

Summary of Proposed Changes to the Liquor Licensing Act

November 2016



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Introduction

In September 2016, the State Government published its response to former Supreme Court Judge Tim Anderson's Review of the South Australian Liquor Licensing Act 1997.

The Review considered 89 responses from industry bodies, other interested parties and the broader community, with Mr Anderson meeting approximately 60 industry representatives and individuals.

Mr Anderson's report made 129 recommendations aimed at improving the regulatory system, cutting red tape, encouraging a competitive market and promoting vibrancy and a safe drinking culture.

In response, the Government accepted the vast majority of Mr Anderson's recommendations in full, in part, or in principle including:

- Streamlining liquor licensing categories
- Removing restrictions relating to the sale of liquor on Sundays, Christmas Day, Good Friday and New Year's Eve
- Tightening the laws relating to the supply of alcohol to minors
- Introducing a mandatory three hour break in trade for late night premises between 3am and 8am.

This document outlines how changes to the *Liquor Licensing Act 1997* that reflect the Government's response will be implemented.

It details Mr Anderson's recommendations, the Government's response and – where applicable – the relevant clause of the draft Bill.

Changes to the liquor licensing fee structure are not included in the draft Bill, but will be included in the regulations which are intended to be drafted at a later stage, in consultation with the industry.

The draft Bill should be considered in conjunction with the Draft Community Impact Assessment Guidelines, which have also been released for consultation. These Guidelines will outline factors that the liquor licensing authority will need to consider in determining whether certain high risk applications meet the new test based on the concept of community interest.

Objects of the Act

Rec no.	Recommendation	Government Response	Clause in Bill
1	Section 3(1) of the Act be amended to reflect the significance of the objects, contemporary standards and provide greater clarity particularly in respect to harm.	The Government accepts this recommendation.	Clause 4 Amendment to section 3
2	Section 3(2) of the Act be amended so that the Licensing Authority <u>shall not grant</u> an application for a licence or removal of a licence for premises or proposed premises unless it is consistent with the objects of the Act. This section should also provide the Licensing Authority with discretion to have regard to the objects when determining conditions of a licence or an application to vary the conditions of a licence.	The Government accepts this recommendation.	Clause 33 Amendment to section 53
3	The form of application to require the applicant to make a submission addressing each of the objects of the Act to allow the Licensing Authority to make an informed decision.	The Government accepts this recommendation.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
4	Section 53(1a) of the Act be amended to require that an application for the grant or removal of a licence must be refused if the Licensing Authority is satisfied that to grant the application would be contrary to the public interest or is not consistent with the objects of the Act.	The Government accepts this recommendation.	Clause 33 Amendment to section 53 Current section 53(1a)

Categories of Licence

Rec no.	Recommendation	Government Response	Clause in Bill
5	The special circumstances category of licence be abolished.	The Government accepts this recommendation.	Clause 20 New Part 3 Division 2
6	The existing Hotel Licence and relevant sub-category of Special Circumstances Licence including trading conditions be abolished and incorporated under a General Liquor Licence with common trading conditions.	The Government accepts this recommendation.	Clause 20 New section 32
7	The existing Entertainment Venue Licence and relevant sub-category of Special Circumstances Licence be abolished and incorporated under an On-Premises Licence with common trading conditions.	The Government accepts this recommendation.	Clause 20 New section 33
8	The existing Residential Licence be retained.	The Government accepts this recommendation.	Clause 20 New section 34
9	The trading conditions of the existing Restaurant Licence be expanded to reflect catering services and be renamed as a Restaurant and Catering Licence. This licence will also be simplified to allow consumption of liquor without a meal if the provision of meals is the primary activity, without the need for an authorisation as presently required.	The Government accepts this recommendation in part. The proposed extension of the Restaurant Licence to incorporate catering services is accepted. However, with respect to the proposal to allow consumption of liquor without a meal without the need for an authorisation, there is concern to ensure that this cannot be a backdoor means to a restaurant being able to operate as a bar, for example ceasing to serve meals after a certain hour but being permitted under the licence to continue to provide a late night bar service. This aspect of recommendation 9 is not accepted.	Clause 20 New section 35
10	The existing Limited Club Licence and relevant trading conditions be abolished. All licensed clubs to be incorporated under a single category of Club Licence with common trading conditions.	The Government accepts the recommendation. This recommendation will result in former limited clubs losing their exemption from the payment of annual licence fees and the requirement to formally comply with responsible service principles, therefore the Government notes that consideration will need to be given to the impact on former Limited Clubs, for example via fees differentiation as proposed in the Report.	Clause 20 New section 36

11	The existing Small Venue Licence be retained but extended to include North Adelaide.	The Government agrees in part with this recommendation. The existing small venue licence has proven successful in its limited application to the CBD and should be retained, however consideration as to possible expansion to other areas will be deferred for later review in two to three years to allow consolidation and proper review of the impact of the existing small venue licence (see also recommendation 77).	Clause 20 New section 37
12	The existing Retail Liquor Merchant's Licence, Direct Sales Licence and relevant sub-category of Special Circumstances Licence including relevant trading conditions be abolished and incorporated under a Packaged Liquor Sales Licence with common trading conditions.	The Government accepts this recommendation.	Clause 20 New section 38
13	The existing Producer's Licence and Wholesale Liquor Merchant's Licence including relevant trading conditions be abolished and incorporated under a Liquor Production and Sales Licence.	The Government accepts this recommendation.	Clause 20 New section 39

Trading Conditions

Rec no.	Recommendation	Government Response	Clause in Bill
14	The current 'Lockout' provisions be retained for a further two or three years to allow for their effect to be assessed over a longer term.	The Government accepts this recommendation.	No change
15	It is a mandatory condition of a licence that licensed premises must be closed for a minimum of three continuous hours between 3.00am and 9.00am. Alternatively, the premises could remain open for those three hours but not sell liquor.	The Government accepts this recommendation in part but with a preference to restrict the break-in-trade window to between 3am and 8am (rather than 9am). The option to close from 6am to 9am is not considered to be a proper break in the <u>night</u> trade, which is the intention of the break-in-trade.	Clause 23 New section 44A
16	All restrictions relating to the sale of liquor on Sundays, Christmas Day, Good Friday and New Year's Eve should be abolished. Trading under all types of licence should be able to be authorised on any day of the week without differentiation.	The Government accepts this recommendation.	Clause 20 New Part 3 Division 2
17	The compulsory hours of trading for hotels and any obligation to provide meals during certain hours be abolished.	The Government accepts this recommendation.	Clause 20 New section 32
18	The designation of areas within licensed premises (including designated dining areas) be abolished.	The Government accepts this recommendation.	Clause 20 New Part 3 Division 2
19	The imposition of capacities for individual areas within licensed premises be abolished and a total capacity for the premises imposed.	The Government accepts this recommendation. DPTI confirms that overall capacity restrictions dealing with fire and structural safety (eg having regard to the availability of fire escapes and exit door widths as well as load capacity for balconies) are dealt with at planning. There were residual concerns about crowd behaviour due to overcrowding in one area of a premises, however as the Report points out, designated area capacity restrictions are difficult or impossible to enforce.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
20	Entertainment other than 'prescribed entertainment', for all types of licences requiring such a facility should be permitted as a matter of right at any time during nominated trading hours.	The Government accepts this recommendation.	Clause 63 Amendment to section 105

21	Legislate for the authorised trading hours applicable to each category of licence as set out in table 5.	The Government accepts this recommendation.	Clause 20 New Part 3 Division 2
22	Subject to the terms and conditions of the licence, the Licensing Authority shall fix and prescribe on the licence the actual trading hours as nominated by the licensee (<i>to be known as the Nominated Trading Hours</i>).	The Government accepts this recommendation, noting that the nominated hours would be approved and fixed as a trading authorisation by the Licensing Authority and would need to be within the hours authorised under the Act for that licence category and approved by council.	Clause 20 New Part 3 Division 2
23	It is a mandatory condition of a licence that a licensee must not conduct trade in liquor outside the Nominated Trading Hours specified in the licence.	The Government accepts this recommendation.	Current section 45
24	A standard automatic extension of Nominated Trading Hours until 2.00am on New Year's Day shall apply to licences authorising the consumption of liquor on the licensed premises.	The Government accepts this recommendation.	Clause 23 New section 44
25	A licence should state the specific terms and conditions including the Nominated Trading Hours fixed by the Licensing Authority.	The Government accepts this recommendation.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
26	Statutory licence conditions should continue to be retained within the legislation rather than captured within a code.	The Government accepts this recommendation.	No change

27	A General Liquor Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises.	The Government accepts this recommendation, with off-premises restricted to a cut-off time of 10pm. For the existing bottle-shops attached to hotels that are currently authorised to trade beyond 10pm, a grandfathering approach will be taken such that they will be permitted to continue trading those extended hours. The 10pm cut-off will apply to all other hotels selling for off-premises consumption and any new General Liquor Licences.	Clause 20 New section 32 Transitional provisions – Schedule 2
28	An On-Premises Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of meals is not the primary and predominant business of the licensee.	The Government accepts this recommendation, however consideration will be given to whether a requirement to have food available should be imposed by the General Code in relation to certain premises, such as for On-Premises Licences trading after a certain time.	Clause 20 New section 33
29	A Residential Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises where the provision of accommodation is the primary and predominant business of the licensee.	The Government accepts this recommendation.	Clause 20 New section 34
30	A Restaurant and Catering Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises or at a place other than the licensed premises where the provision of meals is the primary and predominant business of the licensee.	The Government does not support this recommendation for the reasons outlined for recommendation 9.	Clause 20 New section 35

31	A Club Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on or off the licensed premises.	The Government accepts this recommendation, noting that authorisation for off-premises sales will still need to pass the Community Impact and Public Interest Test. Trading hours for off-premises consumption should also be consistent with Packaged Liquor Sales licences and therefore limited to 10pm, not extend until midnight.	Clause 20 New section 36 Transitional provisions – Schedule 2
32	A Small Venue Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption on the licensed premises between 8am and 2am on any day.	The Government accepts this recommendation.	Clause 20 New section 37
33	A Packaged Liquor Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor for consumption off the licensed premises for a maximum of 13 hours in any one day.	The Government accepts this recommendation, noting that the Government agrees with the proposed cut-off time of 10pm for packaged liquor sales. For the existing bottle shops attached to hotels that are currently authorised to trade beyond 10pm, a grandfathering approach will be taken such that they will be permitted to continue trading those extended hours. The 10pm cut-off will apply to all other bottle shops, clubs and hotels selling for off-premises consumption and any new licensees in these categories.	Clause 20 New section 38
34	A Liquor Production and Sales Licence shall authorise the licensee in accordance with the terms and conditions specified in a trading authorisation to sell liquor or the licensee's own product for consumption on or off the licensed premises.	The Government accepts this recommendation.	Clause 20 New section 39

Annual Licence Fee

Rec no.	Recommendation	Government Response	Clause in Bill
35	Describe the annual fee within the legislation as an 'annual licence renewal fee'.	The Government accepts in principle the need to bolster processes to ensure timely payment of annual licence fees and enforce disciplinary consequences for failure to pay, however the Government is concerned that use of the term "renewal" could adversely affect the value of licences, which are perpetual. It is considered that implementation of recommendation 46 is a more appropriately targeted measure for achieving the objective.	No change
36	Change the annual licence renewal fee structure to incorporate the concepts of a fee based on the premises capacity, trading hours, extended event authorisation and compliance record (i.e. the later the closing time, the higher the fee) so that it is applicable to all classes of licence.	The Government accepts this recommendation but notes the need to consider the impact on licensed premises that have large capacity but generally very low patronage or small client base. Implementation of this recommendation will require change to fees prescribed by regulation and further consideration will need to be given, in consultation with affected parties, to determining the appropriate fee levels.	Regulations - to be drafted
37	That the amount of the annual licence renewal fee applicable to premises which typically trade as hotels or taverns (<i>i.e. with approval to sell liquor for consumption on or off the premises</i>) under the proposed General Liquor Licence class be increased.	The Government accepts this recommendation, however further consideration will need to be given, in consultation with affected parties, to determining the appropriate fee levels.	Regulations - to be drafted
38	That the fee structure for a General Liquor Licence be also applicable to licences which authorise the sale or supply of liquor for consumption on the premises under an On-Premises Licence (<i>irrespective of whether the sale of liquor is the predominant activity or not</i>).	The Government accepts this recommendation.	Regulations - to be drafted
39	Introduce interim capacity thresholds for the calculation of annual licence renewal fees for Club Licences and imposing a different fee for clubs with or without gaming.	The Government accepts this recommendation.	Regulations - to be drafted

40	The holder of a Club Licence may apply to the Licensing Authority to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee.	The Government accepts this recommendation but notes that consideration will need to be given to the fees payable for Event Endorsements where all events are charitable or community events.	Clause 20 New section 36 Regulations - to be drafted
41	Increase the amount of the annual licence renewal fee applicable to the sale of packaged liquor products under the Packaged Liquor Sales Licence and the introduction of an increased fee for holders of multiple package liquor sales licences.	The Government accepts this recommendation in part. The Report points out that 80 per cent of alcohol consumed in Australia is sold through off-licence premises. Accordingly, a significant degree of risk of alcohol-related harm, and significant costs to the community arising from alcohol-related harms, are associated with this licence type and the Government agrees that the annual licence renewal fee level for the packaged liquor sales licence should better reflect, and better offset, these costs. However, the Government is not persuaded that the proposed graduated fee (payable per licence, increasing depending on the number of outlets held) for holders of multiple packaged liquor sales licences is justified.	Regulations - to be drafted
42	Should the Government choose to retain the existing option for this category of licence to trade beyond 10.00pm to midnight, a further increase to the licence fee of between \$2,500 and \$5,000 should be applied.	The Government accepts this recommendation. The Government is of the view that no packaged liquor outlets ought to be allowed to trade past 10pm. For the existing bottle shops attached to hotels that are currently authorised to trade beyond 10pm, a grandfathering approach will be taken such that they will be permitted to continue trading those extended hours. The 10pm cut-off will apply to all other bottle shops, clubs and hotels selling for off-premises consumption and any new licensees in these categories.	Clause 20 New sections 32, 36 and 38 Transitional provisions – Schedule 2

43	Licensees holding a Liquor Production and Sales Licence be allowed to have their licence endorsed to permit the sale and supply of liquor at a number of events per year subject to the payment of an annual Extended Event Trading Fee.	The Government accepts this recommendation in part on the basis that this should be limited to endorsement for low risk events only (eg weddings and food and wine functions, but not music festivals) with high risk events requiring separate application and authorisation.	Clause 20 New section 39 Regulations - to be drafted
44	Exempt businesses from late trading fees where the predominant activity conducted relates to restaurants, cafes and tourism operators with only a BYO facility, catering providers and bona fide cooking schools.	The Government accepts this recommendation.	Regulations - to be drafted
45	Incorporate a penalty fee in the annual licence renewal fee to reflect serious incidents of non-compliance in the previous 12 months or fee period.	<p>The Government does not support this recommendation. The concern is that a penalty fee effectively penalises the licensee twice for the same offence. The Government prefers to see non-compliance, and in particular repeated non-compliance, result in suspensions or trading restrictions being imposed on the licensee, which are considered to be a better targeted and more effective enforcement measure. To that end the Government is strongly supportive of recommendations 86 and 100, which would mandate disciplinary action by the Licensing Authority for a second offence after expiation of a first.</p> <p>Instead of a non-compliance penalty fee, the Government proposes to legislate to provide that the Licensing Authority may impose conditions on a licence as well as issuing an expiation fee for a first offence, after giving the licensee the opportunity to make submissions.</p>	Clause 81 New section 119B
46	The provisions of section 50A of the Act be strengthened to mandate sanctions and include time frames following the non-payment of annual licence renewal fees.	The Government accepts this recommendation, noting however the response to recommendation 35 regarding use of the term "renewal".	Clause 27 Amendment to section 50A

Red Tape

Rec no.	Recommendation	Government Response	Clause in Bill
47	The provisions of section 51 of the Act (form of application) be retained.	The Government accepts this recommendation.	No change
48	There should be one application form for all categories of licence.	The Government accepts this recommendation.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
49	In keeping with the Premier's Digital by Default Declaration, the process for submitting liquor applications and ongoing administration of the liquor licensing regime should be through a web-based digital portal.	The Government accepts this recommendation, noting that Consumer and Business Services has already commenced work on moving to online liquor licence applications.	Clause 91 New section 136(2a)
50	Amend section 52(2) of the Act so that notice of the application is required to be published on the CBS website and all other notification or advertising requirements are removed. The Licensing Authority should retain the discretion to require any further advertising or notification.	The Government accepts this recommendation in part. The Government is concerned to ensure that local residents and adjacent occupiers are notified of a liquor licence application. Not all applications will entail planning approval and notification of residents pursuant to the planning process, therefore the Government considers that retaining the requirement to place a notice on the premises is reasonable to achieve that objective.	Clause 31 Amendment to section 52
51	General objections should be replaced with written submissions and the rights of review of the Commissioner's decision should apply only in limited situations.	The Government accepts this recommendation.	Clauses 9, 10, 12, 17 and 53
52	Amend sections 71 and 97 of the Act to provide clarity and a distinction between persons who manage the business under the licence and persons exercising responsibilities on a day to day basis as responsible persons.	The Government does not support this recommendation on the basis that there is no demonstrated problem and the recommendation would cause unnecessary red tape, for example of notifying the Licensing Authority of periodic changes in this manager. A nominated manager is unlikely to be present on the premises when enforcement officers visit, whereas a 'responsible person' would be.	No change
53	Amend the Act to expressly allow the Licensing Authority to issue a temporary approval of responsible persons in its absolute discretion.	The Government accepts this recommendation.	Clause 50 Amendment to section 71

54	Amend the Act to give the Commissioner a general discretion to revoke an approval of a responsible person.	The Government accepts this recommendation.	Clause 51 New section 71A
55	Approval of crowd controllers to work in licensed premises should only be administered under the <i>Security and Investigation Industry Act 1995</i> .	The Government accepts this recommendation.	Clause 52
56	Amend the definition of 'controlling crowds' in section 3(1) of the <i>Security and Investigation Industry Act 1995</i> to exclude the functions of responsible persons and licensees.	The Government accepts this recommendation.	Consequential changes to the <i>Security and Investigation Industry Regulations 2011</i> - to be drafted
57	Amend the Act so that clubs are only required to notify the Commissioner of the members of the committee of management and any changes to the composition of that committee.	The Government accepts this recommendation.	Clause 36 Amendment to section 56 Clause 20 New section 36(3)
58	Replace the eligibility requirements for membership of clubs in section 49(3)(b) of the Act with the requirement that the rules of the club must make provision for the criteria for admission to membership of the club.	The Government accepts this recommendation.	Clause 20 New section 36(6)
59	Amalgamating clubs should only be required to notify the Commissioner of the amalgamation, provided that there are no changes to the trading rights attached to the host premises, which was the subject of a liquor licence.	The Government accepts this recommendation but notes that Club amalgamation notifications will entail assessment, and the issue of a new licence, by CBS and will therefore need to attract a fee.	Clause 47 New section 65A
60	The trading conditions applicable to clubs that share licensed premises should be more flexible to allow either club to conduct operations on any day subject to both clubs maintaining a joint register.	The Government accepts this recommendation.	Clause 25 Amendment to section 48 Clause 20 New section 36(7)
61	The Act be amended to include an exemption for cruise ships operating in South Australian waters, provided certain conditions are met.	The Government accepts this recommendation.	Regulations - to be drafted
62	The Act be amended to include an exemption for retirement villages provided certain conditions are met.	The Government accepts this recommendation.	Regulations - to be drafted
63	The Act be amended to include an exemption for businesses selling gifts which include alcohol, provided certain conditions are met.	The Government accepts this recommendation.	Regulations - to be drafted
64	The Act be amended to extend the exemption relevant to the provision of bed and breakfast facilities.	The Government accepts this recommendation.	Regulations - to be drafted

Planning and Liquor Licensing Regime Overlap

Rec no.	Recommendation	Government Response	Clause in Bill
65	The Planning and Design Code under the <i>Planning, Development and Infrastructure Act 2016</i> to prescribe in which areas different types of licensed venues are an acceptable use of land and contain general land use conditions relating to those licensed venues.	The Government accepts this recommendation in principle. This is a matter for further consideration by the Department of Planning Transport and Infrastructure during development of the Planning and Design Code.	To be considered during the development of the Planning and Design Code
66	Implement a clear delineation of responsibilities between relevant planning authorities and the Licensing Authority.	The Government accepts this recommendation in principle, agreeing with the objective of reducing duplication in the planning and liquor licensing processes. However, there are some planning-type matters that do not currently fall under the <i>Development Act 1993</i> or the <i>Planning, Development and Infrastructure Act 2016</i> as strictly constituting development and there will need to be further consideration given as to how to appropriately delineate responsibilities.	To be considered further in conjunction with planning reforms.
67	Certain applications under the Act should trigger the need for development approval under the <i>Development Act 1993</i> or the <i>Planning, Development and Infrastructure Act 2016</i> (when that comes into operation).	The Government does not support this recommendation. Although the Government is committed to reducing duplication in the planning and liquor licensing processes, this recommendation potentially adds additional red tape to the planning process. The Government prefers to explore alternative options, such as assessing planning and licencing applications in tandem and early notification of licensing applications to councils to achieve this objective.	No change
68	The necessary approvals under the <i>Development Act 1993</i> or the <i>Planning, Development and Infrastructure Act 2016</i> (when that comes into operation) must be obtained before lodgement of the application with CBS.	The Government does not support this recommendation for the same reasons as outlined in relation to recommendation 67.	No change

69	Remove the ability of council to object or make a submission on matters that are dealt with or addressed at the planning level and remove the ability of council to intervene in the liquor licensing process.	The Government agrees with this recommendation, noting that the new <i>Planning, Development and Infrastructure Act 2016</i> will already substantially achieve this by the consequential amendment to the <i>Liquor Licensing Act 1997</i> provided for in Schedule 6, Part 6 removing the ability of a local council to intervene by making representations in a matter that is dealt with or addressed at the planning level under the new Act.	Clause 53 New section 77(3)
70	The Commissioner should have an absolute discretion to add, substitute, vary or revoke any existing conditions as a result of any proposed reforms and because it is a matter that is dealt with or addressed under the <i>Development Act 1993</i> or the <i>Planning, Development and Infrastructure Act 2016</i> (when that comes into operation). Please see chapter 21 for further discussion.	The Government accepts this recommendation.	Transitional provisions Schedule 2 – Clause 5
71	Section 106 of the Act relating to complaints about noise etc. emanating from licensed premises should be retained.	The Government accepts this recommendation.	No change

Needs Test

Rec no.	Recommendation	Government Response	Clause in Bill
72	<p>The 'needs test' in sections 58 and 61 of the Act be replaced with a Community Impact and Public Interest Test to apply to certain high risk categories of licence, with a discretion for the Licensing Authority to include other applications.</p>	<p>The Government substantially accepts this recommendation but notes that careful consideration will need to be given to framing this test to protect against proliferation of liquor outlets and alcohol-related harm. Under this new Community Impact and Public Interest Test (the new Test) an applicant will have to satisfy the Licensing Authority that granting the application will not detract from the safety and well-being of the community and is in the public interest. This will involve the Licensing Authority balancing any benefits against any detriment. This test will consider matters that are wider than the aspirations and expectations of the public (which must be satisfied as part of the objects of the Act).</p> <p>The new Test should be a wide test to capture a broad range of matters. The Government agrees that the types of matters set out in section 9.7 of Mr Anderson's Report are appropriate matters to include in the proposed guidelines and agrees that the new Test threshold, including the type and amount of supporting information that must be provided by an applicant, must vary depending on the licence type, with higher risk businesses needing to meet a higher threshold.</p> <p>The Licensing Authority must be able, in its discretion, to require the applicant to provide such further information as it may require.</p> <p>Further, the Government is concerned to ensure the new Test continues to apply to a sufficiently wide range of on-premises venue types to guard against a proliferation of bars in the community. The Report proposes that the new Test apply to on-premises licenses authorised to trade past 2am. However, the Government takes the view that the new Test should apply to any on-premises general licence regardless of whether the licensee trades past 2am - with exceptions for businesses predominantly providing a conveyance service or accommodation and sporting venues as recommended in the Report.</p>	<p>Clause 5(8) Amendment to section 4</p> <p>Clause 34 New sections 53A and 53B</p>
73	<p>Guidelines should be issued by the Commissioner about the Community Impact and Public Interest Test to inform the public and applicants about the assessment process.</p>	<p>The Government accepts this recommendation. Rather than prescribing or entrenching these matters within the legislation, it is proposed, consistent with the approach taken in other jurisdictions with a similar test, that the Commissioner issue guidelines about the Community Impact and Public Interest Test and set out what matters will be considered as part of that Test. This will allow the Licensing Authority to be unfettered in the matters that it can consider.</p>	<p>Clause 5(8) Amendment to section 4</p> <p>Clause 34 New sections 53A and 53B</p> <p>Please refer to the Draft Community Impact Assessment Guidelines released for public consultation</p>

Packaged Liquor Sales in Supermarkets

Rec no.	Recommendation	Government Response	Clause in Bill
74	The requirement in section 37(2) that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from the premises used for other commercial purposes, should be retained. Notwithstanding this, the legislation must make it clear that licensed premises can however exist under the same roof as a supermarket.	The Government accepts this recommendation, noting that the new Community Impact and Public Interest Test (the new Test) will still operate as a guard against outlet proliferation, in particular in risky areas. For example, where there is a supermarket within a shopping centre and already a bottle shop nearby within the centre, the application of the Test may well prevent the supermarket getting a licence to establish an additional bottle shop within the supermarket area. However, where that supermarket business owns the bottle shop in question, it may be successful in removing the bottle shop from the separate premises to within the supermarket area, provided it can meet the separation and other requirements. The physical separation requirements also safeguard against harm. The Government agrees that the 'shop within a shop' concept as set out in recommendation 75 provides significant protection without need for a separate roof, and acknowledges that in fact there are already examples of licences issued under the present <i>Liquor Licensing Act</i> provisions where physical separation has not entailed a separate roof. However, the Government believes physical separation needs to be more than proposed in the Report and should also require a separate entrance. In the case of supermarkets, this would mean that the entrance to the liquor shop must be a separate entrance from the street or shopping centre. Further, to guard against legal arguments about what constitutes adequate "physical separation", the Government also proposes to legislate that this must include a permanent and substantial physical barrier, non-transparent and at least 2.5 metres high.	Clause 20 New section 38
75	The licensed premises in respect to a Packaged Liquor Sales Licence should have a separate checkout with an adult operator trained in responsible service of alcohol and supervised/managed by a responsible person at all times.	The Government accepts this recommendation.	Clause 20 New section 38 Current sections 97, 107(1) and General Code of Practice
76	Legislation should expressly prohibit specific types of business from holding a Packaged Liquor Sales Licence (see paragraph 5.7.42 for the complete list).	The Government accepts this recommendation.	Clause 20 New section 38(7)

Small Venue Licences

Rec no.	Recommendation	Government Response	Clause in Bill
77	Extend the application of the Small Venue Licence to include the area of North Adelaide.	The Government does not support this recommendation. The existing small venue licence has proved successful in its limited application to the CBD, however consideration as to possible expansion to other areas will be deferred for later review in two to three years to allow consolidation and proper review of the impact of the existing program (see also recommendation 11).	No change

Limited Licences

Rec no.	Recommendation	Government Response	Clause in Bill
78	The existing Limited Licence class of licence be abolished and incorporated under a Liquor Permit, Extended Liquor Permit or Special Event Permit depending on the duration and nature of the event.	The Government accepts this recommendation.	Clause 20 New section 40
79	There should be a renewable BYO Permit (for operators who wish to provide a BYO facility but without the full authorisation and trading rights applicable under a Restaurant Licence). This could apply to galleries, studios, café's and tourism providers.	The Government accepts this recommendation.	Clause 20 New section 40
80	The requirement for a separate application for a low-risk single occasion event should be dispensed with and replaced with a system of permits by notification.	The Government accepts this recommendation.	Clause 20 New section 40
81	The Government may wish to give consideration to allowing the Licensing Authority to grant an event permit for a period not exceeding three years (e.g. for low risk events such as Tasting Australia, and the Glendi Festival).	The Government accepts this recommendation.	Clause 20 New section 40

Dry Areas

Rec no.	Recommendation	Government Response	Clause in Bill
82	Amend section 131 of the Act to allow local councils, in limited circumstances, to prohibit the consumption and/or possession of liquor in public places within their relevant local government area.	The Government accepts this recommendation noting that the recommendation is for a limited council power to declare a dry area for a maximum 48 hours and requires public notification as well as notification of SAPOL and the Licensing Authority. The Licensing Authority would be given the power to vary or revoke those dry areas if it is in the public interest.	Clause 91 Amendment to section 131
83	Amend section 131 of the Act to allow the Minister and Commissioner to revoke or vary a prohibition order made under that section.	The Government accepts this recommendation.	Clause 91(3) Amendment to section 131
84	The impact of prohibition orders made under section 131 of the Act should be monitored, particularly in regional centres such as Ceduna and Coober Pedy.	The Government accepts this recommendation.	Implementation of the Government's response does not require a change to the Liquor Licensing Act

Minors

Rec no.	Recommendation	Government Response	Clause in Bill
85	Offences which relate to the sale of liquor to minors on licensed premises should be strict liability offences and be recorded on the Minors Non-Compliance Register.	The Government accepts this recommendation in part. The Government understands that the intention of the recommendation is to remove the defences. Removing the defences could lead to unfair enforcement outcomes. It would be preferable to instead bolster the offences by reversing the onus of proof. The Government agrees with the recommendation to record offences on a Minors Non-Compliance Register (see also recommendation 95).	Clause 68 Amendment to section 110 Clause 93 New section 135A
86	Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to the supply of liquor to minors on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority.	The Government accepts this recommendation.	Clause 68 Amendment to section 110 Clause 69 New section 110A Clause 79 Amendment to section 118 Clause 81 New section 119B Clause 93 New section 135B
87	Disciplinary action in relation to the supply of liquor to minors should be prescribed for the purposes of imposing a Compliance Penalty Fee for the next annual licence renewal fee period.	The Government does not support this recommendation for the same reasons outlined in relation to recommendation 45.	No change

88	Legislate to require persons who appear to be under the age of 25 years to produce evidence of age.	The Government does not support this recommendation. Licensees may already require persons who they reasonably suspect to be under 18 to produce ID. The proposed offence would be difficult to comply with and to enforce. There would not appear to be a need to legislate for a requirement to show ID. To encourage licensees to check for age (noting that under the response to recommendation 85 they will now commit the offence of supplying a minor unless they can prove that they didn't serve them), however it is proposed to broaden the existing provision to allow licensees to require any person (regardless of whether there is a reasonable suspicion that they are under 18) to produce ID. Failure to produce ID should require denial or entry or service, as relevant.	Clause 75 Amendment to section 115 Clause 77 New section 116
89	Legislate to entrench powers to seize false or fraudulently used evidence of age identification documents.	The Government accepts this recommendation, noting the need to draft carefully with the impending trials of digital driver's licences.	Clause 76 New section 115A
90	Minors should not be allowed— (a) on licensed premises where the primary and predominant business conducted under the licence is that of a nightclub, karaoke bar or other type of bar between 9.00pm and 5.00am; or (b) on licensed premises where the primary and predominant business conducted under the licence is the sale of packaged liquor products (i.e. bottle shops) unless accompanied by a responsible adult at all times; or (c) on any other licensed premises between 9.00pm and 2.00am unless accompanied by a responsible adult; or (d) on any other licensed premises between 2.00am and 5.00am.	The Government agrees with this recommendation in part. Although noting the proposed exemptions set out in the body of the Report, further consideration needs to be given to the recommended 9pm cut-off for "any other licensed premises" (ie other than nightclubs or bottle shops) to ensure that this does not apply to restaurants. The Government is also concerned that the restriction not apply to minors attending, for example, functions at sporting clubs and considers that midnight is a more appropriate cut-off time, after which a minor may not remain on hotel, club, etc premises unaccompanied by a responsible adult, noting that the equivalent cut-off time under the existing legislation is midnight. With the proposal to remove 'designated dining areas' under these recommendations, a later midnight cut-off will address the likely situation of minors on premises past 9pm while dining.	Clause 67 New section 109C Clause 71 Amendment to section 112
91	Legislate to exempt certain categories of minors from the prohibition from licensed premises.	The Government accepts this recommendation.	Clause 71(4) Amendment to section 112

92	Adopt legislation for the secondary supply of liquor to minors, particularly in relation to residential premises and strengthen the regulation of minors consuming liquor and adults supplying liquor at high risk after-parties or events.	The Government accepts this recommendation. The Government acknowledges concerns about application of these offences to parents (who eg supply their child's friends during a private party), however there is a demonstrated problem with secondary supply to minors at 'schoolies' type events and parties. These offences should serve as a strong deterrent. Further, as the Report notes, South Australia is currently out of step with other jurisdictions in not having secondary supply offences.	Clause 69 New section 110A Clause 74 – repeal of section 114 Clause 78 – repeal of section 117
93	Consider penalties for the supply of liquor to minors equivalent to the monetary amounts and term of imprisonment prescribed under New South Wales legislation.	The Government agrees with this recommendation in principle, agreeing that the penalties for secondary supply need to serve as a strong deterrent. Having considered the NSW penalties, the Government takes the view that a penalty of imprisonment is excessive and prefers the alternative Report option of a considerable monetary penalty of \$10,000 with an expiation fee of \$500.	Clause 69 New section 110A
94	Legislate to prohibit the sale and delivery of liquor to minors through direct sales transaction.	The Government accepts this recommendation.	Clause 64 New section 107A
95	Legislate to require that offences relating to the sale of liquor to minors are strict liability offences with offending licensees recorded in a register and the details published on the CBS website.	The Government accepts this recommendation in part. The Government understands that the intention of the recommendation is to remove the defences. Removing these defences could lead to unfair enforcement outcomes. It would be preferable to instead bolster the offences by reversing the onus of proof. The Government agrees with the recommendation to record offences on a Minors Non-Compliance Register (see also recommendation 85).	Clause 93 New section 135A

Compliance and Enforcement

Rec no.	Recommendation	Government Response	Clause in Bill
96	The provisions of the Declared Public Precincts Bill, if enacted, should be applied concurrently with the provisions of the <i>Liquor Licensing Act 1997</i> .	The Government accepts this recommendation.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
97	There should be a greater visible police presence in and around licensed premises and proactive policing of licensed venues and events to prevent alcohol related harms.	The Government agrees with this recommendation but notes the need for separate consideration of the resource implications for SAPOL and CBS.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
98	The compliance and enforcement activities of CBS should have a greater focus on assessing compliance with the objects of the Act, particularly licensee's obligations to minimising harm or the potential for harm associated with excessive or inappropriate consumption of liquor.	The Government accepts this recommendation.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
99	Make it a strict liability offence for a licensee, employee of the licensee or other person engaged by the licensee to grant entry, sell or supply or allow an intoxicated person to be on licensed premises.	The Government accepts this recommendation in part. The Government understands that the intention of the recommendation is to remove the defences. Removing these defences could lead to unfair enforcement outcomes. It would be preferable to instead bolster the offences by reversing the onus of proof. Further, the Government is concerned with the Report's recommendations for new offences of allowing an intoxicated person to enter or remain on licensed premises. There are already powers and requirements to deal with an intoxicated person posing a risk to other patrons and to refuse supply to intoxicated persons. An offence of allowing entry to an intoxicated person would require licensed premises to employ a crowd controller to police entry. Further consideration will be given to limiting the scope of this proposed offence to high risk or late night premises. The proposed offence of allowing an intoxicated person to remain on premises could lead to injury or harm if an intoxicated person is ejected onto the street as opposed to being allowed to remain in the relative safety of the premises. It is not proposed to introduce this offence.	Clause 65 Amendment to section 108

100	Enable CBS inspectors and police officers on the occasion of the first offence to expiate offences relating to intoxicated persons on licensed premises, while a second or subsequent offence should trigger mandated disciplinary action before the Licensing Authority.	The Government accepts this recommendation but to apply to the scope of offences outlined in relation to recommendation 99.	Clause 65 Amendment to section 108 Clause 93 New section 135B
101	The Liquor and Gambling Commissioner should have wider power to suspend a licence for repeat breaches of the Act or for a serious or prescribed first offence.	The Government accepts this recommendation.	Clause 80 New section 119B
102	Introduce a web based notification system or portal for licensees, SA Police and CBS to manage collectively the barring of persons from licensed premises.	The Government agrees in principle with this recommendation, subject to further costing and feasibility studies.	Clause 94(2) Amendment to section 136
103	Provisions relating to 'welfare barring orders' under sections 125(1)(aa) and 125B(1)(e) of the Act should be amended to reflect the revised objects of the Act if enacted.	The Government accepts this recommendation.	Clause 82 New section 124A Clause 83 Amendment to section 125 Clause 84 Amendment to section 125B
104	Consider a complete reappraisal of all offences under the Act with the view of making the majority of offences expiable, particularly for a first offence.	The Government agrees with this recommendation in principle, noting that only certain types of (generally 'clear cut') offences are suitable for expiation.	Various clauses of the Bill
105	All offences and relevant penalties, whether by expiation or through disciplinary action, should be contained under a specific part of the Act.	The Government agrees with this recommendation in principle, however this may not be achievable and should be subject to the advice of Parliamentary Counsel.	Amendments have been made within the framework of the current Act
106	Amend section 11A of the Act to allow for the expiation of offences relating to codes of practice consistent with the State's gambling legislation.	The Government accepts this recommendation.	Clause 8 Amendment to section 11A
107	Enact legislation to provide police with the power to conduct alcohol and drug testing of licensees and responsible persons who are on duty and that it should be an offence for failing to comply.	The Government accepts this recommendation, noting that crowd controllers are already subject to zero tolerance testing.	Clause 88 New Part 9 Division 5
108	Enact legislation or incorporate within the Late Night Code of Practice requirements to mandate the use of ID Scanners concurrently with the use of CCTV and metal detectors.	The Government agrees with this recommendation in principle, subject to further consideration of feasibility and impacts on licensees and noting that adoption within the Late Night Code would appear the most appropriate approach. The Government notes that ID scanners are in use interstate and will require legislated controls around privacy and use of the information.	To be considered as part of the Late Night Trading Code of Practice

Licensing Authority

Rec no.	Recommendation	Government Response	Clause in Bill
109	The Commissioner and Licensing Court two tier structure should be retained.	The Government accepts this recommendation.	No change
110	A maximum of three judges from the existing pool of judges be designated as Licensing Court judges so that there is a consistency and efficiency in the decision making process.	The Government accepts this recommendation.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
111	Amend section 26 of the Act to include a power to award costs where the conduct of proceedings is frivolous or vexatious.	The Government accepts this recommendation.	Clause 16 Amendment to section 26
112	Include a power for the Licensing Court to impose an injunction to prevent a breach of the Act or the codes of practice.	The Government accepts this recommendation.	Clause 14 New sections 24B and 24C
113	The right of appeal from the Licensing Court to the Supreme Court should be retained.	The Government accepts this recommendation.	No change

Liquor Licensing and Gambling Regime Overlap

Rec no.	Recommendation	Government Response	Clause in Bill
114	The Government may wish to consider a more in-depth review of the overlap between liquor and gambling legislation with the view of identifying red tape barriers, digital strategy potential and opportunities for legislative and regulatory improvement and to remove inconsistencies.	The Government accepts this recommendation and has decided to appoint the Honourable Tim Anderson QC to conduct this further review.	Implementation of the Government's response does not require a change to the Liquor Licensing Act at this stage

RSA Standards and Competency

Rec no.	Recommendation	Government Response	Clause in Bill
115	There should be greater focus on responsible service of alcohol training through mechanisms such as refresher courses, enforcement and specific training for responsible persons.	The Government accepts this recommendation.	Clause 55 New section 97A To be considered as part of the General Code of Practice
116	Licensees to ensure as part of their responsibilities for holding a liquor licence, that all relevant staff are checked for responsible service of alcohol competency on a regular basis.	The Government accepts this recommendation.	General Code of Practice - to be drafted
117	Mutual recognition of responsible service of alcohol training qualifications should be discussed at the appropriate national inter-governmental meeting.	The Government accepts this recommendation.	This is a national issue and will be pursued through the appropriate forum

Miscellaneous Matters

Rec no.	Recommendation	Government Response	Clause in Bill
118	Amend the Act to define 'body corporate' and insert eligibility provisions to hold a licence and an accreditation to act as a responsible person.	The Government accepts this recommendation.	Clause 5(3) Amendment to section 4 Clause 35 Amendment to section 55
119	That the issue of alcohol advertising during telecasts of live sporting events be considered at a national level.	This is a matter for the Commonwealth and the Government has brought the recommendation to the attention of the relevant Commonwealth Minister.	This is a national issue and has been brought to the attention of the relevant Commonwealth Minister
120	Legislation should be considered to ban alcohol advertisements on public transport and public transport infrastructure in South Australia.	The Government has changed requirements for Adelaide Metro vehicle contracts, to take effect in mid-2017 so that no alcohol advertising will appear on public transport.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
121	Minimum alcohol pricing should be considered at a national level to ensure consistency across Australia.	The Government agrees in principle with this recommendation, noting that this is a matter for consideration at the national level.	This is a matter for consideration at the national level
122	Wholesale alcohol sales data be collected in South Australia, with a view to implementing a nationally consistent approach.	The Government accepts this recommendation in principle subject to costing and feasibility studies.	Implementation of the Government's response does not require a change to the Liquor Licensing Act Current section 109B
123	To supplement current in-venue signage requirements, street signage in and around entertainment precincts should be improved to direct the public to the nearest after midnight transport service.	The Government agrees in principle with this recommendation, subject to discussion with council and noting the need to consider the outcome of the response to recommendation 124.	Implementation of the Government's response does not require a change to the Liquor Licensing Act
124	Conduct a feasibility study to determine the merits of an expanded 'After Midnight' public transport service as part of harm minimisation practices connected to the late night economy.	The Government agrees in principle with this recommendation, however, in light of recent decisions regarding entry of ride sharing services such as Uber it is proposed to defer further consideration of this proposal to enable patronage of the 'After Midnight' service and impact of ride sharing services to be evaluated first.	Implementation of the Government's response does not require a change to the Liquor Licensing Act

125	Amend section 111 of the Act to allow the Licensing Authority at its discretion to declare any area as out of bounds to minors.	The Government accepts this recommendation.	Clause 70 Amendment to section 111
126	Amend schedule 2 of the <i>Liquor Licensing (General) Regulations 2012</i> to prescribe graphical and simplified premises signage directed to minors.	The Government accepts this recommendation.	Clause 70 Amendment to section 111 Clause 71 Amendment to section 112 Clause 72 Amendment to section 113 Clause 73 New section 113A

Technical Amendments

Rec no.	Recommendation	Government Response	Clause in Bill
127	Subject to the recommendations in this report being enacted, appropriate consequential amendments to the <i>Gaming Machines Act 1992</i> will need to be provided for in the amending Act.	The Government accepts this recommendation.	Related amendments - Schedule 1
128	Subject to the recommendations in this report being enacted, appropriate administrative amendments will need to be provided for in the amending Act.	The Government accepts this recommendation in principle, noting that some of the proposed changes suggested under this recommendation require further consideration. For example the proposals to provide that land owners be liable to disciplinary action for licensee misconduct, or brought within the definition of "close associate", appear excessive.	Various clauses in the Bill - see separate table on page 32

Transitional Provisions

129	Subject to the recommendations in this report being enacted, appropriate transitional arrangements should be provided for in the amending Act.	The Government accepts this recommendation.	Transitional provisions – Schedule 2
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Administrative Changes From Recommendation 128

Provision	Clause in the Bill
<p>Interpretation</p> <p>Amend the definition of “public conveyance” to exclude “a hired conveyance where the owner of the vehicle consents in writing to the consumption of BYO liquor”.</p> <p>Amend the definition of “record” to include CCTV recordings, electronic transaction data, scanned images and any technologies developed since this section commenced.</p> <p>Insert a reference to “position of authority” and refer to the definition in section 6 of the Act.</p>	<p>Public conveyance: Clause 20 New section 36(10)</p> <p>Definition of record: Current section 4</p> <p>Position of authority: Clause 5(16)</p>
<p>Close Associate</p> <p>Amendment proposed to assist with the assessment of a person to be “fit and proper” and that all classes of undesirable person are excluded from having influence over the operation of licensed premises.</p> <p>Amend the definition of “close associates” to include where “one person is the landlord of the premises to which the licence does/is to relate”</p>	<p>Fit and proper: Clause 35 Amendment to section 55</p> <p>Definition of close associates: No change - see Government’s Response</p>
<p>Powers with respect to witnesses and evidence</p> <p>Amend this section to remove the power for the Commissioner to issue a summons on behalf of the Court.</p>	<p>Clause 13 Amendment to section 24</p>
<p>Form of application</p> <p>Amend this section to include a reference to the provision of information generally.</p> <p><i>(5) An applicant must, at the request of the licensing authority, produce documents, materials and any other such information that the authority considers relevant to the application.</i></p>	<p>Clause 29(3) Amendment to section 51</p>
<p>Factors to be taken into account in deciding whether a person is fit and proper</p> <p>While section 74 of the Act provides for a licensee becomes bankrupt or insolvent, the assessment of a person under section 55 as “fit and proper” does not give bankruptcy or insolvency consideration.</p> <p>Amend section 55 to exclude a person who is or has been declared bankrupt or insolvent from being declared “fit and proper”.</p> <p>For consistency with other legislation, consider amending the assessment requirements for determining if a person is “fit and proper” by also importing the conditions currently proposed in the <i>Tattooing Industry Control Act 2015</i> or the <i>Security and Investigation Industry Regulations 2011</i>.</p> <p><u>Security and Investigation Industry Act 1995 (SA)</u></p> <p><i>3(2) For the purposes of this Act, the following provisions govern whether a person is a fit and proper person to hold a licence or to be the director of a body corporate that holds a licence:</i></p> <p><i>(a) a person is not a fit and proper person to hold a licence or to be the director of a body corporate that holds a licence if—</i></p> <p><i>(i) the person has been found guilty or convicted of an offence as prescribed by the regulations; or...</i></p> <p><u>Security and Investigation Industry Regulations 2011</u></p> <p><i>6(1) For the purposes of sections 3(2)(a)(i) and 23 of the Act, the following is prescribed:</i></p> <p><i>(a) the person has been convicted of a category A offence, or a category B offence, and the penalty imposed for the offence included detention or imprisonment of more than 30 months;</i></p> <p><i>(b) the person has been convicted of a category A offence within the preceding 10</i></p>	<p>Clause 35 Amendment to section 55</p>

years;

- (c) *the person has been found guilty but not convicted of a category A offence within the preceding 5 years;*
- (d) *the person has been found guilty but not convicted of a category B offence within the preceding 5 years and the penalty imposed for the offence included a fine of or greater than \$500;*
- (e) *(e) the person has been convicted of a category B offence within the preceding 10 years and the penalty imposed for the offence included a fine of or greater than \$500, detention or imprisonment.*

6(6) *In this regulation—*

category A offence means—

- (a) *an indictable offence; or*
- (b) *an offence against the Controlled Substances Act 1984 in respect of a controlled drug, controlled precursor or controlled plant, other than an offence constituted of possession of a controlled drug, controlled precursor or controlled plant; or*
- (c) *an offence against the Police Act 1998; or*
- (d) *an offence against Part 5.3 of the Criminal Code set out in the Schedule to the Criminal Code Act 1995 of the Commonwealth; or*
- (e) *except in relation to a security agent authorised to perform only the function of controlling crowds—*
 - i. *an offence against the Listening and Surveillance Devices Act 1972; or*
 - ii. *an offence against the Telecommunications (Interception and Access) Act 1979 of the Commonwealth; or*
- (f) *an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia;*

category B offence means—

- (a) *an offence against the Act or regulations made under the Act or the repealed Commercial and Private Agents Act 1986 or regulations made under that Act; or*
- (b) *an offence of dishonesty; or*
- (c) *common assault or an offence of violence; or*
- (d) *an offence against the Firearms Act 1977, other than an offence against section 15C, 18, 21A, 21AB or 26 of that Act; or*
- (e) *an offence against Part 3A of the Summary Offences Act 1953; or*
- (f) *an offence against the Controlled Substances Act 1984 constituted of possession of a controlled drug, controlled precursor or controlled plant; or*
- (g) *an offence substantially similar to any of the above offences against the law of the Commonwealth, another State or a Territory, or a place outside Australia,*

but does not include a category A offence.

Tattooing Industry Control Act 2015 (SA)

(7)(2) *A natural person is disqualified from providing tattooing services if he or she—*

- (a) *is a member of a prescribed organisation; or*
- (b) *is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the Serious and Organised Crime (Control) Act 2008; or*
- (c) *is disqualified from providing tattooing services (however described) under a law of the Commonwealth or another State or Territory; or*
- (d) *is a person, or is a person of a class, prescribed by the regulations for the*

<p><i>purposes of this subsection.</i></p> <p>(7)(3)A body corporate is disqualified from providing tattooing services if—</p> <p>(a) the body corporate—</p> <ul style="list-style-type: none"> i. is a prescribed organisation; or ii. is disqualified from providing tattooing services (however described) under a law of the Commonwealth or another State or Territory; or <p>(b) a director of the body corporate is disqualified from providing tattooing services under subsection (2); or</p> <p>(c) is a body corporate, or is a body corporate of a class, prescribed by the regulations for the purposes of this subsection.</p>	
<p>Licence fee payable on grant of licence – Limited Licence</p> <p>Amend this section to clarify that the charging of a limited licence fee is imposed for each day (or part of a day) that the licence is to operate.</p>	Regulations - to be drafted
<p>Applicant for transfer must be fit and proper</p> <p>Consider amending the assessment requirements for determining if a person is “fit and proper” to replicate the provisions of section 55.</p> <p>Importing the conditions currently proposed in the <i>Tattooing Industry Control Act 2015 (SA)</i> or the <i>Security and Investigation Industry Regulations 2011</i> and exclude a person who is or has been declared bankrupt or insolvent from being declared “fit and proper”.</p>	Clause 35 Amendment to section 55
<p>Supervision and management</p> <p>Amend section 97(4) to allow a first offence to be expiated.</p> <p><i>If at any time the business conducted under a licence is not supervised and managed by a responsible person as required under subsection (1), the licensee and persons occupying a position of authority are guilty of an offence.</i></p>	Clause 54 Amendment to section 97
<p>Liquor not to be sold or supplied to intoxicated persons</p> <p>Extend responsibility to “persons who occupy a position of authority”.</p>	Clause 65 Amendment to section 108
<p>Copy of licence to be kept on licensed premises</p> <p>Amend to state “A licensee must keep a copy of the licence, showing all conditions of, and endorsements on, the licence displayed at or near the front entrance to the licensed premises at all times so that it can be read by the public, an Inspector or police officer with an unimpeded view”.</p> <p>Insert “A copy of the current plan as approved by the licensing authority must be kept on the premises and made available to an Inspector or police officer on request”.</p> <p>Insert “A copy of the Development Approval issued by the relevant local government authority must be kept on the premises and made available to an Inspector or police officer on request”.</p>	Clause 66 Amendment to section 109
<p>Record of Liquor Transactions</p> <p>Include that “a record of liquor transactions shall include the CCTV recording of transactions”. This may be captured by an amendment to the definition of “record” in section 4.</p>	See above
<p>Disciplinary Action</p> <p>Include the owner of premises or a person who holds an equity interest in the premises.</p>	No change – see Government’s Response
<p>Cause for disciplinary action</p> <p>Subsection (1) should be amended to allow disciplinary action to be taken if the licensee acts contrary to the Act or unlawfully or negligently. An existing precedent applies under section 21(1)(c) of the <i>Building Work Contractors Act 1995</i>.</p>	Clause 80(3) Amendment to section 119

<p>Amend subsection (1) to include—</p> <p><i>There is proper cause for disciplinary action against a licensee and a person in a position of authority if—</i></p> <p><i>the licensee has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting the business authorised by a licence.</i></p>	
<p>Powers of Authorised Officers</p> <p>Amend subsection (1) to allow an authorised officer to require a person to produce evidence of the person’s age, name and address. For example:</p> <p>(f) <i>require a person to state particulars, and/or produce evidence of the person’s age, name and address.</i></p> <p>Insert subsection (1a) and (1b) to state—</p> <p>(1a) <i>A person who pursuant to a request under subsection (1)(f)—</i></p> <p style="padding-left: 40px;">(a) <i>fails or refuses, without reasonable excuse, to comply with the request; or</i></p> <p style="padding-left: 40px;">(b) <i>makes a false statement, or produces false evidence</i></p> <p style="padding-left: 40px;"><i>is guilty of an offence.</i></p> <p>I note that section 125E provides a police officer with powers in relation to requesting personal details.</p> <p>Alternatively, it may be that a similar provision to that of section 125E also apply to Authorised Officers.</p> <p>Section 125E requires a police officer to first require a person to state his/her personal details. If a police officer then has cause to suspect that the personal details are false, then the police officer may require the persons to produce evidence. A police officer must also identify themselves.</p>	<p>Clause 75 Amendment to section 115</p>
<p>Licensee barring orders</p> <p>Subsection 1(aa) does not include situations of domestic violence or where an offender does not reside with a person at risk. Consideration should be given to amending this subsection to include domestic violence and in particular the harm minimisation objects of the Act.</p> <p>Subsection 125(1)(aa) should reflect that the excessive or inappropriate consumption of liquor may lead to—</p> <p>(a) <i>the risk of harm to children, vulnerable peoples and vulnerable communities; or</i></p> <p>(b) <i>adverse effects on the person’s health; or</i></p> <p>(c) <i>further alcohol abuse or misuse; or</i></p> <p>(d) <i>domestic violence or anti-social behaviour causing personal injury, death or property damage.</i></p>	<p>Clause 82 New section 124A</p> <p>Clause 83 Amendment to section 125</p>
<p>Police officer barring order</p> <p>Allow a police officer of the rank of Sergeant or above to bar a person for up to 72 hours and to issue one to three month multi-premises barring orders.</p> <p>Amend subsections (3)(b)(i), (ii) and (iii) to read as <i>“been barred under this subdivision”</i>.</p> <p>Amend to allow the electronic service of barring orders (i.e. by email).</p> <p>Subsection 1(e) does not include situations of domestic violence or where an offender does not reside with a person at risk. Consideration should be given to amending this subsection to include domestic violence and in particular the harm minimisation objects of the Act.</p> <p>Subsection 125(1)(e) should reflect that the excessive or inappropriate consumption of liquor may lead to—</p> <p>(a) <i>the risk of harm to children, vulnerable peoples and vulnerable communities; or</i></p>	<p>Clause 82 New section 124A</p> <p>Clause 84 Amendment to section 125B</p> <p>Clause 94 Amendment to section 136</p>

<p>(b) <i>adverse effects on the person’s health; or</i></p> <p>(c) <i>further alcohol abuse or misuse; or</i></p> <p>(d) <i>domestic violence or anti-social behaviour causing personal injury, death or property damage.</i></p>	
<p>Report to Minister on barring orders Amend subsection (1)(b) to require that orders made under Subdivision 3 because of information classified by the Commissioner of Police as criminal intelligence should be reported by the Commissioner of Police in his or her annual report to the Minister to whom the administration of the Police Act 1998 is for the time being committed.</p>	<p>Clause 87 New section 128AB</p>
<p>Unlawful consumption of liquor For the purposes of defining “<i>prescribed entertainment</i>” for this section, replace the word “<i>dance</i>” with “<i>events described as a dance, rave, recovery event, warehouse party, school formal/graduation/party</i>” and equivalent social media trends and terms.</p>	<p>Regulations - to be drafted</p>
<p>Vicarious Liability Include the owner of premises or a person who holds an equity interest in the premises.</p>	<p>No change – see Government’s Response</p>
<p>Accords Insert a new section dealing with liquor accords, and specifically exempt liquor accords from the application of the <i>Competition and Consumer Act 2010</i> (Cwlth). Other jurisdictions in Australia have legislated for this, see for example Part XA of the <i>Liquor Act</i> (NT), Part 8 of the <i>Liquor Act 2007</i> (NSW) and Part 8, Division 6 <i>Liquor Control Reform Act 1998</i> (Vic).</p>	<p>Clause 89 New Part 9A</p>
<p>Name of licensed premises To aid in compliance and enforcement and the maintenance of accurate licensee records insert a new provision which make it an offence for a licensee to not notify the Commissioner of any change to the name of the licensed premises. For example:</p> <ol style="list-style-type: none"> 1) <i>A licensee must not alter the name of the licensed premises unless the licensing authority has:</i> <ol style="list-style-type: none"> (a) <i>approved in writing the proposed new name, and</i> (b) <i>endorsed the change of name on the licence.</i> 2) <i>A licensee who fails to notify the licensing authority of a change in name of the licensed premises is guilty of an offence.</i> 	<p>Clause 21(1) Amendment to section 42</p>