

South Australia



**LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT ACT 1995**

**No. 31 of 1995**

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**ELIZABETHAE II REGINAE**

A.D. 1995

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**No. 31 of 1995**

**An Act to amend the Liquor Licensing Act 1985.**

[Assented to 27 April 1995]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Liquor Licensing (Miscellaneous) Amendment Act 1995*.
- (2) The *Liquor Licensing Act 1985* is referred to in this Act as "the principal Act".

**Commencement**

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

**Amendment of s. 58—Certain applications to be advertised**

3. Section 58 of the principal Act is amended by inserting in subsection (1)(a) "or a temporary licence granted under section 80" after "limited licence".

**Amendment of s. 60—Factors to be taken into account when determining whether a person is fit and proper to hold licence**

4. Section 60 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Where—

- (a) the licensing authority is to determine whether a person is a fit and proper person to hold a licence and the person is to personally supervise and manage the business conducted in pursuance of the licence; or
- (b) the licensing authority is to determine whether a person is a fit and proper person to occupy a position of authority in a body corporate which holds or is to hold a licence and the person is to be actively involved in the supervision and management of the business conducted in pursuance of the licence; or

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- (c) the licensing authority is to determine whether a person is a fit and proper person to be approved as manager of the business conducted in pursuance of a licence,

the licensing authority must also give consideration to whether the person has the appropriate knowledge, experience and skills for the supervision and management of the business.

**Amendment of s. 61—Applicant must be fit and proper person**

5. Section 61 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) If a person referred to in subsection (1) is to supervise and manage, or be actively involved in the supervision or management of, the business conducted in pursuance of 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.

**Amendment of s. 70—Applicant for transfer must be fit and proper person**

6. Section 70 of the principal Act is amended by inserting after subsection (1) the following subsection:

(2) If a person referred to in subsection (1) is to supervise and manage, or be actively involved in the supervision or management of, the business conducted in pursuance of 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 training within a specified time after the transfer of the licence.

**Amendment of s. 78—Approval of management and control**

7. Section 78 of the principal Act is amended by inserting after subsection (2) the following subsections:

(3) Subject to subsection (4), the licensing authority may only approve a person as a manager, or approve the assumption by a person of a position of authority in a body corporate that holds a licence, if satisfied that he or she is a fit and proper person.

(4) If an applicant for approval is to supervise and manage, or be actively involved in the supervision or management of, the business conducted in pursuance of 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 training within a specified time of obtaining the approval.

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**Amendment of s. 80—Devolution of licensee's rights in certain cases**

8. Section 80 of the principal Act is amended by inserting after subsection (7) the following subsection:

(7a) If the person who is to hold the licence on revocation of the condition is to supervise and manage, or be actively involved in the supervision and management of, the business conducted in pursuance of 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 training within a specified time after the grant of the application.

**Amendment of s. 87—Licence fee**

9. Section 87 of the principal Act is amended by inserting in subsection (9) ", other than a restricted club licence fee," after "if a licence fee".

**Amendment of s. 90—Payment of licence fee**

10. Section 90 of the principal Act is amended—

(a) by striking out from subsection (1) "A licence fee" and substituting "Subject to subsection (1a), a licence fee";

(b) by inserting after subsection (1) the following subsection:

(1a) Where a licence fee is equal to or less than the prescribed minimum fee, the licence fee must be paid in a single instalment on or before the first day of the licence period in respect of which it is due.

**Insertion of Division 7A of Part 6**

11. The following Division is inserted after section 115 of the principal Act:

**DIVISION 7A—SALE OR SUPPLY TO INTOXICATED PERSONS**

**Liquor not to be sold, supplied to intoxicated persons**

115A. (1) If liquor is sold or supplied on licensed premises to a person who is intoxicated, the licensee, the manager of the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.

Penalty: Division 7 fine.

(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—that he or she believed on reasonable grounds that the person to whom it was supplied was not intoxicated; or

(b) if the defendant is the licensee or manager of the licensed premises and did not personally sell or supply the liquor—that he or she exercised proper diligence to prevent the sale or supply of liquor in contravention of subsection (1).

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**Amendment of s. 119A—Minors not to enter or remain in certain licensed premises**

**12. Section 119A of the principal Act is amended—**

(a) by inserting after paragraph (a) of subsection (1) the following paragraph:

(ab) licensed premises in respect of which a general facility licence is in force at any time between midnight and 5 a.m. on any day, not being a designated dining area or an area approved by the licensing authority for the purposes of this section;;

(b) by inserting in subsection (2) "or in contravention of a condition of the licence" after "in contravention of this section";

(c) by inserting in subsection (3) "or in contravention of a condition of the licence" after "in contravention of this section";

(d) by inserting in subsection (4) "or under a condition of the licence" after "under this section".

**Insertion of Division 3 of Part 9**

**13. The following Division is inserted after section 128 of the principal Act:**

**DIVISION 3—POWER TO BAR**

**Power to bar persons on reasonable grounds**

**128A. (1)** A licensee or the manager of licensed premises may, by order served on a person, bar the person from entering or remaining on the licensed premises (or a part of the licensed premises) for a specified period, not exceeding three months—

(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.

(2) A person who enters or remains on premises from which he or she is barred under this section is guilty of an offence.

Penalty: Division 8 fine.

(3) A licensee or the manager of licensed premises may, by subsequent order served on a person, revoke an order.

(4) A licensee, the manager of licensed premises or an employee of the licensee who suffers or permits a person to enter or remain on premises from which he or she is barred is guilty of an offence.

Penalty: Division 8 fine.

**Orders**

**128B.** (1) An order under this Division must be in writing in a form prescribed by regulation.

(2) A copy of the order must be kept at the licensed premises to which the order relates.

**Power to remove person who is barred**

**128C.** (1) If a person is on premises from which he or she 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 him or her from the premises, using only such force as is reasonably necessary for the purpose.

(3) In this section—

"authorised person" means—

(a) the licensee or an employee of the licensee; or

(b) a manager of the licensed premises; or

(c) a member of the police force.

**Commissioner may review order**

**128D.** (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 one month; or

(b) for periods exceeding one month in aggregate during a period of three months,

may apply to the Commissioner for a review of the order under which the person is barred from those premises.

(2) The Commissioner may, on an application under this section, confirm, vary or revoke the order.

(3) A decision of the Commissioner under this section is not subject to review.

(4) The Commissioner may, if he or she thinks fit, suspend an order pending determination of an application for review of the order.

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**Amendment of s. 138—Service**

**14. Section 138 of the principal Act is amended—**

*(a)* by inserting after subsection (1) the following subsection:

*(1a)* 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 that solicitor.;

*(b)* by striking out from subsection (2) "a licensee under subsection (1)(a) shall" and substituting "any person under this section will";

*(c)* by striking out from subsection (2) "licensee" second occurring and substituting "person".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor