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ACT Legislative Assembly
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Dear Chair

I am writing in response to comments made by the Standing Committee on Legal Affairs (Legislative Scrutiny Role) in Scrutiny Report 13 about the Liquor Amendment Bill 2025 (the Bill).

I thank the Committee for its consideration of the amendments in the Bill. I provide the following response in relation to the Committee's comments on the amendments to include new sections 143Q, 143Z, and 143ZB in the *Liquor Act 2010* (the Liquor Act).

The ACT Government acknowledges that the obligations relating to the collection, use and disclosure of personal information under the *Privacy Act 1988* (Cth) (the Privacy Act) may not apply to some small businesses. The Government notes that in the context of the same-day delivery market in the ACT, very few same-day delivery providers would fall in the category of small business (that is, those with \$3 million or less in annual turnover). Nevertheless, this gap has the potential to risk the mishandling of personal information of individuals collected pursuant to new sections 143Q, 143Z and 143ZB of the Liquor Act.

As the Committee observes, the personal information that is to be collected—including the name and volume of the liquor supplied or refused, the name of the customer, the address for delivery and reason for delivery refusal (if applicable)—may be information of a sensitive nature. The explanatory statement for the Bill notes that it is necessary to collect this information for compliance purposes. For the reasons outlined below, the ACT Government considers that there are appropriate safeguards and protections in place to mitigate the risk of this personal information being mishandled.

Obligations of confidence

Australian law recognises a legally enforceable obligation to maintain confidence that may arise in both equity and contract—including by implication if there are no express terms in the contract.

The broader Australian community has a growing understanding of the data-driven economy and the serious harm to individuals when their data is not appropriately protected, especially in light of major

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data breach incidents in recent years. This understanding underpins the significant commercial and reputational harm that may arise from a business's privacy practices that result in a data breach or other mishandling of personal information.

The potentially sensitive nature of the information to be collected by a same-day delivery provider from a customer would, in the context of the obligation of confidence and risks to their reputation and business, incentivise the provider to have appropriate information handling processes in place to ensure that the information is not subject to unlawful use or disclosure.

Protection for serious invasions of privacy

In 2024, the Privacy Act was amended to introduce a new statutory cause of action for serious invasions of privacy. The cause of action protects an individual against misuse of their information in circumstances where:

- the person would have had a reasonable expectation of privacy in all of the circumstances
- the invasion of privacy was intentional or reckless
- the invasion of privacy as serious, and
- the public interest in the person's privacy outweighed any countervailing public interest.

The cause of action would allow a person to take legal action and seek a remedy against a same-day delivery provider that misuses their information in a way that seriously invades their privacy. The maximum amount of damages that may be awarded is equivalent to the maximum amount that may be awarded under defamation proceedings (currently \$500,000). Consequently, the cause of action would act as a strong deterrent against misuse of information and give individuals a mechanism to protect their information.

Commissioner for Fair Trading power to direct a same-day delivery provider and delivery person

Section 144 of the Liquor Act gives the Commissioner for Fair Trading (the Commissioner) the power to make a direction to take action or for conduct not to be undertaken, if the Commissioner believes on reasonable grounds that there is or is likely to be a contravention of the Liquor Act.

The Bill would extend this power so that the Commissioner can make a direction to a same-day delivery provider and a delivery person. It would be an offence to fail to comply with the Commissioner's direction, with a maximum penalty of 100 penalty units, 12 months imprisonment or both.

Finally, there are further privacy safeguards that apply to the handling of personal information by a public sector agency under the *Information Privacy Act 2014* (ACT). An individual may make a complaint to the Information Privacy Commissioner who may deal with the complaint, for example by seeking to conciliate the complaint.

Together, these existing frameworks provide robust safeguards for the right to privacy, and therefore the Bill has not been further amended.

I trust this information adequately addresses the Committee's comments.

Sincerely



Tara Cheyne MLA
Attorney-General