. RISK FACTORS 38

8.1 Section 229 (2)(b) of Liquor Act 2010 38

8.1.1 Class or subclass of a licence 38

8.1.2 Licensed times 39

8.1.3 Term of a licence 39

8.1.4 The nature and scale of the activities being carried out at the licensed premises 39

8.1.5 Occupancy loading for the licensed premises 40

8.1.6 History of compliance of licensees with Liquor Act 40

8.1.7 Victoria 41

8.1.8 Queensland 41

8.1.9 ACT 41

8.1.10. Anything else consistent with the objects of this Act and the harm minimisation and community safety principles 42

9. LIQUOR LICENSING COSTS 43

9.1 Liquor regulation expenditure 43

10. LICENSING FEE MODELS 44

10.1 The Options 44

10.2. Fee model comparisons 44

11. LIQUOR PERMITS 46

11.1 Need for review 46

11.2 Terms of Reference 46

11.3 Guiding principles 46

11.4 Temporary liquor permit fee structure 46

11.4.1 Commercial and non commercial permits 46

11.4.2 Current fee structure for liquor permits 47

11.4.3 Analysis of past liquor permits 48

11.4.4 Liquor permit fee threshold 50

11.5 Methodology for calculating risk-based permit fees 50

11.5.1 Non commercial permits 50

11.5.2 Commercial permits 51

11.5.3 Amount of liquor purchased for sale 51

Appendix A Optional Liquor Fee Models 53

Model 1 53

Model 2 55

Model 3 57

Model 4 58

Model 5 61

Model 6 63

Model 7 65

Model 8 67

Model 8A 68

Model 8B 69

Model 8C 70

Appendix B List of Submissions 73

Appendix C 74

Appendix D 75

Table 3 - Incidents by trading hours 75

Table 4 - Incidents by occupancy loading of licensed premises 76

Table 5 - Incidents by licensed premises 77

GLOSSARY 1

EXECUTIVE SUMMARY

This Report results from a resolution made by the ACT Legislative Assembly on 18 November 2010 calling for the Attorney General to undertake a comprehensive review of the ACT's new liquor licensing fees. The Assembly resolved that the Attorney General table the report by 1 October 2011.

A Liquor Information Collection Committee, made up of senior officers from key Government agencies, collated and provided information held by these agencies on liquor for review. Liquor data was supplied by the Office of Regulatory Services (ORS), ACT Policing, ACT Treasury Directorate, ACT Civil and Administrative Tribunal (ACAT) and the Courts.

There was also significant consultation with liquor industry stakeholders.

To facilitate the completion of the report by 1 October 2011, the review uses liquor data analyses undertaken over a six month period from 1 December 2010 to 31 May 2011.

Terms of Reference

(a) an analysis of the effect the 2010 fees determination has had on the number of licensed venues operating in the ACT and trading hours they adopt.

The current liquor fee model is a simple licensing model which uses evidence-based risk factors of trading hours and amount of liquor sold proportionate to the level of risk.

The current liquor fees have been calibrated using a $100,000 threshold to determine standard fees, which all licensees pay, and additional risk-based fees for licensees who choose to trade past midnight to either 2am, 4am or 5am.

The standard fee is currently set at $1,638 for licensees who purchase liquor for sale below $100,000 and $3,661 for those who purchase liquor for sale above $100,000. Additional increments of $5,000 and $10,000 apply to 2am and 4am trading hours respectively, plus an additional increment of $2,500 to trade to 5am.

The review found that a majority of licensees (55 per cent) purchase liquor for sale under $100,000 a year.

Currently, the cost of directly regulating the ACT liquor industry is approximately $2.9 million per year. Based on actual cash received to 24 June 2011 ($2.66 million) and predicted revenue from final quarterly payments ($244,000), ORS expects to receive approximately $2.9 million this licence period (1 December 2010 – 30 November 2011) which is on target to meet the total regulatory costs. The current licensing scheme recoups the annual expenditure costs.

In evaluating the impact the new liquor fees have had on the liquor market and the trading hours adopted, the review undertook a comparative analysis of the annual renewal rates of liquor licences for 2010 with the years leading up to the introduction of the new liquor fees and licence surrenders and transfers were taken into account.

The review was unable to compare past and current trading hours adopted by licensees since the new fees were introduced because under the old *Liquor Act 1975* licensees could trade around the clock from midnight to 4 am (and with ORS permission to 5am) and 7am to midnight.

In a comparative sense because the market participation rate in the ACT liquor industry fluctuates from month to month, due to new licensees entering and others leaving the market throughout the year, the most reliable market participation rate is the annual renewal rate of liquor licences. High renewal rates are a strong indicator of the economic wellbeing of the industry when licensees decide to renew their licences by 30 November each year.

The six month period of review indicates that there has been little change in the number of liquor licences since the new liquor fees were introduced when compared with previous years.

In December 2010, 636 licensees applied to renew their liquor licences compared with 592 in 2009/10, 612 in 2008/09 and 601 licensees in 2007/08.

In comparison with previous years, the market trend tends to suggest that there are more licensees staying in the liquor industry.

The review found that the current trend in the liquor industry indicates a relatively stable liquor market, with a slight upturn in participation rates. 16 new liquor licence applications were received by ORS between 1 December 2010 to the end of May 2011. It is acknowledged the short timeframe required for the review limits the strength of conclusions in this area.

The review also found that:

- a large majority of the ACT liquor market is made up of small to medium sized businesses (82 per cent) of which nine per cent trade late past midnight and large businesses (18 per cent) of which 11 per cent trade late past midnight;
- more than half (58 per cent) of reported alcohol-related incidents occurred at nightclubs (34 per cent) and clubs (24 per cent) and nearly 80 per cent of incidents occurred at premises trading to 4am or 5am;
- 61 per cent of alcohol-related incidents occurred at larger venues with an occupancy loading of 351 patrons or more.
- nine licensees transferred their licence to another party over the review period in comparison with 15 in 2009/10, 19 in 2008/9 and 14 in 2007/8.

(b) an evaluation of the impact of continuing to use $100,000 as the threshold test for the "annual liquor purchase", noting it has not been reviewed for at least 10 years.

The use of the $100,000 threshold to determine licensing fees was adopted in the past to differentiate between small and large volumes of liquor purchased for sale so that commensurate fees could be levied. A licensee who sold more liquor paid a higher fee than a licensee who sold less.

The review found that overall the threshold split has served the industry well because the majority of licensees in the past sold under the $100,000 threshold and paid the lower fee (55 per cent)..

However, because the old liquor fees did not differentiate between on and off licensees, a small number of on licensees and some off licensees who paid the higher fee may have benefited unfairly from the split, if they were purchasing significant amounts of liquor for sale above the $100,000 threshold. For example, an off licensee who purchased liquor for sale for $1 million or more would have paid the same fee as a smaller on licensee who sold $150,000 or less of liquor.

Today, however, this element of unfairness has been reduced because the use of the threshold as a risk factor is only one component of the new liquor licensing fees.

The introduction of the new risk-based fees, which on licensees pay if they choose to trade past midnight, together with the new off licence fees, which are calibrated in proportion to the amount of liquor purchased for sale, now reduces the unfair discrimination against smaller licensees.

While in the past, the threshold was used to levy a higher fee on licensees who sold larger volumes of liquor and lower fees for those who sold less, use of the threshold today can be a useful mechanism for harm minimisation. A dollar threshold is one way of differentiating between small and large licensees when calculating risk-based liquor fees to reflect lower risk of harm to the community. Using an occupancy loading factor is another effective way of differentiating between small and large licensees.

The review found that using a dollar threshold in a risk-based fee framework is an effective measure to differentiate between small and large licensed businesses.

The review acknowledges that setting the threshold at $100,000 might not be an appropriate level for a threshold, given that it has remained at this level for over 10 years.

In the current environment where the Government's priority is to reduce the incidence of alcohol related harm in the community, retaining a dollar threshold to calculate fees by differentiating small from large businesses is one way of acknowledging the lower risk of harm to the community.

The review recommends that the Government consider an adjustment to the liquor fees to reflect the lower risk of harm from smaller licensees. In doing so, either a dollar threshold for annual liquor purchases or an occupancy loading factor or both could be used to differentiate small from large licensed premises when calculating liquor fees.

The review also recommends that were the Government minded to retain the dollar threshold, it should be indexed to compensate for annual inflationary costs on liquor licensees.

(c) *an analysis of the impacts of expanding the 2010 fees determination to take account of the full list of seven risk factors listed in section 229(2)(b) of the Liquor Act 2010.*

In evaluating the market impact of using additional risk factors to determine liquor fees, the review undertook a risk analysis of the ACT liquor market by identifying market participation rates by licensees, venue size by occupancy loadings, trading hours, alcohol-related incidents and market trends over a six month period and compared the data with previous years.

For the first time, information collection processes, which were co-ordinated across ACT Government agencies, provide confirmation of the relationship between liquor consumption, trading hours, occupancy loadings and alcohol-related incidents.

The review concluded overall that the risk factors set out in section 229(2)(b) of the *Liquor Act 2010* are relevant considerations to take into account when using a risk-based formula to determine liquor fees.

The review did, however, hold some reservations about using compliance history as a risk factor in a small jurisdiction like the ACT. Without knowing how many infringement notices might be issued by ACT Policing in the future or the extent of disciplinary action taken by the Tribunal, the review was unable to test the impact on the market if licensees had to pay significantly higher renewal fees from poor compliance. The six month period of review was too short a period of time for this analysis to occur.

An evaluation of the compliance history risk factor could be undertaken during the planned two year review of the new liquor laws, as enough time would have passed by then to more properly assess the market impact of non-compliance.

The review was concerned that using a compliance history multiplier (similar to Victoria) as an incentive for licensees to comply with liquor laws could possibly threaten the long term sustainability of the liquor industry. The ACT liquor market is not as well placed as other larger jurisdictions like Victoria and New South Wales to withstand closure of liquor venues as a result of significant higher renewal fees from poor compliance history.

As the spread of ACT liquor on licences is made up of predominantly small to medium sized venues (82 per cent) which pose less of a risk than larger premises, risk-based fees and the financial allocation of responsibility on the liquor industry for recovering the cost of the regulatory measures at $2.9 million per year need careful consideration to ensure an enduring market.

The review found that the market analyses clearly demonstrate that the small size and concentration of the ACT liquor market requires financial responsibility be spread across the entire industry in the ACT to create a sustainable market for everyone. A fee model which takes into account some additional risk factors, but at the same time, considers the complexities of a smaller market, and rewards less risky businesses is optimal.

Interim Options Paper on Fee Models

Based on submissions received and the outcome of liquor data analyses undertaken by the review, the Justice and Community Safety Directorate prepared and released an interim Options Paper on 8 July 2011 to illustrate the impact on various sectors of the industry of using some or all of the prescribed risk factors to calibrate sustainable fee models.

The Options Paper presented an alternative model of fees for off licensees and five optional models for on-licensees, using the risk factors set out in section 229(2) of the *Liquor Act 2010,* refer Appendix A.

The licensing fee model options have been calibrated using different combinations of risk factors to recover the direct regulatory costs from the liquor industry. Indirect regulatory costs from alcohol abuse and misuse such as medical, hospital, emergency services, domestic violence, court costs and lost productivity costs, are funded by the community.

The submissions and the liquor data analyses have identified that the current fee model can be made fairer based on the same principles that the Government used in allocating a monetary value to the overall regulatory costs.

When modelling fee options based on risk, there is much less certainty of outcome in a smaller market with more complex models. Small changes in market behaviour can have significant impact on the quantum of fees recovered.

Overall, the submissions confirm that a fairer approach should be calibrated to more appropriately assign responsibility to the various sectors of the ACT liquor industry.

(d) an analysis of the current fee structure for liquor permits

The review found that the current framework for liquor permit fees, which sets the same permit fees for non commercial and commercial permits, has the potential to discriminate unfairly against on and off licensees selling liquor for profit. The permit fee framework which has not been reviewed for many years, can operate to the detriment of a fair marketplace, as commercial permit holders who apply for permits to sell liquor for profit at one-off special events are in direct competition with other licensed premises.

The review recommends that the Government consider removing the $2,000 threshold for commercial permits and adopting a new proportionate fee model for commercial permits, similar to the fee model used for off licence premises, which calibrates fees in proportion to the amount of liquor purchased for sale.

The proportionate fee model would be based on the retail amount of liquor to be sold as the risk factor associated with the issuance of the permit.

The new commercial permit fees would be calibrated in proportion to the level of risk. This model would be a simple fixed fee model using one risk criterion: the amount of retail liquor intended to be sold at the event – proportionate to the degree of potential harm to the community.

The review also recommends that the Government consider indexing the existing $2,000 threshold for non commercial permits to raise the threshold to a contemporary level of activities used by permit holders involved in not-for-profit social activities. As the current fee level for non commercial permits is already indexed each year, the review recommends that non commercial permit fees remain unchanged.

KEY FINDINGS

Below is a list of the key findings from the review of liquor licensing fees:

- the six month period of review indicates that there has been little change in the number of liquor licences since the new liquor fees were introduced when compared with previous years;
- in December 2010, 636 licensees applied to renew their liquor licences compared with 592 in 2009/10; 612 in 2008/09 and 601 licensees in 2007/08;
- the current trend in the liquor industry indicates a relatively stable liquor market with a slight upturn in participation rates;
- 16 new liquor licence applications were received by the Office of Regulatory Services between 1 December 2010 and the end of May 2011;
- a large majority of the ACT liquor market is made up of small to medium sized businesses (82 per cent) of which nine per cent trade late past midnight and large businesses (18 per cent) of which 11 per cent trade late past midnight;
- more than half (58 per cent) of reported alcohol-related incidents occurred at nightclubs (34 per cent) and clubs (24 per cent) and nearly 80 per cent of incidents occurred at premises trading to 4am or 5am;
- 61 per cent of alcohol-related incidents occurred at larger venues with an occupancy loading of 351 patrons or more;
- the use of a dollar threshold or an occupancy loading factor is a useful measure to differentiate and reflect the lower risk of harm to the community from smaller licensees when determining liquor fees;
- that the Government consider adjusting the current fee framework to lower fees for smaller licensees;
- the risk factors set out in section 229(2)(b) of the *Liquor Act 2010* are relevant considerations to take into account when using a risk-based formula to determine liquor fees, apart from compliance history;
- that the Government consider re-evaluating the use of compliance history as a risk factor for determining liquor fees in the planned two year review of the liquor laws;
- that the Government consider removing the $2,000 threshold for commercial permits and adopting a new proportionate fee model for commercial permits which calibrates fees in proportion to the value of liquor purchased for sale;
- that the Government consider indexing annually the $2,000 threshold currently used to determine non commercial permit fees to take account of annual inflationary costs on permit holders;
- that the permit fees for non commercial permits remain the same, as they are already indexed each year to take account of annual inflationary regulatory costs.

1. INTRODUCTION

1.1 Why are we undertaking this review now?

As part of the new liquor regulatory framework, the Government undertook to review the new liquor laws, including the liquor fees, two years after their operation to evaluate their effectiveness at reducing the incidents of alcohol-related violence and anti-social behaviour in the Canberra community.

In November 2010, however, a disallowance motion on the liquor fees was moved in the Legislative Assembly by Mrs Vicki Dunne MLA. The motion was debated on 18 November 2010. The motion was amended to instead require a report on the impact of the new liquor fees on market participation in the liquor industry, an evaluation of the impact of using the $100,000 threshold test and additional risk factors for setting liquor licence fees. The Assembly resolved that the report should be tabled by 1 October 2011 and that the Attorney General take into account the results of the review in making a new fee determination.

The *Liquor Bill 2010* was introduced in the Legislative Assembly on 24 June 2010, passed on 26 August 2010, notified on 6 September 2010 and commenced operation on 1 December 2010. The *Liquor Act 2010* regulates the sale, supply, promotion and consumption of liquor in a way that minimises harm associated with the consumption of liquor, and takes into account the safety of the community. The *Liquor Act 2010* replaced the *Liquor Act 1975*.

The *Liquor Regulation 2010* was made on 19 October 2010 and notified on 20 October 2010. The Regulation makes statutory rules for the sale and supply of liquor under the *Liquor Act 2010*.

On 19 October 2010, the Attorney General made the Liquor Fees Determination under section 227 of the *Liquor Act 2010*, which was notified on 20 October 2010, and commenced on 1 December 2010. The new liquor licensing fees comprise two components: standard base fees for licensees who trade to midnight, and additional risk-based fees paid by those licensees who trade past midnight to either 2am, 4am or 5am. The new licensing fees offset costs for 10 new police officers and additional Office of Regulatory Services staff to administer and enforce the new liquor laws.

1.2 Terms of Reference

The Terms of Reference require that the Review Report be presented to the Assembly no later than 1 October 2011 and include:

(e) an analysis of the effect the 2010 fees determination has had on the number of licensed venues operating in the ACT and trading hours they adopt;
(f) an evaluation of impact of continuing to use $100,000 as the threshold test for the "annual liquor purchase", noting it has not been reviewed for at least 10 years; and

(g) an analysis of the impacts of expanding the 2010 fees determination to take account of the full list of seven risk factors listed in section 229(2)(b) of the *Liquor Act 2010*".
(h) an analysis of the current fee structure for liquor permits.

The Attorney General in making any new fee determination, take into account the results of the review.

In consultation with the Liquor Advisory Board, the Minister agreed to include in the Terms of Reference an analysis of the current fee structure for liquor permits, as these fees have not been reviewed for many years and may give some traders an unfair market advantage.

1.3 Guiding Principles

The review set out to collect and evaluate data held by a number of key ACT Government agencies whose activities involve dealings with liquor. The Government agencies included the Office of Regulatory Services (ORS), ACT Policing, the ACT Civil & Administrative Tribunal (ACAT) the ACT Courts and ACT Treasury Directorate.

The review undertook a comparative assessment of liquor data for the years 2007 – 2011 and compared the results objectively.

The liquor data collected and analysed related to the number of liquor licensees operating in the market each year, the type of liquor licence issued, the location of each licensed premises, the trading hours of premises, the number of infringement notices issued at licensed premises, the number of alcohol-related incidents where police were required to attend at a licensed premises and the number of cases completed or pending before the Tribunal or the Courts.

In response to submissions received to the review and the liquor data analyses, a number of liquor fee models were developed and calibrated to achieve the requisite $2.9 million regulatory costs for industry consultation.

1.4 Current Liquor Licensing Fee Structure

1.4.1 Liquor (Fees) Determination 2010 (No 1)

On 19 October 2010, the current liquor licensing fees were determined by the Minister in a Fees Determination made under section 227 of the *Liquor Act 2010.* The Fees Determination was notified on 20 October 2010 and commenced on 1 December 2010.

The new liquor licensing fees are made up of two components: a standard fee and a risk-based fee. The standard fee uses a $100,000 threshold to differentiate between low risk and high risk licensees. The standard fee which is paid by all licensees, is currently set at $1,638 for small licensees who purchase liquor for sale below $100,000 and $3,661 for those who purchase liquor for sale above $100,000.

Only licensees who trade past midnight to 2am, 4am or 5am pay the risk-based component of the licensing fee. The risk-based component uses evidence-based risk factors of trading hours and volume of liquor sold, as key fee determinants and is proportionate to the level of risk.

Licensees who trade past midnight pay additional increments of $5,000 and $10,000 to trade to 2am and 4am respectively, plus an additional increment of $2,500 to trade to 5am.

The current fee model commenced on 1 December 2010 on a cost recovery basis to recover from the liquor industry approximately $2.9 million per year to fund the annual regulatory costs, including the new cost of 10 new police officers and additional staff for the Office of Regulatory Services to address alcohol-related violence and anti-social behaviour (@ $1.6 million per year over four years).

In December 2010, 636 licensees applied to renew their liquor licence for 2010/11, noting that some licensees when renewing their licences, chose to pay by quarterly instalments throughout the year.

The Office of Regulatory Services (ORS) has advised that based on actual cash received to 24 June 2011 ($2.66 million) and predicted revenue from final quarterly payments ($244,000), it expects to receive approximately $2.9 million this licence period (1 December 2010 – 30 November 2011) on target to meet the $2.9 million quantum of regulatory costs.

Trading Times and Occupancy Loadings

Occupancy Loading	1-80	81+
12am	$3661	$3661
2am	$4661	$8661
4am	$4661	$13661
5am	$4661	$16161

1. *The current fee model uses the $100,000 threshold (the table above assumes the higher standard fee of $3,661).
   *This model also uses the current $1,000 flat late night fee for venues with an occupancy loading of 1-80.

2. CONSULTATION

2.1 The consultative process

On 12 April 2011, the Attorney General opened the inaugural meeting of the Liquor Advisory Board and briefed them on the key objectives of the Liquor Fees Review and invited comments on the draft terms of reference for the review. The Board recommended and the Attorney General agreed to include in the terms of reference an analysis of the current fee structure for liquor permits.

On 21 April 2011, the Attorney General issued terms of reference for the Liquor Fees Review and issued a press release inviting submissions from the public, the liquor industry and the Liquor Advisory Board.

The Justice and Community Safety Directorate (JACS) wrote to all liquor licensees on 21 April 2011 advising them that the Directorate was undertaking a review of liquor licensing fees and inviting them to lodge a submission to the review.

2.2 Submissions to the Liquor Fees Review

The Attorney General publicly released the submissions to the Liquor Fees Review on 8 June 2011.

The Liquor Fees Review received 22 submissions from the public, liquor stakeholders and the Greens, of which 13 (59 per cent) were from smaller licensees and three from larger licensees.

Submissions were received from three industry associations: the Australian Hotels Association, ClubsACT and Master Grocers Australia. The peak body for the alcohol and other non-government drug sector, the Alcohol and other Drugs Council of Australia, and the ACT Greens provided a submission to the review. One submission was received from a member of the public. A list of people who made submissions is at Appendix B and can be accessed on www.justice.act.gov.au.

The majority of submissions came from smaller licensees who primarily advocate for a fee structure that requires them to pay less than what they are currently paying. The submissions raise a range of issues and suggestions around the level of fees, what risk factors should apply, licensing categories and the $100,000 threshold for liquor purchases for sale. For example, the Australian Hotels Association (AHA) noted that the quantum of increase in annual fees had put significant pressure on business and advocated against further fee increases.

The AHA wants the $100,000 threshold removed and believes that all licensees should be equally committed to meeting obligations under the liquor laws. It also wants the 80 or less occupancy loading category removed arguing that the encouragement of a small bar sector within the industry through licence concessions presents an unfair market advantage for these venues. The AHA is opposed to using compliance history as a risk criterion.

In comparison, ClubsACT believes that the current fee structure does not sufficiently distinguish between different licence categories in terms of risks posed relative to other venues. ClubsACT advocated that the current level of fees not become the baseline for further increases in years to come and that the Government's objective should be to gradually reduce fees to lessen the burden on the industry.

Master Grocers Australia (MGA), which represents a number of off licensees in the ACT, does not believe that the current licensing fee structure, based on risk assessed through the gross wholesale price a retailer has paid for liquor in the previous year, is fair to small and medium sized businesses, which already compete with larger chains.

MGA claims that the new fee structure has had a negative impact on its members, including the need to review staff hours. MGA argues that the current structure favours larger operators rather than family businesses, which may own more than one smaller business, and suggests that a further purchase category be considered to cover off licensees who turn over more than $1million up to $2million a year to reduce the fee down to $5,000. MGA would also reduce the lower fees in the $2m - $3m categories and would raise the $3m plus category to $20,000. MGA contended that the risk factors should also look at compliance history relating to off licensees, as there is currently no incentive to be a good operator.

Industry self regulation and liquor accords

The MGA advocated for the Government to adopt a different regulatory approach to the imposition of liquor licensing fees on the industry. It recommended that consideration be given to the industry, together with the community, taking responsibility for the development of a self-regulatory code of conduct and educating customers through activities such as local and regional liquor accords.

The review notes that during the consultation process on the development of the new liquor laws, the Government gave careful consideration to alternative methods of regulating the liquor industry, including using self-regulatory liquor accords and codes of conduct where industry would work with the regulator and ACT Policing to develop a code of conduct for the licensed hospitality industry.

Other key stakeholders, however, noted the difficulty with maintaining participation in accords, and their positions are supported to a degree by the ACT's past experience with attempts to institute voluntary liquor accords using self-regulatory codes of conduct.

The ACT's experience in Civic and Manuka in attempting to establish and maintain community based voluntary liquor accords indicated that they required a dedicated resource commitment because the commercial partners tended to lose commitment after six to 12 months resulting in non-attendance at forums and a loss of corporate knowledge with staff turnover.

While liquor accords and active participation by licensees are welcome additions to the ACT's liquor regulatory efforts, ACT experience shows that adequate and enforceable legislation is a more reliable and effective way of regulating the liquor industry.

The submissions received were greatly appreciated and have informed the review and contributed to its findings.

While there is a not unexpected diversity of views from stakeholders from larger businesses compared to small and from on licensees to off licensees, what was evident in the responses is the general acceptance by the liquor industry of its responsibility to contribute to the funding of the regulatory costs. This is pleasing.

The submissions and the liquor data have identified that the current model can be made fairer based on the same principles that the Government used in allocating a monetary value to the overall regulatory costs.

Overall, the submissions confirm that a fairer approach should be calibrated to more appropriately assign responsibility to the various sectors of the ACT liquor industry.

2.3 Release of Interim Options Paper

On 8 July 2011, JACS released an *Options Paper on Liquor Licensing Fee Models* developed from suggestions made in submissions to the review and liquor data analyses over a six month period from1 December 2010 to 31 May 2011 and based on issues raised by the Liquor Advisory Board and at Ministerial roundtables. The fee model options are illustrative of the impact on various sectors of the industry from using different risk factors to determine fees and were released for discussion with the ACT liquor industry.

In week commencing 11 July 2011, the Commissioner for Fair Trading from the Office of Regulatory Services sent a mailout to liquor licensees informing them about the release of the Options Paper, which they could access via the ORS website.

In July 2011, JACS contacted those people who had made submissions to the Review of Liquor Licensing Fees informing them about the release of the Options Paper and providing details of where they could access the Options Paper on the JACS website at www.justice.act.gov.au.

2.4 Ministerial roundtable consultations

On 19 April 2011, as part of the broad consultative process, the Attorney General wrote to a number of key liquor stakeholders inviting them to attend two roundtable meetings to discuss liquor fees.

The first roundtable meeting was held on 12 May 2011 and the second meeting was held on 26 July 2011 at the ACT Legislative Assembly.

These meetings gave stakeholders an opportunity to discuss with each other and the Minister a number of liquor related issues, including liquor fees.

Responsible Service of Alcohol Training

One issue unrelated to the review raised at the first roundtable was the time to undertake responsible service of alcohol training.

To assuage industry concerns about there being sufficient time for its members to undertake their responsible service of alcohol training, the Minister agreed to extend by six months the stay of commencement of Division 8.1 (Responsible service of alcohol) offences in the *Liquor Act 2010*, which will now commence on 1 June 2012, instead of 1 December 2011. Given the degree of uncertainty around the exact number of people in the industry still needing to undertake the course by the end of the year, it was prudent to extend the period for a further six months.

The Regulation was made and notified on 4 August 2011.

Anti-smoking laws and liquor laws

Clarification about the relationship between the new anti-smoking laws and how they impacted on liquor licensees and the interaction between the smoking legislation and the liquor legislation was also discussed at the roundtable. The Commissioner for Fair Trading subsequently distributed an advice from the Justice and Community Safety Directorate responding to these issues.

That advice made clear that the Commissioner for Fair Trading is responsible for enforcement of the offences in the *Smoke-Free Public Places Act 2003* and the occupational disciplinary provisions in the *Liquor Act 2010*. The two pieces of legislation are complementary and designed to ensure that licensees take responsibility for ensuring that patrons who frequent licensed premises do not smoke on the premises (except where they have opted for a designated outdoor smoking area).

It was also noted that the new smoking laws clearly acknowledge that licensees are not able to and should not force people to stop smoking at their premises by including legal defences to ensure that licensees are not treated unfairly. For example, a licensee has a defence if they ask a person to stop smoking and they refuse to stop, and a licensee can also raise a defence that they were not aware and could not reasonably be expected to have known that a person was smoking on the premises.

Subsequent to the roundtable meetings, the key liquor stakeholders provided further feedback and detailed comments on liquor fee options. On 26 July 2011, the Master Grocers of Australia provided its preferred model with adjustments to the thresholds for off licensees for Government consideration. On 5 September 2011, the Australian Hotels Association and ClubsACT met with the Attorney General and provided their preferred model which raises a range of thresholds and risk factors on 7 September 2011. Both of these submissions are at Appendix C.

3. LITERATURE REVIEW

3.1 Statistical Evidence on Alcohol-related Harms

Of more recent times, there has been a growing body of research into the social and economic costs of alcohol abuse in Australia given the increasing incidence of alcohol-related violence and anti-social behaviour happening in Australian communities.

3.1.2 The Australian Institute of Criminology (AIC)

In May 2011, the AIC, through the Drug Use Monitoring in Australia (DUMA) program, released a quarterly report on statistics on offenders' consumption of alcohol before committing assaults or disorderly conduct offences.

Offenders were asked questions about their alcohol use as part of a coordinated Operation Unite program undertaken by Australian and New Zealand police on 17 and 18 December 2010. Operation Unite is a targeted policing initiative which uses a range of strategies including a highly concentrated and highly visible policing presence around entertainment precincts during peak trading hours on Friday and Saturday nights.

The AIC Report provides further evidence that a high level of alcohol consumption has a major impact on offending behaviour, particularly at weekends.

The AIC's national statistics on alcohol and assault on Friday and Saturday nights reveal that of the 170 sample of assault offenders who had been drinking before they committed the assault, 30 per cent had been drinking at on-licensed premises and that half of the assault offenders surveyed had consumed their last drink at a residential location.

The report showed that it was younger males, aged between 18 and 25, who were more likely to have been drinking at on-licensed premises. The statistics on alcohol and disorderly conduct on Friday and Saturday nights showed a similar result.

3.1.3. Australian Alcohol Education and Research Foundation (AAERF)

In 2010 the AAERF released a report into the hidden harms associated with alcohol use. The report focused on the costs of alcohol's harm to others which was estimated at $14.2 billion annually. This quantum included costs experienced by those living with or affected by the alcohol of someone else such as out of pocket expenses for lost or damaged property, lost wages, hospitalisations and child protection costs.

3.1.4. City of Sydney Council

The City of Sydney Council commissioned research by the National Drug and Alcohol Research Centre (NDARC) to demonstrate cumulative impacts of increasing the number of late night trading venues in existing areas of high density liquor establishments.

NDARC's research was consistent with evidence from the current literature that rates of alcohol related harm are associated with a number of factors: increased density of licensed premises; longer trading hours; the type of premises operating and an increase in net availability of alcohol via more licences irrespective of their type.

3.1.5. Joint Australian Universities

In 2008, a report by Macquarie University, University of Queensland and the University of New South Wales titled *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05* found that the total social cost of alcohol abuse accounted for $15.3 billion annually. A breakdown of this quantum found that the social tangible cost of crime from alcohol abuse accounted for $1.61 billion, the cost of health accounted for $1.97 billion and the cost of road accidents accounted for $2.2 billion.

3.2 Other risk-based liquor licensing fee models

Currently in Australia, only Victoria, Queensland and the ACT have risk-based liquor licensing fee frameworks. Other jurisdictions use standard fixed liquor fee frameworks.

3.2.1 Victorian liquor licences

In Victoria, a base fee is set depending on what type of licence is sought with additional amounts paid for late night trading, and additional fees imposed on licensees who have been found to be in breach of the Victorian liquor laws during the preceding year.

In Victoria, for late night (general/hotel) and late night (on-premises) licences the fee is multiplied by a factor of up to four which increases with the occupancy loading of the licensed premises. For example, if the Victorian model was applied to a particular ACT nightclub which has an occupancy loading of 799 and trades to 4am and it was the recipient of three infringement notices in the previous year for serving intoxicated people or minors, that nightclub would pay $33,787 to renew its licence.

In Victoria while clubs only pay $795 and no late night trading component for a licence, if they receive even one infringement notice in the previous year, they must pay an additional fee which can be multiplied by as many as four times resulting in a maximum of $28,620 licence renewal fee.

In Victoria any large venue (other than a club) with a record of violations of liquor laws could pay up to approximately $55,000 in licensing fees the following year on renewal of a liquor licence.

3.2.2 Queensland liquor licences

Queensland also adopts penalties for violations of liquor laws. A licensee who receives one or more infringement notices for particular offences is liable to pay an extra $5,000 at renewal.

If the Chief Executive decides to take disciplinary action with regards to a liquor licence or the licensee was convicted of an offence, the licensee is liable to pay an extra $10,000 at renewal, whereas a licensee who is convicted of a supply offence which contributed to a death or serious assault must pay an additional $20,000 at renewal time.

4. LIQUOR DATA ANALYSES

4.1 Effect of New Liquor Fees on ACT Liquor Market

4.1.1 ACT Liquor Market

In April 2011, the ACT had 640 liquor licences made up of 446 on licences and 194 off licences. On-licensees sell liquor for consumption on the premises and off licensees sell liquor for consumption off the premises.

As part of the new liquor laws since 1 December 2010, both on and off licensees are now required to provide the Commissioner for Fair Trading with information detailing the exact dollar amount of liquor purchased for sale in the preceding financial year. The Commissioner uses this information to determine the category of licence fee for each on and off licence.

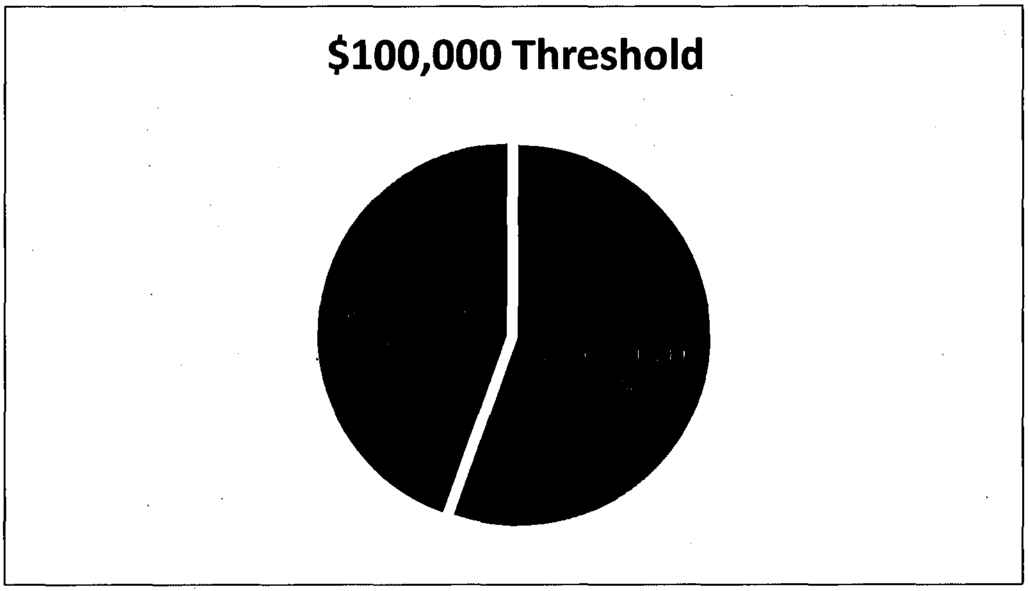
In 2009/10 the value of liquor purchases in the ACT reported to the Commissioner for Fair Trading exceeded $200 million. This amount reflects both the wholesale and retail value of liquor purchased for sale in the ACT. Liquor purchase information provided by off licensees may also be captured by on licensees who purchase wholesale liquor through an ACT off licensee.

4.2 Standard fee

Currently the Commissioner for Fair Trading uses a $100,000 threshold to calculate the standard component of the licensing fee. A licensee who purchases liquor for sale under $100,000 pays a standard fee of $1,638. A licensee who purchases liquor for sale $100,000 or over pays $3,661.

Graph 1 below shows that the majority of licensees purchase liquor for sale under $100,000 a year. The AHA recommended that the Government remove the threshold and the Greens recommended that the Government increase the $100,000 threshold to reflect contemporary business models and that the threshold level be consumer price indexed (CPI) each year. Taking an average of two per cent CPI over 10 years (the time since the threshold was first introduced) would raise the current $100,000 threshold to $120,000.

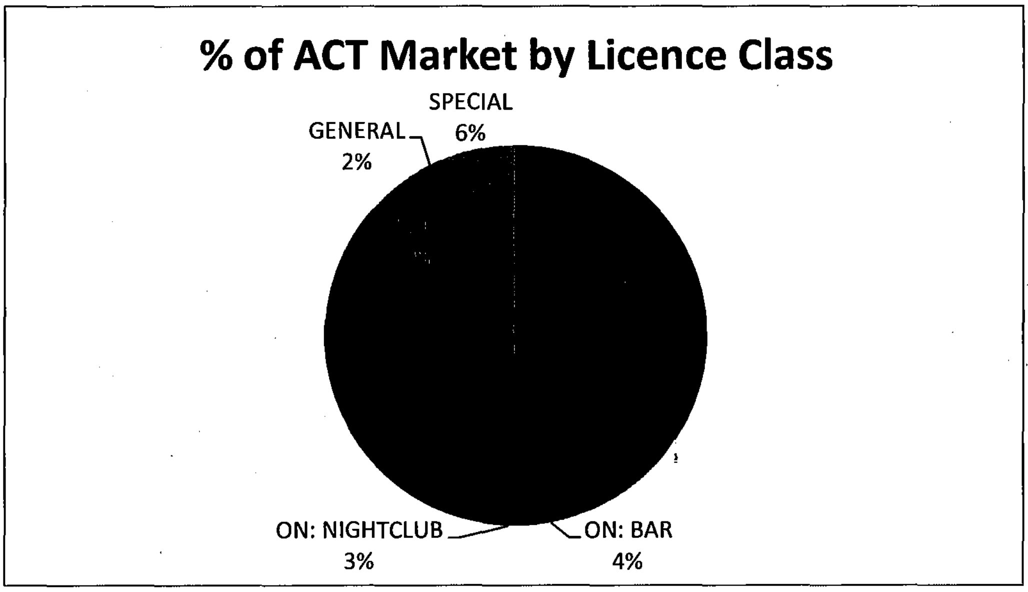
As there were seven venues which purchase liquor for sale between $100,000 and $120,000, raising the threshold level to reflect contemporary levels of business activity would have minimal impact on the cost recovery of the quantum of regulatory costs of $2.9 million per year.



Graph 1

4.3 Break-up of Liquor Licence Classes

Graph 2 below shows that of the total 640 ACT liquor licences in April 2011, off licences accounted for 30 per cent of the liquor market (194 licences) and on licences accounted for 70 per cent of the market (446 licences). Of the 70 percent of on licences, restaurant/cafe licences accounted for 45 per cent, clubs accounted for 9.5 per cent, special licences accounted for 6.5 per cent, bar licences accounted for 4.5 per cent, general licences accounted for 2 per cent, and nightclub licences accounted for 2.5 per cent of the total market.



Graph 2

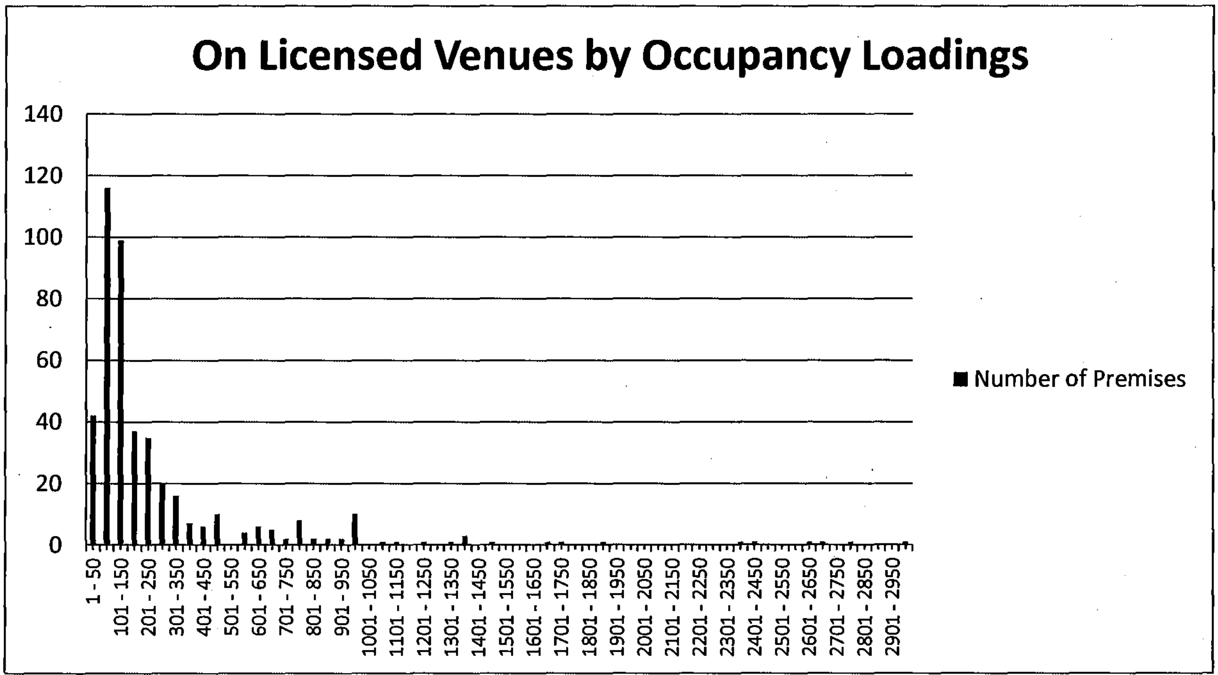
4.4 On Licensees (On, Club, General, Special)

From the on licence subclasses, there were 287 restaurants and cafes, 17 nightclubs, and 28 bars. There were 61 clubs, 12 general licences (mainly hotels), which sell liquor on and off the premises and 41 special licences which authorise the sale of liquor on the premises and in the places specified in the licence (usually at places other than the premises). In the past, ORS also used special licences where conditions were needed, as these could not be included on other licences under the old Liquor Act. With the change in definition in the new *Liquor Act 2010*, some former special licences have been reclassified to hold an on licence or a general licence.

For the six month period between 1 December 2010 and end of May 2011, there were 16 applications for new licences and 9 licensees applied to transfer their licence to another party in comparison with 11 transfers in 2009/10, 10 transfers in 2008/09 and 13 transfers in 2007/08.

Of the 16 applications for new licences, there were 10 on licence subclass applications, two general licence applications, one special licence application and three off licence applications. Since 1 December 2010, six licensees surrendered their licence compared with 10 licensees in 2009, 19 licensees in 2008 and nine licensees in 2007. This would suggest that the new liquor fees have had little impact on market participation rates since they commenced in December 2010.

Graph 3 below shows that the vast majority of on licensees (82 per cent of licensed venues) traded with an occupancy loading between 1 and 350 patrons made up of micro, small and medium sized businesses. There were 42 venues with an occupancy loading of 50 patrons or less. There were 215 venues with an occupancy loading between 51 and 150 patrons and 108 venues with an occupancy loading between 151 and 350 patrons. There were 81 venues with an occupancy loading above 350 patrons.



Graph 3
Using occupancy loading in units of 50.

4.5 Break-up by Size

Graph 4 below shows the percentage of the on-licensed market which is made up of micro sized venues (occupancy loading 1-80), small venues (81-150), medium venues (151-350) and large venues (350+). 82 per cent of on licensees who sell liquor for consumption on the premises operate small to medium sized businesses in the ACT liquor market.

Liquor Market - % of On Licence Venues by Size

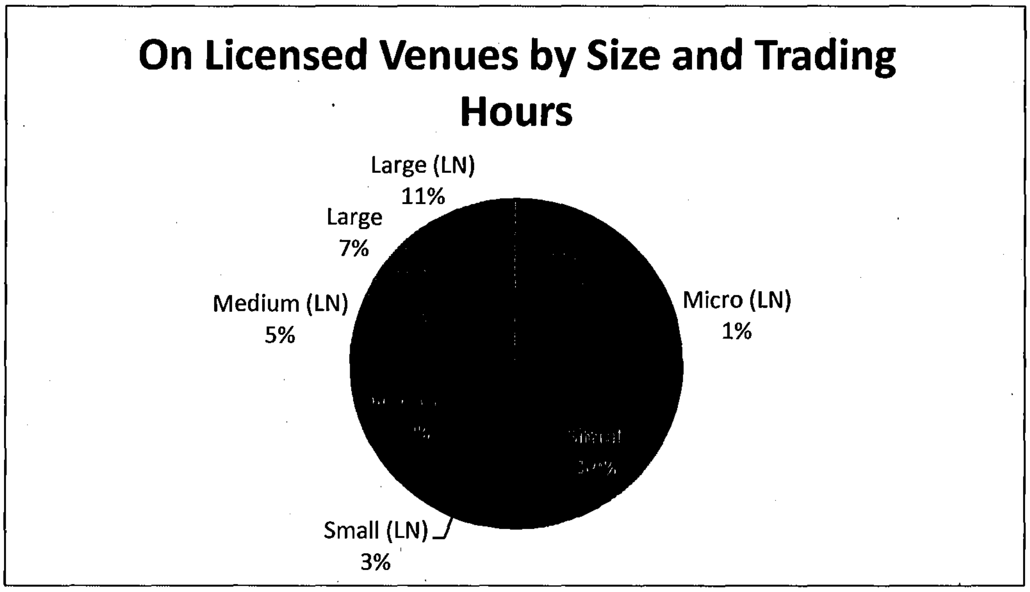
Graph 4

4.6 Break-up by Size and Trading Hours

Graph 5 below shows that of the 21 per cent of micro venues with an occupancy loading of up to 80 patrons or less, only four per cent (or one per cent of the on-licensed market) traded late past midnight. Of the 37 per cent of smaller venues with an occupancy loading between 81 and 150 patrons, only eight per cent (or three per cent of the on-licensed market) traded late past midnight. Of the 24 per cent of medium sized venues with an occupancy loading between 151 and 350 patrons, only 20 per cent (or 5 per cent of the on-licensed market) traded late past midnight.

Of the 18 per cent of large venues with an occupancy loading above 350 patrons, 63 per cent traded late past midnight (or 11 per cent of the on-licensed market). Of the total number of on licensees (446), only 20 per cent traded late past midnight of which nine per cent is made up of micro, small and medium sized venues. The liquor data demonstrates a market concentration of predominantly small to medium sized venues (82 per cent) in comparison with 18 per cent of larger venues of which 11 per cent trade late. This suggests that apportioning the majority of licensing fees to the high risk venues using multiple risk factors would be difficult to predict and sustain.

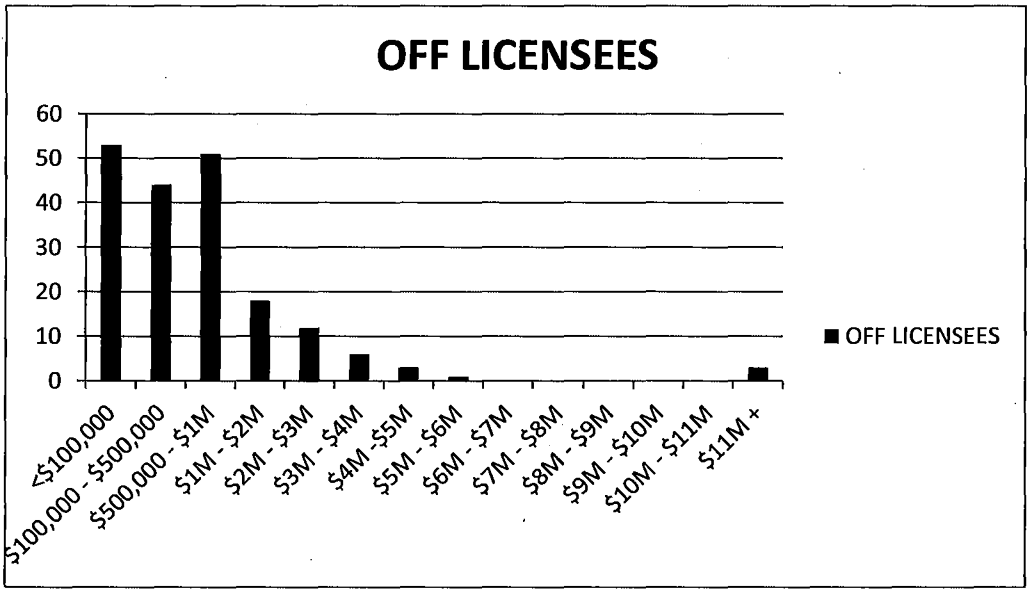
Graph 5 below shows that a liquor licence fee model using risk factors such as type of licence or venue (nightclub or restaurant), nature of activities (primary purpose sale of liquor), trading hours, occupancy loading and compliance history to determine equitable fees across the ACT liquor industry would result in only eleven per cent of licensees financing the vast majority of regulatory costs.



Graph 5

4.7 Off licensees

In April 2011 there were a total of 194 off licensees. Graph 6 below shows the spread of off licensees by the amount of liquor purchased for sale in the ACT. 77.5 per cent of off licensees in the ACT purchase liquor for sale to the value of $1 million or less, 20.5 per cent of off licensees purchase liquor for sale between $1 million and $5 million and 2 per cent of off licensees trade over $5 million.



Graph 6

5. CHAPTER THREE – MARKET PARTICIPATION 2011

5.1 Liquor Licensees

In December 2010, 636 licensees applied to renew their liquor licences compared with 592 in 2009/10, 612 in 2008/09 and 601 licensees in 2007/08. Graph 7 below shows the licence renewal rates from 2007 to 2011.

Using statistical data to compare licences issued in one year with licences issued in another year is of only limited value. Even though in one year the Government may receive and approve a number of liquor licence applications, at the same time, there is always a number of licences that will lapse throughout the year. This means that the use of point-in-time data to indicate liquor licences fluctuates throughout the year.

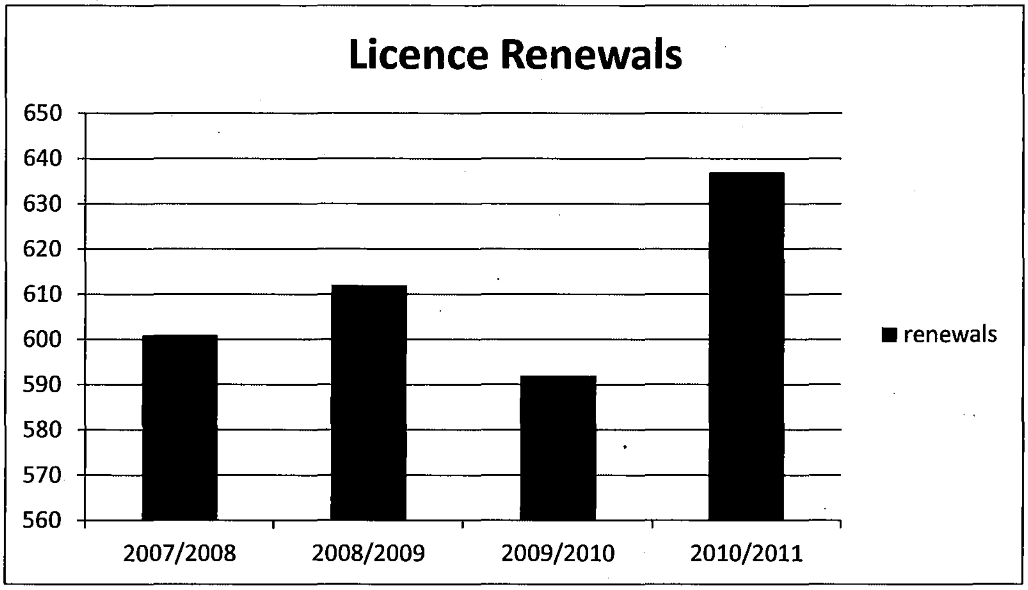
It should also be noted that the review's data is only based on a six month period. For example, while there were 652 licences approved in 2009/10, in April 2011, there were 640 licence applications received (renewals and new applications) since 1 December 2010.

The number of licence applications received now does not take into account the number of new applications that may be lodged and approved over the next six months.

The most reliable category to compare across the years is the number of renewals at the end of each year. The use of renewal data is an accurate tool to indicate annual market participation, as it indicates the actual number of licensees operating in the market at 1 December each year, when licensees are required to renew their licences.

Graph 7 below shows an increase in the number of licensees choosing to continue to participate in the liquor market in 2011, which may suggest that the impact of the new liquor fees on the number of participants in the industry has been small.

A number of submissions, however, suggest that smaller operators may have experienced some financial hardship as a result of the new fee structure. Only a small number of licensees chose not to renew their licences for this year, similar to previous years, which may be attributed to normal attrition rates. In comparison with previous years, the market trend appears to suggest that there are more licensees staying in the liquor industry.



Graph 7

The review was unable to compare the subclasses of on licences for restaurants, bars and nightclubs with past years, as there was no provision in the former Liquor Act for these subclasses of on licences. The review did, however, compare the number of on licence categories for clubs, generals (hotels) and special licences between 2007 and April 2011, refer Table 1 below.

CLUBS			
YEAR	RENEWALS	NEW	TOTAL
2007/08	64	3	67
2008/09	66	4	70
2009/10	64	3	67
2010/11	61	0	61
GENERAL			
YEAR	RENEWALS	NEW	TOTAL
2007/08	13	0	13
2008/09	12	0	12
2009/10	12	0	12
2010/11	15	2 (1 pending)	17
SPECIAL			
YEAR	RENEWALS	NEW	TOTAL
2007/08	42	6	48
2008/09	39	2	41
2009/10	38	3	41
2010/11	29	1	30

Table 1

Table 1 shows that there was a slight decrease in the number of club renewals for 2011, yet renewals went up for general licences (hotels). The number of special licences decreased this year due to the change in the definition of a "special licence" in the *Liquor Act 2010*. Previously a special licence authorised the sale of liquor on the premises and in the places specified in the licence and conditions could be imposed.

The special licence category was used by some premises to sell liquor at places other than the premises (with approval and with conditions). ORS also used special licences where conditions were needed, as these could not be included on other licences under the old Liquor Act. With the change in definition, there were a number of holders of special licences that were better placed to hold a different type of licence, such as an on licence or a general licence. This explains why the number of special licences dropped from 38 in 2010 to 29 in 2011. [1]

[1] Note: the figures in this table only represent a proportion of the total figures and are incomplete.

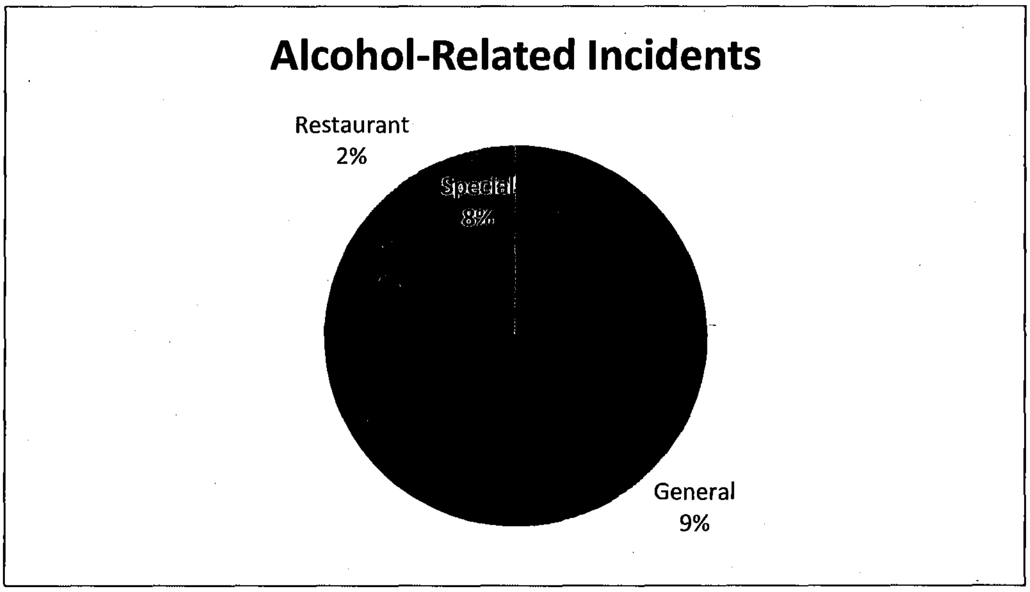
6. ALCOHOL-RELATED INCIDENT DATA

6.1 ACT Policing

ACT Policing provided data on the number of alcohol-related incidents which required police attendance at the licensed premises. The data from ACT Policing indicates 931 alcohol-related incidents requiring police attendance occurred at licensed venues across Canberra over the six month period from 1 December 2010 to end of May 2011.

6.2 Break-up of incidents by licence type

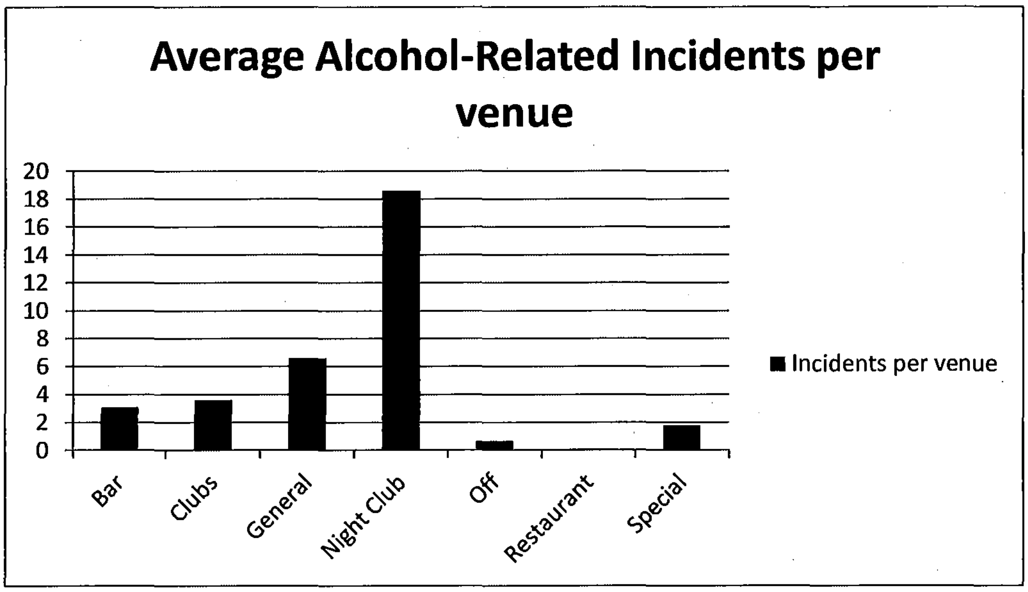
Graph 8 below shows the percentage break-up of the 931 incidents by licence type. More than half the incidents (58 per cent) occurred at night clubs (34 per cent) and clubs (24 per cent).



Graph 8

6.3 Average incidents at venue type

Graph 9 below shows the average number of alcohol-related incidents occurring at each type of venue. For example, each nightclub of which there were 17 might expect to have on average 18.6 incidents in a six month period in comparison with each club of which there were 61, which might expect to have 3.6 incidents and each restaurant might expect to have 0.1 incidents in the same period.

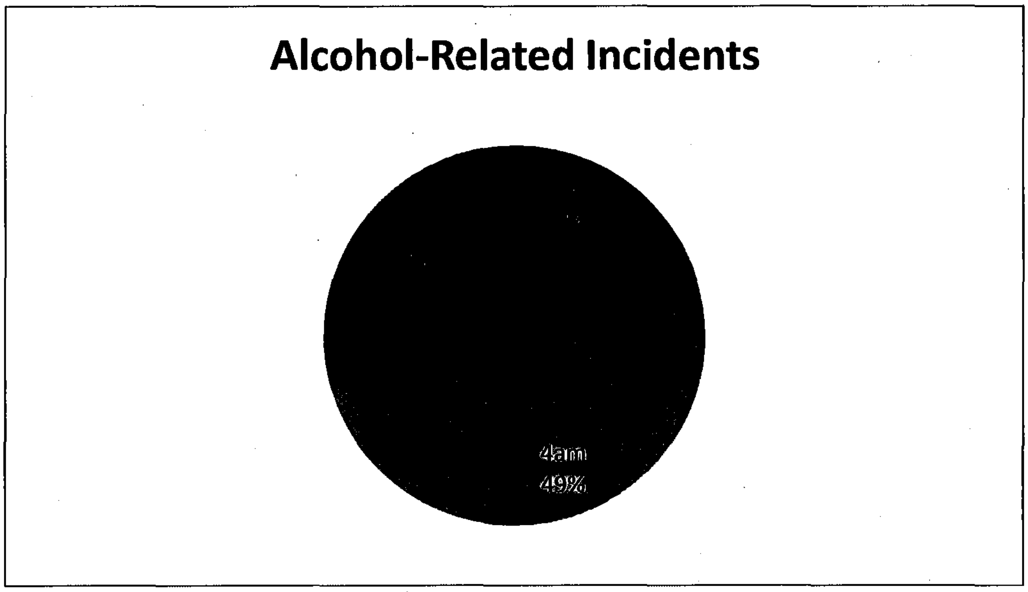


Graph 9

6.4 Break-up of incidents by trading times

Graph 10 below shows the percentage break-up of the 931 alcohol-related incidents by trading times. 13 per cent or 121 incidents occurred at premises trading to midnight. Eight per cent or 74 incidents occurred at premises trading to 2am. 49 per cent or 456 incidents occurred at venues trading to 4am. 30 per cent or 279 incidents occurred at premises trading to 5am.

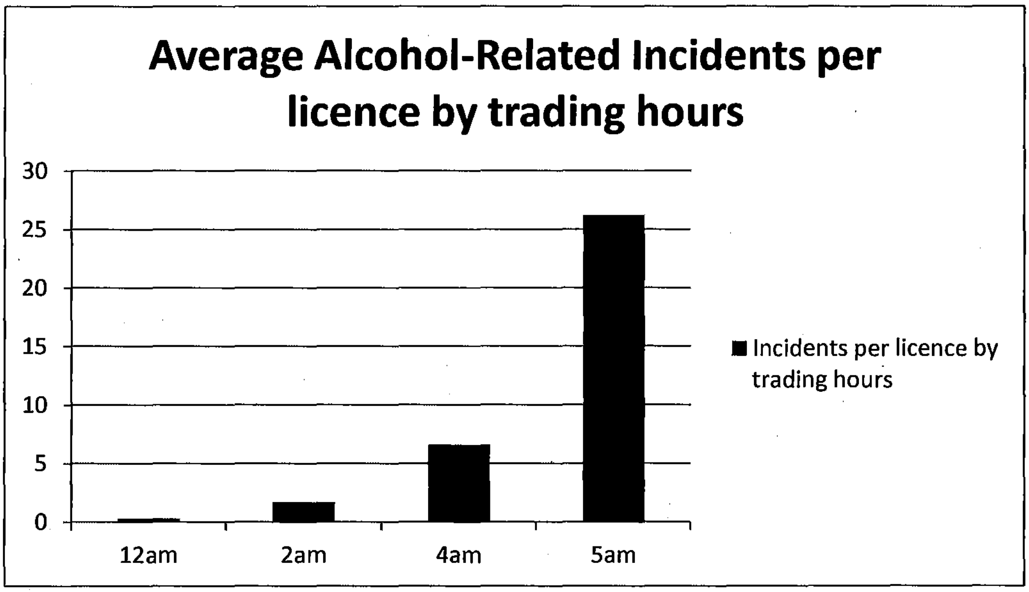
79 per cent of alcohol-related incidents occurred at premises trading to 4am or 5am.



Graph 10

Graph 11 below shows that venues trading to 2am might expect to have on average 1.7 incidents per licensed premises in a six month period, venues trading to 4am might expect to have on average 6.6 incidents per licensed premises, and those trading to 5am might expect to have on average 26.2

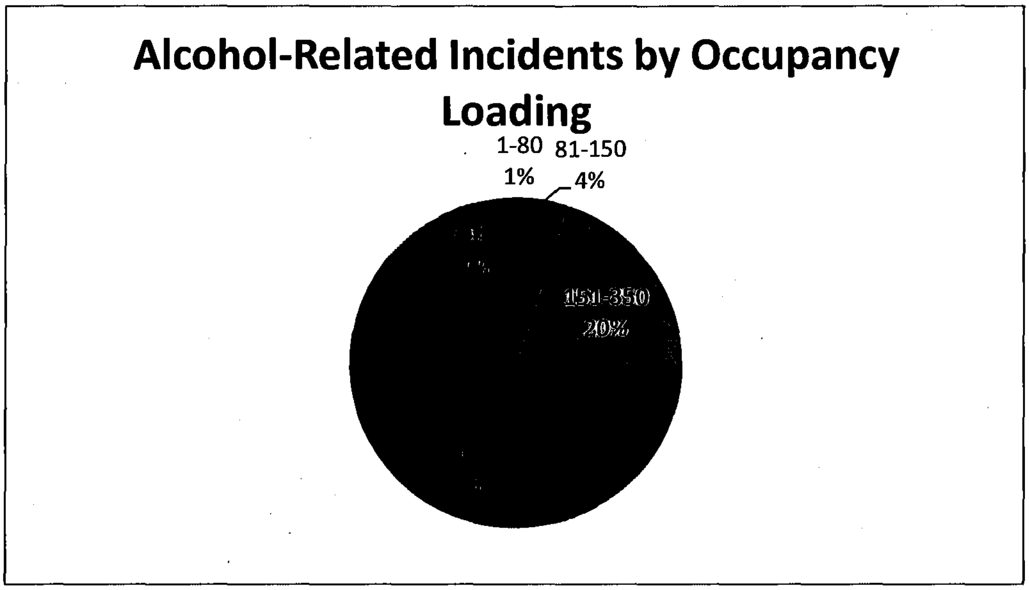
incidents per licensed premises for the same period. This compares with a venue trading to 12am which might expect to have 0.3 incidents per licensed premises or approximately one incident every three venues over six months. This suggests that the later you trade the higher the risk that an alcohol-related incident will occur.



Graph 11

6.5 Break-up of incidents by occupancy loading at each premises

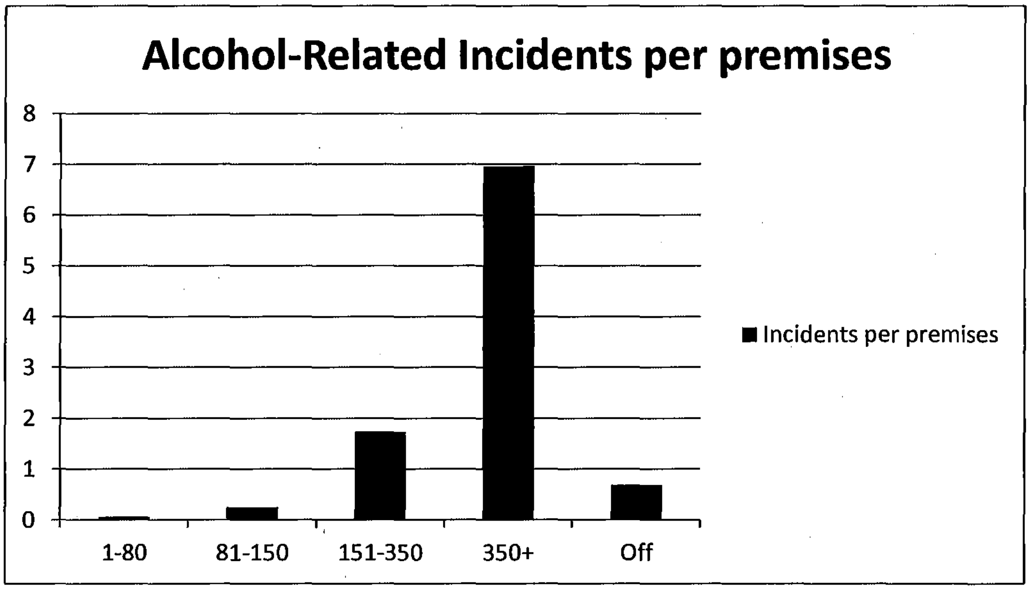
Graph 12 below shows the break-up of alcohol-related incidents across the categories of premises by occupancy loading. 61 per cent of alcohol-related incidents (or 568 incidents) occurred at premises with an occupancy loading of 351 patrons or more. 92 per cent of these (that is, 523 incidents) occurred at premises that trade past 12am. 20 per cent of alcohol-related incidents (or 186 incidents) occurred at premises with an occupancy loading of between 151 and 350. 14 per cent of alcohol-related incidents (or 130 incidents) occurred at off licensed premises. A majority of alcohol-related incidents occurred at larger premises. This suggests that the higher the occupancy loading for a premises, the higher the risk of harm to the community.



Graph 12

6.6 Average break-up of incidents by premises

Graph 13 below shows the average number of incidents per premises by occupancy loading. A micro venue might expect to have on average 0.06 incidents per venue, or 1 incident every 17 venues over six months. It could be expected that small premises would have 0.25 incidents per venue, or 1 incident every four venues over six months. Also, the data shows that there could be 0.7 incidents per off licensee and 1.75 incidents per medium licensee over six months. This compares with seven incidents per large venue over six months.



Graph 13

The above graph suggests that smaller licensed premises present less risk of harm to the community in comparison with larger licensed premises.

7. $100,000 THRESHOLD

7.1 Standard liquor licensing fee

The review has been asked to evaluate the merits of continuing to use $100,000 as the threshold test for the "annual liquor purchase", noting it has not been reviewed for at least 10 years.

Currently ACT liquor fees are determined by the Attorney General using a $100,000 threshold to determine the standard component base fee of the new liquor licensing fees.

Prior to the introduction of the new liquor risk-based licensing fees on 1 December 2010, the standard fee was the only liquor fee paid by all liquor licensees for the commercial privilege of being granted a licence to sell liquor in the marketplace.

The standard fee is made up of two components. A licensee who purchases liquor for sale under $100,000 pays a lower standard fee of $1,638. A licensee who purchases liquor for sale for $100,000 or more pays a higher standard fee of $3,661. Accordingly, the differential cost reflects the lower and higher volume of liquor being sold in the marketplace.

The Greens recommended that the Government increase the $100,000 threshold to reflect contemporary business models and that the threshold level be indexed each year. Taking an average of two per cent CPI over 10 years (the time since the threshold was first introduced) would raise the current $100,000 threshold to $120,000. Indexing the threshold acknowledges annual inflationary costs on licensees.

Conversely, the Australian Hotels Association advocated that the $100,000 threshold be removed on the basis that venues involved in the sale of alcohol regardless of size are engaged in a licensable activity which carries an element of risk. The AHA believes that all licensees should be equally committed to meeting obligations under the legislation.

Historically, the use of the $100,000 threshold to determine licensing fees was adopted to differentiate between small and large sellers of liquor by apportioning a smaller fee for those who sold less liquor in the marketplace.

As the majority of licensees in the past paid the lower fee, the level of the threshold has served the industry well. However, because the old liquor fees did not differentiate between on and off licensees, a small number of on licensees and some off licensees who paid the higher fee may have benefited unfairly from the split, if they were purchasing significant amounts of liquor for sale over the $100,000 threshold. For example, an off licensee who purchased $1 million of liquor for sale would pay the same fee as a smaller on licensee who sold $150,000 of liquor.

Data analysis for the six month review period confirmed that 301 on licensees paid the lower threshold fee and 145 on licensees paid the higher threshold fee last year.

The use and level of a threshold has proven to be an effective measure to differentiate between small and large licensees in the Territory given the high number of businesses which trade under the threshold each year. Raising the threshold to $120,000 takes account of annual inflationary costs on licensees and further reduces the fee burden on smaller businesses.

Today the use of the threshold as a risk factor is only one component of the new liquor licensing fees. The introduction of the new risk-based fees, which larger on licensees pay if they choose to trade past midnight, together with the new off licence fees, which are proportionate to the amount of liquor purchased for sale, now reduces the potential for unfairness against smaller licensees.

The review finds that using a dollar threshold as a component in a risk-based fee framework to reflect lower risk of harm can be an effective measure, but not the only measure, to differentiate between small and large licensed businesses.

Some of the submissions from smaller licensees, such as restaurants and small bars, with low occupancy loadings argued that it was unfair that, if they traded late, they should have to pay the same amount of risk-based liquor fees as a high risk venue such as a nightclub.

The case for adjusting the liquor fees paid by smaller licensees has been strengthened by the alcohol-related incident data provided by ACT Policing, which supports a risk-based licensing framework.

A dollar threshold for annual liquor purchase or an occupancy loading factor or both could be used to differentiate small from large licensed premises to reflect lower risk of harm when calculating liquor fees.

8. RISK FACTORS

8.1 Section 229 (2)(b) of Liquor Act 2010

Section 229 of the *Liquor Act 2010* sets out a number of risk factors which the Minister may take into account when calculating liquor fees.

The Minister gave consideration to these factors prior to determining the new liquor fees for 2011.

The prescribed factors include:

(i) the class or subclass of a licence or permit;

(ii) licensed times and permitted times;

(iii) the term of a licence or permit;

(iv) the nature and scale of the activities being carried out at the licensed premises or permitted premises;

(v) the occupancy loading for the licensed premises or permitted premises;

(vi) the history of compliance of licensees and permitted premises with this Act;

(vii) anything else consistent with the objects of this Act and the harm minimisation and community safety principles.

The prescribed factors are relevant considerations to take into account when calculating liquor licensing fees based on risk. At the same time, however, when adopting any of these factors to calculate liquor industry fees, it is essential to take into account the sustainability of the liquor industry. Late night trading plays an important role in providing for the diverse social, cultural and economic needs of the ACT community.

If fees are set too high for any sector of the industry, this could result in flight from the marketplace reducing the spread of licensed premises and impacting on the social amenity and economic wellbeing of the community.

This is particularly important when determining liquor fees for the ACT liquor market, which is small in comparison with other jurisdictions like Victoria and New South Wales. Victoria has over 18,000 liquor licences and NSW has over 16,000 liquor licences in comparison with the ACT, which only had 640 liquor licences at the end of April 2011. Small changes in market behaviour can have significant impact on the sustainability of various sectors of the ACT liquor industry.

8.1.1 Class or subclass of a licence

When using risk to calculate liquor fees, a fee determination may take into consideration the class or subclass of a licence.

The sale of liquor at on licensed premises would ordinarily have an immediate effect on the consumption of alcohol because liquor is sold in open containers and consumed on the premises.

Accordingly, when calculating fees based on risk, this factor is a relevant consideration to take into account.

Similarly, the volume of liquor sold by off licensees as a class of licence is a relevant consideration to take into account because the volume of liquor sold by them will also impact on the consumption of alcohol by the community.

8.1.2 Licensed times

When using risk to calculate liquor fees, a fee determination may take into consideration the licensed times.

There is now a growing body of evidence to show that licensed premises which trade late past midnight, particularly after 2am, encounter higher levels of alcohol-related violence and anti social behaviour (refer Appendix D, Table 3). Accordingly, the trading hours of a licensed premises is a relevant consideration to take into account when calculating licence fees based on risk. Currently, licensed premises which are open the longest after midnight incur the largest fees..

8.1.3 Term of a licence

When using risk to calculate liquor fees, a fee determination may take into consideration the term of the licence.

Currently, liquor licensing fees are determined for one year and pro-rata'd. However, under the new liquor laws, low risk premises trading to midnight or premises with an occupancy loading up to 80 patrons are able to apply for a liquor licence for up to three years. Riskier late night premises are required to renew their licences each year. Short term licences require licensees to be more accountable and take more responsibility for the management of their premises by virtue of having to reapply for the licence each year. To encourage greater accountability and responsibility by high risk licensees, it is appropriate to take into account the term of a licence when calculating liquor fees based on risk.

8.1.4 The nature and scale of the activities being carried out at the licensed premises

When using risk to calculate liquor fees, a fee determination may take into consideration the nature and scale of the activities being carried out at the licensed premises.

On licensees are treated differently from off licensees, because the risks they present to the community are different. Along with opening times for on licences, the scale of the activities being carried out, using the volume of liquor purchased for sale as the indicator, is the major determinant of the fees for off- licensees.

Licensed premises where the primary purpose is the sale of liquor are higher risk than licensed premises where liquor is ancillary to the provision of other services. Accordingly, nightclubs and bars pay higher fees than other low risk licensees.

8.1.5 Occupancy loading for the licensed premises

When using risk to calculate liquor fees, a fee determination may take into account the occupancy loading for the licensed premises.

This was a consideration in a number of submissions from small licensees who argued that it was unfair that small licensees, compared with large licensees, were required to pay the same amount of late night risk-based fee.

ACT Policing statistics for alcohol-related incidents over a six months period from 1 December 2010 to end of May 2011 clearly demonstrate that more alcohol-related incidents occur at larger premises.

The liquor fee models calibrated in the Options Paper at Appendix One (apart from Model 6) take into account occupancy loading resulting in lower fees for smaller licensees.

Using an occupancy loading factor is one way to distinguish and acknowledge the lower risk of harm to the community from smaller licensed premises.

8.1.6 History of compliance of licensees with Liquor Act

When using risk to calculate liquor fees, a fee determination may take into account the history of compliance of licensees with the Act.

In April 2011, there were 640 liquor licences operating in the ACT liquor market of which 446 were on licences and 194 off licences.

In the ACT, the market spread of licensees is made up of predominantly small to medium sized businesses (82 per cent) which pose less of a risk than larger premises. The remaining 18 per cent are large venues.

The Liquor Information Collection Committee provided some data on compliance history of licensed premises, however, the data mostly related to cases determined before the commencement of the new *Liquor Act 2010*. Consequently, the review was unable to draw any firm conclusions about the efficacy of using compliance history as a risk factor to determine fees or as an incentive to comply with the law.

The planned two year review of the new liquor laws which will occur by December 2012, should be better placed to make this evaluation.

Generally however, using compliance history to calculate liquor fees in a small market like the ACT is an unreliable factor to use for developing a sustainable fee model, as it is impossible to predict with any accuracy the number of infringement notices which might be issued or occupational disciplinary actions taken over a licensing period to build into a cost recovery fee model to meet the quantum target of $2.9 million of regulatory costs over four years.

8.1.7 Victoria

Consideration of the liquor fees scheme operating in Victoria indicated that a Victorian style scheme which produced a multiplier effect for licensees who breached licensing laws would be likely to have a significant negative impact on the ACT liquor industry and may not be sustainable given the smallness of the jurisdiction.

For example, in Victoria, a base fee is set depending on what type of licence is sought with additional amounts paid for late night trading, and additional fees imposed on licensees who have been found to be in breach of the Victorian liquor laws during the preceding year.

In Victoria, for late night on premises licences, the fee is multiplied by a factor of up to four which increases with the occupancy loading of the licensed premises. For example, if the Victorian model was applied to an ACT nightclub which has an occupancy loading of 799 and trades to 4am and it was the recipient of three infringement notices in the previous year for serving intoxicated people or minors, that nightclub would pay $33,787 to renew its licence the following year compared to $13,661 paid now.

8.1.8 Queensland

Similarly, the Queensland liquor fee framework adopts significant penalties for violations of liquor laws. A licensee who receives one or more infringement notices for particular offences is liable to pay an extra $5,000 at renewal. And, if a licensee was convicted of an offence, the licensee is liable to pay an extra $10,000 at renewal and if a licensee is convicted of a supply offence which contributed to a death or serious assault must pay an additional $20,000 at renewal time.

8.1.9 ACT

For the ACT, a particular consideration is the likelihood of licensees inadvertently breaching licence conditions while becoming familiar with the new scheme.

It is important to acknowledge that the Victorian and Queensland liquor fee schemes apply in very different market circumstances to the ACT liquor market which has a small to medium market concentration.

The liquor data analysis in this report demonstrates a market concentration of predominantly small to medium sized venues (82 per cent) of which only 9 per cent trade late past midnight. The remaining 18 per cent are larger venues with an occupancy loading of 350 patrons or more of which only 11 per cent trade late past midnight.

Of the total on licensed liquor market, only 20 per cent of licensees fall into the high risk category by trading late past midnight but only 11 per cent of these are high risk by virtue of their size and the nature of the activities they undertake (nightclubs, clubs and bars). The remaining 9 per cent have either low occupancy loadings, or do not sell liquor as a primary purpose of their business, for example restaurants.

Using compliance history as a relevant consideration for calculating liquor fees needs to be carefully considered given the lack of empirical evidence to test the impact of its use on the sustainability of the liquor industry. Using compliance history with a multiplier to calculate liquor fees in the ACT, similar to Victoria, could result in only 11 per cent of licensees financing the vast majority of regulatory costs. For example, the Victorian fee model adds the compliance history component before the multiplier is applied, which results in a much higher renewal fee.

However, as an incentive for licensees to comply with the law, a compliance history component of a fixed amount could be added to the total fee where there is no multiplier or to the standard fee before using the multipliers for those models in the Options Paper (at Appendix 1) with a multiplier. The use of compliance history, in effect, creates a financial incentive to encourage licensees to manage their businesses responsibly throughout the licensing period.

If compliance history were to be used as a fee determinant, a fixed penalty for infringements and disciplinary action could be added on to the annual renewal fee, rather than using a multiplier. For example, with the current fee model, a nightclub trading to 2am pays a liquor fee of $8,661. This could be increased by $500 if they received an infringement notice, bringing the final fee to $9,161.

Model 8 in the Options Paper at Appendix 1 sets out a number of examples at models 8A – 8C of how using a compliance history incentive component might apply.

8.1.10. Anything else consistent with the objects of this Act and the harm minimisation and community safety principles

When using risk to calculate liquor fees, a fee determination may take into account anything else consistent with the objects of this Act and the harm minimisation and community safety principles.

The harm minimisation and community safety principles have been a predominant factor in considering the current liquor fees, as has been the related philosophy that the people reaping the benefits from the sale of alcohol, licensees, should bear the costs of the risk-based scheme set in place to minimise risks and reduce harm to the community.

9. LIQUOR LICENSING COSTS

9.1 Liquor regulation expenditure

In 2010 the Government agreed to fund additional expenditure of $6.41 million over four years to regulate the liquor industry by funding the cost of 10 new police officers and additional Office of Regulatory Services staff to enforce and administer the new liquor licensing laws. The additional expenditure was agreed to on the basis that it would be recouped on a cost recovery basis from the ACT liquor industry.

This additional risk-based expenditure of $6.4 million over four years is in addition to the pre-existing liquor annual regulatory costs of approximately $1.3 million paid by the liquor industry.

Accordingly, the standard liquor fee, which is paid by all licensees, was set at $1,638 for licensees who purchase liquor for sale below $100,000 and $3,661 for those who purchase liquor for sale above $100,000. Licensees who trade past midnight pay additional late night risk fees. Additional increments of $5,000 and $10,000 apply to 2am and 4am trading hours respectively, plus an additional increment of $2,500 to trade to 5am.

In December 2010, 636 licensees applied to renew their liquor licence for 2010/11, noting that some licensees when renewing their licence chose to pay by quarterly instalments throughout the year.

ORS has advised that based on actual cash received to 24 June 2011 ($2.66 million) and predicted fees from final quarterly payments ($244,000), it expects to receive approximately $2.9 million this licence period (1 December 2010 – 30 November 2011) on target to meet the $2.9 million quantum of total liquor regulatory costs.

10. LICENSING FEE MODELS

10.1 The Options

Based on findings from the liquor data analysis and submissions received, there are models that can be constructed to take into account a number of concerns of those who made submissions. The models have been assessed against a list of standard criteria including:

- predictability;
- complexity;
- ORS resources; and
- impact on licensees.

An alternative refined off licence model to take into account lower volumes of liquor sales by smaller off licensees, five new on licence fee models using various risk factors to target larger late night venues trading late past midnight, and an optional compliance history model which could be added to any of the proposed fee models have been designed for consultation.

Liquor data analysis suggests that smaller venues pose lesser risk of harm trading to midnight and later, than larger venues trading at similar times. Accordingly, the fee options require larger, more risky venues to contribute more in varying degrees to the cost recovery of the requisite $2.9 million per year regulatory costs.

The models vary in the number of risk factors applied and how they are applied in order to present a variety of options, although some risk factors are common across all models. For example, all models recognise that the later you trade the higher the risk. The models also take into account the distribution of licensees in the market, noting that 82 per cent of the market is made up of micro to medium sized businesses with only 11 per cent of venues being large and trading late, which pose much higher risks of harm.

10.2. Fee model comparisons

The following table sets out a summary of each fee model option.

1	Current Model	***On/Club/General/Special:*** *Standard Fee based on amount of Liquor + Late Night Risk Fee = Total Fee* ***Off:*** *Total fee based on amount of Liquor sold*
2	Refined Current Off Licence Model	***Off:*** *Total fee based on amount of Liquor sold (with new categories)*
3	Refined Current Model	***On/Club/General/Special:*** *Standard Fee based on amount of Liquor + Late Night Risk Fee (modified occupancy loading)= Total Fee*
4	Flexi Model	***On/Club/General/Special:*** *Standard Fee based on amount of Liquor + Late Night Fee Based On Occupancy Loading = Total Fee*
5	OLM Model	***On/Club/General/Special:*** *(Standard Fee based on amount of Liquor + Late Night Fee) x Occupancy Loading Multiplier = Total fee*

6	Licence Category Model	***On/Club/General/Special:*** *Standard Fee based on Licence Category x Late Night Risk Factor = Total Fee*
7	Three Risk Category Model	***On/Club/General/Special:*** *Standard Fee based on Licence Type x (Size Factor + Late Night Factor) = Total fee*
8a	Refined Current Model with compliance history	***On/Club/General/Special:*** *Standard Fee based on amount of Liquor + Late Night Risk Fee + Compliance History Component = Total Fee*
8b	OLM Model with compliance history	***On/Club/General/Special:*** *(Standard Fee based on amount of Liquor + Late Night Fee + Compliance History Component) x Occupancy Loading Multiplier = Total fee*
8c	Refined Off Licence Model with compliance history	***Off:*** *Total fee based on amount of Liquor sold + Compliance History Component*

A fee model designed to use all five risk factors of amount of liquor purchased for sale, occupancy loading, trading hours, class and subclass of licence and compliance history would place a heavy financial burden on a small percentage of on licensees in the ACT liquor market.

Only one model, the *Three Category Model*, recognises the five risk factors and only if the optional compliance history factor is also included.

11. LIQUOR PERMITS

11.1 Need for review

As noted earlier in this report, in consultation with the Liquor Advisory Board, the Minister agreed to include in the terms of reference for the liquor fees review, an analysis of the current fee structure for liquor permits. The aim of this review is to ensure that the permit fee structure is consistent with the new liquor licensing fees.

The current fee structure of liquor permits may have the potential to provide some traders with an unfair advantage in the marketplace.

11.2 Terms of Reference

The Review will:

- develop a methodology for determining a cost recovery model for permit fees based on risk that complements liquor licensing fees and encourages economic activity; and
- evaluate the impact of continuing to use $2,000 as the threshold test for the sale of liquor, noting that it has not been reviewed for a number of years.

11.3 Guiding principles

The review set out to collect and evaluate data held by the Office of Regulatory Services on temporary liquor permits issued since 2009.

The review undertook a comparative assessment of liquor permits issued for the years 2009 – 2011 and compared the results objectively.

The liquor data collected and analysed related to the number of liquor permits issued each year.

The review focused on identifying and resolving any impediments to the creation of a competitive liquor market where market participants can compete fairly in the marketplace.

11.4 Temporary liquor permit fee structure

11.4.1 Commercial and non commercial permits

Under the Liquor Act 2010, a person can apply for a temporary commercial permit to sell liquor for profit at an event or apply for a temporary non commercial permit to sell liquor at an event.

Non commercial permits are used by not-for-profit incorporated associations and organisations, which are not carried on for profit or gain to their individual members, and do not make any distribution whether in money, property or otherwise to their members.

Non commercial permits are used by social clubs, charities, local sporting clubs, school fetes and incorporated associations to sell liquor at a variety of irregular or temporary events. These permit holders are authorised to sell liquor for consumption on or off the premises. Profits made under these permits must be used for a non-commercial purpose.

In contrast, commercial permits are used by groups or organisations to sell liquor for profit at specific one off events. These sellers of liquor compete with other sellers of liquor, such as licensees, in the marketplace. Commercial permits can vary from a one-off market stall up to a major festival event.

To protect the integrity of the liquor permit system, it is already an offence for a person who applies for a permit not to record the sale in electronic form in a way that is easily retrievable and keep a record of the sale for at least six years.

The ORS undertakes a range of compliance activities across a large number of regulated industries, including audits of stated performance. Retail sales data on liquor permits would be audited on a risk basis in line with the ORS risk-based compliance framework.

11.4.2 Current fee structure for liquor permits

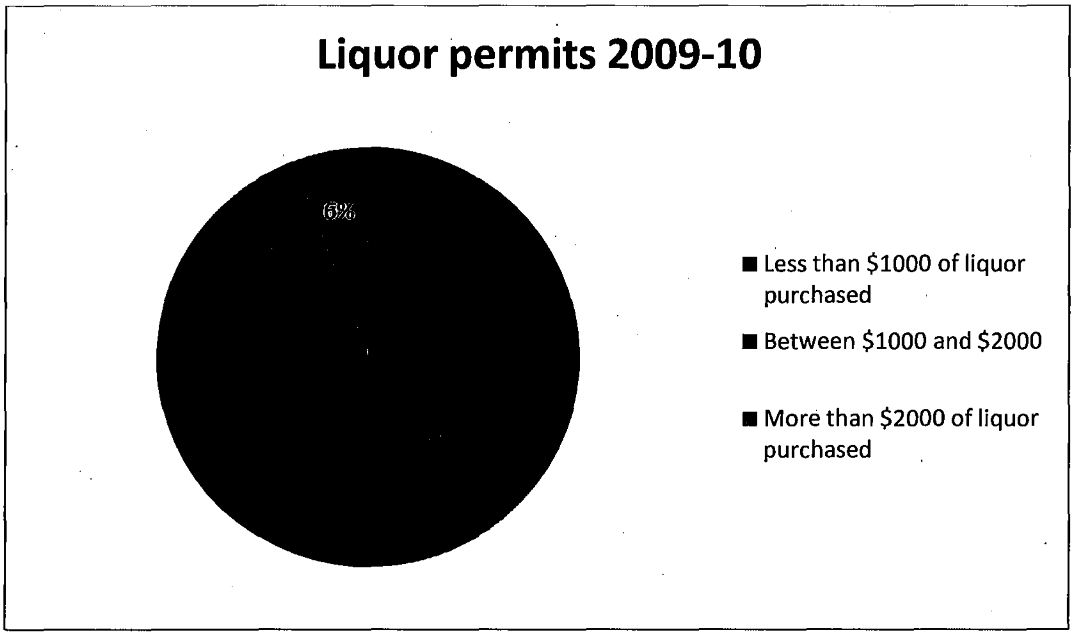
The current fee model used to determine both commercial and non commercial permit fees is based on the retail value of liquor purchased for sale, limited to a threshold amount of under or over $2,000. The fee model does not differentiate between commercial and non commercial permit holders.

The current fee structure for all liquor permits uses a $2,000 threshold to determine permit fees. Permits issued for the sale of liquor at $2,000 or less pay a lower fee than permits issued for the sale of liquor for more than $2,000.

Commercial permit		
Liquor retail value stated in permit less than $2,000	all times	$40
Liquor retail value stated in permit greater than $2,000	all times	$135
Non commercial permit		
Liquor retail value stated in permit less than $2,000	all times	$40
Liquor retail value stated in permit greater than $2,000	all times	$135

11.4.3 Analysis of past liquor permits

Graph 14 below shows that liquor permits issued for the financial years 2009/2010 indicated that of the total 754 permits issued in 2009/10, 713 permit holders (94 per cent) sold less than $2,000 and 636 of those permit holders (84 per cent) were issued for less than $1000. (ORS data systems are unable to separate commercial and non commercial liquor permits for this period as liquor permits were not differentiated in the past).



Graph 14

Non commercial permits

Graph 15 below shows that between the review period of 1 December 2010 and 31 May 2011, ORS issued 138 non commercial permits of which 96 permits (nearly 70 per cent) were at or under the $2,000 threshold and 42 permits (30 per cent) were issued for more than $2,000.

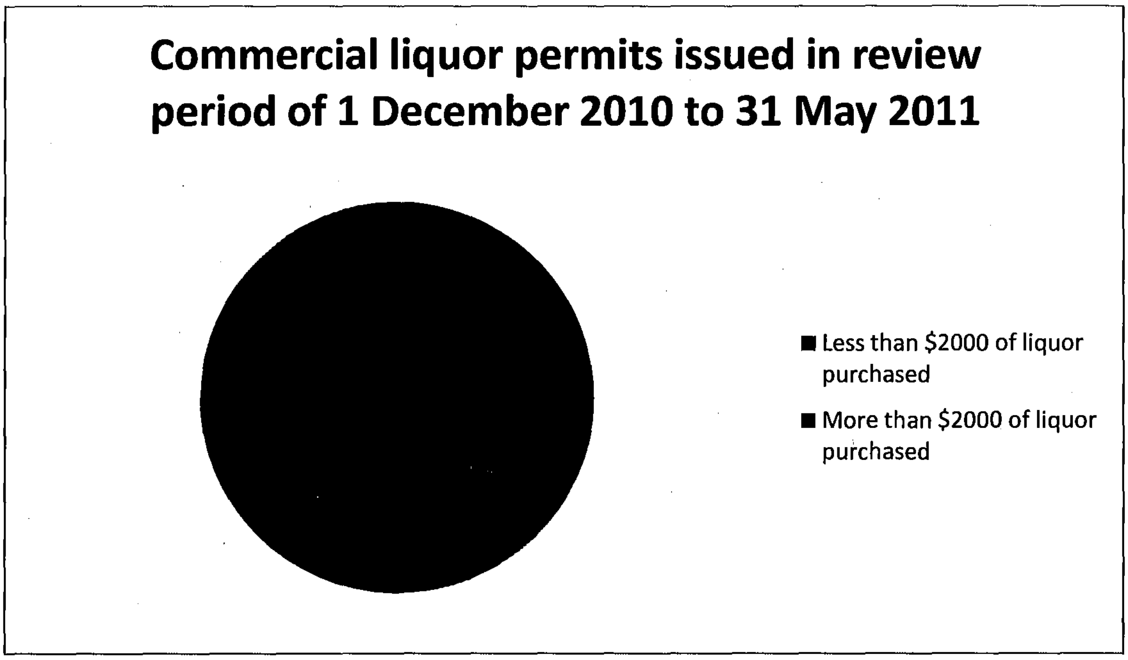
Of the 30 per cent of non commercial permits issued for more than $2,000, 22 permits were issued with a value between $2,000 and $10,000 and the remainder were issued for an amount between $10,000 and $50,000. The higher dollar value permits were issued to work social clubs which hold a number of regular one-off work social events throughout the year.

Graph 15

Commercial permits

Graph 16 below shows that between the review period of 1 December 2010 and 31 May 2011, ORS issued 152 commercial permits of which 112 permits (74 per cent) were at or under the $2,000 threshold. Over the review period, 40 permits (26 per cent) were issued for more than $2,000.

Of the 26 per cent of commercial permits issued by ORS, ten permits were issued for $100,000 or more, 17 permits were issued between $10,000 and $40,000 and 13 permits were issued between $2,000 and $10,000.



Graph 16

11.4.4 Liquor permit fee threshold

In the past, a $2,000 liquor threshold has been used to differentiate between lower and higher sales of liquor and set commensurate fees. Under a risk-based fee structure, people who sell more liquor pay higher permit fees than those who sell less. The use of the threshold has been used for both non commercial and commercial permits.

11.5 Methodology for calculating risk-based permit fees

To reflect contemporary permit usage, the standard $2,000 threshold should be indexed each year to reflect annual inflationary costs on business. As it has been a decade or so since the fee structure for permits has been reviewed, it is recommended that the current $2,000 threshold be retained and increased for non commercial permits, taking an average index of two per cent over 10 years. This would raise the current $2,000 threshold to $2,400. The use of annual indexation would compensate businesses for inflationary costs each year.

This recommendation is in line with comments made in submissions to the Review that threshold amounts used to calculate liquor fees should be indexed each year.

11.5.1 Non commercial permits

Currently, permit fees for non commercial permits used by social clubs, sporting clubs, charities and incorporated associations are indexed each year. It is recommended that this practice be continued to reflect inflationary regulatory costs.

Permit fees for non commercial permits are currently set at $40 for permits authorized to sell liquor for a stated amount under $2,000.

Permit fees for non commercial permits are currently set at $135 for permits authorized to sell liquor for a stated amount over $2,000.

Non commercial permits are used solely by small community groups to foster congenial social amenity where profits are dispersed back into the group.

The review found that the current fee level for non commercial permits, which has been indexed each year, is set at a level which is proportionate to the recommended increased threshold amount of $2,400.

11.5.2 Commercial permits

Data analysis in Graph 14 suggests that the vast majority of liquor permits were for an amount under the $2,000 threshold.

In 2009 and 2010, 94 per cent of all permits were issued for amounts under $2,000.

When calculating risk-based commercial permit fees, it is important, therefore, to continue to differentiate between smaller and larger events to reflect the lower level of harm to the community from the sale of smaller amounts of liquor at infrequent and short term events.

The current model used to determine *off licence* fees is a relevant model to use for calibrating fees for commercial permits. This model is based on the amount of liquor purchased for sale, as the only risk factor associated with off licensed venues. This risk factor indicates how much liquor each off licensee is selling in the marketplace.

Like off licensees, permit holders who sell lower volumes of liquor in the marketplace generate a lower risk of social harm to the community. Accordingly, this lower incidence of harm should be reflected in the payment of commercial permit fees.

Using a methodology based on the value of liquor sold for profit at an event is a relevant consideration to take into account when calculating commercial permit fees using a risk-based formula.

This risk factor recognises the different business structures used for liquor licences and permits, which present different risk and business cost profiles. For example, commercial permits authorising the sale of a stated amount of liquor at an event for a limited period can have an immediate impact on the incidence of binge drinking in comparison with a business which is licensed to sell liquor continuously throughout the year.

11.5.3 Amount of liquor purchased for sale

A fee model for commercial permits using the liquor retail value stated on the permit as the risk factor would calculate fees in proportion to the amount of liquor intended to be sold at the event.

Commercial permits issued for the sale of lower amounts of liquor would attract lower fees. Permits issued for the sale of higher amounts of liquor would attract higher fees.

This would mean that the $2,000 risk threshold previously used to calculate commercial permit fees would no longer apply.

It is recommended that new commercial permit fees be determined using a new proportionate fee model for commercial permits which calibrates fees in proportion to the value of liquor purchased for sale. A permit holder who sells more liquor would pay a higher fee than a permit holder who sells less, reflecting increasing risk levels of harm to the community.

This methodology would make liquor permit fees more compatible with the current level of licensing fees and create a "level playing field" in the liquor market.

Appendix A Optional Liquor Fee Models

The liquor licensing fee model options below are illustrative of the potential impact on various sectors of the liquor industry from using different risk factors to determine liquor fees.

On 8 July 2011, the Justice and Community Safety Directorate released the options in an *Options Paper on Liquor Licensing Fee Models* for public and industry consultation.

Model 1

Current Model

Trading Times and Occupancy Loadings

	1-80	81+
12am	$3661	$3661
2am	$4661	$8661
4am	$4661	$13661
5am	$4661	$16161

*The current fee model uses the $100,000 threshold (the table above assumes the higher standard fee of $3,661).
*This model also uses the current $1,000 flat late night fee for venues with an occupancy loading of 1-80.

51.The current liquor licensing fee model is a simple fee model which uses evidence-based risk factors of trading hours and volume of liquor sold and is proportionate to the level of risk. The fees have been calibrated using the $100,000 threshold to determine standard fees, which all licensees pay, and additional risk-based fees for licensees who choose to trade past midnight to either 2am, 4am or 5am.

2. The current fee model commenced on 1 December 2010 on an expense recovery basis to recover from the liquor industry the direct regulatory costs of 10 new police officers and additional staff for the Office of Regulatory Services.

3. The standard fee, which is paid by all licensees, is set at $1,638 for licensees who purchase liquor for sale below $100,000 and $3,661 for those who purchase liquor for sale above $100,000. Licensees who trade past midnight pay additional risk fees. Additional increments of $5,000 and $10,000 apply to 2am and 4am trading hours respectively, plus an additional increment of $2,500 to trade to 5am.

4. In December 2010, 636 licensees applied to renew their liquor licence for 2010/11, noting that some licensees when renewing their licence chose to pay by quarterly instalments throughout the year.

5. ORS has advised that based on actual cash received to 24 June 2011 ($2.66million) and predicted revenue from final quarterly payments ($244,000), it expects to receive approximately $2.9million

this licence period (1 December 2010 – 30 November 2011) on target to meet the $2.9million total regulatory costs.

Assessment

6. *Predictability*. An advantage of this model is its predictability. The model has met its target of $2.9 million per year, which will fund the regulatory costs of 10 new police officers and additional staff for ORS to administer the new licensing system over four years.
7. *Complexity*. This model is a simple fixed fee model using two evidence-based risk factors to determine the level of fees which delivers certainty for the industry.
8. *ORS resources*. ORS has an electronic licensing system in place to assess and process liquor licences using the current fee model.
9. *Impact on Licensees*. Market analysis would suggest that this model has had a marginal impact on the participation rate of licensees. However, a number of smaller licensees have raised concerns about experiencing some financial hardship as a result of the new fees.

Model 2

Refined Current Off Licence Model

Amount of Liquor Purchased for Sale

Current Fee Model:

Category	Fee
<$100,000	$1,638
$100,000 -> $500,000	$5,161
$500,000 -> $1M	$6,661
$1M -> $3M	$8,661
$3M+	$13,661

Refined Fee Model:

Category	Fee
<$5,000	$500
$5,000 - $100,000	$1,638
$100,000 -> $500,000	$3,661
$500,000 -> $1M	$5,661
$1M -> $3M	$9,661
$3M-7M	$17,661
$7M+	$25,661

10. This model uses the volume of liquor purchased for sale as the only risk factor associated with off licence venues, as this factor indicates how much liquor each off licensee is selling into the marketplace. It has a greater number of categories than the current model to reflect different business practices.

11. A number of representations were made on behalf of smaller off licensees advocating fairer and more equitable fees. For example, Master Grocers of Australia contended that the current licensing fee structure, based on risks assessed through the gross wholesale price a retailer has paid for liquor in the previous year, is not fair to small and medium businesses, which already compete with larger chains. It claims that the new fee structure has had a negative impact on its members, including the need to review staff hours, and favours larger operators rather than family businesses, which may own more than one smaller business. The Greens also recommended consideration be given to recalibrating off licence fees.

12. The review had the benefit of accessing the liquor data held by the Office of Regulatory Services in relation to the actual amounts of liquor purchased for sale by each off licensee for the financial year 2009/10. To reflect the lower risk of harm by off licensees who sell smaller volumes of liquor into

the ACT marketplace, the current fee model for off licensees has been adjusted to reflect the lower level of risk of harm to the community. For example, this model would remove the risk component of $1,500 for an off licensee who purchased liquor for sale between $100,000 and $500,000. This initiative is equivalent to on licensees who trade over $100,000 worth of liquor, but do not trade late.

13. Under the refined off licence model, this category of off licensee would pay $3,661 compared with $5,161 under the current fee model. Similarly, an off licensee who purchased liquor for sale between $500,000 and $1 million would pay $5,661 compared with $6,661 under the current fee model.

14. A reduction in fees for a large number of small licensees has meant that there has been an increase in fees for the smaller number of bigger licensees purchasing liquor for sale above $1 million. For example, a licensee who purchased liquor for sale between $1 million and $3 million would pay $9,661 compared with $8,661 under the current fee model.

15. A new category for off licensees purchasing liquor for sale above $7 million has been created recognising the higher social risks associated with larger volume of liquor sold into the marketplace.

16. Another new category has been added to the off licence model to recognise extremely small off licence businesses. For example, a florist selling champagne with flowers for Valentines Day and other such cultural events. The creation of a micro business model was suggested by the Greens. While the Greens also suggested that a micro business model be created for on licensees, liquor permits are available to accommodate infrequent sales of liquor for consumption on the premises.

Assessment

17. *Predictability.* This model has the advantage of predictability of licensing fees and delivers certainty for the industry. Each business knows from year to year the liquor licensing fee and can factor this fee into their business plan.

18. *Complexity.* This model is a simple fixed fee model using one risk criterion the volume of liquor purchased for sale in the marketplace to reflect the degree of potential harm on the community.

19. *ORS resources.* This model should be relatively simple to administer.

20. *Impact on Licensees.* The high renewal rate of off licensees and market risk analysis would suggest that the current model has had a marginal impact on the participation rate of off licensees. The creation of a new micro category would address those small businesses who sell liquor for special cultural events, which involve very small liquor sales. Adjustment to the current fee model would address the concerns of the smaller venues, but would increase the fees for the small number of larger off licensees who sell much higher volumes of liquor in the marketplace, with the addition of a new category for large volumes of sale.

Model 3

Refined Current Fee Model

Trading Times and Occupancy Loadings

	1-150	151+
12am	$3661	$3661
2am	$4661	$8661
4am	$4661	$13661
5am	$4661	$16161

*The refined current fee model uses the $120,000 threshold (the table above assumes the higher standard fee of $3,661).
*This model also uses the current $1,000 flat late night fee for venues with an occupancy loading of 1-150.

21. Model 3 makes a slight adjustment to the current model by acknowledging that smaller venues present a lower risk of harm and deserve reconsideration of their contribution to the regulatory costs. It does this by expanding the current 1-80 occupancy loading category to an occupancy loading of 1-150 patrons. The impact of this adjustment would mean that approximately ten licensees would only pay $1,000 to trade late as opposed to $5,000/$10,000/$12,500 from the current fee model.

22. Currently six of these venues trade to 2am and four trade to 4am. This model would remove $50,000 from the recovered costs. However, estimates based on current market participation rates would suggest that this model would still likely meet the target of $2.9 million per annum, as the current trend indicates a relatively stable liquor market with a slight upturn in participation rates.

Assessment

23. *Predictability.* There is greater certainty of achieving the requisite $2.9 million target each year with this model, as it is less graduated and more predictable than some of the other models.

24. *Complexity.* Like the current fee model, this model is a simple fee model using two significant evidence-based risk factors of trading hours and volume of liquor purchased for sale in the market place to determine the level of fees and also delivers certainty for the industry. Each business knows from year to year the amount of the liquor licensing fee and can factor this fee into their business plan.

25. *ORS resources.* As with the current fee model, ORS has an electronic licensing system in place to assess and process liquor licence applications and renewals using this fee model, and would not require additional resources.

26. *Impact on Licensees.* As with the current fee model, market analysis would suggest that the impact of these fees would have a marginal impact on the participation rate of licensees, but would provide some financial relief for approximately ten smaller licensees with an occupancy loading between 81 – 150 patrons who pay more under the current scheme. No-one pays more than they currently pay under this model.

Model 4

Flexi Model

Trading Times and Occupancy Loadings

	1-80	81-150	151-350	351+
12am	$3661	$3661	$3661	$3661
1am	$4661	$4911	$6161	$6411
2am	$4661	$6161	$8661	$9161
3am	$4661	$7411	$11,161	$11,911
4am	$4661	$8661	$13,661	$14,661
5am	$4661	$9911	$16,161	$17,411

*The flexi model uses the $120,000 threshold (the table above assumes the higher standard fee of $3,661).
*This model also uses the current $1,000 flat late night fee for micro venues.

27. The Flexi Model is a refinement of the current fee model to include additional trading hour options for venues to trade to 1am, 2am, 3am, 4am or 5am. This model provides greater flexibility and options for licensees to build their business type around. This model uses two risk factors: occupancy loading and trading hours, as the fee determinant. It uses four categories of occupancy loading (micro, small, medium and large) to recognise degrees of risk from lower to higher rather than using a blunt Victorian style multiplier component. The Victorian liquor market has the benefit of many more venues with much larger occupancy loadings to recoup regulatory costs.

28. In the ACT, the vast majority of licensees (82 per cent) trade with an occupancy loading between 1 and 350 patrons (small to medium venues). The remaining 18 per cent trade above an occupancy loading of 350 patrons (large venues). The 18 per cent of larger licensees who trade late represent 11 per cent of the on licensed market which comprises 446 licensees. It would be impractical in terms of market sustainability to require only 49 large licensees to bear the substantial financial responsibility of meeting the regulatory costs. This market concentration would suggest that financing of the regulatory costs needs to be spread across the liquor industry to ensure a level of sustainability and social amenity.

Micro Category

29. Under this model, the licensed venues in the micro category (1-80 occupancy loading size) would pay the same amount of fees as they currently do. There are four licensed venues in this category which pay $1,000 to trade late. 21 percent of total licensees sit in this category of occupancy loading.

Small Category

30. In comparison with the current fee model, there are 13 small licensees who trade late with an occupancy loading of 81 – 150 who would pay:

    a. $3,750 less to trade to 1am - (paying $4,911 compared to $8,661 under current model);

    b. $2,500 less to trade to 2am - (paying $6,161 compared to $8,661 under current model);

    c. $6,250 less to trade to 3am - (paying $7,441 compared to $13,661 under current model);

    d. $5,000 less to trade to 4am - (paying $8,661 compared to $13,661 under current model); and

    e. $6,250 less to trade to 5am - (paying $9,911 compared to $16,161).

31. 37 per cent of licensees sit in the small category of occupancy loading, refer Graph 4.

Medium Category

32. Under this model, licensees in this category (151-350 occupancy loading) would pay the same fees as they currently pay, if they continued to trade to 2am or 4am. With the options now allowing them to choose their trading times, they would pay less if they chose to trade to 1am. 24 per cent of licensees fall within this category of occupancy loading refer Graph 4. This category accounted for 20 per cent (or 187 incidents) of alcohol-related incidents which required police attendance (refer Graph 12).

    a. $2,500 less to trade to 1am ($6,161 compared to $8,661 under current model);

    b. $0 more to trade to 2am ($8,661 compared to $8,661 under current model);

    c. $2,500 less to trade to 3am ($11,161 compared to $13,661 under current model);

    d. $0 more to trade to 4am ($13,661 compared to $13,661 under current model); and

    e. $0 more to trade to 5am ($16,161 compared to $16,161 under current model).

Large Category

33. In comparison with the current model, these licensees with an occupancy loading of 350 plus and who represent 11 per cent of on licensed premises, would pay:

    a. $2,250 less to trade to 1am ($6,411 compared to $8,661 under current model);

    b. $500 more to trade to 2am ($9,161 compared to $8,661 under current model);

    c. $1,750 less to trade to 3am ($11,911 compared to $13,661 under current model);

    d. $1,000 more to trade to 4am ($14,661 compared to $13,661 under current model); and

e. $1,250 more to trade to 5am ($17,411 compared to $16,161 under current model).

34. Over a six month period, 695 alcohol-related incidents out of 931 incidents occurred at venues which trade late, refer Appendix D, Table 3.

Assessment

35. *Predictability*. This model is less predictable in terms of meeting its cost recovery target. There is uncertainty around this model, as it is difficult to predict whether licensees will adjust their trading hours.

36. The level of fees have been calibrated on the premise that there will be a minor variance in changed trading times that could impact negatively on the amount of fees receipted compared with last year if some venues close earlier. Conversely, others may take advantage of the lower fees and close later. This model may encourage some licensees to pay a little extra ($2,500 for the medium category) to trade to 1am.

37. *Complexity*. This model is more complex in its design and implementation. While it provides greater flexibility and options for licensees to build their business type around, it would be more challenging to administer. This model uses risk factors of occupancy loading and trading hours, as the fee determinant. It uses four categories of occupancy loading (micro, small, medium and large) to recognise degrees of risk from lower to higher rather than using a blunt Victorian style multiplier component.

38. *ORS resources*. Although ORS is already privy to trading hours information from licensees and already conducts random inspections of premises to check occupancy loadings and trading hours, this model may incur additional ORS resources to conduct inspections of trading hours more frequently.

39. *Impact on Licensees*. This model would address the financial concerns raised in submissions by smaller licensees. It also has the advantage of providing flexibility for on licensees to choose a liquor licence which best suits their needs. It gives on licensees six trading time options around which to develop their business. It addresses concerns raised by licensees in submissions regarding smaller venues having to compete with bigger venues paying the same risk fees. The flexi model addresses these concerns by expanding the number of occupancy loading categories to include micro, small, medium and large venues. It has also expanded the categories of trading hours to facilitate more choice for venues to trade later past midnight and pay an additional late night risk fee or close earlier later in the morning and pay less. The fee level, however, remains proportionate to the risk. The model provides a comparatively better outcome for those who are open to 1am and 3am.

Model 5

Occupancy Loading Multiplier Model (OLM)

(Standard Fee + Late Night Fee) x Occupancy Loading Multiplier

Standard Fee

<$120,000: $1,638
>$120,000: $3,661

Late Night Fee

1am: $1,000
2am: $2,000
3am: $3,000
4am: $4,000
5am: $5,000

Occupancy Loading Multiplier

0-80	81-150	151-250	251-350	351-450	451-550	551-650	651-750	751-850	851+
0.5	0.75	1	1.25	1.5	1.75	2	2.25	2.5	2.75

*The OLM model uses the $120,000 threshold.

40. This model uses risk factors of occupancy loading, trading times and a multiplier as the risk fee determinant. The OLM model is based on the Victorian Liquor Fee model, which builds in a number of risk factors to identify venues which pose higher risks. The Victorian risk factors include trading hours, compliance history and occupancy loading with a multiplier.

41. This model does not take into account the market behaviour or compliance history of each licensee because the six month data collection period (1 December 2010 – 31May 2011) was too short a period to be able to assess what impact this risk criterion might have on the sustainability of a small ACT liquor market. Rather, this model focuses on recovering the regulatory costs from those licensees who choose to operate higher risk businesses where the nature of the business is primarily on the service of alcohol and trading past midnight. The Greens submission supports the introduction of a model using risk factors of venue type, trading hours, compliance history and occupancy loading. Venue type risk factors are discussed under Model 6, the Licence Category Model.

42. The OLM model uses components which include:

   a. a standard fee;

   b. a late night fee; and

c. a multiplier based on the occupancy loading (or the size) of the venue.

43. The final fee is worked out using the following formula: (Standard Fee + Late Night Fee) x Multiplier = Total Fee.

44. Under this model, a small on licence venue trading to 2am with an occupancy loading of 150 patrons and trading above the $120,000 threshold would pay a standard fee of $3,661 plus a late night fee of $2,000, the total of which is multiplied by a factor of 0.75 which equals $4,245.75. Under the current model this small venue would pay $8,661.

45. Under this model, an on licensee who trades to 2am with an occupancy loading of 350 patrons and purchases liquor for sale to the value of above the $120,000 threshold would pay a standard fee of $3,661 plus a late night fee $2,000, the total of which would be multiplied by a factor of 1.25 which equals $7,076.25. Under the current model, this medium sized venue would pay $8,661.

46. Under this model, a nightclub or a club with an occupancy loading of 850 patrons trading to 2am and trading over the $120,000 threshold, would pay a standard fee of $3,661 plus a late night fee of $2,000, the total of which is multiplied by a factor of 2.5 which equals $14,152.50. Under the current model, this large sized venue would pay $8,661.

47. Under this model, a nightclub or club with an occupancy loading of 851 + trading to 5am and trading over the $120,000 threshold, would pay a standard fee of $3,661 plus a late night fee of $5,000, the total of which would be multiplied by a factor of 2.75 which equals $23,817.75. Under the current model this large sized venue would pay $13,661.

Assessment

48. *Predictability.* This model is less predictable for achieving recovery of regulatory costs using a licensing fee structure with a number of trading hour options.

49. *Complexity.* This model is a highly complex and complicated model for a small jurisdiction like the ACT.

50. *ORS resources.* This model would require additional ORS resources to assess and process liquor licence applications and renewals due to the complexity of the fee formula. It may not necessarily require additional inspectorate resources.

51. *Impact on Licensees.* This model rewards smaller less riskier licensees, but would have a significant impact on larger licensees who are made subject to much higher late night fees as a consequence of being in a high risk category.

Model 6

Licence Category Model

Standard Fee x Venue Type Multiplier x Late Night Multiplier

Standard Fee		$2,000

Venue Type	Risk	
Nightclub	x3	$6,000
Restaurant	x1	$2,000
The rest	x2	$4,000

2am	x2	
4am	x3	
5am	x3.5	
12am+ Restaurant	+ $1,000	

*The licence category model does not use the $120,000 threshold.

52. This model uses the risk factors of venue type and trading times as the fee determinant. This model does not use the $120,000 threshold of liquor purchased for sale to determine the standard fee, which the current fee model does. This model adopts a flat standard fee of $2,000 as a basis for calculating the final licence fee.

53. To reflect higher risks, the standard fee is multiplied by a factor determined by the type of venue and is then multiplied by another factor determined by trading times once again to reflect the higher risks with late night trading. The level of the multiplier factors were determined to reflect the target requisite $2.9 million per annum regulatory costs and risks associated with venue type and trading times.

54. Risks associated with restaurants trading to midnight or later are small in comparison with a nightclub trading at comparable times. This model sets a fee commensurate with the level of risk associated with different licensed premises. For example, a restaurant trading to 2am would pay $3,000 and pose a lower risk in comparison with a nightclub trading to 2am which would pay $12,000. A night club trading to 5am would pay $21,000.

55. This model recognises that venues which trade late are higher risk and that certain venue types are riskier than others due to the nature of the activities at the venue.

Assessment

56. *Predictability.* An advantage of this model is its predictability for receipting the $2.9 million of liquor licensing fees per year over four years to fund the total regulatory costs. However, one impediment of using licence type as a risk factor in a fee model is that it may encourage licensees to shop around for the lowest priced licence. For example, if a fee model determines a nightclub licence at a high fee level, and a general or special licence at a lower level, the temptation to switch licence type is compelling. Currently nightclubs can legitimately apply for either a nightclub, a general or, in some circumstances, a special licence, as the ACT's liquor licensing system licenses the activity of a business rather than a licence or venue type. This ensures that the liquor legislation can accommodate the evolution of new entrepreneurial business types without requiring frequent legislative amendment.

57. *Complexity.* This model is a more simple fixed fee model using two evidence-based risk factors to determine the level of fees and delivers certainty for the industry.

58. *ORS resources.* ORS would need to adjust its electronic licensing data base to assess and process liquor licence applications and renewals, which may require additional resources.

59. *Impact on licensees.* This model rewards lower risk premises like restaurants and impacts higher risk premises such as nightclubs. Clubs and bars would pay less under this model, as the liquor data analysis suggests that these premises pose less of a risk than nightclubs.

Model 7

Three Risk Category Model

Venue Type Standard Fee x (Size Factor + Late Night Factor)

Standard Fee Nightclub	$4500
Standard Fee Restaurant	$1500
Standard Fee Other	$3000

Micro	0.75
Small	1
Medium	1.25
Large	1.5

	Micro	Small	Medium	Large
1am	0.5	0.75	1.25	1.75
2am	0.5	1.25	1.75	2.25
3am	0.5	1.75	2.25	2.75
4am	0.5	2.25	2.75	3.25
5am	0.5	2.75	3.25	3.75

*The 3 risk category model does <u>not</u> use the $120,000 threshold.

60. This model uses the risk factors of venue type, occupancy loading and trading times as the fee determinant. It does not use the $100,000 threshold component for setting a standard fee as the current model does.

61. This model sets licence fees commensurate with the level of risk based on the three risk categories mentioned above. The level of the standard fee is based on the type of licence or venue reflecting that some venue types are riskier than others due to the nature of the activities at the venue (refer ACT Policing data at Appendix D, Table 5).

62. The standard fee is multiplied by a factor determined by a venue's occupancy loading and trading times, reflecting the higher risks associated with larger venues and those which trade late (refer Appendix D, Tables 3 & 4).

63. This model rewards lower risk venues and penalises riskier venues. For example a restaurant trading to midnight in the micro category of less than 80 patrons would pay $1,125 compared with the current model of $1,638 or $3,661. Another example would see a medium sized bar (occupancy loading less than 350) trading to 2am would pay $9,000 as compared to a $8,661 in the current model. A large nightclub (occupancy loading greater than 350) trading to 2am would pay $16,875 compared to $8,661 under the current model. A large Club trading to 2am would pay $11,250 under

this model as compared to $8,661 under the current model. A large nightclub trading to 5am would pay, under this model, $23,625 as compared to $16,161 under the current model. A large club trading to 5am would pay $15,750 as compared $16,161 under the current model.

Assessment

64. *Predictability.* This model is less predictable at achieving the $2.9 million per year cost recovery target because of the difficulty in predicting business trading hours.

65. *Complexity.* This model uses three risk factors and is more complicated to administer than the current model.

66. *ORS resources.* ORS would need to adjust its electronic licensing data base to assess and process liquor licensing applications and renewals.

67. *Impact on Licensees.* Less risky licensed premises such as restaurants would benefit under this model by paying a lower licensing fee. Less riskier premises including clubs, hotels and bars would pay less under this model. Higher risk premises such as nightclubs would pay higher fees.

Model 8

Optional Compliance History Component Model

68. The Liquor Information Collection Committee provided some data on compliance history of licensed premises, however, the data mostly related to cases determined before the commencement of the new *Liquor Act 2010*. Consequently, the review was unable to draw any firm conclusions about the efficacy of using compliance history as a risk factor to determine fees or as an incentive to comply with the law. The two year review of the new liquor laws which will occur by December 2012 should be better placed to make this evaluation.

69. Generally, however, compliance history is an unreliable factor to use in developing a sustainable fee model in a small market like the ACT, as it is impossible to predict with any accuracy the number of infringement notices which might be issued or occupational disciplinary actions taken over a licensing period to build into a cost recovery fee model to meet the total target of $2.9million of regulatory costs per year over four years.

70. However, as an incentive for licensees to comply with the law, a compliance history component could be added to each model by adding an amount to the total fee where there is no multiplier or to the standard fee before using the multipliers for those models with a multiplier. For example, the Victorian fee model adds the compliance history component before the multiplier is applied, which results in a much higher final fee. For example, with the current fee model a nightclub trading to 2am pays $8,661. This could be increased by $500 if they received an infringement notice, bringing the final fee to $9,161.

71. Another example using the *Occupancy Loading Multiplier Model* which adds a standard fee to a late night fee then multiplies the amount by a factor determined by the occupancy loading would result in a 550 patron nightclub trading to 2am would pay ($3,661 + $2,000) x 1.75 @$9,906.75. If they received one infringement notice, $500 could be added to the standard fee ($3,661 + $2,000 + $500) x 1.75 @ $10,781.75.

72. Some examples of models using a compliance history component are below at models 8A – 8C.

Model 8A

Refined Current Model with Compliance History

Trading Times and Occupancy Loadings + Compliance History

	1-150	151+
12am	$3661	$3661
2am	$4661	$8661
4am	$4661	$13661
5am	$4661	$16161

*The refined current fee model uses the $120,000 threshold (the table above assumes the higher standard fee of $3,661).
*This model also uses the current $1,000 flat late night fee for venues with an occupancy loading of 1-150.

	1-150	151+
1+ Ins	$250	$500
OD	$500	$1000

*INs = Infringement Notices
*OD = Occupational Discipline

73. The compliance history component increases a licensee's renewal fee by $250 for one or more infringement notices if the occupancy loading is between 1 – 150 and by $500 for an occupancy loading greater than 150 patrons. A licensee's renewal fee would be increased by $500 if they had been subject to occupational disciplinary action by the Tribunal during the licensing period if their occupancy loading was between 1 – 150 and $1,000 if their occupancy loading was greater than 150 patrons.

Model 8B

Occupancy Loading Multiplier Model (OLM) with Compliance History

(Standard Fee + Late Night Fee + Compliance History) x Occupancy Loading Multiplier

Standard Fee

<$120,000: $1,638
>$120,000: $3,661

Late Night Fee

1am: $1,000
2am: $2,000
3am: $3,000
4am: $4,000
5am: $5,000

Compliance History Component

1+ Infringement Notice: $500
Occupational Disciplines: $1,000

Occupancy Loading Multiplier

0-80	81-150	151-250	251-350	351-450	451-550	551-650	651-750	751-850	851+
0.5	0.75	1	1.25	1.5	1.75	2	2.25	2.5	2.75

*The OLM model uses the $120,000 threshold.

74. A premises with an occupancy loading of 400, trading above $100,000 threshold, trading to 2am with two infringement notices would pay a Standard Fee of $3,661 + Late Night Fee of $2,000 + Compliance History of $500, all multiplied by an Occupancy Loading Multiplier of 1.5 = ($3,661 + $2,000 + $500) x 1.5 = $6,161 x 1.5 = $9,241.50.

Model 8C

Refined Off Licence Model with Compliance History

Amount of Liquor Purchased for Sale + Compliance History

Current Fee Model:

Category	Fee
<$100,000	$1,638
$100,000 -> $500,000	$5,161
$500,000 -> $1M	$6,661
$1M -> $3M	$8,661
$3M+	$13,661

Refined Fee Model:

Category	Fee
<$5,000	$500
$5,000 - $100,000	$1,638
$100,000 -> $500,000	$3,661
$500,000 -> $1M	$5,661
$1M -> $3M	$9,661
$3M-7M	$17,661
$7M+	$25,661

Compliance History component

	<$100,000	$100,000+
1+ Ins	$250	$500
OD	$500	$1000

75. *INs = Infringement Notices
*OD = Occupational Discipline

76. An off licensee trading under the $100,000 threshold who received one or more infringement notices would pay a compliance history component of $250. An off licensee trading over the $100,000 threshold who received one or more infringement notices would pay a compliance history component of $500. An off licensee who was the subject of occupational disciplinary by the Tribunal would pay $500 if trading under the $100,000 threshold or $1,000 if trading over the $100,000 threshold.

Assessment

77. *Predictability*. Using a compliance history component as part of a licensing fee model is highly unpredictable at achieving a cost recovery target in a small jurisdiction like the ACT.

78. *Complexity*. If a compliance history formula was applied to the fee model options it would be more complex than the other models to administer.

79. *ORS resources*. Adding a compliance history component as part of a licensing fee structure would place additional administrative pressure on ORS which would require additional resources to assess and process liquor licensing applications and renewals.

80. *Impact on Licensees*. All licensees who were subject to infringement notices or occupational disciplinary actions by the ACAT during the licensing period would pay more for their licences each year. Conversely, using a compliance history component is likely to act as a strong incentive for licensees to comply with the new liquor laws.

CONCLUSION

81. As a cost recovery model, the current fee model has met the challenge by setting liquor licensing fees at levels which recoup the annual regulatory costs. The fixed fee formula is predictable and is a simple formula for ORS to administer, as it already has in place an electronic licensing data system for this fee formula. The high renewal rate for 2010/11 also suggests that the current fee model has had a marginal impact on the liquor industry, with the one exception being some smaller operators with occupancy loadings under 150 patrons. The current fee model, however, has the disadvantage of not adequately differentiating risk between lower and higher risk licensed premises. The refined current model corrects this limitation by acknowledging the liquor data risk analyses and reduces licensing fees for smaller licensees who have an occupancy loading less than 150 patrons rather than the current 80 patrons.

82. While the flexi model delivers flexibility by introducing trading time options for licensees, it is less predictable at meeting the cost recovery target and would require additional ORS resources to administer and enforce, as ORS would need to conduct inspections more frequently to ensure compliance with approved licensed trading hours. Similarly, the Occupancy Loading Multiplier Model is more complex for ORS to administer and would require additional regulatory resources. It does, however, reward less risky venues and impacts on high risk venues such as nightclubs, clubs, bars and hotels, which trade late.

83. The Licence Category model uses a fixed standard fee rather than the $100,000 threshold and is likely to meet the cost recovery target as its formula is made up of fixed components, licence type, and trading hours and is a less complex model to administer. However, ORS would need to adjust its electronic database to accommodate this formula. The model rewards lower risk premises like restaurants and impacts on higher risk premises such as nightclubs. Clubs, bars and hotels would pay much less than nightclubs due to their lower risk of harm to the community.

84. The Three Risk Category Model also uses a fixed standard fee rather than the $100,000 threshold. It rewards smaller venues with an occupancy loading of 80 or less patrons which would pay considerably less fees in comparison with higher risk venues such as nightclubs. However, medium sized venues could pay a little more than they are currently paying depending on their choice of trading hours. Larger venues such as nightclubs would pay considerably higher fees if they trade late and clubs trading to 5am would pay a bit less than they currently pay.

85. The Refined Off Licence Model reduces the licensing fees for smaller businesses which purchase liquor for sale between $100,000 and $500,000 and between $500,000 and $1 million to reflect the lower volumes of liquor sold and the commensurate lower level of harm to the community. It also introduces a new micro category to cater for those small businesses who sell very small amounts of liquor.

86. All of the models use a number of risk factors and take into account the findings of the liquor data risk analysis and submissions received and address a number of concerns raised by those who made submissions.

87. The review concludes that the present licensing fee arrangements are satisfactory in financing the additional measures the Government has introduced. The review recognises that a number of stakeholders have made representations on the fairness of that fee structure.

88. The Directorate is mindful of these views and has developed additional options to align with the objectives of sharing the social responsibility on behalf of the ACT community.

89. The Directorate therefore invites consideration of possible changes to the licensing fees structure as presented in this Paper.

Appendix B List of Submissions

ACT Greens

ACT Rugby Union Club

Anonymous 60

Anonymous 64

Australian Hotels Association

Australian Wines Archive

Canberra Rifle Club

Canberra Wine and Food Club

Candamber

Casino Canberra

ClubsACT

Cyber Bunker

Danbria

Master Grocers Australia

Matthew Watts

Muddle Bar

The Alcohol and other Drugs Council of Australia

The Basement

The Phoenix

The Pot belly

Vikings Group

Woolworths

Appendix C

Appendix D

Table 3 - Incidents by trading hours

	12am			2am			4am			5am		
	103	Incidents across	49	66	Incidents across	17	393	Incidents across	40	236	Incidents across	9
	0	Incidents across	290 [1]	0	Incidents across	21	0	Incidents across	20	0	Incidents across	0
TOTAL:	*103*	*Incidents across*	*339*	*66*	*Incidents across*	*38*	*393*	*Incidents across*	*60*	*236*	*Incidents across*	*9*
AVERAGE:	*0.3*	*Per licence*		*1.7*	*Per licence*		*6.6*	*Per licence*		*26.2*	*Per licence*	

1 Number of licences that trade in this category that have no incidents recorded against them

Highest Risk -> Lowest Risk	
Licence	**Incidents Per**
5am	26.2
4am	6.6
2am	1.7
12am	0.3

Table 4 - Incidents by occupancy loading of licensed premises

	1-100			101-200			201-300			301-400		
	23	Incidents across	14	47	Incidents across	13	137	Incidents across	20	21	Incidents across	7
	0	Incidents across	138 [1]	0	Incidents across	86	0	Incidents across	29	0	Incidents across	11
TOTAL:	*23*	*Incidents across*	*152*	*47*	*Incidents across*	*99*	*137*	*Incidents across*	*49*	*21*	*Incidents across*	*18*
AVERAGE:	*0.2*	*Per licence*		*0.5*	*Per licence*		*2.8*	*Per licence*		*1.2*	*Per licence*	

	401-500			501-600		
	72	Incidents across	6	69	Incidents across	2
	0	Incidents across	3	0	Incidents across	2
TOTAL:	*72*	*Incidents across*	*9*	*69*	*Incidents across*	*4*
AVERAGE:	*8*	*Per licence*		*17.3*	*Per licence*	

1 Number of licences that trade in this category that have no incidents recorded against them

Highest Risk -> Lowest Risk	
Licence	**Incidents Per**
501-600	17.3
401-500	8
201-300	2.8
301-400	1.2
101-200	0.5
1-100	0.2

Table 5 - Incidents by licensed premises

	CLUBS			GENERAL			OFF			SPECIAL		
	222	Incidents across	40	79	Incidents across	10	133	Incidents across	60	75	Incidents across	12
	0	Incidents across	21 [1]	0	Incidents across	2	0	Incidents across	133	0	Incidents across	29
TOTAL:	*222*	*Incidents across*	*61*	*79*	*Incidents across*	*12*	*133*	*Incidents across*	*193*	*75*	*Incidents across*	*41*
AVERAGE:	*3.6*	*Per licence*		*6.6*	*Per licence*		*0.7*	*Per licence*		*1.8*	*Per licence*	
	ON: BAR			ON: NIGHTCLUB			ON: RESTAURANT					
	88	Incidents across	17	316	Incidents across	17	18	Incidents across	17			
	0	Incidents across	11				0	Incidents across	270			
TOTAL:	*88*	*Incidents across*	*28*	*316*	*Incidents across*	*17*	*18*	*Incidents across*	*287*			
AVERAGE:	*3.1*	*Per licence*		*18.6*	*Per licence*		*0.1*	*Per licence*				

1 Number of licences that trade in this category that have no incidents recorded against them

Highest Risk -> Lowest Risk	
Licence	**Incidents Per**
NightClub	18.6
General	6.6
Club	3.6
Bar	3.1
Special	1.8
Off	0.7
Restauran	0.1

GLOSSARY

ACAT	ACT Civil and Administrative Tribunal
AHA	Australian Hotels Association
CPI	Consumer price index
Directorate	Justice and Community Safety Directorate
MGA	Master Grocers Australia
ORS	Office of Regulatory Services