

South Australia

# Liquor Licensing Act 1997

An Act to regulate the sale, supply and consumption of liquor; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **1—Short title**

This Act may be cited as the *Liquor Licensing Act 1997*.

### 3—Objects of this Act

- (1) The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular—
  - (a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the *responsible service and consumption principles*) and minimise the harm associated with the consumption of liquor; and
  - (b) to further the interests of the liquor industry and industries with which it is closely associated—such as the live music industry, tourism and the hospitality industry—within the context of appropriate regulation and controls; and
  - (c) to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and
  - (d) to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and
  - (e) to encourage a competitive market for the supply of liquor.
- (2) In deciding any matter before it under this Act, the licensing authority must have regard to the objects set out in subsection (1).

### 4—Interpretation

In this Act, unless the contrary intention appears—

*adjacent*—places or premises are adjacent if they adjoin (either in a horizontal or vertical plane) or if they are in close proximity to each other;

*approved crowd controller* means a person approved under Part 4 Division 10A to act as a crowd controller for licensed premises, but does not include a person whose approval has been suspended or revoked;

*authorised person*, in relation to licensed premises, means—

- (a) the licensee; or
- (b) a responsible person for the licensed premises; or
- (c) a police officer; or
- (d) an approved crowd controller;

*authorised trading hours*, in relation to a licence, means the hours during which the sale, supply or consumption of liquor is authorised by the licence;

*beer* means beer, ale, lager, stout or liquor of any other kind produced by brewing;

*beneficiary* includes an object of a discretionary trust;

*close associate*—see section 7;

*code of practice*—see section 11A;

*collective outlet*—see section 39(1c);

*Commissioner* means the Liquor and Gambling Commissioner;

*council* means a municipal or district council;

**Court** means the Licensing Court of South Australia;

**criminal intelligence** means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

**designated dining area** means a part of licensed premises designated by the licensing authority as a dining area;

**designated reception area** means a part of licensed premises designated by the licensing authority as a reception area;

**director** of a body corporate means a member of the board or committee of management of the body corporate;

**direct sales transaction** means a transaction for the sale of liquor in which—

- (a) the liquor is ordered by the purchaser by mail, telephone, facsimile transmission or internet or other electronic communication; and
- (b) the liquor is delivered to the purchaser, or a person nominated by the purchaser, at the residence or place of business of the purchaser, or some place (other than premises at which the liquor has been stored prior to delivery) nominated by the purchaser;

**entertainment** means—

- (a) a dance, performance, exhibition or event (including a sporting contest) calculated to attract and entertain members of the public; or
- (b) a visual display but not if provided by means of a television screen not exceeding dimensions fixed under the regulations;

**extended trading authorisation**—see section 44;

**function** means a gathering of people on any occasion at which liquor is to be sold, supplied or consumed and for which licensed premises, or a part of licensed premises, has been booked in advance;

**gross turnover** means the gross proceeds of the sale of liquor under a licence;

**inspector** means a person authorised by the Commissioner to exercise the powers of an inspector under this Act;

**Judge** means the Licensing Court Judge or some other Judge with authority to exercise the jurisdiction of the Court;

**licence** means a licence under this Act;

**licensed person** or **licensee** means a person who holds a licence (including a temporary or limited licence) under this Act and includes—

- (a) if a licence is held by a trustee—the trust; or
- (b) a person authorised to carry on business under a licence;

**licensed premises** means premises in respect of which a licence is in force and includes premises for which the licence is currently under suspension;



**licensing authority** means—

- (a) in relation to a matter that is to be decided by the Court under this Act—the Court;
- (b) in relation to any other matter—the Commissioner;

**Licensing Court Judge** means a District Court Judge designated by proclamation as the Licensing Court Judge;

**liquor** means a beverage which at 20° Celsius contains more than 1.15 per cent alcohol by volume and includes any substance declared by regulation to be liquor for the purposes of this Act;

**liquor merchant** means—

- (a) a person who holds a licence under this Act (except a person who holds only a limited licence); or
- (b) a person who is authorised under the law of another State, or a Territory, of the Commonwealth to sell liquor;

**live entertainment** means—

- (a) a dance or other similar event at which a person is employed or engaged to play music (live or pre-recorded); or
- (b) a performance at which the performers, or at least some of them, are present in person; or
- (c) a performance of a kind declared by regulation to be live entertainment;

**lodger**—see section 5;

**meal** means a genuine meal eaten while seated at a table;

**offensive or disorderly**—without limiting the conduct that may constitute behaving in an offensive or disorderly manner, the conduct may be constituted of offensive language;

**officer** means—

- (a) in relation to a body corporate—a director of the body corporate;
- (b) in relation to a trust—a trustee;

**packaged liquor** means liquor in sealed containers for consumption off licensed premises;

**party** includes—

- (a) an intervener or an objector;
- (b) in relation to an application for the transfer of a licence—the transferor;

**premises** includes—

- (a) land;
- (b) any building or structure on land;
- (c) a public conveyance;
- (d) a part of premises;

**producer's event endorsement**—see section 39(1d);

**production outlet**—see section 39(1a);

**public conveyance** means an aeroplane, vessel, bus, train, tram, or other vehicle used for public transport or available for hire by members of the public, but does not include a conveyance hired on a self-drive basis if all passengers (if any) are to be transported free of charge or other consideration;

**public order and safety** includes matters of—

- (a) personal safety and apprehension of danger to personal safety; and
- (b) safety of property and apprehension of danger to safety of property; and
- (c) public order unrelated to matters of public safety; and
- (d) public safety unrelated to matters of public order;

**public order and safety notice**—see section 128B;

**public place** means a place (not being licensed premises) to which the public has access (whether or not admission is obtained by payment of money);

**reception** includes a convention, conference or similar function—

- (a) at which people gather in substantial numbers for a particular purpose; and
- (b) for which licensed premises, or a part of licensed premises, has been booked in advance,

(but does not include a function of which the consumption of liquor is the sole or a predominant purpose);

**records** means—

- (a) books, papers or documents; or
- (b) microfilm records; or
- (c) the contents (in an intelligible form) of records that are kept by computer; or
- (d) records of a kind declared by regulation to be records to which this definition applies;

**regulated premises** means—

- (a) licensed premises; or
- (b) a restaurant, café or shop; or
- (c) an amusement parlour or amusement arcade; or
- (d) a public place that is being used for the purposes of an organised event, where admission to the event is gained on payment of money, presentation of a pre-paid ticket or purchase of some item; or
- (e) a public conveyance; or
- (f) premises of a kind declared by regulation to be regulated premises,

and includes an area appurtenant to any such premises, but does not include any premises, place or conveyance declared by regulation not to be regulated premises;

**related body corporate**—bodies corporate are related for the purposes of this Act if they are related within the meaning of the *Corporations Act 2001* of the Commonwealth;

**responsible person** for licensed premises means a person who is, in accordance with section 97, responsible for supervising and managing the business conducted under the licence;

**retail**—a sale is by retail if made to a person who is not a liquor merchant;

**retail licence** means a licence other than a wholesale liquor merchant's licence, a producer's licence or a special circumstances licence authorising the sale of liquor by wholesale;

**retail outlet**—see section 39(1a);

**sample**—an amount of liquor of a particular kind will not be considered to be a sample if it exceeds the prescribed amount for that kind of liquor;

**sell** includes—

- (a) to barter or exchange;
- (b) to offer or expose for sale, barter or exchange;
- (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit;
- (d) to supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

**spirits** means liquor of any kind produced wholly or in part by distillation;

**trust**—a trust is considered for the purposes of this Act as a single entity consisting of the trustees and the beneficiaries;

**trust or corporate entity** means a trust or a body corporate;

**unlicensed person** means a person who does not hold a licence under this Act;

**unlicensed premises** means premises in respect of which a licence is not in force under this Act (but if a licence for the premises is under suspension, the premises are not to be regarded as unlicensed premises for the period of the suspension);

**wholesale**—a sale is by wholesale if made to a liquor merchant;

**wine** includes mead, cider, perry and any other fermented liquor produced from fruit, vegetables, berries or honey but does not include a product produced by blending wine with other beverages.

## 5—Lodgers

- (1) A person is regarded as a lodger in licensed premises at a particular time if, and only if—
  - (a) the person has spent the previous night at the licensed premises or is booked to spend the next night (or the present night) at the licensed premises; and
  - (b) the person's name has been entered in the record of lodgers required to be kept by the licensee under this Act.

- (2) None of the following persons is a lodger:
- (a) the licensee or a member of the licensee's family;
  - (b) a responsible person for the licensed premises or a member of a responsible person's family;
  - (c) an employee of the licensee or a member of the employee's family.

## **6—Persons with authority in a trust or corporate entity**

- (1) A person occupies a position of authority in a trust or corporate entity if the person—
- (a) in the case of a body corporate—
    - (i) is a director of the body corporate;
    - (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs;
    - (iii) manages, or is to manage, the business of the body corporate to be conducted under a licence;
    - (iv) if the body corporate is a proprietary company—is a shareholder in the body corporate; or
  - (b) in the case of a trust—is a trustee or beneficiary of the trust.
- (2) However—
- (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not for that reason to be regarded as a person occupying a position of authority; and
  - (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.

## **7—Close associates**

- (1) Two persons are *close associates* if—
- (a) one is a spouse, domestic partner, parent, brother, sister or child of the other; or
  - (b) they are members of the same household; or
  - (c) they are in partnership; or
  - (d) they are joint venturers; or
  - (e) they are related bodies corporate; or
  - (f) one is a body corporate and the other is a director, manager, secretary or public officer of the body corporate; or
  - (g) one is a body corporate (other than a public company whose shares are quoted on a prescribed financial market) and the other is a shareholder in the body corporate; or
  - (h) one is a body corporate whose shares are quoted on a prescribed financial market and the other is a substantial shareholder (within the meaning of the *Corporations Act 2001* of the Commonwealth) in the body corporate; or

- (i) one has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
  - (j) one is in a position to exercise control or significant influence over the conduct of the other; or
  - (k) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (2) For the purposes of subsection (1)—

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

*prescribed financial market* means a prescribed financial market within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth;

*spouse*—a person is the spouse of another if they are legally married.

## **Part 2—Licensing authorities**

### **Division 1—The Commissioner and staff**

#### **8—Liquor and Gambling Commissioner**

- (1) The office of *Liquor and Gambling Commissioner* continues.
- (2) The Commissioner is responsible to the Minister for the administration of this Act.
- (3) The Commissioner is to be a Public Service employee.

#### **9—Inspectors and other officers**

- (1) The Commissioner's staff consists of the inspectors and other officers necessary to assist the Commissioner in the administration and enforcement of this Act.
- (2) The Commissioner must provide each inspector with a certificate of identity and an inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, powers under this Act, produce that certificate.

#### **10—Delegation**

- (1) The Commissioner may delegate powers or functions (under this Act or any other Act or instrument) to any person.
- (2) A delegation under this section—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the Commissioner to act personally in any matter; and
  - (c) is revocable at will.

## 11—Disclosure of information

The Commissioner may disclose information gained in the course of the administration of this Act—

- (a) to authorities responsible for the administration of liquor licensing laws in other States and Territories of the Commonwealth; and
- (b) to any other authorities that may require the information for the purpose of discharging duties of a public nature; and
- (c) if the information is disclosed in a form that does not identify the person to whom it relates—to any other person, or in any other way, the Commissioner (in the exercise of an absolute discretion) considers appropriate in the public interest.

### 11A—Commissioner's codes of practice

- (1) For the purposes of this Act, the Commissioner may, by notice in the Gazette, publish a code of practice that has been approved by the Minister.
- (2) A code of practice may include measures designed for any of the following purposes:
  - (a) to minimise the harmful and hazardous use of liquor or promote responsible attitudes in relation to the promotion, sale, supply and consumption of liquor;

**Examples—**

- Measures requiring staff to undertake specified accredited training.
  - Measures prohibiting advertising of liquor in a manner likely to result in the liquor having a special appeal to minors or being mistaken for confectionery or non-alcoholic beverage.
  - Measures otherwise regulating advertising of liquor or licensed premises or schemes for the promotion of liquor or licensed premises.
  - Measures requiring steps to be taken to prevent liquor from being sold or supplied to intoxicated persons.
- (b) to minimise offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of licensed premises, or to minimise prejudice to the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of licensed premises, resulting from activities on the licensed premises, or the conduct of people making their way to or from the licensed premises;
  - (c) to prevent offensive behaviour on licensed premises (including offensive behaviour by persons providing or purporting to provide entertainment (whether live or not) on the licensed premises);
  - (d) to protect the safety, health or welfare of customers, staff or both;
  - (e) to protect the safety, health or welfare of minors on licensed premises;
  - (f) to ensure public order and safety at events expected to attract large crowds;
  - (fa) to impose special requirements for the sale of liquor for consumption on licensed premises between 4 am and 7 am on any day for the purpose of reducing alcohol-related crime and anti-social behaviour;

**Examples—**

- Measures prohibiting the supply of liquor for consumption on any part of the licensed premises comprised of a footpath or other outdoor area.
  - Measures requiring security to be provided by means of closed circuit television or similar electronic surveillance and the retention of recorded images.
  - Measures requiring the presence of an authorised person performing the duty of promoting responsible attitudes in relation to the sale, supply and consumption of liquor as his or her principal duty.
  - Measures prohibiting the sale of liquor in a form that may encourage rapid or excessive consumption of liquor.
  - Measures prohibiting the sale of liquor in glass containers in circumstances of high risk.
  - Measures requiring incidents to be recorded in a register that will be made available for inspection by authorised persons.
- (g) to otherwise promote compliance with the provisions and objects of this Act.
- (3) A code of practice may—
- (a) be of general or limited application; and
  - (b) vary in operation according to factors stated in the code; and
  - (c) provide for the granting by the Commissioner of exemptions (conditional or unconditional) from specified provisions of the code.
- (4) The Commissioner may, by subsequent notice in the Gazette, vary or revoke a code of practice.
- (5) A notice published in the Gazette under this section may come into operation on the day on which it is published or on a later day or days specified in the notice.
- (6) Sections 10 and 10A of the *Subordinate Legislation Act 1978* apply to a notice published in the Gazette under this section as if it were a regulation within the meaning of that Act.

**Division 2—The Licensing Court of South Australia****12—Continuation of Court**

The Licensing Court of South Australia continues in existence.

**13—Court to be court of record**

The Court is a court of record.

**13A—Seal**

- (1) The Court will have such seals as are necessary for the transaction of its business.
- (2) A document apparently sealed with a seal of the Court will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Court.

## **14—Constitution of the Court**

- (1) The Court is constituted of—
  - (a) the Licensing Court Judge; or
  - (b) some other District Court Judge, or former District Court Judge, with authority to exercise the jurisdiction of the Court.
- (2) The Court, separately constituted of different Judges, may sit at the same time to hear and determine separate proceedings.

## **15—Judges**

- (1) The Governor may, by proclamation—
  - (a) designate a District Court Judge as the Licensing Court Judge; or
  - (b) confer on other District Court Judges, or former District Court Judges, authority to exercise the jurisdiction of the Court; or
  - (c) vary or revoke a proclamation under this section.
- (2) If a proclamation under subsection (1)(a) or (b) so provides, it lapses at the end of a specified period.
- (3) The Licensing Court Judge is responsible for the administration of the Court.
- (4) If the Licensing Court Judge is absent or unable to act, another Judge of the Court nominated by the Governor will act in the office of the Licensing Court Judge.
- (5) The Licensing Court Judge may delegate any power or function under this Act to another Judge of the Court.
- (6) A delegation under subsection (5) is revocable at will and does not derogate from the power of the Licensing Court Judge to act himself or herself in any matter.
- (7) A Judge has the same privileges and immunities from civil liability as a Judge of the Supreme Court.

## **16—Jurisdiction of the Court**

The Court has the jurisdiction conferred on it by this Act or any other Act.

### **16A—Rules**

- (1) Rules of court may be made under this Act to regulate the practice and procedure of the Court and to provide for any other matter necessary or expedient for the effective and efficient operation of the Court.
- (2) The power to make rules under this section includes the power to make rules in respect of any jurisdiction conferred on the Court by another Act.
- (3) Rules of the Court may be made by the Licensing Court Judge.
- (4) Rules of the Court take effect as from the date of publication in the Gazette or a later date specified in the rules.



## **Division 3—Division of responsibilities between the Commissioner and the Court**

### **17—Division of responsibilities between the Commissioner and the Court**

- (1) The powers and responsibilities of a licensing authority under this Act are divided between the Commissioner and the Court as follows:
  - (a) the Commissioner is to determine—
    - (i) all non-contested matters except those that are, under some other provision of this Act, to be determined by the Court; and
    - (ii) all contested applications for a limited licence;
  - (b) if an application is contested (and the application does not relate to a matter that is, under some other provision of this Act, within the exclusive jurisdiction of the Court), the Commissioner must, subject to subsection (2), make reasonable attempts to achieve agreement between the parties by conciliation and—
    - (i) if the differences between the parties are resolved by conciliation, the Commissioner must determine the matter so as to reflect the agreement reached by conciliation; and
    - (ii) if the differences between the parties are not resolved by conciliation—
      - if the dispute arises on an application for a limited licence—the Commissioner must determine the application; and
      - if the dispute arises on an application (but not an application for a limited licence) and the parties request the Commissioner to determine the application—the Commissioner must determine the application; and
      - in any other case—the Commissioner must refer the matter for hearing and determination by the Court;
  - (c) the Court must determine the following matters:
    - (i) all matters referred for hearing and determination by the Court under paragraph (b); and
    - (ii) all other matters that are, under some other provision of this Act, to be determined by the Court.
- (2) The Commissioner is not required to attempt conciliation in relation to an application to which an objection has been lodged by the Commissioner of Police on the ground that to grant the application would be contrary to the public interest.

## **Division 4—Proceedings before the Commissioner**

### **18—Proceedings before the Commissioner**

In proceedings under this Act, the Commissioner—

- (a) must act without undue formality; and
- (b) is not bound by the rules of evidence but may inform himself or herself on any matter as the Commissioner thinks fit.

### **19—Powers of Commissioner with respect to witnesses and evidence**

- (1) The Commissioner may exercise the following powers:
  - (a) by summons, require any person to attend before the Commissioner at a time and place specified in the summons for the purpose of giving evidence relevant to proceedings before the Commissioner;
  - (b) by summons, require the production of records;
  - (c) inspect records, and take copies of, or extracts from, them;
  - (d) require any person to take an oath or affirmation verifying evidence given, or to be given, before the Commissioner;
  - (e) require any person appearing before the Commissioner to answer a question put by the Commissioner or some other person.
- (2) A person who—
  - (a) having been served with a summons to attend before the Commissioner fails, without reasonable excuse, to attend in obedience to the summons; or
  - (b) having been served with a summons to produce records fails, without reasonable excuse, to comply with the summons; or
  - (c) refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Commissioner,

is guilty of an offence.

Maximum penalty: \$2 500.

### **20—Representation**

- (1) A party to proceedings before the Commissioner may appear in those proceedings—
  - (a) personally; or
  - (b) by counsel; or
  - (c) if the party is a member of a genuine association formed to promote or protect the interests of a section of the liquor industry, or employees in the liquor industry—by an officer or employee of that association; or
  - (d) if the party is a trust or corporate entity—by an officer or employee of the entity; or
  - (e) with the permission of the Commissioner—by any other person.

- (2) The Commissioner of Police may be represented in proceedings before the Commissioner by a police officer.

## **21—Power of Commissioner to refer questions to the Court**

The Commissioner may refer for hearing and determination by the Court—

- (a) any proceedings that involve questions of substantial public importance; or
- (b) any question of law that arises in proceedings before the Commissioner; or
- (c) any other matter that should, in the public interest or in the interests of a party to the proceedings, be heard and determined by the Court.

## **22—Application for review of Commissioner's decision**

- (1) A party to proceedings before the Commissioner who is dissatisfied with a decision made by the Commissioner in the proceedings may apply to the Court for a review of the Commissioner's decision.
- (2) However, if the Commissioner's decision relates to a subject on which the Commissioner has an absolute discretion, the decision, insofar as it was made in the exercise of that discretion, is not reviewable by the Court.
- (3) An application for review of a decision of the Commissioner must be made within 1 month after the party receives notice of the decision or a longer period allowed by the Court.
- (4) A review is in the nature of a rehearing.
- (5) On a review, the Court may exercise any one or more of the following powers:
  - (a) affirm, vary or quash the decision subject to the review;
  - (b) make any decision that should, in the opinion of the Court, have been made in the first instance;
  - (c) refer a matter back to the Commissioner for rehearing or reconsideration;
  - (d) make any incidental or ancillary order.

## **Division 5—Proceedings before the Court**

### **22A—Time and place of sittings**

- (1) The Court may sit at any time (including a Sunday).
- (2) The Court may sit at any place (either within or outside the State).
- (3) The Court will sit at such times and places as the Licensing Court Judge may direct.

### **22B—Adjournment from time to time and place to place**

The Court may—

- (a) adjourn proceedings from time to time and from place to place; or
- (b) adjourn proceedings to a time, or a time and place, to be fixed; or
- (c) order the transfer of proceedings from place to place.

## **22C—Hearing in public**

- (1) Subject to this and any other Act, proceedings before the Court must be heard in public.
- (2) The Court may, at any stage of the proceedings on its own initiative or on the application of a party, give directions—
  - (a) requiring particular persons to withdraw from a hearing before the Court, or excluding particular persons from a hearing before the Court, so that it may be conducted in private; or
  - (b) prohibiting or restricting the publication of evidence given before the Court or of the contents of any document produced to the Court.
- (3) A person must comply with a direction of the Court under subsection (2).  
Maximum penalty: \$5 000.

## **23—Proceedings before the Court**

In proceedings before the Court (under this Act or any other Act) the Court—

- (a) must act without undue formality; and
- (b) is not bound by the rules of evidence but may inform itself on any matter as it thinks fit.

## **24—Powers with respect to witnesses and evidence**

- (1) The Court may exercise any of the following powers:
  - (a) by summons, require any person to attend before the Court at a time and place specified in the summons to give evidence relevant to proceedings before the Court;
  - (b) by summons, require the production of records;
  - (c) inspect records, and take copies of, or extracts from, them;
  - (d) require any person to take an oath or affirmation verifying evidence given, or to be given, before the Court;
  - (e) require any person appearing before it to answer a question put by the Court or some person appearing before the Court.
- (1a) If the Court requires the attendance before it of any person who is held in custody in the State, the Court may—
  - (a) issue a summons requiring the custodian to produce that person before the Court at a nominated time and place; or
  - (b) issue a warrant authorising the sheriff, or a police officer, to take the person from the custodian and bring him or her before the Court.
- (2) A person who—
  - (a) having been served with a summons to attend before the Court fails, without reasonable excuse, to attend in obedience to the summons; or
  - (b) having been served with a summons to produce records fails, without reasonable excuse, to comply with the summons; or

- (ba) misbehaves before the Court, wilfully insults the Court, or wilfully interrupts the proceedings of the Court; or
- (c) refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Court,

is guilty of an offence.

Maximum penalty: \$2 500.

- (3) A summons may be issued on behalf of the Court, on the application of any party to proceedings before the Court, by—
  - (a) a Judge; or
  - (b) the Commissioner.

#### **24A—Entry and inspection of property**

- (1) The Court may enter any land or building and carry out any inspection that the Court considers relevant to a proceeding before the Court.
- (2) A person who obstructs the Court in the exercise of a power of entry or inspection under this section is guilty of an offence.

Maximum penalty: \$5 000.

#### **25—Representation**

- (1) A party to proceedings before the Court may appear in the proceedings—
  - (a) personally; or
  - (b) by counsel; or
  - (c) if the party is a member of a genuine association formed to promote or protect the interests of a particular section of the liquor industry, or employees in the liquor industry—by an officer or employee of that association; or
  - (d) if the party is a trust or corporate entity—by an officer or employee of the entity; or
  - (e) with the permission of the Court—by any other person.
- (2) The Commissioner of Police may be represented in proceedings before the Court by a police officer.

#### **26—Power to award costs**

If, in the opinion of the Court, a person has brought proceedings, or has exercised the right to object to an application, frivolously or vexatiously, the Court may award costs against that person.

#### **27—Appeal from orders and decisions of the Court**

- (1) A party to proceedings before the Court may, with the permission of the Supreme Court, appeal against any order or decision of the Court.
- (2) However, no appeal lies against—
  - (a) an order or decision of the Court made on a review of a decision of the Commissioner under this or some other Act; or

- (b) an order or decision of the Court excluded from appeal under a provision of this or some other Act.
- (3) An appeal must be commenced within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
- (4) An appeal under this section must be heard and determined by the Full Court.
- (5) On an appeal under this section, the Supreme Court may—
  - (a) affirm, vary or quash the order or decision subject to the appeal;
  - (b) make any order or decision that should, in the opinion of the Supreme Court, have been made in the first instance;
  - (c) remit the subject matter of the appeal for further hearing by the Court;
  - (d) make any incidental or ancillary order.

## **28—Reference of question of law**

- (1) The Court may refer a question of law to the Supreme Court.
- (2) A question of law referred under this section must be determined by the Full Court.

## **Division 6—Criminal intelligence**

### **28A—Criminal intelligence**

- (1) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.
- (2) If a licensing authority—
  - (a) refuses an application for a licence, the transfer of a licence or an approval, or takes disciplinary action against a person, or revokes or proposes to revoke an approval under Part 4 Division 10A; and
  - (b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the licensing authority is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the person were to be or continue to be licensed or approved, or that it would be contrary to the public interest if the approval were to continue in force.

- (2a) If the Commissioner proposes to impose a licence condition to improve public order and safety or to issue a public order and safety notice in respect of a licence and the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence, the Commissioner is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest if the condition were not imposed or the notice were not issued.

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- (3) If the Commissioner of Police lodges an objection to an application under Part 4 because of information that is classified by the Commissioner of Police as criminal intelligence—
- (a) the Commissioner of Police is not required to serve a copy of the notice of objection on the applicant; and
  - (b) the licensing authority must, at least 7 days before the day appointed for the hearing of the application, advise the applicant in writing that the Commissioner of Police has objected to the application on the ground that to grant the application would be contrary to the public interest.
- (4) If the Commissioner or the Commissioner of Police lodges a complaint under Part 8 in respect of a person because of information that is classified by the Commissioner of Police as criminal intelligence, the complaint need only state that it would be contrary to the public interest if the person were to be or continue to be licensed or approved.
- (5) If the Commissioner of Police bars a person from entering or remaining on licensed premises by order under Part 9 Division 3 because of information that is classified by the Commissioner of Police as criminal intelligence, the order need only state that it would be contrary to the public interest if the person were not so barred.
- (5a) In any proceedings under this Act to be determined by the Commissioner, the Commissioner must maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence.
- (5b) In any proceedings under this Act to be determined by the Court or the Supreme Court, the Commissioner or the Commissioner of Police may apply to the court for a determination that information classified by the Commissioner of Police as criminal intelligence is criminal intelligence.
- (5c) The court must maintain the confidentiality of information that is the subject of an application under subsection (5b).
- (5d) If, on an application under subsection (5b), the court proposes to determine that the information is not criminal intelligence, the applicant must be informed of the proposed determination and given the opportunity to withdraw the information from the proceedings.
- (5e) If the court determines that the information is criminal intelligence or the information is withdrawn, the court must continue to maintain the confidentiality of the information.
- (5f) The confidentiality of information is maintained only if—
- (a) the information is not used except for the purposes of the proceedings; and
  - (b) the information is not disclosed to any parties to the proceedings (other than the Commissioner or the Commissioner of Police), the representatives of such parties or any member of the public; and
  - (c) evidence and submissions about the information are received and heard in private in the absence of any parties to the proceedings (other than the Commissioner or the Commissioner of Police) and the representatives of such parties and are not disclosed to any member of the public; and
  - (d) the information is not disclosed in any reasons for decision.

- (5g) The Commissioner or the court may take any steps it considers appropriate to maintain the confidentiality of the information.
- (5h) The duties imposed by this section on the Court and the Supreme Court apply to any court dealing (on appeal or otherwise) with information that has been determined to be criminal intelligence or with the question of whether information classified by the Commissioner of Police as criminal intelligence is criminal intelligence.
- (6) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.
- (7) A delegation by the Commissioner of Police under subsection (6)—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Commissioner of Police to act in any matter; and
  - (d) is revocable at will by the Commissioner of Police.

## **Part 3—Licences**

### **Division 1—Requirement to hold licence**

#### **29—Requirement to hold licence**

A person who sells liquor without being licensed under this Act to do so is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$20 000;
- (b) for a second or subsequent offence—\$40 000.

#### **30—Cases where licence is not required**

A licence is not required for the sale of liquor—

- (a) where the liquor is sold for medicinal purposes—
  - (i) by a registered pharmaceutical chemist; or
  - (ii) by or on the prescription of a registered medical practitioner or registered dentist; or
- (b) where the liquor is sold to a religious organisation or a representative of a religious organisation for sacramental or other similar religious purposes; or
- (c) where the liquor is supplied in the course of an educational course declared by the regulations to be an approved course for the purposes of this section; or
- (d) where the liquor is sold in Parliament House by the proper authority; or
- (e) where the liquor is an allowance supplied by the master of a ship to a member of the ship's crew; or



- (f) where the liquor is supplied to a patient in a hospital by or under the authority of the body responsible for administering the hospital; or
- (g) where the liquor is won as a prize in a game of skill or chance; or
- (h) where the sale is exempted by the regulations from the application of this Act.

## **Division 2—Licences**

### **31—Authorised trading in liquor**

- (1) A licence authorises the licensee to sell and supply liquor in accordance with the terms and conditions of the licence (including the trading hours fixed by the licensing authority).
- (2) Licences are to be of the following classes:
  - (a) hotel licence;
  - (b) residential licence;
  - (c) restaurant licence;
  - (d) entertainment venue licence;
  - (e) club licence;
  - (f) retail liquor merchant's licence;
  - (g) wholesale liquor merchant's licence;
  - (h) producer's licence;
  - (ha) direct sales licence;
  - (i) special circumstances licence;
  - (j) limited licence.

### **32—Hotel licence**

- (1) A hotel licence authorises the licensee—
  - (a) to sell liquor on the licensed premises for consumption on or off the licensed premises—
    - (i) on any day (except a Sunday, Good Friday and Christmas Day) between 5 am and midnight; and
    - (ii) on a Sunday (not being Christmas Day or New Year's Eve) between 11 am and 8 pm; and
    - (iii) if New Year's Eve is on a Sunday, on that Sunday between 11 am and midnight; and
    - (iv) on Christmas Day between 9 am and 11 am; and
    - (v) on New Year's Day between midnight and 2 am; and
  - (b) if an extended trading authorisation is in force, to sell liquor on the licensed premises for consumption on the licensed premises during the whole or any part of the following hours as is specified in the authorisation:

- (i) on any day (except a Sunday, Good Friday, the day after Good Friday, Christmas Day and the day after Christmas Day) between midnight and 5 am;
    - (ii) on a Sunday (not being Christmas Day or the day after Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight;
    - (iii) if the day after Christmas Day is a Sunday, on that Sunday between 8 am and 11 am and between 8 pm and midnight;
    - (iv) on Good Friday between midnight and 2 am;
    - (v) on Christmas Day between midnight and 2 am; and
  - (c) if an extended trading authorisation is in force, to sell liquor on the licensed premises for consumption off the licensed premises during the whole or any part of the hours between 8 am and 11 am, and between 8 pm and 9 pm, on a Sunday (not being Christmas Day) as is specified in the authorisation; and
  - (d) to sell liquor at any time on the licensed premises to a lodger for consumption on or off the licensed premises; and
  - (e) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and
  - (f) to sell liquor at any time in a designated reception area to a person attending a reception for consumption in that area; and
  - (g) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only during the hours that the licensee is authorised to sell liquor on the licensed premises to a person other than a lodger for consumption off the licensed premises).
- (2) A hotel licence is subject to the following conditions:
- (a) a condition requiring the licensee to keep the licensed premises open to the public for the sale of liquor on every day (except Good Friday, Christmas Day or Sunday) between 11 am and 8 pm;
  - (b) a condition requiring the licensee to provide a meal, at the request of a member of the public, between noon and 2 pm, and between 6 pm and 8 pm, on any day on which the licensed premises are open to the public for the sale of liquor.
- (3) However—
- (a) the licensing authority may exempt a licensee from the obligation to keep the licensed premises open for the sale of liquor to an extent the authority considers appropriate in the circumstances of a particular case; and
  - (b) a licensee is not required by a condition under this section to provide a meal for a person if—
    - (i) the person appears to be intoxicated; or
    - (ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal; or

- (iii) the licensee cannot comply with the request because of prior obligations to provide meals for others; or
- (iv) there is some other proper reason for not complying with the request; and
- (c) the licensing authority may exempt a licensee from the obligation to provide meals wholly or to a specified extent.

### 33—Residential licence

- (1) A residential licence—
  - (a) authorises the licensee to sell liquor on the licensed premises at any time—
    - (i) to a lodger for consumption on or off the licensed premises; and
    - (ii) to a diner in a designated dining area for consumption with or ancillary to a meal provided by the licensee in that area; and
    - (iii) to a person attending a reception for consumption in a designated reception area; and
  - (b) if the conditions of the licence so provide—authorises the licensee to sell liquor at any time for consumption on the licensed premises by persons attending a function at which food is provided or seated at a table, except—
    - (i) not—
      - (A) on Good Friday between 2 am and midnight; or
      - (B) on the day after Good Friday between midnight and 5 am; or
      - (C) on Christmas Day between 2 am and midnight; or
      - (D) on the day after Christmas Day between midnight and 5 am; and
    - (ii) only—
      - (A) between midnight and 5 am on any day (other than Good Friday, Christmas Day or a Sunday); and
      - (B) between midnight and 2 am on Good Friday; and
      - (C) between midnight and 2 am on Christmas Day; and
      - (D) on a Sunday (not being Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight,

to the extent that those hours are specified in an extended trading authorisation that is in force.
- (2) A residential licence is subject to the following conditions:
  - (a) the licensee must provide accommodation for a member of the public on request;
  - (b) the licensee must, if a lodger requests breakfast or an evening meal, comply with the request (but the licensee is not obliged to provide breakfast before 8 am or after 9.30 am and is not obliged to provide an evening meal before 6 pm or after 8 pm).

(3) However—

- (a) a licensee is not required by a condition under this section to provide accommodation or a meal for a person if—
  - (i) the person appears to be intoxicated; or
  - (ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the accommodation or the meal; or
  - (iii) the licensee cannot comply with the request because of prior obligations to provide accommodation or meals for others; or
  - (iv) there is some other proper reason for not complying with the request; and
- (b) the licensing authority may exempt the licensee from the obligation to provide accommodation or meals wholly or to a specified extent.

### **34—Restaurant licence**

(1) A restaurant licence—

- (a) authorises the consumption of liquor on the licensed premises at any time with or ancillary to a meal provided by the licensee; and
- (b) authorises the licensee to sell liquor at any time for consumption on the licensed premises with or ancillary to a meal provided by the licensee; and
- (c) if the conditions of the licence so provide—authorises the licensee to sell liquor at any time for consumption on the licensed premises by persons attending a function at which food is provided or seated at a table except—
  - (i) not—
    - (A) on Good Friday between 2 am and midnight; or
    - (B) on the day after Good Friday between midnight and 5 am; or
    - (C) on Christmas Day between 2 am and midnight; or
    - (D) on the day after Christmas Day between midnight and 5 am; and
  - (ii) only—
    - (A) between midnight and 5 am on any day (other than Good Friday, Christmas Day or a Sunday); and
    - (B) between midnight and 2 am on Good Friday; and
    - (C) between midnight and 2 am on Christmas Day; and
    - (D) on a Sunday (not being Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight,

to the extent that those hours are specified in an extended trading authorisation that is in force.

- (2) Except as otherwise allowed by a condition of the licence, it is a condition of a restaurant licence that business must be so conducted at the licensed premises that the supply of meals is at all times the primary and predominant service provided to the public at the premises.

### 35—Entertainment venue licence

- (1) An entertainment venue licence authorises the licensee—
- (a) to sell liquor at any time for consumption on the licensed premises, in a designated dining area, with or ancillary to a meal provided by the licensee; and
  - (b) to sell liquor on the licensed premises for consumption on the licensed premises at a time when live entertainment is provided on the licensed premises between 9 pm on one day and 5 am on the next except—
    - (i) not—
      - (A) on Good Friday between 2 am and 5 am; or
      - (B) between 9 pm on Good Friday and 5 am on the day after Good Friday; or
      - (C) between 9 pm on Christmas Day and 5 am on the day after Christmas Day; and
    - (ii) only between midnight and 2 am on Good Friday to the extent that those hours are specified in an extended trading authorisation that is in force; and
  - (c) if the conditions of the licence so provide—authorises the licensee to sell liquor at any time for consumption on the licensed premises by persons attending a function at which food is provided or seated at a table except—
    - (i) not—
      - (A) on Good Friday between 2 am and midnight; or
      - (B) on the day after Good Friday between midnight and 5 am; or
      - (C) on Christmas Day between 2 am and midnight; or
      - (D) on the day after Christmas Day between midnight and 5 am; and
    - (ii) only—
      - (A) between midnight and 5 am on any day (other than Good Friday, Christmas Day or a Sunday); and
      - (B) between midnight and 2 am on Good Friday; and
      - (C) between midnight and 2 am on Christmas Day; and
      - (D) on a Sunday (not being Christmas Day) between midnight and 11 am and between 8 pm and midnight,to the extent that those hours are specified in an extended trading authorisation that is in force.

- (2) An entertainment venue licence must be subject to the following conditions:
- (a) a condition that the business conducted at the licensed premises must consist primarily and predominantly of the provision of live entertainment; and
  - (b) a condition requiring the licensee to implement appropriate policies and practices to guard against the harmful and hazardous use of liquor; and
  - (c) any conditions the licensing authority considers appropriate to prevent undue offence, annoyance, disturbance noise or inconvenience to people who, for example, reside, work, study or worship in the vicinity of the licensed premises; and
  - (d) any other conditions the licensing authority considers appropriate in view of the nature and extent of the trade authorised under the licence.

### **36—Club licence**

- (1) A club licence authorises the licensee—
- (a) to sell liquor on the licensed premises for consumption on the licensed premises—
    - (i) on any day (except a Sunday, Good Friday and Christmas Day) between 5 am and midnight; and
    - (ii) on a Sunday (not being Christmas Day or New Year's Eve) between 11 am and 8 pm; and
    - (iii) if New Year's Eve is on a Sunday, on that Sunday between 11 am and midnight; and
    - (iv) on Christmas Day between 9 am and 11 am; and
    - (v) on New Year's Day between midnight and 2 am; and
  - (b) if an extended trading authorisation is in force, to sell liquor on the licensed premises for consumption on the licensed premises during the whole or any part of the following hours as is specified in the authorisation:
    - (i) on any day (except a Sunday, Good Friday, the day after Good Friday, Christmas Day and the day after Christmas Day) between midnight and 5 am;
    - (ii) on a Sunday (not being Christmas Day or the day after Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight;
    - (iii) if the day after Christmas Day is a Sunday, on that Sunday between 8 am and 11 am and between 8 pm and midnight;
    - (iv) on Good Friday between midnight and 2 am;
    - (v) on Christmas Day between midnight and 2 am; and
  - (c) to sell liquor at any time on the licensed premises to a lodger for consumption on or off the licensed premises; and
  - (d) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and

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- (e) to sell liquor at any time in a designated reception area to a person attending a reception for consumption in that area; and
  - (f) if the licensing authority is satisfied that members of the club cannot, without great inconvenience, obtain supplies of packaged liquor from a source other than the club and includes in the licence a condition authorising the sale of liquor under this paragraph—
    - (i) to sell liquor on the licensed premises to a member of the club for consumption off the licensed premises on any day (except Good Friday and Christmas Day) during the hours that the licensee is authorised to sell liquor on the licensed premises to a person other than a lodger for consumption on the licensed premises; and
    - (ii) to sell liquor at any time through direct sales transactions to members of the club (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8 am and 9 pm and not on Good Friday or Christmas Day).
- (3) A **limited club licence** is a club licence that is, by agreement between the club and the licensing authority, granted on the following conditions:
- (a) the club will not, during the currency of the licence, hold a gaming machine licence;
  - (b) the club will not sell or supply liquor under the licence except for consumption on the club premises by—
    - (i) a member of the club; or
    - (ii) a guest of a member who is also present on the club premises;
  - (c) a member of the club will not be permitted by the club to have more than 5 guests on the club premises at any one time (or a lesser number determined by the licensing authority);
  - (d) the club will keep the Commissioner informed of any changes to the composition of the committee of management of the club and will provide the information required by the Commissioner (in the form required by the Commissioner) about the members of the committee of management;
  - (e) if the licensing authority notifies the club that it considers that any member of the committee of management of the club is not a fit and proper person to be in a position of authority in the club, the club will immediately take action to have that person removed from the committee of management.

### 37—Retail liquor merchant's licence

- (1) A retail liquor merchant's licence authorises the licensee—
- (a) to sell liquor on the licensed premises on any day except Good Friday and Christmas Day between the hours of 8 am and 9 pm, or over a continuous period authorised by the licensing authority, for consumption off the licensed premises (but a period authorised by the licensing authority must begin no earlier than 5 am, must end no later than midnight, and must not exceed 13 hours); and

- (ab) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8 am and 9 pm and not on Good Friday or Christmas Day); and
  - (b) to sell or supply liquor by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority.
- (2) It is a condition of a retail liquor merchant's licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.

**Exceptions—**

- 1 Goods may be sold in the same premises if they are of the kind normally associated with, and incidental to, the sale of liquor (eg glasses, decanters, cheeses and pates).
- 2 The licensing authority may grant an exemption from the above condition if satisfied that the demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption.

### **38—Wholesale liquor merchant's licence**

- (1) A wholesale liquor merchant's licence authorises the licensee—
- (a) to sell liquor on the licensed premises to a liquor merchant at any time for consumption off the licensed premises; and
  - (b) to sell liquor on the licensed premises between the hours of 8 am and 9 pm on any day (other than Good Friday and Christmas Day) to a person other than a liquor merchant for consumption off the licensed premises; and
  - (ba) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State and the purchaser of the liquor is not a liquor merchant, the liquor is despatched and delivered only between the hours of 8 am and 9 pm and not on Good Friday or Christmas Day); and
  - (c) to sell or supply liquor by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority.
- (2) A wholesale liquor merchant's licence is subject to the following conditions—
- (a) liquor must not be sold to a purchaser (other than a liquor merchant) in an aggregate quantity of less than 4.5 litres; and
  - (b) at least 90 per cent of the licensee's gross turnover from the sale of liquor in each financial year (excluding sales of liquor to the licensee's own employees and sales for the delivery of liquor outside Australia) must be derived from the sale of liquor to liquor merchants.

### **39—Producer's licence**

- (1) A producer's licence authorises the licensee—
- (a) to sell the licensee's product on the licensed premises at any time for consumption off the licensed premises; and
  - (b) to sell the licensee's product at any time through direct sales transactions; and



- 
- (c) if the conditions of the licence so provide—to sell or supply by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority—
- (i) the licensee's product; or
  - (ii) for the purposes of comparison with the licensee's product, other liquor of the same type as the licensee's product; and
- (d) if the conditions of the licence so provide—to sell liquor at any time for consumption in a designated dining area with or ancillary to a meal; and
- (e) if the conditions of the licence so provide—to sell the licensee's product at any time for consumption on a part of the licensed premises approved for the purposes by the licensing authority subject to restrictions specified by the licensing authority by condition of licence.
- (1a) The following rules apply for the purposes of subsection (1):
- (a) if a licensee has production premises—the licensed premises may be comprised of either a production outlet or retail outlet or both a production outlet and retail outlet;
  - (b) if a licensee does not have production premises—the licensed premises may only be comprised of a retail outlet;
  - (c) a production outlet must be comprised of—
    - (i) the whole or a part of the licensee's production premises; or
    - (ii) premises that are adjacent to the licensee's production premises and approved by the licensing authority for the purpose;
  - (d) a retail outlet must be comprised of premises approved by the licensing authority for the purpose;
  - (e) if a licensee's production premises are in a particular wine region and are to be used for the production of wine—any retail outlet of the licensee must be in that wine region.
- (1b) The same premises may be shared by 2 or more licensees—
- (a) as a retail outlet for each of the licensees; or
  - (b) as a production outlet for 1 licensee and as a retail outlet for the other licensees,
- but the licensing authority must not grant a licence resulting in the same premises being so shared if of the opinion that the trade to be authorised at the premises would, in view of the number of licensees involved or the nature and extent of the trade or for any other reason, be better authorised by a retail liquor merchant's licence or a licence of some other category.
- (1c) To the extent that licensees share the same premises as referred to in subsection (1b)—
- (a) the part of the premises that is shared is referred to as a *collective outlet*; and
  - (b) for the purposes of the application of this Act to the part of the premises that is shared, a single producer's licence will be taken to be held for that part of the premises jointly by the licensees.

- (1d) The licensing authority may endorse a producer's licence with an authorisation to sell or supply the licensee's product on a site specified in the endorsement during an event specified in the endorsement for consumption on or off the site as specified in the endorsement (a *producer's event endorsement*) except if—
- (a) the licensee does not have production premises; or
  - (b) the licensing authority is of the opinion that the trade to be authorised by the endorsement would, in view of the likely scale or nature of the event or for any other reason, be better authorised by a limited licence or a licence of some other category.

**Note—**

Licencees cannot share the same site specified in an endorsement—see section 48(3).

- (1e) If a licensee's production premises are in a particular wine region and are to be used for the production of wine, any site specified in a producer's event endorsement must be in that wine region.
- (1f) A producer's licence with a producer's event endorsement authorises the licensee to sell or supply the licensee's product in accordance with the endorsement and the licensed premises are, for the period for which the licensee is so authorised to sell or supply the product, to be regarded as including any site specified in the endorsement.
- (2) Liquor is to be regarded as a licensee's product if—
- (a) in the case of beer—it was brewed by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product;
  - (b) in the case of spirits—it was produced by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product;
  - (c) in the case of wine—
    - (i) the wine was fermented by or under the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product; or
    - (ii) the wine was produced by blending wine produced from Australian primary produce and a substantial proportion of the blended wine was fermented by or under the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product; or
    - (iii) the wine was produced by blending wine produced from Australian primary produce by or at the direction of the licensee (or a related body corporate) in accordance with, and during a period specified in, an approval granted by the licensing authority under subsection (3) and is uniquely the licensee's (or the related body corporate's) own product,

and the licensee (or a related body corporate) assumed the financial risk of the production;

- (d) in the case of other liquor—it was produced by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product.
- (3) The licensing authority may, on application by a licensee, grant an approval for the purposes of section 39(2)(c)(iii) if satisfied that circumstances beyond the control of the licensee warrant the licensee being authorised to produce wine during the period to be specified in the approval other than wine comprised of, or including a substantial proportion of, wine fermented by or under the direction of the licensee (or a related body corporate).

- (4) For the purposes of this section—

*licensee* means the holder of a producer's licence;

*production of liquor* includes any step in production including the growing of grapes or other primary produce for production of liquor;

*production premises* of a licensee means premises to be occupied and used by the licensee for the production of liquor;

*wine region* means a geographical area in relation to which a geographical indication is in force under the *Australian Wine and Brandy Corporation Act 1980* of the Commonwealth.

### 39A—Direct sales licence

- (1) A direct sales licence authorises the licensee to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8 am and 9 pm and not on Good Friday or Christmas Day).
- (2) It is a condition of a direct sales licence that the licensee does not, as part of, or in connection with, the business authorised by the licence, invite or admit prospective purchasers of liquor to any premises or place at which liquor is displayed or stored for sale by the licensee.

### 40—Special circumstances licence

- (1) A special circumstances licence authorises the licensee in accordance with the terms and conditions of the licence—
- (a) to sell liquor for consumption on or off the licensed premises—
- (i) on any day (other than a Sunday) between 5 am and midnight; and
  - (ii) on a Sunday between 11 am and 8 pm; and
- (b) if an extended trading authorisation is in force, to sell liquor for consumption on or off the licensed premises during the whole or any part of the following hours as is specified in the authorisation:
- (i) on any day (other than a Sunday, Good Friday, the day after Good Friday, Christmas Day or the day after Christmas Day) between midnight and 5 am;
  - (ii) on a Sunday (not being Christmas Day or the day after Christmas Day) between midnight and 11 am and between 8 pm and midnight;
  - (iii) on Good Friday between midnight and 2 am;

- (iv) on Christmas Day between midnight and 2 am;
    - (v) if Christmas Day or the day after Christmas Day is a Sunday, on that Sunday between 8 pm and midnight; and
  - (c) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and
  - (d) to sell liquor at any time to a lodger for consumption on or off the licensed premises.
- (2) A special circumstances licence cannot be granted unless the applicant satisfies the licensing authority that—
- (a) a licence of no other category (either with or without an extended trading authorisation) could adequately cover the kind of business proposed by the applicant; and
  - (b) the proposed business would be substantially prejudiced if the applicant's trading rights were limited to those possible under a licence of some other category.
- (3) A special circumstances licence does not authorise extended trade in liquor unless the licence contains an extended trading authorisation.
- (4) If liquor is sold by a licensee under a special circumstances licence for consumption at a function off the licensed premises, the licensed premises of the licensee are, for the period for which the licensee supplies liquor at the function, to be regarded as including the premises at which the function is held.
- (5) The terms and conditions of a special circumstances licence may classify the licence for the purposes of the application of the Commissioner's codes of practice (and that classification may be varied by the Commissioner from time to time).

#### **41—Limited licence**

- (1) A limited licence authorises—
- (a) the licensee to sell or supply liquor; or
  - (b) the consumption of liquor,
- in accordance with the terms and conditions of the licence, in circumstances in which the sale, supply or consumption of liquor would otherwise be unlawful.
- (2) A limited licence may only be granted for a special occasion or series of special occasions.
- (3) A limited licence is not to be granted for a term of more than one month unless the licensing authority is satisfied that there are special circumstances justifying a longer term.
- (4) A limited licence may be granted either to a person who holds a licence of some other class or to an unlicensed person.
- (5) A limited licence is not to be granted if—
- (a) the licence is sought for a function organised by a particular person or group; and

- (b) limited licences have been granted for previous functions organised by the same person or group; and
  - (c) the licensing authority is of the opinion that the trade to be authorised by the licence would, in view of the frequency of applications, be better authorised by a permanent licence or by condition of a permanent licence.
- (6) The terms and conditions of a limited licence may classify the licence for the purposes of the application of the Commissioner's codes of practice (and that classification may be varied by the Commissioner from time to time).

### **Division 3—Conditions of licence**

#### **42—Mandatory conditions**

- (1) It is a condition of every licence that the licensee must comply with the Commissioner's codes of practice.
- (2) It is a condition of a licence authorising the sale of liquor for consumption off the licensed premises that liquor sold under that authorisation—
  - (a) must be delivered to the purchaser in sealed containers or containers of a kind approved by the licensing authority; and
  - (b) if the liquor is not delivered personally to the purchaser at the licensed premises—must, except in the case of a direct sales licence or where the licensing authority gives an authorisation to the contrary, be despatched to the purchaser from the licensed premises; and
  - (c) must not be consumed on the licensed premises unless the licence also authorises the sale of liquor for consumption on the licensed premises and the liquor could have been lawfully sold and consumed on the licensed premises under that authorisation.

#### **43—Power of licensing authority to impose conditions**

- (1) The licensing authority may impose licence conditions the authority considers appropriate.

**Examples—**

- Conditions to ensure that the noise emanating from the licensed premises is not excessive.
- Conditions to minimise offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the licensed premises, or to minimise prejudice to the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the licensed premises, resulting from activities on the licensed premises, or the conduct of people making their way to or from the licensed premises.
- Conditions to prevent offensive behaviour on the licensed premises (including offensive behaviour by persons providing or purporting to provide entertainment (whether live or not) on the licensed premises).
- Conditions to protect the safety, health or welfare of customers, staff (or both).
- Conditions to ensure that the nature of the business to be conducted under the licence conforms with representations made to the licensing authority in proceedings for the grant of the licence or other proceedings under this Act.

- Conditions to ensure public order and safety at events expected to attract large crowds.
  - Conditions to prevent the consumption of liquor sold for consumption off the licensed premises in the vicinity of the licensed premises.
  - Other conditions to ensure compliance with the objects of this Act.
- (2) A licensing authority may impose a condition under subsection (1)—
- (a) on the grant, transfer or removal of a licence; or
  - (b) on application by the licensee; or
  - (c) on application by the Commissioner of Police; or
  - (d) if the licensing authority is the Court—on application by the Commissioner; or
  - (e) in any other proceedings under this Act involving the licensee; or
  - (f) if the licensing authority considers the condition necessary for public order or safety—on the Commissioner's own initiative.
- (3) The licensing authority may vary or revoke a condition imposed under this section.
- (4) A licensee who is dissatisfied with a decision made by the Commissioner to impose a condition in circumstances in which there are no proceedings before the Commissioner may apply to the Court for a review of the Commissioner's decision as if he or she were a party to proceedings before the Commissioner.

#### **44—Extended trading authorisation**

- (1) An extended trading authorisation is a condition of a licence extending the hours during which the licence authorises trade in liquor.
- (2) An extended trading authorisation cannot be given unless the licensing authority is satisfied that—
- (a) the grant of the authorisation would be unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience to people who, for example, reside, work, study or worship in the vicinity of the licensed premises; and
  - (b) the licensee will implement appropriate policies and practices to guard against the harmful and hazardous use of liquor.
- (3) On granting an extended trading authorisation, the licensing authority may include further conditions in the licence that it considers appropriate in view of the extended trading authorisation.

#### **45—Compliance with licence conditions**

If a condition of a licence is not complied with—

- (a) the licensee is guilty of an offence; and
- (b) if the breach of the condition involves conduct of another person that the other person knows might render the licensee liable to a penalty—the other person is also guilty of an offence.

Maximum penalty:

- (a) in the case of the licensee—

- (i) for a first offence—\$10 000;
  - (ii) for a second or subsequent offence—\$20 000;
  - (b) in any other case—\$2 500.
- Expiation fee: for an offence of a kind prescribed by the regulations—
- (a) in the case of the licensee—\$1 200;
  - (b) in any other case—\$210.

## **Division 4—General provisions**

### **46—Unauthorised sale or supply of liquor**

- (1) A licensee who sells liquor in circumstances in which the sale of liquor is not authorised by the licence is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$20 000;
  - (b) for a second or subsequent offence—\$40 000.
- (2) A licensee who supplies liquor to a person in or in the vicinity of licensed premises in circumstances in which the licensee would not be authorised to sell liquor to that person is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$20 000;
- (b) for a second or subsequent offence—\$40 000.

### **47—How licences are to be held**

- (1) A licence may be held jointly by two or more persons.
- (2) Where a licence is held jointly by two or more persons, those persons are jointly and severally liable to any civil or criminal liability that attaches to the licensee under this Act.
- (3) If the trustee of a trust holds a licence for the purposes of a business conducted by the trustee under a trust—
- (a) the name of the trust is to be specified in the licence; and
  - (b) the trust is to be considered as an entity holding the licence jointly with the trustee.

### **48—Plurality of licences**

- (1) A person may hold two or more licences.
- (3) However, two or more licences are not to be granted for the same premises except as follows:
- (a) two or more licences may be granted for different parts of the same premises that are separated by walls or partitions that effectively prevent their use for a common purpose; and

- (b) two or more club licences may be granted for the same premises provided that the trading hours authorised under the licences do not coincide or overlap; and
- (c) a limited licence may be granted for premises or a part of premises in respect of which a licence of some other class is in force; and
- (d) 2 or more producer's licences may be granted for the same premises constituting a collective outlet.

#### **49—Special provision for club licences**

- (1) A club licence may only be held by a club that is a non-profit association incorporated under the *Associations Incorporation Act 1985*.
- (2) However, the licensing authority may grant a club licence to a trustee for an association if satisfied that—
  - (a) the association is unable to become incorporated; or
  - (b) it is inappropriate to require the incorporation of the association.
- (3) A club is not eligible to hold a club licence unless the licensing authority is satisfied that—
  - (a) the club will be entitled to exclusive possession of the licensed premises at times when the sale of liquor is authorised by the licence; and
  - (b) the rules of the club make appropriate provision for admission to membership of the club and, in particular, provision to the following effect:
    - (i) a person may not become an ordinary member of the club unless duly nominated after proper notice of the nomination is given to the ordinary members of the club; and
    - (ii) if the rules provide for honorary or temporary membership—the classes of person entitled to such membership are not unduly large, having regard to the nature and objects of the club; and
  - (c) the rules of the club also make appropriate provision for—
    - (i) management of the affairs of the club by a management committee elected by the general body of members; and
    - (ii) regular meetings of the general body of members and the management committee; and
    - (iii) the payment of subscriptions by the ordinary members of the club; and
    - (iv) the keeping of proper records of the proceedings of the club and its financial affairs.

#### **50—Minors not to be licensees**

A minor must not—

- (a) hold a licence; or
- (b) occupy a position of authority in a trust or corporate entity that holds a licence,



(but a minor may be a shareholder in a proprietary company or a beneficiary of a trust that holds a licence).

## **Part 4—Applications, interventions and objections**

### **Division 1—Formal requirements**

#### **51—Form of application**

- (1) An application to a licensing authority—
  - (a) must be made in a manner and form approved by the Commissioner; and
  - (b) must be accompanied by the plans and specifications required under the regulations and any documents or material required by the Commissioner; and
  - (c) if a time limitation is prescribed by the regulations—must be made within the prescribed time; and
  - (d) must be accompanied by the fee required under the regulations.
- (2) An applicant or other person who makes a false or deliberately misleading statement in, or in support of, an application is guilty of an offence.
- (3) A licensing authority may allow an applicant to vary the application at any time before the application is decided.
- (4) If a licensing authority allows variation of an application, the authority must ensure that the other parties to the application are given notice of the variation a reasonable time before the hearing of the application.
- (5) An applicant must, at the request of the licensing authority, produce documents and other materials that the authority considers relevant to the application.

#### **51A—Applications to be given to Commissioner of Police**

- (1) This section applies to an application for—
  - (a) the grant of a licence (other than a temporary or limited licence); or
  - (b) the transfer of a licence; or
  - (c) approval of a person or persons as a responsible person or responsible persons for a business under a licence; or
  - (d) approval of a person to assume a position of authority in a trust or corporate entity that holds a licence; or
  - (e) the conversion of a temporary licence into a permanent licence; or
  - (f) approval of an agreement or arrangement under which an unlicensed person may participate in the proceeds of the business carried on under a licence.
- (2) The Commissioner—
  - (a) must give a copy of each application to which this section applies; and
  - (b) may give a copy of any other application,  
to the Commissioner of Police.

- (3) As soon as reasonably practicable following receipt of an application under subsection (2), the Commissioner of Police—
- (a) must make available to the Commissioner information about criminal convictions; and
  - (b) may make available to the Commissioner other information to which the Commissioner of Police has access,
- relevant to whether the application should be granted.

## **52—Certain applications to be advertised**

- (1) This section applies to applications for—
- (a) the grant of a licence (other than a temporary or limited licence);
  - (b) the transfer of a licence;
  - (c) the removal of a licence;
  - (d) an extended trading authorisation;
  - (e) the conversion of a temporary licence into a permanent licence;
  - (f) a condition authorising sale of liquor under a club licence for consumption off the licensed premises;
  - (g) consent to use part of the licensed premises or an area adjacent to the licensed premises to provide entertainment;
  - (h) the variation of trading hours previously fixed in relation to the licence.
- (2) Notice must be given of an application to which this section applies as follows:
- (a) the applicant must, at least 28 days before the date fixed for hearing the application, give written notice to—
    - (i) the council for the area in which the licensed premises are, or are to be, situated; and
    - (ii) the occupiers of land or premises adjacent to the licensed premises or proposed licensed premises; and
  - (b) the applicant must, at least 28 days before the date fixed for hearing the application, give notice of the application by publication of an advertisement, in the prescribed form—
    - (i) in a newspaper circulating generally throughout the State; and
    - (ii) in another newspaper circulating in the area in which the licensed premises are, or are to be, situated; and
    - (iii) in the Gazette; and
  - (c) the applicant must, for 28 days immediately preceding the date fixed for hearing the application, keep posted a notice of the application, in the dimensions and form prescribed under the regulations, in a prominent position—
    - (i) on the premises to which the application relates; or

- (ii) if the premises have not been constructed—on the land on which it is proposed to construct the premises,  
  
so as to be clearly visible to, and legible by, persons passing the premises or land.
- (2a) A notice under subsection (2) must specify that the application and certain documents and material relevant to the application may be inspected at a place and during a period specified by the Commissioner.
- (3) The licensing authority—
  - (a) may, in an appropriate case, dispense with, or modify, a requirement of this section; or
  - (b) may direct that—
    - (i) notice be given under this section of other applications to the authority; or
    - (ii) notice be given to specified authorities and persons in addition to the notice specifically required by this section.

#### **52A—Confidentiality of certain documents and material relevant to application**

- (1) Subject to this section, the Commissioner must make available for inspection by any person with a genuine interest an application required to be advertised under this Act and any documents and material produced to the licensing authority under this Act relevant to the application.
- (2) The Commissioner may, in his or her absolute discretion, exclude from inspection information that the Commissioner considers to be—
  - (a) personal information of a confidential nature; or
  - (b) information that has a commercial or other value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
  - (c) information the disclosure of which would, or could reasonably be expected to, prejudice the commercial position of a person or confer a commercial advantage on a person; or
  - (d) information the disclosure of which would be contrary to the public interest for any other reason.
- (3) A person who inspects an application, a document or material under this section must not use information contained in the application, document or material for a purpose other than objecting to the application, or intervening in proceedings, under this Act and must not disclose that information to another person except for that purpose.  
Maximum penalty: \$10 000.

- (4) A person who gains access to information (whether properly or improperly and whether directly or indirectly) as a result of the inspection of an application, a document or material under this section by another person must not use the information for a purpose other than that for which the person inspecting the application, document or material may lawfully use it.

Maximum penalty: \$10 000.

## **Division 2—General powers and discretions of licensing authority**

### **53—Discretionary powers of licensing authority**

- (1) Subject to this Act, the licensing authority has an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application).
- (1a) An application must be refused if the licensing authority is satisfied that to grant the application would be contrary to the public interest.
- (2) A licensing authority should not grant an application as a matter of course without proper inquiry into its merits (whether or not there are objections to the application).
- (2a) A licensing authority may—
- (a) grant an application on an interim basis;
  - (b) specify that a condition of a licence, permit or approval is to be effective for a specified period,
- and, in consequence, may give any necessary procedural directions in the matter.
- (3) A licensing authority may, on such conditions (if any) as it thinks fit, vary or waive compliance with formal requirements relating to an application.
- (4) If a licensing authority considers that an applicant should satisfy the licensing authority as to a certain matter for the purposes of determining the application, the licensing authority may, if the licensing authority thinks fit, nevertheless grant the application on the condition that the applicant satisfies the licensing authority as to the matter within a period determined by the licensing authority.
- (5) If a licence, permit or approval is granted on a condition under subsection (4), the licensing authority may, on failure by the applicant to comply with the condition, revoke the licence, permit or approval, or suspend the licence, permit or approval until further order.
- (6) A licensing authority may in proceedings accept an undertaking from a party in relation to the conduct of the proceedings and, on failure by the party to fulfil the undertaking, refuse to hear the party further in the proceedings subject to any further order of the licensing authority.

### **54—Order for determining applications**

The order in which applications for new licences are determined must be consistent with the requirements of the regulations.

### **55—Factors to be taken into account in deciding whether a person is fit and proper**

- (1) In deciding whether a person is a fit and proper person for a particular purpose under this Act, a licensing authority must take into consideration—
  - (a) the reputation, honesty and integrity (including the creditworthiness) of the person; and
  - (b) the reputation, honesty and integrity of people with whom the person associates.
- (2) If a licensing authority is to decide whether a person is a fit and proper person to supervise or manage, or to be involved in the supervision or management of, the business conducted or to be conducted under a licence, the licensing authority must also give consideration to—
  - (a) whether the person has the appropriate knowledge, experience and skills for the purpose; and
  - (b) in particular—whether the person has knowledge, experience and skills in encouraging the responsible supply and consumption of liquor.
- (3) For the purposes of determining whether a person is a fit and proper person for a particular purpose under this Act, the Commissioner may cause the person's photograph and fingerprints to be taken.

### **Division 3—Application for new licence**

#### **56—Applicant to be fit and proper person**

- (1) An applicant for a licence must satisfy the licensing authority—
  - (a) that the applicant is a fit and proper person to hold the licence; and
  - (b) if the applicant is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of the class sought in the application.
- (2) If a person referred to in subsection (1) is to supervise or manage, or be actively involved in the supervision or management of, the business conducted under the licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless grant the licence on the condition that the person undertake specified training within a specified time after the grant of the licence.

#### **57—Requirements for premises**

- (1) An applicant for a licence for premises or proposed premises must satisfy the licensing authority—
  - (a) that the premises for which the licence is sought are, or, in the case of premises not yet constructed, will be, of sufficient standard for the purpose of properly carrying on business under the licence; and
  - (b) that the operation of the licence would be unlikely—

- (i) to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or
  - (ii) to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises.
- (2) An application for a licence for premises or proposed premises must not be granted unless the licensing authority is satisfied—
  - (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and
  - (b) that any approvals, consents or exemptions that are required by law for the carrying out of building work before the licence takes effect have been obtained; and
  - (c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.
- (3) The licensing authority may dispense with the requirement that an applicant for a direct sales licence or limited licence—
  - (a) satisfy the licensing authority as to a matter referred to in this section; or
  - (b) submit plans.

### **58—Grant of hotel licence or retail liquor merchant's licence**

- (1) An applicant for a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.
- (2) An applicant for a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated, do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.
- (3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under a certificate of approval.

### **59—Certificate of approval for proposed premises**

- (1) The licensing authority may refuse an application for a licence for proposed premises having regard to the extent to which the proposed premises are uncompleted but may, instead, grant a certificate (a *certificate of approval*) approving the plans submitted by the applicant in respect of the proposed premises if satisfied that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the proposed premises for the sale of liquor have been obtained.
- (2) A certificate of approval—
  - (a) may be granted on conditions the licensing authority thinks fit; and

- (b) must state the trading rights to be conferred by the licence and may state conditions to which the licence should be subject.
- (3) If—
- (a) a certificate of approval has been granted; and
  - (b) the holder of the certificate satisfies the licensing authority—
    - (i) that the conditions (if any) on which the certificate was granted have been complied with; and
    - (ii) that the premises have been completed in accordance with plans approved by the licensing authority on the grant of the certificate or a variation of those plans later approved by the licensing authority,
- a licence conferring the trading rights, and subject to the conditions, specified in the certificate must be granted to the holder of the certificate in respect of the premises.
- (4) A certificate under this section is, for the purposes of the provisions of this Act relating to the transfer of a licence, taken to be a licence.
- (5) A transaction under which the holder of a certificate of approval agrees to the transfer of the certificate for a monetary or other consideration is void unless the proposed transfer is to a close associate.

## **Division 4—Removal of licence**

### **60—Premises to which licence is to be removed**

- (1) An applicant for the removal of a licence to premises or proposed premises must satisfy the licensing authority—
- (a) that the premises to which removal of the licence is sought are, or, in the case of premises not yet constructed, will be, of an appropriate standard for carrying on business under the licence; and
  - (b) that the removal of the licence would be unlikely—
    - (i) to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or
    - (ii) to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises.
- (2) An application for the removal of a licence to premises or proposed premises cannot be granted unless the licensing authority is satisfied—
- (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and
  - (b) that any approvals, consents or exemptions that are required by law for carrying out of building work before the removal of the licence takes effect have been obtained; and
  - (c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.

- (3) The licensing authority may dispense with the requirement that an applicant for the removal of a direct sales licence—
  - (a) satisfy the authority as to a matter referred to in this section; or
  - (b) submit plans.

### **61—Removal of hotel licence or retail liquor merchant's licence**

- (1) An applicant for removal of a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality to which the licence is to be removed, the removal of the licence is necessary in order to provide for the needs of the public in that locality.
- (2) An applicant for the removal of a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality to which the licence is to be removed do not adequately cater for the public demand for liquor for consumption off licensed premises and the removal of the licence is necessary to satisfy that demand.
- (3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under an existing certificate of approval.

### **62—Certificate of approval for removal of licence to proposed premises**

- (1) The licensing authority may refuse an application for the removal of a licence to proposed premises having regard to the extent to which the proposed premises are uncompleted but may, instead, grant a certificate (a *certificate of approval*) approving the plans submitted by the applicant in respect of the proposed premises if satisfied that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the proposed premises for the sale of liquor have been obtained.
- (2) A certificate of approval—
  - (a) may be granted on conditions the licensing authority thinks fit; and
  - (b) may include a statement of conditions to which, in the opinion of the licensing authority, the licence should be subject on its removal (either in addition to, or in substitution for, existing conditions of the licence).
- (3) If—
  - (a) a certificate has been granted under subsection (1); and
  - (b) the holder of the certificate satisfies the licensing authority—
    - (i) that the conditions (if any) on which the certificate was granted have been complied with; and
    - (ii) that the premises have been completed in accordance with plans approved by the licensing authority on the grant of the certificate or a variation of those plans later approved by the licensing authority,

the licence must be removed to the new premises and, if the certificate of approval provides for the addition or substitution of conditions, the licence then becomes subject to the new conditions in accordance with the terms of the certificate.



- (4) A transaction under which the holder of a certificate of approval agrees to the transfer of the certificate for a monetary or other consideration is void unless the proposed transfer is to a close associate.

### **62A—Removal of producer's licence in respect of outlet**

An application for removal of a producer's licence in respect of a production outlet to a different production outlet or in respect of a retail outlet to a different retail outlet is to be dealt with as an application for the removal of the licence to premises or proposed premises under this Division (even if the licence is not removed in respect of some other outlet).

## **Division 4A—Addition of outlets to producer's licence**

### **62B—Addition of outlets to producer's licence**

- (1) An applicant for the addition to a producer's licence of premises or proposed premises as a production outlet or retail outlet must satisfy the licensing authority—
- (a) that the premises sought to be added are, or, in the case of premises not yet constructed, will be, of an appropriate standard for carrying on business under the licence; and
  - (b) that the addition of the premises to the licence would be unlikely—
    - (i) to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or
    - (ii) to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises.
- (2) An application for the addition to a producer's licence of premises or proposed premises as a production outlet or retail outlet cannot be granted unless the licensing authority is satisfied—
- (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and
  - (b) that any approvals, consents or exemptions that are required by law for carrying out of building work before the removal of the licence takes effect have been obtained; and
  - (c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.
- (3) If adding a production outlet or retail outlet to a producer's licence would result in the establishment of a collective outlet or an increase in the number of licensees for whom the outlet constitutes a collective outlet, the licensing authority must not grant the application for the addition if of the opinion that the trade to be authorised at the outlet would, in view of the number of licensees involved or the nature and extent of the trade or for any other reason, be better authorised by a retail liquor merchant's licence or a licence of some other category.

### **62C—Certificate of approval for addition to producer's licence of proposed premises as outlet**

- (1) The licensing authority may refuse an application for the addition to a producer's licence of proposed premises as a production outlet or retail outlet having regard to the extent to which the proposed premises are uncompleted but may, instead, grant a certificate (a *certificate of approval*) approving the plans submitted by the applicant in respect of the proposed premises if satisfied that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the proposed premises for the sale of liquor have been obtained.
- (2) A certificate of approval—
  - (a) may be granted on conditions the licensing authority thinks fit; and
  - (b) may include a statement of conditions to which, in the opinion of the licensing authority, the licence should be subject on the addition of the premises (either in addition to, or in substitution for, existing conditions of the licence).
- (3) If—
  - (a) a certificate has been granted under subsection (1); and
  - (b) the holder of the certificate satisfies the licensing authority—
    - (i) that the conditions (if any) on which the certificate was granted have been complied with; and
    - (ii) that the premises have been completed in accordance with plans approved by the licensing authority on the grant of the certificate or a variation of those plans later approved by the licensing authority,the new premises must be added to the licence and, if the certificate of approval provides for the addition or substitution of conditions, the licence then becomes subject to the new conditions in accordance with the terms of the certificate.
- (4) A transaction under which the holder of a certificate of approval agrees to the transfer of the certificate for a monetary or other consideration is void unless the proposed transfer is to a close associate.

## **Division 5—Transfer of licence**

### **63—Applicant for transfer must be fit and proper person**

- (1) An applicant for the transfer of a licence must satisfy the licensing authority—
  - (a) that the applicant is a fit and proper person to hold the licence; and
  - (b) where the applicant is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of the class to which the application relates.

- (2) If a person referred to in subsection (1) is to supervise or manage, or be actively involved in the supervision or management of, the business conducted under the licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless transfer the licence and impose a condition of the licence that the person undertake specified accredited training within a specified time after the transfer of the licence.
- (3) A club licence or a limited licence is not transferable.

#### **64—Limitation on sale or assignment of rights under licence**

- (1) A licensee cannot sell or assign rights to carry on business under the licence unless the transfer of the licence to the purchaser or assignee has been approved by the licensing authority.
- (2) This section does not prevent a licensee from entering into a contract for the sale or assignment of rights to carry on business under the licence if the contract is subject to a condition precedent under which the sale or assignment will not take effect unless and until the transfer of the licence to the purchaser or assignee has been approved by the licensing authority.

#### **65—Transferee to succeed to transferor's liabilities and rights**

- (1) Where a licence is transferred, the transferee succeeds to the liabilities of the transferor under this Act.
- (3) If a licence authorising the sale of liquor produced by the licensee is transferred, the transferee may sell, under the licence, liquor produced by the transferor before the date of the transfer as if it had been produced by the transferee.

### **Division 6—Voluntary suspension and revocation of licence**

#### **66—Suspension and revocation of licence**

- (1) The Commissioner may, on the application of a licensee, suspend the licence held by that licensee.
- (2) A suspension—
  - (a) may be made for a specified period or until revoked by a licensing authority; and
  - (b) may operate generally or in relation to a particular part of the licensed premises or a particular aspect of the licensee's business.
- (3) The Commissioner may revoke a licence if it appears that the licensee has ceased to carry on business under the licence.

#### **67—Surrender of licence**

- (1) A licensee may, by written agreement with the Commissioner, surrender the licence as from a date fixed in the agreement.
- (2) Before agreeing to the surrender of a licence, the Commissioner must inquire into the proposed use of the premises to which the licence applies.
- (3) The surrender of a licence does not affect liabilities incurred by the licensee under this Act up to the date on which the surrender takes effect.

## **Division 7—Alteration and redefinition of licensed premises**

### **68—Alteration and redefinition of licensed premises**

- (1) The licensing authority may, on the application of a licensee—
  - (a) approve an alteration or proposed alteration to the licensed premises;
  - (b) redefine the licensed premises as defined in the licence;
  - (c) designate a part of licensed premises as a dining area or a reception area;
  - (d) in the case of a producer's licence—remove a production outlet or retail outlet from the licensed premises.
- (2) An application for approval of an alteration to licensed premises must not be granted unless the licensing authority is satisfied that all other approvals, consents or exemptions required by law have been obtained.
- (3) If licensed premises are altered without approval under this section, the licensee is guilty of an offence.

## **Division 8—Extension of trading area**

### **69—Extension of trading area**

- (1) The licensing authority may, on application by a licensee who holds a licence authorising the sale of liquor for consumption on the licensed premises, extend the authority conferred by the licence so that the licensee is authorised to sell liquor in a place adjacent to the licensed premises for consumption in that place.
- (2) The place to which the authorisation relates is, when the sale of liquor is authorised, taken to form part of the licensed premises.
- (3) An authorisation cannot be granted under this section unless—
  - (a) the licensing authority is satisfied that the object of the application could not be more appropriately achieved by redefinition of the licensed premises; and
  - (b) the licensee will, when the sale of liquor is authorised, be entitled to sell or supply liquor to customers in the relevant place; and
  - (c) the relevant place can be adequately defined and supervised; and
  - (d) the owner of the relevant place (if not owned by the licensee) consents to the application; and
  - (e) if the relevant place is under the control of a council—the council approves the application.

## **Division 8A—Alteration of producer's event endorsement**

### **69A—Alteration of producer's event endorsement**

The licensing authority may, on the application of the holder of a producer's licence with a producer's event endorsement, alter the terms of the endorsement.

## **Division 9—Variation of non-statutory conditions of licence**

### **70—Variation of non-statutory conditions of licence**

- (1) The licensing authority may, on application by a licensee—
  - (a) vary trading hours previously fixed by the licensing authority in relation to the licence;
  - (b) vary or revoke a condition of the licence.
- (2) Nothing in this section authorises the licensing authority to vary or revoke a condition fixed or imposed by this Act.

## **Division 10—Approval of management and control**

### **71—Approval of management and control**

- (1) The licensing authority may, on application by a licensee, approve a natural person or persons as a responsible person or responsible persons for the business conducted under the licence.
- (1a) No application fee is payable on an application under subsection (1) if the applicant is the holder of a limited club licence.
- (2) The licensing authority may, on the application of a person who seeks to assume a position of authority in a trust or corporate entity that holds a licence, approve the assumption by that person of that position in the entity.
- (3) The licensing authority may only approve a person as a responsible person, or approve the assumption by a person of a position of authority in a trust or corporate entity that holds a licence, if satisfied that he or she is a fit and proper person.
- (4) However, if an applicant for approval is to supervise and manage, or be actively involved in the supervision or management of, the business conducted under a licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless approve the person and impose a condition of the licence that the person undertake specified accredited training within a specified time of obtaining the approval.

## **Division 10A—Approval of crowd controllers**

### **71A—Approval of crowd controllers**

- (1) The Commissioner may, on application, approve a person to act as a crowd controller for licensed premises.
- (2) The Commissioner cannot approve a person to act as a crowd controller unless the person has the appropriate knowledge, experience and skills for the purpose.
- (3) If an applicant for approval does not have the appropriate knowledge, experience and skills to act as a crowd controller, the Commissioner may nevertheless approve the person and impose a condition on the approval that the person undertake specified accredited training within a specified time of obtaining the approval.

### **71B—Use of force by approved crowd controller**

An approved crowd controller must not use force to remove a person from licensed premises except under the direct supervision of the licensee or the responsible person for the premises.

### **71C—Revocation of approval**

- (1) The Commissioner has an unqualified discretion to revoke an approval given under this Division on such ground or for such reason as he or she thinks fit.
- (2) The Commissioner must, before exercising powers under subsection (1) in relation to a person—
  - (a) give written notice to the person of the proposed revocation, including, subject to section 28A, a statement of the reasons that the Commissioner considers justify the revocation; and
  - (b) allow the person a period of 21 days (or such longer period as the Commissioner may in a particular case allow) to show cause why the approval should not be revoked.
- (3) The Commissioner may suspend an approval pending final determination of the question as to whether the approval should be revoked.
- (4) On revoking an approval, the Commissioner must cause notice of the revocation to be given, personally or by post, to all persons affected by the revocation.

### **71D—Application of Division**

This Division is in addition to, and does not derogate from, the *Security and Investigation Agents Act 1995*.

## **Division 11—Lessor's consent**

### **72—Consent of lessor or owner required in certain cases**

- (1) Subject to this section—
  - (a) the licensing authority must not grant an application—
    - (i) for a new licence; or
    - (ii) for approval of an alteration or proposed alteration to the licensed premises,  
if the licensed premises or proposed licensed premises are occupied, or are to be occupied, under a lease and the lessor has not consented to the application;
  - (b) the licensing authority must not grant an application for the removal of a licence if the premises to which the licence is to be removed are held under lease and the lessor has not consented to the application;
  - (c) the licensing authority must not grant an application for transfer of a licence if the licensed premises are occupied under a lease and the lessor has not consented to the application.

- (2) A lessor is taken to have consented to an application for a licence or for the removal or transfer of a licence if, before the lessor granted or approved the assignment of the lease, the applicant gave the lessor written notice of the applicant's intention to use the premises for trading in liquor.
- (3) The licensing authority may dispense with a consent required under this section if, in its opinion, the consent has been capriciously or unreasonably withheld.
- (4) A reference in this section to the lessor of premises is, in relation to premises held from the Crown under lease or licence, a reference to the Crown.

## **Division 12—Devolution of licensee's rights**

### **73—Devolution of licensee's rights**

- (1) If a licensee or one of two or more joint licensees dies—
  - (a) the executor of the will or the administrator of the estate; or
  - (b) a relative of the deceased acting with the permission of the licensing authority,may, for 1 month after the date of death or a longer period approved by the licensing authority, carry on business as the licensee or one of the licensees (as the case requires) under the licence.
- (2) If a licensee or one of two or more joint licensees becomes physically or mentally incapable of carrying on business under the licence—
  - (a) a person authorised or appointed by law to administer the licensee's affairs; or
  - (b) a relative of the licensee acting with the permission of the licensing authority,may, for 1 month after the commencement of the incapacity or a longer period approved by the licensing authority, carry on business as the licensee or one of the licensees (as the case requires) under the licence.
- (3) If a licensee ceases to occupy the licensed premises to which the licence relates, a landlord, mortgagee or other person acting with the permission of the licensing authority may, for a period of 1 month or a longer period approved by the licensing authority, carry on business as the licensee under the licence.
- (4) If a licence is surrendered or revoked, the licensing authority may, on application by a landlord, mortgagee or other person who satisfies the authority that it stands to suffer loss in consequence of the surrender or revocation, grant a temporary licence—
  - (a) of the same class, and subject to the same conditions, as the licence that was surrendered or revoked; but
  - (b) subject to a condition that the licence will expire at the end of a term fixed by the licensing authority not exceeding 6 months.
- (5) An approval, permission or temporary licence may be granted under this section by the licensing authority—
  - (a) on the application of the person seeking it without hearing or inviting representations from any other person; and
  - (b) on conditions the licensing authority thinks fit.

- (6) A temporary licence under this section may be converted into an ordinary licence by revocation of the condition referred to in subsection (4)(b) but an application for revocation of such a condition must not be granted unless the licensing authority is satisfied—
- (a) that the person who is to hold the licence on revocation of the condition is a fit and proper person to hold a licence of the relevant class; and
  - (b) if that person is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of that class.
- (7) If the person who is to hold the licence on revocation of the condition is to supervise or manage, or be actively involved in the supervision and management of, the business conducted under the licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless grant the application for revocation of the condition and impose a condition of the licence that the person undertake specified accredited training within a specified time after the grant of the application.

#### **74—Bankruptcy or winding up of licensee**

- (1) If a licensee becomes bankrupt or insolvent, the official receiver may carry on business as the licensee under the licence.
- (2) If a corporate licensee is being wound up or is under administration, receivership or official management, a person vested by law with power to administer the affairs of the body corporate may carry on business as the licensee under the licence.

#### **75—Notice to be given of exercise of rights under this Division**

A person who exercises rights under this Division (except by prior permission of the licensing authority) must, within 7 days after starting to do so, give notice in writing of that fact to the Commissioner.

### **Division 13—Rights of intervention and objection**

#### **75A—Intervention by Commissioner of Police**

The Commissioner of Police may intervene in proceedings before a licensing authority for the purpose of introducing evidence, or making submissions, on any question before the authority and, in particular, may, if the proceedings are in connection with an application under this Part, intervene on the question of—

- (a) whether a person is a fit and proper person; or
- (b) whether, if the application were to be granted, public disorder or disturbance would be likely to result; or
- (c) whether to grant the application would be contrary to the public interest.

#### **76—Other rights of intervention**

- (2) A council in whose area licensed premises or premises proposed to be licensed are situated may intervene in proceedings before a licensing authority for the purpose of introducing evidence, or making representations, on any question before the authority.



- (3) If a licensing authority directs that notice of a particular application be given to a particular body or person, that body or person may intervene in proceedings based on that application for the purpose of introducing evidence, or making representations, on any question arising in the proceedings.
- (4) The Commissioner may intervene in proceedings before the Court under this Act for the purpose of introducing evidence, or making representations, on any question before the Court.

### **77—General right of objection**

- (1) If an application has been advertised under this Part, any person may, by notice in the prescribed form lodged with the licensing authority at least 7 days before the day appointed for the hearing of the application, object to the application.
- (2) Subject to section 28A, a copy of the notice of objection must be served by the objector on the applicant at least 7 days before the day appointed for the hearing of the application.
- (3) However, the licensing authority may (in its absolute discretion) accept an objection even though it is lodged, or served on the applicant, out of time.
- (4) An objection may be made on behalf of an unincorporated association under this section by an agent duly appointed for the purpose.
- (5) An objection may be made on one or more of the following grounds:
  - (a) that the grant of the application would not be consistent with the objects of this Act or would be contrary to this Act in some other way;
  - (b) in the case of an application for the grant or removal of a hotel licence—that the grant of the application is not necessary in order to provide for the needs of the public in the area in which the premises or proposed premises to which the application relates are situated;
  - (c) in the case of an application for the grant or removal of a retail liquor merchant's licence—that the grant of the application is not necessary in order to adequately cater for the public demand for liquor for consumption off licensed premises in the area in which the premises or proposed premises to which the application relates are situated;
  - (d) in the case of an application by a natural person for the grant or transfer of a licence, or for the conversion of a temporary licence into an ordinary licence—that the applicant is of bad reputation or character or is in other respects not a fit and proper person to be licensed;
  - (e) in the case of an application by a trust or corporate entity for the grant or transfer of a licence, or for the conversion of a temporary licence into an ordinary licence—that the applicant is not a fit and proper person to be licensed or that a person who occupies a position of authority in the entity is of bad reputation or character or is in other respects not a fit and proper person to hold such a position in an entity that holds a licence;
  - (f) in the case of an application for the grant or removal of a licence—that the position, nature or quality of the premises renders them unsuitable to be licensed, or to be licensed under a licence of the kind to which the application relates;

- (g) that if the application were granted—
  - (i) undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises or proposed premises to which the application relates would be likely to result; or
  - (ia) the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises or proposed premises to which the application relates would be likely to be prejudiced; or
  - (ii) the amenity of the locality in which the premises or proposed premises to which the application relates are situated would be adversely affected in some other way.

### **78—Lessor's special right of objection**

- (1) A lessor of licensed premises may object to an application for removal of a licence from the premises to some other premises if it is a term of the lease that the lessor's consent is required for such an application and the consent has not been obtained in accordance with the lease.
- (2) A lessor of licensed premises may object to an application for approval of alterations to the licensed premises if the licensee has agreed in writing that the lessor's consent is required for such an application and the lessor's consent has not been obtained.

### **79—Variation of objections**

- (1) A licensing authority may allow a person who has made an objection to vary the objection at any time before the proceedings are determined.
- (2) If a licensing authority allows an objection to be varied, the authority must ensure that the parties to the proceedings are given notice of the variation a reasonable time before the time fixed for the hearing.

## **Part 6—Conduct of licensed business**

### **Division 1—Supervision and management**

#### **97—Supervision and management of licensee's business**

- (1) The business conducted under a licence—
  - (a) must, at all times when the licensed premises are open to the public, be personally supervised and managed by a natural person (a *responsible person*) who is—
    - (i) the licensee or a director of the licensee and qualified for the purpose in accordance with subsection (1a); or
    - (ii) a person approved by the licensing authority as a responsible person for the business conducted under the licence; or
  - (b) must be supervised and managed in accordance with arrangements approved by the licensing authority under subsection (2).

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- (1a) The licensee or a director of the licensee is qualified for supervising and managing the business conducted under a licence if—
- (a) the licensee has satisfied the licensing authority that the licensee or the director (as the case may be) is a fit and proper person for the purpose; or
  - (b) the licence has been made subject to a condition that the licensee or the director (as the case may be) undertake specified accredited training within a specified time and the specified time has not elapsed or the condition has been satisfied.
- (2) If the licensing authority is satisfied on the application of the licensee that, in view of the limited scope of a business conducted under a licence, an exemption from the requirements of subsection (1)(a) may be granted without compromising the responsible service and consumption principles, the licensing authority may approve alternative arrangements for the supervision and management of the business.
- (3) No application fee is payable on an application for approval under subsection (1) or (2) if the applicant is the holder of a limited club licence.
- (4) If at any time the business conducted under a licence is not supervised and managed as required under subsection (1), the licensee is guilty of an offence.
- (5) A responsible person for licensed premises must, while acting as such on the licensed premises, wear identification in a form and manner approved by the Commissioner.
- Maximum penalty: \$1 250.  
Expiation fee: \$160.

## **98—Approval of assumption of positions of authority in corporate or trust structures**

- (1) A person must not assume a position of authority in a trust or corporate entity that holds a licence (other than a limited licence or a limited club licence) without the approval of the licensing authority.
- (2) A person who contravenes subsection (1) is guilty of an offence.

## **Division 2—Profit sharing**

### **99—Prohibition of profit sharing**

- (1) Subject to this Act, if a licensee—
  - (a) enters into partnership with an unlicensed person in relation to the business carried on under the licence; or
  - (b) enters into any agreement or arrangement under which an unlicensed person may participate in the proceeds of the business carried on under the licence (but this paragraph does not prevent the members of a licensed club from benefiting as members of the club from the proceeds of the business conducted under the licence); or
  - (c) remunerates an unlicensed person by reference to the proceeds or profits obtained from the business carried on under the licence or by reference to the quantity of liquor sold; or

- (d) permits an unlicensed person (not being a person approved by the licensing authority) to conduct, superintend or manage the business carried on at licensed premises under the licence; or
- (e) permits an unlicensed person to exercise control or substantial influence, without authorisation or approval under this Act, over the business conducted under the licence; or
- (f) permits an unlicensed person to hold himself or herself out to the public as the licensee,

the licensee and the unlicensed person are each guilty of an offence.

- (2) The Commissioner may, on application by an interested person, approve an agreement or arrangement if—
  - (a) the agreement or arrangement—
    - (i) is likely to assist the liquor industry and industries with which it is closely associated—such as tourism and the hospitality industry; or
    - (ii) is otherwise in the public interest,or there is some other good reason for approving the agreement or arrangement; and
  - (b) the agreement or arrangement does not adversely affect the rights and reasonable expectations of persons presently in employment.
- (3) If an agreement or arrangement approved under subsection (2) provides for a trust or corporate entity to conduct, superintend or manage the business conducted under a licence, that business must nevertheless be conducted under the personal supervision and management of a natural person approved by the licensing authority.
- (4) The Commissioner may, on application by the holder of a licence authorising the sale of liquor by wholesale, approve an agreement or arrangement between that holder and an unlicensed agent under which the agent is to be remunerated by reference to the quantity of wholesale sales of liquor made by the agent.
- (5) The Commissioner must not approve an agreement or arrangement under subsection (4) unless satisfied—
  - (a) that the agent is a fit and proper person to act as an agent of the licensee; and
  - (b) that the nature and scale of the business to be conducted by the agent under the proposed agreement or arrangement is not such that, taken alone or in conjunction with the business conducted under all other similar agencies held by the agent with other holders of wholesale licences, the agent should properly hold an appropriate licence under this Act in relation to that business.
- (6) Subsection (1) does not apply to—
  - (a) an agreement or arrangement approved under subsection (2) or (4) or any other provision of this Act, or anything done under any such approved agreement or arrangement; or

- (b) any contractual provision for the remuneration of an employee of a licensee (other than a provision that confers on the employee a right to a share of the profits of the business conducted under the licence or provides that the remuneration of the employee is to vary by reference to the quantity of liquor sold); or
  - (c) an agreement or arrangement providing for the disbursement of profits or proceeds to a person in a position of authority in a trust or corporate entity that holds the licence or to a shareholder or beneficiary approved by the licensing authority as being a fit and proper person.
- (7) For the purposes of subsection (2)—
- interested person* includes an association formed to protect or further the interests of—
- (a) the liquor industry or a particular section of the liquor industry; or
  - (b) employees in the liquor industry or a particular section of the liquor industry.

### Division 3—Supply of liquor to lodgers

#### 100—Supply of liquor to lodgers

- (1) The following conditions must be observed in relation to liquor supplied under a licence authorising the sale of liquor to lodgers:
- (a) if the liquor is supplied to a lodger for consumption on the licensed premises and the licence does not (when the liquor is supplied) authorise the sale of liquor to the public for consumption on the licensed premises—
    - (i) the liquor must be consumed by the lodger personally or by a guest of the lodger in the presence of the lodger and at the lodger's expense;
    - (ii) there must be no more than 6 adult guests of the lodger present at the time the liquor is consumed;
    - (iii) liquor must not be supplied to, or consumed by, a minor;
  - (b) if the liquor is supplied to a lodger for consumption off the licensed premises and the licence does not authorise the sale of liquor to the public for consumption off the licensed premises—the liquor may only be supplied in quantities likely to be consumed by the lodger and guests on the day on which it is supplied.
- (2) If any of the conditions prescribed by subsection (1) is contravened, the licensee and the lodger are each guilty of an offence.

Maximum penalty:

- (a) in the case of the licensee—
  - (i) for a first offence—\$10 000;
  - (ii) for a second or subsequent offence—\$20 000;
- (b) in the case of a lodger—\$2 500.

Expiation fee: for an offence of contravening conditions prescribed by subsection (1)(a)—

- (a) in the case of the licensee—\$1 200;
- (b) in the case of a lodger—\$210.

### **101—Record of lodgers**

- (1) A licensee who holds a licence that authorises the sale of liquor to lodgers must keep a record of all lodgers for whom accommodation is provided at the licensed premises.
- (2) The record—
  - (a) must be kept in writing or by computer; and
  - (b) must contain the name and address of the lodger; and
  - (c) must include any other prescribed information.
- (3) A person who fails to keep a record as required by this section is guilty of an offence.  
Maximum penalty:
  - (a) for a first offence—\$10 000;
  - (b) for a second or subsequent offence—\$20 000.Expiation fee: \$1 200.

## **Division 4—Removal and consumption of liquor**

### **102—Restriction on taking liquor from licensed premises**

- (1) Subject to this Division—
  - (a) if a licensee is not authorised under the licence to sell liquor for consumption off the licensed premises, a person who takes liquor away from the licensed premises is guilty of an offence;
  - (b) if a licensee is authorised under the licence to sell liquor for consumption off the licensed premises during certain authorised trading hours, a person who takes liquor away from the licensed premises more than 30 minutes after the relevant trading hours is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) This section does not prevent the removal of liquor won as a prize.

### **103—Restriction on consumption of liquor in, and taking liquor from, licensed premises**

- (1) Subject to this Division, if at a particular time a licensee is not entitled under the licence to sell liquor to a particular person, that person is not then entitled—
  - (a) to purchase or consume liquor on the licensed premises; or
  - (b) to be in possession of liquor on the licensed premises; or
  - (c) to take liquor from the licensed premises,

and a person who does so is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

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- (2) A person who is on licensed premises for the purpose of purchasing or consuming liquor contrary to subsection (1)(a) is guilty of an offence.
- (3) In any proceedings for an offence against subsection (2) in which it is proved that the defendant was on licensed premises when not entitled to purchase or consume liquor, it will be presumed, in the absence of proof to the contrary, that the person was there for the purpose of purchasing or consuming liquor in contravention of subsection (1)(a).
- (4) A licensee who permits a person to act in contravention of this section is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$10 000;
- (b) for a second or subsequent offence—\$20 000.
- (5) No offence is committed by a person under this section—
- (a) because the person, within 15 minutes of the conclusion of the relevant authorised trading hours—
- (i) consumes; or
- (ii) has possession of,
- liquor lawfully sold by the licensee for consumption on the licensed premises;
- or
- (b) because the person, within 30 minutes of the conclusion of the relevant authorised trading hours—
- (i) has possession of; or
- (ii) takes from licensed premises,
- liquor lawfully sold by the licensee for consumption off the licensed premises.
- (6) No offence is committed under this section—
- (a) because of the consumption of liquor on licensed premises—
- (i) by a lodger; or
- (ii) by a person who is resident on the licensed premises being the licensee or a member of the licensee's family or a responsible person for the licensed premises or a member of a responsible person's family; or
- (iii) by a guest of a person referred to in subparagraph (i) or (ii), if the liquor was supplied in the presence, and at the expense, of that person; or
- (iv) by a non-resident licensee; or
- (v) by an employee of the licensee; or
- (b) because of the taking of liquor from licensed premises—
- (i) by a lodger; or

- (ii) by a person who is resident on the licensed premises being the licensee or a member of the licensee's family or a responsible person for the licensed premises or a member of a responsible person's family.

#### **104—Liquor may be brought onto, and removed from, licensed premises in certain cases**

If a licence authorises the consumption of liquor (or the sale and consumption of liquor) on the licensed premises with or ancillary to a meal provided by the licensee, then, despite any other provision of this Act, it is lawful for a person—

- (a) to bring liquor onto the licensed premises, with the consent of the licensee, intending that it be consumed with or ancillary to a meal provided by the licensee on the licensed premises and later to take from the licensed premises the unconsumed portion of liquor so brought onto the licensed premises in the container in which it was brought onto the licensed premises; or
- (b) if a bottle of wine has been purchased on the licensed premises by the person intending that the wine be consumed with or ancillary to a meal provided by the licensee on the licensed premises, to take from the licensed premises the unconsumed portion of wine so purchased in the bottle in which it was purchased.

### **Division 5—Entertainment**

#### **105—Entertainment on licensed premises**

- (1) A licensee must not use any part of the licensed premises, or any area adjacent to the licensed premises, for the purpose of providing entertainment unless—
  - (a) the consent of the licensing authority has been obtained; and
  - (b) in the case of a licence that authorises the sale or supply of liquor for consumption on the licensed premises—
    - (i) the licensed premises are, at all times while the entertainment is being provided, open for the sale or supply of liquor for consumption on the licensed premises under the licence; or
    - (ii) the terms of the consent of the licensing authority expressly allow the provision of entertainment in circumstances in which the licensed premises are not open for the sale or supply of liquor for consumption on the licensed premises under the licence.
- (2) The licensing authority may only grant its consent if satisfied that—
  - (a) the giving of the consent would be consistent with the objects of this Act; and
  - (b) the entertainment is unlikely to give undue offence to people who reside, work or worship in the vicinity of the premises.
- (3) The licensing authority may grant its consent under subsection (1) subject to conditions it considers necessary or desirable.
- (4) Any conditions imposed under subsection (3) have effect as conditions of the licence and operate according to their terms whether or not entertainment is being provided in accordance with the consent of the licensing authority.



- (5) A licensee who contravenes subsection (1) is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$10 000;
- (b) for a second or subsequent offence—\$20 000.

Expiation fee: \$1 200.

## **Division 6—Noise**

### **106—Complaint about noise etc emanating from licensed premises**

- (1) If—
- (a) an activity on, or the noise emanating from, licensed premises; or
  - (b) the behaviour of persons making their way to or from licensed premises,
- is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity of the licensed premises, a complaint may be lodged with the Commissioner under this section.
- (2) A complaint under this section may be lodged by—
- (a) the Commissioner of Police; or
  - (b) the council for the area in which the licensed premises are situated; or
  - (c) a person claiming to be adversely affected by the subject matter of the complaint.
- (3) A complaint cannot be made under subsection (2)(c) unless—
- (a) the complainant is authorised to make the complaint by at least 10 persons who reside, work or worship in the vicinity of the licensed premises; or
  - (b) the Commissioner is satisfied that the nature or gravity of the complaint is such that it should be admitted despite non-compliance with paragraph (a).
- (3a) If a complaint is lodged with the Commissioner under this section—
- (a) the Commissioner must cause a copy of the complaint to be served on the licensee of the licensed premises to which the complaint relates no later than 7 days after its lodgement; and
  - (b) no conciliation meeting or other hearing may be held on the complaint until the period of 14 days has elapsed from the day of that service.
- (4) Unless either party to the proceedings on a complaint requests that the matter proceed direct to a hearing and the Commissioner is of the opinion that good reason exists for concurring with the request, the Commissioner must endeavour to resolve the subject matter of the complaint by conciliation and—
- (a) the Commissioner may, before or during the course of the conciliation proceedings, make an interim order about the subject matter of the complaint; and
  - (b) if the matter is settled by conciliation, the Commissioner may make a final order against the licensee reflecting the terms of the settlement,

(and the terms of an interim or final order under this subsection become conditions of the licence).

- (5) If the subject matter of the complaint is not to be conciliated, or is not resolved by conciliation, as the case may be—
- (a) if the parties to the proceedings request the Commissioner to do so—the Commissioner must determine the matter; and
  - (b) in any other case—the Commissioner must refer the matter for hearing and determination by the Court.
- (6) In hearing and determining a complaint under this section, the Commissioner or the Court, as the case may be—
- (a) must give the complainant, the licensee and any other person whom the Commissioner or the Court thinks fit to hear an opportunity to be heard; and
  - (b) must take into account—
    - (i) the relevant history of the licensed premises in relation to other premises in the vicinity and, in particular, the period of time over which the activity, noise or behaviour complained about has been occurring and any significant change at any relevant time in the level or frequency at which it has occurred; and
    - (ii) the unreasonableness or otherwise of the activity, noise or behaviour complained about; and
    - (iii) the trading hours and character of the business carried out by the licensee on the licensed premises; and
    - (iv) the desired future character of the locality in which the licensed premises are situated as stated in any relevant Development Plan under the *Development Act 1993*; and
    - (v) whether or not any environment protection policy made under Part 5 of the *Environment Protection Act 1993*, or guidelines published by the Environment Protection Authority established under that Act, applicable to the provision of live music on the licensed premises have been complied with; and
    - (vi) any other matter that the Commissioner or the Court considers relevant.
- (6a) On completing the hearing of the complaint the Commissioner or the Court, as the case may be, may—
- (a) dismiss the complaint; or
  - (b) make an order against the licensee resolving the subject matter of the complaint.
- (7) The order may add to or vary the conditions of the licence.
- (8) If a proposal for settlement of the subject matter of the complaint is made in the course of proceedings before the Commissioner, evidence of the proposal is inadmissible in proceedings before the Court.

- (9) An interim order of the Commissioner under this section continues in force until the making of a final order on the complaint by the Commissioner or the Court, or earlier revocation of the interim order by the Commissioner or the Court.

## **Division 7—Employment of minors**

### **107—Minors not to be employed to serve liquor in licensed premises**

- (1) If a minor is employed to sell, supply or serve liquor on licensed premises, the licensee is guilty of an offence.
- (2) However, this section does not prevent the employment of a minor to sell, supply or serve liquor on licensed premises if—
- (a) the minor is of or above the age of 16 years, a child of the licensee or a responsible person for the licensed premises and resident on the premises; or
  - (b) —
    - (i) the minor is of or above the age of 16 years and a child of the licensee or a responsible person for the licensed premises; and
    - (ii) the licensing authority, on application, approves the employment of the minor for that purpose.

## **Division 8—Sale or supply to intoxicated persons**

### **108—Liquor not to be sold or supplied to intoxicated persons**

- (1) If—
- (a) liquor is sold or supplied on licensed premises to an intoxicated person; or
  - (b) liquor is sold or supplied on licensed premises to a person in circumstances in which the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor,

the licensee, the responsible person for the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$20 000;
  - (b) for a second or subsequent offence—\$40 000.
- (2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—
- (a) if the defendant is the person by whom the liquor was sold or supplied—
    - (i) in the case of contravention of subsection (1)(a)—that the defendant believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated; or
    - (ii) in the case of contravention of subsection (1)(b)—that the defendant believed on reasonable grounds that the impairment of the speech, balance, coordination or behaviour of the person to whom it was sold or supplied was not the result of the consumption of liquor; or

- (b) if the defendant is the licensee or responsible person for the licensed premises and did not personally sell or supply the liquor—that the defendant exercised proper care to prevent the sale or supply of liquor in contravention of subsection (1).

## **Division 9—Miscellaneous requirements**

### **109—Copy of licence to be kept on licensed premises**

- (1) A licensee must keep a copy of the licence, showing all conditions of, and endorsements on, the licence displayed at or near the front entrance to the licensed premises at all times.
- (2) A person who fails, without reasonable excuse, to comply with subsection (1) is guilty of an offence.

Maximum penalty: \$10 000.

Expiation fee: \$1 200.

### **109A—Records of liquor transactions**

- (1) A licensee must keep records of all transactions involving the sale or purchase of liquor.
- (2) The records—
  - (a) must be kept in the form required by the licensing authority; and
  - (b) must contain the information required by the licensing authority; and
  - (c) must be made up as soon as practicable after the transactions to which they relate.
- (3) A person who is required by this section to keep records must retain the records in this State for 6 years after the date on which they were compiled.
- (4) A person who fails to keep or retain records as required by this section is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

### **109B—Returns**

- (1) A licensee must, if so required by the Commissioner, lodge returns with the Commissioner containing information the Commissioner requires relating to transactions involving the sale or purchase of liquor or other matters specified by the Commissioner for the purposes of this Act.
- (2) If returns are required under subsection (1), they must be lodged at the times, or periodic intervals, specified by the Commissioner.
- (3) If a licensee—
  - (a) fails to lodge a return as required under this section; or
  - (b) includes in such a return information that is false or misleading in a material particular,

the licensee is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: for an offence against paragraph (a)—\$315.

## Part 7—Minors

### 110—Sale of liquor to minors

- (1) If liquor is sold or supplied to a minor on licensed premises by or on behalf of the licensee, the licensee, the responsible person for the licensed premises, and the person by whom the liquor is sold or supplied are each guilty of an offence.

Maximum penalty:

- (a) in the case of the licensee or responsible person—

(i) for a first offence—\$20 000;

(ii) for a second or subsequent offence—\$40 000;

- (b) in any other case—\$5 000.

- (1a) If a licensee sells or supplies liquor to a minor otherwise than on licensed premises, the licensee is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$20 000;

- (b) for a second or subsequent offence—\$40 000.

- (2) A licensee who permits a minor to consume liquor on the licensed premises is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$20 000;

- (b) for a second or subsequent offence—\$40 000.

- (3) It is a defence to a charge of an offence against subsection (1), (1a) or (2) to prove that—

(a) the licensee or some person acting on behalf of the licensee required the minor to produce evidence of age that complies with the requirements of the regulations; and

(b) the minor made a false statement, or produced false evidence, in response to that requirement; and

(c) in consequence the person who served the minor reasonably assumed that the minor was of or above the age of 18 years.

- (4) If a person, acting at the request of a minor, purchases liquor on behalf of the minor on licensed premises, that person and the minor are each guilty of an offence.

Maximum penalty: \$5 000.

- (5) This section does not apply to the gratuitous supply of liquor to, or the consumption of liquor by, a minor if—

(a) —

(i) the liquor is supplied by a parent or guardian of the minor; and

- (ii) the minor is a child of—
    - (A) the licensee; or
    - (B) a responsible person for the licensed premises; or
    - (C) an employee of the licensee,and is resident on the licensed premises; or
  - (b) the minor is enrolled in a tertiary educational course declared by the regulations to be an approved course for the purposes of section 30 and the liquor is supplied to the minor as part of that course.
- (6) In this section—
- licensed premises* includes areas appurtenant to the licensed premises.

### **111—Areas of licensed premises may be declared out of bounds to minors**

- (1) A licensee may, with the approval of the licensing authority, declare any part of the licensed premises (not being a dining room or bedroom) to be out of bounds to minors.
- (2) If a part of licensed premises is declared out of bounds to minors, a notice of that fact, in the prescribed form, must be erected at each entrance to that part of the licensed premises.
- (3) If a minor (not being a child of the licensee or a responsible person for the licensed premises) enters a part of licensed premises that has been declared to be out of bounds to minors, and in respect of which notices have been erected, under this section, an authorised person may require the minor to leave, and, if the minor fails to do so, may exercise reasonable force to remove the minor.
- (4) An approval may be granted under subsection (1) on such conditions as the licensing authority thinks fit.

### **112—Minors not to enter or remain in certain licensed premises**

- (1) A minor—
  - (a) may not enter, or remain in, a part of licensed premises subject to an entertainment venue licence (other than a part of the licensed premises approved by the licensing authority) between the hours of 9 pm on one day and 5 am of the next; and
  - (b) may not enter, or remain in, a part of licensed premises subject to a licence of some other class (other than a dining room, a bedroom or some other part of the licensed premises approved by the licensing authority) between the hours of midnight and 5 am if liquor may be sold in the relevant part of the licensed premises at that time.
- (2) If a minor enters or remains in licensed premises in contravention of this section or in contravention of a condition of the licence, an authorised person may require the minor to leave, and, if the minor fails to do so, may exercise reasonable force to remove the minor.
- (3) If a minor enters or remains in licensed premises or any part of licensed premises in contravention of this section or in contravention of a condition of the licence, the minor and the licensee are each guilty of an offence.

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- (4) If a licensee is charged with an offence against subsection (3), it is a defence to prove that the licensee took reasonable care to prevent minors from entering or remaining on the relevant part of the licensed premises at the relevant time.
  - (5) A licensee must ensure that a notice in the prescribed form is displayed at each entrance of licensed premises, or part of licensed premises, at any time when access is prohibited to minors under this section or under a condition of the licence.
  - (6) This section does not apply in relation to minors of a class exempted by the regulations from its ambit.

### **113—Notice to be erected**

- (1) A licensee must ensure that a notice in the prescribed form is displayed in a prominent position in each part of the licensed premises to which access is permitted to minors by the licensee—
  - (a) stating—
    - (i) the minimum age at which liquor may be consumed in the licensed premises; and
    - (ii) that persons suspected of being under the minimum age may be required to provide evidence of their age; and
    - (iii) that minors are prohibited from obtaining or consuming liquor on the licensed premises; and
    - (iv) the penalties for the unlawful obtaining or consumption of liquor on licensed premises by a minor; and
  - (b) including any other information required under the regulations.
- (2) A licensee who fails to comply with this section is guilty of an offence.  
Maximum penalty: \$10 000.  
Expiation fee: \$1 200.

### **114—Offences by minors**

- (1) A minor who obtains or consumes liquor in regulated premises is guilty of an offence.
- (2) A person who supplies liquor to a minor in regulated premises is guilty of an offence.
- (3) This section does not apply to the gratuitous supply of liquor to, or the consumption of liquor by, a minor on licensed premises if—
  - (a) —
    - (i) the liquor is supplied to the minor by a parent or guardian of the minor; and
    - (ii) the minor is a child of—
      - (A) the licensee; or
      - (B) a responsible person for the licensed premises; or
      - (C) an employee of the licensed premises,
 and is resident on the licensed premises; or

- (b) the minor is enrolled in a tertiary educational course declared by the regulations to be an approved course for the purposes of section 30 and the liquor is supplied to the minor as part of that course.

### 115—Evidence of age may be required

- (1) If a prescribed person suspects on reasonable grounds that a person (the *suspected minor*) is under the age of 18 years, the prescribed person may require the suspected minor to produce evidence that complies with the requirements of the regulations if—
  - (a) the suspected minor is on regulated premises; or
  - (b) the suspected minor is, or has recently been, in possession of liquor in a public place.
- (2) A person who—
  - (a) fails, without reasonable excuse, to comply with a requirement under this section; or
  - (b) makes a false statement, or produces false evidence, in response to such a requirement,

is guilty of an offence.

- (3) In this section—

*prescribed person* means—

- (a) in relation to regulated premises or a public place—an inspector or a police officer;
- (b) in relation to regulated premises—the occupier or manager of the premises or an agent or employee of the occupier.

### 116—Power to require minors to leave licensed premises

- (1) If an authorised person suspects on reasonable grounds that a person on licensed premises—
  - (a) is under the age of 18 years; and
  - (b) is on the licensed premises for the purpose of consuming liquor in contravention of this Act,the authorised person may require that person to leave the licensed premises.
- (2) If a person fails to comply forthwith with a requirement under subsection (1), an authorised person may remove the person from the licensed premises, using such force as may be reasonably necessary for the purpose.
- (3) If a person re-enters licensed premises within 24 hours of being required to leave, or being removed from, the licensed premises under this section—
  - (a) the person is guilty of an offence; and
  - (b) an authorised person may remove the person from the licensed premises using such force as may be reasonably necessary for the purpose.

- (4) In this section—

*licensed premises* includes areas appurtenant to licensed premises.



## **117—Minors may not consume or possess liquor in public places**

- (1) A minor who consumes or has possession of liquor in a public place is guilty of an offence.
- (2) A person who supplies liquor to a minor in a public place is guilty of an offence.  
Maximum penalty: \$5 000.
- (3) This section does not apply to the consumption or possession of liquor by, or the supply of liquor to, a minor who is in the company of an adult guardian or spouse of the minor.
- (4) In this section—

*guardian* in relation to a minor, means a parent (including a step-parent) or legal guardian of the minor.

## **Part 7A—Offensive or disorderly conduct**

### **117A—Offensive or disorderly conduct**

- (1) A person must not behave in an offensive or disorderly manner in licensed premises or in the vicinity of licensed premises.  
Maximum penalty: \$1 250.  
Expiation fee: \$160.
- (2) This section does not apply to any behaviour involving violence or a threat of violence.

## **Part 8—Disciplinary action**

### **118—Application of Part**

- (1) This Part applies to—
  - (a) a person who is or has been licensed or approved under this Act;
  - (b) a person who has sold liquor without a licence;
  - (c) a person who occupies or has occupied a position of authority in a licensed entity or an entity that has sold liquor without a licence;
  - (d) a person who supervises or manages or has supervised or managed a business conducted under a licence or a business in the course of which liquor has been sold without a licence;
  - (e) an unlicensed person who has entered into an arrangement contrary to this Act with a licensee;
  - (f) a lessor of licensed premises.
- (2) This Part does not apply to a person approved as a crowd controller under Part 4 Division 10A.

## 119—Cause for disciplinary action

- (1) There is proper cause for disciplinary action against a person to whom this Part applies—
  - (a) if the person has improperly obtained a licence or approval under this Act; or
  - (b) in relation to a business that is being or has been conducted under a licence—
    - (i) if liquor has been sold or supplied contrary to this Act or without proper authority under this Act; or
    - (ii) if there has been a breach of a condition of the licence; or
    - (iii) if the licensed premises have been altered without the approval of the licensing authority; or
    - (iv) if the licensed premises are or have been in disrepair or in an unsatisfactory condition; or
    - (v) if the safety, health or welfare of persons resorting to the licensed premises is or has been endangered by neglect of the premises or neglect in the conduct, supervision or management of the business; or
    - (vi) if a person has been convicted of unlawful gaming in respect of events occurring (wholly or partly) on the licensed premises; or
    - (via) if there has been a breach of a provision of this Act or the *Gaming Machines Act 1992* relating to the prevention of a person from entering, or the removal of a person from, licensed premises; or
    - (vii) if a contravention or failure to comply with an industrial award or enterprise agreement has occurred; or
    - (viii) if the business has otherwise not been properly conducted, supervised or managed in accordance with this or any other Act; or
  - (c) if the person is or has been licensed or approved under this Act but is not a fit and proper person; or
  - (d) if the person has been guilty of—
    - (i) a breach of this Act (which may be a breach by virtue of which this Part applies to the person); or
    - (ii) a breach of a term or condition of a licence; or
    - (iii) a breach of an order under this Act; or
    - (iv) a breach of an undertaking under section 119A(1)(a); or
  - (e) if the person is or has been licensed or approved under this Act but it would be contrary to the public interest if the person were to be or continue to be licensed or approved.

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- (2) In determining whether there is proper cause for disciplinary action against a person who is or has been licensed or approved under this Act, regard may be had to such evidence of the conduct (no matter when the conduct is alleged to have occurred) of the person or persons with whom the person associates (or has associated at any relevant time) as the Court considers relevant, including information that existed at the time the licence or approval was granted, regardless of whether that information was before or could have been brought before the licensing authority at that time.

### **119A—Commissioner's power to deal with disciplinary matter by consent**

- (1) If the Commissioner is of the opinion that proper grounds for disciplinary action exist, and the person liable to the disciplinary action consents to such a course of action, the Commissioner may determine not to lodge a complaint with the Court and instead—
- (a) obtain from the person an undertaking directed against continuation or repetition of the relevant conduct; or
  - (b) in the case of a person licensed under this Act, add to, or alter, the conditions of the licence; or
  - (c) in the case of a person licensed or approved under this Act, suspend or revoke the licence or approval.
- (2) The Commissioner may, in determining whether to exercise a power under this section in relation to a person, take into account any previous action under this section or a previous finding by the Court that there was proper cause for taking disciplinary action against the person.

### **120—Disciplinary action before the Court**

- (1) A complaint may be lodged with the Court alleging that proper grounds for disciplinary action exist against a specified person.
- (1a) The complaint must, subject to section 28A, state the grounds for disciplinary action.
- (2) A complaint may be lodged—
- (a) by the Commissioner; or
  - (b) by the Commissioner of Police; or
  - (c) if the subject matter of the complaint is relevant to the responsibilities of the council in whose area the licensed premises are situated—by the council.
- (3) A complaint may be lodged and disciplinary action taken against a person for conduct that constitutes an offence despite the fact that the person has not been prosecuted for the offence.
- (4) Notice of a complaint and of the time and place appointed for the hearing of the complaint must be served on the person to whom the complaint relates.

### **120A—Commissioner's power to suspend or impose conditions on approval pending disciplinary action**

- (1) The Commissioner may, if of the opinion that it is desirable to do so in the public interest—
- (a) suspend the approval of a person the subject of a complaint; or

- (b) impose conditions on the person's approval limiting the authority conferred by the approval,  
pending hearing and determination of the complaint.
- (2) If the Commissioner has exercised his or her power to suspend or impose conditions, the Court may revoke or vary the suspension or conditions imposed by the Commissioner.

### **121—Disciplinary action**

- (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:
  - (a) in the case of a person licensed under this Act, add to, or alter, the conditions of the licence;
  - (b) in the case of a person licensed or approved under this Act, suspend or revoke the licence or approval;
  - (c) in the case of any person—
    - (i) reprimand the person;
    - (ii) impose a fine not exceeding \$15 000 on the person;
    - (iii) disqualify the person from being licensed or approved under this Act.
- (2) The Court may—
  - (a) direct that a disqualification is to apply permanently;
  - (b) direct that a suspension or disqualification is to apply—
    - (i) for a specified period; or
    - (ii) until the fulfilment of stipulated conditions; or
    - (iii) until further order;
  - (c) direct that an order is to have effect at a specified future time or is to have effect at a specified future time unless stipulated conditions are fulfilled;
  - (d) vary an order imposing a suspension or disqualification.
- (3) If—
  - (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,the person is not liable to a fine under this section for conduct giving rise to the offence.
- (4) If a licensee is convicted of a prescribed offence and a complaint is lodged on the ground of the breach of duty leading to the conviction, the Court must—
  - (a) take disciplinary action against the licensee; and

- (b) if the conviction follows a previous conviction for a prescribed offence of a similar kind or previous disciplinary action for an incident involving the commission of a prescribed offence of a similar kind—suspend or revoke the licence unless the licensee shows cause why that action should not be taken.
- (4a) If—
- (a) the Court finds that there is proper cause for taking disciplinary action against a licensee for an incident involving the commission of an offence against this Act on licensed premises during the hours between 4 am and 7 am on any day; and
- (b) the finding follows a conviction of the licensee for such an offence committed within the previous 2 years or previous disciplinary action for an incident involving the commission of such an offence within the previous 2 years,
- the Court must alter the conditions of the licence so that the licence no longer authorises trade during the hours between 4 am and 7 am on any day unless the licensee shows cause why that action should not be taken.
- (5) A condition may be imposed under this section—
- (a) limiting the kinds of liquor that may be sold under the licence;
- (b) limiting the times when liquor, or liquor of a particular kind, may be sold under the licence;
- (c) limiting in some other way the authority conferred by the licence.
- (6) An order imposing a fine may be registered in the Magistrates Court or the District Court and enforced as an order of the court in which it is registered.
- (7) In this section—
- prescribed offence*** means—
- (a) an offence involving the unlawful sale or supply of liquor to a minor; or
- (b) an offence involving the unlawful sale or supply of liquor to an intoxicated person or to a person in circumstances in which the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor; or
- (c) an offence involving trafficking in a controlled drug (within the meaning of the *Controlled Substances Act 1984*) in respect of events occurring (wholly or partly) on the licensed premises; or
- (d) an offence of a kind prescribed by the regulations.

## **Part 9—Special powers and enforcement**

### **Division 1—Powers of entry etc**

#### **122—Powers of authorised officers**

- (1) An authorised officer may, at any reasonable time—
- (a) enter licensed premises; and
- (b) inspect licensed premises; and

- (c) require any person who has possession of books of account, or other records, relevant to a business conducted under a licence, or to transactions involving the sale or purchase of liquor, to produce those books of account or other records for inspection; and
  - (d) require any person who is in a position to provide information relating to the sale, purchase or supply of liquor to answer any question put by the authorised officer on that subject.
- (2) An authorised officer may—
  - (a) examine books of account or other records produced under this section; and
  - (b) make copies of, or take extracts from, any such books of account or other records; and
  - (c) retain the books of account or other records for a reasonable period for the purposes referred to above.
- (3) A person who—
  - (a) hinders or obstructs an authorised officer in the exercise of powers under this section; or
  - (b) fails, without reasonable excuse, to comply with a requirement of an authorised officer under this section; or
  - (c) fails, without reasonable excuse, to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer; or
  - (d) falsely represents that he or she is an authorised officer,is guilty of an offence.
- (4) A person may decline to answer a question put under this section if the answer would tend to incriminate the person of an offence.
- (6) In this section—

**authorised officer** means—

  - (a) the Commissioner; or
  - (b) an inspector; or
  - (c) a police officer.

### **123—Power to enter and search premises and confiscate liquor**

- (1) If a police officer suspects on reasonable grounds—
  - (a) that an offence against this Act is being committed on any premises; or
  - (b) that there is on licensed or other premises evidence of an offence against this Act,the officer may enter and search the premises, using the force necessary for the purpose.
- (2) A police officer may confiscate liquor that the officer suspects on reasonable grounds to have been illegally sold or supplied, or to be in the possession of a person unlawfully or for an unlawful purpose.

## **Division 2—Power to remove or refuse entry**

### **124—Power to refuse entry or remove intoxicated persons or persons guilty of offensive behaviour**

- (1) An authorised person may, if necessary, use reasonable force to remove a person from, or prevent the entry of a person onto, licensed premises if—
  - (a) the person is intoxicated; or
  - (b) the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor; or
  - (c) the person is behaving in an offensive or disorderly manner.
- (2) An authorised person may, if necessary, use reasonable force to remove a person from licensed premises if the authorised person reasonably suspects that the person has supplied, or is about to supply, liquor to another person on the licensed premises in circumstances in which—
  - (a) that other person is intoxicated; or
  - (b) that other person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor.
- (2a) If a licensee or a responsible person for licensed premises requests a police officer to exercise a power conferred by this section in relation to a person, the police officer must do so if satisfied that the power may be exercised in relation to the person under this section.
- (3) A person removed from licensed premises under this section who re-enters the licensed premises within 24 hours of being removed from them is guilty of an offence.
- (4) A person who—
  - (a) is removed from licensed premises, or refused entry to, or prevented from entering, licensed premises under this section; and
  - (b) enters or attempts to enter the licensed premises within the following 24 hours,is guilty of an offence.
- (5) A police officer may arrest, without warrant, any person who commits an offence against subsection (4).

## **Division 3—Power to bar**

### **Subdivision 1—Interpretation**

#### **124A—Interpretation**

In this Division, a reference to *licensed premises* or *premises* includes a reference to areas adjacent to the licensed premises that are under the control of the licensee for the licensed premises.

## Subdivision 2—Licensee barring orders

### 125—Licensee barring orders

- (1) A licensee or a responsible person for licensed premises may, by order served on a person, bar the person from entering or remaining on the licensed premises for a specified period, not exceeding any applicable limit fixed by this section—
  - (aa) if the licensee or responsible person is satisfied that the welfare of the person, or the welfare of a person residing with the person, is seriously at risk as a result of the consumption of alcohol by the person; or
  - (a) if the person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises; or
  - (b) on any other reasonable ground.
- (1a) A police officer may provide a licensee or responsible person for licensed premises with information about a person (including photographic and other information that may identify the person) for either or both of the following purposes:
  - (a) for the purposes of subsection (1);
  - (b) to identify a person who has been barred from premises under that subsection.
- (2) A person who enters or remains on licensed premises from which he or she is barred under this section is guilty of an offence.  
Maximum penalty: \$1 250.
- (3) A licensee or a responsible person for licensed premises may, by subsequent order served on a person, revoke an order.
- (4) A licensee, a responsible person for licensed premises or an employee of the licensee who allows a person to enter or remain on licensed premises from which the person is barred is guilty of an offence.  
Maximum penalty: \$1 250.
- (5) A person may be barred under this section—
  - (a) if the person is barred under subsection (1)(aa)—for an indefinite period or any specified period; or
  - (b) in any other case—
    - (i) if the person has not previously been barred from entering or remaining on the licensed premises—for a period not exceeding 3 months or such longer period as may be approved by the Commissioner; or
    - (ii) if the person has on one previous occasion been barred from entering or remaining on the licensed premises—for a period not exceeding 6 months or such longer period as may be approved by the Commissioner; or
    - (iii) if the person has on at least 2 previous occasions been barred from entering or remaining on the licensed premises—for an indefinite period or any specified period.



- (6) If a person is barred under this section for an indefinite period or a period exceeding 6 months, the order will cease to have effect unless, within 7 days of the service of the order, the Commissioner is provided with—
- (a) in the case of an order under subsection (1)(aa)—details of the information in response to which the order was made; or
  - (b) in any other case—details of the conduct giving rise to the order.

### **Subdivision 3—Police barring orders**

#### **125A—Commissioner of Police barring orders**

- (1) The Commissioner of Police may, by order served on a person, bar the person from entering or remaining on—
- (a) specified licensed premises; or
  - (b) licensed premises of a specified class; or
  - (c) licensed premises of a specified class within a specified area; or
  - (d) all licensed premises within a specified area,
- for an indefinite period or a period specified in the order on any reasonable ground.
- (2) The Commissioner of Police may revoke an order under this section barring a person from premises by subsequent order served on the person.
- (3) The Commissioner of Police may delegate his or her power under this section to a Deputy Commissioner or an Assistant Commissioner of Police.
- (4) A delegation under this section—
- (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the Commissioner of Police to act in any matter; and
  - (d) is revocable at will by the Commissioner of Police.

#### **125B—Police officer barring orders**

- (1) Subject to this section, a police officer may, on the authorisation of a senior police officer, by order (a *barring order*) served on a person, bar the person from entering or remaining on—
- (a) specified licensed premises; or
  - (b) licensed premises of a specified class; or
  - (c) licensed premises of a specified class within a specified area; or
  - (d) all licensed premises within a specified area,
- for a specified period not exceeding any applicable limit fixed by this section—
- (e) if the police officer is satisfied that the welfare of the person, or the welfare of a person residing with the person, is seriously at risk as a result of the consumption of alcohol by the person; or

- (f) if the person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises; or
  - (g) on any other reasonable ground.
- (2) A police officer may, on the authorisation of a senior police officer, vary or revoke an order under this section barring a person from premises by subsequent order served on the person.
- (3) The following provisions apply in relation to an order under this section:
  - (a) in the case of a barring order made on the grounds referred to in subsection (1)(e)—the order remains in force for an indefinite period, or the period specified in the order;
  - (b) in the case of a barring order made on the grounds referred to in subsection (1)(f) or (g) and authorised by a senior police officer of or above the rank of Inspector—the order remains in force—
    - (i) if the person has not previously been barred under this section—for the period specified in the order (which may not exceed 3 months); or
    - (ii) if the person has on 1 previous occasion been barred under this section—for the period specified in the order (which may not exceed 6 months); or
    - (iii) if the person has on at least 2 previous occasions been barred under this section—for an indefinite period or the period specified in the order;
  - (c) in the case of a barring order made on the grounds referred to in subsection (1)(f) or (g) and authorised by a senior police officer of or above the rank of Sergeant or in charge for the time being of a police station—the order remains in force for a period specified in the order (which may not exceed 72 hours).
- (4) An authorisation to issue a barring order under this section may be granted orally or in writing but a written record must be kept of—
  - (a) the name, rank and identification number of the senior police officer giving the authorisation; and
  - (b) the name, rank and identification number of the police officer requesting the authorisation; and
  - (c) details of the conduct giving rise to the request; and
  - (d) the following details relating to the barring order:
    - (i) the name of the person barred under the order; and
    - (ii) the licensed premises from which the person has been barred under the order; and
    - (iii) the grounds on which the issuing of the order is authorised; and
    - (iv) the period for which the order remains in force.

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- (5) For the purposes of subsection (2), a condition or limitation under this section in relation to the making of a particular barring order extends to a variation or revocation of the order under that subsection.
- (6) In this section—
- senior police officer* means—
- (a) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(e)—a police officer of or above the rank of Inspector;
  - (b) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(f) or (g)—
    - (i) if the order is to be made for a period exceeding 72 hours—a police officer of or above the rank of Inspector; or
    - (ii) in any other case—a police officer of or above the rank of Sergeant or in charge for the time being of a police station.

### 125C—Offences

- (1) A person who enters or remains on licensed premises from which he or she is barred under this Subdivision is guilty of an offence.  
Maximum penalty: \$1 250.
- (2) A licensee, a responsible person for licensed premises, or an employee of the licensee, who knows or ought reasonably to know that a person has been barred from licensed premises under this Subdivision and who allows a person to enter or remain on those premises, is guilty of an offence.  
Maximum penalty: \$1 250.

### 125D—Evidence

- (1) In proceedings for an offence against this Subdivision, a certificate apparently signed by a police officer of or above the rank of Inspector stating that a person was barred from licensed premises under this Subdivision for the period specified in the certificate will be accepted, in the absence of proof to the contrary, as proof of the matters stated in the certificate.
- (2) In proceedings for an offence against this Subdivision, a certificate apparently signed by a police officer of or above the rank of Inspector stating—
- (a) that an authorisation under section 125B was given; and
  - (b) that the authorisation authorised the making of an order under this Subdivision; and
  - (c) the grounds on which the authorisation was given,
- will be accepted, in the absence of proof to the contrary, as proof of the matters stated in the certificate.

### Subdivision 4—Miscellaneous

#### 125E—Power to require personal details

- (1) A police officer may, for the purposes of this Division, require a person to state all or any of the person's personal details.

- (2) If a police officer has reasonable cause to suspect that a personal detail as stated in response to a requirement under subsection (1) is false, the officer may require the person making the statement to produce evidence of the correctness of the personal detail as stated.
- (3) A person who—
- (a) refuses or fails, without reasonable excuse, to comply with a requirement under subsection (1) or (2); or
  - (b) in response to a requirement under subsection (1) or (2)—
    - (i) states a personal detail that is false; or
    - (ii) produces false evidence of a personal detail,
- is guilty of an offence.
- Maximum penalty: \$1 250.
- (4) A police officer who has required a person to state all or any of the person's personal details under this section is required to comply with a request to identify himself or herself, by—
- (a) producing his or her police identification; or
  - (b) stating orally or in writing his or her surname, rank and identification number.
- (5) In this section—
- personal details***, in relation to a person, means—
- (a) the person's full name; and
  - (b) the person's date of birth; and
  - (c) the person's residential address; and
  - (d) the person's business address.

## **126—Orders**

- (1) An order under this Division must be in writing in a form prescribed by regulation.
- (1a) If a person has been barred from premises by order under Subdivision 3, the relevant licensee must, within 14 days of the service of the order, be provided with—
- (a) a copy of the order; and
  - (b) information that identifies the person,
- (but a failure to comply with this subsection does not affect the operation of the order).
- (2) A copy of the order must be kept at the licensed premises to which the order relates.

## **127—Power to remove person who is barred**

- (1) If a person is on premises from which the person is barred under this Division, an authorised person may require that person to leave the premises.
- (2) If a person who is barred from premises under this Division—
- (a) seeks to enter the premises; or

(b) refuses or fails to comply with a requirement under subsection (1),  
an authorised person may prevent the person from entering the premises, or remove the person from the premises, using the force reasonably necessary for the purpose.

## 128—Review of orders

- (1) A person in respect of whom one or more orders have been made under this Division barring the person from premises—
  - (a) for a period exceeding 1 month; or
  - (b) for periods exceeding 1 month in aggregate during a period of 3 months,may apply to the licensing authority for a review of the order under which the person is barred from the premises.
- (1a) The licensee of the premises must be given reasonable notice by the licensing authority of the hearing of an application under this section and is entitled to appear at the hearing personally or by a representative.
- (2) The licensing authority may, on the hearing of an application under this section, confirm, vary or revoke the order.
- (2a) If, on the hearing of an application under this section in relation to an order under which the applicant has been barred from premises for an indefinite period or a period exceeding 6 months, the licensing authority is of the opinion that it is appropriate to vary the order so that the person is barred from entering or remaining on the premises until further order of the Commissioner, the licensing authority may so vary the order.
- (2b) When the Commissioner is determining whether to make an order under subsection (2a), the Commissioner must have regard to whether the person has undertaken a behaviour management course, obtained medical assistance or taken other action to address the problem.
- (3) A decision of the Commissioner under this section is not subject to review.
- (4) The licensing authority has an absolute discretion to suspend an order pending determination of an application for review of the order.
- (5) In this section—

*licensing authority* means—

- (a) if the order was made barring the person from premises for an extended period approved by the Commissioner under section 125(5)(b)(i) or (ii)—the Court;
- (b) in any other case—the Commissioner.

## 128A—Report to Minister on barring orders

- (1) The Commissioner must, on or before 30 September in each year (other than the calendar year in which this section comes into operation), provide a report to the Minister specifying the following information in relation to the financial year ending on the preceding 30 June:
  - (a) in relation to an order made under Subdivision 2 barring a person from licensed premises for an indefinite period or a period exceeding 6 months—

- (i) in the case of orders made under section 125(1)(aa) (a *welfare order*)—
    - (A) the number of welfare orders made; and
    - (B) the location of the licensed premises from which the persons were barred;
  - (ii) in any other case—
    - (A) the number of orders made; and
    - (B) statistical information about the type of conduct giving rise to the orders; and
    - (C) the location of the licensed premises from which the persons were barred;
  - (b) in relation to an order made under Subdivision 3 because of information classified by the Commissioner of Police as criminal intelligence—
    - (i) the number of orders made; and
    - (ii) the location of the licensed premises from which the persons were barred; and
    - (iii) statistical information about—
      - (A) the period for which the orders have effect; and
      - (B) the age, gender, race and residential postcode of the persons barred;
  - (c) the number of reviews of orders conducted under section 128 and the outcome of any such review.
- (2) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

## **Division 4—Public order and safety**

### **128B—Power of Commissioner to issue public order and safety notice**

- (1) The Commissioner may, in his or her absolute discretion, issue a public order and safety notice in respect of a licence if the Commissioner considers that the notice is necessary or desirable to address an issue or perceived issue of public order and safety or to mitigate adverse consequences arising from an issue or perceived issue of public order and safety.
- (2) A public order and safety notice may—
  - (a) vary or suspend a condition of the licence; or
  - (b) impose a condition on the licence; or
  - (c) vary the trading hours fixed by the licensing authority in relation to the licence; or
  - (d) require the licensed premises to be closed and remain closed for specified hours, despite a requirement of this Act to keep the premises open to the public during those hours; or

- (e) suspend the licence.
- (3) Unless the urgency of the circumstances require otherwise, the Commissioner must, before issuing a public order and safety notice in respect of a licence, give the licensee a reasonable opportunity to make submissions about the making of the notice and its proposed terms (however, failure to comply with this subsection does not affect the validity of the notice).
- (4) A public order and safety notice in respect of a licence takes effect when served on the licensee or at a later time specified in the notice and remains in force for a period of not more than 72 hours specified in the notice.
- (5) A public order and safety notice in respect of a licence may not be issued except with the approval of the Minister if the licence has been subject to another public order and safety notice within the 72 hours immediately preceding the period for which the notice would apply.
- (6) A public order and safety notice in respect of a licence may be varied or revoked by the Commissioner by notice in writing served on the licensee.
- (7) The Commissioner must include in the Commissioner's annual report to the Minister a record of—
  - (a) the number of notices issued under this section during the period to which the report relates; and
  - (b) in relation to each notice issued during that period—
    - (i) the licence in relation to which the notice was issued; and
    - (ii) the period for which the notice was in force; and
    - (iii) the grounds on which the notice was issued; and
  - (c) any other matters the Commissioner considers relevant.
- (8) No civil liability attaches to the Commissioner or the Crown in respect of an act or omission in good faith in the making, variation or revocation of a public order and safety notice.

### **128C—Power of police to clear or close licensed premises etc**

- (1) If a senior police officer believes on reasonable grounds that it would be unsafe for members of the public to enter or remain in a licensed premises or part of a licensed premises because of conditions temporarily prevailing there, the officer may—
  - (a) order persons to leave the premises or part of the premises immediately; or
  - (b) order the licensee immediately to remove persons from the premises or part of the premises; or
  - (c) order the licensee to take other specified action to rectify the situation immediately or within a specified period; or
  - (d) if an order under paragraph (a), (b) or (c) is not obeyed, take action to carry out the order; or

- (e) if satisfied that the safety of persons cannot reasonably be ensured by other means, order the licensee to close the premises or part of the premises immediately and for such period as the officer considers necessary (but not exceeding 24 hours) for the alleviation of the danger; or
  - (f) if a closure order under paragraph (e) cannot for any reason be given to the licensee, or if a closure order, having been given to the licensee, is not immediately obeyed, take action to close the premises or part of the premises for such period as the officer considers necessary (but not exceeding 24 hours) for the alleviation of the danger.
- (2) If a person given an order under this section refuses or fails to obey the order, the person is guilty of an offence.  
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (3) An order under this section may be given orally or by notice in writing.
- (4) If a closure order under this section is given orally, the officer must as soon as practicable cause a written notice containing the order to be served on the licensee.
- (5) When a senior police officer is satisfied that the danger has been alleviated, he or she may revoke an order under this section.
- (6) A senior police officer may authorise another police officer to issue an order under subsection (1) if satisfied (whether on the basis of his or her own observations or the report of another police officer) that urgent action is required.
- (7) A police officer may use such force to enter a place, or to take other action under this section, as is reasonably necessary for the purpose.
- (8) The Commissioner of Police must include in his or her annual report to the Minister to whom the administration of the *Police Act 1998* is for the time being committed a record of—
  - (a) the number of orders made under this section during the period to which the report relates; and
  - (b) in relation to each order made during that period—
    - (i) the licensed premises or part of licensed premises in relation to which the order was made; and
    - (ii) the period for which the order was in force; and
    - (iii) the grounds on which the order was made; and
  - (c) any other matters the Commissioner of Police considers relevant.
- (9) This section does not derogate from the powers of a police officer under any other Act or law.
- (10) In this section—  
**senior police officer** means a police officer of or above the rank of inspector.



## Part 10—Unlawful consumption of liquor

### 129—Consumption on regulated premises

- (1) If regulated premises are unlicensed, a person who consumes liquor on the premises is guilty of an offence.
- (2) If regulated premises are unlicensed, a person who supplies liquor on or in the vicinity of the premises for consumption on the premises is guilty of an offence.

### 130—Unlawful consumption of liquor

- (1) If—
  - (a) a prescribed entertainment is held on unlicensed premises; and
  - (b) the organisers of the entertainment have stipulated, in a manner calculated to come to the attention of those attending the entertainment, that no liquor is to be consumed on, or brought onto, the premises during the entertainment,a person who consumes liquor on or in a place adjacent to the premises during a period commencing 30 minutes before the entertainment commences and ending 30 minutes after it concludes is guilty of an offence.
- (2) This section does not prevent the consumption of liquor on licensed premises.
- (3) It is a defence to a charge of an offence against this section to prove the defendant—
  - (a) did not come to the relevant place for the purpose of attending or participating in the entertainment or for any other purpose connected with the entertainment; and
  - (b) did not know and could not reasonably be expected to have known of the circumstances rendering the consumption of liquor in that place unlawful.
- (4) In this section—

*prescribed entertainment* means—

  - (a) a dance;
  - (b) any other entertainment declared by regulation to be a prescribed entertainment for the purposes of this section.

### 131—Control of consumption etc of liquor in public places

- (1) A person who, in a public place—
  - (a) consumes liquor; or
  - (b) has possession of liquor,in contravention of a prohibition imposed by regulation is guilty of an offence.  
Maximum penalty: \$1 250.  
Expiation fee: \$160.
- (2) A prohibition imposed for the purposes of subsection (1)—
  - (a) may relate to a specified public place or to public places of a specified kind;
  - (b) may be absolute or conditional;

- (c) may operate continuously or at specified times.
- (3) If, in proceedings for an offence against subsection (1) constituted of the possession of liquor, the question arises as to whether the possession was lawful under section 104, the onus of proving that the possession was lawful lies on the defendant.

## **Part 10A—Prohibition of manufacture, sale or supply of certain liquor**

### **131AA—Prohibition of manufacture, sale or supply of certain liquor**

- (1) A person must not, in the course of a trade or business, manufacture, sell or supply liquor to which this section applies.  
Maximum penalty: \$10 000.
- (2) This section applies to such liquor as may be declared—
  - (a) by the Minister by notice in the Gazette; or
  - (b) by the regulations.
- (3) A declaration may only be made under this section if the Minister is satisfied that, because of its name, design or packaging or for any other reason, the liquor is likely to have a special appeal to minors or be confused with confectionery or non-alcoholic beverage.
- (4) A notice under subsection (2)(a) expires 42 days after it comes into operation or on such earlier day as is specified by the Minister in the notice or by subsequent notice in the Gazette.
- (5) Before a regulation is made under subsection (2)(b) in relation to liquor, the Minister must give manufacturers, importers and distributors of the liquor known to the Minister at least 7 days within which to comment on the proposed regulation (but failure to do so does not affect the validity of the regulation).

## **Part 11—Miscellaneous**

### **Division 1—Offences and procedure**

#### **131A—Failing to leave licensed premises on request**

- (1) If a person to whom this section applies fails, without reasonable excuse, to leave licensed premises immediately on being requested to do so by an authorised person, the person is guilty of an offence.  
Maximum penalty: \$1 250.
- (2) This section applies to a person who is on licensed premises if—
  - (a) the person is under the age of 18 years and is on the licensed premises for the purpose of consuming liquor in contravention of this Act; or
  - (b) the person is intoxicated; or
  - (c) the person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor; or

- (d) it is reasonable to suspect that the person has supplied, or is about to supply, liquor to another person on the licensed premises in circumstances in which—
  - (i) that other person is intoxicated; or
  - (ii) that other person's speech, balance, coordination or behaviour is noticeably impaired and it is reasonable to believe that the impairment is the result of the consumption of liquor; or
- (e) the person is behaving in an offensive or disorderly manner; or
- (f) the person is barred from the licensed premises under Part 9 Division 3; or
- (g) the person's presence on the licensed premises is otherwise in contravention of this Act.

### **132—Penalties**

A person who is guilty of an offence against this Act for which no penalty is specifically provided is liable to the following penalty:

- (a) if the person is, or was at the time of the offence, a licensee, a responsible person for licensed premises or an officer of a trust or corporate entity that holds a licence—a fine not exceeding \$10 000;
- (b) in any other case—a fine not exceeding \$2 500.

### **133—Recovery of financial advantage illegally obtained**

- (1) If a person, by contravention of, or non-compliance with, a provision of this Act or a condition of a licence gains any financial advantage, the Court may, on the application of the Commissioner, assess the amount of that advantage and the amount so assessed may be recovered from that person as a debt due to the Crown.
- (2) This section applies whether or not the contravention or non-compliance referred to in subsection (1) has been prosecuted as an offence.

### **134—Vicarious liability**

- (1) If a body corporate is guilty of an offence against this Act, each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the body corporate.
- (2) If the trustee of a trust for which a licence is held is guilty of an offence against this Act, every other person occupying a position of authority in the trust is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.
- (3) If there is proper cause for disciplinary action against a trust or corporate entity under Part 8, there is proper cause for disciplinary action under that Part against each person occupying a position of authority in the entity unless it is proved that the person could not, by the exercise of reasonable care, have prevented the misconduct.

### 135—Evidentiary provision

- (1) In proceedings for an offence against this Act or in disciplinary proceedings under Part 8, an allegation in the complaint—
- (a) that a substance referred to in the complaint was liquor;
  - (b) that a person named in the complaint is, or was on a specified date, a licensed person or an unlicensed person;
  - (c) that premises referred to in the complaint are, or were on a specified date, licensed premises;
  - (d) that a person named in the complaint is, or was on a specified date, a minor;
  - (e) that a licence referred to in the complaint is, or was on a specified date, subject to specified conditions;
  - (f) that a person named in the complaint is, or was on a specified date, a responsible person for licensed premises;
  - (g) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a trust or corporate entity that holds a licence under this Act;
  - (h) that a person named in the complaint is, or was on a specified date, an inspector,

must be accepted as proved in the absence of proof to the contrary.

- (2) In legal proceedings, a document apparently certified by the Commissioner to be a licence, certificate, notice or other document issued under this Act, or to be a copy of a licence, certificate, notice or other document issued under this Act, must be accepted as such in the absence of proof to the contrary.
- (3) In legal proceedings, proof that a person has advertised, or has by any other means given the impression, that the person will sell liquor must, in the absence of proof to the contrary, be accepted as proof that the person has sold liquor.
- (4) In legal proceedings, a document apparently signed by the Commissioner stating—
- (a) that a specified person has, or had on a specified date, a specified power or function because of a delegation by the Commissioner under this Act; or
  - (b) that a delegation by the Commissioner under this Act is, or was on a specified date, subject to specified conditions,

is, in the absence of proof to the contrary, proof of the facts as stated.

## Division 2—General

### 136—Service

- (1) A notice or other document may be served on a licensee—
- (a) personally; or
  - (b) by leaving it at the licensed premises, in an envelope addressed to the licensee, with a person apparently employed or engaged in the business conducted under the licence; or

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- (c) by posting it to the licensee in an envelope addressed to the licensee at the licensed premises or some other appropriate address of which the person who is to serve the notice or document has had notice; or
  - (d) by transmitting it to the licensee by fax or email to the fax number or email address last provided to the Commissioner by the licensee for that purpose.
- (2) A notice or other document may be served on any other person—
    - (a) personally; or
    - (b) if the person has nominated an address for service—by leaving it at or posting it to that address in an envelope addressed to the person; or
    - (c) by posting it to the person's usual place of business or residence in an envelope addressed to the person; or
    - (d) by leaving it at or posting it to the address of the person's solicitor in an envelope addressed to the solicitor; or
    - (e) by transmitting it to the person by fax or email to the fax number or email address last provided to the Commissioner by the person for that purpose.
  - (3) A notice or other document posted to a person under this section will be conclusively presumed to have been served on the person at the time when it would, in the ordinary course of post, reach the address to which it was posted.
  - (4) A notice or other document transmitted to a person under this section will be conclusively presumed to have been served on the person at the time of transmission.

### **137A—Destruction of fingerprints**

- (1) This section applies—
  - (a) to fingerprints taken under section 55 in connection with an application for a licence or approval if the application is refused; or
  - (b) to fingerprints taken under section 55 in connection with an application for a licence or approval if the application is granted and—
    - (i) in the case of a licence—the licence expires or is revoked or surrendered, or the holder, being a body corporate, dissolved; or
    - (ii) in the case of an approval—the approval is revoked.
- (2) A person whose fingerprints have been taken for the purposes of this Act may, if the fingerprints are fingerprints to which this section applies, apply to the Commissioner of Police to have the fingerprints, and any copies of the fingerprints, destroyed.
- (3) The Commissioner of Police may grant or refuse the application as the Commissioner of Police sees fit.

### **137B—Procedures to be observed by authorised persons in prevention of persons from entering, and removal of persons from, licensed premises**

- (1) The regulations may prescribe procedures to be observed by authorised persons in or in connection with the prevention of persons from entering, or the removal of persons from, licensed premises or a part of licensed premises.

- (2) The regulations may prescribe procedures to be observed by authorised persons in or in connection with the removal of minors from licensed premises or a part of licensed premises.
- (3) An authorised person must comply with the procedures (if any) prescribed under this section.

### **138—Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) A regulation may be of general or limited application and may vary in operation according to factors stated in the regulation.
- (3) A regulation may provide that contravention of or non-compliance with the regulation constitutes a summary offence punishable—
  - (a) if the convicted person is, or was at the time of the offence, a licensee, a responsible person for licensed premises or an officer of a trust or corporate entity that holds a licence—by a fine not exceeding \$10 000;
  - (b) in any other case—by a fine not exceeding \$1 250.
- (4) A regulation may prescribe an expiation fee for an alleged offence against the regulations not exceeding—
  - (a) if the alleged offender is, or was at the time of the offence, a licensee, a responsible person for licensed premises or an officer of a trust or corporate entity that holds a licence—\$1 200; or
  - (b) in any other case—\$160.
- (5) A regulation may provide for the Commissioner to waive, reduce or refund fees payable under this Act.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Liquor Licensing Act 1997* repealed the following:

*Liquor Licensing Act 1985*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1997	65	<i>Liquor Licensing Act 1997</i>	7.8.1997	1.10.1997 ( <i>Gazette 25.9.1997 p874</i> ) except ss 80—93, s 96 and the third example in Sch cl 4 were deleted by 49/1998 without coming into operation
1998	2	<i>Liquor Licensing (Licensed Clubs) Amendment Act 1998</i>	5.3.1998	19.3.1998 ( <i>Gazette 19.3.1998 p1514</i> )
1998	49	<i>Liquor Licensing (Licence Fees) Amendment Act 1998</i>	3.9.1998	8.10.1998 ( <i>Gazette 8.10.1998 p1058</i> )
2000	35	<i>Liquor Licensing (Regulated Premises) Amendment Act 2000</i>	6.7.2000	6.7.2000
2000	55	<i>Liquor Licensing (Miscellaneous) Amendment Act 2000</i>	20.7.2000	1.9.2000 ( <i>Gazette 24.8.2000 p592</i> )
2001	18	<i>Statutes Amendment (Gambling Regulation) Act 2001</i>	31.5.2001	Pt 6 (ss 42 & 43)—1.10.2001 ( <i>Gazette 13.9.2001 p4116</i> )
2002	2	<i>Liquor Licensing (Miscellaneous) Amendment Act 2002</i>	25.7.2002	8.8.2002 ( <i>Gazette 8.8.2002 p3009</i> )
2002	34	<i>Statutes Amendment (Corporations—Financial Services Reform) Act 2002</i>	28.11.2002	Pt 8 (s 21)—1.8.2003 ( <i>Gazette 10.7.2003 p2913</i> )
2004	3	<i>Liquor Licensing (Miscellaneous) Amendment Act 2004</i>	4.3.2004	25.3.2004 ( <i>Gazette 25.3.2004 p937</i> )

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2005	22	<i>Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005</i>	9.6.2005	Pt 3 (ss 25—34, 35(1), 36—38, 39(1), 40(1), 41 & 42) & Sch 1 (cl 2)—8.12.2005 ( <i>Gazette 8.12.2005 p4195</i> ); ss 35(2), (3), 39(2), (3) & 40(2), (3) impliedly repealed by 37/2006 ss 8(2), 9(2) & 10—the provisions amended were subsequently deleted
2005	57	<i>Liquor Licensing (Exemption for Tertiary Institutions) Amendment Act 2005</i>	17.11.2005	17.11.2005
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 46 (ss 158—161)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
2006	37	<i>Liquor Licensing (Authorised Persons) Amendment Act 2006</i>	14.12.2006	1.2.2007: s 2
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 52 (s 148)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2007	52	<i>Liquor Licensing (Certificates of Approval) Amendment Act 2007</i>	29.11.2007	13.12.2007 ( <i>Gazette 13.12.2007 p4811</i> )
2008	48	<i>Statutes Amendment (Power to Bar) Act 2008</i>	4.12.2008	Pt 2 (ss 4—11)—1.3.2009 ( <i>Gazette 26.2.2009 p765</i> ) except new s 28A(5f) (as inserted by s 5(2))—4.12.2010 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2009	61	<i>Liquor Licensing (Producers, Responsible Service and Other Matters) Amendment Act 2009</i>	26.11.2009	3.5.2010 ( <i>Gazette 18.2.2010 p816</i> ) except ss 5 & 7—26.11.2011 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 84 (ss 199 & 200)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2011	31	<i>Statutes Amendment (Budget 2011) Act 2011</i>	4.8.2011	Pt 3 (ss 11—15)—uncommenced
<b>2011</b>	<b>40</b>	<b><i>Liquor Licensing (Miscellaneous) Amendment Act 2011</i></b>	<b>3.11.2011</b>	<b>30.1.2012 except ss 4, 5, 12—42 &amp; Sch 1—5.3.2012 (<i>Gazette 27.1.2012 p372</i>)</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.8.2003
Pt 1		
s 2	<i>deleted by 2/2002 Sch</i>	8.8.2002
s 3		
s 3(1)	s 3 amended and redesignated as s 3(1) by 2/2002 s 3(a), (b)	8.8.2002
s 3(2)	inserted by 2/2002 s 3(b)	8.8.2002
s 4		
approved crowd controller	inserted by 22/2005 s 25(1)	8.12.2005



<i>assessment period</i>	<i>deleted by 49/1998 s 3</i>	8.10.1998
authorised person	inserted by 37/2006 s 4	1.2.2007
<b>code of practice</b>	<b>inserted by 40/2011 s 4(1)</b>	<b>5.3.2012</b>
collective outlet	inserted by 61/2009 s 4(1)	3.5.2010
Commissioner	amended by 18/2001 s 42	1.10.2001
criminal intelligence	inserted by 22/2005 s 25(2)	8.12.2005
	amended by 48/2008 s 4	1.3.2009
direct sales transaction	inserted by 55/2000 s 3(a)	1.9.2000
<i>extended trade</i>	<i>amended by 3/2004 s 4</i>	25.3.2004
	<i>deleted by 40/2011 s 4(2)</i>	<b>5.3.2012</b>
<b>extended trading authorisation</b>	<b>amended by 40/2011 s 4(3)</b>	<b>5.3.2012</b>
<i>licence fee</i>	<i>deleted by 49/1998 s 3</i>	8.10.1998
<i>licence period</i>	<i>deleted by 49/1998 s 3</i>	8.10.1998
<i>low alcohol liquor</i>	<i>deleted by 49/1998 s 3</i>	8.10.1998
<i>manager</i>	<i>deleted by 2/1998 s 3</i>	19.3.1998
<b>offensive or disorderly</b>	<b>inserted by 40/2011 s 4(4)</b>	<b>5.3.2012</b>
<i>police officer</i>	<i>deleted by 2/2002 Sch</i>	8.8.2002
producer's event endorsement	inserted by 61/2009 s 4(2)	3.5.2010
production outlet	inserted by 61/2009 s 4(2)	3.5.2010
public conveyance	amended by 35/2000 s 2(a)	6.7.2000
<b>public order and safety</b>	<b>inserted by 40/2011 s 4(5)</b>	<b>5.3.2012</b>
<b>public order and safety notice</b>	<b>inserted by 40/2011 s 4(5)</b>	<b>5.3.2012</b>
regulated premises	amended by 35/2000 s 2(b), (c)	6.7.2000
related body corporate	amended by 2/2002 Sch	8.8.2002
<i>relevant assessment period</i>	<i>deleted by 49/1998 s 3</i>	8.10.1998
responsible person	inserted by 55/2000 s 3(b)	1.9.2000
retail outlet	inserted by 61/2009 s 4(3)	3.5.2010
sample	inserted by 61/2009 s 4(3)	3.5.2010
s 5		
s 5(2)	amended by 55/2000 s 4	1.9.2000
s 7		
s 7(1)	s 7 amended by 2/2002 Sch	8.8.2002
	s 7 amended and redesignated as s 7(1) by 34/2002 s 21(a)—(c)	1.8.2003
	amended by 43/2006 s 148(1)	1.6.2007
s 7(2)	inserted by 34/2002 s 21(c)	1.8.2003

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	amended by 43/2006 s 148(2)	1.6.2007
domestic partner	inserted by 43/2006 s 148(3)	1.6.2007
spouse	inserted by 43/2006 s 148(4)	1.6.2007
Pt 2		
Pt 2 Div 1		
s 8		
s 8(1)	amended by 18/2001 s 43	1.10.2001
s 8(3)	substituted by 84/2009 s 199	1.2.2010
s 11A	inserted by 61/2009 s 5	26.11.2011
s 11A		
s 11A(2)	<b>amended by 40/2011 s 5(1)</b>	<b>5.3.2012</b>
s 11A(3)	<b>substituted by 40/2011 s 5(2)</b>	<b>5.3.2012</b>
Pt 2 Div 2		
s 13A	inserted by 40/2011 s 6	30.1.2012
s 15		
s 15(3)—(7)	inserted by 40/2011 s 7	30.1.2012
s 16A	inserted by 40/2011 s 8	30.1.2012
Pt 2 Div 3		
s 17		
s 17(1)	s 17 amended and redesignated as s 17(1) by 22/2005 s 26(1), (2)	8.12.2005
s 17(2)	inserted by 22/2005 s 26(2)	8.12.2005
Pt 2 Div 4		
s 20		
s 20(1)	amended by 17/2006 s 158	4.9.2006
s 22		
s 22(4)	amended by 49/1998 s 4	8.10.1998
Pt 2 Div 5		
ss 22A—22C	inserted by 40/2011 s 9	30.1.2012
s 24		
s 24(1a)	inserted by 40/2011 s 10(1)	30.1.2012
s 24(2)	amended by 40/2011 s 10(2)	30.1.2012
s 24A	inserted by 40/2011 s 11	30.1.2012
s 25		
s 25(1)	amended by 17/2006 s 159	4.9.2006
s 27		
s 27(1)	amended by 17/2006 s 160	4.9.2006
s 28		
s 28(1)	amended by 17/2006 s 161(1)	4.9.2006
s 28(2)	amended by 17/2006 s 161(2)	4.9.2006
Pt 2 Div 6	inserted by 22/2005 s 27	8.12.2005
s 28A		
s 28A(1)	substituted by 48/2008 s 5(1)	1.3.2009

<b>s 28A(2a)</b>	<b>inserted by 40/2011 s 12</b>	<b>5.3.2012</b>
s 28A(5)	substituted by 48/2008 s 5(2)	1.3.2009
s 28A(5a)—(5e)	inserted by 48/2008 s 5(2)	1.3.2009
s 28A(5f)	inserted by 48/2008 s 5(2)	4.12.2010
s 28A(5g) and (5h)	inserted by 48/2008 s 5(2)	1.3.2009
s 28A(7)	inserted by 48/2008 s 5(3)	1.3.2009
Pt 3		
<b>s 29</b>	<b>amended by 40/2011 s 13</b>	<b>5.3.2012</b>
s 31		
<b>s 31(1)</b>	<b>amended by 40/2011 s 14</b>	<b>5.3.2012</b>
s 31(2)	amended by 55/2000 s 5	1.9.2000
s 32		
s 32(1)	amended by 55/2000 s 6	1.9.2000
	<b>substituted by 40/2011 s 15</b>	<b>5.3.2012</b>
s 33		
<b>s 33(1)</b>	<b>amended by 40/2011 s 16</b>	<b>5.3.2012</b>
s 34		
<b>s 34(1)</b>	<b>amended by 40/2011 s 17</b>	<b>5.3.2012</b>
s 34(2)	substituted by 55/2000 s 7	1.9.2000
s 35		
s 35(1)	amended by 55/2000 s 8	1.9.2000
	amended by 3/2004 s 5(1)	25.3.2004
	<b>substituted by 40/2011 s 18</b>	<b>5.3.2012</b>
s 35(2)	amended by 3/2004 s 5(2)	25.3.2004
s 36		
s 36(1)	amended by 55/2000 s 9	1.9.2000
	<b>substituted by 40/2011 s 19(1)</b>	<b>5.3.2012</b>
<b>s 36(2)</b>	<b>deleted by 40/2011 s 19(2)</b>	<b>5.3.2012</b>
s 36(3)	inserted by 2/1998 s 4	19.3.1998
s 37		
s 37(1)	amended by 55/2000 s 10	1.9.2000
s 38		
s 38(1)	amended by 55/2000 s 11(a)	1.9.2000
s 38(2)	amended by 49/1998 s 5	8.10.1998
	amended by 55/2000 s 11(b)	1.9.2000
s 39		
s 39(1)	amended by 55/2000 s 12(a)	1.9.2000
	substituted by 61/2009 s 6(1)	3.5.2010
s 39(1a)—(1f)	inserted by 61/2009 s 6(1)	3.5.2010
s 39(2)	amended by 55/2000 s 12(b)	1.9.2000
	amended by 61/2009 s 6(2)	3.5.2010
s 39(3)	substituted by 61/2009 s 6(3)	3.5.2010
s 39(4)	inserted by 61/2009 s 6(3)	3.5.2010

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<b>production of liquor</b>	<b>inserted by 40/2011 s 20</b>	<b>5.3.2012</b>
s 39A	inserted by 55/2000 s 13	1.9.2000
s 40		
<b>s 40(1)</b>	<b>substituted by 40/2011 s 21(1)</b>	<b>5.3.2012</b>
s 40(4)	inserted by 55/2000 s 14	1.9.2000
<b>s 40(5)</b>	<b>inserted by 40/2011 s 21(2)</b>	<b>5.3.2012</b>
s 41		
s 41(1)	substituted by 35/2000 s 3	6.7.2000
<b>s 41(6)</b>	<b>inserted by 40/2011 s 22</b>	<b>5.3.2012</b>
s 42		
s 42(1)	substituted by 61/2009 s 7	26.11.2011
<b>s 42(1)</b>	<b>amended by 40/2011 s 23</b>	<b>5.3.2012</b>
s 42(2)	amended by 55/2000 s 15	1.9.2000
s 43		
s 43(1)	amended by 49/1998 s 6	8.10.1998
	amended by 55/2000 s 16	1.9.2000
<b>s 43(4)</b>	<b>inserted by 40/2011 s 24</b>	<b>5.3.2012</b>
s 44		
<b>s 44(1)</b>	<b>amended by 40/2011 s 25(1)</b>	<b>5.3.2012</b>
s 44(2)	amended by 3/2004 s 6(1)	25.3.2004
s 44(4)	<i>(a) deleted by 3/2004 s 6(2)</i> <b>deleted by 40/2011 s 25(2)</b>	25.3.2004 <b>5.3.2012</b>
s 45	amended by 55/2000 s 17	1.9.2000
	amended by 61/2009 s 8	3.5.2010
	<b>amended by 40/2011 s 26</b>	<b>5.3.2012</b>
s 46		
<b>s 46(1)</b>	<b>amended by 40/2011 s 27(1)</b>	<b>5.3.2012</b>
<b>s 46(2)</b>	<b>amended by 40/2011 s 27(2)</b>	<b>5.3.2012</b>
s 48		
s 48(1)	substituted by 49/1998 s 7(a)	8.10.1998
s 48(2)	<i>deleted by 49/1998 s 7(a)</i>	8.10.1998
s 48(3)	amended by 49/1998 s 7(b)	8.10.1998
	amended by 61/2009 s 9	3.5.2010
s 50A	inserted by 31/2011 s 11	uncommenced—not incorporated
Pt 4		
Pt 4 Div 1		
s 51		
s 51(1)	amended by 61/2009 s 10	3.5.2010
s 51A	inserted by 22/2005 s 28	8.12.2005
s 52		
s 52(2a)	inserted by 61/2009 s 11	3.5.2010
s 52A	inserted by 61/2009 s 12	3.5.2010

Pt 4 Div 2		
s 53		
s 53(1a)	inserted by 22/2005 s 29	8.12.2005
s 53(2a)	inserted by 2/2002 s 4	8.8.2002
s 53(3)	amended by 31/2011 s 12	uncommenced—not incorporated
s 53(4)—(6)	inserted by 3/2004 s 7	25.3.2004
s 55		
s 55(1)	substituted by 22/2005 s 30(1)	8.12.2005
s 55(3)	inserted by 22/2005 s 30(2)	8.12.2005
Pt 4 Div 3		
s 57		
s 57(1)	amended by 55/2000 s 18(a), (b)	1.9.2000
s 57(3)	inserted by 55/2000 s 18(c)	1.9.2000
s 59		
s 59(1)	substituted by 55/2000 s 19	1.9.2000
	substituted by 52/2007 s 4	13.12.2007
s 59A	inserted by 31/2011 s 13	uncommenced—not incorporated
Pt 4 Div 4		
s 60		
s 60(1)	amended by 55/2000 s 20(a), (b)	1.9.2000
s 60(3)	inserted by 55/2000 s 20(c)	1.9.2000
s 61		
s 61(1)	amended by 2/2002 s 5	8.8.2002
s 61(2)	amended by 55/2000 s 21	1.9.2000
s 62		
s 62(1)	substituted by 55/2000 s 22	1.9.2000
	substituted by 52/2007 s 5	13.12.2007
s 62A	inserted by 61/2009 s 13	3.5.2010
Pt 4 Div 4A	inserted by 61/2009 s 14	3.5.2010
Pt 4 Div 5		
s 65		
s 65(2)	<i>deleted by 49/1998 s 8</i>	8.10.1998
Pt 4 Div 7		
s 68		
s 68(1)	amended by 61/2009 s 15	3.5.2010
Pt 4 Div 8A	inserted by 61/2009 s 16	3.5.2010
Pt 4 Div 10		
s 71		
s 71(1)	amended by 55/2000 s 23(a)	1.9.2000
s 71(1a)	inserted by 2/1998 s 5	19.3.1998
s 71(3)	amended by 55/2000 s 23(b)	1.9.2000
s 71(5)	<i>deleted by 55/2000 s 23(c)</i>	1.9.2000
Pt 4 Div 10A	inserted by 22/2005 s 31	8.12.2005

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Pt 4 Div 12		
s 73		
s 73(8)	<i>deleted by 49/1998 s 9</i>	8.10.1998
Pt 4 Div 13		
s 75A	inserted by 22/2005 s 32	8.12.2005
s 76		
s 76(1)	<i>deleted by 22/2005 s 33</i>	8.12.2005
s 77		
s 77(2)	amended by 22/2005 s 34	8.12.2005
s 77(5)	amended by 55/2000 s 24	1.9.2000
	amended by 2/2002 s 6	8.8.2002
Pt 5	<i>deleted by 49/1998 s 10</i>	8.10.1998
Pt 6		
s 97	substituted by 2/1998 s 6	19.3.1998
s 97(1)	amended by 55/2000 s 25(a), (b)	1.9.2000
s 97(1)	(a)(iii) deleted by 55/2000 s 25(c)	1.9.2000
s 97(1a)	inserted by 55/2000 s 25(d)	1.9.2000
s 97(5)	substituted by 55/2000 s 25(e)	1.9.2000
	amended by 61/2009 s 17	3.5.2010
s 97(6) and (7)	<i>deleted by 55/2000 s 25(e)</i>	1.9.2000
s 98		
s 98(1)	amended by 2/1998 s 7	19.3.1998
s 100		
s 100(2)	amended by 61/2009 s 18	3.5.2010
	<b>amended by 40/2011 s 28</b>	<b>5.3.2012</b>
s 101		
s 101(3)	amended by 61/2009 s 19	3.5.2010
	<b>amended by 40/2011 s 29</b>	<b>5.3.2012</b>
s 102		
s 102(1)	amended by 61/2009 s 20	3.5.2010
s 103		
s 103(1)	amended by 61/2009 s 21	3.5.2010
<b>s 103(4)</b>	<b>amended by 40/2011 s 30</b>	<b>5.3.2012</b>
s 103(6)	amended by 55/2000 s 26	1.9.2000
s 104	amended by 61/2009 s 22	3.5.2010
s 105		
s 105(1)	substituted by 61/2009 s 23(1)	3.5.2010
s 105(5)	amended by 61/2009 s 23(2)	3.5.2010
	<b>amended by 40/2011 s 31</b>	<b>5.3.2012</b>
s 106		
s 106(3a)	inserted by 2/2002 s 7(a)	8.8.2002
s 106(4)	amended by 2/2002 s 7(b)	8.8.2002
s 106(5) and (6)	substituted by 2/2002 s 7(c)	8.8.2002

s 106(6a)	inserted by 2/2002 s 7(c)	8.8.2002
s 106(9)	inserted by 55/2000 s 27	1.9.2000
s 107		
s 107(2)	substituted by 55/2000 s 28	1.9.2000
s 108		
s 108(1)	amended by 55/2000 s 29	1.9.2000
	substituted by 61/2009 s 24(1)	3.5.2010
	<b>amended by 40/2011 s 32</b>	<b>5.3.2012</b>
s 108(2)	amended by 55/2000 s 29	1.9.2000
	amended by 61/2009 s 24(2)	3.5.2010
s 109		
s 109(2)	amended by 61/2009 s 25	3.5.2010
s 109A	inserted by 49/1998 s 11	8.10.1998
s 109B	inserted by 49/1998 s 11	8.10.1998
s 109B(3)	amended by 61/2009 s 26	3.5.2010
Pt 7		
s 110		
s 110(1)	amended by 55/2000 s 30(a), (b)	1.9.2000
	<b>amended by 40/2011 s 33(1)</b>	<b>5.3.2012</b>
s 110(1a)	inserted by 55/2000 s 30(c)	1.9.2000
	<b>amended by 40/2011 s 33(2)</b>	<b>5.3.2012</b>
<b>s 110(2)</b>	<b>amended by 40/2011 s 33(3)</b>	<b>5.3.2012</b>
s 110(3)	amended by 55/2000 s 30(d)	1.9.2000
	amended by 61/2009 s 27(1)	3.5.2010
s 110(5)	amended by 55/2000 s 30(a)	1.9.2000
	amended by 57/2005 s 3	17.11.2005
	amended by 61/2009 s 27(2)	3.5.2010
s 111		
s 111(3)	amended by 55/2000 s 31	1.9.2000
	amended by 37/2006 s 5	1.2.2007
s 112		
s 112(2)	amended by 37/2006 s 6	1.2.2007
s 113		
s 113(2)	amended by 61/2009 s 28	3.5.2010
s 114		
s 114(3)	substituted by 55/2000 s 32	1.9.2000
	amended by 57/2005 s 4	17.11.2005
s 115		
s 115(1)	amended by 37/2006 s 7(1), (2)	1.2.2007
s 115(3)		
prescribed person	authorised person amended to read prescribed person by 37/2006 s 7(3)	1.2.2007
s 116		

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<i>s 116(3a) and (3b)</i>	<i>inserted by 22/2005 s 35(1)</i>	8.12.2005
	<i>deleted by 37/2006 s 8(1)</i>	1.2.2007
s 116(4)		
<i>authorised person</i>	<i>amended by 55/2000 s 33</i>	1.9.2000
	<i>amendment by 22/2005 s 35(2), (3) impliedly repealed by 37/2006</i>	—
	<i>deleted by 37/2006 s 8(2)</i>	1.2.2007
<b>Pt 7A</b>	<b>inserted by 40/2011 s 34</b>	<b>5.3.2012</b>
Pt 8		
s 118		
s 118(1)	s 118 redesignated as s 118(1) by 22/2005 s 36	8.12.2005
s 118(2)	inserted by 22/2005 s 36	8.12.2005
s 119		
s 119(1)	amended by 55/2000 s 34(a)	1.9.2000
	amended by 22/2005 s 37(1), (2)	8.12.2005
s 119(2)	deleted by 55/2000 s 34(b)	1.9.2000
	inserted by 22/2005 s 37(3)	8.12.2005
s 119A	inserted by 55/2000 s 35	1.9.2000
s 120		
s 120(1)	amended by 22/2005 s 38(1)	8.12.2005
s 120(1a)	inserted by 22/2005 s 38(2)	8.12.2005
<b>s 120A</b>	<b>inserted by 40/2011 s 35</b>	<b>5.3.2012</b>
s 121		
s 121(2)	amended by 3/2004 s 8	25.3.2004
<b>s 121(4)</b>	<b>substituted by 40/2011 s 36(1)</b>	<b>5.3.2012</b>
<b>s 121(4a)</b>	<b>inserted by 40/2011 s 36(1)</b>	<b>5.3.2012</b>
<b>s 121(7)</b>	<b>inserted by 40/2011 s 36(2)</b>	<b>5.3.2012</b>
Pt 9		
<b>heading</b>	<b>substituted by 40/2011 s 37</b>	<b>5.3.2012</b>
Pt 9 Div 1		
s 122		
<i>s 122(5)</i>	<i>deleted by 49/1998 s 12</i>	8.10.1998
Pt 9 Div 2		
s 124		
s 124(1)	substituted by 61/2009 s 29(1)	3.5.2010
<i>s 124(1a) and (1b)</i>	<i>inserted by 22/2005 s 39(1)</i>	8.12.2005
	<i>deleted by 37/2006 s 9(1)</i>	1.2.2007
s 124(2)	amended by 55/2000 s 36	1.9.2000
	substituted by 61/2009 s 29(1)	3.5.2010
s 124(2a)	inserted by 61/2009 s 29(1)	3.5.2010
s 124(3)	amended by 61/2009 s 29(2)	3.5.2010
<i>s 124(6) before deletion by 37/2006</i>		



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<i>authorised person</i>	<i>amended by 55/2000 s 36</i>	1.9.2000
	<i>amendment by 22/2005 s 39(2), (3) impliedly repealed by 37/2006</i>	—
s 124(6)	<i>deleted by 37/2006 s 9(2)</i>	1.2.2007
Pt 9 Div 3		
Pt 9 Div 3 Subdiv 1	inserted by 48/2008 s 6	1.3.2009
Pt 9 Div 3 Subdiv 2	heading inserted by 48/2008 s 6	1.3.2009
s 125		
s 125(1)	amended by 55/2000 s 37(a)—(c)	1.9.2000
	amended by 48/2008 s 7(1)	1.3.2009
s 125(1a)	inserted by 48/2008 s 7(2)	1.3.2009
s 125(2)	amended by 48/2008 s 7(3)	1.3.2009
s 125(3)	amended by 55/2000 s 37(a)	1.9.2000
s 125(4)	amended by 55/2000 s 37(a)	1.9.2000
	amended by 48/2008 s 7(4)	1.3.2009
s 125(5)	inserted by 55/2000 s 37(d)	1.9.2000
	amended by 48/2009 s 7(5), (6)	1.3.2009
s 125(6)	inserted by 55/2000 s 37(d)	1.9.2000
Pt 9 Div 3 Subdiv 3	inserted by 48/2008 s 8	1.3.2009
Pt 9 Div 3 Subdiv 4	heading inserted by 48/2008 s 8	1.3.2009
s 125E	inserted by 48/2008 s 8	1.3.2009
s 126		
s 126(1a)	inserted by 48/2008 s 9	1.3.2009
s 127		
s 127(2a) and (2b)	<i>inserted by 22/2005 s 40(1)</i>	8.12.2005
	<i>deleted by 37/2006 s 10</i>	1.2.2007
s 127(3) before deletion by 37/2006		
<i>authorised person</i>	<i>amended by 55/2000 s 38</i>	1.9.2000
	<i>amendment by 22/2005 s 40(2), (3) impliedly repealed by 37/2006</i>	—
s 127(3)	<i>deleted by 37/2006 s 10</i>	1.2.2007
s 128		
s 128(1)	amended by 48/2008 s 10(1)	1.3.2009
s 128(1a)	inserted by 55/2000 s 39	1.9.2000
	amended by 48/2008 s 10(2)	1.3.2009
s 128(2)	substituted by 55/2000 s 39	1.9.2000
	substituted by 48/2008 s 10(3)	1.3.2009
s 128(2a) and (2b)	inserted by 48/2008 s 10(3)	1.3.2009
s 128(4)	substituted by 48/2008 s 10(4)	1.3.2009
s 128(5)	inserted by 48/2008 s 10(4)	1.3.2009
s 128A	inserted by 48/2008 s 11	1.3.2009
<b>Pt 9 Div 4</b>	<b>inserted by 40/2011 s 38</b>	<b>5.3.2012</b>
Pt 10		

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s 131		
s 131(3)	inserted by 61/2009 s 30	3.5.2010
Pt 10A	inserted by 61/2009 s 31	3.5.2010
Pt 11		
<i>s 131A before substitution by 61/2009</i>	<i>inserted by 22/2005 s 41</i>	8.12.2005
s 131A(2)	<i>deleted by 37/2006 s 11</i>	1.2.2007
s 131A	substituted by 61/2009 s 32	3.5.2010
s 132	amended by 55/2000 s 40	1.9.2000
s 135		
s 135(1)	amended by 55/2000 s 41	1.9.2000
s 135(2)	<b>amended by 40/2011 s 39</b>	<b>5.3.2012</b>
s 136		
s 136(1)	<b>amended by 40/2011 s 40(1)</b>	<b>5.3.2012</b>
s 136(2)	<b>amended by 40/2011 s 40(2)</b>	<b>5.3.2012</b>
s 136(4)	<b>inserted by 40/2011 s 40(3)</b>	<b>5.3.2012</b>
<i>s 137</i>	<i>deleted by 84/2009 s 200</i>	1.2.2010
s 137A	inserted by 22/2005 s 42	8.12.2005
s 137B	inserted by 37/2006 s 12	1.2.2007
s 138		
s 138(3)	amended by 55/2000 s 42	1.9.2000
s 138(4)	inserted by 61/2009 s 33	3.5.2010
s 138(5)	<b>inserted by 40/2011 s 41</b>	<b>5.3.2012</b>
<i>Sch before deletion by 40/2011</i>		
cl 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.8.2003
cl 4	<i>amended by 49/1998 s 13</i>	8.10.1998
<i>Sch</i>	<i>deleted by 40/2011 s 42</i>	<b>5.3.2012</b>

## Transitional etc provisions associated with Act or amendments

### *Liquor Licensing (Licence Fees) Amendment Act 1998*

#### **14—Exclusion of liability to liquor licence fees on and from 5 August 1997**

Despite the provisions of the *Liquor Licensing Act 1985*, no liability to licence fees is to be taken to have accrued under that Act in respect of sales or purchases of liquor made on or after 5 August 1997.

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***Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005,  
Sch 1—Transitional provisions***

***2—Liquor Licensing Act 1997***

- (1) An amendment to the *Liquor Licensing Act 1997* effected by a provision of this Act applies in respect of an application under that Act if the application is determined after the commencement of that provision irrespective of whether the application was lodged before or after that commencement.
- (2) An amendment to the *Liquor Licensing Act 1997* effected by a provision of this Act applies in respect of a licence or approval granted under that Act, or a person licensed or approved under that Act, whether the licence or approval was granted before or after the commencement of that provision.

***Liquor Licensing (Producers, Responsible Service and Other Matters)  
Amendment Act 2009, Sch 1—Transitional provisions***

***1—Certain existing special circumstances licences***

- (1) If a special circumstances licence in force under the *Liquor Licensing Act 1997* immediately before the commencement of section 6 of this Act authorises the licensee to sell the licensee's product (within the meaning of section 39 of the *Liquor Licensing Act 1997*) on the licensed premises at any time for consumption off the licensed premises, the licence will lapse 2 years after that commencement unless within that period the licensing authority, on application by the licensee—
  - (a) converts the licence into a producer's licence; or
  - (b) confirms that the licence may continue in force as a special circumstances licence.
- (2) The licensing authority may not confirm that a licence may continue in force as a special circumstances licence unless satisfied by the licensee that—
  - (a) a producer's licence (either with or without an extended trading authorisation) could not adequately cover the kind of business authorised by the licensee's special circumstances licence; and
  - (b) the licensee's business would be substantially prejudiced if the licensee's trading rights were limited to those possible under a producer's licence.

***Liquor Licensing (Miscellaneous) Amendment Act 2011, Sch 1—Transitional provisions***

***1—Amendments apply to existing licences, approvals and authorisations***

- (1) An amendment to the *Liquor Licensing Act 1997* effected by a provision of this Act applies in respect of a licence, approval or extended trading authorisation granted under that Act, or the holder of a licence, approval or authorisation under that Act, whether the licence, approval or authorisation was granted before or after the commencement of that provision (and any existing licence, approval or authorisation is taken to be modified accordingly).

- (2) However, the trading rights under a special circumstances licence in respect of which a decision was made under clause 3(10)(b) of the Schedule of the *Liquor Licensing Act 1997* as in force before its repeal by this Act are not diminished by reason of subclause (1) and to the extent that an extended trading authorisation or other special licence condition would be required to replicate those trading rights, the licence will, on the commencement of this clause, be taken to include such an authorisation or condition.

## **2—Issue of replacement licence, approval or authorisation**

The Commissioner may issue to the holder of a licence, approval or extended trading authorisation under the *Liquor Licensing Act 1997* in force immediately before the commencement of a provision of this Act a replacement copy of the licence, approval or authorisation in order to take account of modifications effected by the provision or, in the case of a licence, to include on the licence a statement of the trading hours or the classification of the licence for the purposes of the Commissioner's codes of practice.

## **3—Consequential modification of gaming machine licence**

The Commissioner must, in relation to each gaming machine licence that is in force under the *Gaming Machines Act 1992* at the commencement of this clause, vary the condition fixing the hours during which gaming operations may be conducted on the licensed premises to such extent (if any) as is necessary to ensure the hours are not outside the hours during which the licensed premises are authorised to be open for the sale of liquor.

## **Historical versions**

Reprint No 1—19.3.1998

Reprint No 2—8.10.1998

Reprint No 3—6.7.2000

Reprint No 4—1.9.2000

Reprint No 5—1.10.2001

Reprint No 6—8.8.2002

Reprint No 7—1.8.2003

25.3.2004

17.11.2005

8.12.2005

4.9.2006

1.2.2007

1.6.2007

13.12.2007

1.3.2009

1.2.2010

3.5.2010

4.12.2010

26.11.2011

30.1.2012

