

South Australia

Liquor Licensing (Miscellaneous) Amendment Act 2013

An Act to amend the *Liquor Licensing Act 1997*.

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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 (Miscellaneous) Amendment Act 2013*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Liquor Licensing Act 1997*

4—Amendment of section 3—Objects

Section 3(1)—after paragraph (e) insert:

and

- (f) to ensure that the sale and supply of liquor occurs in such a manner as to minimise the risk of intoxication and associated violent or anti-social behaviour including property damage and causing personal injury.

5—Amendment of section 4—Interpretation

- (1) Section 4, definition of *entertainment*—delete the definition and substitute:

entertainment means a dance, performance, exhibition or event (including a sporting contest) calculated to attract and entertain members of the public;
- (2) Section 4—after the definition of *public conveyance* insert:

public interest—the public interest includes, but is not limited to, matters relating to—

 - (a) public order and safety; and
 - (b) public health (whether generally or in respect of particular groups or communities); and
 - (c) the welfare of particular groups or communities;
- (3) Section 4—after the definition of *inspector* insert:

intoxicated—a person is intoxicated if—

 - (a) the person’s speech, balance, co-ordination or behaviour is noticeably affected, and
 - (b) it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor or some other substance;

6—Amendment of section 11A—Commissioner's codes of practice

- (1) Section 11A(2)—delete subsection (2) and substitute:
 - (2) Without limiting the matters that may be included in a code of practice, a code of practice may include measures that can reasonably be considered appropriate and adapted to the furtherance of the objects of this Act.
- (2) Section 11A—after subsection (4) insert:
 - (4a) The Commissioner must, before making or varying a code of practice, undertake consultation (in such manner as the Commissioner thinks fit) with persons or bodies that the Commissioner is satisfied represent the interests of licensees affected by the proposed code or variation.
- (3) Section 11A—after subsection (6) insert:
 - (7) A person is, in relation to the performance of a prescribed function under a code of practice, exempt from the operation of the *Security and Investigation Agents Act 1995*.

7—Insertion of section 11B

After section 11A insert:

11B—Review of codes of practice

- (1) The Minister must cause a review of the operation of any codes of practice published under section 11A to be conducted immediately following the first anniversary of the commencement of this section.
- (2) A review under subsection (1) must be completed, and a report on the results of the review provided to the Minister, within 6 months after the first anniversary of the commencement of this section.
- (3) The Minister must, within 12 sitting days after receipt of a report, cause copies of the report to be laid before each House of Parliament.

8—Amendment of section 30—Cases where licence is not required

Section 30(c)—delete "regulations" and substitute:

Minister by notice in the Gazette

9—Amendment of section 31—Authorised trading in liquor

Section 31(1)—delete "A licence" and substitute:

Subject to this Act, a licence

10—Amendment of section 32—Hotel licence

- (1) Section 32(1)—delete "A hotel" and substitute:

Subject to this Act, a hotel

- (2) Section 32(2)—delete "A hotel" and substitute:

Subject to this Act, a hotel

11—Amendment of section 33—Residential licence

Section 33(1)—delete "A residential" and substitute:

Subject to this Act, a residential

12—Amendment of section 34—Restaurant licence

Section 34(1)—delete "A restaurant" and substitute:

Subject to this Act, a restaurant

13—Amendment of section 35—Entertainment venue licence

Section 35(1)—delete "An entertainment" and substitute:

Subject to this Act, an entertainment

14—Amendment of section 36—Club licence

Section 36(1)—delete "A club" and substitute:

Subject to this Act, a club

15—Amendment of section 37—Retail Liquor Merchant's licence

Section 37(1)—delete "A retail" and substitute:

Subject to this Act, a retail

16—Amendment of section 38—Wholesale Liquor Merchant's licence

Section 38(1)—delete "A wholesale" and substitute:

Subject to this Act, a wholesale

17—Amendment of section 39—Producer's licence

(1) Section 39(1)—delete "A producer's" and substitute:

Subject to this Act, a producer's

(2) Section 39(4), definition of *wine region*—delete "*Australian Wine and Brandy Corporation Act 1980*" and substitute:

Wine Australia Corporation Act 1980

18—Amendment of section 39A—Direct sales licence

Section 40(1)—delete "A direct" and substitute:

Subject to this Act, a direct

19—Amendment of section 40—Special circumstances licence

Section 40(1)—delete "A special" and substitute:

Subject to this Act, a special

20—Amendment of section 40A—Small venue licence

Section 40A(1)—delete "A small" and substitute:

Subject to this Act, a small

21—Amendment of section 41—Limited licence

Section 41(1)—delete "A limited" and substitute:

Subject to this Act, a limited

22—Amendment of section 43—Power of licensing authority to impose conditions

(1) Section 43(1)—delete subsection (1) and substitute:

(1) Subject to this section, the licensing authority may—

- (a) impose a condition on a licence (including a condition that varies the trading hours in respect of the licence fixed or required by or under this Act); and
- (b) vary, suspend or revoke a condition of a licence (other than a mandatory condition contemplated by section 42).

Examples—

The kinds of conditions that may be imposed under this section include, but are not limited to, the following:

- 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 and staff (or both);
- conditions to protect the public interest;
- 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) Section 43(2)—delete "A licensing authority may impose a condition" and substitute:

The licensing authority may impose, vary, suspend or revoke a condition

(3) Section 43(2)(f)—delete paragraph (f) and substitute:

(f) if the Commissioner considers the imposition, variation, suspension or revocation of the condition to be in the public interest—on the Commissioner's own initiative.

(4) Section 43(3)—delete subsection (3)

(5) Section 43(4)—delete "to impose a condition" and substitute:

under subsection (1)

23—Amendment of section 49—Special provision for club licences

Section 49(1)—delete "that is a non-profit association incorporated under the *Associations Incorporation Act 1985*" and substitute:

that is—

- (a) a non-profit association incorporated under the *Associations Incorporation Act 1985*; or
- (b) a company limited by guarantee under the *Corporations Act 2001* of the Commonwealth.

24—Amendment of section 71—Approval of management and control

Section 71(1)—delete "for the business conducted under the licence" and substitute:
under this Act

25—Amendment of section 97—Supervision and management of licensee's business

Section 97(1)(a)(ii)—delete "for the business conducted under the licence" and substitute:

for the purposes of this section

26—Amendment of section 108—Liquor not to be sold or supplied to intoxicated persons

(1) Section 108(1)—delete subsection (1) and substitute:

- (1) If liquor is sold or supplied on licensed premises to an intoxicated person, 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) Section 108(2)(a)(ii)—delete subparagraph (ii)

27—Amendment of section 109—Copy of licence to be kept on licensed premises

Section 109(2), expiation fee—delete "\$1 200" and substitute:

\$160

28—Amendment of section 111—Areas of licensed premises may be declared out of bounds to minors

(1) Section 111(1)—delete "part" and substitute:

area

(2) Section 111(2)—delete "a part" and substitute:

an area

- (3) Section 111(2)—delete "that part" and substitute:

that area

- (4) Section 111(3)—delete "a part" and substitute:

an area

29—Amendment of section 112—Minors not to enter or remain in certain licensed premises

- (1) Section 112(1)(a)—delete "a part of"

- (2) Section 112(1)(b)—delete "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" and substitute:

an area in licensed premises subject to a licence of some other class (other than a dining room, a bedroom or some other area of the licensed premises approved by the licensing authority) between the hours of midnight and 5 am if liquor may be sold in the area at that time

- (3) Section 112(3)—delete "or any part of licensed premises"

- (4) Section 112(4)—delete "on the relevant part" and substitute:

in the relevant area

- (5) Section 112(5)—delete "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" and substitute:

either—

(a) each entrance to the licensed premises; or

(b) each entrance to an area within the licensed premises,

during any time that access to the licensed premises or area is prohibited to minors under this section or under a condition of the licence

30—Amendment of section 113—Notice to be erected

Section 113(1)—delete "part" and substitute:

area

31—Amendment of heading to Part 7A—Offensive or disorderly conduct

Heading to Part 7A—delete the heading and substitute:

Part 7A—Offences relating to conduct on licensed premises etc

32—Amendment of section 117A—Offensive or disorderly conduct

Section 117A(1), expiation fee—delete "\$160" and substitute:

\$500

33—Amendment of section 119—Cause for disciplinary action

Section 119(1)—after subsection (1) insert:

- (1a) For the purposes of subsection (1)(c), a trust or corporate entity that is or has been licensed under this Act will be taken not to be a fit and proper person if any person who occupies a position of authority in the trust or corporate entity is not a fit and proper person.

34—Amendment of section 119A—Commissioner's power to deal with disciplinary matter by consent

Section 119A(1)(b)—delete paragraph (b) and substitute:

- (b) in the case of a person licensed under this Act—
 - (i) impose a condition on the licence (including a condition that varies the trading hours in respect of the licence fixed or required by or under this Act); and
 - (ii) vary, suspend or revoke a condition of the licence (other than a mandatory condition contemplated by section 42); or

35—Amendment of section 120A—Commissioner's power to suspend or impose conditions pending disciplinary action

(1) Section 120A—before subsection (1) insert:

- (a1) The Commissioner may, if of the opinion that it is desirable to do so in the public interest—
 - (a) impose a condition on a licence (including a condition that varies the trading hours in respect of the licence fixed or required by or under this Act); or
 - (b) vary, suspend or revoke a condition of a licence, to which a complaint relates pending hearing and determination of the complaint (including, to avoid doubt, a condition relating to the subject matter of the complaint).

(2) Section 120A(1)(b)—after "approval" second occurring insert:

(including, to avoid doubt, a condition relating to the subject matter of the complaint)

(3) Section 120A—after subsection (1) insert:

- (1a) The Commissioner may, despite the fact that a complaint has not been lodged against a person, exercise a power under subsection (a1) or (1) in respect of the person if the Commissioner believes on reasonable grounds that—
 - (a) proper cause for disciplinary action exists against the person; and
 - (b) it is necessary to do so in the public interest; and
 - (c) a complaint will in due course be lodged against the person.

- (4) Section 120A(2)—delete "his or her power to suspend or impose conditions" and substitute:

a power under this section

- (5) Section 120A—after subsection (2) insert:

- (3) A person who is dissatisfied with a decision made by the Commissioner under this section 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.

Note—

See section 22.

- (4) Nothing in this section limits the Commissioner's powers under section 128B.
- (5) No civil liability attaches to the Commissioner or the Crown in respect of the exercise of a power in good faith under this section.

36—Amendment of section 121—Disciplinary action

- (1) Section 121(1)—delete paragraph (a) and substitute:

- (a) in the case of a person licensed under this Act—
- (i) impose a condition on the licence (including a condition that varies the trading hours in respect of the licence fixed or required by or under this Act); or
- (ii) vary, suspend or revoke a condition of the licence (other than a condition under section 42);

- (2) Section 121(7), definition of prescribed offence, (b)—delete "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"

37—Amendment of section 122—Powers of authorised officers

Section 122(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) An authorised officer may, at any reasonable time, do 1 or more of the following:
- (a) enter, remain on and inspect licensed premises (and, if entry is refused, may employ such force as is reasonably necessary to gain entry);
- (b) require any person (whether on licensed premises or otherwise) who has possession of books of account, records required to be kept under this Act or any 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 records for inspection;
- (c) examine, copy or take extracts from such books of account or records;

- (d) remove and retain such books of account or records for so long as is reasonably necessary for the purpose of making a copy of the book of account or record;
- (e) 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;
- (f) require any such person to state his or her full name and address and date of birth.

38—Amendment of section 124—Power to refuse entry or remove intoxicated persons or persons guilty of offensive behaviour

- (1) Section 124(1)(b)—delete paragraph (b)
- (2) Section 124(2)—delete subsection (2) and substitute:
 - (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 an intoxicated person on the licensed premises.

39—Amendment of section 128B—Power of Commissioner to issue public order and safety notice

- (1) Section 128B(2)(b)—after "licence" insert:
 - (including a condition that varies the trading hours in respect of the licence fixed or required by or under this Act)
- (2) Section 128B(2)(c)—delete "fixed by the licensing authority in relation to the licence" and substitute:
 - in respect of the licence fixed or required by or under this Act
- (3) Section 128B(7)—delete subsection (7) and substitute:
 - (7) The Commissioner must provide a report to the Minister on the operation of this section at least once in every 12 month period.
- (4) Section 128B—after subsection (8) insert:
 - (9) In legal proceedings, a certificate apparently signed by the Minister certifying an approval of a period for the purposes of subsection (4) is, in the absence of proof to the contrary, proof of the matter certified.

40—Amendment of section 131—Control of consumption etc of liquor in public places

- (1) Section 131(1)—delete subsection (1) and substitute:
 - (1) The Minister may, by notice in the Gazette, prohibit the consumption or possession or both of liquor in the public place or public places specified in the notice.

- (1a) The Commissioner may, by notice in the Gazette, prohibit the consumption or possession or both of liquor in the public place or public places specified in the notice during the period (not exceeding 14 days) specified in the notice.
- (1b) A person who contravenes a prohibition under subsection (1) or (1a) is guilty of an offence.
Maximum penalty: \$1 250.
Expiation fee: \$160.
- (2) Section 131(2)—delete "prohibition imposed for the purposes of subsection (1)" and substitute:
notice under subsection (1) or (1a)
- (3) Section 131(2)—after paragraph (c) insert:
 - (d) may exempt a specified person, or class of persons, from the operation of the prohibition.
- (4) Section 131—after subsection (3) insert:
 - (4) The regulations may make further provisions in relation to a prohibition under this section (including, to avoid doubt, by exempting a person, or a person of a class, from the operation of this section).

41—Amendment of section 131A—Failing to leave licensed premises on request

- (1) Section 131A(2)(c)—delete paragraph (c)
- (2) Section 131A(2)(d)—delete paragraph (d) and substitute:
 - (d) it is reasonable to suspect that the person has supplied, or is about to supply, liquor to an intoxicated person on the licensed premises; or

42—Amendment of section 138—Regulations

Regulation 138—after subsection (2) insert:

- (2a) A regulation may make provisions of a saving or transitional nature.

Schedule 1—Transitional provisions

1—Responsible persons

- (1) Subject to this clause, a person who was, immediately before the commencement of this clause, approved as a responsible person for the business conducted under a particular licence in accordance with section 71 of the *Liquor Licensing Act 1997* (as in force before the commencement of this clause) will be taken to be approved as a responsible person under section 71 of that Act, as amended by this Act.

Note—

A natural person may be a responsible person in respect of any licensed premises pursuant to section 71, as amended.

- (2) Subject to the *Liquor Licensing Act 1997*, an approval contemplated by subclause (1) will be taken to be subject to any conditions, or suspension, that applied to the approval immediately before the commencement of this clause.
- (3) Nothing in this clause operates to revive an approval that was revoked under the *Liquor Licensing Act 1997* (as in force before the commencement of this clause).

2—Certain conditions taken to be validly imposed etc

A condition limiting the times when liquor may be sold under a licence, or limiting in some other way the authority conferred by the licence, purportedly imposed on a licence before the commencement of this clause will for all purposes be taken to have been validly imposed or varied (as the case requires).

3—Certain codes of practice taken to be valid

- (1) A code of practice, and any provision of a code of practice, that—
 - (a) was published under section 11A of the *Liquor Licensing Act 1997* (as in force before the commencement of this clause); and
 - (b) is purportedly in force on the commencement of this clause,will be taken to be valid, and always to have been valid, if the code of practice or provision would have been valid had it been published under section 11A of the *Liquor Licensing Act 1997* as amended by this Act.
- (2) The requirements of section 11A(4a) do not apply in relation to a code of practice referred in to subclause (1).
- (3) However, no action may be taken under the *Liquor Licensing Act 1997* in respect of a person's refusal or failure to comply with a provision of the Late Night Trading Code of Practice during the period commencing on 1 October 2013 and concluding on the day on which this clause comes into operation.
- (4) In this clause—

Late Night Trading Code of Practice means the Late Night Trading Code of Practice under the *Liquor Licensing Act 1997*.

Note—

The Late Night Trading Code of Practice was published by notice in the Gazette on 6 June 2013 and came into operation on 1 October 2013.