



Australian
Competition &
Consumer
Commission

Determination

Application for revocation and substitution of
authorisations A91224 & A91225

lodged by

The State of Queensland acting through
the Office of Liquor and Gaming Regulation

in respect of

price and supply controls included in
a pro-forma liquor accord arrangement

Date: 18 December 2014

Authorisation numbers: A91385 & A91386

Commissioners: Sims
Rickard
Schaper
Cifuentes
Court
Featherston

Summary

The ACCC has decided to grant conditional re-authorisation to enable members of liquor accords operating in Queensland to adopt a pro-forma liquor accord agreement that restricts the price and supply terms on which participating licensed venues sell alcoholic beverages to consumers.

Authorisation is granted subject to conditions that are intended to ensure that the adoption of price and supply controls directly address alcohol related harm and are subject to transparent and independent oversight by the OLGR.

The ACCC grants re-authorisation until 9 January 2020.

The State of Queensland, through the Office of Liquor and Gaming Regulation (**OLGR**), has applied for re-authorisation of a pro-forma liquor accord agreement (**PLAA**). The PLAA was conditionally authorised by the ACCC in 2010 (A91224 and A91225) (the **existing authorisations**).

The PLAA itself is not a liquor accord, rather it is a template document that local liquor accord bodies are encouraged to adopt. The OLGR submitted that the purpose of the PLAA is to allow licensed venues in local communities to implement strategies that help prevent alcohol-related harm. The PLAA may be adopted in full or in part. Participating in a liquor accord is voluntary.

The OLGR seeks re-authorisation for local liquor accords to adopt the Responsible Service of Alcohol section of the PLAA. This section of the PLAA includes **price controls** such as:

- banning 'drink cards' that provide multiple free drinks
- banning extreme discounts or discounts of limited duration
- ensuring smaller serves of drinks (e.g. half nips) are available at differential (lower) prices
- offering and promoting low alcohol beer at differential (lower) prices compared to full strength
- offering and promoting a range of non alcoholic drinks at differential (lower) prices, and

supply controls such as:

- avoiding labelling or promotions that may encourage patrons to consume liquor irresponsibly and excessively to an unduly intoxicated state
- avoiding offering drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication (such as offering drinks in novelty containers or conducting drinking games)
- not advertising or allowing promotions of very high alcoholic substances such as overproof rum and high alcohol carbonated drinks.

The PLAA also includes sections dealing with safety and security and commitments to being good neighbours. Authorisation is not sought for accord members to adopt these sections of the PLAA as doing so would be unlikely to raise concerns under the *Competition and Consumer Act 2010* (the **CCA**). There are over 100 liquor accords currently operating in Queensland which adopt provisions of the PLAA, but do not adopt price or supply controls (and therefore do not require authorisation by the ACCC).

At present, an accord group consisting of licensed premises operating in the Townsville CBD (the **Townsville Liquor Accord Body**) is the only accord group adopting the price and supply controls contained in the PLAA. The area covered by this accord is a densely populated strip of around 25 licensed premises, many of which are late trading venues. The Townsville Liquor Accord Body has been implementing price and supply controls since July 2012.

The cornerstone of the Townsville Liquor Accord is an agreement that the minimum price that accord members will charge for a standard nip of spirits is \$3 on Tuesday nights and on nights before public holidays, and \$5 per spirit at all other times. The Townsville Liquor Accord Body submitted that this price control was implemented because of problematic behaviour around 'Cheap Tuesday' and the sale of discount spirits more generally where spirits were being sold for as little as 80 cents. Other features of the Townsville Accord are a ban on 'shots' or 'shooters' after 2am and a ban on touting near competitors' premises.

Evidence provided during the ACCC's consideration of the application for re-authorisation, particularly by the OLGR and Townsville Police, indicates that prior to the accord in Townsville being adopted there were significant problems encountered during times of heavily discounted drinks. The OLGR and Townsville Police report a reduction in anti-social and violent behaviour in the area since the accord was adopted.

ACCC assessment

The rapid and/or excessive consumption of alcohol has the potential to cause significant harm in the community. The social and economic costs of alcohol abuse include increased violence and other crimes against persons and property, road accidents, increased reliance on hospital, other community health and policing resources and reduced amenity for other patrons at licensed premises. Arrangements reducing these costs are likely to generate significant public benefit. This includes allowing drinking venues in local areas to work together with local stakeholders and the support of the Queensland State Government liquor regulatory body to adopt appropriate price and supply strategies aimed at minimising these harms.

Accordingly, based on the evidence received from the relevant stakeholders, the ACCC is satisfied that the adoption of the price and supply controls in the PLAA by liquor accords is likely to encourage more responsible consumption of alcohol and is likely to continue to contribute to a reduction in alcohol-related harms. This is likely to result in significant public benefit.

However, the adoption of the price and supply controls contained in the PLAA is also likely to increase prices paid by consumers in some circumstances (for example, where accord members agree not to offer extreme discounts) and limit consumer choice (for example, where members agree not to offer drinks in novelty containers or conduct drinking games). These costs are borne by all customers of participating premises, including those who consume alcohol responsibly.

To ensure that the public benefits associated with minimising alcohol-related harms are realised and to minimise any associated public detriment, the ACCC limits the scope of the authorisation and grants authorisation subject to a number of conditions. The conditions are intended to ensure that the adoption of price and supply controls is subject to transparent and independent oversight by the OLGR. They also seek to ensure that measures implemented by licensed venues are not disproportionate to the harm they are seeking to address. The conditions also provide the OLGR with the discretion to review the ongoing justifications for the price and supply controls at any time.

The scope of the authorisation is limited so that implementing agreements between accord members to adopt price and supply controls will not be authorised unless the liquor accord is registered with the OLGR.

Also the OLGR will establish a registration process where it only registers a liquor accord if it is satisfied that the proposed price and supply controls are appropriate for reducing an identified harm and are proportionate to the harm sought to be addressed. The OLGR may seek information and/or statistics from local stakeholders including police, taxi companies, local councils and other community representatives in making its decision about whether to register a liquor accord.

To ensure that the price and supply measures contained in liquor accords continue to appropriately target alcohol-related problems, the OLGR will also be able to review liquor accords and withdraw registration of a liquor accord where the OLGR considers that the price and supply controls no longer address the identified harms in a proportionate way.

The OLGR will report annually to the ACCC regarding all decisions about whether to register, deny registration or withdraw registration for an accord.

The ACCC also imposes a condition of authorisation that requires amendment to the PLAA to clarify the scope of the price and supply controls and to explain the registration process to liquor accord bodies, including the circumstances in which registration is and is not necessary.

Full details of the conditions are available from paragraph 120 of this determination. A copy of the PLAA incorporating the amendments imposed by the ACCC as a condition of authorisation is at **Attachment A**.

The ACCC notes that of over 100 liquor accords currently in operation, only the Townsville Liquor Accord Body is currently implementing price and supply controls that are subject to the authorisation and associated conditions. Given the majority of liquor accord bodies have previously decided that price or supply controls were not necessary for their local area, the ACCC anticipates that few liquor accord bodies in the future will need to seek registration of their accords.

As it has done to date, the ACCC understands that the OLGR will continue to assist liquor accord bodies in developing their accords and with the registration process. The ACCC notes that liquor accord bodies in some other jurisdictions (such as Liquor Accord Precincts in NSW) undertake a similar assessment and approval process.

The ACCC has consulted the OLGR about the conditions. The OLGR has stated that it is in a position to fully meet the conditions and that it is satisfied that it can fulfil the role objectively.

Subject to the conditions, the ACCC is satisfied that the likely public benefits that will result from the proposed arrangements would outweigh the likely detriments and therefore the ACCC grants authorisation for a further five years.

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The applications for authorisation

1. On 17 September 2013 the State of Queensland, through the Office of Liquor and Gaming Regulation (**OLGR**), lodged an application with the Australian Competition and Consumer Commission (**ACCC**) for the revocation of authorisations A91224 & A91225 and the substitution of new authorisations A91385 & A91386 for the authorisations revoked (**re-authorisation**).
2. The OLGR seeks re-authorisation to enable members of liquor accords to adopt a pro-forma liquor accord arrangement (**PLAA**) that restricts the price and supply terms on which participating licensed venues sell alcoholic beverages to consumers.
3. Liquor accords are signed by licensed premises and others in a particular area and contain strategies to reduce the harms caused by the abuse of alcohol. Participating venues can include those businesses in an area which are licensed to serve alcohol for consumption on site, as well as that area's police, local council and any other significant community stakeholders who are affected by the abuse of alcohol. Liquor accords are used around Australia and involve a variety of measures to improve the safety and amenity of those in the accord area.
4. The applications were lodged because the arrangements may contain a cartel provision¹, may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the *Competition and Consumer Act 2010* (the **CCA**) or may include an exclusionary provision² in contravention of the CCA.
5. Authorisation is a transparent process where the ACCC may grant protection from legal action for conduct that might otherwise breach the CCA. The ACCC may 'authorise' businesses to engage in anti-competitive conduct where it is satisfied that the public benefit from the conduct outweighs any public detriment.³
6. The OLGR's PLAA was conditionally authorised by the ACCC in 2010 for three years (the **existing authorisations**). The OLGR seeks re-authorisation for another five years.
7. The existing authorisations were granted until 7 October 2013. On 2 October 2013 the ACCC decided under section 91 of the Act to suspend the operation of the existing authorisations and grant interim authorisation in substitution, subject to the same conditions as the existing authorisations. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.⁴

¹ Section 44ZRD

² Defined in section 4D.

³ Detailed information about the authorisation process is contained in the ACCC's Guide to Authorisation available on the ACCC's website www.accc.gov.au.

⁴ The ACCC's interim authorisation decision can be found on public register entry for the matter: <http://registers.accc.gov.au/content/index.php/html/itemId/1126167/fromItemId/278039/display/acccDecision>.

8. On 14 August 2014 the ACCC released a draft determination proposing to grant conditional re-authorisation for five years to enable members of liquor accords operating in Queensland to adopt the amended pro-forma liquor accord agreement and to continue their existing liquor accords for a transitional period.

The applicant

9. The OLGR is part of the Department of Justice and Attorney-General in Queensland. One of the OLGR's primary responsibilities is regulating Queensland's liquor industry and its development in a way that is compatible with minimising harm caused by alcohol abuse. This role includes supporting the development and management of local liquor accords to curb alcohol-related harms.
10. Although the OLGR does not currently enter into, or approve, individual agreements adopted by liquor accords, it oversees this policy initiative including applying for authorisation of the PLAA on behalf of potential participants and advising participants about establishment and management of liquor accord agreements. Local liquor accord meetings are attended regularly by OLGR Liquor Compliance Officers along with other stakeholders such as members of the local police force and councillors.

The pro-forma liquor accord arrangement (PLAA)

11. The OLGR seeks re-authorisation for "Section 1 - Responsible Service of Alcohol" of the PLAA on behalf of parties who are now or in the future become, members of liquor accords in local areas that adopt any of the relevant provisions of the PLAA.
12. The PLAA is a template document that local liquor accord bodies are encouraged to adopt. The PLAA may be adopted in full, or in part, by liquor accord bodies in Queensland. Participating in a liquor accord is voluntary.
13. The Responsible Service of Alcohol section of the PLAA contains provisions dealing with:
 - unduly intoxicated patrons
 - underage drinking
 - discouraging activities that encourage excessive drinking
 - not promoting beverages that may encourage rapid or excessive alcohol consumption and
 - encouraging promotion of low alcohol beverages and food.
14. Other sections of the PLAA, for which authorisation is not sought, contain provisions dealing with:
 - safety and security, and

- commitment to being good neighbours.

15. The provisions of the Responsible Service of Alcohol section of the PLAA that may potentially raise concerns under the CCA include:

Discourage activities that encourage excessive drinking

- Ban practices and promotions that may encourage rapid or excessive consumption of liquor, for example:
 - 'drink cards' that provide multiple free drinks
 - extreme discounts or discounts of limited duration
 - any other promotions or gimmicks that encourage rapid intoxication.
- Ensure smaller serves of drinks (e.g. half nips) are available at differential (lower) prices.

Not promote or sell alcoholic beverages that may encourage rapid or excessive consumption of liquor

- Avoid labelling or promotions that may encourage patrons to consume liquor irresponsibly and excessively to an unduly intoxicated state.
- Avoid offering drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication.
- Not advertise or allow promotions of very high alcohol substances such as overproof rum and high alcohol carbonated drinks.

Promote non or low alcohol beverages and food

- Offer and promote low alcohol beer at differential (lower) prices compared to full strength.
- Offer and promote a range of non alcoholic drinks at differential (lower) prices.

16. A number of definitions in the PLAA are relevant to these provisions. These currently read as follows:

- **Extreme discounts** include practices such as half price drinks. This accord does not however, prohibit or restrict licensees from discounting drinks generally.
- **Discounts of limited duration** include happy hours with a duration of less than an hour or promotions that set a short timeframe (eg. 15 minutes) in which liquor is discounted. This accord does not however, prohibit or restrict licensees from discounting or promoting happy hours generally.
- **Drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid**

intoxication include drinks that are offered in objects or items that are non-standard glasses certified by Weights and Measures (eg. test tubes and water pistols). It also includes drinking games involving the consumption of liquor in a short period of time which can lead to rapid and/or excessive consumption of liquor (eg. skolling games and laybacks).

- **Very high alcohol substances** – This term is intended to capture drinks that contain any more than 2 standard drinks per serve.

17. Also relevant is the definition of price controls and supply controls. These terms were defined by the ACCC in its 2010 determination authorising the arrangements as follows:

- **Price control** – means a provision requiring parties to the accord to ban drink cards, extreme discounts and discounts of limited duration, or requiring parties to the accord to charge lower prices for smaller serves of full strength beverages or for low or non alcoholic beverages, as set out in the pro-forma liquor accord arrangement.
- **Supply control** – means a provision requiring parties to the accord not to offer or advertise particular beverages, as set out in the pro-forma liquor accord arrangement.

18. The ACCC is proposing modifications to the above definitions in this determination (see **Attachment A** and condition C12).

Background

Legislative framework in Queensland

19. The OLGR submitted that authorisation of the PLAA supports the main purposes of the *Liquor Act 1992 (Qld)* (**Liquor Act**) and the *Liquor Regulation 2002 (Qld)* (**Liquor Regulation**) to minimise harm caused by alcohol abuse and misuse. In Queensland liquor accords are permitted under section 224 of the Liquor Act where the agreement is entered into for the purposes of:

- promoting responsible practices in relation to the sale and supply of liquor at licensed premises situated in the locality; and
- minimising harm caused by alcohol abuse and misuse and associated violence in the locality; and
- minimising alcohol-related disturbances, or public disorder, in the locality.

20. The Liquor Act does not provide guidance regarding the expected contents of liquor accord agreements. The Liquor Act is accompanied by the Liquor Regulation which contains a number of requirements or prohibitions which are potentially replicated by the PLAA. Those requirements or prohibitions are imposed on individual premises in their own right and do not compel pubs and clubs to make agreements implementing them collectively.

21. While liquor accords are permitted under the Liquor Act they are not exempt from the competition provisions of the CCA. Accordingly, any agreement between liquor accord members to adopt the relevant price and supply controls contained in the PLAA could risk contravening the CCA.

Legislative framework in other states and territories

22. In some states and territories liquor accord agreements are exempt from the competition provisions of the CCA through legislative exemptions enacted by state governments.⁵ Currently the *Liquor Act 2007 (NSW)*, *Liquor Act 1978 (NT)* and *Liquor Control Reform Act 1998 (VIC)* provide for exemptions from the CCA for conduct relating to liquor accords developed in those jurisdictions. The Liquor Act in Queensland does not include such an exemption for conduct in relation to liquor accords.

Liquor accords in Queensland

23. There are over 100 liquor accords in Queensland that aim to address alcohol-related issues by implementing harm minimisation initiatives in local areas. The

⁵ Some Commonwealth, state and territory Acts permit conduct that would normally contravene the *Competition and Consumer Act*. Section 51(1) of the CCA provides that such conduct may be permitted if it is specifically authorised under those other Acts.

accords involve liquor licensees voluntarily participating with police, local businesses, community groups, government agencies and other interested stakeholders to develop appropriate policies and measures for their region.

24. Many of these accords have used the PLAA when establishing their arrangements. However, the OLGR advised that since authorisation was granted in 2010 only two liquor accord bodies (the Whitsunday Accord and the Townsville Accord), have implemented price and supply control initiatives that may, absent authorisation, raise concerns under the CCA.

Whitsunday Accord

25. The Whitsunday Accord commenced as a 6 month trial in November 2011 and included a price control of establishing and setting 'a lowest price for spirit promotions and pricing namely \$4 per drink'. The OLGR submitted that the price control was implemented in response to anecdotal evidence identifying that a major cause of alcohol-related incidents in the Airlie Beach/Whitsunday region was liquor promotions and discount pricing. Information from the industry stated that these incidents had increased specifically since the introduction of discount pricing and promotions of spirits.
26. The OLGR advised that feedback from industry members indicated there had been no change in behaviour in the area after the accord commenced and that the OLGR had received reports that there were ongoing poor responsible serving practices in some venues. The OLGR therefore considered that price control on its own was not sufficient to bring about the required change in patron behaviour and accordingly recommended that other non-price measures, focused on the responsible service of alcohol, be adopted instead. The Whitsunday Liquor Accord decided not to continue the price controls.

Townsville Accord

27. The Townsville Liquor Accord commenced as a six month trial on 19 July 2012 and continues to operate at present. The ACCC understands that this accord came about in response to escalating liquor-related problems in and around the Flinders Street East nightclub strip where there are around 10 to 15 venues trading to, or beyond, 2am and located within close proximity. The Townsville Liquor Accord is specifically targeted at this area and does not extend to licensed premises in other areas of Townsville.
28. Townsville was identified by the Queensland Government for participation in the 'Drink Safe Precinct' trial, along with Fortitude Valley and Surfer's Paradise. The Drink Safe Precinct trial operated from 2010 to mid-2014 to reduce alcohol-related violence in those three key entertainment precincts. The Drink Safe Precincts were designated precincts where government agencies, industry and community organisations employed additional measures to address alcohol-related harm including increasing police presence and establishing 'safe zones' where patrons could access non-government support services. The Drink Safe

Precincts, and 12 additional precincts, now fall under the 'Safe Night Precincts' policy initiatives announced by the Queensland Government in June 2014⁶.

29. At the time the Townsville Liquor Accord commenced, membership of the Townsville Liquor Accord included 25 out of 27 licensed premises within the area. The ACCC understands that membership by licensed venues has reduced since the accord first commenced. Accord membership also includes non-voting representatives from the Queensland Police Service, OLGR, Townsville City Council, Australian Defence Force, Townsville Taxis and local security firms.
30. While the Townsville Liquor Accord is based on the PLAA template it contains variations which the Townsville Accord Body submitted are necessary in order to bring together a practical agreement that accommodates the particular circumstances in the Townsville central business district.
31. The cornerstone of the Townsville Liquor Accord is to establish minimum prices for spirits sold by signatories to the Townsville Accord.
32. Other ways in which Townsville Liquor Accord Body has customised the PLAA to address alcohol-related harm in the area include the addition of a commitment that signatories will not serve "shooters" or "shots" any time after 2am and a commitment that venues to the accord will not engage in "touting" within close range of any other licensed venue within the Townsville Liquor Accord area.
33. The Townsville Liquor Accord Agreement also includes a provision allowing accord members to agree to ban problematic individuals from their premises. The PLAA for which the OLGR seeks reauthorisation does not include an equivalent provision. Accordingly the ACCC has not considered this provision in its assessment of the arrangements for which reauthorisation is sought.
34. As the Townsville Liquor Accord is the only liquor accord currently in place that includes price and supply controls it is the only accord, based on the information provided to the ACCC by the OLGR, whose members are currently engaging in conduct relevant to the application for re-authorisation. Although the ACCC is assessing the price and supply controls covered by the PLAA more generally, the ACCC refers to the Townsville Liquor Accord in making its assessment as an example of the likely effects where liquor accords choose to implement the price and supply controls.

⁶ Queensland Government, 'Safe Night Out Strategy', <http://www.premiers.qld.gov.au/publications/categories/plans/assets/safe-night-out-strategy.pdf>, June 2014, accessed 18 July 2014.

Submissions received by the ACCC

35. The ACCC tests the claims made by the applicant in support of an application for authorisation through an open and transparent public consultation process.
36. The ACCC sought submissions from over 50 interested parties potentially affected by the applications, including representatives of liquor retailers and wholesalers, licensed venues, local, state and federal governments, as well as substance abuse support workers and researchers. A summary of the public submissions received from the applicant and interested parties follows.
37. The views of OLGR and interested parties are considered in the evaluation chapter of this determination. Copies of public submissions may be obtained from the ACCC's website www.accc.gov.au/authorisationsregister.
38. As the Townsville Accord is the only accord currently adopting price and supply controls much of the information submitted by interested parties was framed by reference to the operation of the Townsville Accord.

Submissions received prior to the draft determination

The OLGR

39. The OLGR submitted that the main purpose of liquor accords is to develop strategies and implement initiatives that help prevent liquor related harm in local communities. Although there are common liquor-related issues faced by all communities, often the issue specifics are unique in nature and are influenced by the local cultural, social and operational environment.
40. The OLGR argues that abuse and misuse of alcohol can cost the Queensland Government significant amounts of money each year. However, the measure of economic impact should not be restricted to taxpayer dollars spent as the impact extends across the community through crime, violence, road accidents and loss of productivity including a significant burden on the Queensland health system.
41. The OLGR submitted that liquor accords that include price and supply controls can deliver the following public benefits:
 - reduce anti-social behaviour in and around licensed premises
 - enhance community health and well-being including safety and security
 - reduce road trauma directly related to alcohol abuse
 - enhance community engagement in various controls and strategies that affect their community
 - improve local amenity.

42. The OLGR submitted that prior to the Townsville Liquor Accord being adopted OLGR officers operating in the CBD observed increased intoxication-related complaints and issues during times of heavily discounted drinks. The OLGR states that since the adoption of the price controls in the Townsville Liquor Accord its officers have observed that anti-social behaviour among patrons at participating venues has reduced significantly compared to patrons at non-participating venues.

The Townsville Liquor Accord Body

43. The Townsville Liquor Accord Body submitted that after introducing the measures in the liquor accord signatories to the accord reported a significant drop in anti-social behaviour in and around their licensed premises. The general consensus of accord members is that the reduction can be directly attributed to the introduction of pricing controls in relation to spirit-based drinks. There has also been a significant drop in 'push and shove' style incidents that have led to violent clashes in the past.
44. At the time of lodging its application the OLGR provided a number of letters in support of the Townsville Liquor Accord from stakeholders and industry members in Townsville. The letters demonstrate strong support for continuation of the Townsville Liquor Accord based on the first year of operation:
- **Townsville Police:** submitted that before the measures contained in the Townsville Accord were implemented, although individual premises would only offer two hours of discounted drinks, patrons were able to indulge in up to eight hours of heavily discounted drinks including 'dollar drinks' and various 2-for-1 offers when they went from club to club within an easy walk. This resulted in high incidents of intoxication and associated violence within the area. Townsville Police submitted that since the setting of minimum prices an obvious decline in the number of incidents has been observed, but importantly there has also been a decline in the severity of violence within the nightclub precinct.
 - **Cactus Jack's Bar & Grill:** supports the continuation of the measures in the Townsville Accord and submitted that if the measures were to be removed there will be a return to irresponsible practices from desperate licensees that will tarnish the improved reputation of the precinct.
 - **Mad Cow Tavern:** submitted that the Townsville Accord has proved that price controls have worked in reducing alcohol-related violence.
 - **Councillor Gary Eddiehausen:** submitted that from the point of view as the Chair of the Townsville City Council's Healthy and Safe City Committee, the measures in the Townsville Accord have resulted in members of the community being a great deal safer when visiting the Flinders Street area.
 - **Secure Queensland:** supplies crowd controllers and security officers in Townsville in venues such as nightclubs and pubs. Secure Queensland submitted that there has been a significant drop in violence reported and this is the result of the Townsville Accord's measures in trying to limit the

mass consumption of alcohol during peak periods. Participating venues are no longer offering '2-for-1' specials on spirits which used to start as early as 5pm and led to a number of intoxicated patrons early in the night.

- **Townsville Street Chaplains:** provide first aid, water and support to those who are left vulnerable from alcohol-fuelled incidents from a tent in the centre of the Flinders Street East nightclub strip. Townsville Street Chaplains strongly supports the retention of price controls.

Interested parties

Distilled Spirits Industry Council of Australia

45. The Distilled Spirits Industry Council of Australia (**DSICA**) submitted that it supports the use and operation of local liquor accords and much of the PLAA. However, DSICA has a number of criticisms about the operation of the current PLAA and application by OLGR for what DSICA submitted is in effect an extension of the authorisations. In particular, DSICA submitted that the decision by the Townsville Liquor Accord Body to set a minimum price for spirits across all trading hours, and to target spirits but not other types of alcoholic beverages, has not been justified, and that there is no statistical evidence to support the Townsville Liquor Accord Body's argument that targeting spirits has resulted in a reduction in alcohol-related assaults.

Queensland Network of Alcohol and Other Drug Agencies

46. Queensland Network of Alcohol and Other Drug Agencies (**QNADA**) welcomes the increased collaboration in implementing practical solutions to alcohol-related problems and improving community safety and amenity that accompany liquor accords. However, QNADA submitted that the limited evaluation of liquor accords has shown that although they do generally produce a reduction in alcohol-related violence in the short term, sustaining their benefits in the longer term is difficult. As such they should be used in conjunction with other harm reduction activities.

Submissions in response to the draft determination

The OLGR

47. The OLGR stated that it welcomes the ACCC's proposal to grant conditional re-authorisation. It submitted that it is in a position to fully meet the conditions of authorisation proposed by the ACCC in the draft determination, and it is satisfied that it can manage the registration process for local liquor accords proposed in the draft determination objectively.

Interested parties

48. The ACCC received a further two submissions in response to the draft determination, from DSICA and Diageo Australia. Diageo is a producer and distributor of alcoholic beverages with brands such as Johnnie Walker Scotch whisky, Smirnoff vodka, Gordon's gin, Bailey's Irish cream liqueur and Bundaberg Rum. Diageo states that it operates in 180 markets around the world and is a member of DSICA.
49. DSICA and Diageo submitted that they support the formation and operation of liquor accords as local solutions to local problems. However, they raised a number of concerns about the price and supply restrictions in the proposed PLAA. In particular, they object to control mechanisms which they submitted are targeted at spirits.
50. Both DSICA and Diageo questioned the rationale for the price and supply restrictions in the proposed PLAA. Diageo submitted that, due to the limited implementation of such controls in current liquor accord agreements, there is not sufficient evidence to support expressly including "agreed minimum pricing" in the proposed PLAA. DSICA also questioned whether the evidence supplied by Townsville Police (that they have had to dedicate fewer police officers for shifts covering the Townsville late-night entertainment area since price controls were introduced due to a reduction in anti-social behaviour), supports the adoption of price controls. DSICA submitted that it is likely that drinkers have simply changed their drinking locations and the drinks that they consume. Diageo and DSICA further contend that price and supply controls are not necessary if licensed venues comply with their Responsible Service of Alcohol obligations.
51. DSICA and Diageo both object to what they contend is the creation of an easier means for Queensland liquor accords to set a minimum price for alcohol for their members. Diageo submits that including "agreed minimum pricing" in the proposed PLAA, and circulating it to the current liquor accords, creates the potential for other liquor accords to:
- be encouraged to adopt this in their liquor accords without considering local issues of harm minimisation; and
 - adopt the "agreed minimum pricing" in their liquor accords with the aim of reducing competition between them.
52. DSICA and Diageo also object to allowing accord members to restrict the serving of "shots" and "shooters" by, for example, their inclusion in the PLAA's definition of "drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication". Diageo submits that this proposal:
- singles out spirits and liqueur products unfairly – a standard drink of spirit is the same as a standard drink of any other product; and
 - depending on the definition of "shots", does not necessarily impact only products that are designed to be consumed rapidly, but potentially also other forms of spirits such as neat malt whisky serves and cream liqueurs.

53. DSICA expressed concerns that the draft determination lacks any objective tests that the OLGR needs to meet in order to grant registration. It submitted that the OLGR should be subject to greater reporting and transparency obligations, such as a requirement to make public the number and percentage of total applications for competition-reducing measures that it has rejected as unwarranted.
54. Diageo and DSICA both submitted that each liquor accord proposing to adopt price controls should have to submit an application for authorisation of their proposed arrangements to ensure ongoing oversight from the ACCC.
55. In relation to the length of the proposed authorisation, both DSICA and Diageo submitted that, if granted, a three-year authorisation would be more appropriate. Diageo submitted that the alcoholic beverage market is constantly changing and a five year authorisation risks the PLAA becoming out of date and not adequately addressing current issues.

ACCC evaluation

56. The ACCC's evaluation of the liquor accord arrangements is in accordance with the relevant net public benefit tests⁷ contained in the CCA. While there is some variation in the language of the tests, in broad terms, the ACCC is required to identify and assess the likely public benefits and detriments, including those constituted by any lessening of competition and weigh the two. Generally, the ACCC may grant authorisation if it is satisfied that the benefit to the public would outweigh the public detriments.
57. The ACCC notes that it is assessing only the proposed conduct allowing liquor accords to make and give effect to agreements that incorporate some or all of the price and supply terms contained in the 'Responsible Service of Alcohol' section of the PLAA.

The relevant areas of competition

58. In assessing the liquor accord arrangements the ACCC identifies the relevant areas of competition affected.
59. The OLGR submitted the relevant area of competition is the market for 'the supply and service of alcohol to members of the public (18 years or over) within a "destination drinking venue" which may extend to venues that supply entertainment and/or the service of meals'. The OLGR states that these venues do not compete in the same market as retailers who sell alcohol for consumption off site.
60. The OLGR submitted that because the PLAA is intended for use throughout Queensland there are many different geographic markets involved. Some will be in rural areas such that consumers may have to travel large distances to attend a licensed premises outside the accord's coverage, and others will be in urban areas where licensed premises not covered by an accord will be more readily accessible.
61. During the ACCC's assessment of the applications in 2010, the ACCC considered the relevant area of competition affected by the conduct to be for the supply and service of alcohol to members of the public (18 years and over) in drinking venues within local areas in Queensland. The ACCC has not received any submissions or information to suggest that this assessment should be altered.⁸

The future with and without

62. To assist in its assessment of the liquor accord arrangements against the authorisation tests the ACCC compares the likely future with the conduct that is

⁷ Subsections 90(6), 90(7), 90(5A), 90(5B) and 90(8). The relevant tests are set out in **Attachment B**.

⁸ This is consistent with the ACCC's assessment of the relevant area of competition during its assessment of ALH Group Pty Ltd and Laundry Hotel Group's proposed acquisition of Caringbah Inn in 2012.

the subject of the authorisation to the likely future without the conduct that is the subject of the authorisation. The ACCC will compare the public benefits and detriments likely to arise in the future where the conduct occurs against the future in which the conduct does not occur.

63. The OLGR submitted that cessation of authorisation would limit the strategies available to meet the legislative obligations under the Liquor Act to provide a safe environment and to minimise harm associated with alcohol abuse and misuse. In relation to the Townsville Liquor Accord, the public benefit already gained may be lost. The OLGR believes that while the Townsville Liquor Accord would continue to operate without authorisation, a limitation on the strategies available would handicap the Townsville Accord's effectiveness.
64. The Townsville Liquor Accord Body submitted that should re-authorisation not be granted, it is very likely that there will be an immediate return to extreme discounting in the accord area as licensees attempt to increase their crowds and subsequent profits.
65. The ACCC notes that the applications for authorisation (and subsequent re-authorisation applications) arose from recognition that in fulfilling their obligations under the Liquor Act and Liquor Regulations, drinking venues that enter into collective arrangements through liquor accords may be at risk of engaging in conduct in contravention of the CCA.
66. The ACCC is of the view that in the absence of authorisation of the price and supply controls contained in the PLAA and the use of those provisions by liquor accords in Queensland, liquor accord bodies will have fewer measures available when deciding which terms to adopt in order to most effectively target problematic behaviour in their area.
67. The ACCC recognises that with and without the proposed conduct, drinking venues in Queensland operate under various legislated obligations regarding the supply of alcoholic products. However, the ACCC considers that the proposed conduct allows drinking venues to collaboratively determine higher standards for the service of alcohol through the price and supply provisions contained in the PLAA. While absent authorisation it would be open to accord members to unilaterally impose such restrictions on the price and supply of alcohol, they would be less likely to do so without the agreement of competing licensed premises due to the likelihood that some of their customers could switch to those venues that do not impose equivalent price and supply restrictions.

Public benefit

68. Public benefit is not defined in the CCA. However, the Tribunal has stated that the term should be given its widest possible meaning. In particular, it includes:

...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principle elements ... the achievement of the economic goals of efficiency and progress.⁹

69. The OLGR made a number of submissions regarding the public benefits likely to be delivered by the arrangements. Broadly, the OLGR argued that the liquor accord arrangements will assist in preventing alcohol-related harm in local communities. The OLGR submitted that the abuse and misuse of alcohol is costly to the Queensland Government but also affects the community with crime, violence, road accidents and loss of productivity, including a significant burden on the Queensland health system.
70. The ACCC recognises that there is a high level of community concern about harms caused by alcohol abuse and that drinking venues have an important role to play in promoting the responsible consumption of alcohol. In this context liquor accords (with the support of the OLGR) have been widely recognised as playing a valuable role in assisting Queensland communities to reduce problems associated with alcohol abuse.
71. All submissions received by the ACCC were supportive of measures which seek to reduce alcohol-related problems and were supportive of the concept that liquor accords allow for local solutions to be found to local problems.
72. The ACCC notes that any initiative that reduces crime and violence, destruction of property and use of hospital and police resources is likely to result in a public benefit. This includes allowing drinking venues in a local area to work together with local stakeholders and the support of the Queensland State Government liquor regulatory body to adopt appropriate price and supply strategies aimed at minimising alcohol-related harms.
73. Accordingly, the relevant consideration for the ACCC is the extent to which the price and supply controls in the PLAA contribute to the realisation of this public benefit.
74. Research by the National Drug Research Institute (**NDRI**) and others indicates that, as overall alcohol consumption in a given population rises or falls, so do the incidence and gravity of related harms.¹⁰ Consumption of alcohol can be influenced through measures including the price and terms of supply or availability of alcoholic beverages. Evidence suggests that a rise in the price of alcohol results in falling consumption of alcohol (although moderate drinkers are more price responsive than heavy drinkers)¹¹ with a consequential reduction in alcohol-related harms¹². Similarly, measures such as avoiding labelling, promotions and methods of serving drinks that encourage rapid and excessive

⁹ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677..

¹⁰ National Drug Research Institute, *Restrictions on the Sale and Supply of Alcohol: Evidence and Outcomes*, 2007, <http://ndri.curtin.edu.au/local/docs/pdf/publications/M68.pdf> accessed on 24 April 2014, pp 21-23.

¹¹ Gallet, CA, *The Demand for Alcohol: A Meta-analysis of Elasticities*, Australian Journal of Agricultural and Resource Economics, 2007, 51, 121-135, p.133; Wagenaar AC, Salois MJ, Komor KA. Effects of beverage alcohol price and tax levels on drinking: a meta-analysis of 1003 Estimates from 112 Studies, *Addiction*, 2009, 104, 179-90, p.189.

¹² *Independent Review of the effects of alcohol pricing and promotion. Part A: Systematic Reviews*. Sheffield: SchARR, University of Sheffield, p. 38; Alcohol and Public Policy Group (2010), Babor T., Caetano R., Casswell S., Edwards G., Giesbrecht N., Graham K. et al. *Alcohol: No Ordinary Commodity—Research and Public Policy*. Oxford, UK: Oxford University Press; 2010, p.124.

drinking could also be expected to lower consumption and/or the pace at which alcohol is consumed. In the absence of the ability to directly target those who abuse alcohol, lowering the overall level of consumption appears to be an imprecise but ultimately effective way of reducing alcohol-related harms.

75. The ACCC notes that although there are numerous studies regarding the effects of changing prices broadly these studies do not specifically examine the price and supply controls contained in the PLAA. However, in considering the effectiveness of the measures contained in the PLAA it is instructive to draw on the experience in the Townsville Liquor Accord area where the supply and control provisions in the PLAA have been adopted. In doing so however, it should be noted that the price and supply controls and other measures contained in the Townsville Accord were implemented simultaneously and within a changing broader social and police enforcement environment that may have contributed to any observable changes in behaviour in the area.

Experience of the Townsville Liquor Accord Body

76. The Townsville Liquor Accord Body submitted that their accord was adopted in response to alcohol fuelled behavioural problems in the area. Similarly, the OLGR submitted that prior to the Townsville Accord being adopted OLGR officers operating in the CBD observed increased intoxication-related complaints and issues during times of heavily discount drinks. More generally, the Townsville CDB has been recognised by the Queensland state government as an area warranting specific initiatives to reduce alcohol-related violence through its inclusion in the Drink Safe Precinct trial and as a Safe Night Precinct.
77. The area covered by the Townsville Liquor Accord is densely populated by licensed venues and includes around 10 to 15 venues trading to, or beyond, 2am and located within approximately 1 kilometre of each other, many within 300 metres of each other. The density of, and extended trading hours of drinking venues in Townsville may be contributing factors to the drinking problems experienced in the region. There is strong Australian evidence that increased trading hours for licensed premises are associated with increased levels of consumption and/or harm.¹³ Further, international and national evidence indicates a strong relationship between increased numbers of licensed premises and increased levels of violence.¹⁴
78. The cornerstone of the Townsville Liquor Accord is to establish minimum prices for spirits sold by signatories to the Townsville Accord. The Townsville Accord contains the following price controls:
- minimum prices from 8pm on Tuesdays: \$3.00 for a standard nip, \$2.50 for a standard half nip;
 - minimum prices from 5pm the day before any public holiday: \$3 for a standard nip, \$2.50 for a standard half nip;
 - minimum prices for all other times: \$5.00 for a standard nip, \$4.00 for a standard half nip.

¹³ National Drug Research Institute, p 23. See also Allen Consulting Group 2009, *Alcohol-related harm and the operation of licensed premises*, Melbourne, p.23.

¹⁴ National Drug Research Institute, pp 29-31.

79. The Townsville Liquor Accord Body submitted that these measures were introduced because problematic behaviour was occurring on Tuesday nights where a promotional practice of 'Cheap Tuesdays'/'Uni Nights' had evolved. The Townsville Liquor Accord Body submitted that on these nights spirits were heavily discounted to as low as 80 cents for a standard nip and these dangerous drink promotions were resulting in problematic behaviour. It appeared that pubs and clubs were inclined to extend this heavy discounting to spirits on other nights of the week, for instance on Friday nights and increasingly also on Saturday nights. Minimum prices were set to curb this heavy promotional activity and prevent it from spreading to other nights of the week. The Townsville Liquor Accord Body further submitted that the OLGR and Queensland Police were supportive of this measure.
80. The Townsville Liquor Accord Body submitted that the general consensus of all accord members is that there has been a significant drop in anti-social behaviour in and around licensed premises, and that this reduction can be attributed to the introduction of pricing controls in relation to spirit based drinks.
81. The Townsville Liquor Accord also includes the addition of a commitment that signatories will not serve shots after 2am and a commitment that venues to the accord will not engage in touting within close range of any other licensed venue within the Townsville Liquor Accord area.
82. The Townsville Liquor Accord Body submitted that the ban on shots after 2am is aimed at reducing the incidents of unruly and intoxicated patrons. The Townsville Liquor Accord Body submitted that the precinct has seen a decline in overall offences after 2am since the measures were implemented. The ban on touting close to competitor's venues is aimed at discouraging the aggressive touting of discounted drink offers.
83. The submissions received from local stakeholders (including letters in support provided at the time the application was lodged from Townsville Police, a Townsville Councillor and Townsville Street Chaplains which are summarised at paragraph 44) state that the measures in the Townsville Accord have resulted in reduced alcohol-related harms in and around participating venues. These submissions are strongly in favour of continuing the measures in order to achieve a safer environment in the region. Further, the OLGR submitted that the behaviour of patrons at venues participating in the Townsville Liquor Accord has improved significantly compared to patrons at premises not participating in the Accord.
84. Townsville Police provided a copy of a memo sent by Townsville Police to the Townsville Liquor Accord Body indicating their continued support for the Townsville Accord. The memo reads, in part:

[w]hen allocating police staff numbers on any given night in the Drink Safe Precinct part of what dictates policing numbers is the number of 'calls for service' or how busy similar nights have been in the past. One of the factors that influence the police numbers is not necessarily the number of patrons but the level of violence associated with the number of patrons.

Prior to the minimum priced drinks I would have up to 12 staff allocated on duty on any given Tuesday night. In the past three months I have

been allocating 4 staff on any given Tuesday night. The calls for service have reduced. I believe that reducing the access to cheap alcohol, spread cumulatively through a variety of establishments, is directly related to the reduced policing presence and requirement to respond to incidents. The amount of violence is reduced and in addition to that the severity of the violence is reduced as well.

85. DSICA, while supportive of accord measures, questions the focus on spirits in the price controls in the Townsville Accord. DSICA submitted that there is no statistical basis for arguing that the minimum prices for spirits implemented by participants in the Townsville Accord have led to a public benefit. Similarly, in submissions in response to the draft determination, DSICA and Diageo questioned whether the evidence noted above was sufficient to conclude that price and supply controls adopted by the Townsville Liquor Accord Body had contributed to a reduction in alcohol related harm in the Townsville CBD.
86. As noted above, it is difficult to quantify the impact of a minimum price initiative such as that implemented by the Townsville Liquor Accord Body where initiatives are implemented simultaneously with other measures and within a changing broader social and police enforcement environment. However, the ACCC considers that the anecdotal evidence provided by objective stakeholders in the Townsville area, and in particular the OLGR and Townsville Police, supports the argument that the Townsville Accord has been successful in contributing to a reduction in alcohol-related harm in the Townsville CBD.

Issues raised by interested parties

87. Queensland Network of Alcohol and Other Drug Agencies (**QNADA**) welcomes increased collaboration in implementing practical solutions to alcohol-related problems and improving community safety and amenity through liquor accords. However, QNADA submitted that the limited evaluation of liquor accords has shown that although they do generally produce a reduction in alcohol-related violence in the short term, sustaining their benefits in the longer term is difficult. This research has shown that for liquor accords to be successful there must be external regulation and enforcement of the accords from those whose livelihood is not dependent on the sale of liquor.
88. QNADA further submitted that while liquor accords are valuable tools for instigating and improving communication between licensees and services they have limited ability to have a long standing impact on alcohol-related harm reduction. As such they should be used in conjunction with other harm reduction activities.
89. The ACCC notes that authorisation has been sought for liquor accords to adopt the OLGR's PLAA. Accordingly, the ACCC's assessment is limited to assessing the public benefits and detriments of the PLAA. While the ACCC welcomes other initiatives that complement or enhance the effectiveness of the PLAA arrangements, except to the extent that such measures may impact on the assessment of the conduct for which authorisation is sought, it is not the ACCC's role through the authorisation process to consider these measures.
90. The ACCC does note the oversight of accord arrangements provided by the OLGR. As discussed further below, the ACCC considers that the realisation of the potential public benefits of the PLAA arrangements could be enhanced, and

the potential public detriments mitigated, by the OLGR taking a greater oversight role in the implementation of accord arrangements. The ACCC has imposed conditions of authorisation reflecting this.

ACCC conclusion on public benefits

91. The ACCC accepts that the rapid and/or excessive consumption of alcohol has the potential to cause significant harm in the community. The social and economic costs of alcohol abuse include increased violence and other crimes against persons and property, road accidents, increased reliance on hospital, other community health and policing resources and reduced amenity for other patrons at licensed premises. The ACCC considers that any arrangement that reduces these costs is likely to generate significant public benefit. This includes allowing drinking venues in local areas to work together with local stakeholders and the support of the Queensland State Government liquor regulatory body to adopt appropriate price and supply strategies aimed at minimising these harms.
92. Accordingly, the ACCC is satisfied that the adoption of the price and supply controls in the PLAA by liquor accords in Queensland is likely to encourage more responsible consumption of alcohol and is likely to continue to contribute to a reduction in alcohol-related harms. This is likely to result in significant public benefit.

Public detriment

93. Public detriment is also not defined in the CCA but the Tribunal has given the concept a wide ambit, including:

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁵

94. The OLGR submitted that the price and supply measures contained in the PLAA will not cause public detriment.

Price controls

95. Price controls in the PLAA include:

- banning 'drink cards' that provide multiple free drinks
- banning extreme discounts or discounts of limited duration
- ensuring smaller serves of drinks (e.g. half nips) are available at differential (lower) prices
- offering and promote low alcohol beer at differential (lower) prices compared to full strength

¹⁵ *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,683.

- offering and promote a range of non alcoholic drinks at differential (lower) prices.
96. As detailed from paragraph 78 above, the Townsville Accord, which is the only accord currently adopting the price and supply controls provided for in the PLAA, includes agreed minimum prices for spirits.
 97. Agreements between competing pubs and clubs that influence the pricing decisions of those venues can result higher prices for consumers and generate a loss of consumer welfare.
 98. Furthermore, while such measures are aimed at moderating the behaviour of the small subset of customers who generate harm for themselves and the wider community, the cost of moderating this behaviour through price controls is borne by all customers of establishments who are party to the agreement.
 99. To the extent that customers are unable or unwilling to switch from these venues to others that are not implementing price controls and/or consume less while attending venues that are, the effect of such price controls can also be to increase the profits of participating venues. Where there are few non-participating licensed venues nearby, this may incentivise venues to agree to such measures regardless of whether the measures address any alcohol-related harm.
 100. DSICA raised concerns about the Townsville Accord adopting price controls, in preference to other measures, and questioned why spirits, as opposed to other types of alcoholic drinks, were targeted by the Townsville Accord. In submissions in response to the draft determination DSICA and Diageo reiterated these concerns. DSICA also questioned whether agreements on minimum prices are within the scope of the conduct authorised by the ACCC in 2010.
 101. The Townsville Liquor Accord Body submitted that spirits were targeted because prior to the introduction of the price controls, heavy discounting focused on spirits. At the time of agreeing to minimum prices for spirits the Townsville Liquor Accord Body also agreed that strategies would be discussed for other types of drinks should this be required.
 102. The OLGR submitted that the minimum price agreement between Townsville Accord members was within the scope of the conduct authorised by the ACCC.
 103. The ACCC notes the PLAA does not target spirits or any other form of alcoholic beverage. Rather, it is designed to allow liquor accords to be developed at a local level with flexibility regarding the price or supply measures required for each area depending on the factors contributing to the harm. In the case of the Townsville Accord, discounting of spirits to as low as 80 cents per serve was considered to be a contributing factor to alcohol-related harms. On this basis, the Townsville Accord chose to include restrictions on the price of spirits, and on the service of particular serves of spirits, in their accord. The effectiveness of the suite of measures implemented by the Townsville Liquor Accord including minimum prices for spirits, are discussed in the ACCC's assessment of the public benefits of the arrangements.
 104. More generally, the ACCC considers that the extent of any detriment arising from the price controls is likely to be mitigated by the fact that they only operate within specific geographic boundaries, and are voluntary. This is reflected in

experience since the arrangements were first authorised in 2010, whereby only two accords, Townsville and the Whitsunday Accord, have adopted price controls, and in the case of the Whitsunday Accord, after a six month trial it decided to abandon price controls.

105. The ACCC also understands that in Townsville there has not been full participation in minimum price agreements for spirits by venues located in the CBD, where the liquor accord is based. Some venues did not adopt the accord at its commencement and some of those that did adopt the accord have since withdrawn. The ACCC understands that some of the non-participating venues continue to offer drinks at prices below the minimum prices established by the accord agreement.
106. The ACCC also notes that the price controls only target specific types of discounts and do not affect price competition between venues more broadly. If a drinking venue was generally cheaper than another before the introduction of price controls, it should remain cheaper after they are introduced.
107. However, in order to ensure that price controls are only adopted in response to relevant identified harms, and that they are implemented in a transparent manner with independent oversight, the ACCC has confined the scope of the authorisation and impose a number of conditions as set out at paragraph 154. The effect of these conditions is that individual liquor accords containing price (and supply) restrictions will not be protected by authorisation unless the OLGR is satisfied that the price (and supply) controls in the accord are appropriate for reducing an identified alcohol-related harm. The ACCC also notes that this is designed, in part, to address the type of concern raised by Diageo that price controls in liquor accords will not be related to addressing harm minimisation but rather to reducing competition.
108. In addition, the ACCC has clarified the definition of extreme discounting in the PLAA so that it includes agreements not to sell drinks below an agreed minimum price. The definition of extreme discount makes clear however that the accord does not prohibit or restrict licensees from discounting drinks generally.
109. Further, the ACCC does not authorise accord members to agree on the actual prices (at or above any minimum prices) to be charged by accord members for alcoholic beverages. Any accord that contains agreement about the actual prices of alcoholic beverages would not be able to be registered with the OLGR. The ACCC is also imposing a condition of authorisation that requires that this be made clear in the PLAA.

Supply controls

110. Supply controls in the PLAA include:
 - avoiding labelling or promotions that may encourage patrons to consume liquor irresponsibly and excessively to an unduly intoxicated state.
 - avoiding offering drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication (such as offering drinks in novelty containers or conducting drinking games).

- not advertising or allowing promotions of very high alcohol substances such as overproof rum and high alcohol carbonated drinks.
111. The Townsville Accord includes a ban on “shooters” or “shots” any time after 2am and a commitment that venues will not engage in “touting” within close range of any other licensed venue within the Townsville Accord area.
 112. Agreements between competitors to limit the range and types of alcoholic drinks available can reduce consumer choice and distort the level of competition that would otherwise exist. Agreements to ban touting similarly have the potential to reduce competition between licensed premises.
 113. As with price controls, the cost of these supply controls is borne by all customers of participating venues, including the majority who are consuming alcohol responsibly. However, the ACCC considers that the factors identified above as mitigating the potential public detriment resulting from price controls are also applicable to these supply controls. Further, the conditions imposed by the ACCC will also apply to these supply controls to ensure that they are only be adopted to address relevant identified harm and are subject to transparent, independent oversight by the OLGR.
 114. In response to the draft determination DSICA and Diageo raised concerns that the inclusion of shooters and shots in the proposed definition in the PLAA of “drinks that by their method of consumption encourage irresponsible drinking habits and are likely to result in rapid intoxication” unfairly singles out spirits and may lead to bans on products that are not consumed rapidly such as neat malt whiskey serves.
 115. The ACCC notes that the inclusion of these types of products in the proposed definition is intended to provide flexibility for individual accord bodies to tailor the restrictions they wish to apply having regard to particular local circumstances. The conditions of authorisation allow liquor accord bodies to impose restrictions that are in narrower terms than those set out in the amended PLAA. As with price and supply controls more generally, individual accord bodies will decide what if any restrictions they wish to apply, and what products they will apply to, having regard to factors contributing to alcohol related harm in their area. Further, as discussed at paragraphs 120 to 129, the adoption of any price or supply control will be subject to the approval of, and oversight by, the OLGR.
 116. The Townsville Liquor Accord Body submitted that the ban on touting close to competitor’s venues is aimed at discouraging the aggressive touting of discounted drink offers. The ACCC notes that section 148 of the Liquor Act bans individual venues from engaging in certain types of touting (for instance touting 2-for-1 drinks, free liquor, the sale price of liquor and other discounting promotions including happy hours, ‘all you can drink’ and ‘toss the boss’).
 117. The ban on touting in the Townsville Liquor Accord goes beyond that provided for in the Liquor Act in that it provides for an absolute ban on touting of any type within close proximity to competitor’s venues. The ACCC considers that a broad ban on all touting near competitor premises is likely to soften competition between licensed premises given that it limits the manner in which licensed venues can promote themselves to consumers. Therefore the ACCC proposes to authorise liquor accord bodies to agree bans on touting that are consistent

with the Liquor Act, but not to authorise liquor accord bodies to extend their agreements to ban touting entirely.

ACCC conclusion on public detriments

118. The ACCC considers that adoption of the price and supply controls contained in the PLAA are likely to increase prices paid by consumers and limit consumer choice in some circumstances. There is also potential that accord members may adopt controls with the aim of reducing competition between them rather than to address identified alcohol-related harms. The costs of this are borne by all customers of participating premises, including those who consume alcohol responsibly. The ACCC considers there are some factors such as the limited geographic reach of liquor accords, and the voluntary nature of liquor accords that may reduce the public detriments somewhat.
119. Notwithstanding the mitigating factors, the ACCC considers that an unfettered ability for accord bodies to adopt price and supply controls at their discretion, unless exercised only to address identified alcohol-related harms and in a manner that is proportional to the harm sought to be addressed, has the potential to generate anti-competitive detriment.

Conditions

120. The ACCC limits the scope of the authorisation and imposes conditions to ensure that price and supply controls are only implemented when there are clearly identified harms and the price and supply controls that are implemented are proportional to the harm they seek to address. The ACCC limits the scope of the authorisation it grants so that agreements between accord members to adopt price and supply controls in their liquor accords will only be protected by authorisation if the liquor accord is registered with the OLGR.
121. Under the conditions the OLGR will establish and manage a registration process with these key features:
 - The OLGR will notify all liquor accord bodies in Queensland about the requirements of the conditional authorisation and establish a process for registering liquor accords that contain a price or supply control provision. Liquor accords that do not contain such a provision do not need to be registered.
 - A liquor accord body must have its liquor accord registered with the OLGR to be covered by the authorisation.
 - Applications to the OLGR for registration must provide information to allow the OLGR to decide whether to register the accord including a copy of the proposed or executed liquor accord and a description of the identified harms that the price or supply provisions seek to address. The harms would include any social harm that relates to alcohol abuse or excessive consumption of alcohol in and around licensed venues.

- The OLGR will only register a liquor accord where it has received the required information and is satisfied that the proposed price and supply controls are appropriate for reducing an identified harm and is proportionate to the harm sought to be addressed. The OLGR may seek information and/or statistics from local stakeholders including police, taxi companies, local councils and other community representatives in making its decision.
 - The OLGR may withdraw registration of a liquor accord at any time after registering that liquor accord where the OLGR considers that the price or supply provisions no longer address the identified harms in a proportionate way. Before doing so the OLGR will provide the liquor accord body with sufficient notice of its intention in order to allow them to make submissions regarding why registration should not be withdrawn.
 - The OLGR reports annually to the ACCC regarding its decisions on registration. The ACCC may direct the OLGR or a member of a registered liquor accord to provide information relating to a registered accord.
122. In response to the draft determination Diageo submitted that the proposed approach did not provide for sufficient oversight of price and supply controls that local liquor accords propose to adopt. Diageo and DSICA also raised concerns that the proposed approach would encourage local liquor accord groups to adopt price and supply controls without considering local issues of harm minimisation and potentially adopt such controls with the aim of reducing competition.
123. The ACCC considers that these conditions will ensure that the adoption of price and supply controls is subject to transparent and independent oversight and to minimise the risk that measures would be implemented by licensed venues that are not proportionate to the harm they are seeking to address, or for a profit motive rather than the intention of reducing alcohol-related harms. The conditions also provide the OLGR with the discretion to review the ongoing justifications for the price and supply controls at any time.
124. The conditions of authorisation also require that changes be made to the PLAA to explain the registration process, including the circumstances in which registration is and is not necessary and the risk of potentially breaching relevant provisions of the CCA if an accord body adopts price and supply controls without first being registered. A copy of the PLAA, incorporating the changes the ACCC has required, is at **Attachment A**.
125. The ACCC has also made amendments to the definitions contained in the PLAA so that it is clear that, subject to registration, licensed venues may implement terms in their liquor accord arrangements to agree not to engage in touting of the type prohibited by the Liquor Act, to agree on minimum prices for drinks and to ban the sale of shots.
126. The scope of the authorisation the ACCC grants is limited to accord agreements in the same terms, or narrower terms, than the amended PLAA at **Attachment A**. Liquor accords that include additions to or other variations on the price and supply controls in the PLAA would not receive the benefit of authorisation. For example, liquor accord members will not be permitted to agree on the actual

price (at or above any minimum price) to be charged by liquor accord members of alcoholic drinks.

127. The ACCC has also imposed a number of other conditions to ensure statutory protection continues for existing accords for a sufficient period of time to allow them to gather the required information and to make any necessary amendments to existing liquor accords to reflect the amended version of the PLAA that the ACCC authorises, and for the OLGR to make its assessment about registering those accords.
128. The ACCC notes that of over 100 liquor accords currently in operation, only the Townsville Liquor Accord Body is currently implementing price and supply controls that are subject to the authorisation and associated conditions. Given the majority of liquor accord bodies have previously decided that price or supply controls were not necessary for their local area, the ACCC anticipates that few liquor accord bodies in the future will need to seek registration of their accords.
129. As it has done to date, the ACCC understands that the OLGR will continue to assist liquor accord bodies in developing their accords and with the registration process. The ACCC notes that liquor accord bodies in some other jurisdictions (such as Liquor Accord Precincts in NSW) undertake a similar assessment and approval process.
130. The ACCC has consulted the OLGR about the conditions. The OLGR has stated that it is in a position to fully meet the conditions and that it is satisfied that it can fulfil the role objectively.

Balance of public benefit and detriment

131. In general, the ACCC may grant authorisation if it is satisfied that in all the circumstances the proposed conduct is likely to result in a public benefit, and that public benefit will outweigh any likely public detriment, including any lessening of competition.
132. The ACCC considers that allowing liquor accords in Queensland to adopt the price and supply controls included in the PLAA will assist accord members to work together with local stakeholders and the OLGR to adopt appropriate strategies aimed at reducing alcohol-related harms, thereby resulting in significant public benefit.
133. However, the ACCC also notes that the adoption of the price and supply controls has the potential to increase the prices paid by consumers and limit consumer choice in some circumstances. These costs are borne by all customers of participating premises, including those who consume alcohol responsibly. Further, without sufficient oversight there is potential for accord members to adopt controls with the aim of reducing competition between them rather than to address identified alcohol-related harms.
134. To ensure the realisation of the public benefits identified by the ACCC and to minimise any associated public detriment the ACCC grants authorisation subject to a number of conditions. These conditions are intended to ensure transparent and independent oversight of decisions to implement price and supply controls. They establish criteria which must be met before such controls can be

implemented. Specifically, the proposed price and supply controls must be appropriate for reducing an identified harm and be proportionate to the harm sought to be addressed. The conditions also provide that the OLGR, rather than accord members, will ultimately decide whether these criteria are met and therefore, whether proposed price and supply controls included in individual accord agreements are implemented.

135. For the reasons outlined in this determination, and subject to the conditions, the ACCC is satisfied that the likely benefit to the public from liquor accord bodies making and giving effect to liquor accords in express terms of the PLAA, or in narrower terms, would outweigh the detriment to the public including the detriment constituted by any lessening of competition that would be likely to result from this conduct. For the same reasons, the ACCC is also satisfied, subject to the conditions, that this conduct is likely to result in such a benefit to the public that it should be allowed to take place.
136. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Length of authorisation

137. The CCA allows the ACCC to grant authorisation for a limited period of time.¹⁶ This allows the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
138. The OLGR seeks re-authorisation for five years. The OLGR submitted that this period is suitable given the nature of liquor accord arrangements and the public benefits that may be derived from them.
139. DSICA submitted the new authorisation should not be for the proposed five years because this is unnecessarily long to determine the effectiveness of the PLAA. DSICA submitted that the appropriate length of authorisation is three years. In response, OLGR submitted that the conditions contained in the existing authorisation allow for an ongoing assessment of how the pro-forma liquor accord is being applied by individual liquor accords and that with these conditions five years is appropriate.
140. In response to the draft determination Diageo submitted that, if granted, a three year authorisation would be more appropriate as the alcoholic beverage market is constantly changing and a five year authorisation risks the PLAA becoming out of date and not adequately addressing current issues.
141. The ACCC considers that authorisation for five years is appropriate. In relation to the concerns raised by Diageo, the ACCC notes that the PLAA is designed to allow liquor accords to be developed at a local level with flexibility regarding the price and supply controls adopted. Further, local liquor accord bodies are able to change their liquor accord agreements as circumstances change, subject to the OLGR registration process. In addition, as noted, the OLGR can withdraw

¹⁶ Subsection 91(1)

registration at any time if it considers that the price and supply controls no longer address identified harms in a proportional way.

142. The ACCC also notes that the arrangements have already been authorised for three years and the conditions of authorisation, including the oversight role that the OLGR will play in registering, and potentially revoking registration, for accords are likely to ensure that the likely public benefit will continue to outweigh the likely public detriment over the five year period. In particular, giving effect to an accord agreement will not be covered by the authorisation unless the OLGR is satisfied that the price and supply controls in the accord are appropriate for reducing an identified alcohol-related harm and are proportional to the harm sought to be addressed.

Determination

The application

143. On 17 September 2013 the State of Queensland, acting through the OLGR lodged with the ACCC an application for the revocation of authorisations A91224 and A91225 and substitution of authorisations A91385 and A91386 for the revoked authorisations. Applications A91385 and A91386 were made using Form FC Schedule 1, of the Competition and Consumer Regulations 2010.
144. Relevantly, the initial authorisation applications lodged by the OLGR were made under subsection 88(1) and 88(1A) of the CCA for the Responsible Service of Alcohol section of a pro-forma liquor accord arrangement which imposes controls on the price and supply of alcoholic beverages to consumers. The provisions of the Responsible Service of Alcohol section that could potentially raise concerns under the CCA are highlighted in **Attachment A** of this determination.

The net public benefit test

145. For the reasons outlined in this determination, and subject to the conditions below, the ACCC considers that in all the circumstances making and giving effect to liquor accords in the express terms of the PLAA, or in narrower terms, is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from this conduct. For the same reasons, and subject to the conditions below, the ACCC is also satisfied that this conduct is likely to result in such a benefit to the public that it should be allowed to take place.
146. The ACCC therefore **grants authorisation** to applications A91385 and A91386 **on conditions C1 to C12** outlined at paragraph 154 below.

Conduct for which the ACCC grants authorisation

147. The ACCC grants conditional authorisation for:
- Liquor Accord Members to make a liquor accord agreement containing a Price or Supply Control Provision, where that Price or Supply Control Provision is in the express terms set out in Attachment A to the conditions of this authorisation, or is in narrower terms;
 - Liquor Accord Members to give effect to a provision of a liquor accord agreement that is a Price or Supply Control Provision in the express terms set out in Attachment A or in narrower terms, but only if the liquor accord agreement is registered with the Applicant in accordance with the conditions of this authorisation;

- Liquor Accord Members to give effect to a provision of a liquor accord agreement (other than a Price or Supply Control Provision) that is in the express terms set out in Part 1 (Responsible Service of Alcohol) of Attachment A to the conditions of this authorisation, or is in narrower terms.
148. A Price or Supply Control Provision means a highlighted provision (including associated definitions) set out at condition 11 of this authorisation. A Liquor Accord Member is a signatory to a liquor accord agreement.
149. Conditional authorisation only applies to liquor accord agreements that operate within the State of Queensland.

Existing Liquor Accords

150. In order to ensure that statutory protection continues for existing liquor accords for sufficient time to allow Liquor Accord Members to make any necessary changes to their liquor accord and have it registered, from the commencement date of the authorisation (and in addition to paragraph 143 above):
- giving effect to the provisions of the Townsville Liquor Accord is authorised under this authorisation for a period of two months;
 - giving effect to the provisions of any other liquor accord that was authorised under the interim authorisation granted by the ACCC on 2 October 2013 is authorised under this authorisation for a period of 12 months.
151. After the above time periods expire, conditional authorisation only extends to those provisions of liquor accord agreements that are Price or Supply Control Provisions in the express terms set out in Attachment A (or in narrower terms) and are registered with the Applicant in accordance with the conditions of this authorisation.

Future parties

152. Under subsection 88(6) of the CCA, any authorisation granted by the ACCC is automatically extended to cover any person named in the authorisation as being a party or proposed party to the conduct. This conditional authorisation in the above terms extends to future Liquor Accord Members who become signatories to a liquor accord agreement already authorised under this authorisation.

Conduct not authorised

153. The ACCC does not grant authorisation for the following conduct:
- except as otherwise stated above, making and giving effect to provisions of a liquor accord agreement that are not in either the express terms (including associated definitions) set out in Part 1 (Responsible Service of Alcohol) of Attachment A to the conditions of this authorisation, or narrower terms.

For example, making and giving effect to provisions of liquor accord agreements that specify the actual prices (at or above any minimum prices) to be charged by Liquor Accord Members for alcoholic beverages is not authorised under this authorisation.

- giving effect to liquor accord agreements that incorporate price and supply restrictions that are not registered with the OLGR.
- giving effect to a Price or Supply Control Provision at premises licensed to sell alcohol for off-site consumption.
- agreements between Liquor Accord Members to ban problematic individuals from their premises.¹⁷

Conditions

154. The conditions read as follows.

The OLGR must establish and publish on its website a registration process and notify established Liquor Accord Bodies of the registration process

C1. Within one week of the Commencement Date of this Authorisation, the Applicant must:

- a. establish a process for registering Liquor Accords that complies with conditions 3 to 5. The Applicant must publish the details of that registration process on its website;
- b. amend the Applicant's pro-forma liquor accord arrangement so that the Applicant's pro-forma liquor accord arrangement is the same as the 2014 Pro-forma Liquor Accord;
- c. provide written notification to established Liquor Accord Bodies, enclosing a copy of the amended pro-forma liquor accord arrangement and advising established Liquor Accord Bodies that:
 - i. the Applicant has amended its pro-forma liquor accord arrangement, and that the amended version is enclosed;
 - ii. authorisation of all existing Liquor Accords will expire 12 months from the Commencement Date of this Authorisation unless registration of the Liquor Accord has been obtained in accordance with the process set out in conditions 3 and 4;

¹⁷ While the ACCC is aware that the Townsville Accord includes such an agreement, the PLAA does not and the OLGR has confirmed that it is not seeking authorisation for accords to adopt agreements of this type.

- iii. all Price or Supply Control Provisions are not authorised under this Authorisation unless:
 - (a) the relevant provision of the Liquor Accord is in the same express terms as the relevant requirement of the amended pro-forma liquor accord arrangement, or is in narrower terms;
 - (b) registration of the Liquor Accord has been obtained in accordance with the process set out in conditions 3 and 4;
- iv. other practices not expressly included in the amended pro-forma liquor accord arrangement are not authorised under this Authorisation.

The applicant must provide written notification to the Townsville Liquor Accord Body about the status of the Townsville Liquor Accord

- C2. Within one week of the Commencement Date of this Authorisation, the Applicant must:
- a. provide written notification to the Townsville Liquor Accord Body that its authorisation will expire two months from Commencement Date of this Authorisation unless registration of the Townsville Liquor Accord has been obtained in accordance with the process set out in conditions 3 to 4; and
 - b. provide a copy of the notification to the ACCC.

Registration for Liquor Accords

- C3. To apply for a Liquor Accord to be registered, a Liquor Accord Body must provide the Applicant with:
- a. a copy of the executed or proposed Liquor Accord, the Price or Supply Control Provisions of which must be in the same express terms as the 2014 Pro-forma Liquor Accord, or in narrower terms;
 - b. a list of all Liquor Accord Members who are currently signatories to the Liquor Accord, and / or a list of all currently proposed signatories to the Liquor Accord (as relevant);
 - c. for each Price or Supply Control Provision contained in the Liquor Accord a description of the Identified Harms that the Price or Supply Control seeks to address; and
 - d. any other information requested by the Applicant that the Applicant considers relevant.
- C4. The Applicant must not register a Liquor Accord that it receives in accordance with condition 3 unless:

- a. the Liquor Accord Body has provided the Applicant with all of the information required by conditions C3(a) to (c);
- b. after reviewing the information provided by the Liquor Accord Body, the Applicant is satisfied that the inclusion of each Price or Supply Control in the Liquor Accord is appropriate for reducing, and is proportionate to, the Identified Harms sought to be addressed by that Price or Supply Control. In making this assessment, the Applicant may make any enquiries and have regard to any information it considers appropriate, such as information and/or statistics from the Police, Ambulance Officers or other relevant stakeholders in the local area in which the Liquor Accord is to operate.

Applicant may withdraw registration of a Liquor Accord

- C5. If, at any time after registering a Liquor Accord, the Applicant is no longer satisfied that a Price or Supply Control in the Liquor Accord is appropriate for reducing, and is proportionate to, the Identified Harms sought to be addressed by that Price or Supply Control, or for any other reason, the Applicant may decide to withdraw registration of that Liquor Accord.
- C6. The Applicant must provide written notification of that decision (including the date on which the withdrawal will take effect) to the relevant Liquor Accord Body. The withdrawal will take effect on the date specified in the written notification, but only if at least 4 weeks have elapsed since the written notification was provided to the relevant Liquor Accord Body. Prior to the withdrawal taking effect, the Applicant may decide to revoke the withdrawal at any time.

Applicant to report to the ACCC

- C7. By [date] each year from the Commencement Date of this Authorisation until the expiry of this Authorisation, the Applicant must provide the ACCC with a report that includes:
 - a. a statement as to whether the Applicant has complied with the Conditions for registration set out in conditions 1 to 6 above;
 - b. in respect of each application for registration of a Liquor Accord received within the previous 12 month period details of the application including a copy of the executed Liquor Accord, a list of all Liquor Accord Members and details of the Applicant's decision about whether to register the Liquor Accord;
 - c. details of any decisions made under conditions 5 or 6 above.

Applicant to comply with direction from ACCC

- C8. The ACCC may, at any time during the term of this authorisation, direct in writing the Applicant or a member of a Registered Liquor Accord to, and the Applicant or relevant Liquor Accord Members must, furnish or produce information, documents or materials to the ACCC relating to the conduct the subject of this authorisation in the time and in the form requested by the ACCC.

- C9. Nothing in this condition requires the provision of information, documents or materials in respect of which the Applicant has a claim of legal professional privilege.
- C10. The power of the ACCC in this condition may be exercised by an employee of the ACCC.

Applicant to amend the pro-forma liquor accord

- C11. Within one week of the date of the Commencement Date, the Applicant must amend the pro forma liquor accord arrangement the subject of the application for re-authorisation, titled “ADOPTION OF LIQUOR ACCORD PRO-FORMA ARRANGEMENT”, so that it reads as set out at Attachment A to these Conditions.

Definitions

- C12. In these conditions:

2014 Pro-forma Liquor Accord means the pro-forma liquor accord set out at Attachment A to these conditions.

Applicant means the State of Queensland acting through the Office of Liquor and Gaming Regulation or its successor.

Commencement Date of this Authorisation means the date of this authorisation plus 22 days [In the final determination the reference to dates of authorisation plus 22 days would be replaced with an actual date, being the date authorisation comes into effect].

Identified Harms means any damage or harm related to alcohol abuse, alcohol misuse or excessive consumption of alcohol in and around venues participating in a liquor accord but borne by the broader community surrounding those venues.

Liquor Accord means a written agreement between licensed premises, local government, police and/or other local stakeholders made for the purpose of curbing curb alcohol-related harms, and which contains at least one provision which is a Price or Supply Control Provision.

Liquor Accord Body means the incorporated body or person responsible for new and/or established Liquor Accords and includes Liquor Accord Members where appropriate.

Liquor Accord Members means the signatories of a Liquor Accord.

Price or Supply Control Provision means a highlighted provision (including associated definitions) set out in Attachment A to these conditions.

Townsville Liquor Accord means the Liquor Accord operating in the Townsville local area as at the Commencement Date.

Interim authorisation

155. At the time of lodging the application, the OLGR requested interim authorisation because the existing authorisations were due to expire on 7 October 2013. On 2 October 2013 the ACCC granted interim authorisation under subsection 91(2) of the CCA to liquor accord arrangements in the form of OLGR's pro-forma liquor accord arrangements subject to the same conditions as the existing authorisations.
156. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

Date authorisation comes into effect

157. This determination is made on 18 December 2014. If no application for review of the determination is made to the Australian Competition Tribunal, the determination will come into force on 9 January 2015.

Attachment A - Amended pro-forma liquor accord arrangement

Important information for liquor accord participants

Liquor accord bodies are encouraged to tailor liquor accord arrangements to suit circumstances unique to licensees and your local community or precinct. You are not compelled to implement all or any of the accord strategies contained in this document.

Implementing any highlighted strategies or provisions?

The 'Responsible service of alcohol' section of this pro-forma liquor accord arrangement have received conditional authorisation from the Australian Competition and Consumer Commission (ACCC).

You will receive the benefit of authorisation for giving effect to some or all of the **highlighted strategies/provisions** in the Responsible Service of Alcohol section, provided you first register your liquor accord arrangement with the Office of Liquor and Gaming Regulation (OLGR). The OLGR will register your liquor accord arrangement if it considers that the highlighted strategies/provisions you wish to implement are appropriate for reducing, and are proportionate to, the alcohol-related harms in your local community.

If your liquor accord body gives effect to, or take steps to implement, any of the highlighted strategies/provisions without first registering the liquor accord arrangement with the OLGR, members of the accord may be liable for breach of the *Competition and Consumer Act 2010* (Cth).

Not implementing any highlighted strategies or provisions?

If your liquor accord body does not propose to implement any of the highlighted strategies or provisions, you should delete all highlighted provisions before you sign and commence implementing the liquor accord arrangement. In this situation your liquor accord arrangement does not need to be registered with the OLGR.

Individual accord members can still decide independently of each other to adopt the highlighted strategies or provisions provided they have not reached an agreement with other accord members to adopt these provisions.

Future variations to your liquor accord arrangement

If your local liquor accord body wishes to implement any of the highlighted strategies that are not already included in your liquor accord arrangement (whether your liquor accord arrangement is already registered or not), you must develop a new liquor accord arrangement and register it with the OLGR.

Strategies that depart from the pro-forma liquor accord arrangement

If your local liquor accord body wishes to vary the contents of this pro-forma liquor accord arrangement, or to otherwise depart from its contents, you are

advised to seek legal advice on the implications of trade practices laws and other legal requirements before adopting the amendments. Even if your liquor accord is registered with the OLGR, you will not receive the benefit of authorisation for any provisions of your liquor accord arrangement that are not in the same express terms as the highlighted strategies or provisions, unless those provisions are in narrower terms than the highlighted strategies or provisions.

For example, and in accordance with the scope of the ACCC's authorisation, liquor accord members are not permitted to agree on the actual price (at or above the minimum price) to be charged by liquor accord members for alcoholic beverages.

PRO-FORMA LIQUOR ACCORD ARRANGEMENT

Stakeholders of the [insert name of local liquor accord body] endorse and will seek to uphold the strategies as listed below in our local area as a way of:

- promoting responsible practices in relation to the sale and supply of liquor at licensed premises
- minimising harm from the misuse of alcohol
- minimising alcohol-related disturbances, or public disorder, in the locality.

DEFINITIONS

The following definitions apply to this accord:

Extreme discounts means half price drinks, 2-for-1 drinks or supplying drinks at prices that are below an agreed minimum price. This accord does not however, prohibit or restrict licensees from discounting drinks generally.

Discounts of limited duration include happy hours with a duration of less than an hour or promotions that set a short timeframe (eg. 15 minutes) in which liquor is discounted. This accord does not however, prohibit or restrict licensees from discounting or promoting happy hours generally.

Drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication include drinks that are offered in objects or items that are non-standard glasses certified by Weights and Measures (eg. test tubes and water pistols), and alcoholic drinks commonly known as "shots" or "shooters". It also includes drinking games involving the consumption of liquor in a short period of time which can lead to rapid and/or excessive consumption of liquor (eg. skolling games and laybacks).

Promotions that encourage rapid intoxication include advertising, in a way that is visible or audible to persons outside particular premises:

- (a) the availability of free liquor or multiple quantities of liquor at those premises (such as "2-for-1 drinks" promotions)
- (b) the sale price of liquor at those premises

- (c) the promotion of the availability of liquor for consumption at those premises at a price less than that normally charged for the liquor (such as 'happy hour', 'all you can drink', and 'toss the boss' promotions).

Very high alcohol substances – This term is intended to capture drinks that contain any more than 2 standard drinks per serve.

Accord stakeholders are encouraged to refer to the *Liquor Act 1992*, *Liquor Regulation 2002* and the Code of Practice for the Responsible Service, Supply and Promotion of Liquor for further guidance.

STRATEGIES

1. Responsible service of alcohol

No unduly intoxicated patrons

- Refuse to serve alcohol to, or allow entry of, persons who are unduly intoxicated.
- Encourage patrons to drink responsibly, and let them know they will be asked to leave if they become unduly intoxicated, disorderly, violent or quarrelsome.
- Promptly and politely ask patrons to leave when they are showing signs of being unduly intoxicated.
- Offer to call unduly intoxicated patrons a taxi and/or provide water while they wait in a safe environment.

No underage drinking

- Actively monitor all patrons to ensure they are not underage by checking proper proof of age identification (ID) at the door.
- Prominently display signage about restrictions on minors.
- Apply the following standards when checking ID:
 - The ID is removed from a wallet/purse or cardholder and held by the staff member conducting the check
 - The ID is checked to ensure it is current and is an approved form of identification - photographic driver's licence; or a proof of age card issued by a Government Department or approved entity (e.g. 18+ card, Keypass); or an Australian or foreign passport
 - The date of birth is checked to establish the age of the patron
 - The date of birth is checked for any tampering
 - The photo is checked to ensure it is the person presenting the ID
 - The photo is checked to ensure it has not been substituted or tampered with
 - The ID is checked overall for any bumps or raised areas which may indicate the identification has been tampered with.
- If staff believe that a document being presented is false, defaced or in the possession of a person who is not the owner of the ID and who is falsely claiming to be 18 years of age, the document will be confiscated and forwarded to the Office of Liquor and Gaming Regulation.

Discourage activities that encourage excessive drinking

- Ban practices and promotions that may encourage rapid or excessive consumption of liquor, for example:
 - 'drink cards' that provide multiple of free drinks
 - extreme discounts or discounts of limited duration
 - any other promotions or gimmicks that encourage rapid intoxication.
- Provide snack food during 'happy hours' where practical.
- Avoid serving drinks that offer alcohol in non-standard measures.
- Ensure smaller serves of drinks (eg half nips) are available at differential (lower) prices.

Not promote or sell alcoholic beverages that may encourage rapid or excessive consumption of liquor

- Avoid labelling or promotions that may encourage patrons to consume liquor irresponsibly and excessively to an unduly intoxicated state.
- Avoid offering drinks that, by their method of consumption, encourages irresponsible drinking habits and are likely to result in rapid intoxication.
- Not advertise or allow promotions of very high alcohol substances such as overproof rum and high alcohol carbonated drinks.
- Not allow stockpiling of drinks.

Promote non or low alcohol beverages and food

- Offer and promote low alcohol beer at differential (lower) prices compared to full strength.
- Offer and promote a range of non alcoholic drinks at differential (lower) prices.
- Ensure bottled water is available free or for purchase at reasonable prices.
- Provide and promote reasonably priced snacks and food throughout operating hours.

2. Improve safety and security

Provide and maintain a safe environment in and around the licensed premises, for example:

Maintain proper standards of behaviour

- Have a phone available for the use of patrons in a location where patrons using the phone can be heard above noise within the premises.
- Display phone numbers for taxis, police, ambulance and fire brigade adjacent to the phone.

- Have the name of the duty manager prominently displayed at each bar in the premises.
- Do not promote activities that might encourage harassment by patrons of the staff or other patrons.
- Clearly display a list of acceptable and unacceptable behaviour on premises (house policy), such as the non acceptance of excessive consumption of alcohol or any illicit drug use.
- Assign staff to actively monitor patrons and at regular intervals move through premises to assess any potential problems (monitoring should also include toilets).
- Actively liaise with police and other licensed premises when disorderly patrons have been ejected or are moving through the area.
- Ensure internal and external security procedures are well maintained and functioning effectively.
- Encourage phased and an orderly exit of patrons from premises when closing.

Maintain safety and security

- Conduct regular risk assessments of premises and surrounding environments.
- Ensure entrances and exits of premises are well lit and that immediate surrounds are safe and allow good visibility.
- Implement appropriate surveillance systems, such as closed circuit television systems, on premises.
- Ensure staff, including security staff are clearly identifiable (for example, distinctive t-shirts, uniforms, name tags etc.).
- Serve drinks in containers which minimize potential harm to customers.
- Fully cooperate with the police and other accord members on ways to improve public safety.
- Prevent criminal activity and disorderly conduct from occurring on premises.
- Notify the police immediately if something illegal or suspicious does occur.
- Door/security or reception personnel will, in addition to restricting entry by minors or unduly intoxicated persons to the premises:
 - wear clear ID at all times
 - not harass or intimidate passers-by or potential customers
 - refuse re-entry to the premises to those who have caused a disturbance
 - immediately contact police and other premises to inform them of potential 'problem' patrons in the vicinity
 - check for the unlawful removal of alcohol from premises
 - assist patrons in accessing safe transportation out of the area
 - uphold any statutory requirements relating to security personnel and enter details of any safety incidents in the Premises Incident Register.

Maintain records of incidents and have appropriate communication with the police and other authorities

- Maintain a register of all safety and security incidents noting the time, date and nature of the incident in and around the premises and the response by staff and management (the 'incident register').

- Notify the police and other relevant authorities of any special events likely to significantly increase the number of people in the area. This should happen well in advance of the event.
- Train all staff to know help procedures and emergency numbers and when and how to fill out the incident register.
- Encourage all staff members to undertake first aid courses and, where possible, ensure one staff member with a first aid certificate is rostered on to each shift.
- Establish open communication with security at other venues via venue to venue radio and or a telephone contact listing.
- Ensure close liaison and open communication with the Office of Liquor and Gaming Regulation.

3. Commitment to being good neighbours

Improve the local amenity

- Assist patrons in accessing safe transportation out of the area (for example, door staff should volunteer information about access to a railway station, late night bus services and taxi ranks and encourage patrons to use these quickly and quietly when departing).
- Minimise noise generating from the premises.
- Educate patrons, including through signage, about the need to respect the local amenity and to arrive and depart the area in a quiet and orderly manner.
- Prevent the unlawful removal of liquor (other than packaged where permitted) from licensed premises.
- Ensure staff, specifically door and security staff are briefed on local environmental issues, including potential traffic, noise or security problems.
- Ensure police are informed of regular closing hours and any variations such as for special events or new activities.
- Respond to legitimate complaints and resident concerns and take all reasonable steps to ensure premises are functioning as a 'good neighbour'.

Patron responsibility

- Post signage that clearly explain licensee and patron responsibilities regarding the responsible service of alcohol (for example 'No More it's the Law' signage).
- Ensure staff are trained appropriately to advise patrons when they will no longer be served alcohol and will be asked to leave the premises.

Staff at licensed premises (including outsourced staff eg. security)

- Ensure all employees and applicable security staff have completed a Queensland approved Responsible Service of Alcohol course.
- Maintain a register of staff that have completed a Queensland approved Responsible Service of Alcohol course.
- Provide regular updates to new staff and training on the accord and related responsible service of alcohol and harm minimisation policies and practices.

- Ensure strict reference checks are conducted on all staff, including outsourced security staff, in the context of recruitment practices.
- Ensure all staff are familiar with the incident register and are aware of how to use it when required.
- Ensure staff have access to relevant literature on the accord, Queensland liquor laws and regulations.

Actively monitor and promote the accord

- Provide an ongoing commitment to the accord and to the continued proper management and conduct of the licensed premises.
- Notify the police, or other relevant authorities where appropriate, of any event or practice detected that may impact on the accord or any other licensing law or regulation.
- Establish and maintain effective complaints procedures.
- Promote educational and information items in the community to discourage the irresponsible service and consumption of alcohol.

Attachment B - Summary of relevant statutory tests

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:
 - an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - i. an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
 - ii. an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - iii. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

- make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.