

Queensland



# LIQUOR ACT 1992

**Reprinted as in force on 30 December 2002  
(includes amendments up to Act No. 58 of 2002)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 6E**

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# Queensland



## LIQUOR ACT 1992

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# LIQUOR ACT 1992

[as amended by all amendments that commenced on or before 30 December 2002]

## **An Act to regulate the sale and supply of liquor and the provision of adult entertainment**

### **PART 1—PRELIMINARY**

#### **1 Short title**

This Act may be cited as the *Liquor Act 1992*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Objects of Act**

The objects of this Act are—

- (a) to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change; and
- (b) to provide for a Liquor Appeals Tribunal with jurisdiction to hear and decide appeals authorised by this Act; and
- (c) to provide for a flexible, practical system for regulation of the liquor industry of the State with minimal formality, technicality or intervention consistent with the proper and efficient administration of this Act; and
- (d) to regulate the liquor industry in a way compatible with—
  - (i) minimising harm arising from misuse of liquor; and
  - (ii) the aims of the National Health Policy on Alcohol; and

- (e) to regulate the sale and supply of liquor in particular areas to minimise harm caused by alcohol abuse and misuse and associated violence; and
- (f) to regulate the provision of adult entertainment; and
- (g) to provide revenue for the State to enable the attainment of the objects of this Act and for other purposes of government.

### **3A Principle underlying this Act for facilitating and regulating the liquor industry**

(1) The underlying principle of this Act in relation to the sale and supply of liquor is—

- (a) a person may obtain a licence to sell or supply liquor as part of conducting a business on premises; and
- (b) liquor may only be sold or supplied on the licensed premises as part of the person conducting a business, on the licensed premises, that is the primary purpose under the licence.

(2) This Act states the primary purpose of a business that may be conducted under each type of licence.

(3) This Act must be administered in accordance with the underlying principle of this Act.

(4) In interpreting this Act, a construction promoting the underlying principle is to be preferred to a construction that would not promote it.

## **4 Definitions**

In this Act—

**“Aboriginal police officer”** means an Aboriginal police officer who is—

- (a) appointed under the *Community Services (Aborigines) Act 1984* or *Local Government (Aboriginal Lands) Act 1978* for a community area; and
- (b) authorised under that Act to exercise the powers of an investigator under part 7 of this Act for the administration and enforcement of a prescribed provision and sections 168B, 169 and 171 in the area.

**“accounting records”** includes—

- (a) books of account; and
- (b) such working papers and other documents as are necessary to explain the methods and calculations by which an account is made up.

**“adult entertainment”** has the meaning given by section 103E(2).

**“adult entertainment permit”** means a permit granted under this Act authorising a person to provide adult entertainment.

**“affected by bankruptcy action”**, in relation to an individual, means the individual, in any jurisdiction—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

**“approved area”** has the meaning given by section 103G(1).

**“approved form”** means a form approved by the chief executive.

**“assessment period”** means the period by reference to which a fee payable in respect of a licence for a licence period is to be assessed.

**“assistant commissioner”**, for a locality, means the assistant commissioner in charge of the police service for the locality.

**“associate”** has the meaning given by section 4C.

**“boat”** means a boat, ship or other vessel of any size or kind, and includes a hovercraft.

**“brothel licence”** has the meaning given by the *Prostitution Act 1999*, schedule 4.

**“cabaret”** means—

- (a) the conduct of business for the primary purpose of providing entertainment on premises; or
- (b) the premises on which such entertainment is provided.

**“chairperson”** means the chairperson of the Tribunal.

**“chief executive”** means the chief executive of the department.

**“club”** means an association of persons who meet periodically—

- (a) with an interest in promoting some object; or

(b) for social purposes.

**“code”** means the adult entertainment code made and approved under section 103E.

**“commissioner”** means the commissioner of the police service.

**“community area”** of a Council means the area of the State in which the Council may exercise its jurisdiction.

**“community justice group”** means a community justice group established under the *Community Services (Aborigines) Act 1984*, part 3A, or *Community Services (Torres Strait) Act 1984*, part 3A.

**“controller”** means a person authorised by the chief executive under section 109AA to supervise the provision of adult entertainment.

**“Council”** means—

- (a) an Aboriginal Council under the *Community Services (Aborigines) Act 1984*; and
- (b) an Island Council under the *Community Services (Torres Strait) Act 1984*; and
- (c) the Council of the Shire of Aurukun; and
- (d) the Council of the Shire of Mornington.

**“deputy chairperson”** means a deputy chairperson of the Tribunal.

**“detached bottle shop”** means premises approved by the chief executive as mentioned in section 59(1)(d), even if the premises are subsequently relocated under section 154A or transferred under section 154B.

**“disciplinary action”**, relating to a licence, means—

- (a) cancelling the licence; or
- (b) suspending the licence—
  - (i) for a stated period; or
  - (ii) until further ordered by the chief executive up to a maximum period of 1 year; or
- (c) closing the licensed premises, or part of the licensed premises, for a stated period; or
- (d) varying the licence by—

- (i) stating in the licence a condition to which it is to be subject;  
or
- (ii) otherwise limiting the authority conferred by the licence; or
- (e) reducing the times at which the licensee may conduct business under authority of the licence; or
- (f) disqualifying the licensee from holding a licence or permit—
  - (i) for a stated period; or
  - (ii) until further ordered by the chief executive up to a maximum period of 5 years; or
- (g) requiring the licensee to pay to the department an amount of not more than \$10 000;<sup>1</sup> or
- (h) reprimanding the licensee.

**“disqualified person”** means a person disqualified under section 228A from holding a licence or permit.<sup>2</sup>

**“entertainment”**, for an on-premises (cabaret) licence, see section 4AA.

**“executive officer”**, of a corporation, in sections 4C and 107B, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

**“exempt minor”** see section 155.

**“family”** of an individual, has the meaning given by the *Prostitution Act 1999*, schedule 4.

**“function”** see section 4A.

**“have in possession”** includes have under control in any place, whether for the use or benefit of the person in relation to whom the term is used or another person, even though another person has the actual possession or custody.

**“interested person”**, in section 43 and part 5, division 3, subdivision 3, means a person who—

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1 The department may require the licensee to pay the department an amount of not more than \$10 000 for each ground for which disciplinary action is taken—see part 5, division 3, subdivision 3 (Disciplinary action relating to licences).

2 Section 228A (Disqualification from holding licence or permit on conviction of certain offences)

- (a) is an owner, lessee or mortgagee of licensed premises or a secured creditor of a licensee whose interest is likely to be affected by cancellation of the licence for the premises; and
- (b) has, under section 44A(2), given the chief executive particulars of the person's interest in the licence.

**“interest in a brothel”** has the meaning given by the *Prostitution Act 1999*, section 7.

**“investigator”** means—

- (a) a person authorised under section 174(1); or
- (b) in this Act apart from part 7—any of the following—
  - (i) a commissioned police officer;
  - (ii) a police officer acting as a commissioned police officer;
  - (iii) a police officer designated by a police officer mentioned in subparagraph (i) or (ii) to act as an investigator under this Act; or
- (c) in part 7—
  - (i) any police officer; or
  - (ii) for the administration and enforcement of sections 168B, 169 and 171—an Aboriginal police officer or Island police officer.<sup>3</sup>

**“Island police officer”** means an Island police officer who is—

- (a) appointed under the *Community Services (Torres Strait) Act 1984* for the community area of a Council; and
- (b) authorised under that Act to exercise the powers of an investigator under part 7 of this Act for the administration and enforcement of a prescribed provision and sections 168B, 169 and 171 in the area.

**“licence”** includes a licence granted, or provisionally granted, under this Act.

**“licence period”** means the period for which a fee is payable in respect of a licence or permit.

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<sup>3</sup> For the exercise of powers of an Aboriginal police officer or Island police officer, see section 174A.



**“licensed brothel”** has the meaning given by the *Prostitution Act 1999*, schedule 4.

**“licensed premises”** means premises to which a licence relates, and includes premises approved under section 125 for sale of liquor.

**“licensee”** means the holder of a licence, and includes a person prescribed to be subject to this Act as if the person were a licensee.

**“liquor”** see section 4B.

**“meal”** means food that—

- (a) is eaten by a person sitting at a table, or fixed structure used as a table, with cutlery provided for the purpose of eating the food; and
- (b) is of sufficient substance as to be ordinarily accepted as a meal.

**“member of a reciprocal club”**, in relation to a club with a club licence or restricted club permit, means a member of another club whose members have privileges at the club with the club licence or restricted club permit because of arrangements between the clubs.

**“mortgagee”** includes a lienee.

**“non-proprietary club”** means an association of persons under whose constitution—

- (a) the income, profits and assets of the association are to be applied only in promotion of its objects; and
- (b) the payment of dividends to, or the distribution of income, profits or assets of the association among, its members is prohibited.

**“on-premises (cabaret) licence”** means an on-premises licence for conducting a business with the primary purpose stated in section 71A(1).

**“on-premises (function) licence”** means an on-premises licence for conducting a business with the primary purpose stated in section 70A(1).

**“on-premises (meals) licence”** means an on-premises licence for conducting a business with the primary purpose stated in section 73(1).

**“on-premises (other activity) licence”** means an on-premises licence for conducting a business with the primary purpose stated in section 80(1).

**“on-premises (presentations) licence”** means an on-premises licence for conducting a business with the primary purpose stated in section 75A(1).

**“on-premises (tourist) licence”** means an on-premises licence for conducting a business with the primary purpose stated in section 78(1).

**“on-premises (transport) licence”** means an on-premises licence for conducting a business with the primary purpose stated in section 74A(1).

**“ordinarily set aside for dining”**, for a part of licensed premises, means the part of the licensed premises that is set aside as the regular or usual place for dining on the licensed premises, but does not include a part of the licensed premises set aside merely for a particular day.

**“permit”** means a permit granted under this Act.

**“permittee”** means the holder of a permit, and includes a person prescribed to be subject to this Act as if the person were a permittee.

**“place”** includes vacant land or premises.

**“premises”** includes—

- (a) land; and
- (b) a building or structure on or in land; and
- (c) a vehicle, boat, aircraft, train or other means of transport.

**“prescribed provision”** means—

- (a) the *Community Services (Aborigines) Act 1984*, section 45T; or
- (b) the *Community Services (Torres Strait) Act 1984*, section 43T.<sup>4</sup>

**“prescribed quantity”** see section 173H(2).

**“presiding case manager”** means the presiding case manager under the *Queensland Building Tribunal Act 2000*.

**“private event”** see section 102D.

**“prostitution”** has the meaning given by the Criminal Code, section 229E.

**“provisional licence”** means a licence issued under section 123(2).

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4 *Community Services (Aborigines) Act 1984*, section 45T and *Community Services (Torres Strait) Act 1984*, section 43T (Possession or consumption of alcohol in or on dry place)

**“public event”** see section 102D.

**“public place”**, for a restricted area, means—

- (a) a place the public is entitled to use, open to the public or used by the public, whether or not on payment of an amount; or
- (b) a vehicle, boat or aircraft that is in a place mentioned in paragraph (a).

**“register”** means the register kept under section 43.

**“registrar”**, of the Tribunal, means the director, central tribunals registry under the *Queensland Building Tribunal Act 2000*.

**“relevant action”**, relating to an adult entertainment permit, means—

- (a) cancel the permit; or
- (b) suspend the permit for a stated period; or
- (c) impose conditions on, or vary conditions of, the permit.

**“restricted area”** means an area declared under section 173G(1) to be a restricted area.

**“secretary”**, of a club, means the principal executive officer of the club, by whatever name called, whether or not the person is a member of the club.

**“sell”** includes—

- (a) barter or exchange; and
- (b) offer, agree or attempt to sell; and
- (c) expose, send, forward or deliver for sale; and
- (d) cause or permit to be sold or offered for sale; and
- (e) supply or offer, agree or attempt to supply—
  - (i) in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit; or
  - (ii) gratuitously, but to gain or keep custom or other commercial advantage.

**“staged development approval”** see section 123A(2).

**“Tribunal”** means the Liquor Appeals Tribunal.

**“unduly intoxicated”** means a state of being in which a person’s mental and physical faculties are impaired because of consumption of liquor

so as to diminish the person's ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.

**“unlicensed person”** means a person who is not the holder of—

- (a) a licence under this Act; or
- (b) a licence under the *Wine Industry Act 1994*; or
- (c) an approval, however described, under a law of the Commonwealth or a State that allows the approval holder to sell liquor.

**“unlicensed premises”** means premises to which a licence or permit does not relate.

**“wine”** has the meaning given by the *Wine Industry Act 1994*.

#### **4AA Meaning of “entertainment”**

(1) **“Entertainment”**, for an on-premises (cabaret) licence, means entertainment provided by a person—

- (a) who is physically present when providing the entertainment; and
- (b) whose function is to present the entertainment.

(2) However, **“entertainment”**, for an on-premises (cabaret) licence, does not include entertainment using facilities that do not require a person present to provide the entertainment.

*Examples of facilities that do not require a person to be present—*

1. Pool tables
2. Jukeboxes.

#### **4A Meaning of “function”**

(1) **“Function”** is an event or occasion to which persons are invited by, or for, the organiser of the event or occasion.

(2) However, **“function”** does not include an event or occasion organised—

- (a) by the owner or licensee of the licensed premises where the event or occasion is held if the event or occasion is for the owner's or licensee's own benefit; or
- (b) by someone else if the owner or licensee of the premises where the event or occasion is held is entitled to receive a benefit other than a charge for using the premises and providing catering facilities.

#### **4B Meaning of "liquor"**

(1) **"Liquor"** is a spiritous or fermented fluid of an intoxicating nature intended for human consumption.

(2) **"Liquor"** also includes any other substance intended for human consumption in which the level of ethyl alcohol (ethanol) is more than 5mL/L (0.5%) at 20°C.

(3) However, **"liquor"** does not include a fluid, that would otherwise be liquor, if it is used merely as a preservative or medium in which fruit is offered for sale to the public in sealed containers and with the contents visible.

#### **4C Meaning of "associate"**

(1) For an adult entertainment permit, a person is an **"associate"** of an individual if the person—

- (a) is a member of the individual's family; or
- (b) has entered into a business arrangement or relationship with the individual for the provision of adult entertainment; or
- (c) is the owner or lessor, either alone or jointly, of premises used or proposed to be used for the provision of adult entertainment under an adult entertainment permit.

(2) A person is an **"associate"** of a corporation if the person is an executive officer of the corporation.

#### **5 Who is a responsible adult for a minor**

Each of the following persons is a responsible adult for a minor—

- (a) a parent, step-parent or guardian of the minor;

- (b) an adult who, while the minor is on licensed premises or in public places, has parental rights and responsibilities for the minor.

## **6 Acceptable evidence of age**

For the purposes of this Act, acceptable evidence of the age of a person is a document—

- (a) that is—
  - (i) a proof of age card issued to the person—
    - (A) by a department prescribed by regulation or an entity of another State or a Territory performing functions similar to the functions of the department; or
    - (B) by an entity approved in writing by the chief executive; or
  - (ii) a motor vehicle driver's or rider's licence or permit issued to the person under a law of the State or a law of another State or a Territory; or
  - (iii) an Australian or foreign passport issued to the person; or
  - (iv) another form of identification approved in writing by the chief executive; and
- (b) that bears a photograph of the person; and
- (c) that indicates by reference to the person's date of birth or otherwise that the person has attained a particular age.

## **7 Presumed quantity of liquor**

For the purposes of this Act—

- (a) 12 containers each containing at least 700 mL of liquor, or 24 containers each containing at least 345 mL of liquor, are to be taken to contain a total quantity of 9 L of liquor; and
- (b) 6 containers each containing at least 700 mL of liquor, or 12 containers each containing at least 345 mL of liquor, are to be taken to contain a total quantity of 4.5 L of liquor.

## **8 Venue of sale of liquor**

For the purposes of this Act, a sale of liquor happens on premises in which is situated the store of liquor from which liquor is appropriated to the contract of sale.

## **9 Ordinary trading hours**

(1) The authority conferred by a licence to sell liquor on licensed premises during ordinary trading hours—

- (a) extends only to selling liquor during hours that are, under this section, the ordinary trading hours of the premises; and
- (b) if a provision of this section specifies conditions for selling liquor at specified times on specified licensed premises—extends only to selling liquor on the premises, at those times, in accordance with those conditions.

(2) If an order of the chief executive that is directed to reducing the trading hours of specified licensed premises specifies days on which, or times at which, liquor may be sold on the premises, the ordinary trading hours of those licensed premises are the trading hours specified in the order.

(3) On Anzac Day, ordinary trading hours—

- (a) of all licensed premises—do not include any period before 1 p.m. on Anzac Day except—
  - (i) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises between 10 a.m. and 1 p.m., or the period between 6 a.m. and 1 p.m. that the chief executive approves in a particular case; or
  - (ii) as specified in paragraph (b);

- (b) of premises that are a cabaret—subject to subsection (2), include the period from 12 midnight<sup>5</sup> on the day immediately before Anzac Day until 3 a.m. on Anzac Day.

(4) Subject to subsections (2), (3) and (7), the ordinary trading hours of licensed premises to which a producer/wholesaler licence relates are the trading hours of the premises under the *Trading (Allowable Hours) Act 1990*.

(5) Subject to subsection (2), on Good Friday and Christmas Day ordinary trading hours of all licensed premises, other than a cabaret or premises to which a producer/wholesaler licence relates are—

- (a) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises—between 10 a.m. and 12 midnight, or the period between 7 a.m. and 12 midnight that the chief executive approves in a particular case; or
- (b) for other sale of liquor—nil.

(6) Subject to subsection (2), on Good Friday and Christmas Day ordinary trading hours of premises that are a cabaret are—

- (a) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises—between 10 a.m. and 12 midnight, or the period between 7 a.m. and 12 midnight that the chief executive approves in a particular case; or
- (b) for other sale of liquor—from 12 midnight on the day immediately before Good Friday or Christmas Day until 3 a.m. on Good Friday or Christmas Day.

(7) If the licensee of licensed premises to which a producer/wholesaler licence relates is a producer of liquor, then, on any day on which the premises may, under subsection (4), be lawfully open for trading, and

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5 “Midnight” is defined by the *Acts Interpretation Act 1954* as follows—

“**midnight**”, in relation to a particular day, means the point of time at which the day ends.



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subject to subsections (2) and (3), ordinary trading hours of the premises are—

- (a) for sale of liquor, produced or made on the premises, to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises; or
- (b) for sale of liquor produced or made on the premises to a visitor to the premises as a souvenir of the visit;

such period between 7 a.m. and 12 midnight as the chief executive approves in a particular case.

**(8)** Subject to subsections (2) and (3), ordinary trading hours of a boat, vehicle or aircraft used for the primary purpose of carrying passengers commercially, and to which an on-premises licence relates, are—

- (a) between start and end of a journey for that primary purpose; and
- (b) within 1 hour before the scheduled time of departure and 30 minutes after end of the journey.

**(9)** Subject to subsections (2) and (3), ordinary trading hours of licensed premises used for the primary purpose of presenting sporting, cultural, theatrical or cinematographic events and to which an on-premises licence relates—

- (a) are—
  - (i) within 1 hour before the scheduled time of start of such a presentation on the premises; and
  - (ii) during every scheduled intermission in the presentation; and
  - (iii) within 1 hour after end of the presentation; and
- (b) do not include any time before 10 a.m. except—
  - (i) with the chief executive's prior approval, a time after 7 a.m.; and
  - (ii) a time within 1 hour after end of the presentation.

**(10)** Subject to subsections (2) and (3), on any day other than Good Friday or Christmas Day, ordinary trading hours of licensed premises that are a cabaret are—

- (a) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the

premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises—between 10 a.m. and 5 p.m. or the period between 7 a.m. and 5 p.m. that the chief executive approves in a particular case; and

- (b) for other sale of liquor—between 5 p.m. on the day and 3 a.m. on the next day.

(11) Subject to subsections (2) and (3), on any day other than Good Friday or Christmas Day, ordinary trading hours of licensed premises other than—

- (a) premises to which a producer/wholesaler licence relates; or
- (b) a boat, vehicle or aircraft to which an on-premises licence relates; or
- (c) premises that are a cabaret;

are between 10 a.m. and 12 midnight or such period between 7 a.m. and 12 midnight as the chief executive approves in a particular case.

(12) In respect of licensed premises to which a general licence relates, the chief executive may approve, as ordinary trading hours, different hours for different parts of the licensed premises.

(13) The ordinary trading hours of licensed premises for New Year's Eve day are the ordinary trading hours for the premises for the day and, if the ordinary trading hours would end before 2 a.m. on New Year's Day, the ordinary trading hours are extended until 2 a.m.

## **10 When supply of liquor is in association with eating a meal**

For the purpose of this Act, a sale or supply of liquor may be taken as being in association with the consumer eating a meal if the liquor is supplied on premises—

- (a) to a consumer who has indicated a genuine intention of eating a meal on the premises, within 1 hour before the consumer orders the meal; or
- (b) while the consumer is eating the meal; or
- (c) within 1 hour after the consumer has finished eating the meal;

and at no other times.

### **10A When meal is taken not to have been prepared and served to be eaten on premises**

(1) For this Act, a meal is taken not to have been prepared and served to be eaten on premises if the preparation does not involve adding value to the food comprising the meal.

(2) Without limiting subsection (1), a person does not add value to food comprising a meal by merely heating a product the person purchased.

*Example for subsection (2)—*

A person does not add value to food if the person heats a prepackaged pie or other item and serves it.

(3) However, the preparation of a meal is taken to involve adding value to the food comprising the meal if the meal forms part of a menu and the majority of menu items offered and available are meals the preparation of which otherwise involves adding value to the food comprising the meals.

## **11 Public place**

(1) For the purposes of this Act, a public place includes—

- (a) any premises to which the public has access as of right, or with the express or tacit consent, or permission, of the owner or occupier of the premises at the time material to the application of this Act in respect of the premises; and
- (b) any doorway, entrance or vestibule that gives access to premises from a public place under paragraph (a).

(2) Premises may be a public place under subsection (1) even if, at the material time—

- (a) access to the premises depends on payment of a price for admittance or fulfilment of some other condition; or
- (b) no person is on, or seeking access to or from, the premises.

## **12 Exemptions**

(1) A provision of this Act that prohibits—

- (a) taking liquor into premises to which a licence or permit relates; or

- (b) removing liquor from premises to which a licence or permit relates; or
- (c) carrying liquor for sale;

whether absolutely or at a particular time, does not apply to a carrier, delivery person or other person engaged in delivering liquor to, or collecting liquor from, any such premises or carrying liquor in the ordinary course of lawful business.

(2) Also, this Act does not apply to the following—

- (a) a sale in good faith of spirituous or distilled perfume as perfumery;
- (b) a sale of spirituous cooking essence, other than for use as a beverage or for manufacturing a beverage, if—
  - (i) the essence is sold in a container containing not more than—
    - (A) if the essence is vanilla essence—100 mL; or
    - (B) in any other case—50 mL; or
  - (ii) the sale is by wholesale;
- (c) a sale of liquor in a refreshment room of Parliament House by permission and under control of the Parliament;
- (d) a sale of liquor in the lawful operation of an Australian Defence Force canteen;
- (e) a sale in good faith of spirits or wine by a pharmacist within the meaning of the *Pharmacy Act 1976*, section 5 as medicine or for medicinal or chemical purposes;
- (f) a sale at auction conducted by a licensed auctioneer—
  - (i) of liquor for a person who is authorised by this Act to sell the liquor; or
  - (ii) by order of a trustee under the *Bankruptcy Act 1966* (Cwlth), of liquor held by the trustee as trustee under that Act; or
  - (iii) by order of the executor, administrator or trustee of the estate of a deceased person, of liquor that is the property of the deceased's estate; or

- (iv) by order of the public trustee, of liquor that is the property of an estate in the course of administration by the public trustee;
- (g) a sale, during actual flight of an aircraft, of liquor to a passenger on the aircraft made for the aircraft's operator and for consumption during the flight;
- (h) a sale of liquor by a provider of bed and breakfast accommodation or host farm accommodation to a guest of the provider for consumption on the premises at which the accommodation is provided;
- (i) a sale of liquor to a person by the proprietor of a duty free shop described in a warehouse licence under the Customs Act if—
  - (i) the sale takes place at the duty free shop; and
  - (ii) the liquor is goods specified in a permission given to the proprietor under section 96A or 96B of that Act;<sup>6</sup> and
  - (iii) the liquor is to be delivered to the person under the permission.

(3) Also, this Act does not apply to carrying or exposing liquor for sale in an aircraft, as permitted by subsection (2)(g).

(4) In this section—

**“aircraft”** means an aircraft that is not licensed premises.

**“bed and breakfast accommodation”** means accommodation that—

- (a) includes the provision of accommodation and breakfast for guests; and
- (b) is conducted on premises (other than a caravan, caretaker's or manager's residence, flat, home unit, hostel, hotel, lodging house, motel or relocatable home) by a person who lives on the premises; and
- (c) caters for a maximum of 6 guests at the same time; and
- (d) may be provided for a guest for a maximum continuous period of 14 days.

**“Customs Act”** means the *Customs Act 1901* (Cwlth).

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<sup>6</sup> *Customs Act 1901* (Cwlth), section 96A (Outwards duty free shops) or 96B (Inwards duty free shops)

**“duty free shop”** means—

- (a) an outwards duty free shop under section 96A of the Customs Act; or
- (b) an inwards duty free shop under section 96B of the Customs Act.

**“host farm accommodation”** means accommodation that—

- (a) includes the provision of accommodation and meals, or food for preparing meals, for guests; and
- (b) is conducted on a farm involved in primary production by a person who manages, and lives on, the farm; and
- (c) caters for a maximum of 6 guests at the same time; and
- (d) may be provided for a guest for a maximum continuous period of 30 days.

### **13 Act binds the Crown**

This Act binds the Crown.

## **PART 2—LIQUOR APPEALS TRIBUNAL**

### *Division 1—The Tribunal*

#### **14 The Tribunal and its members**

(1) There is a tribunal called the Liquor Appeals Tribunal.

(2) The Governor in Council may, by gazette notice, appoint members of the Tribunal.

(3) One member of the Tribunal is to be appointed as chairperson of the Tribunal, and another is, or others are, to be appointed as deputy chairperson of the Tribunal.

(4) The chairperson may hold, or act in, and perform the functions of, another public office in addition to the office of chairperson if the chairperson is appointed to, or appointed to act in, the other office by the Governor in Council.

## **15 Qualification for appointment**

At least 1 member must be a person who—

- (a) has held office as a judge of the Supreme Court or as a judge of the District Court and who no longer holds such office; or
- (b) has engaged in legal practice for at least 5 years.

## **15A Advertising for nominations for appointment**

Before recommending a person to the Governor in Council for appointment as a member of the Tribunal, the Minister must advertise in a newspaper circulating throughout the State for applications or expressions of interest from suitably qualified persons to be considered for selection as a member of the Tribunal.

## **16 Appointment on part-time basis**

A member of the Tribunal is to be appointed on a part-time basis.

## **17 Term of appointment**

- (1) Appointment as a member of the Tribunal is for a specified period not longer than 3 years.
- (2) A member of the Tribunal is eligible for reappointment.

## **18 Resignation and removal from office**

(1) A member of the Tribunal may resign by signed notice given to the Minister.

(2) The Governor in Council may terminate the appointment of a member if the Governor in Council is satisfied the member—

- (a) is mentally or physically incapable of satisfactorily performing the member's duties; or
- (b) performed the member's duties carelessly, incompetently or inefficiently; or
- (c) has engaged in conduct that could warrant dismissal from the public service if the member were a public service officer; or
- (d) is affected by bankruptcy action.

(3) The Governor in Council must terminate the appointment of a member if the member is convicted of an indictable offence, whether dealt with on indictment or summarily.

(4) This section applies to a member whether appointed before or after the commencement of this section.

## **19 Leave of absence**

The Minister may grant leave of absence to a member of the Tribunal on conditions determined by the Minister.

## **20 Remuneration**

A member of the Tribunal is entitled to such remuneration by way of allowances as the Governor in Council determines.

## **20A Protection of members**

A member of the Tribunal has, in the performance of the member's duties as a member of the Tribunal, the same protection and immunity as a District Court judge has in the performance of the judge's duties.

## **20B Annual report on operation of tribunal**

(1) As soon as practicable after each financial year, but not later than 30 September, the chairperson must give the Minister a report containing—

- (a) a review of the operation of the tribunal during the preceding financial year; and
- (b) proposals for improving the operation of, and forecasts of the workload of, the tribunal in the present financial year.

(2) The department's annual report for a financial year must include a report on the operation of the tribunal during the financial year.

### *Division 1A—Administration of Tribunal*

## **20C Chairperson's role**

(1) The chairperson's role includes the following—



- (a) directing the Tribunal's adjudicative operations to ensure they are as fair, economical, informal and speedy as practical;
- (b) developing, with the participation of other members, guiding principles that promote high quality and consistent decisions by the tribunal;
- (c) developing and implementing procedures and policies for the Tribunal's adjudicative operations;
- (d) issuing practice directions of general application to proceedings;
- (e) managing the overall performance of members;
- (f) being responsible for the professional development and training of members of the Tribunal in relation to the discharge of their functions.

(2) The chairperson may do all things necessary or convenient to be done for the performance of the chairperson's role.

### **20D Chairperson and registrar to work cooperatively**

The chairperson and the registrar must work cooperatively to promote the effective and efficient operation of the Tribunal.

### **20E Member's role**

(1) The role of a member of the Tribunal includes professionally and efficiently performing the functions of the Tribunal assigned or given to the member under this Act.

(2) A member must comply with the procedures and policies implemented by the chairperson for the tribunal's adjudicative operations.

### **20F Delegation by chairperson**

(1) The chairperson may delegate the chairperson's powers under this Act or another Act to another member of the Tribunal.

(2) The chairperson may delegate the chairperson's power under section 22(2) to the registrar of the Tribunal.

(3) The registrar may subdelegate the delegated power to another appropriately qualified officer of the staff of the registry.

(4) In this section—

**“appropriately qualified”**, for a subdelegated power, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person’s level of employment in the registry.

**“registry”** means the central tribunals registry under the *Queensland Building Tribunal Act 2000*.

### ***Division 2—Jurisdiction, powers and procedures of Tribunal***

## **21 Jurisdiction and powers of Tribunal**

(1) The Tribunal has jurisdiction to hear and determine appeals made to it against decisions of the chief executive in relation to—

- (a) the grant or refusal of a licence or permit or the renewal of an extended hours permit; or
- (b) the specification of conditions in a licence or permit; or
- (c) the taking of disciplinary action relating to, or the urgent suspension of, a licence, the cancellation or suspension of a permit or the imposition or variation of the conditions of a permit; or
- (ca) the surrender of a licence or permit; or
- (d) the grant or refusal of an authorisation under this Act; or
- (e) an order directed to a licensee or permittee or a person holding an authorisation under this Act; or
- (f) assessment, reassessment or imposition of a fee payable in respect of a licence; or
- (g) allotment or apportionment of liability for payment, or entitlement to refund, of a fee in respect of a licence or permit;

and to hear and determine other appeals or applications that, under this or another Act, it is authorised to hear and determine.

(2) In exercise of its jurisdiction, the Tribunal—

- (a) has—

- (i) the powers and discretions of the chief executive in respect of the matter under appeal; and
- (ii) the powers otherwise conferred on it by this Act; and
- (b) has the duties imposed by this Act on the chief executive in respect of the matter under appeal; and
- (c) is subject to the limitations imposed by this Act on the chief executive in respect of the matter under appeal.

## 22 Constitution of Tribunal

(1) For the purpose of exercising its jurisdiction, the Tribunal is properly constituted by 3 of its members of whom 1 must be qualified as mentioned in section 15.

(2) The chairperson must select the members of the Tribunal for a proceeding, one of whom may be the chairperson.

(3) However, for a minor appeal, a conference under section 26A<sup>7</sup> or an application for an order under section 41A(2),<sup>8</sup> the Tribunal may be constituted by a single member selected by the chairperson who is qualified as mentioned in section 15.<sup>9</sup>

(4) Also, for a prescribed application or matter under the *Queensland Building Tribunal Act 2000*, section 26C,<sup>10</sup> the chairperson may select the presiding case manager to constitute the Tribunal.

(5) In this section—

“**minor appeal**” means an appeal against a decision of the chief executive other than the following—

- (a) a decision on an application for a new licence under this Act or the *Wine Industry Act 1994*;
- (b) a decision on an application for an extended hours permit, or variation of an extended hours permit, that would extend trading hours on a regular basis;

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7 Section 26A (Directions)

8 Section 41A (Suppression of sensitive information)

9 Section 15 (Qualification for appointment)

10 *Queensland Building Tribunal Act 2000*, section 26C (Presiding case manager’s power to deal with particular applications to central tribunals)

- (c) a decision on an application for, or for relocation or transfer of, a detached bottle shop;
- (d) a decision on an application for, or the cancellation, suspension or imposition or variation of conditions on, an adult entertainment permit;
- (e) a decision under section 137A(1) or (4)<sup>11</sup> to take disciplinary action relating to a licence;
- (f) a decision on a variation of a licence.

### **23 Way of exercising jurisdiction**

The Tribunal's jurisdiction is exercised in a proceeding by—

- (a) for a minor appeal, a conference under section 26A<sup>12</sup> or an application for an order under section 41A(2)<sup>13</sup> for which the Tribunal is constituted by a single member—the member constituting the Tribunal in the proceeding; or
- (b) for a prescribed application or matter under the *Queensland Building Tribunal Act 2000*, section 26C—the person constituting the Tribunal for the application or matter; or
- (c) otherwise—the unanimous or majority decision of the Tribunal's members constituting the Tribunal in the proceeding.

### **24 Supervision of Tribunal's exercise of jurisdiction**

(1) A participant in a proceeding before the Tribunal, who is dissatisfied with the Tribunal's decision in the proceeding, may appeal to the Supreme Court against the decision on a ground of error of law.

(2) The appeal must be made within 28 days of the date of the Tribunal's decision.

(3) If a question of law arises in a proceeding before the Tribunal, the Tribunal may state a case for the Supreme Court's opinion—

- (a) on its own initiative; or

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11 Section 137A (Decision about disciplinary action)

12 Section 26A (Directions)

13 Section 41A (Suppression of sensitive information)

(b) on application made to the Tribunal by a participant in the proceeding.

(4) If the Supreme Court finds the Tribunal's decision is affected by error of law, it may set aside the Tribunal's decision and remit the matter to the Tribunal for decision in accordance with law.

## **25 Procedures of Tribunal**

In exercise of its jurisdiction the Tribunal—

- (a) must observe natural justice; and
- (b) must proceed expeditiously with as little formality and technicality as is consistent with a fair and proper consideration of the matter before it; and
- (c) is not bound by rules or practice as to evidence and may inform itself on any matter as it considers appropriate; and
- (d) subject to this Act, may regulate its procedures as it considers appropriate.

## **26 Powers of Tribunal in proceedings**

(1) In a proceeding, the Tribunal may—

- (a) proceed in the absence of a person who has been given reasonable notice of the proceeding; and
- (b) receive evidence on oath or a statutory declaration; and
- (c) adjourn the proceeding; and
- (d) permit amendment of any document; and
- (e) disregard a defect, error, omission or insufficiency in—
  - (i) a document; or
  - (ii) giving, advertising or displaying a document.

(2) The member, or any of the members, constituting the Tribunal in a proceeding, and any person authorised by the member, or any of the members, to do so, may administer an oath to a person appearing as a witness in the proceeding.

(3) In this section—

**“member”** includes presiding case manager.

**26A Directions**

(1) The Tribunal may hold a conference for considering, or giving directions at or after the conference about, any matter or proceeding within its jurisdiction.

(2) Without limiting subsection (1), the Tribunal may consider or give directions about the following as it considers appropriate—

- (a) the conduct of the matter or proceeding;

*Example for paragraph (a)—*

The Tribunal may direct, in the case of conflicting experts' reports, that the experts prepare a joint report identifying the points of agreement and highlighting the points of disagreement.

- (b) requiring parties to make discovery or allow inspection of evidentiary material;
- (c) requiring parties to file pleadings;
- (d) giving a party leave to be represented by a lawyer;
- (e) striking out the matter or proceeding on the ground that it is frivolous or vexatious;
- (f) staying a decision of the chief executive;
- (g) giving leave to adduce new evidence under section 35A.<sup>14</sup>

(3) A conference may be held and directions given—

- (a) on the application of a participant or on the Tribunal's own initiative; and
- (b) before a matter or proceeding starts or at any time during the matter or proceeding; and
- (c) by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication.

(4) A direction given by the Tribunal under this section may be in the form of an order of the Tribunal.

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<sup>14</sup> Section 35A (Tribunal may give leave for appeal to be based on new evidence and related matters)

**27 Summons to witnesses**

(1) The registrar of the Tribunal may, on direction by the Tribunal as constituted in a proceeding or on application by a party to a proceeding, by written notice given to a person require the person to attend at a proceeding before the Tribunal at a time and place specified in the notice for the purpose of giving evidence or producing a document specified in the notice.

(2) A person to whom a notice under subsection (1) is given must not, without reasonable excuse, fail to attend—

- (a) as required by the notice; and
- (b) continue to attend as required by the Tribunal until excused from further attendance.

Maximum penalty—35 penalty units.

(3) A person required to attend at a proceeding before the Tribunal is entitled to—

- (a) the witness fees and expenses prescribed under a regulation; or
- (b) if no witness fees or expenses are prescribed—the reasonable witness fees and expenses decided by the Tribunal.

(4) If the notice requiring a person to attend at a proceeding is issued on an application by a party to the proceeding, the party must pay the fees and expenses to which the person is entitled.

**28 Duty of witness in proceedings**

(1) A person who appears, voluntarily or in response to a notice under section 27(1), as a witness before the Tribunal must not—

- (a) fail to take an oath or make an affirmation when required to do so for the purpose of the proceeding; or
- (b) fail, without reasonable excuse, to answer a question when required by the Tribunal to do so; or
- (c) fail, without reasonable excuse, to produce a document that the person is required by a notice under section 27(1) to produce.

Maximum penalty—35 penalty units.

(2) For the purposes of this Act—

- (a) it is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person; and
- (b) it is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.

## **29 Contempt of Tribunal**

(1) A person must not—

- (a) insult the member, or any of the members, constituting the Tribunal in a proceeding; or
- (b) deliberately interrupt a proceeding before the Tribunal; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the Tribunal is conducting a proceeding; or
- (d) do anything that would constitute a contempt of court if the Tribunal were a court of record.

Maximum penalty—50 penalty units.

(2) In this section—

“**member**” includes presiding case manager.

### *Division 3—Appeals to Tribunal*

#### **29A Definition**

In this Division—

“**submission**” does not include a submission made under section 118A.

## **30 Persons entitled to appeal**

(1) An appeal against a decision of the chief executive may be made only by a person—

- (a) who—



- (i) made an application, submission or objection in the proceeding in which the decision was made; or
  - (ii) if the decision is to take disciplinary action relating to, or the urgent suspension of, a licence, to cancel or suspend a permit or to impose or vary the conditions of a permit—the licensee or permittee; and
- (b) who is aggrieved by the decision.

(2) However, if, under section 111(2), the chief executive decides to vary conditions of a licence or permit relating to a restricted area, a person who made a submission or objection in the proceeding for the variation is not entitled to appeal against the chief executive's decision.

### **31 Start of appeal**

(1) A person who wishes to appeal against a decision of the chief executive must start the appeal under this section.

(2) An appeal is started by filing a notice of appeal with the registrar of the Tribunal.

(3) The notice of appeal must be filed with the registrar within 28 days after the day on which the person received written notice of the chief executive's decision.

(4) The registrar must give a copy of the notice of appeal to the chief executive within 3 days of receiving the notice.

(5) Subsection (6) applies if the chief executive fails to notify an applicant of the grant or refusal of an application within 30 days after the end of the time within which all steps required or permitted by this Act to be taken relating to the application must be taken.

(6) For the purposes of an appeal, the chief executive is taken to have given to the applicant notice of a decision to refuse the application at the end of the period of 30 days.

### **32 Notice of appeal**

A notice of appeal must—

- (a) be in a form approved by the registrar; and
- (b) specify the grounds of appeal.

### **33 Notification to interested persons**

(1) As soon as practicable after receiving a notice of appeal, the chief executive must give to the registrar of the Tribunal written notice of the names and addresses (as last known to the chief executive) of all persons who made an application, submission or objection in the proceeding relevant to the appeal.

(2) The registrar of the Tribunal must give to each person whose name and address have been notified to the registrar under subsection (1), other than the appellant, written notice that an appeal has been started.

### **34 Arranging the hearing of appeal**

(1) An appeal to the Tribunal against a decision of the chief executive is by a rehearing on the evidence that was before the chief executive.

(2) Within 2 months after a notice of appeal is filed with the registrar of the Tribunal, the appeal must be set down for hearing.

(3) At least 3 days before the hearing of the appeal is to start, the registrar must give written notice of the time and place of the hearing to the following persons—

- (a) the appellant;
- (b) the chief executive;
- (c) as far as is practicable—each person whose name and address have been given to the registrar under section 33.

(4) At the hearing of the appeal, each person mentioned in subsection (3)(a) to (c) is entitled—

- (a) for an individual—to be heard personally; or
- (b) for a corporation—to be represented by an officer of the corporation; or
- (c) in any case—with the Tribunal's leave, to be represented by a lawyer.

(5) In deciding whether to grant leave under subsection (4)(c), the Tribunal must consider—

- (a) whether complex questions of law may arise; or
- (b) whether a party to the appeal may be disadvantaged by the decision.

(6) An appeal that has been properly started cannot be withdrawn or abandoned without the Tribunal's leave.

### **35 Stay of operation of decisions etc.**

(1) On application of an appellant filed with the registrar of the Tribunal, an order may be made that a decision subject to the appeal—

- (a) be stayed; or
- (b) be given effect only to a specified extent.

(2) An order under subsection (1) may be made—

- (a) if application for the order is made before the hearing of the appeal starts—by the member of the Tribunal who is to preside at the hearing; or
- (b) if application for the order is made after the hearing of the appeal starts—by the Tribunal constituted for the appeal.

(3) An order under subsection (1) may impose conditions on which it is to be effective.

(4) An order that imposes conditions has effect only while all the conditions are complied with.

(5) Subject to subsection (4), an order under subsection (1) has effect until—

- (a) the appeal is determined or properly withdrawn; or
- (b) the Tribunal otherwise orders on the chief executive's application.

(6) Unless an order under subsection (1)(a) has effect, a decision subject to appeal to the Tribunal remains in force and is to be given effect by all persons concerned.

### **35A Tribunal may give leave for appeal to be based on new evidence and related matters**

(1) This section applies despite section 34(1).

(2) A participant in a proceeding for an appeal against a decision of the chief executive may apply for leave to adduce fresh, additional or substituted evidence (“**new evidence**”) in a way permitted by the Tribunal.

(3) The Tribunal may give leave to adduce new evidence if it is satisfied—

- (a) the person seeking to adduce the new evidence did not know, and could not reasonably be expected to have known, of the existence of the new evidence on or before the day of the chief executive’s decision; or
- (b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.

(4) If the Tribunal gives leave to adduce new evidence, the Tribunal may—

- (a) adjourn the proceeding to allow the chief executive to reconsider the decision appealed against together with the new evidence; or
- (b) if the Tribunal considers it appropriate for the participant to make a new application, require the participant to make a new application to the chief executive; or
- (c) continue with the appeal by way of rehearing on the evidence that was before the original decision-maker and on the new evidence.

(5) Despite subsection (4), if the chief executive applies for an adjournment to allow the chief executive to reconsider the decision appealed against together with the new evidence, the Tribunal must adjourn the proceeding for a stated reasonable time.

(6) In deciding if it is appropriate for the participant to make a new application, the Tribunal must consider whether—

- (a) the new evidence substantially changes the application the subject of the appeal; or
- (b) additional people may be affected by the application and the additional people should have an opportunity to comment on or object to the application.

### **36 Powers of Tribunal on appeal**

(1) In deciding an appeal, the Tribunal may—

- (a) confirm the chief executive's decision; or
- (b) set aside the chief executive's decision, in whole or part, and—
  - (i) substitute its decision; or
  - (ii) return the matter, in whole or part, to the chief executive with the directions it considers appropriate.

(2) The Tribunal may decide an appeal to remedy an injustice or adverse effect the Tribunal considers was caused to the appellant by the chief executive's decision even though someone failed to take, or properly to take, an action required by this Act.

(3) The Tribunal may make orders it considers appropriate to give effect to its decision.

### **37 Compliance with orders**

Every order made—

- (a) by the Tribunal, in exercise of its jurisdiction or of a power had by the Tribunal for the purpose of exercising its jurisdiction; or
- (b) by a member of the Tribunal, under section 35(2)(a);

must be complied with by the appellant, the chief executive and all other persons affected by the order.

Maximum penalty—350 penalty units.

### **38 Costs on appeal**

(1) Subject to subsections (2) and (2A), each of the persons entitled to be heard on an appeal must bear the person's own costs.

(2) On application made to it, the Tribunal may make such order as to costs (including expenses of witnesses attending for the purpose of giving evidence before it) as it considers just if—

- (a) it considers the appeal to be frivolous or vexatious; or
- (b) a person concerned in the appeal has not given reasonable prior notice of intention to seek an adjournment of a hearing; or
- (c) a person concerned in the appeal has incurred costs because another person concerned in the appeal has defaulted in complying with procedural requirements; or

- (d) the chief executive has not attempted to support the decision, or failure to make a decision, subject to the appeal.

**(2A)** Also, if the Tribunal directs an expert to prepare a report in relation to a proceeding within its jurisdiction, the Tribunal may make the order it considers appropriate in relation to the costs for the preparation of the report.

**(3)** A document purporting to be certified by the registrar of the Tribunal to be a true copy of an order for costs may be filed in the registry of the District Court, and enforced as an order of that court.

**(4)** If the Tribunal makes an order for costs but the order does not specify the amount of the costs, the amount is to be ascertained in accordance with the table for taxation of costs in the District Court, as determined, if necessary, by the taxing officer of the Supreme Court at Brisbane.

### **39 Appeal without hearing**

**(1)** This section applies if—

- (a) an appellant asks the Tribunal to deal with an appeal without holding a hearing; and
- (b) the other parties to the appeal consent.

**(2)** The Tribunal may proceed to deal with the appeal, or part of the appeal, without holding a hearing.

### **40 Striking out appeal**

If an appellant—

- (a) fails to appear, in person or by an agent, at the time and place appointed for the start of hearing an appeal, or any adjournment, of which the appellant has been given reasonable notice; and
- (b) has not informed the Tribunal of a reasonable excuse for the failure;

the Tribunal may strike out the appeal without proceeding to a determination.

**41 Tribunal's decision to be written and include reasons**

- (1) The Tribunal must make its decision on an appeal in writing.
- (2) The decision must include the Tribunal's reasons for the decision.
- (3) A copy of the decision must be given to each party to the appeal.

**41A Suppression of sensitive information**

(1) If, at the time of a proceeding, a participant in the proceeding applies to the Tribunal to suppress sensitive information about a person, the Tribunal may order that the information is not to form part of the record available for inspection by members of the public.

(2) If, after a proceeding, a person who was a participant in the proceeding applies to the Tribunal for an order to suppress sensitive information about the person, the Tribunal may order that the information is not to form part of the record available for inspection by members of the public from a day stated in the order.

(3) However, the Tribunal must—

- (a) before making an order under subsection (2), ask the registrar to provide information about—
  - (i) the extent of any existing publication of the sensitive information; and
  - (ii) the period reasonably needed for the removal of the sensitive information from the record available for inspection by members of the public; and
- (b) in making the order, have regard to the extent of any publication of the information and the period for removal stated by the registrar.

(4) The tribunal, in deciding whether to suppress information, is not limited by subsection (3) or to a consideration of whether or not the information is in fact sensitive.

(5) In this section—

**“sensitive information”**, about a person, means information about—

- (a) the person's reputation; or
- (b) the person's history of behaviour or attitude in relation to the management and discharge of the person's financial obligations.

## PART 3—ADMINISTRATION

### 42 Power of delegation

(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service employee, police officer or person employed by a local government other than a Council.

(2) However, a delegation under subsection (1) for the issue of a permit relating to a restricted area may only be given to an appropriately qualified officer of the department.

(3) A person to whom a power has been delegated under subsection (1) may delegate the power to an appropriately qualified public service employee, police officer or person employed by a local government other than a Council.

(4) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

For a public service employee, the employee's position in a department.

### 43 Register of licences, permits and applications to be kept

(1) The chief executive must keep a register of licences, permits and applications, in a form or forms the chief executive considers appropriate.

(2) The register is to contain the following—

- (a) particulars of licences and permits;
- (b) particulars of licensees, permittees, nominees of licensees or permittees and interested persons;
- (c) addresses of licensed premises or places to which permits relate;
- (d) trading hours that apply to licences or permits;
- (e) particulars of applications required under section 118(1) to be advertised that have not been decided.

(3) However, the chief executive must ensure the register does not include any of the following—

- (a) sensitive information about a person;



- (b) information the chief executive reasonably considers is commercially sensitive;
- (c) particulars given to the chief executive under section 45.<sup>15</sup>

(4) For subsection (3)(b), a person may ask the chief executive to consider a written submission by the person about whether information is commercially sensitive.

(5) In this section—

“**sensitive information**”, about a person, see section 41A(5).

#### **44 Register open to inspection**

The register must be available in the department at Brisbane for inspection—

- (a) by an investigator or a police officer while performing duty for the purposes of this Act, free of charge; and
- (b) by any other person, on payment of the fee prescribed.

#### **44A Owner, lessee, mortgagee and secured creditors to give particulars to chief executive**

(1) This section applies to—

- (a) an owner, lessee and mortgagee of licensed premises; and
- (b) a secured creditor of the licensee whose interest is likely to be affected by cancellation of the licence for the premises.

(2) The persons mentioned in subsection (1) must give the chief executive particulars sufficient to identify their interest in the licence within 28 days of—

- (a) acquiring the interest; or
- (b) if the person holds the interest at the time the licence is granted—the granting of the licence.

(3) A person who has given particulars under subsection (2) of the person’s interest in a licence must give the chief executive notice that the

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15 Section 45 (Court officials to furnish particulars)

person no longer holds the interest within 28 days of ceasing to hold the interest.

Maximum penalty for subsection (3)—1 penalty unit.

#### **45 Court officials to furnish particulars**

The court official who has custody of records of convictions recorded, and penalties ordered, by a court must give to the chief executive particulars of—

- (a) all convictions by the court of licensees, permittees and nominees; and
- (b) all penalties ordered by the court on the convictions.

#### **46 Orders for licensed premises etc.**

(1) The chief executive may issue an order to a licensee, permittee, nominee, owner or other person shown in the register as a person who has an interest in licensed premises, or premises to which a restricted club permit relates, about—

- (a) altering the premises to make the premises suitable for the conduct of business under authority of the licence or permit; or
- (b) increasing or decreasing the area of the premises; or
- (c) complying with laws about noise coming from the premises; or
- (d) complying with laws about fire safety for the premises and hygienic practices in the conduct of business under authority of the licence or permit; or
- (e) complying with this Act.

(2) An order under subsection (1) may—

- (a) specify a time within which it is to be complied with; and
- (b) indicate specific steps to be taken with a view to complying with it.

(3) A person must not contravene an order under subsection (1).

Maximum penalty—25 penalty units.

**47 Assistance to public authorities**

The chief executive may disclose to—

- (a) any authority charged with administering a law of another State or a Territory relating to licensing for the sale or supply of liquor; or
- (b) any authority that seeks the information for the purpose of performing functions of a public nature imposed on the authority by law;

information gathered in the course of administering this Act with respect to—

- (c) the administration of this Act; or
- (d) the affairs of any person affected by the administration of this Act.

**47A Publication of information on internet etc.**

The chief executive may publish information in the register kept under section 43<sup>16</sup> in a way the chief executive considers appropriate, including, for example, by the internet or other telecommunication.

**48 Preservation of confidentiality**

(1) Subject to subsection (2), a person who is engaged, or has been engaged, in giving effect to this Act must not make a record of, or directly or indirectly disclose, information about the affairs of another person gathered in the course of administration of this Act.

Maximum penalty—35 penalty units.

(2) Subsection (1) does not apply to—

- (a) disclosing information in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (b) disclosing information in the register; or
- (c) disclosing information about the status of an application required to be advertised under section 118(1); or

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16 Section 43 (Register of licences, permits and applications to be kept)

- (d) disclosing information about the status of an appeal started in the Tribunal and the names of the parties to the appeal; or
- (e) doing anything for the purposes of this Act.

#### **49 Protection from liability**

(1) A person engaged in giving effect to this Act does not incur civil liability for an act done or omitted to be done honestly and without negligence under, or for the purposes of, this Act.

(2) A liability that would, but for this section, attach to a person attaches instead to the State.

## **PART 4—LICENCES AND PERMITS**

### *Division 1—Licences*

#### **58 Available licences**

(1) The following licences may be granted and held under this Act—

- (a) general licence;
- (b) residential licence;
- (c) on-premises licence;
- (d) producer/wholesaler licence;
- (e) club licence;
- (f) special facility licence;
- (g) limited licence.

(2) Only 1 licence may be granted or held for premises, or part of premises, but a licence may be granted or held for the premises or part even though there is a licence under the *Wine Industry Act 1994* for the premises or part.

(3) However, if a licence is granted or held for premises, or part of premises, under this Act and the *Wine Industry Act 1994*—

- (a) the licensee under both Acts must be the same person; and
- (b) the nominee under this Act must be a nominee for the licence under the *Wine Industry Act 1994*; and
- (c) liquor may be sold under the licence under this Act only for the trading hours authorised under the licence.

### *Division 2—General licence*

#### **58A Primary purpose of a business conducted under a general licence**

(1) The primary purpose of a business conducted under a general licence is the sale of liquor for consumption on the premises, or on and off the premises, together with the provision of meals and accommodation as required under the licence.

(2) The authority under a general licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).

(3) To remove doubt, it is declared that it is inconsistent with the primary purpose of a business conducted under a general licence to only sell liquor for consumption off the premises.

#### **59 Authority of general licence**

(1) A general licence authorises the licensee—

- (a) to sell liquor on the licensed premises, for consumption on or off the premises, during ordinary trading hours or ordinary trading hours extended by an extended hours permit; and
- (b) to sell liquor on the licensed premises, for consumption on or off the premises, at any time to a resident on the premises; and
- (c) to sell liquor on the licensed premises, for consumption on the premises, at any time to a guest of a resident on the premises while the guest is in the resident's company; and
- (d) to sell liquor on premises approved by the chief executive for sale of liquor under authority of the general licence, for consumption—
  - (i) off the premises; or

(ii) on the premises in the amount and in the circumstances prescribed by regulation.

(2) If the chief executive specifies in the licence, the authority of a general licence extends to the sale of liquor off the licensed premises, for consumption off the premises, while the licensee is catering for a function if—

- (a) the sale is ancillary to the function at the place where the liquor is consumed; and
- (b) the liquor is sold for consumption by persons genuinely attending the function.

(3) The authority under subsection (1) or (2) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

(4) Premises approved by the chief executive for sale of liquor under the authority of a general licence are part of the licensed premises to which the licence relates.

## **60 Restriction on grant of general licence**

(1) The chief executive may grant a general licence only if the chief executive is satisfied the business to be conducted under the licence on the licensed premises will have a primary purpose as mentioned in section 58A(1).

(2) The chief executive must not grant a general licence to a person for premises the chief executive reasonably considers are, or are to be, used primarily as a supermarket.

## **61 Consumption of liquor on premises by residents and guests**

Liquor supplied under authority of a general licence to a resident on the licensed premises, or to a guest of a resident in the resident's company, for consumption on the premises at any time other than ordinary trading hours, or those hours extended by an extended hours permit, must be consumed—

- (a) in a residential unit on the premises; or
- (b) in a part of the premises approved for the time being by the chief executive for the purpose.

***Division 3—Residential licence*****61A Primary purpose of a business under a residential licence**

(1) The primary purpose of a business conducted under a residential licence is the provision of accommodation.

(2) The authority under a residential licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with the primary purpose as mentioned in subsection (1).

**62 Authority of residential licence**

(1) A residential licence authorises the licensee to sell liquor on the licensed premises—

(a) at any time—

(i) to a resident on the licensed premises, or a guest of a resident in the resident's company, for consumption on the premises; or

(ii) to a resident on the licensed premises in a quantity of not more than 9 L on any day, for consumption off the premises; and

(b) during ordinary trading hours or those hours extended by an extended hours permit, to any person, including a person not eating a meal, as if the residential licence were an on-premises (meals) licence relating to a part of the premises stated in the residential licence as ordinarily set aside for dining; and

(c) if the chief executive so specifies in the licence—during ordinary trading hours to an owner or operator of a boat making use of facilities of a marina adjacent to the licensed premises, for consumption on or off the premises as specified in the licence.

(2) Despite subsection (1)(b), a residential licence does not authorise the licensee to sell liquor, from the part of the premises stated in the residential licence as ordinarily set aside for dining, for consumption off the premises.

(3) If the chief executive specifies in the licence, the authority of a residential licence extends to the sale of liquor on premises, other than the licensed premises, for consumption on the other premises.

(4) The authority conferred by a residential licence to sell liquor for consumption off the licensed premises to a person other than a resident on the licensed premises is restricted to the sale of liquor—

- (a) as ancillary to a function that—
  - (i) happens at a place at which the liquor is consumed; and
  - (ii) includes the licensee providing food for the function of sufficient substance as to be ordinarily accepted as a meal for consumption by persons genuinely attending the function, even though the food may be eaten while standing and without cutlery; and
- (b) for consumption by persons genuinely attending the function.

(5) In deciding whether the holder of, or an applicant for, a residential licence sells or proposes to sell liquor under the licence as if the licence were an on-premises (meals) licence, the chief executive must consider the indicators mentioned in section 73(3)<sup>17</sup> together with any other relevant matters.

(6) The authority under subsection (1) or (3) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

### **63 Restriction on grant of residential licence**

The chief executive may grant a residential licence for premises only if the chief executive is satisfied that—

- (a) the primary purpose of the business to be conducted on the premises is the provision of residential accommodation; and
- (b) the premises contain, or will contain, residential units of an area and furnished with facilities approved by the chief executive.

### **64 Consumption of liquor on premises by residents and guests**

(1) Liquor supplied under authority of a residential licence to a resident or guest on the licensed premises, for consumption on the premises outside ordinary trading hours, must be consumed in—

- (a) a residential unit on the licensed premises; or

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<sup>17</sup> Section 73 (Primary purpose of a business under an on-premises (meals) licence)



- (b) a part of the licensed premises approved for the time being by the chief executive for the purpose.

(2) In this section—

“**guest**” means a guest of a resident in the resident’s company.

“**ordinary trading hours**”, for a residential licence, includes ordinary trading hours extended by an extended hours permit for the residential licence.

## **65 Consumption of liquor in dining area**

Liquor supplied under authority of a residential licence to a person as if the licence were an on-premises (meals) licence must be consumed in a part of the licensed premises stated in the residential licence as ordinarily set aside for dining.

## **66 Extension of authority to supply liquor for consumption on premises**

The chief executive may specify in a residential licence that the licensee may, subject to such conditions as the chief executive specifies in the licence, sell and supply liquor to or for persons genuinely attending a function held on the licensed premises.

## **67 Restriction on sale of liquor for consumption off premises**

The chief executive may specify that liquor may be sold under authority of a residential licence for consumption off the licensed premises only if the chief executive is satisfied that sale of the liquor will be made only in the course of the licensee providing catering facilities for functions.

### *Division 4—On-premises licence*

#### *Subdivision 1—General*

## **68 Authority of on-premises licence**

(1) An on-premises licence authorises the licensee to sell liquor in association with an activity conducted on the licensed premises, or on

premises of which the licensed premises form part, which activity is the primary purpose to be served by conduct of business under authority of the licence—

- (a) for consumption on the licensed premises; and
- (b) if the chief executive so specifies in the licence—for consumption off the licensed premises;

during ordinary trading hours or those hours extended by an extended hours permit.

(2) If the chief executive specifies in the licence, the authority of an on-premises licence extends to the sale of liquor on premises other than the licensed premises for consumption on the other premises.

(3) The authority under subsection (1) or (2) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

## **69 Restriction on grant of on-premises licence**

(1) The chief executive may grant an on-premises licence in respect of premises only if the chief executive is satisfied that the primary purpose of the premises is their use for—

- (a) functions; or
- (b) cabaret; or
- (c) eating meals prepared and served to be eaten on the premises; or
- (d) carrying passengers commercially; or
- (e) sporting, cultural, theatrical or cinematographic presentations; or
- (f) an area developed as a tourist attraction by provision of entertainment or visual instruction to tourists on the premises; or
- (g) training or educational programs relating to preparation and service of food and beverage; or
- (h) any other activity or purpose approved by the chief executive.

(2) The chief executive must not grant an on-premises licence if the chief executive considers that the sale of liquor proposed to be carried on under authority of the licence would more appropriately be carried on under authority of a licence of another kind.

**70 Restriction on sale of liquor for consumption off-premises**

(1) The chief executive may determine that liquor may be sold under authority of an on-premises licence for consumption off the licensed premises only if the chief executive is satisfied that sale of the liquor will be made only in the course of the licensee providing catering facilities for functions.

(2) The authority conferred by an on-premises licence to sell liquor for consumption off the licensed premises is restricted to the sale of liquor—

- (a) as ancillary to a function that—
  - (i) happens at a place at which the liquor is consumed; and
  - (ii) includes the licensee providing food for the function of sufficient substance as to be ordinarily accepted as a meal for consumption by persons genuinely attending the function, even though the food may be eaten while standing and without cutlery; and
- (b) for consumption by persons genuinely attending the function.

(3) However, the authority conferred by an on-premises (other activity) licence to sell liquor for consumption off the licensed premises is restricted to the sale of liquor for a function relating to the activity as stated in the licence by the chief executive.

(4) Subsections (1) and (2) do not apply to an on-premises (meals) licence in relation to a sale or supply of liquor under section 73A(b).

***Subdivision 2—On-premises (function) licences*****70A Primary purpose of an on-premises (function) licence**

(1) The primary purpose of a business conducted under an on-premises (function) licence is the provision of premises and catering facilities for use by persons genuinely attending a function held on the licensed premises.

(2) The authority under an on-premises (function) licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with the primary purpose as mentioned in subsection (1).

## **71 Restriction on sale and supply of liquor at functions**

Liquor sold or supplied as ancillary to a function must be sold or supplied only to persons genuinely attending the function for consumption by those persons at the function.

### ***Subdivision 3—On-premises (cabaret) licences***

#### **71A Primary purpose of a business under an on-premises (cabaret) licence**

(1) The primary purpose of a business under an on-premises (cabaret) licence is—

- (a) for the ordinary trading hours for the sale of liquor as mentioned in section 9(10)(b)—the provision of entertainment; and
- (b) if the chief executive so states in the licence—the provision of meals prepared and served to be eaten on the licensed premises for the ordinary trading hours for the sale of liquor as mentioned in section 9(10)(a).

(2) The authority under an on-premises (cabaret) licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).

(3) In deciding whether the holder of, or an applicant for, an on-premises (cabaret) licence conducts or will conduct a business that complies or will comply with subsection (1)(b), the chief executive must consider the indicators mentioned in section 73(3) together with any other relevant matters.

## **72 Seating accommodation in cabarets**

Premises used for cabaret must have accommodation for at least 100 persons seated at tables or otherwise as the chief executive approves.

#### **72A Authority to sell and supply liquor when primary purpose includes provision of meals**

If the primary purpose of an on-premises (cabaret) licence includes the provision of meals as mentioned in section 71A(1)(b), the authority of the licence to sell or supply liquor during the ordinary trading hours mentioned

in section 9(10)(a) extends to the sale or supply of liquor to a person on the premises other than in association with the person eating a meal.

### **72B Extension of authority to sell or supply liquor under on-premises (cabaret) licence**

The chief executive may state in an on-premises (cabaret) licence that the licensee may, subject to the conditions the chief executive states in the licence, sell and supply liquor to or for persons genuinely attending a function held on the licensed premises.

#### *Subdivision 4—On-premises (meals) licences*

### **73 Primary purpose of a business under an on-premises (meals) licence**

(1) The primary purpose of a business conducted under an on-premises (meals) licence is the provision of meals prepared and served to be eaten on the licensed premises.

(2) The authority under an on-premises (meals) licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with the primary purpose as mentioned in subsection (1).

(3) In deciding whether the holder of, or an applicant for, an on-premises (meals) licence conducts or will conduct a business that complies or will comply with subsection (1), the following are indicators that must be considered—

- (a) the existing or proposed seating and standing arrangements;
- (b) the existing or proposed number of staff for preparing and serving meals;
- (c) the existing or proposed kitchen arrangements, including, for example, the hours of operation of the kitchen;
- (d) for an existing business, a comparison of the number of meals consumed and the amount of liquor sold.

(4) Subsection (3) does not limit the matters that may be considered when deciding if a business complies or will comply with subsection (1).

**73A Restriction on sale of liquor under an on-premises (meals) licence**

The authority of an on-premises (meals) licence is restricted to the following—

- (a) the sale and supply of liquor for consumption on the licensed premises—
  - (i) in association with a consumer eating a meal on the premises; and
  - (ii) to persons on the premises other than in association with the persons eating meals;
- (b) the sale and supply of 1 opened and 1 unopened bottle of wine for consumption off the premises to each adult consumer eating a meal.

**73B Extension of authority to sell or supply liquor under on-premises (meals) licence**

The chief executive may state in an on-premises (meals) licence that the licensee may, subject to the conditions the chief executive states in the licence, sell and supply liquor to or for persons genuinely attending a function held on the licensed premises.

**74 Display of menu and liquor list**

The holder of an on-premises (meals) licence must display details of the menu and the liquor list available to consumers on the premises so the details and list are—

- (a) in a conspicuous place on the premises to which the licence relates; and
- (b) clearly visible from outside the premises.

Maximum penalty—25 penalty units.

***Subdivision 5—On-premises (transport) licences*****74A Primary purpose of a business under an on-premises (transport) licence**

(1) The primary purpose of a business conducted under an on-premises (transport) licence is carrying passengers commercially on an aircraft, boat, train or vehicle.

(2) The authority under an on-premises (transport) licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with the primary purpose as mentioned in subsection (1).

**75 Restriction on sale of liquor**

The authority of an on-premises (transport) licence that relates to an aircraft, boat, train or vehicle is restricted to the sale of liquor to passengers who are about to make, are making, or have just completed a journey on the aircraft, boat, train or vehicle.

***Subdivision 6—On-premises (presentations) licences*****75A Primary purpose of a business under an on-premises (presentations) licence**

(1) The primary purpose of a business conducted under an on-premises (presentations) licence is the provision of facilities for sporting, cultural, theatrical or cinematographic presentations.

(2) The authority under an on-premises (presentations) licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).

**76 Location of liquor outlets specified in licence**

(1) There must be specified in an on-premises (presentations) licence each part of the premises in which liquor may be sold and consumed.

(2) A part of the premises that is readily accessible to persons who are not attending a presentation on the premises must not be specified under subsection (1).

**77 Number of liquor outlets**

(1) The chief executive must decide the number of liquor outlets that should be in premises mentioned in section 76 to which an on-premises (presentations) licence relates.

(2) The chief executive must—

- (a) define in the licence each part of the premises that is to be a liquor outlet; and
- (b) specify in the licence how each such liquor outlet must be marked out.

(3) Each liquor outlet defined in the licence, and marked out as specified in the licence, is the licensed premises in respect of the area to which the licence relates.

***Subdivision 7—On-premises (tourist) licences*****78 Primary purpose of a business under an on-premises (tourist) licence**

(1) The primary purpose of a business conducted under an on-premises (tourist) licence is the provision of entertainment or visual instruction to tourists on premises developed as a tourist attraction.

(2) The authority under an on-premises (tourist) licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).

**79 Restriction on sale of liquor under on-premises (tourist) licence**

(1) The authority under an on-premises (tourist) licence is restricted to the sale of liquor at a liquor outlet stated in the licence for consumption within that liquor outlet.

(2) The chief executive may state in an on-premises (tourist) licence that the licensee may sell and supply liquor to or for persons genuinely attending a function held on the licensed premises only on the conditions the chief executive states in the licence.



*Subdivision 8—Other activity***80 Primary purpose of a business under an on-premises (other activity) licence**

(1) The primary purpose of a business conducted under an on-premises (other activity) licence is the provision by the licensee of an activity stated in the licence for persons on the licensed premises.

(2) The authority under an on-premises (other activity) licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with the primary purpose as mentioned in subsection (1).

**81 Extension of authority to sell liquor under an on-premises (other activity) licence**

The chief executive may state in an on-premises (other activity) licence that the licensee may, subject to the conditions the chief executive states in the licence, sell liquor to or for persons on the licensed premises genuinely attending a function relating to the activity as stated in the licence.

*Division 5—Producer/wholesaler licence***81A Primary purpose of business under producer/wholesaler licence**

(1) The primary purpose of a business conducted under a producer/wholesaler licence is either or both of the following—

- (a) the production and wholesale sale on the licensed premises of liquor made on the licensed premises;
- (b) the wholesale sale on the licensed premises of liquor.

(2) The authority under a producer/wholesaler licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).

**82 Authority of producer/wholesaler licence**

(1) A producer/wholesaler licence authorises the licensee—

- (a) if the licensee is a producer of liquor—to sell on the licensed premises liquor produced or made on the licensed premises, for

consumption on or off the licensed premises, during ordinary trading hours or those hours extended by an extended hours permit; or

- (b) if the licensee is a wholesale supplier of liquor—to sell liquor on the licensed premises, for consumption off the licensed premises, during ordinary trading hours.

(2) The authority under subsection (1) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

### **83 Restriction on grant of producer/wholesaler licence**

The chief executive may grant a producer/wholesaler licence only if the chief executive is satisfied the business to be conducted under the licence on the licensed premises will have a primary purpose as mentioned in section 81A(1).

### **84 Restriction on sale of liquor under producer/wholesaler licence**

(1) Subject to subsection (2), the holder of a producer/wholesaler licence must not sell liquor to a person other than—

- (a) a licensee or permittee; or
- (aa) a licensee under the *Wine Industry Act 1994*; or
- (b) a person engaged in an activity to which this Act is prescribed not to apply, if the sale is for the purpose of that activity; or
- (d) a person authorised by a law of the Commonwealth, another State or a Territory or foreign country to sell liquor, or the person's agent; or
- (e) a person exempt from the application of a law of the Commonwealth, another State or a Territory relating to the sale of liquor, or the person's agent, if the sale is made in circumstances in which the person is so exempt; or
- (f) a person who purchases the liquor for export; or
- (g) a person who purchases the liquor for stock in a duty free store; or
- (h) a person who purchases the liquor to provide it for consumption on ships or aircraft on international journeys; or

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- (i) a person who purchases the liquor to provide it at Government House, or at a foreign embassy or consulate, as part of official activities at the place; or
- (j) a person who purchases the liquor for a religious entity for sacramental purposes.

(2) The holder of a producer/wholesaler licence who is a producer of liquor may—

- (a) sell the licensee's liquor and liquor for which the licensee is a wholesaler to a visitor to the licensed premises for consumption on the premises in association with the visitor eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises; and
- (b) sell the licensee's liquor, for consumption on or off the licensed premises, to a visitor to the licensed premises, if the liquor is sold as a souvenir of the visit.

(3) The holder of a producer/wholesaler licence does not contravene this section by selling liquor during any period—

- (a) to the holder's staff; or
- (b) for sampling, promotions or similar purposes;

if such sales do not exceed 2.5% by value of the holder's total sales of liquor during the period.

(4) This section does not apply to the holder of a producer/wholesaler licence who holds a brewery licence within the meaning of section 77A of the *Excise Act 1901*<sup>18</sup> (Cwlth) in relation to the sale by the licensee of the licensee's liquor.

(5) In this section—

**“licensee's liquor”** means liquor produced on the premises to which the licence relates.

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18 *Excise Act 1901* (Cwlth), section 77A—  
*brewery licence* means a licence to manufacture beer.

***Division 6—Club licence*****84A Primary purpose of business under club licence**

(1) The primary purpose of a business conducted under a club licence is the provision of facilities and services to the club's members and the achievement of the club's objects.

(2) The authority under a club licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with the primary purpose as mentioned in subsection (1).

**85 Authority of club licence**

(1) A club licence authorises the licensee to sell liquor on the licensed premises—

- (a) during ordinary trading hours, or those hours extended by an extended hours permit held by the licensee in respect of the premises, to—
  - (i) a member of the club, for consumption on or off the premises, or a guest of a member in the member's company, for consumption on the premises; or
  - (ii) a member of a reciprocal club whose members' reciprocal rights are secured by formal reciprocal arrangements for consumption on or off the premises, or a guest of a member of such a reciprocal club in the member's company for consumption on the premises; or
  - (iii) an applicant for membership of the club for a period of 30 days after receipt by the secretary of the club of the applicant's application for membership for consumption on the premises; or
  - (iv) a visitor to the club whose ordinary place of residence is in another State or a Territory or in a foreign country for consumption on the premises; or
  - (v) a visitor to the club whose ordinary place of residence is in the State at least 15 km from the club's premises for consumption on the premises; or

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- (vi) a person attending a function or club activity (other than the purpose of the club) on the premises for consumption on the premises; or
  - (vii) for a club that is a RSL or Services Club—a defence member for consumption on the premises; and
- (b) at any time to a resident on the premises, or a guest of a resident in the resident's company, for consumption on the premises.

**(1A)** Despite subsection (1)(a)(vi), if the chief executive states in a club licence that the licensed premises include particular premises (the “**other premises**”) that the club owns or has a legal right to occupy and the other premises may be used on an infrequent basis for an event, the club licence authorises the licensee to sell liquor within a defined area on the other premises for the event for consumption within the defined area stated in the licence if—

- (a) the sale is during ordinary trading hours for the club licence to members of the public attending the event on the other premises; and
- (b) the event is the playing of a sport or game for which the club is established; and

*Example of sport or game for which a club is established—*

If a rugby union club is established but the club allows other clubs to use its premises for bridge or darts, or encourages the rugby union club's members to play those games, the rugby union club is established for rugby union and not other sports or games (like bridge or darts) that may be played on its premises.

- (c) the club is catering for the event on the other premises; and
- (d) at least 14 days before the date of the event, the club gives written notice about the event to the police officer in charge of the locality in which the event is to be held.

*Example for subsection (1A)—*

A football club may have premises with an adjacent field in 1 suburb that are used on a weekly basis for training and regular games. The club may also own a second field in another suburb which is used a few times a year for the club's games. The chief executive may state in the club licence that the licensed premises includes defined areas at 1 or both fields. The club licence authorises the club to sell liquor within the defined areas.

**(1B)** For subsection (1A), the area of the other premises defined in the licence forms part of the licensee's licensed premises for the period the licensee is authorised to sell liquor on the other premises.

(1C) Despite section 84A(1), a club licence does not authorise the sale or supply of liquor from a facility ordinarily known as a drive-in or drive through bottle shop.

(2) The authority under subsections (1) and (1A) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

(3) A visitor to the premises of a club who—

- (a) with permission of an authorised agent of the management committee of the club; and
- (b) after payment of the fee (if any) ordinarily charged for the purpose;

plays a sport or game that is part of the club's business, or that is played under the auspices of the club, is taken, for the purposes of subsection (1), to be a member of the club for the day on which the visitor so plays.

(4) If it is a team that plays a sport or game mentioned in subsection (3) as visitors to the premises of a club, every genuine official of the team is taken to be a visitor who has played the sport or game although the official has not taken part in the sport or game.

(5) In this section—

**“defence member”** means any of the following persons in possession of a current service identity card—

- (a) a member of the Permanent Naval Forces, the Australian Regular Army, the Regular Army Supplement or the Permanent Air Force;
- (b) a member of the Emergency Forces or the Reserve Forces who is rendering continuous full-time service.

**“game”** does not include a game within the meaning of the *Gaming Machine Act 1991*.

## **86 Restrictions on grant of club licence**

(1) The chief executive may grant a club licence only if the chief executive is satisfied that—

- (a) the business to be conducted under the club licence on the licensed premises will have a primary purpose as mentioned in section 84A(1); and

- (b) the club in question is a non-proprietary club.
- (2) The chief executive may not grant a club licence if—
- (a) the premises to which the club licence would relate are a part of larger premises, wholly or partly (the “**larger premises**”); and
  - (b) another type of licence was formerly held in relation to the larger premises; and
  - (c) another type of licence is still held in relation to the remainder of the larger premises, wholly or partly.

*Example—*

If club A applies for a club licence in relation to a part of premises that has been excised from B’s general licence or C’s on-premises cabaret licence, club A’s application must be refused.

## **88 Requirements of club and secretary**

- (1) A club licence is subject to the following conditions—
- (a) the rules of the club must comply with the schedule, except as otherwise authorised in writing by the chief executive;
  - (b) if an amendment of the rules of the club is adopted by the club—
    - (i) the club’s secretary must, within 14 days after the adoption of the amendment, give to the chief executive a certified copy of the proposed amendment; and
    - (ii) the amendment takes effect at the end of 28 days after receipt by the chief executive of the certified copy, unless, within that period, the chief executive disallows the amendment by written notice given to the club’s secretary;
  - (c) the club’s secretary must keep on the club premises a register of—
    - (i) the name and address of each member of the club; and
    - (ii) particulars of payment of the membership subscription last paid by the member;
  - (d) the club’s secretary must keep on the club premises a register of—
    - (i) the name of each guest of a member or visitor to the club premises; and

- (ii) the current place of residence of each guest or visitor or, if the guest or visitor is a member of a reciprocal club, the name of the reciprocal club;
  - (e) the club's secretary must keep the register mentioned in paragraph (c) or (d) open for inspection at any time by an investigator.
- (2) The regulations may prescribe amendments to which subsection (1)(b)(i) does not apply.
- (3) An amendment to which subsection (1)(b)(i) does not apply takes effect as soon as it is adopted by the club.
- (4) Subsection (1)(d) does not apply to a person who is—
- (a) a minor; or
  - (b) a visitor mentioned in section 85(3) or (4).
- (5) A person must not make an entry in a register, or give information to someone else to enter in a register, mentioned in subsection (1)(c) or (d) that the person knows is false, misleading or incomplete in a material particular.
- Maximum penalty—35 penalty units.
- (6) It is enough for a complaint against a person for an offence against subsection (5) to state that the information entered was false, misleading or incomplete to the person's knowledge.

### *Division 8—Special facility licence*

#### **92 Primary purpose of a business under a special facility licence**

- (1) The primary purpose of a business conducted under a special facility licence is the provision of an activity, facility or presentation that—
- (a) provides enlightenment, entertainment or services to the public; or
  - (b) forms part of the tourist development of the State.
- (2) The authority under a special facility licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).



**93 Authority of special facility licence**

(1) A special facility licence authorises the licensee to sell liquor on the licensed premises, for consumption on or off the premises, during the times specified in the licence.<sup>19</sup>

(2) The authority under subsection (1) is subject to this Act and the conditions that the chief executive has specified in the particular licence.

**94 Restriction on grant of special facility licence**

(1) The chief executive may grant a special facility licence only if the chief executive is satisfied the business to be conducted under the licence on the licensed premises will have a primary purpose as mentioned in section 92(1).

(2) The chief executive must not grant a special facility licence if the chief executive considers that the supply of liquor proposed to be provided under authority of the licence would more appropriately be carried on under authority of a licence of another kind.

(3) Also, the chief executive must not grant a special facility licence to a person for premises the chief executive reasonably considers are, or are to be, used primarily as a supermarket.

***Division 9—Limited licence*****94A Primary purpose of a business under a limited licence**

(1) The primary purpose of a business conducted under a limited licence is the provision of an activity, matter or service to which the sale of liquor is a subsidiary aspect.

(2) The authority under a limited licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises with a primary purpose as mentioned in subsection (1).

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<sup>19</sup> Because of the nature of a special facility licence, there are no ordinary trading hours.

**95 Authority of limited licence**

(1) A limited licence authorises the licensee, during the times specified in the licence<sup>20</sup>—

- (a) to sell liquor on the licensed premises, for consumption on the premises; or
- (b) to sell liquor on the licensed premises, for consumption off the premises, if the amount of each sale is not more than—
  - (i) if the chief executive specified an amount in the licence—the amount specified by the chief executive; or
  - (ii) in any other case—2L; or
- (c) if the chief executive specified in the particular licence—to sell liquor on premises other than the licensed premises for consumption on the premises on which the liquor is sold.

(2) The authority under subsection (1) is subject to this Act and the conditions that the chief executive has specified in the particular licence.

**96 Restriction on grant of limited licence**

(1) The chief executive must not grant a limited licence if the chief executive considers that the supply of liquor proposed to be provided under authority of the licence would more appropriately be provided under authority of a licence of another kind.

(2) Also, the chief executive must not grant a limited licence to a person for premises the chief executive reasonably considers are, or are to be, used primarily as a supermarket.

*Division 10—Permits***97 Available permits**

The following permits may be granted and held under this Act—

- (a) a general purpose permit;
- (b) an extended hours permit;

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<sup>20</sup> Because of the nature of a limited licence, there are no ordinary trading hours.

- (c) a catering away permit;
- (d) a restricted club permit;
- (e) an adult entertainment permit;
- (f) a restricted area permit.

### ***Division 11—General purpose permit***

#### **98 Authority of general purpose permit**

(1) A general purpose permit authorises the permittee to sell liquor—

- (a) at the event or occasion; and
- (b) at the times on the day or days; and
- (c) subject to the conditions;

specified in the permit and subject to this Act.

(2) Authority of a general purpose permit extends to sale of liquor—

- (a) for consumption at the event or occasion specified in the permit; and
- (b) for removal from the venue of the event or occasion, and subsequent consumption, if specified in the permit.

#### **99 Restriction on grant of general purpose permit**

(1) The chief executive must not grant a general purpose permit—

- (a) in respect of licensed premises; or
- (b) if the chief executive considers that the supply of liquor proposed to be provided under authority of the permit would more appropriately be provided under authority of a licence or restricted club permit.

(2) The chief executive may grant a general purpose permit only to—

- (a) a non-proprietary club; or
- (b) another entity—if the chief executive is satisfied all the net proceeds from the sale of liquor under the permit will be used for the benefit of the community.

(3) If the applicant for a general purpose permit is a non-proprietary club that is an unincorporated association, the permit may be granted only to an individual for the non-proprietary club.

### **100 Identification of premises**

(1) The chief executive must—

- (a) define an area adjacent to each liquor outlet of premises to which a general purpose permit relates; and
- (b) specify the means by which the area must be marked out.

(2) An area so defined is part of the premises to which the general purpose permit relates.

### **101 Restriction on consumption or possession of liquor**

(1) During continuance of a general purpose permit a person must not—

- (a) consume liquor; or
- (b) have liquor in possession for consumption;

at the venue of the event or occasion specified in the permit elsewhere than in an area that is part of the premises to which the permit relates.

(2) Subsection (1) does not apply to consumption, or having in possession, of liquor supplied by the person or association of persons controlling the event or occasion in a part of the venue of the event or occasion set apart for use by that person or association and guests.

### *Division 12—Extended hours permit*

### **102 Authority of extended hours permit**

An extended hours permit authorises the licensee who is the holder of the permit to sell liquor under authority of the licence that relates to the licensed premises for which the permit is granted subject to this Act at the times, and subject to the conditions, specified in the permit.

**102A Restriction on grant of extended hours permit**

The chief executive must not grant an extended hours permit that would purport to authorise the sale of liquor at any time on Good Friday, Christmas Day or Anzac Day, otherwise than as prescribed by section 9.

**102B Application for an extended hours permit on a regular basis that includes trading between 5 a.m. and 7 a.m.**

(1) This section applies to—

- (a) an application for an extended hours permit that, if granted, would extend trading hours on a regular basis to include trading between 5 a.m. and 7 a.m.; and
- (b) an application for the renewal of the extended hours permit.

(2) The chief executive must—

- (a) give a copy of the application to the local government for the area in which the licensed premises are situated; and
- (b) ask the local government to give the chief executive written recommendations and written reasons for the recommendations, within a stated reasonable period, about the application; and
- (c) have regard to the local government's recommendations and reasons received within the stated reasonable period and, to the fullest extent practicable and consistent with this Act's objects, adopt the recommendations in deciding the application.

(3) The extended hours permit, or any renewal of the extended hours permit, must be for a period stated in the permit or renewal of not more than 6 months.

(4) An extended hours permit may be renewed more than once.

(5) This section does not limit the application of any other section that applies to an application for an extended hours permit, or renewal of an extended hours permit, that would extend trading hours on a regular basis, including, for example, sections 116, 118, 121 and 121A.<sup>21</sup>

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<sup>21</sup> Sections 116 (Public interest relevant to applications), 118 (Advertisement of applications), 121 (Conference of concerned persons and decision by chief executive) and 121A (Renewal of permits for extension of hours beyond 3 a.m.)

**102C Other application for an extended hours permit that includes trading between 5 a.m. and 7 a.m.**

(1) This section applies to an application for an extended hours permit that would result in trading hours that include trading between 5 a.m. and 7 a.m., other than an application to which section 102B applies.

(2) The chief executive must not grant the application, unless—

- (a) the extension of the trading hours is restricted to a time coinciding with an event the chief executive reasonably considers to be a special event; and
- (b) the special event—
  - (i) happens in the locality in which the licensed premises are situated; or
  - (ii) is, in the chief executive's opinion, of particular significance or special interest to the regular patrons of the licensed premises.

*Example of special events—*

Premier sporting fixtures.

(3) This section does not limit the application of any other section that applies to an application for an extended hours permit that would not extend trading hours of licensed premises on a regular basis, including, for example, section 110.<sup>22</sup>

***Division 12A—Catering away permits for public events*****102D Definitions for div 12A**

In this division—

“**licence**” means each of the following types of licences for which the authority under the licence is extended to allow the sale of liquor on premises that are not the licence's main premises—

- (a) general licence;
- (b) residential licence;
- (c) on-premises licence;

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<sup>22</sup> Section 110 (Application for grant of extended hours permit not on regular basis)

(d) limited licence.

**“main premises”** means licensed premises described in a licence.

**“private event”** means an event or occasion, held at premises other than main premises, if—

- (a) the event or occasion is not publicly advertised or is not open to the public or casual attendance; or
- (b) attendance at the event or occasion is restricted by personal invitation of the function’s host; or
- (c) admission to the event or occasion does not involve paying a fee for admission, or for entertainment or services provided at the event or occasion.

*Examples of a private event—*

A 21<sup>st</sup> birthday party, boardroom lunch, company cocktail party and wedding.

**“public event”**, in relation to a licensee, means an event or occasion held at premises other than the licensee’s main premises, that is not a private event.

*Examples of a public event—*

A festival, public ball, race meeting and rock concert.

### **102E Licensee to obtain a permit for selling or supplying liquor at public events**

(1) A licensee who proposes to sell or supply liquor at a public event under the licence must apply for the grant of a catering away permit to sell or supply the liquor at the public event.

(2) Without limiting section 105,<sup>23</sup> an application must—

- (a) describe the area where the liquor will be sold or supplied and consumed and the area where any catering to be provided by the licensee will take place; and
- (b) be accompanied by a proposed event management plan for the public event stating all matters about which the chief executive is to be satisfied under section 102F(1).

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23 Section 105 (Requirements for applications)

**102F Restriction on grant of catering away permit**

(1) The chief executive must not grant a catering away permit for a public event unless the chief executive is satisfied about all of the following—

- (a) the licensee would, in catering for the public event, be complying with the primary purpose of the business conducted under the licence;
- (b) premises in which liquor may be sold, supplied and consumed at the public event are properly defined and will be appropriately monitored;
- (c) the public event will not create any undue annoyance, disturbance or inconvenience to residents of the locality in which the public event is to be held;
- (d) the public event will not create an unsafe or unhealthy environment for persons employed at and attending the public event or residents of the locality in which the public event is to be held;
- (e) appropriate planning for the public event has been carried out with the police service and local government for the area in which the public event is to be held;
- (f) the proposed event management plan satisfactorily provides for any other matter required under a regulation.

(2) Subsection (1)(a) does not apply to an application for a catering away permit to extend the authority of a residential licence.

(3) The chief executive must not grant a catering away permit for a public event that would purport to authorise the sale of liquor at any time on Good Friday or Christmas Day or before 1.00 p.m. on Anzac Day.

**102G Area in catering away permit forms part of licensed premises**

The area defined in a catering away permit for a public event forms part of the licensee's licensed premises for the period the licensee is authorised to sell or supply liquor at the public event under the catering away permit.



**103 Authority of catering away permit**

(1) Subject to this Act, a catering away permit authorises the permittee to sell or supply liquor—

- (a) at the public event stated in the permit; and
- (b) at the times on the day or days stated in the permit; and
- (c) subject to the conditions stated in the permit.

(2) The authority of a catering away permit extends to the sale or supply of liquor for consumption within the defined area at the public event, stated in the permit.

***Division 13—Restricted club permit*****103A Authority of restricted club permit**

(1) A restricted club permit authorises the permittee to sell and supply liquor on the premises to which the permit relates to the following persons, for consumption on the premises—

- (a) a member of the club;
- (b) a guest of a member of the club in the member's company;
- (c) a member of a reciprocal club;
- (d) a guest of a member of a reciprocal club in the member's company.

(2) The authority under subsection (1) is subject to this Act and the conditions specified in the permit.

**103B Restriction on grant of restricted club permit and other related matters**

(1) The chief executive may grant a restricted club permit only if the chief executive is satisfied that the club is a non-proprietary club.

(2) The chief executive must include the following matters in a restricted club permit—

- (a) the times, totalling not more than 21 hours a week, for the sale of liquor under the permit;
- (b) the area to which the permit relates.

(3) On application by the holder of a restricted club permit, the chief executive may extend the times specified in the permit for sale and consumption of liquor for special occasions celebrated by the club.

(4) The chief executive may extend the hours under subsection (3) by not more than 10 hours a month.

### **103C Duration of permit**

The chief executive may grant a restricted club permit for a period of at least 3 months but no longer than 1 year.

### **103D Requirements of club and secretary**

(1) A restricted club permit is subject to the following conditions—

- (a) the rules of the club must comply with the schedule, unless the chief executive has given written permission to the club to vary the rules;
- (b) if an amendment of the rules of the club is adopted by the club—
  - (i) within 14 days after adoption of the amendment, the club's secretary must give the chief executive a certified copy of the amendment; and
  - (ii) the amendment takes effect at the end of 28 days after the chief executive receives the certified copy unless the chief executive has disallowed the amendment by written notice given to the club's secretary;
- (c) the club's secretary must keep on the club premises a register of—
  - (i) the name and address of each club member; and
  - (ii) particulars of the most recent membership subscription paid by the member;
- (d) the club's secretary must keep on the club premises a register of—
  - (i) the name and current address of each guest of a member; and
  - (ii) the name of each member of a reciprocal club, on the premises, and the name of the reciprocal club; and

(iii) the name and current address of each guest of a member of a reciprocal club mentioned in subparagraph (ii);

(e) the club's secretary must keep the registers mentioned in paragraphs (c) and (d) open for inspection by an investigator at any time when the club is open.

(2) The regulations may prescribe amendments to which subsection (1)(b)(i) does not apply.

(3) An amendment to which subsection (1)(b)(i) does not apply takes effect as soon as it is adopted by the club.

(4) A person must not make an entry in a register, or give information to someone else to enter in a register, mentioned in subsection (1)(c) or (d), that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—35 penalty units.

(5) It is enough for a complaint against a person for an offence against subsection (4) to state that the information entered was false, misleading or incomplete to the person's knowledge.

### *Division 13A—Adult entertainment permit*

#### **103E Adult entertainment code**

(1) There is to be an adult entertainment code (the “**code**”).

(2) The code prescribes the live entertainment that may be performed for an audience, by a person performing an act of an explicit sexual nature (“**adult entertainment**”), on licensed premises or premises to which a general purpose permit or restricted club permit relates under an adult entertainment permit.

(3) Adult entertainment does not include the performance of the following acts—

- (a) sexual intercourse;
- (b) masturbation;
- (c) oral sex.

(4) The chief executive and the commissioner are to make the code.

(5) The code is not effective until it is approved by the Governor in Council under a regulation.

(6) The chief executive must ensure that a copy of the code approved under subsection (5) is made available for inspection without charge, or for purchase during normal business hours at the office of the department in which this Act is administered.

(7) In this section—

“oral sex” has the meaning given by the Criminal Code, section 229E(5).<sup>24</sup>

### **103F Only licensees and permittees eligible for grant of adult entertainment permit**

(1) A person is eligible to apply for, or to be granted, an adult entertainment permit only if the person is a licensee or the holder of a general purpose permit or restricted club permit.

(2) Subsection (1) does not limit another requirement about who may apply for, or the grant of, an adult entertainment permit under part 5.

### **103G Authority of adult entertainment permit**

(1) An adult entertainment permit authorises the permittee to provide adult entertainment only—

- (a) in an area of the permittee’s premises approved by the chief executive (the “**approved area**”); and
- (b) during the hours stated in the permit.

(2) The adult entertainment permit is subject to this Act and the conditions prescribed under a regulation or imposed by the chief executive.

### **103H Approved area to conform with requirements**

Before the chief executive approves an area as an approved area, the chief executive must be satisfied the area conforms, or will conform, with this Act and the following requirements while adult entertainment is being provided in the area—

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<sup>24</sup> Criminal Code, section 229E (Meaning of “prostitution”)

- (a) the area must be fully enclosed in a way that prevents a person outside the area from seeing inside the area;
- (b) the area must not contain, for the private use of persons attending the entertainment, a lounge, booth, compartment or cubicle (other than a toilet cubicle);
- (c) another requirement prescribed under a regulation.

### **103I Duration of adult entertainment permit**

An adult entertainment permit—

- (a) is issued for the term stated in it, not longer than 1 year, unless it is sooner surrendered, suspended or cancelled under this Act; and
- (b) is not renewable; and
- (c) is not transferable.

### **103J Adult entertainment permit dependent on currency of licence or general purpose permit or restricted club permit**

(1) This section applies if an adult entertainment permit is issued for licensed premises or for premises to which a general purpose permit or restricted club permit relates and—

- (a) the licence or general purpose permit or restricted club permit ends or is suspended or cancelled; or
- (b) the licensee or permittee surrenders the licence or general purpose permit or restricted club permit.

(2) If the licence or general purpose permit or restricted club permit ends, the adult entertainment permit also ends at the same time.

(3) If the licence or general purpose permit or restricted club permit is suspended, the adult entertainment permit is also suspended at the same time.

(4) If the licence or general purpose permit or restricted club permit is surrendered or cancelled, the adult entertainment permit is also surrendered or cancelled at the same time.

**103K Restriction on grant of adult entertainment permit**

(1) The chief executive must not grant an adult entertainment permit that would relate to premises at which a public event or private event is to be held other than for—

- (a) if the applicant is a licensee—the main premises under the licence; or
- (b) if the applicant is the holder of a general purpose permit or restricted club permit—the premises to which the permit relates.

(2) In this section, including in the definitions “public event” and “private event” as applying for this section—

“**main premises**” means licensed premises described in a licence other than—

- (a) a detached bottle shop; or
- (b) for a club licence—premises mentioned in section 85(1A).<sup>25</sup>

***Division 13B—Restricted area permits*****103L Authority of restricted area permit**

(1) A restricted area permit authorises the permittee to have in possession in a public place in a restricted area more than the prescribed quantity of liquor for the area at the times on the day or days, and for the purpose, stated in it.

(2) The permit is subject to this Act and the conditions prescribed under a regulation or imposed by the chief executive.

(3) If a restricted area permit authorises the permittee to have in possession liquor for carrying in or on a vehicle, boat, aircraft, animal or other thing, the permit is, subject to its express terms, authority for the carrying of liquor only once at the times on the day or days, and for the purpose, stated in the permit.

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25 Section 85 (Authority of club licence)

**103M Restriction on grant of restricted area permit**

The chief executive must not grant an application for a restricted area permit unless the chief executive is satisfied—

- (a) the amount of liquor the applicant has applied to have in possession is reasonable for the purpose or event stated in the application; and
- (b) if the purpose is not merely personal to the applicant—another restricted area permit has not been issued to another person for the purpose or event.

***Division 14—Additional authority of licence and permit*****104 Additional time for consumption or removal of liquor**

A licence or permit that authorises—

- (a) the sale of liquor, during any period, for consumption on licensed premises; or
- (b) the sale of liquor, during any period, for consumption off licensed premises;

also authorises—

- (c) consumption on the premises of liquor supplied on a sale mentioned in paragraph (a); and
- (d) removal from the premises of liquor supplied on a sale mentioned in paragraph (b);

within 30 minutes after the end of the period during which the sale is made.

## **PART 5—GRANT, VARIATION AND TRANSFER OF LICENCES AND PERMITS**

### *Division 1—Applications*

#### **105 Requirements for applications**

(1) An application for or relating to a licence or a permit for any purpose under this Act must—

- (a) be made to the chief executive; and
- (b) be in the approved form; and
- (c) specify, or be accompanied by, the particulars prescribed by regulation; and
- (d) be accompanied by the fee prescribed by regulation for an application of the relevant kind.

(2) The chief executive may, by written notice given to an applicant, require the applicant to give the chief executive further information or a document about the application within the reasonable time, not less than 30 days, stated in the notice.

(3) The requirement must relate to information or a document that the chief executive reasonably considers is necessary to help the chief executive decide the application and reasonable for the applicant to provide.

(4) The application is taken to be withdrawn by the applicant if—

- (a) the chief executive has given the applicant a notice under subsection (2) requiring the applicant to give the chief executive further information or a document about the application; and
- (b) the applicant has failed to comply with the requirement within the time stated in the notice unless the applicant provides the chief executive with an excuse for the failure that the chief executive considers to be a reasonable excuse.

#### **106 Who may apply for licence or permit**

(1) An adult individual, or a corporation, may make application for a licence or permit.



(2) Also, an adult may apply for a licence or permit for or on behalf of an unincorporated association.

(3) A person who holds a brothel licence, or has an interest in a brothel, may not apply for or hold a licence or permit.

### **107 Restrictions on grant of licence or permit**

(1) The chief executive may grant an application for a licence or permit only if the chief executive is satisfied that the applicant is not a disqualified person and is a fit and proper person to hold the licence or permit applied for having regard to—

- (a) whether the applicant demonstrates knowledge and understanding of the obligations of a licensee or permittee of the relevant kind under this Act; and
- (b) whether the applicant is a person of good repute who does not have a history of behaviour that would render the applicant unsuitable to hold the licence or permit applied for; and
- (c) whether the applicant demonstrates a responsible attitude to the management and discharge of the applicant's financial obligations.

(2) If the applicant is a corporation, or the chief executive knows, or suspects on reasonable grounds, that the applicant would hold any licence or permit granted on behalf of a partnership, the chief executive must discharge the responsibility under subsection (1) by applying the subsection to—

- (a) each person in a position of authority or influence in relation to the corporation; or
- (b) each person who is a member of the partnership of whom the chief executive has knowledge;

as if each such person were the applicant.

(3) If the applicant has nominated a nominee in respect of the licence or permit sought, the chief executive must discharge the responsibility under subsection (1) by applying the subsection to the nominee as if the nominee were the applicant.

(4) Subject to section 123,<sup>26</sup> the chief executive may grant an application only if the premises to which it relates are, in the chief executive's opinion, suitable for conduct of business under authority of the licence or permit applied for.

(5) The chief executive may obtain—

- (a) a report from the commissioner in relation to the criminal history of—
  - (i) an applicant for a licence or permit; and
  - (ii) each person to whom subsection (1) applies as if the person were the applicant; and
- (b) if the applicant or person holds or previously held in another State or a Territory a relevant licence, permit, authority, interest or position—a report from the appropriate authority in the State or Territory.

(6) A report under subsection (5)(a) must include reference to or disclosure of convictions mentioned in section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.<sup>27</sup>

(7) In this section—

“**permit**” does not include an adult entertainment permit.

### **107AA Chief executive may impose conditions on licences and permits**

The chief executive may impose conditions on licences and permits—

- (a) to ensure appropriate compliance with this Act; or
- (b) to give effect to an agreement about the management of premises that has resulted from a conference held under section 121<sup>28</sup> or a decision of the Tribunal; or
- (c) to minimise harm caused by alcohol abuse and misuse and associated violence; or
- (d) to minimise alcohol related disturbances, or public disorder, in a locality.

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26 Section 123 (Chief executive may grant provisional licence)

27 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

28 Section 121 (Conference of concerned persons and decision by chief executive)

**107A Restriction on grant of adult entertainment permit**

(1) The chief executive may grant an application for an adult entertainment permit only if the chief executive is satisfied that—

- (a) the applicant is a suitable person to provide adult entertainment in licensed premises (the “**relevant premises**”) or premises to which a general purpose permit or restricted club permit relates (also the “**relevant premises**”); and
- (b) after considering that, if the application were granted, the combined total of licensed brothels and premises permitted to provide adult entertainment in the locality in which the relevant premises are situated would not substantially affect the character of the locality; and

*Example of character of locality being substantially affected—*

Locality becoming a ‘red light district’.

- (c) the proposed approved area for the entertainment conforms with the requirements of section 103H; and
- (d) the applicant has submitted a proposed management plan in the approved form that provides for any matters prescribed under a regulation.

(2) Without limiting subsection (1), the chief executive must have regard to any comments of the relevant local government or assistant commissioner received under section 117(2)(a).

**107B Suitability of applicant for adult entertainment permit**

(1) In deciding whether an applicant for an adult entertainment permit is a suitable person to provide adult entertainment, the chief executive must consider all relevant matters including the following—

- (a) the applicant’s reputation, having regard to character, honesty and integrity;
- (b) whether the applicant has been convicted of—
  - (i) an indictable offence; or
  - (ii) an offence against the *Prostitution Act 1999*;
- (c) whether the applicant is an associate of a person who has been convicted of—
  - (i) an indictable offence; or

- (ii) an offence against the *Prostitution Act 1999*;
- (d) whether the applicant is an associate of a corporation, an executive officer of which has been convicted of—
  - (i) an indictable offence; or
  - (ii) an offence against the *Prostitution Act 1999*;
- (e) whether the applicant has been charged with any offence of a sexual nature that involves violence, intimidation, threats or children, including the circumstances surrounding the laying of the charge and whether proceedings in relation to the charge are continuing or have been discontinued;
- (f) whether the applicant's business structure is sufficiently transparent to enable all associates of the applicant, whether individuals or bodies corporate, to be readily identified;
- (g) whether the applicant has the ability to control the noise and behaviour of the number of persons that could reasonably be expected to be on and in the vicinity of the premises if the permit were granted;
- (h) any other matters prescribed under a regulation.

(2) For subsection (1)(e), it does not matter whether the offence is alleged to have been committed in Queensland or elsewhere.

(3) If the applicant has nominated a nominee for the applicant's licence or general purpose permit or restricted club permit, the chief executive must comply with subsection (1) by also applying the subsection to the nominee as if the nominee were the applicant.

### **107C Application to be referred to commissioner**

(1) The chief executive must give to the commissioner any particulars the chief executive considers relevant for each application for an adult entertainment permit.

(2) On receiving particulars of the application, the commissioner—

- (a) must make inquiries about the applicant's criminal history; and
- (b) must make any other inquiries about the application, including inquiries to the Prostitution Licensing Authority, the commissioner considers appropriate.

(3) The commissioner must report to the chief executive after receiving the results of the inquiries.

(4) The commissioner's report may include recommendations.

(5) The commissioner's report must include reference to or disclosure of convictions of the person mentioned in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.<sup>29</sup>

### **108 More than 1 licence or adult entertainment permit may be held**

(1) A person may apply for, and hold, more than 1 licence, whether of the same kind or of different kinds, or adult entertainment permit if for each licence for which a nominee is nominated the nominee is other than the holder of the licence and any other nominee.

(2) In this section—

“**licence**” includes a permit, other than an adult entertainment permit.

### **109 Nominees**

(1) An applicant for a licence or permit must, in any of the following cases—

- (a) if the applicant is a corporation;
- (b) if the applicant for a licence is already the holder of a licence;
- (c) if the application is for an on-premises licence that, if granted, would relate to a vessel;

and may, in any other case, nominate an individual to be nominee in respect of the licence or permit sought by the applicant.

(2) An applicant for an on-premises licence that, if granted, would relate to a boat may nominate any number of persons, who will be in charge of the navigation of the boat, to be nominees in respect of the licence.

(3) If a licence or permit is granted on the application, an individual so nominated is taken to be, for the purposes of this Act, the nominee in respect of the licence or permit.

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<sup>29</sup> *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)

(6) In the conduct of business on premises to which a licence or permit relates a nominee in respect of the licence or permit that relates to the premises—

- (a) is responsible for ensuring that—
  - (i) liquor is supplied or possessed on the premises only in accordance with the authority conferred by the licence or permit; and
  - (ii) for an adult entertainment permit, the conduct of entertainment under the permit is in accordance with this Act and the conditions of the permit; and
- (b) is subject to the obligations imposed by this Act on the licensee or permittee; and
- (c) is liable as a licensee or permittee for an offence against this Act or for any failure to perform any of such obligations.

(7) A nominee's liability to be punished for a contravention of this Act does not affect the liability of the licensee or permittee to be punished for the contravention.

(8) A person ceases to be a nominee in respect of a licence or permit if the person ceases to hold the position in which the person is charged with responsibility for the supply of liquor in the conduct of the business for which the licence or permit was obtained.

(9) If—

- (a) subsection (1) requires an applicant to nominate a person to be nominee in respect of a licence; and
- (b) at any time after the licence is granted, the person so nominated (being an only nominee) ceases to be nominee in respect of the licence;

the licensee must nominate another individual to be nominee in respect of the licence and, on acceptance by the chief executive of the nominated person as such nominee, the nominated person becomes the nominee in respect of the licence.

(10) At any time during continuance of an on-premises licence that relates to a boat, the licensee may make application to the chief executive for acceptance of the licensee's nomination of persons who are, or will be, in charge of the navigation of the boat, as nominees in respect of the licence, in addition to or in substitution for existing nominees.

(11) If the chief executive accepts a nomination made under subsection (10), the persons nominated become nominees in respect of the licence.

### **109AA Controllers**

(1) A licensee or permittee who holds an adult entertainment permit may nominate an adult to be a controller to supervise the provision of the adult entertainment under the permit to ensure that it is provided in accordance with this Act and the conditions of the permit.

(2) The nomination of a person by a licensee or permittee as a controller has no effect until it is authorised by signed written notice from the chief executive to the licensee or permittee.

(3) If the licensee or permittee nominates a person to be a controller, the licensee or permittee must, within 14 days after nominating the person, give to the chief executive the following particulars about the person—

- (a) the person's full name and residential address;
- (b) the date and place of the person's birth;
- (c) any other particulars prescribed under a regulation.

Maximum penalty—25 penalty units.

(4) Before authorising the nomination, the chief executive must give to the commissioner any particulars about the person the chief executive considers relevant to the nomination.

(5) On receiving the particulars, the commissioner must make the inquiries the commissioner considers appropriate including—

- (a) inquiries about the person's criminal history; and
- (b) inquiries to the Prostitution Licensing Authority.

(6) The commissioner must report to the chief executive after receiving the results of the inquiries.

(7) The commissioner's report may include recommendations.

(8) The commissioner's report must include reference to or disclosure of convictions of the person mentioned in the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6.<sup>30</sup>

(9) Without limiting subsection (2), the chief executive must refuse to authorise the nomination if the chief executive is satisfied the nominated person is not a suitable person to be a controller.

(10) In deciding whether the nominated person is a suitable person to be a controller, the chief executive must consider all relevant matters including the following—

- (a) whether the nominated person has an interest in a licensed brothel;
- (b) whether the nominated person has been convicted of—
  - (i) an indictable offence; or
  - (ii) an offence against the *Prostitution Act 1999*;
- (c) whether the nominated person has been charged with any offence of a sexual nature that involves violence, intimidation, threats or children, including the circumstances surrounding the laying of the charge and whether proceedings in relation to the charge are continuing or have been discontinued.

(11) For subsection (10)(c), it does not matter whether the offence is alleged to have been committed in Queensland or elsewhere.

### **109A Application for grant of extended hours permit**

An applicant for a licence, or a licensee, may apply for an extended hours permit for the premises that are, or are to be, the licensed premises.

### **110 Application for grant of extended hours permit not on regular basis**

(1) This section applies to an application for an extended hours permit that would not extend the trading hours of licensed premises on a regular basis.

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30 *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)



(2) An applicant for an extended hours permit must, at or about the time the application is given to the chief executive, also give a copy of the application to the police officer in charge of the locality in which the relevant premises are situated.

(3) The police officer may comment or object to the chief executive about the application within 14 days of receiving the copy of the application.

(4) In considering an application under this section, the chief executive must have regard to—

- (a) any matter raised by the local government in whose area the premises to which the application relates are situated; and
- (b) any objection or comment made to the chief executive by a police officer under subsection (3); and
- (c) the impact on the amenity of the community.

(5) If an application is for extension of hours beyond 2 a.m., the chief executive must also have regard to the following matters—

- (a) the previous conduct of the applicant in discharging any duties under this Act previously placed on the applicant, especially for the premises for which the extension is sought;
- (b) the applicant's ability to control noise and behaviour of the number of persons that could reasonably be expected to be on and in the vicinity of the premises if the extension were granted;
- (c) the suitability of the premises and its facilities for the purpose for which the extension is sought.

## **111 Variation of licence**

(1) A licensee may make application to vary a licence by—

- (a) altering the times when business may be conducted under authority of the licence; or
- (b) amending or revoking a condition of the licence.

(2) The chief executive may, on the chief executive's own initiative, seek to vary a licence in relation to any 1 or more of the following—

- (a) the restriction of the authority under the licence;
- (b) the ordinary hours of the licence;

- (c) the hours stated in the licence;
- (d) the description of the licensed premises;
- (e) the type, quantity and availability of liquor from the licensed premises;
- (f) responsible practices in relation to the service, supply or promotion of liquor.

*Examples for paragraph (f)—*

1. Providing meals.
2. Prohibiting takeaway sales of liquor to taxi drivers.
3. Prohibiting a licensee holding a person's financial-institution access card.

**(2A)** The chief executive may exercise the power under subsection (2) in the same way for all licenced premises in a restricted area.

**(3)** This section does not apply to an application for the chief executive's approval to conduct business—

- (a) on Anzac Day—between 6 a.m. and 1 p.m; or
- (b) on another day—between 7 a.m. and 10 a.m.

**(4)** An application mentioned in subsection (3) may only be made by application for an extended hours permit under section 109A.

## **112 Procedure for variation by chief executive**

**(1)** If the chief executive seeks to vary a licence—

- (a) the chief executive must cause written notice to be given to the licensee; and
- (b) the licensee may, within 14 days after receiving the notice, give to the chief executive written notice of objection to the proposed variation.

**(2)** This section does not apply to a variation of a licence for a disciplinary action relating to the licence under section 137A.<sup>31</sup>

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31 Section 137A (Decision about disciplinary action)

**112A Compensation not payable for variation**

Compensation is not payable to any person for the variation of a licence under section 111(2).

**113 Application for transfer of licence**

(1) On application made by—

- (a) the licensee and the proposed transferee; or
- (b) the owner, lessee or mortgagee of the licensed premises if—
  - (i) the licensee has been lawfully evicted from, or has abandoned, the licensed premises; or
  - (ii) the lease, sublease, tenancy or right to occupy the licensed premises of the licensee has been lawfully terminated; or
  - (iii) the licensee has ceased to conduct business in the licensed premises and has not agreed to the application;

the chief executive may transfer a licence (together with any extended hours permit held in association with the licence) to a person who could be granted the licence.

(2) The authority of the chief executive under subsection (1) is subject to the *Gaming Machine Act 1991*, section 78.<sup>32</sup>

(3) On transfer of a licence, the transferee becomes the licensee and—

- (a) has the authority conferred by the licence on the holder; and
- (b) is subject to the obligations imposed by this Act or the conditions of the licence on the holder; and
- (c) is subject to the obligations imposed on the transferor or any previous holder of the licence by order of the chief executive, or requisition of an investigator, that has not been complied with.

**113A Transfer of licence or permit held for or on behalf of unincorporated association**

(1) This section applies if—

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32 *Gaming Machine Act 1991*, section 78 (Certain applications under Liquor Act 1992 subject to chief executive's certificate)

- (a) a person holds a licence or permit for or on behalf of an unincorporated association; and
- (b) the association becomes incorporated.

(2) The person and the incorporated association must, within 3 months after the association is incorporated, apply to the chief executive for the licence or permit to be transferred to the incorporated association.

### **114 Restriction on transfer of licence**

The chief executive may transfer a licence only if all fees relating to the licence, and payable under this Act, have been paid in full.

### **115 Chief executive's responsibility on application for transfer or franchising of a licence**

- (1) On application made for the chief executive's approval that—
- (a) a licence or permit be transferred; or
  - (b) licensed premises, or any part, be let or sublet; or
  - (c) the right to sell liquor be let or sublet; or
  - (d) a franchise, or management rights of a similar nature, be granted for licensed premises, or a part of licensed premises;

sections 107 to 109 apply as if the proposed transferee, lessee, sublessee, franchisee or proposed holder of management rights were an applicant for a licence, and the chief executive must not approve the application unless the requirements of the sections are satisfied.

(2) If a nominee is nominated under this section because of section 109(9), the chief executive must discharge the responsibility under section 107(1) to the nominee as if the nominee were the proposed transferee, lessee, sublessee, franchisee or proposed holder of management rights.

### **116 Public interest relevant to applications**

- (1) This section applies to an application for—
- (a) a licence other than a club licence; or
  - (b) an approval under section 59(1)(d); or

- (c) an extended hours permit that would extend trading hours on a regular basis; or
- (d) a club licence or permit the chief executive, by written notice given to the applicant, declares is a licence or permit to which this paragraph applies.

(2) The applicant must satisfy the chief executive that it is in the public interest for the application to be granted.

(3) For the purpose of satisfying the chief executive about the public interest, an applicant must give information to the chief executive about the following—

- (a) the number and condition of licensed premises already existing in the locality;
- (b) the distribution of licensed premises already existing throughout the locality;
- (c) the extent and quality of services provided, or to be provided, by licensed premises already existing in the locality;
- (d) any other relevant information that the chief executive asks the applicant to provide.

(4) In deciding the public interest relating to an application, the chief executive must take into account information about the matters mentioned in subsection (3) and must also have regard to—

- (a) the existing and projected population and demographic trends in the locality; and
- (b) the number of persons residing in, resorting to or passing through the locality, and their respective expectations; and
- (c) the likely health and social impacts that granting the application would have on the population of the locality; and
- (d) an assessment of the magnitude, duration and probability of the occurrence of the health and social impacts; and
- (e) the proximity of the proposed licensed premises to identified sub-communities within the locality, including, for example, schools and places of worship, and the likely impact on those sub-communities; and
- (f) other information the chief executive considers relevant to the reasonable requirements of the public for liquor and related services in the locality; and

- (g) the objects of the Act as mentioned in section 3 and the underlying principle of this Act as mentioned in section 3A.

(5) A reference in this section to licensed premises already existing includes a reference to premises for which a licence or permit to which this section applies is in force.

### **117 Advice about application etc.**

(1) As soon as practicable after the chief executive receives an application to which section 116 applies or an application for a club licence or an adult entertainment permit, the chief executive must tell the following about the application—

- (a) the local government for the relevant locality;
- (b) if the application is for an extended hours permit or an adult entertainment permit—the assistant commissioner for the locality.

(2) The local government or assistant commissioner may—

- (a) comment on the reasonable requirements of the public in the locality; or
- (b) object to the grant of the application on the grounds that the amenity, quiet or good order of the locality would be lessened.

(3) The comment or objection must be given to the chief executive—

- (a) if the application was required to be advertised—on or before the last day for filing objections to the application; and
- (b) in any other case—within 14 days of receiving advice about the application.

### **117A Comments about particular applications**

(1) As soon as practicable after the chief executive receives an application relating to a restricted area, the chief executive may ask any 1 or more of the following to give the chief executive comments about the application—

- (a) the local government that may exercise jurisdiction in the area;
- (b) the assistant commissioner for the locality to which the application relates;

- (c) if the area is or is in a community area—the community justice group for the area.

(2) In deciding the application, the chief executive must have regard to comments received from the entities mentioned in subsection (1).<sup>33</sup>

### **118 Advertisement of applications**

(1) An application for the following must be advertised under this section—

- (a) a licence or variation of a licence;
- (b) a detached bottle shop;
- (c) an extended hours permit, or variation of an extended hours permit, that would extend trading hours on a regular basis;
- (d) an adult entertainment permit, other than a one-off permit or subsequent permit;
- (e) another application that the chief executive requires, by written notice to the applicant, to be advertised.

(2) If an application must be advertised, the applicant must—

- (a) in a form, and on days, approved by the chief executive generally or in a particular case, publish notice of the application, at the applicant's expense—
  - (i) once in the gazette; and
  - (ii) twice in a newspaper circulating in the locality; and
- (b) display a copy of the notice on a sign the dimensions of which (including dimensions of the print) are approved by the chief executive, generally or in a particular case; and
- (c) ensure the copy is displayed conspicuously for 28 days immediately before the last day for making submissions about the reasonable requirements of the public in the locality or filing objections to the application.

(2A) For subsection (2)(b), the sign must be displayed—

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<sup>33</sup> Also, see section 121 (Conference of concerned persons and decision by chief executive).

- (a) if the land on which the premises to which the application relates has only 1 road frontage—conspicuously, on the front alignment of the land or on the premises, at street level and in a way that ensures it is clearly visible to the passing public; and
  - (b) if the land on which the premises to which the application relates has more than 1 road frontage—conspicuously, on the land or on the premises, at street level and in a way that ensures it is clearly visible to the passing public on each road frontage.
- (3)** The chief executive may—
- (a) waive or vary the publication and display requirements for an application if the chief executive is satisfied that publication and display under subsection (2) is not necessary because of the remote location of the premises or other special circumstances; or
  - (b) vary the display requirements for an application, including by requiring the applicant to comply with other requirements, if the chief executive is satisfied that display under subsection (2) is not appropriate having regard to the specific nature of the location.
- (4)** Subject to subsection (5), the applicant must give to the chief executive evidence of satisfying the publication and display requirements under subsection (2) or (3).
- (5)** The chief executive may approve publication and display that—
- (a) substantially complies with subsection (2); or
  - (b) has already taken place for another purpose and substantially complies with subsection (2).
- (6)** In deciding whether to require an application for an adult entertainment permit to be advertised, that is an application for a one-off permit or subsequent permit, the chief executive must have regard to—
- (a) for a one-off permit—whether the frequency, location, size or timing of the adult entertainment may cause some community concern; and
  - (b) for a subsequent permit—whether a previous adult entertainment permit exists or has lapsed or whether there are specific problems relating to the locality of the licensed premises, including, for example, the use of the premises for adult entertainment, or the behaviour of persons entering or leaving the premises, may cause



undue annoyance or disturbance to persons living or working or doing business in the neighbourhood of the premises.

(7) In this section—

**“one-off permit”** means an adult entertainment permit for a term of less than 4 days.

**“subsequent permit”** means an adult entertainment permit relating to a person for premises if the person was, within the preceding 6 months of the date of the application for the subsequent permit, previously the holder of an adult entertainment permit for the premises, other than a one-off permit.

### **118A Submissions on public interest**

(1) If a notice about an application to which section 116 applies is published as required by section 118, a member of the public may make a written submission to the chief executive about the matters to which the chief executive must have regard under section 116.

(3) In this section—

**“member of the public”** has the meaning given by section 119.

### **119 Objection to grant of applications**

(1) If notice of an application is published as required by section 118, any member of the public may object to the grant of the application, by writing filed with the chief executive on or before the last day for filing of objections as specified in the notice.

(2) An objection may be made individually or by petition.

(3) The grounds on which an objection about an application, other than an application for an adult entertainment permit, may be made are that—

- (a) if the application were granted—undue offence, annoyance, disturbance or inconvenience to persons who reside or work or do business in the locality concerned, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school is likely to happen; or
- (b) if the application were granted—the amenity, quiet or good order of the locality concerned would be lessened in some way.

(4) The grounds on which an objection about an application for an adult entertainment permit may be made are that, if the application were granted—

- (a) undue annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality, or to persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school or other facility or place regularly frequented by children for cultural or recreational activities is likely to happen; or
- (b) the amenity, quiet or good order of the locality concerned would be lessened in some way.

(5) In subsection (1)—

**“member of the public”** means any adult individual or body of persons that in the chief executive’s opinion—

- (a) has a proper interest in the locality concerned; and
- (b) is likely to be affected by the grant of the application.

## **120 Requirements of objection by petition**

(1) An objection purporting to be by petition to the grant of an application is ineffective, and may be disregarded, unless—

- (a) each sheet of the petition has an identical heading clearly stating the subject matter of the petition and positioned to be clearly legible to every person whose signature on the petition is sought; and
- (b) each signatory to the petition adds particulars of his or her connection with the locality to which the application relates; and
- (c) each sheet of the petition states the name of the petition’s sponsor with whom all contact between the chief executive and the signatories to the petition is to take place.

(2) A notice given by the chief executive, or the registrar of the Tribunal, to the sponsor of the petition is taken to be given to all signatories to the petition.

**121 Conference of concerned persons and decision by chief executive**

(1) If the chief executive receives an objection under section 119 to an application, the chief executive must invite the following persons to attend a conference before making a decision on the application—

- (a) the applicant;
- (b) persons who properly made an objection to the grant of the application.

(1A) Also, the chief executive may invite the following to attend the conference—

- (a) a representative of the local government for the area, or assistant commissioner for the locality, to which the application relates;
- (b) if the application relates to a community area—the community justice group for the area.

(2) The chief executive must give reasonable notice of when and where the conference is to be held to the persons invited to attend.

(3) However, the chief executive is not required to hold a conference if the persons mentioned in subsection (1)(b) tell the chief executive they will not be attending or they do not attend at the time and place stated in the notice.

(3A) The chief executive may take part in the conference.

(4) If—

- (a) at the conference, agreement is reached between the applicant and other conferring persons on issues about the application; and
- (b) agreed terms are put in writing and signed by the applicant and the conferring persons mentioned in subsection (1);

the chief executive must have regard to the agreement in making a decision on the application.

(5) Also, in deciding whether to grant the application, the chief executive must have regard to—

- (a) if the application is an application to which section 116 applies—
  - (i) whether the applicant has satisfied the chief executive under section 116(2); and
  - (ii) the matters mentioned in section 116(4); and
- (b) objections made to the grant of the application; and

- (c) comments from the local government for the area to which the application relates; and
- (d) for an extended hours permit or adult entertainment permit or an application relating to a restricted area—comments from the assistant commissioner for the locality to which the application relates; and
- (e) if the application relates to a community area—comments from the community justice group for the area; and
- (f) the impact on the amenity of the community concerned; and
- (g) for an extended hours permit for extension of hours beyond 2 a.m.—
  - (i) the previous conduct of the applicant in discharging any duties under this Act previously placed on the applicant, especially for the premises for which the extension is sought; and
  - (ii) the applicant's ability to control the noise and behaviour of the number of persons that could reasonably be expected to be on and in the vicinity of the premises if the extension were granted; and
  - (iii) the suitability of the premises and its facilities for the purpose for which the extension is sought.

(6) If the chief executive grants an extended hours permit for extension of hours beyond 3 a.m., the permit remains in force for a maximum period of 6 months and may be renewed only on application to the chief executive.

### **121A Renewal of permits for extension of hours beyond 3 a.m.**

(1) As soon as practicable after the chief executive receives an application for renewal under section 121(6) of a permit for extension of hours beyond 3 a.m., the chief executive must tell the following about the application—

- (a) the local government for the area to which the application relates;
- (b) the assistant commissioner for the locality to which the application relates.

(2) The local government or assistant commissioner may comment on, or object to, the application by giving written comments or objections to

the chief executive within 14 days of receiving the chief executive's advice about the application.

(3) In considering the application, the chief executive must have regard to—

- (a) comments and objections received under subsection (2); and
- (b) the matters mentioned in section 121(5)(g); and
- (c) the impact on the amenity of the community concerned.

### **122 Procedure on receipt of objections**

(1) The chief executive must give to the applicant written notice of all objections properly made to the grant of an application advertised under section 118.

(2) The notice of objections—

- (a) must either specify the ground of the objection or consist of a copy of the objection; and
- (b) must be given to the applicant within 7 days after the last day for lodging objections as specified in the relevant notice under section 118(3).

(3) A conference that is to be held under section 121 because of objections received must be held as soon as practicable after the chief executive has given notice of the objections to the applicant.

### **123 Chief executive may grant provisional licence**

(1) This section applies if—

- (a) the chief executive assesses an application for a licence, including, for example, the primary purpose of a business to be conducted under the proposed licence and the requirements of section 107<sup>34</sup> in relation to the application; and
- (b) a development approval has been given under the *Integrated Planning Act 1997* for the use of the land on which the proposed premises will be situated for licensed premises; and

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34 Section 107 (Restrictions on grant of licence or permit)

- (c) the chief executive would grant the application if a building or structure forming part of the proposed premises—
  - (i) were completed under the law relating to carrying out building work; or
  - (ii) were approved or certified as required by law for use as licensed premises and, if the case requires it, for conduct in the premises of a business for which the licence was sought.

(2) The chief executive may grant the application provisionally and issue a provisional licence subject to a condition that the applicant produces evidence of the completion of the building work or approval or certification as required by law, as mentioned in subsection (1)(c).

(3) The provisional licence must state—

- (a) the evidence the applicant is required to produce; and
- (b) that if the applicant produces the stated evidence to the satisfaction of the chief executive within a stated reasonable time, not more than 1 year, the applicant is entitled to a stated licence; and
- (c) that if the applicant does not produce the stated evidence within the stated time, the applicant's provisional licence will be cancelled.

### **123A Chief executive may grant authority to trade for staged development**

(1) This section applies if—

- (a) the chief executive assesses an application for a licence, including, for example, the primary purpose of a business to be conducted under the proposed licence and the requirements of section 107 in relation to the application; and
- (b) the construction or alteration of the proposed premises is to be completed in stages and 1 or more of the stages has been completed; and
- (c) the business to be conducted in a completed stage meets the primary purpose under the proposed licence and has been approved or certified as required by law for use as licensed premises and, if the case requires it, for conduct in the premises of a business for which the licence was sought; and

- (d) the chief executive would grant the application if all the stages of the construction or alteration of the premises were completed.

(2) The chief executive may grant the application provisionally and issue an approval (a “**staged development approval**”) subject to a condition that the applicant produces evidence of the completion of the remaining stages of the construction or alteration of the premises.

(3) The staged development approval must state—

- (a) the evidence the applicant is required to produce before the application for the licence will be granted; and
- (b) the part of the premises in which the applicant is authorised to operate the business the subject of the application until the licence is granted; and
- (c) that if the applicant produces the stated evidence within a stated reasonable time, not more than 1 year, the applicant is entitled to a stated licence.

### **123B Provisional licence or staged development approval**

(1) A provisional licence or staged development approval remains in force for—

- (a) the stated reasonable time from the day on which it is granted; or
- (b) if no time is stated in the approval, 1 year from the day on which it is granted.

(2) The chief executive may renew a provisional licence, for a period of not more than 1 year, if the chief executive reasonably considers there are special circumstances for the applicant not producing the evidence stated in the licence within the stated time, including, for example, delays in completing the proposed premises because of adverse weather conditions.

(3) A provisional licence can not be renewed more than once.

(4) The chief executive may, after considering a matter to which the chief executive may have regard in making a decision to grant a licence of the type the subject of a staged development approval, renew the approval for a period of not more than 1 year.

(5) A staged development approval may be renewed more than once.

**123C Effect of provisional licence**

(1) A provisional licence in relation to an application for a licence does not give the applicant authority to operate the business the subject of the application until the licence is granted.

(2) If, while a provisional licence is in force, the holder of the licence produces the evidence stated in the licence to the satisfaction of the chief executive, the chief executive must grant the appropriate licence.

(3) If the holder of a provisional licence does not produce the evidence stated in the licence within the time stated in the licence, the chief executive must cancel the provisional licence.

(4) The cancellation of a provisional licence takes effect despite another provision of this Act.

**124 Effect of staged development approval**

(1) A staged development approval in relation to an application for a licence authorises the applicant to sell and supply liquor as if—

- (a) the approval were the licence the subject of the application; and
- (b) the part of the premises stated in the approval in which the applicant is authorised to operate the business the subject of the application were licensed premises; and
- (c) the applicant were the licensee.

(2) If, while a staged development approval is in force, the holder of the approval produces the evidence stated in the staged development approval, the chief executive must grant the appropriate licence.

**125 Temporary authority**

(1) If licensed premises are wholly or partially destroyed, or are damaged to such an extent that they are unsuitable for conduct of business under authority of the licence—

- (a) the licensee must discontinue business under authority of the licence until a temporary authority is granted under paragraph (b); and
- (b) the chief executive may, on application made by the licensee, grant to the licensee a temporary authority to conduct business under authority of the licence.



(2) A temporary authority may be granted in respect of—

- (a) any part or parts of the licensed premises; or
- (b) any neighbouring premises;

for the period the chief executive considers reasonable, although such part or parts, or neighbouring premises, do not satisfy the requirements of this Act or of the chief executive.

(3) If the licence for the licensed premises is a general licence, the chief executive may grant temporary authority even though part of the business that is the primary purpose under the licence can not be conducted in the premises that are the subject of the authority.

*Example of subsection (3)—*

If a hotel is destroyed by fire but there is a detached bottle shop covered by the licence, the temporary authority may be given for the detached bottle shop even though the hotel is not able to operate or can not be rebuilt for a period of time.

(4) A temporary authority may be—

- (a) granted for 1 term stated in the authority, but not longer than 2 years; and
- (b) extended for a term or terms, each of which is not longer than 2 years, if the chief executive is satisfied there are special circumstances for not restoring the premises within the original term or the most recent extension of the term, including, for example—
  - (i) continuing investigations about the destruction of the premises; or
  - (ii) difficulties in obtaining development approval for rebuilding the premises.

(5) While a temporary authority is in force, the part or parts of licensed premises, or neighbouring premises, to which it relates are, for the purposes of this Act, the licensed premises to which the existing licence relates.

## **126 Variation or transfer to be endorsed on licence or permit**

(1) If a licence or extended hours permit is varied, the chief executive must cause an appropriate endorsement to be made on the licence or permit.

(2) If a licence is transferred, the chief executive must cause an appropriate endorsement to be made on the licence.

(3) The chief executive may, by written notice, require a licensee to produce the licence or permit for endorsement under subsection (1) or (2).

### **127 Duplicate licence or permit**

(1) On application made by a licensee or permittee, the chief executive may issue to the applicant a duplicate of the licence or permit, or of any part, with the word 'duplicate' marked on it.

(2) A duplicate—

- (a) must be a true record of the original licence or permit, or part, of which it purports to be a duplicate; and
- (b) must bear all endorsements made on the original licence or permit, or part, that remain effective at the time of issue of the duplicate; and
- (c) must be certified by the chief executive as complying with paragraphs (a) and (b).

(3) A duplicate that complies with subsection (2)—

- (a) is valid for all purposes as the original licence or permit; and
- (b) is admissible in evidence and for all purposes to the same extent as the original licence or permit.

### **128 Liability of licensees in certain cases**

If a licence is held—

- (a) by a corporation, and at any time there is no nominee in respect of the licence—each of the directors of the corporation is subject to the same liabilities under this Act as a licensee; or
- (b) for or on behalf of an unincorporated association, and the licensee is absent from the management and supervision of the business conducted under authority of the licence—each of the members of the association's management committee is subject to the same liabilities under this Act as a licensee.

*Division 2—Persons managing affairs of licensees***129 Applications to continue trading in certain circumstances**

(1) The following persons may apply to the chief executive to conduct the business of a licensee on licensed premises—

- (a) if a licensee is dead—a person entitled to be appointed as the legal personal representative of the deceased licensee;
- (b) if the licensee is bankrupt or has taken advantage of the laws of bankruptcy—a person in possession of the licensed premises who is entitled to administer the affairs of the licensee;
- (c) if the licensee is a corporation—a person in possession of the licensed premises who has been appointed to manage or wind up the affairs of the licensee;
- (d) a guardian of a licensee or an administrator or manager of the estate of a licensee.

(2) If any of the following circumstances happen in relation to a licence or licensed premises, the owner or mortgagee of the licensed premises, or the owner of a financial interest in the trading of the licensed premises, may also apply to the chief executive to conduct the business of the licensee on the licensed premises—

- (a) a licensee ceasing to conduct business on the premises under authority of the licence;
- (b) the lessee or sublessee of the right to sell liquor ceasing to conduct business on the premises under authority of the licence;
- (c) a licensee who holds the licence as a member of a partnership ceasing to be a member of the partnership;
- (d) the chief executive has ordered cancellation of the licence but the order has not taken effect.

(3) If the application is made in circumstances mentioned in subsection (2)(d), the order for cancellation is stayed until the application is disposed of by the chief executive.

(4) Also, each of the following persons may apply to the chief executive to conduct the business of a club licence if the person is in possession of the licensed premises and the application states, in detail, the way in which the person will continue trading under the club licence for the benefit of the club—

- (a) an owner or mortgagee of the licensed premises who has, under section 44A(2),<sup>35</sup> given the chief executive particulars of the person's interest in the licence;
- (b) an owner of a financial interest in the trading of the licensed premises who has, under section 44A(2), given the chief executive particulars of the person's interest in the licence.

### **130 Where approval under s 129 not obtained**

If application under section 129—

- (a) is not made within 7 days after a person becomes entitled to make such an application; or
- (b) is not granted by the chief executive;

the licensed premises to which an application (if made) would have related, or to which the application made relates, are taken to be unlicensed premises until an application under section 129 is granted by the chief executive.

### **131 Nominees when application to continue trading in certain circumstances**

An applicant under section 129—

- (a) must nominate a nominee in circumstances where, if the application were an application for a licence, the applicant would be required under this Act to nominate a nominee; and
- (b) may nominate a nominee in any other circumstances.

### **131A Decision by chief executive on application to continue trading in certain circumstances**

(1) This section applies if an application is made under section 129.

(2) If an applicant or the applicant's nominee is the occupier or is entitled to possession of the licensed premises, the chief executive may authorise the applicant or the applicant's nominee to conduct business on licensed premises under authority of the licence on an interim basis.

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35 Section 44A (Owner, lessee, mortgagee and secured creditors to give particulars to chief executive)

**(3)** The authority under subsection (2) continues until the earliest of the following happens—

- (a) the application on which it is made is disposed of by the chief executive;
- (b) the authority is revoked by the chief executive because the applicant or the nominee contravenes this Act or a condition of the licence;
- (c) the authority expires.

**(3A)** If the application is made by a person as mentioned in section 129(4), the maximum period for an authority given under subsection (2) is not for more than 6 months after the date of the application.

**(4)** While the authority under subsection (2) continues, the applicant, and the applicant's nominee (if any), are each subject to liabilities under this Act as if each were the licensee of the licensed premises.

**(5)** If the chief executive is satisfied that the applicant and, if the applicant has nominated a nominee, the nominee are not disqualified persons and are fit and proper persons to conduct the business under the authority of the licence, the chief executive may authorise the applicant and nominee to conduct the business under the authority of the licence.

**(5A)** If the application was made because of an order for cancellation of the licence and the chief executive authorises the conduct of the business under subsection (5), the order for cancellation is set aside.

**(6)** If the chief executive is not satisfied about the matters mentioned in subsection (5), the chief executive must reject the application and may make an order under section 132.

**(7)** On the chief executive's rejection of the application—

- (a) if an authority under subsection (2) is still in force—the authority is revoked; and
- (b) if the application was made because of an order for cancellation of a licence—the chief executive's order for cancellation of the licence takes effect.

**131B Section 129 applicants may apply under s 113**

A person who may apply under section 129, may apply under section 113 for the transfer of the licence even though the person is not a person mentioned in section 113.

**132 Discharge of licensee or permittee from obligations**

If—

- (a) a licensee who is not the sole owner of licensed premises, has ceased to conduct business on the premises under authority of the licence; or
- (b) a licensee who holds the licence as a member of a partnership has ceased to be a member of the partnership; or
- (c) a nominee in respect of premises to which a licence relates has ceased to conduct business on the premises under authority of the licence;

the chief executive may, by order, do all or any of the following—

- (d) discharge the licensee or nominee prospectively from obligations under this Act in respect of the licensed premises;
- (e) suspend the licence until—
  - (i) the licence has been properly transferred; or
  - (ii) a person has been authorised by the chief executive under section 131A to conduct business under authority of the licence; or
  - (iii) a new nominee in respect of the licensed premises has been accepted by the chief executive;

as the case may require.

***Division 3—Surrender and cancellation of licence or permit******Subdivision 1—Surrender of licences and permits*****133 Request to surrender**

(1) An appropriate person may request the chief executive to accept a surrender of the licence.

(2) A permittee may, by writing given to the chief executive, surrender the permit at any time.

(3) A request under subsection (1)—

- (a) must be made in writing by the appropriate person; and
- (b) must be accompanied or supported by—
  - (i) the consent of all mortgagees or lessees of the licensed premises, or part of the licensed premises, who have given the chief executive particulars under section 44A;<sup>36</sup> and
  - (ii) enough information to enable the chief executive to decide the application, including the information prescribed under a regulation for this subparagraph; and
- (c) in the case of surrender of a club licence—must be accompanied by a copy of a minute (certified as correct by the licensee) that evidences adoption by the club of a resolution for surrender of the licence.

(4) The chief executive must cause written notice of a request made by an appropriate person under subsection (1) to be given to each secured creditor of the appropriate person—

- (a) whose interest as creditor is registered with the chief executive; and
- (b) whose interest as creditor is likely to be affected by surrender of the licence; and
- (c) whose written consent to surrender of the licence does not accompany the request.

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36 Section 44A (Owner, lessee, mortgagee and secured creditors to give particulars to chief executive)

(5) A person given notice under subsection (4) who wishes to oppose the surrender requested is entitled to furnish, within 14 days after receiving the notice, a submission to the chief executive specifying the grounds of opposition.

(6) If a surrender is accepted, the licence continues in force until a day fixed by the chief executive for its termination, by written notice given to the licensee.

(7) Surrender of a licence or permit does not affect any liability incurred by the licensee or permittee before the surrender takes effect.

(8) In this section—

**“appropriate person”**, in relation to the surrender of a licence, means—

- (a) the licensee, if the licensee is sole owner of the licensed premises; or
- (b) the owner, lessee or mortgagee of the licensed premises, if any of the following apply—
  - (i) the licensee has been lawfully evicted from, or has abandoned, the licensed premises;
  - (ii) the lease, sublease, tenancy or right to occupy the licensed premises of the licensee has been lawfully terminated;
  - (iii) the licensee has ceased to conduct business in the licensed premises and has not agreed to the application; or
- (c) the licensee and the owner of the licensed premises, if paragraph (a) or (b) does not apply.

### *Subdivision 2—Cancellation, suspension and variation of permits*

#### **134 Cancellation, suspension or variation of permits**

(1) The chief executive may, on the chief executive’s own initiative, cancel, suspend or vary a permit if the chief executive is satisfied that—

- (a) the permittee has contravened—
  - (i) this Act; or
  - (ii) a condition specified in the permit; or



- (iii) an order of the chief executive or a requisition of an investigator; or
- (b) the use of the premises in respect of which the permit is held at the times authorised by the permit, or the behaviour of persons entering or leaving the premises at or about those times—
  - (i) is causing undue annoyance or disturbance to persons living, working or doing business in the neighbourhood of the premises; or
  - (ii) is causing disorderly conduct in, or in the neighbourhood of, the premises.

**(1A)** Also, the chief executive may vary a permit that relates to premises in a restricted area to make the conditions of the permit consistent with the conditions of licences for licensed premises in the area.

**(2)** The chief executive must immediately cancel a permit if the chief executive is satisfied the permittee has become a disqualified person.

**(3)** Subsection (4) applies if an adult entertainment permit has been issued for licensed premises or premises to which a general purpose permit or restricted club permit relate and the chief executive—

- (a) is advised that a nominee ceases to be a nominee for the licence or general purpose permit or restricted club permit; or
- (b) is advised that the licensee has ceased to conduct the business authorised by the licensee's licence on the premises; or
- (c) receives an application to transfer the licence because of the sale of the business authorised by the licensee's licence on the premises; or
- (d) receives an application to conduct the business of a licensee on licensed premises under section 129; or
- (e) receives a notice from a corporation under section 150 about a change in the controlling interest in the corporation.

**(4)** The chief executive must, by written notice, cancel the adult entertainment permit.

**(5)** If subsection (3)(a) applies, the notice must be given to the licensee or permittee and takes effect 28 days after the date of the notice.

**(6)** If subsection (3)(b) applies, the notice must be given to the person controlling, or apparently controlling, the premises and takes effect on giving the notice.

(7) If subsection (3)(c) applies—

- (a) if the licensee has ceased to conduct the business—the notice must be given to the person controlling, or apparently controlling, the premises and takes effect from the date of the notice; or
- (b) if the licensee continues to conduct the business until the date of settlement of the sale—the notice must be given to the licensee and takes effect from the date of settlement.

(8) If subsection (3)(d) applies, the notice must be given to the person controlling, or apparently controlling, the premises and takes effect 28 days after the date of the notice.

(9) If subsection (3)(e) applies, the notice must be given to the licensee and takes effect 28 days after the date of the notice.

### **134A Ground for taking relevant action relating to adult entertainment permit**

The chief executive may take a relevant action relating to an adult entertainment permit on the ground that the person who holds the permit is no longer a suitable person to provide adult entertainment.

### **134B Show cause notice**

If the chief executive considers, on reasonable grounds, that a person who holds an adult entertainment permit is no longer a suitable person to provide adult entertainment, the chief executive must give the person a written notice that—

- (a) states the relevant action relating to the adult entertainment permit that the chief executive proposes to take; and
- (b) states the grounds for the relevant action; and
- (c) states an outline of the facts and circumstances forming the basis for the grounds; and
- (d) invites the person to show within a stated period, not less than 14 days after the notice is given to the person, why the relevant action should not be taken.

**134C Decision about relevant action relating to adult entertainment permit**

(1) After considering any representations made by the person who holds the adult entertainment permit, the chief executive may—

- (a) if the chief executive still considers there is a ground to take the relevant action relating to the adult entertainment permit—take the relevant action; or
- (b) if the chief executive no longer believes a ground exists to take the relevant action—take no further action about the show cause notice.

(2) Within 7 days after the chief executive makes a decision under subsection (1), the chief executive must give written notice of the decision to the licensee.

(3) Also, if the chief executive decides to take the relevant action the notice under subsection (2) must state—

- (a) the reasons for the decision; and
- (b) the licensee may appeal to the Tribunal against the decision within 28 days after the licensee receives notice of the decision.

**135 Summary cancellation, suspension or variation**

(1) Cancellation, suspension or variation of a permit under section 134 takes effect when written notice of the cancellation, suspension or variation is given to the permittee.

(2) Subsection (1) applies subject to section 134(3) to (9).

**135A Compensation not payable for variation**

Compensation is not payable to any person for the variation of a permit under section 134(1A).

***Subdivision 3—Disciplinary action relating to licences*****136 Grounds for disciplinary action**

(1) Each of the following is a ground for taking disciplinary action relating to a licence—

- (a) the licensee has failed to—
  - (i) comply with this Act; or
  - (ii) conduct a business on the licensed premises that is consistent with the primary purpose of the licence; or
  - (iii) comply with a condition stated in the licence; or
  - (iv) comply with an order of the chief executive or a requisition of an investigator;
- (b) the licensee is convicted of—
  - (i) an offence against this Act; or
  - (ii) an offence under the *Health Act 1937* or the *Food Act 1981* involving licensed premises or liquor; or
  - (iii) an offence the chief executive considers indicates the licensee's unsuitability to hold the licence;
- (c) the licensee has, at a material time, employed or engaged in the business conducted under authority of the licence a person convicted of 1 of the following offences committed in the course of the business being carried on—
  - (i) an offence against this Act;
  - (ii) an offence under the *Health Act 1937* or the *Food Act 1981* involving licensed premises or liquor;
- (d) the licensee has obtained the licence by fraud or false representation;
- (e) the licensee or any nominee relating to the licensed premises, is not a fit and proper person to conduct business under authority of the licence;
- (f) the licensee has ceased to conduct business on the licensed premises;
- (g) the licensee holds the licence for the benefit, wholly or partially, of a person to whom the chief executive would not grant the licence if application were to be made by the person;
- (h) the use of the licensed premises, or the behaviour of persons entering or leaving the premises—
  - (i) is causing undue annoyance or disturbance to persons—

- (A) living, working or doing business in the neighbourhood of the premises; or
  - (B) conducting or attending religious services in the neighbourhood of the premises; or
- (ii) is causing disorderly conduct in, or in the neighbourhood of, the premises.

### **137 Procedure for taking disciplinary action in relation to licence**

(1) If the chief executive considers, on reasonable grounds, there is a ground to take disciplinary action relating to a licence (the “**proposed action**”), the chief executive must give the licensee a written notice that states the following—

- (a) the proposed action;
- (b) the grounds for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action includes suspending the licence—the proposed suspension period;
- (e) if the proposed action includes closing the licensed premises for a stated period—the proposed closure period;
- (f) if the proposed action includes varying the licence—the proposed condition to which the licence is to be subject or the other way in which the authority conferred by the licence is to be limited;
- (g) if the proposed action includes disqualifying the licensee from holding a licence or permit—the proposed disqualification period;
- (h) if the proposed action includes requiring the licensee to pay the department an amount—the proposed amount;
- (i) an invitation to the licensee—
  - (i) to show, by a stated day that is at least 28 days after the notice is given (the “**last day for representations**”), why the proposed action should not be taken; and
  - (ii) to make submissions about the proposed action;

- (j) how representations by the licensee about the proposed action may be made.

(2) The chief executive must also give to each interested person relating to the licence, at least 28 days before the show cause period ends, written notice that—

- (a) states the matters mentioned in subsection (1)(a) to (h); and
- (b) invites the interested person to make representations, in the way stated in the notice, about the proposed action before the last day for representations.

### **137A Decision about disciplinary action**

(1) If, after considering any representations made, the chief executive still considers there is a ground to take disciplinary action relating to the licence, the chief executive may decide to—

- (a) if the proposed action was other than suspension or cancellation—take the proposed action or another form of disciplinary action, other than suspension or cancellation of the licence; or
- (b) if the proposed action was to suspend the licence—suspend the licence, for not longer than the proposed suspension period or take another form of disciplinary action, other than cancellation of the licence; or
- (c) if the proposed action was to cancel the licence—either cancel the licence or take another form of disciplinary action.

(2) If the chief executive decides to take disciplinary action other than the proposed action or part of the proposed action, the chief executive must, as soon as practicable after making the decision, give the licensee and each interested person to whom notice of the proposed action was given, a further notice stating the following—

- (a) the form of disciplinary action the chief executive proposes to take;
- (b) the reasons for the decision;
- (c) the licensee and interested persons may make submissions to the chief executive in the way and within the time stated in the notice.

(3) For subsection (2)(c), the time stated in the notice must not be less than 7 days after the licensee and interested persons are given the notice.

(4) If, after considering any representations made about the further notice, the chief executive still considers there is a ground to take disciplinary action relating to the licence, the chief executive may decide to take the disciplinary action.

(5) More than 1 type of disciplinary action relating to a licence may be taken against the licensee under this section.

(6) In this section—

“**proposed action**” see section 137(1).

### **137B Notice to be given about chief executive’s decision**

(1) Within 10 days after the chief executive makes a decision under section 137A(1) or (4) relating to proposed disciplinary action relating to a licence, the chief executive must give written notice of the decision to—

- (a) the licensee; and
- (b) each interested person to whom notice of the proposed action was given.

(2) However, subsection (1) does not apply to a decision made under section 137A(1) if the chief executive decides to take disciplinary action other than the proposed action or part of the proposed action and gives the licensee and each interested person a notice under section 137A(2).

(3) If the chief executive decides to take the proposed action under section 137A(1) or other disciplinary action under section 137A(4), the notice must state—

- (a) the reasons for the decision; and
- (b) the licensee may appeal to the Tribunal against the decision within 28 days after the person receives notice of the decision.

(4) The decision takes effect on the later of—

- (a) the day the notice is given to the licensee; or
- (b) the day of effect stated in the notice.

(5) However, if disciplinary action is taken relating to the licence because of a conviction—

- (a) the disciplinary action does not take effect until—

- (i) the end of the time to appeal against the conviction; or
  - (ii) if an appeal is made against the conviction—the appeal is finally decided; and
- (b) the disciplinary action has no effect if the conviction is quashed.

### **137C Urgent suspension**

(1) This section applies if the chief executive believes, on reasonable grounds—

- (a) a ground exists for taking disciplinary action in relation to a licence; and
- (b) harm may be caused to members of the public if urgent action to suspend the licence is not taken.

(2) The chief executive may immediately suspend the licence (an “**urgent suspension**”) by written notice given to the licensee, stating—

- (a) the licence is suspended; and
- (b) the reasons for the urgent suspension; and
- (c) the licensee may appeal to the Tribunal against the urgent suspension within 28 days after the licensee is given the notice.

(3) The urgent suspension takes effect immediately the notice is given to the licensee.

(4) At the same time as the chief executive gives the licensee the notice, the chief executive must give the licensee a notice under section 137(1).

(5) The urgent suspension continues until the first of the following happens—

- (a) the chief executive revokes it;
- (b) the chief executive, under section 137B(1), gives the licensee notice of the chief executive’s decision under section 137A(1) or (4);
- (c) the end of 60 days after the notice under subsection (2) was given to the licensee.



**137D Amount payable as a debt due to the State**

(1) This section applies if the chief executive decides to take disciplinary action relating to a licence and the action requires the licensee to pay an amount to the department.

(2) Any amount unpaid becomes a debt due and payable to the State 28 days after the day notice of the chief executive's decision is given to the licensee under section 137B.

*Subdivision 4—Effect of suspension of licence or permit and other matter*

**138 Effect of suspension**

A licence or permit that is suspended ceases to be in force for the period of suspension.

**139 Compensation not payable**

Compensation is not payable to any person in respect of—

- (a) acceptance by the chief executive of a surrender of a licence; or
- (b) cancellation or suspension by the chief executive of a licence or permit.

*Division 4—Closure of premises*

**140 Closure of unsafe or unhealthy premises**

(1) If, in respect of licensed premises, the chief executive considers the safety or health of members of the public to be endangered or prejudiced because of—

- (a) absence or inadequacy of fire prevention equipment on the premises; or
- (b) inadequacy of entrances to or exits from the premises; or
- (c) any condition of, or thing on, the premises that constitutes a health hazard; or

- (d) any other reason relating to safety or health that the chief executive considers sufficient;

the chief executive must give to the licensee, and the owner of the premises, an order to close the premises, and to keep them closed, until all orders in respect of the premises relating to—

- (e) public safety from risk of fire; or
- (f) matters of health;

have been complied with to the chief executive's satisfaction.

(2) If, in the chief executive's opinion, circumstances justify action under subsection (1), an order for closure may issue without prior notice to the licensee or owner of the licensed premises.

(3) A person must not contravene an order under subsection (1).

Maximum penalty for subsection (3)—25 penalty units.

### **141 Order to close premises for unlawful trading**

(1) If business is conducted on licensed premises—

- (a) by or on behalf of a person who is not—
  - (i) a licensee in respect of the premises; or
  - (ii) a person authorised by the chief executive under section 131A;<sup>37</sup> or
- (b) by a person who is not the nominee, approved by the chief executive, of the person on whose behalf business is conducted on the premises;

the chief executive may give to the person conducting business on the premises an order to cease trading in liquor on the premises and to close the premises.

(2) A person must not contravene an order under subsection (1).

Maximum penalty for subsection (2)—25 penalty units.

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<sup>37</sup> Section 131A (Decision by chief executive on application to continue trading in certain circumstances)

**142 Closure of premises in face of riot or tumult**

(1) On application made by an investigator, a magistrate, or, if a magistrate is not available, 2 justices, may order that all or any of the licensed premises in a locality in which a riot or tumult is happening, or is reasonably expected to happen, be closed during a period specified in the order.

(2) A person must not knowingly contravene an order under subsection (1).

Maximum penalty for subsection (2)—25 penalty units.

**PART 6—OBLIGATORY PROVISIONS AND OFFENCES*****Division 1—Provisions binding licensees, permittees, nominees, employees and agents*****143 Particulars to be displayed on premises**

(1) A licensee must at all times display, on a conspicuous place on the exterior of the licensed premises, in legible character at least 15 mm in height—

- (a) the name of the licensee and any nominee in respect of the premises; and
- (b) the name of the licensed premises; and
- (c) the nature of the business conducted on the licensed premises; and
- (d) the hours during which liquor may be sold on the premises to persons other than residents or their guests;

so that those particulars may be clearly read at all times.

Maximum penalty—25 penalty units.

(2) A person who contravenes subsection (1) commits a continuing offence against this Act, that may be charged in 1 complaint, from time to time, in respect of any period, and is liable to a penalty of a fine of not

more than 2 penalty units for each day during which the contravention continues.

### **143A Particulars to be displayed for approved area for adult entertainment**

(1) A permittee who holds an adult entertainment permit must, at all times when adult entertainment is being provided in the approved area for the entertainment, display a sign stating—

- (a) that adult entertainment is being provided in the area; and
- (b) that minors must not enter the area; and
- (c) anything else prescribed under a regulation.

Maximum penalty—25 penalty units.

(2) The permittee must ensure that—

- (a) the sign is conspicuously displayed at every entrance to the area; and
- (b) characters on the sign are legible and not less than 50 mm high.

Maximum penalty—25 penalty units.

### **144 Change of name requires approval**

A licensee must not change the name of the licensed premises without the chief executive's prior approval.

Maximum penalty—25 penalty units.

### **145 Keeping licence or permit at licensed premises**

A licensee or permittee must keep the licence or permit at the premises to which the licence or permit relates, unless the licensee or permittee has a reasonable excuse for not doing so.

Maximum penalty—25 penalty units.

**145A Production of licence or permit on request**

(1) An investigator may ask the person who appears to the investigator to be in control of premises to which a licence or permit relates to produce for inspection the licence or permit for the premises.

(2) The person must produce the licence or permit immediately for inspection by the investigator unless the person has a reasonable excuse for not producing it.

Maximum penalty—25 penalty units.

(3) A person does not commit an offence against subsection (2) if at the time the investigator asked the person to produce the licence or permit under subsection (1), the person was not, in fact, in control of the premises.

**146 Supply contrary to licence or permit**

(1) A licensee or permittee, or an employee or agent of a licensee or permittee, must not supply liquor—

- (a) at an unauthorised time; or
- (b) in an unauthorised quantity; or
- (c) in an unauthorised way; or
- (d) for an unauthorised purpose.

Maximum penalty—100 penalty units.

(2) In subsection (1)—

“**supply**” includes sell.

“**unauthorised**” means not authorised by the licence or permit.

**147 Consumption or removal contrary to licence or permit**

(1) In this section—

“**persons**” does not include residents on the relevant licensed premises or their guests.

(2) A licensee or permittee, or an employee or agent of the licensee or permittee, must not permit or allow liquor—

- (a) to be consumed on the licensed premises at any time other than a time when liquor may be sold to, or consumed by, persons on the licensed premises under authority of the licence or permit; or

- (b) to be removed from the licensed premises at any time other than a time when liquor may be removed by persons from the licensed premises under this Act.

Maximum penalty—100 penalty units.

### **148 Gratuitous supply of liquor**

A licensee or permittee, or an employee or agent of the licensee or permittee, does not contravene—

- (a) section 146 by gratuitously supplying liquor at any time; or
- (b) section 147 by permitting or allowing consumption at any time of liquor gratuitously supplied;

if the supply is made or the consumption happens—

- (c) in the course of social contact with the person supplied; and
- (d) in a part of the licensed premises not ordinarily used for the purposes of the business conducted on the premises or, with the chief executive's prior approval for a particular event or occasion, in any part of the licensed premises.

### **149 Licensee to exercise control over premises**

A licensee—

- (a) must not be absent from the management and supervision of business conducted under authority of the licence for a continuous period longer than 28 days without the chief executive's prior approval; and
- (b) must not permit the licensed premises to be in the keeping of a person who is not—
  - (i) a licensee of the premises; or
  - (ii) an employee of the licensee; and
- (c) except with the chief executive's prior approval, must not knowingly permit to be employed on the licensee's behalf on the licensed premises a person who, because of misconduct or bad character—
  - (i) has had a licence, permit or other authority relating to the sale or supply of liquor cancelled; or

- (ii) has been refused a licence, permit or other authority relating to the sale or supply of liquor;

under this Act or a corresponding previous enactment or under a corresponding law of another State or a Territory.

Maximum penalty—100 penalty units.

### **149A Providing adult entertainment without adult entertainment permit**

A licensee or permittee must not provide adult entertainment on licensed premises or premises to which a general purpose permit or restricted club permit relates unless the licensee or permittee provides the entertainment under an adult entertainment permit.

Maximum penalty—200 penalty units.

### **149B Supervising adult entertainment**

(1) At all times when adult entertainment is being provided under an adult entertainment permit, the entertainment must be supervised by the licensee, permittee or nominee or a controller to ensure that it is provided in accordance with this Act and the conditions of the permit.

Maximum penalty—100 penalty units.

(2) If subsection (1) is contravened, the following persons each commit an offence—

- (a) the licensee or permittee;
- (b) any nominee or controller whose duty it was to supervise the entertainment at the relevant time.

### **150 Notification of change in controlling interest in licensee**

(1) A licensee that is a corporation must give to the chief executive written notice of every change in the beneficial ownership of the controlling interest in the corporation, within 14 days after the change.

Maximum penalty—100 penalty units.

(2) The holder of a special facility licence, that is the subject of an approval by the chief executive as mentioned in section 153(3), must give

the chief executive written notice of the following changes within 14 days after the change—

- (a) a change in the letting or subletting of part of the licensed premises;
- (b) a change in the letting or subletting of the right to sell liquor;
- (c) a change in the franchise or management agreement for part of the licensed premises;
- (d) a change in the beneficial ownership of the controlling interest in any lessee, sublessee, franchisee or holder of management rights, under the chief executive's approval.

Maximum penalty for subsection (2)—100 penalty units.

### **151 Unlawful betting or gaming**

(1) A licensee or permittee must not—

- (a) bring or keep, or permit to be brought or kept, on the licensed premises any machine, apparatus or device capable of being used for betting or gaming other than—
  - (i) one required for wagering by a general operator under the *Wagering Act 1998*; or
  - (ii) a gaming machine within the meaning of the *Gaming Machine Act 1991* under the authority of a gaming machine licence under that Act; or
  - (iii) for conducting a game authorised under the *Charitable and Non-Profit Gaming Act 1999*; or
  - (iv) for conducting or playing a keno game conducted by a keno licensee under a keno licence; or
- (b) conduct, or permit or allow to be conducted, on the premises to which the licence or permit relates an art union or lottery that is not authorised by law; or
- (c) permit or suffer to be played on the premises to which the licence or permit relates, or in their appurtenances, a sport or game declared by law to be unlawful.

Maximum penalty—250 penalty units.

(2) In subsection (1)—



“**keno game**” means a game for which rules are made under the *Keno Act 1996*, section 138.<sup>38</sup>

“**keno licence**” means a licence to conduct keno games issued under the *Keno Act 1996*.

“**keno licensee**” means a person who holds a keno licence.

### **152 Prohibition on other use of premises**

(1) A licensee must not, without the chief executive’s prior approval—

- (a) conduct or permit to be conducted, or advertise or represent himself or herself as conducting, on the licensed premises, a business other than—
  - (i) that authorised by the licence; or
  - (ii) a business on behalf of the Totalisator Administration Board under the *Racing and Betting Act 1980*; or
  - (iii) a business under the authority of a gaming machine licence under the *Gaming Machine Act 1991*; or
- (b) supply or permit to be supplied, on the licensed premises, a service to the public other than that authorised by the licence.

Maximum penalty—25 penalty units.

(2) A licensee must not use or publish, or permit to be used or published, a document containing the name of the licensed premises for or in connection with a business or service to the public other than a business or service that may be conducted or supplied on the licensed premises consistently with subsection (1).

Maximum penalty—25 penalty units.

### **153 Letting or subletting of licensed premises**

(1) A licensee must not, without the chief executive’s approval—

- (a) let or sublet all of the licensed premises; or
- (b) enter into a franchise or management agreement for all of the licensed premises.

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38 *Keno Act 1996*, section 138 (Keno rules)

Maximum penalty—40 penalty units.

(2) A licensee must not—

- (a) let or sublet part of the licensed premises; or
- (b) enter into a franchise or management agreement for part of the licensed premises.

Maximum penalty—40 penalty units.

(3) Subsections (1) and (2) do not apply to the holder of a special facility licence who, with the chief executive's approval—

- (a) lets or sublets part of the licensed premises; or
- (b) lets or sublets the right to sell liquor; or
- (c) enters into a franchise or management agreement for part of the licensed premises.

## **154 Alteration etc. and maintenance of licensed premises**

(1) The owner, licensee or other person in control of licensed premises must not, without the chief executive's approval, alter, rebuild, change or increase the area of the licensed premises.

*Examples for subsection (1)—*

1. The licensee of a detached bottle shop in a shopping centre changes the relevant leasing arrangements by reducing the overall area the shop is to occupy. Therefore the licensee must apply for the chief executive's approval to alter the licensed premises permanently.
2. An RSL club is the licensee of a licensed club and wishes to erect a tent next to its licensed premises to provide liquor on Anzac Day. Therefore the licensee must apply for the chief executive's approval to increase the area of the licensed premises for that occasion.

Maximum penalty—25 penalty units.

(2) For subsection (1)—

- (a) in giving an approval, the chief executive must have regard to the business that is the primary purpose conducted under the licence; and
- (b) a change in the area includes not using a part of the licensed premises as if the part were not licensed premises.

(3) The licensee of licensed premises must keep the premises clean and in good repair.

Maximum penalty—25 penalty units.

### **154A Relocation of detached bottle shops**

(1) This section applies if—

- (a) under a general licence the licensee has authority to sell or supply liquor on a detached bottle shop; and
- (b) the licensee proposes to relocate the detached bottle shop.

(2) The licensee must apply to the chief executive for approval for the relocation.

(3) In deciding the application, the chief executive must have regard to whether or not the applicant should be required to advertise the application under section 118.

(4) The chief executive may approve the application only if the chief executive is satisfied the detached bottle shop is to be relocated to another place within the same shopping precinct.

(5) If the detached bottle shop is to be relocated more than the distance prescribed under a regulation from the main licensed premises, the chief executive must refuse the application.

(6) Subsection (5) does not apply if the detached bottle shop—

- (a) operates under an approval granted by the chief executive before 2 December 1994; or
- (b) operates under an approval granted by the chief executive on or after 2 December 1994 that authorises the detached bottle shop to be located more than the distance prescribed under a regulation from the main licensed premises.

(7) If the chief executive approves the application, the chief executive must adjust the licence to ensure it describes the licensed premises after the relocation of the detached bottle shop.

### **154B Transfer of certain premises**

(1) This section applies if—

- (a) the licensee under a general licence (the “**first licensee**”) has authority to sell or supply liquor on a detached bottle shop; and
- (b) the first licensee proposes to transfer the detached bottle shop to another licensee of a general licence (the “**second licensee**”).

(2) The first and second licensees must make a joint application to the chief executive for approval of the transfer.

(3) The chief executive must refuse the application if—

- (a) the detached bottle shop is more than the distance prescribed under a regulation from the main licensed premises of the second licensee; or
- (b) there are 3 detached bottle shops under the authority of the general licence of the second licensee.

(4) In deciding the joint application, the chief executive must have regard to the matters prescribed under a regulation.

(5) If the chief executive approves the joint application, the chief executive must adjust the licences of the first licensee and second licensee to ensure each licence describes its licensed premises after the transfer of the detached bottle shop.

### **154C Inclusion or amendment of other premises as part of authority of club licence**

(1) A licensee under a club licence may apply for—

- (a) the inclusion of a statement in the licence that the licensed premises include other premises; or
- (b) a change of a statement in the licence that the licensed premises include other premises.

(2) If the chief executive approves the application, the chief executive must adjust the licence to ensure it describes the licensed premises after the inclusion of the other premises or change of the other premises.

(3) Section 111<sup>39</sup> must not be used to do something that can be done under this section.

(4) A regulation may prescribe the requirements for an application under this section.

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39 Section 111 (Variation of licence)

(5) In this section—

“**other premises**” see section 85(1A).

### **155 Minors on premises**

(1) This section applies to all minors other than an exempt minor.

(2) A licensee, permittee or person in control of the premises to which the licence or permit relates must ensure that a minor is not on the premises.

(3) Also, an employee or agent of the licensee or permittee must not allow a minor to enter the premises to which the licence or permit relates.

(3A) If a minor is on the premises, each of the following persons commits an offence—

- (a) the licensee or permittee;
- (b) if another person is in control of the premises—the other person;
- (c) if an employee or agent of the licensee or permittee allowed the minor to enter the premises—the employee or agent.

Maximum penalty—100 penalty units.

(4) In this section—

“**exempt minor**” means a minor on premises to which a licence or permit relates if—

- (a) the minor is a resident on the premises; or
- (b) the minor is on the premises to—
  - (i) perform duties as an employee of the owner, or occupier, of the premises or a part of the premises; or
  - (ii) perform duties in the conduct of a lawful business; or
  - (iii) perform duties while receiving training for employment or work experience; or
- (c) the minor is attending a function being held on the premises; or
- (d) the premises are premises to which a club licence or restricted club permit relates and the minor’s presence does not contravene the club’s rules or a condition of the licence or permit; or

- (e) the minor is on the premises for a purpose, and in circumstances, approved by the chief executive; or
- (f) the minor—
  - (i) is eating a meal on the premises; or
  - (ii) is accompanied by a responsible adult who is responsibly supervising the minor.

(5) However, a minor is not an exempt minor merely because the minor is eating a meal on the premises or accompanied by a responsible adult if—

- (a) the minor is on premises after 5 p.m.; and
- (b) the premises are premises mentioned in section 72 to which an on-premises licence relates; and
- (c) the premises are being used for cabaret.

### **155AA Minors must not be in approved area when adult entertainment being provided**

(1) This section applies despite section 155, if a licensee of licensed premises or permittee of premises to which a general purpose permit or restricted club permit relates holds an adult entertainment permit.

(2) The licensee, permittee or the licensee's or permittee's nominee or controller, if any, must ensure that a minor is not in an approved area when adult entertainment is being provided.

Maximum penalty—200 penalty units.

(3) To remove doubt, it is declared that a minor can not be in an approved area in the capacity of a performer of adult entertainment.

### ***Division 2—Provisions binding all persons***

#### **155A Prohibition on sale to a minor**

A person must not sell liquor to a minor.

Maximum penalty—

- (a) if the person is a licensee, permittee, nominee or manager of licensed premises—250 penalty units; or
- (b) in any other case—40 penalty units.

**156 Liquor prohibited to certain persons**

(1) A person must not, on premises to which a licence or permit relates—

- (a) supply liquor to; or
- (b) permit or allow liquor to be supplied to; or
- (c) allow liquor to be consumed by;

a person who—

- (d) is a minor; or
- (e) is unduly intoxicated or disorderly.

(2) A person must not, on a street or place adjacent to premises to which a licence or permit relates, or in a public place supply liquor, or cause or permit liquor to be supplied, to a minor.

(3) A person must not send, or cause or permit to be sent, to premises to which a licence or permit relates a minor with a view to the minor or another person being supplied with liquor.

Maximum penalty for subsections (1) to (3)—

- (a) if the person is the licensee, permittee, nominee or manager of the premises—250 penalty units; or
- (b) in any other case—40 penalty units.

(4) Subsection (2) does not apply to the supply of liquor to a minor in a public place, designated under section 173C, if the minor is accompanied by a responsible adult who is responsibly supervising the minor.

**157 Prohibitions affecting minors**

(1) A minor who is not an exempt minor must not be on premises to which a licence or permit relates.

Maximum penalty—25 penalty units.

(2) A minor must not, on premises to which a licence or permit relates or in a public place—

- (a) consume liquor; or
- (b) be in possession of liquor.

Maximum penalty—25 penalty units.

(3) Subsection (2) does not apply to a minor in a public place, designated under section 173C, if the minor is accompanied by a responsible adult who is responsibly supervising the minor.

(4) Subsection (2)(b) does not apply to a minor who is on the premises for a purpose mentioned in section 155(4)(b) if the minor is in possession of liquor in the course of performing the duties mentioned in the paragraph.

### **158 False representation of age**

(1) A person must not falsely represent himself or herself to have attained 18 years for a wrongful purpose.

Maximum penalty—25 penalty units.

(2) A person must not—

- (a) make a false document that could reasonably be taken to be genuine acceptable evidence of age for the purposes of this Act; or
- (b) give such a false document to another person;

knowing the document to be false and with intent that the document be used as acceptable evidence of age for the purposes of this Act.

Maximum penalty—

- (a) in the case of a minor—25 penalty units; or
- (b) in the case of an adult—40 penalty units.

(3) A person must not falsely represent to an entity that the person has reached 18 years to obtain a proof of age card mentioned in section 6(a)(i) knowing the representation to be false.

Maximum penalty—25 penalty units.

(4) In subsection (1)—

“**wrongful purpose**”, of a minor, means—

- (a) intending to be supplied with liquor; or
- (b) entering into premises to which a licence or permit relates.

### **159 Wrongful dealing with genuine evidence of age**

(1) A person must not knowingly give a document that is evidence of age of the person mentioned in the document (the “**specified person**”) to



someone else, if the person giving the document knows or has reasonable grounds to suspect that the document may be used—

- (a) as evidence of age, under this Act, of someone other than the specified person; or
- (b) to obtain a proof of age card mentioned in section 6(a)(i) for someone other than the specified person.

Maximum penalty—40 penalty units.

(2) A person must not wilfully or negligently deface or interfere with a document that is acceptable evidence of age for the purposes of this Act of the person or another person.

Maximum penalty—40 penalty units.

### **160 Seizure of document wrongly used as evidence of age**

(1) If a contravention of section 158 consists in production of—

- (a) a genuine document that is acceptable evidence of age for the purposes of this Act of the person specified in the document; or
- (b) a false document that could reasonably be taken to be genuine acceptable evidence of age for the purposes of this Act;

the person to whom the document is produced must seize and confiscate the document and give it to an investigator.

Maximum penalty—25 penalty units.

(2) A person does not commit an offence by contravening subsection (1) if the person is not aware of the falsity of the representation as to age made by producing the document.

### **161 Consumption or removal of liquor outside trading hours**

A person must not—

- (a) consume liquor on premises to which a licence or permit relates; or
- (b) remove liquor from premises to which a licence or permit relates; or
- (c) receive liquor from anyone on premises to which a licence or permit relates;

at any time other than a time when liquor may be sold to, or consumed by, the person on the premises, or be removed from the premises by the person, under authority of the licence or permit.

Maximum penalty—25 penalty units.

### **162 Taking liquor onto or away from premises subject to on-premises licence**

(1) A person must not take liquor onto premises to which an on-premises licence relates for consumption on the premises, unless the premises are premises mentioned in section 73.<sup>40</sup>

Maximum penalty—25 penalty units.

(2) A person must not take liquor from premises to which an on-premises licence relates, unless the premises are premises mentioned in section 73 and—

- (a) if the liquor is wine, the wine was supplied to the person on the premises lawfully under the licence as authorised under section 73A(b);<sup>41</sup> or
- (b) the person brought the liquor onto the premises.

Maximum penalty—25 penalty units.

### **163 False representation of intention to dine**

A person must not falsely represent that the person intends to eat a meal, or has recently eaten a meal, on licensed premises with a view to being supplied with liquor at any time when liquor could not lawfully be sold to that person under authority of the licence relating to the premises except in association with the person eating a meal on the premises.

Maximum penalty—25 penalty units.

### **164 Conduct causing public nuisance**

(1) A person must not—

- (a) be drunk or disorderly; or

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40 Section 73 (Primary purpose of a business under an on-premises (meals) licence)

41 Section 73A (Restriction on sale of liquor under an on-premises (meals) licence)

- (b) create a disturbance;

in premises to which a licence or permit relates.

Maximum penalty—25 penalty units.

- (2) A person must not be drunk in a public place.

Maximum penalty—1 penalty unit.

### **165 Removal of persons from premises**

(1) An authorised person for premises to which a licence or permit relates may require a person to leave the premises if—

- (a) the person is unduly intoxicated; or
- (b) the person is disorderly; or
- (c) the person is creating a disturbance; or
- (d) the person is a minor, other than an exempt minor; or
- (e) the person has entered the premises despite being refused entry under section 165A; or
- (f) the person refuses to state particulars, or to produce evidence, as to age when required to do so under section 167.

(2) A person must immediately leave premises when required to do so under subsection (1).

Maximum penalty—25 penalty units.

(3) If a person fails to leave when required under subsection (1), the authorised person may use necessary and reasonable force to remove the person.

(4) A person must not resist an authorised person who is removing the person under subsection (3).

Maximum penalty—25 penalty units.

- (5) In this section—

**“authorised person”**, for premises to which a licence or permit relates, means—

- (a) the licensee or permittee; or
- (b) an employee or agent of the licensee or permittee.

**165A Refusing entry to premises**

(1) An authorised person for premises to which a licence or permit relates may refuse to allow a person to enter the premises if—

- (a) the person is unduly intoxicated; or
- (b) the person is disorderly; or
- (c) the person is a minor, other than an exempt minor; or
- (d) the authorised person suspects on reasonable grounds the person is a minor and the person fails to—
  - (i) produce acceptable evidence that the person is not a minor; or
  - (ii) show that, if admitted to the premises, the person will be an exempt minor.<sup>42</sup>

(2) A person must not enter, or attempt to enter, premises to which the person is refused entry under subsection (1).

Maximum penalty—25 penalty units.

(3) If a person attempts to enter premises despite being refused entry to the premises under subsection (1), an authorised person may use necessary and reasonable force to prevent the person from entering the premises.

(4) A person must not resist an authorised person who is preventing the person from entering premises under subsection (3).

Maximum penalty—25 penalty units.

(5) In this section—

**“authorised person”**, for premises to which a licence or permit relates, means—

- (a) the licensee or permittee; or
- (b) an employee or agent of the licensee or permittee.

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<sup>42</sup> See sections 6 (Acceptable evidence of age) and 155 (Minors on premises).

### **165B Preservation of other rights to prevent entry to premises or remove persons from premises**

Sections 165 and 165A do not limit any rights a person has under another law to prevent entry to premises to anyone or remove anyone from premises.

*Example—*

A licensee decides on a dress standard for persons in the licensed premises. The licensee may exercise the licensee's rights apart from this Act to stop anyone who does not comply with the standard from entering the premises.

### **166 Obstruction generally**

A person must not obstruct or hinder, or attempt to obstruct or hinder a licensee or permittee, or an employee or agent of a licensee or permittee, in the exercise of a power or performance of a duty under this Act.

Maximum penalty—100 penalty units.

### **167 Ascertainment of age**

(1) For the purposes of this Act, an authorised person may require another person whom the authorised person suspects on reasonable grounds to be a minor and to be contravening a provision of this Act—

- (a) to state all relevant particulars concerning the other person's age; and
- (b) to produce evidence of the other person's age.

(2) In this section—

**“authorised person”** includes—

- (a) a licensee or permittee; and
- (b) an employee or agent of a licensee or permittee.

### **168 Interference with licence or permit**

A person must not—

- (a) wilfully or negligently deface a licence or permit; or

- (b) alter a particular shown in a licence or permit, without the chief executive's prior approval.

Maximum penalty—100 penalty units.

### **168A Advertising adult entertainment**

(1) A person must not publish an advertisement for adult entertainment that describes the sexually explicit nature of the acts performed in the entertainment.

Maximum penalty—40 penalty units.

(2) A person must not publish an advertisement for adult entertainment that is not in the form approved by the chief executive either generally or for a particular advertisement.

Maximum penalty—40 penalty units.

(3) A person must not publish any advertisement for adult entertainment through radio or television or by film or video recording.

Maximum penalty—40 penalty units.

(4) Evidence that an advertisement has been published in relation to adult entertainment provided at licensed premises or premises to which a general purpose or restricted club permit relates, is evidence that a person who is the licensee or permittee published the advertisement.

(5) In this section—

**“advertisement”** includes the following—

- (a) notice;
- (b) sign;
- (c) circular;
- (d) matter that is not in writing, but that conveys a message because of the form or context in which it appears.

**“publish”** an advertisement means publish, or cause to be published, in any way including in a newspaper, periodical, notice, sign or circular or through radio or television or by film or video recording.

**168B Prohibition of possession of liquor in restricted area**

(1) A person must not, in a public place in a restricted area to which this section applies because of a declaration under section 173H, have in possession more than the prescribed quantity of liquor for the area, other than under the authority of a restricted area permit.

Maximum penalty—

- (a) for a first offence—500 penalty units; or
- (b) for a second offence—700 penalty units or 6 months imprisonment; or
- (c) for a third or later offence—1 000 penalty units or 18 months imprisonment.

(2) However, subsection (1) does not apply to the possession of liquor in the ordinary course of lawful business by—

- (a) a licensee or permittee in the licensee's or permittee's licensed premises; or
- (b) a carrier who—
  - (i) has collected it from, and is delivering it to, licensed premises in the area; or
  - (ii) has collected it from licensed premises outside the area and is delivering it to licensed premises in the area; or
  - (iii) has collected it from licensed premises in the area and is delivering it to licensed premises outside the area; or
- (c) if the liquor was seized under part 7, division 1—a carrier who is carrying it, under the direction of an investigator, in a restricted area.

(3) In a proceeding for an offence against subsection (1), proof that liquor was, at the material time, in or on a vehicle is conclusive evidence that the operator of the vehicle had in possession all the liquor in or on the vehicle unless the operator proves that, at the time, he or she neither knew nor had reason to suspect that the liquor was in or on the vehicle.

(4) For subsection (3), it is immaterial that another person claims to have had in possession any of the liquor at the material time.

(5) In this section—

“**carrier**” means a carrier, delivery person or other person engaged in the ordinary course of lawful business of delivering liquor.

**“licensed premises”** includes premises to which a permit relates.

**“operator”**, of a vehicle, includes—

- (a) the person in command or control, or who appears to be in command or control, of the vehicle; and
- (b) for a vehicle registered in a State or Territory under a law of the State or Territory providing for the registration of vehicles—the person in whose name the vehicle is so registered.

**“vehicle”** includes a boat and an aircraft.

***Division 3—Provisions concerning sale of liquor by unlicensed persons  
or on unlicensed premises***

**169 Authority required for sale**

A person must not sell liquor unless—

- (a) if the liquor is wine—the sale is made under the authority of a licence or permit under this Act or the *Wine Industry Act 1994*; or
- (b) otherwise—the sale is made under the authority of a licence or permit.

Maximum penalty—

- (a) for a first offence—500 penalty units; or
- (b) for a second offence—700 penalty units or 6 months imprisonment; or
- (c) for a third or later offence—1 000 penalty units or 18 months imprisonment.

**170 Sale of liquor on premises to which licence or permit relates**

A licensee or permittee must not sell or supply liquor on or from premises other than the premises to which the licence or permit relates.

Maximum penalty—100 penalty units.

**171 Carrying or exposing liquor for sale**

- (1) A person must not—



- (a) carry liquor for sale; or
- (b) expose liquor for sale;

in any premises without the authority of a licence or permit relating to the premises.

Maximum penalty—

- (a) for a first offence—500 penalty units; or
- (b) for a second offence—700 penalty units or 6 months imprisonment; or
- (c) for a third or later offence—1 000 penalty units or 18 months imprisonment.

(2) In a proceeding for a contravention of subsection (1), the burden of proving that liquor was not carried or exposed for sale is on the person alleged to have so carried or exposed it unless—

- (a) the package or container in which the liquor is contained is labelled in writing on the outside with the name and address of—
  - (i) the vendor; and
  - (ii) the purchaser; and
  - (iii) the person (if other than the purchaser) to whom the liquor is to be delivered; or
- (b) the particulars prescribed by paragraph (a) and the description and quantity of the liquor are set out in a document in the possession of the person alleged to have so carried or exposed it, and the document is produced to an investigator or police officer on demand.

### **172 Offer to purchase liquor made elsewhere than at licensed premises**

(1) A licensee must not take or receive, or cause or permit an agent or employee to take or receive, an order for liquor elsewhere than at the licensed premises.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the holder of a producer/wholesaler licence for orders taken to supply liquor by wholesale to a person mentioned in section 84(1).

(3) A person other than a licensee must not invite an offer to purchase liquor by way of an order taken or received elsewhere than at the licensed premises on or from which the liquor could be sold under authority of a licence in response to the order.

Maximum penalty—100 penalty units.

### **173 Occupier and owner of unlicensed premises liable for sale of liquor etc.**

(1) Every occupier and every owner of unlicensed premises who permits or knowingly allows the sale of liquor on the premises in contravention of a provision of this division is taken to have sold the liquor and is liable to be punished as if the person had actually sold the liquor.

(2) An owner of unlicensed premises on which liquor is sold is taken to have knowingly allowed the sale of liquor on the premises if—

- (a) during the 2 years before the sale, liquor has been sold on the premises on at least 3 other occasions; and
- (b) someone has been convicted of an offence against this division relating to the sale on each of the other occasions; and
- (c) the owner was owner of the premises when the offences to which the convictions relate were committed; and
- (d) a copy of a certificate of each such conviction was given to the owner by personal service or by pre-paid certified mail addressed to the owner—
  - (i) at the owner's place of residence last known to the complainant in the case in which the conviction was recorded; or
  - (ii) at the owner's place of residence shown in the records of the official responsible for keeping registers in relation to dealings in land.

(3) A conviction of the occupier of unlicensed premises for selling liquor on the premises is sufficient ground on which the owner of the premises may terminate the tenancy of the occupier by serving on the occupier a notice to quit the premises.

(4) If the occupier cannot be found, a notice to quit required to terminate the tenancy may, without limiting the way by which to effect service, be

served on the occupier by fixing a copy of the notice to a place on the premises where it can easily be read.

(5) An owner may exercise power under subsection (3) although the owner is not the landlord in respect of the occupier's tenancy.

(6) Termination of a tenancy under subsection (3) takes effect at the end of 7 days after the day on which notice to quit is served on the occupier.

(7) An owner who has terminated a tenancy under subsection (3)—

- (a) is entitled, in legal proceedings by the owner against the occupier, to an order that the occupier quit the premises and deliver up possession to the landlord; and
- (b) is entitled, under authority of such an order, to have the occupier evicted.

#### *Division 4—Provisions concerning consumption of liquor in certain public places*

### **173A Definitions**

In this division—

**“designated public place”** means a public place designated under section 173C.

**“local government”** does not include a Council.

**“road”** means—

- (a) a road within the meaning of the *Local Government Act 1993*; or
- (b) a State-controlled road under the *Transport Infrastructure Act 1994*.

### **173B Consumption of liquor in certain public places prohibited**

(1) A person must not consume liquor in—

- (a) a public place that is—
  - (i) a road; or
  - (ii) land owned by, or under the control of, a local government (other than a conservation park or resources reserve under the *Nature Conservation Act 1992*); or

- (b) a doorway, entrance or vestibule that gives access to premises from a public place mentioned in paragraph (a).

Maximum penalty—1 penalty unit.

(2) A person does not commit an offence against subsection (1) in relation to a place—

- (a) if the consumption of liquor in the place is authorised or permitted under a licence or permit; or
- (b) if the place is, at the relevant time, a designated public place; or
- (c) if—
- (i) the place was, but at the relevant time is no longer, a designated public place; and
- (ii) the local government concerned has not complied with section 173E in relation to the place.

### **173C Local government may designate public places where liquor may be consumed**

(1) A local government may designate a public place mentioned in section 173B(1)(a) that is in its area as a public place where liquor may be consumed.

(2) The local government may specify the period or times during which the designation is to have effect.

(3) If the local government specifies a period or times under subsection (2), the public place is a designated public place only during that period or those times.

### **173D Local government must advertise designation and place signs**

(1) A local government that designates a public place under section 173C must advertise, or cause someone else to advertise, the designation in a newspaper that circulates in its area.

(2) The advertisement must—

- (a) include a description of the public place; and
- (b) specify the period or times (if any) during which the public place is a designated public place.

(3) The local government must also erect, or cause someone else to erect, signs that—

- (a) sufficiently identify the public place as a designated public place; and
- (b) specify the period or times (if any) during which the public place is a designated public place.

(4) The local government does not have to comply with subsection (1) if it has specified under section 173C(2) that the designation in relation to the public place has effect for a period not longer than 1 day.

(5) A local government does not have to comply with subsections (1) to (3) if the designation is for a public place adjacent to premises used for the primary purpose of eating meals prepared, served and intended to be eaten on the premises.

(6) However, written local government approval for the use of the public place mentioned in subsection (5) must be conspicuously displayed in the place.

(7) Subsection (1) does not apply to a Council.

### **173E Local government must advertise repeal or amendment of designation and remove or alter signs**

(1) If a local government repeals or amends a designation under section 173C, the local government must advertise, or cause someone else to advertise, the repeal or amendment in a newspaper that circulates in its area.

(2) The advertisement must—

- (a) in the case of the repeal of a designation of a public place—include a description of the public place; and
- (b) in the case of an amendment that varies the boundaries of a designated public place—include a description of the public place as varied; and
- (c) in the case of an amendment that varies the period or times during which a designation of a public place has effect—specify the varied period or times.

(3) The local government must also ensure—

- (a) in the case of the repeal of a designation of a public place—that all signs identifying the public place as a designated public place are removed; and
- (b) in the case of an amendment that varies the boundaries of a designated public place—that signs sufficiently identify the public place, as varied, as a designated public place; and
- (c) in the case of an amendment that varies the period or times during which a designation of a public place has effect—that signs identifying the public place specify the varied period or times.

## **PART 6A—RESTRICTED AREAS**

### **173F Purpose of pt 6A**

The purpose of this part is to provide for the declaration of areas for minimising—

- (a) harm caused by alcohol abuse and misuse and associated violence; and
- (b) alcohol related disturbances, or public disorder, in a locality.

### **173G Declaration of restricted area**

(1) A regulation may declare an area to be a restricted area.

(2) Without limiting subsection (1), community area, or part of a community area, may be declared to be a restricted area.

(3) In recommending the Governor in Council make the regulation, the Minister must be satisfied the declaration is necessary to achieve the purpose of this part.

### **173H Declaration of prohibition of possession of liquor in restricted area**

(1) A regulation may declare that a restricted area is an area to which section 168B applies.

(2) A regulation under subsection (1) must state the quantity of liquor that a person may have in possession in a public place in the restricted area (the “**prescribed quantity**”) without a restricted area permit.

### **173I Consultation with community justice groups for declarations**

(1) This section applies if a community area is, or a community area or part of a community area is in—

- (a) an area to be declared under a regulation under section 173G to be a restricted area; or
- (b) a restricted area to be declared under a regulation under section 173H to be an area to which section 168B applies.

(2) The Minister may recommend the Governor in Council make the regulation only if the Minister has consulted with the community justice group for the community area about the declaration or, if the group made a recommendation about the declaration, the Minister has considered the recommendation.

(3) Also, the Minister must consider a recommendation made by the community justice group about changing the declaration.

(4) However, failure to comply with subsection (2) or (3) does not affect the validity of a regulation made for the subsection.

### **173J Notice about prohibition of possession of liquor in restricted area**

(1) As soon as practicable after a declaration under section 173H for a restricted area, the chief executive must—

- (a) give written notice about the declaration to the following—
  - (i) the local government that may exercise jurisdiction in the area;
  - (ii) each assistant commissioner for a locality in the area;
  - (iii) if the area is, or is in, a community area—the community justice group for the area; and
- (b) publish a notice about the declaration in a newspaper circulating in the area; and
- (c) erect or display and maintain a notice about the declaration at the places where public roads enter the area.

(2) A notice under subsection (1)(c) must—

- (a) sufficiently identify the area; and
- (b) state in general terms the effect of section 168B and the penalty for an offence against the section; and
- (c) be easily visible to persons entering the area.

(3) A failure of the chief executive to erect, display or maintain a notice under subsection (1)(c) does not affect a person's liability to be prosecuted for an offence against section 168B.

(4) In this section—

**“public road”** means a road ordinarily used by the public.

## **PART 7—INVESTIGATORS AND THEIR POWERS**

### *Division 1—Exercise of powers*

#### **174 Investigators**

(1) The chief executive may authorise a person, or a class of persons, to exercise—

- (a) all the powers conferred by this Act on an investigator; or
- (b) any powers conferred by this Act on an investigator.

(2) The chief executive must issue an identity card to a person authorised under subsection (1) (the **“investigator”**).

(3) The identity card must—

- (a) contain a recent photograph of the investigator; and
- (b) be in a form approved by the chief executive.

(4) If the investigator ceases to be authorised under subsection (1), the investigator must, as soon as practicable, return his or her identity card to the chief executive.

Maximum penalty—25 penalty units.



(5) The investigator is not entitled to exercise powers under this Act in relation to another person unless the investigator first produces the investigator's identity card for inspection by the person.

### **174A Powers of Aboriginal and Island police officers**

(1) An investigator who is an Aboriginal police officer or Island police officer may only exercise a power under this part for the administration and enforcement of sections 168B, 169 and 171 in a restricted area that is, or is in, the community area for which the officer holds appointment.

(2) Subsection (3) applies for an Aboriginal police officer or Island police officer exercising an investigator's powers under this part for the administration and enforcement of a prescribed provision by the officer.

(3) This part applies to the officer as if—

- (a) a reference to an investigator were a reference to an Aboriginal police officer or Island police officer; and
- (b) the prescribed provision were a provision of this Act.

*Examples for subsection (3)—*

1. An Aboriginal or Island police officer may exercise a power under section 175 if the officer has a reasonable suspicion that a vehicle is being used in the commission of an offence against a prescribed provision.
2. An Aboriginal or Island police officer may exercise the power of entry under section 176 for finding out whether a prescribed provision is being complied with.
3. An Aboriginal or Island police officer may exercise a power of seizure under section 177(4) if the officer has the reasonable belief mentioned in the subsection.

### **175 Power to stop and search vehicles etc.**

(1) This section applies if an investigator suspects on reasonable grounds that—

- (a) a vehicle, boat or aircraft is being, or has been, used in the commission of an offence against this Act; or
- (b) a vehicle, boat or aircraft, or anything on or in, a vehicle, boat or aircraft may afford evidence of the commission of an offence against this Act.

(2) The investigator may, with such assistance and by such force as is necessary and reasonable—

- (a) enter or board the vehicle, boat or aircraft; and
- (b) exercise the powers set out in section 178.

**(3)** If—

- (a) the vehicle or boat is moving or about to move; or
- (b) the aircraft is moving, or about to move, on the ground;

the investigator may signal the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft, to stop or not to move the vehicle, boat or aircraft.

**(4)** A person must not, without reasonable excuse, disobey a signal under subsection (3).

Maximum penalty—165 penalty units or 1 year's imprisonment.

**(5)** It is a reasonable excuse for the person to fail to stop or to move the vehicle, boat or aircraft if—

- (a) to immediately obey the signal would have endangered the person or another person; and
- (b) the person obeys the signal as soon as it is reasonably practicable to stop or move the vehicle, boat or aircraft.

**(6)** The investigator may require the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft—

- (a) to provide such reasonable assistance as the investigator requires to enable the vehicle, boat or aircraft to be entered or boarded under subsection (2); or
- (b) to bring the vehicle, boat or aircraft to a specified place and remain in control of the vehicle, boat or aircraft at the place until the officer permits the person to leave.

**(7)** A person must not, without reasonable excuse, contravene a requirement under subsection (6).

Maximum penalty—165 penalty units or imprisonment for 1 year.

**(8)** If, while searching the vehicle, boat or aircraft, the investigator finds a thing that the investigator believes, on reasonable grounds, will afford evidence of the commission of an offence against this Act, section 177(2)(a) and (b) apply to the thing.

(9) If, after searching the vehicle, boat or aircraft, the investigator believes on reasonable grounds that the vehicle, boat or aircraft will afford evidence of the commission of an offence against this Act, section 177(2)(a) and (b) apply to the vehicle, boat or aircraft.

### **176 Entry and search—monitoring compliance**

(1) Subject to subsection (2), an investigator may, for the purpose of finding out whether this Act is being complied with—

- (a) enter any place at any reasonable time of the day or night; and
- (b) exercise the powers set out in section 178.

(2) The investigator must not enter a place, or exercise a power under subsection (1), unless—

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 179 authorises the entry or exercise of the power; or
- (c) the place is a public place and the entry is made when members of the public attend or the premises are open for admission by the public; or
- (d) the place is premises, or the part of premises, that are licensed premises and—
  - (i) the entry is made when the premises are open for the conduct of business or otherwise open for entry; or
  - (ii) the investigator suspects on reasonable grounds that an offence is being committed against this Act in or on the place; or
- (e) the place is a public place under the *Community Services (Aborigines) Act 1984*, part 3B, or *Community Services (Torres Strait) Act 1984*, part 3B, that has been declared under that part as a dry place.

(3) In this section—

“place” does not include a vehicle, boat or aircraft.

**177 Entry and search—evidence of offences**

(1) Subject to subsection (3), if an investigator has reasonable grounds for suspecting that there is in a place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act, the investigator may—

- (a) enter the place; and
- (b) exercise the powers set out in section 178.

(2) If the investigator enters the place and finds the evidence, the following provisions have effect—

- (a) the investigator may seize the evidence;
- (b) if the evidence is a document—while the investigator has possession of the document, the officer may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the investigator’s possession.

(3) An investigator must not enter the place or exercise a power under subsection (1) unless—

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 180 that was issued in relation to the evidence authorises the entry or exercise of the power.

(4) If, while searching the place under subsection (1) under a warrant under section 180, an investigator—

- (a) finds a thing that the investigator believes, on reasonable grounds, to be—
  - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
  - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
  - (i) its concealment, loss or destruction; or

- (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1) or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

**(5)** In this section—

“**place**” does not include a vehicle, boat or aircraft.

### **178 General powers of investigator in relation to places**

**(1)** An investigator who enters or boards a place under this part may exercise any of the following powers—

- (a) search any part of the place;
- (b) inspect, measure, test, examine, photograph or film anything in or on the place;
- (c) take extracts from, and make copies of, any documents in or on the place;
- (d) take a sample of or from a thing at the place for analysis to find out whether or not the thing is liquor;
- (e) take into or onto the place such persons, equipment and materials as the investigator reasonably requires for the purpose of exercising any powers in relation to the place;
- (f) require the occupier or any person in or on the place to give to the investigator reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (e);
- (g) the powers mentioned in sections 182 to 184.<sup>43</sup>

**(2)** A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(f).

Maximum penalty—50 penalty units.

**(3)** It is a reasonable excuse for a person to fail to answer a question or produce a document (other than a document required to be kept by the person under this Act) if answering the question, or producing the document, might tend to incriminate the person.

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43 Sections 182 (Requirement to give name, address and age), 183 (Power to require answers to questions), 183A (Other powers of seizure), 183B (Powers supporting seizure) and 184 (Other powers of investigators)

(4) An investigator who damages anything when exercising or purporting to exercise a power under this part must, as soon as practicable after damaging the thing, give written notice of particulars of the damage to the person who appears to the investigator to be the owner.

(5) On the hearing of a proceeding for an offence against a prescribed provision or this Act or in a proceeding brought for the recovery of compensation under this subsection, a court may order the payment of compensation to a person for any loss resulting from the unreasonable exercise of powers under this part.

(6) This section does not limit any power that an investigator has apart from this section.

### **179 Monitoring warrants**

(1) An investigator may apply to a magistrate for a warrant under this section in relation to—

- (a) a particular place that is licensed premises; or
- (b) another particular place (other than premises, or the part of premises, used exclusively for residential purposes).

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that the investigator should have access to the place for the purpose of finding out whether this Act is being complied with.

(3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the investigator or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

(4) The warrant must—

- (a) authorise the investigator, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 178; and
- (b) state whether the entry is authorised to be made at any reasonable time of the day or night or only during specified reasonable hours of the day or night; and

- (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

### **180 Offence related warrants**

(1) An investigator may apply to a magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 7 days, in or on the place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act.

(3) If the magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the magistrate must not issue the warrant unless the investigator or another person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

(4) The warrant must—

- (a) authorise the investigator, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 178(1)(a) to (f); and
  - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or only during specified hours of the day or night; and
- (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

### **181 Warrants may be granted by telephone, facsimile, radio etc.**

- (1) If an investigator considers it necessary to do so because of—
- (a) urgent circumstances; or

- (b) other special circumstances, including, for example, the investigator's remote location;

the investigator may, under this section, apply by telephone, facsimile, radio or another form of communication for a warrant under section 179 or 180.

(2) Before applying for the warrant, the investigator must prepare an information of the kind mentioned in section 179(2) or 180(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, an investigator may apply for the warrant before the information has been sworn.

(4) If the magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is sought;

that there are reasonable grounds for issuing the warrant, the magistrate may, under section 179 or 180, complete and sign the warrant that the magistrate would issue under the section if the application had been made under the section.

(5) If the magistrate completes and signs the warrant, the magistrate must immediately send a copy of the warrant to the investigator by facsimile or, if it is not reasonably practicable to do so—

- (a) the magistrate must—
  - (i) tell the investigator what the terms of the warrant are; and
  - (ii) tell the investigator the day and time when the warrant was signed; and
  - (iii) record on the warrant the reasons for granting the warrant; and
- (b) the investigator must—
  - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
  - (ii) write on the form of warrant the name of the magistrate and the day and time when the magistrate signed the warrant.

(6) The investigator must also—



- (a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or
- (b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph;

send to the magistrate—

- (c) the information mentioned in subsection (2), which must have been properly sworn; and
- (d) if a form of warrant was completed by the investigator under subsection (5)(b)—the completed form of warrant.

(7) When the magistrate receives the documents mentioned in subsection (6), the magistrate must—

- (a) attach them to the warrant that the magistrate completed and signed; and
- (b) deal with them in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 179 or 180.

(8) A facsimile copy of a warrant, or a form of warrant properly completed by the investigator under subsection (5)(b), is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.

(9) If—

- (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and
- (b) the warrant completed and signed by the magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

## **182 Requirement to give name, address and age**

(1) An investigator who—

- (a) finds a person committing, or finds a person that the investigator suspects on reasonable grounds of having committed, an offence against this Act; or

- (b) believes on reasonable grounds that the name and address, or age, of a person is required for the purpose of the administration or enforcement of this Act;

may require the person to state the person's name and address or age and, if the investigator believes on reasonable grounds that the name, address or age given is false, may require evidence of its correctness.

(2) A person who is required under subsection (1) to state the person's name, address or age must not—

- (a) fail to comply with the requirement; or
- (b) state a false name, address or age.

Maximum penalty—25 penalty units.

(3) A person who is required under subsection (1) to give evidence of the correctness of a name, address or age must not—

- (a) without reasonable excuse, fail to give the evidence; or
- (b) give false evidence.

Maximum penalty—25 penalty units.

(4) If—

- (a) an investigator makes a requirement under subsection (1) on suspicion of a person having committed an offence; and
- (b) the person is not proved to have committed the offence;

the person does not commit an offence against this section.

### **183 Power to require answers to questions**

(1) If an investigator believes on reasonable grounds that a person may be able to provide information relevant to the administration or enforcement of this Act, the officer may require the person to answer a question relevant to the administration or enforcement of this Act.

(2) A person who is required under subsection (1) to answer a question must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—100 penalty units.

(3) It is reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.

**183A Other powers of seizure**

(1) If an investigator knows, or suspects on reasonable grounds, that liquor is being sold, consumed, possessed or carried for sale in contravention of this Act, or has been sold in contravention of this Act, the investigator may seize any of the following—

- (a) the liquor;
- (b) bottles or other containers in which the liquor is contained;
- (c) if it is known or suspected that liquor is being or has been consumed or is possessed in contravention of a prescribed provision or section 168B—other property that the investigator believes, on reasonable grounds, it is necessary to seize to prevent—
  - (i) its concealment, loss or destruction; or
  - (ii) the continuation or repetition of the contravention or suspected contravention;
- (d) if it is known or suspected that liquor is being or has been sold in contravention of section 169<sup>44</sup>—other property (including other liquor) that the investigator believes, on reasonable grounds, it is necessary to seize to prevent its use in continuing or repeating the contravention or suspected contravention;
- (e) if it is known or suspected that liquor is being carried for sale in contravention of section 171<sup>45</sup>—
  - (i) utensils suitable for measuring or consuming the liquor; or
  - (ii) a vehicle, boat, aircraft, animal or other thing being used to carry the liquor.

*Examples of property that may be seized under paragraph (c)—*

A vehicle, boat, aircraft, animal or other thing used to carry the liquor.

*Examples of property that may be seized under paragraph (d)—*

Refrigerators, glasses, glass washers, keg lines, measures, pourers, liquor, display cabinets, shelving, signage, dry bars, bar stools, bar servery.

(2) In deciding for subsection (1)(c) or (d) whether it is necessary to seize property, the investigator must consider the following—

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44 Section 169 (Authority required for sale)

45 Section 171 (Carrying or exposing liquor for sale)

- (a) any previous occasions on which an investigator knows, or suspects on reasonable grounds, a prescribed provision, section 168B or 169 has been contravened—
  - (i) by the person from whom the property is being seized; or
  - (ii) in the premises from which the property is being seized;
- (b) any representations made to the investigator, by a person from whom the property is being seized, about the operational needs of a lawful business conducted by the person;
- (c) any other matter that may reasonably be taken to indicate whether or not a contravention of a prescribed provision, section 168B or 169 is likely to be continued or repeated if the property is not seized.

(3) In this section—

“**liquor**” includes anything suspected on reasonable grounds to be liquor.

### **183B Powers supporting seizure**

(1) Having seized property under this part, an investigator may—

- (a) move the property from the place where it was seized; or
- (b) leave the property at the place of seizure but take reasonable action to restrict access to it.

*Examples for paragraph (b)—*

1. Sealing the seized property and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized property is situated and marking it to show access to it is restricted.

(2) If the investigator restricts access to the seized property, a person must not tamper, or attempt to tamper, with the property or something restricting access to the property without an investigator’s approval.

Maximum penalty—60 penalty units.

(3) To enable the property to be seized, the investigator may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and

- (b) if necessary, to remain in control of it at the stated place for a stated reasonable time.

**(4) The requirement—**

- (a) must be made by written notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

**(5) The person must comply with the requirement unless the person has a reasonable excuse for not complying with it.**

Maximum penalty—60 penalty units.

**(6) A further requirement may be made under this section in relation to the same property if it is necessary and reasonable to make the further requirement.**

## **184 Other powers of investigators**

**(1) Subject to subsection (2), an investigator may, for the purposes of this Act, exercise any of the following powers—**

- (a) require a person to produce to the investigator—
  - (i) any licence, permit or other authority held by the person under this Act; or
  - (ii) any document required to be kept by the person under this Act;
- (b) inspect, take extracts from, make copies of or keep a document produced to the investigator under paragraph (a);
- (c) if an investigator finds a person on premises to which a licence or permit relates at any time other than a time when liquor may be—
  - (i) sold to, or consumed by, the person on the premises; or
  - (ii) removed from the premises by the person;

require the person to leave the premises and, if the person does not immediately leave, remove the person from the premises using such force as is necessary and reasonable;

- (d) the powers of an authorised person under sections 165, 165A and 167;<sup>46</sup>
- (f) such other powers as are prescribed.

(2) An investigator may keep a document under subsection (1)(b) only for the purpose of taking copies of the document and must, as soon as practicable after taking the copies, return the document to the person who produced it.

### **185 Obstruction of investigators**

(1) A person must not obstruct an investigator in the exercise of a power under this Act.

(2) A person is taken to obstruct an investigator in the exercise of a power under this Act if the person—

- (a) assaults, abuses, hinders, resists or intimidates the investigator or a person assisting the investigator in the exercise of the investigator's powers under this Act; or
- (b) deliberately prevents or attempts to prevent (whether directly or indirectly) a person from—
  - (i) being questioned by an investigator; or
  - (ii) giving, under this Act, any information or document to an investigator; or
- (c) in any other way obstructs, or attempts to obstruct, an investigator in the exercise of the investigator's powers under this Act.

Maximum penalty—200 penalty units or imprisonment for 1 year.

### **186 Seizure of material associated with representation of age**

If an investigator reasonably believes or suspects that a person—

- (a) has made, or caused to be made, a false document in contravention of section 158(2)(a); or

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<sup>46</sup> Sections 165 (Removal of persons from premises), 165A (Refusing entry to premises) and 167 (Ascertainment of age)

- (b) is in possession of a document given to the person in contravention of section 158(2)(b) or 159(1); or
- (c) is in possession of a document defaced or interfered with in contravention of section 159(2);

the investigator may seize and confiscate—

- (d) in the case specified in paragraph (a)—
  - (i) all documents made in contravention of section 158(2)(a) in the person's possession; and
  - (ii) all equipment and materials in the person's possession reasonably suspected by the investigator to have been used, or to be intended for use, in contravening section 158(2)(a); and
- (e) in the case specified in paragraph (b) or (c)—the document in respect of which section 158(2)(b) or 159(1) or (2) appears to have been contravened.

### **187 Abatement of nuisance or dangerous activity**

(1) This section applies if an investigator believes on reasonable grounds that—

- (a) noise coming from licensed premises or a utility area for licensed premises is—
  - (i) an unreasonable noise; or
  - (ii) in contravention of an order under section 46;<sup>47</sup> or
- (b) because of activity in or near the licensed premises, there is a danger to persons or property that is likely to be aggravated by the continued supply of liquor in the locality.

(2) The investigator may give written notice to the licensee, permittee, or person who appears to be in charge of the premises, requiring that—

- (a) the noise stop or be reduced to, and kept at, a level so that it is no longer an unreasonable noise; or
- (b) the premises be closed immediately.

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47 Section 46 (Orders for licensed premises etc.)

(2A) In deciding whether to give a written notice under subsection (2), the investigator must have regard to the following—

- (a) the order of occupancy between the licensee or permittee and any complainant;
- (b) any changes in the licensed premises and the premises occupied by any complainant, including, for example, structural changes to the premises;
- (c) any changes in the activities conducted on the licensed premises over a period of time.

(3) If the notice is contravened, the investigator may take all steps necessary and reasonable to ensure compliance, or continued compliance, with the notice.

(4) A person who contravenes a requisition under subsection (2) commits an offence.

Maximum penalty—25 penalty units.

(5) In this section—

“**licensed premises**” includes premises to which a restricted club permit relates.

“**unreasonable noise**” means noise that exceeds limits prescribed under a regulation.

“**utility area**”, for licensed premises, includes an area containing plant or equipment that is not part of the licensed premises, but is used for the benefit of the licensed premises.

*Example—*

An area containing an airconditioning plant for licensed premises may be a utility area.

### *Division 2—Provisions relating to seizure*

#### **187A Application**

(1) Sections 187B to 187G apply if an investigator who is not a police officer seizes property under this part.

(2) If an investigator who is a police officer seizes property under this part—



- (a) the *Police Powers and Responsibilities Act 2000*, other than chapter 11, part 3, division 7,<sup>48</sup> applies as if the property were seized as evidence under that Act; and
- (b) sections 187F and 187G of this Act apply to the property.

### **187B Receipts for seized property**

(1) As soon as practicable after the investigator seizes the property, the investigator must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to property if it is impracticable or would be unreasonable to give the receipt, given its nature, condition and value.

### **187C Return of seized property**

(1) This section applies to the seized property if it is not forfeited under section 187E, 187EA, 187EB or 187F.

(2) The investigator must return the property to the person from whom it was seized not later than the following times—

- (a) if a proceeding for an offence involving the property is started within 6 months after the seizure—at the end of the proceeding and any appeal from the proceeding;
- (b) otherwise—6 months after the seizure.

(3) Despite subsection (2), if the property was seized only as evidence, the investigator must immediately return the property if the investigator stops being satisfied its continued retention as evidence is necessary.

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48 *Police Powers and Responsibilities Act 2000*, chapter 11 (Administration), part 3 (Dealing with things in the possession of police service), division 7 (Dealing with forfeited things)

**187D Access to seized property**

(1) Until the seized property is forfeited or returned, the investigator must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

**187E Forfeiture of unreturned property**

(1) The seized property is forfeited to the State if—

- (a) the investigator can not find the person from whom it was seized, after making reasonable inquiries; or
- (b) the investigator can not find the person from whom it was seized and it would be unreasonable to make inquiries to find the person; or
- (c) the investigator can not return it, after making reasonable efforts; or
- (d) it would be unreasonable to make efforts to return the property.

*Examples for paragraph (d)—*

- 1. The person from whom the property was seized has migrated to another country.
- 2. The seized property consists a small amount of liquor that does not have a high value.

(2) Regard must be had to the nature, condition and value of property in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

**187EA Forfeiture of seized property to prevent commission of particular offences—investigator**

(1) This section applies if—

- (a) the seized property was seized in relation to the contravention of a prescribed provision or section 168B, 169 or 171; and
- (b) the investigator believes on reasonable grounds the property is liquor having a value of less than \$50; and

- (c) the investigator is satisfied it is necessary to retain the property to prevent it being used in the commission of another contravention of a prescribed provision or section 168B, 169 or 171.

(2) The investigator may exercise the following powers—

- (a) decide to forfeit the property;
- (b) destroy or dispose of the property in the way the investigator considers reasonably appropriate.

*Examples for subsection (2)(b)—*

1. The investigator may empty an opened can of beer found by the investigator being consumed by a person in contravention of section 168B.
2. The investigator may retain a carton of beer found in a person's possession in contravention of section 171.

(3) If the investigator exercises the power under subsection (2)(a)—

- (a) the investigator must immediately tell the person who owned the property immediately before its seizure of the forfeiture; and
- (b) the property is forfeited to, and becomes the property of, the State immediately after the investigator exercises the power; and
- (c) compensation is not recoverable against any person for the forfeiture.

(4) However, subsection (3)(a) does not apply if—

- (a) the investigator can not find the person, after making reasonable inquiries; or
- (b) it is impracticable or would be unreasonable to comply with the paragraph.

### **187EB Forfeiture of seized property to prevent commission of particular offences—chief executive**

(1) This section applies if—

- (a) the seized property was seized in relation to the contravention of a prescribed provision or section 168B, 169 or 171; and
- (b) the chief executive is satisfied it is necessary to retain the property to prevent it being used in the commission of another contravention of a prescribed provision or section 168B, 169 or 171.

(2) However, this section does not apply if the property is forfeited under section 187EA.

(3) The chief executive may, under this section, order the forfeiture of the property to the State.

(4) The chief executive may make the order only if the chief executive gives written notice to—

- (a) the person who owned the property immediately before its seizure; and
- (b) if another person appeared to have possession of it before its seizure—the other person.

(5) However, if the person mentioned in subsection (4)(a) is not known—

- (a) the notice may be given by advertisement in a newspaper circulating in the locality where the property was seized; or
- (b) if the property was seized in a community area—the notice may be given by displaying a notice in a conspicuous place in the Council's office for the area.

(6) Subsection (5)(a) does not apply if the cost of giving the notice is more than the value of the property.

(7) The notice must—

- (a) sufficiently describe the property; and
- (b) state the following—
  - (i) the date and place the property was seized;
  - (ii) the property may be forfeited to the State;
  - (iii) an application may be made to a Magistrates Court under section 187EC for an order for the return of the property;
  - (iv) if an application is not made to a Magistrates Court within 14 days after the notice is given—the chief executive may order that the property be forfeited to the State.

(8) If a person applies under section 187EC to a Magistrates Court, the chief executive may not order the forfeiture of the property, unless the court refuses to order the delivery of the property to the applicant or the application is withdrawn, whichever happens first.

**187EC Application for return of seized property**

(1) This section applies to seized property described in a notice given under section 187EB(4) or (5).

(2) A person who claims to have a legal or equitable interest in the property may apply to a Magistrates Court for an order that the property be delivered to the person.

(3) The application must—

- (a) be in the approved form; and
- (b) if the applicant reasonably believes another person has a legal or equitable interest in the property—state the name and address of the person; and
- (c) be filed in the court.

(4) Within 7 days after the application is filed, the registrar of the court must give a copy of the application to—

- (a) the chief executive; and
- (b) the persons mentioned in subsection (3)(b).

(5) The registrar of the court must give 7 days written notice of the hearing of the application to the applicant and the persons given a copy of the application under subsection (4).

(6) Each of the persons given notice of the hearing under subsection (4) is entitled to be heard at the hearing of the application.

(7) The court may order that the property be delivered to a person on the conditions, if any, the court considers appropriate if satisfied—

- (a) the person may lawfully possess the property; and
- (b) it is appropriate that the property be delivered to the person.

(8) However, the court must not order the delivery of the property to the person if the court is reasonably satisfied the property may be evidence in a proceeding started in relation to the property.

**187F Forfeiture on conviction**

(1) On the conviction of a person for an offence against this Act involving the seized property, the court may order the forfeiture to the State of the property.

(2) The court may make the order whether or not the property has been returned to the person from whom it was seized.

(3) The court may make any order to enforce the forfeiture it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **187G Dealing with forfeited property**

(1) On the forfeiture of property to the State, the property becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy or dispose of the property.

(2A) Subsection (1) does not affect an investigator's powers under section 187EA.

(3) If the property is sold, the proceeds of sale are to be paid—

- (a) first, in meeting expenses of the sale; and
- (b) second, in meeting the expenses of, or relating to, the seizure and storage of the seized property; and
- (c) third, to the consolidated fund.

## **PART 8—PROVISIONS AFFECTING COMMUNITIES OF ABORIGINES OR ISLANDERS**

### **197 Continuance of authority to sell liquor**

(1) A Council that, at the commencement of this section, is authorised—

- (a) to establish and maintain in its community area premises for the sale of liquor; and
- (b) to conduct in its community area the business of selling and supplying liquor;

continues to be so authorised after the commencement of this section until a licence or permit is granted in respect of the premises in the community area or 30 September 2003, whichever is the earlier.

(2) The authority continued by subsection (1) is subject to such conditions as affect the authorisation at the commencement of this section or as varied for the time being by the chief executive.

(3) For a variation of the authority, part 5 applies as if a reference in the part—

- (a) to a licence were a reference to an authority continued by subsection (1); and
- (b) to a licensee were a reference to the holder of the authority.

### **198 Cancellation or suspension of liquor facility on complaint**

(1) If, on complaint of any person, the chief executive is satisfied that—

- (a) the sale of liquor on or from premises in a community area under authority of a licence or an authorisation mentioned in section 197 is the direct or indirect cause of regularly occurring disorder or breaches of the peace in the community area; or
- (b) liquor is regularly taken away from such premises contrary to the conditions of a licence or an authorisation mentioned in section 197; or
- (c) the sale of liquor on or from such premises under authority of a licence or permit or an authorisation mentioned in section 197 is proving—
  - (i) a detriment to the health or wellbeing of—
    - (A) the members generally of the community; or
    - (B) persons resident in the community area; or
  - (ii) a source of danger to—
    - (A) life or safety of members generally of the community; or
    - (B) persons resident in the community area; or
    - (C) property generally in the community area;

the chief executive may, without other procedures—

- (d) immediately cancel or suspend the licence or authorisation; or
- (e) immediately exercise in respect of the matter such other disciplinary powers as are conferred on the chief executive by this Act.

(2) If a licence or authorisation is cancelled or suspended under subsection (1), the chief executive may—

- (a) take all steps necessary and reasonable to ensure—
  - (i) termination of the conduct of business under authority of the licence or authorisation; or
  - (ii) closure of the premises on or from which the business was conducted; and
- (b) to that end may give such orders to such persons as the chief executive considers necessary and reasonable.

(3) A person to whom an order is given under subsection (2) must not, without reasonable excuse, fail to comply with the order in all respects.

Maximum penalty for subsection (3)—25 penalty units.

### **198A Expiry of pt 8**

This part expires on 30 September 2003.

## **PART 9—FINANCIAL PROVISIONS**

### *Division 1—Assessment and payment of fees*

### **199 Elements of gross amount paid or payable for liquor**

(1) In this part—

**“gross amount paid or payable for liquor”** means—

- (a) the price, worked out under subsection (2), for liquor paid or payable by or to a person who is required by this Act to pay a licence fee assessed by reference to the gross amount; or



- (b) if the chief executive suspects on reasonable grounds that a greater amount should have been disclosed than the amount that was disclosed as the gross amount by a person required to pay a licence fee—an amount decided by the chief executive having regard to all relevant circumstances.

(2) In working out the gross amount paid or payable for liquor, regard must be had to—

- (a) the amount attributable to the liquor purchased, or otherwise obtained, or supplied; and
- (b) the amount attributable to bottles or other containers and items of packaging in which the liquor is delivered to or from the person required to pay the licence fee; and
- (c) the amount attributable to expenses for any of the following incurred in relation to the liquor at any stage of its movement to or from the person required by this Act to pay the licence fee—
  - (i) importation, handling and storage;
  - (ii) delivery other than for freight charges;
  - (iii) packaging, labelling and advertising;
  - (iv) credit charges and penalties;
  - (v) imposts under law, other than a licence fee payable under this Act recovered by a supplier of liquor from the purchaser of the liquor.

## **200 Licence and assessment periods**

(1) The licence period for a licence is a financial year.

(2) The assessment period for a licence is the financial year before the licence period.

*Example—*

The fee to be paid for the licence period from 1 July 1994 until 30 June 1995 is worked out on the assessment period from 1 July 1993 until 30 June 1994.

## **201 Duration of licence**

(1) Although each licence has a licence period, a licence continues in force until—

- (a) its surrender is accepted by the chief executive; or
- (b) its cancellation takes effect.

(2) A licence does not have effect during a period for which it is suspended.

## **202 Fees payable for licences and permits**

(1) Fees payable in respect of a licence are as assessed by the chief executive under this part.

(2) Fees payable in respect of a permit are as prescribed by regulation.

## **203 Assessment of fees**

(1) Subject to this subsection, the fee payable in respect of a licence for each licence period of the licence is—

- (a) for a licence other than—
  - (i) a producer/wholesaler licence; or
  - (ii) a limited licence relating to premises used for the conduct of a business by a person who holds a licence under the *Wine Industry Act 1994*;

an amount that is 10% of the gross amount paid or payable for liquor purchased or otherwise obtained for the business conducted on the licensed premises during the assessment period; and

- (b) for a producer/wholesaler licence—\$600 and, in addition—
  - (i) an amount that is 10% of the gross amount paid or payable to the licensee for liquor sold or supplied under authority of the licence to persons exempted under section 12 from application of this Act or to holders of restricted club permits or general purpose permits during the assessment period; and
  - (ii) an amount that is 14% of the gross amount paid or payable to the licensee for liquor sold or supplied under authority of the licence to unlicensed persons (other than exempted persons specified in subparagraph (i)) during the assessment period; and

- (c) for a limited licence relating to premises used for conduct of a business of selling wines by a person who holds a licence under the *Wine Industry Act 1994*—\$60 and, in addition—
- (i) an amount that is 10% of the gross amount paid or payable to the licensee for all Australian wines (other than wines made in Queensland); and
  - (ii) an amount that is 2% of the gross amount paid or payable to the licensee for all wines, other than the licensee's wine, made in Queensland;

being wines sold or supplied under authority of the licence to unlicensed persons during the assessment period.

(2) If premises are used for only part of a licence period, the fee payable on any of the following is to be assessed under subsection (1) and, subject to subsection (4), using an estimate made by the chief executive of what the relevant gross amount would have been if the licensee had been able to trade on the licensed premises during the entire assessment period, proportionately reduced for the period that has expired since the start of the licence period—

- (a) grant of a licence;
- (b) provisional grant of a licence under section 123;
- (c) resumption of trading under a licence removed from another place.

(3) If, in any licence period—

- (a) a return is not lodged under section 205 in respect of a licence; or
- (b) a return lodged in respect of a licence is incomplete or insufficient to enable the relevant gross amount paid or payable for liquor to be determined; or
- (c) a return covering the whole of the assessment period cannot be lodged in respect of a licence;

the chief executive, subject to subsection (4), is to assess the fee payable in respect of the licence in such amount as the chief executive considers reasonable, by reference to the whole of the assessment period.

(4) If—

- (a) a fee assessed under subsection (1) in respect of a licence is less than a minimum fee prescribed by regulation in relation to licences of that class of licence; or

- (b) a licensee, authorised by the licence to sell liquor during the whole of the assessment period immediately before a licence period for which a fee is to be assessed in respect of the licence, has not traded during the assessment period;

the fee payable in respect of the licence for the licence period in question is the minimum fee prescribed by regulation in relation to licences of the class of licence.

(5) A fee assessed under this section is to be calculated to the nearest whole dollar (rounding 50c upwards).

(6) In this section—

“**licensee’s wine**” has the meaning given in the *Wine Industry Act 1994*.

## **205 Filing of returns**

(1) For the purpose of assessing fees in respect of a licence for a licence period, returns must be filed with the chief executive under this section.

(2) In each licence period the holder of a licence other than—

- (a) a producer/wholesaler licence; or  
 (b) a limited licence relating to premises used for the conduct of a business selling wines by a person who holds a licence under the *Wine Industry Act 1994*;

must, within 21 days after the end of the assessment period, file with the chief executive a return in respect of all liquor purchased or otherwise obtained for the licensed premises during the assessment period.

Maximum penalty—25 penalty units.

(3) In each licence period the holder of—

- (a) a producer/wholesaler licence; or  
 (b) a limited licence relating to premises used for the conduct of a business selling wine by a person who holds a licence under the *Wine Industry Act 1994*;

must, within 21 days after the end of each assessment period, file with the chief executive a return in respect of all liquor sold or supplied under authority of the licence or certificate during the assessment period.

Maximum penalty—25 penalty units.

(4) A return under subsection (2) must contain the particulars, and be accompanied by the material, prescribed by regulation.

(5) If the chief executive is not satisfied a return filed under subsection (2) is accurate, the chief executive may, by written notice given to the holder of the licence or certificate, require the holder to file with the chief executive a further return of the same type, certified to be accurate by the person responsible for auditing the accounting records of the business to which the licence or certificate relates.

(6) A person given a notice under subsection (5) must comply with the notice within the period stated in the notice.

Maximum penalty—25 penalty units.

## **206 Factors affecting assessment of fees**

(1) In assessing a fee payable in respect of a licence under section 203, an amount paid or payable for liquor of any of the following descriptions is to be disregarded—

- (a) liquor that is sold—
  - (i) for export, and is exported, from Australia for consumption outside Australia; or
  - (ii) to duty free shops; or
  - (iii) for consumption on ships or aircraft on international journeys; or
  - (iv) to a foreign embassy or consulate or to Government House; or
  - (v) to religious organisations for sacramental purposes;
- (b) liquor purchased or otherwise obtained from the holder of a general licence for premises to which a licence or permit relates;
- (c) liquor purchased or otherwise obtained from a transferor of a licence by a transferee of the licence in the course of transfer of the business conducted under authority of the licence;
- (d) liquor of any other description prescribed by regulation.

(2) In assessing the fee payable for a licence under section 203, the chief executive may also allow for theft, loss or damage of liquor.

**207 Notification of assessment**

(1) As soon as practicable after a fee payable in respect of a licence has been assessed, notification of the assessment must be given to the licensee.

(2) A notification of assessment must specify the due date for payment of the amount of the assessment.

**208 Payment of fees**

(1) The fee in respect of a permit is due and payable to the department on the day application for the permit is made.

(2) A fee payable in relation to a licence is payable to the department on the day stated as the date for payment in the notice of assessment of the fee given to the licensee.

**209 Suspension and cancellation for failure to pay fee**

(1) If a fee in respect of a licence or permit is not paid when it is due and payable, the licence or permit is immediately suspended and, subject to subsection (2) and section 210, is cancelled at the end of 14 days.

(2) If, within the 14 days, the fee is paid to the department in cash or by bank cheque or electronic funds transfer, the suspension is lifted and the cancellation does not take effect.

**210 Appeal concerning failure to pay fee**

(1) A person aggrieved by the suspension and impending cancellation of a licence or permit because of a failure to pay a fee may appeal to the Tribunal on the ground that the failure was due to—

- (a) the business conducted under authority of the licence or permit having been adversely affected by a natural disaster; or
- (b) the licensee ceasing to conduct business on the premises under authority of the licence; or
- (c) the owner, lessee or mortgagee of the premises to which the licence relates starting a proceeding for possession of the premises; or
- (d) a personal hardship for the licensee.

(2) Financial hardship is not a personal hardship for the purposes of subsection (1).

(3) An appeal is started by—

- (a) filing a notice of appeal with the registrar of the Tribunal within 14 days after the day on which the licence or permit is suspended; and
- (b) giving a copy of the notice to the chief executive within 7 days after the notice is filed with the registrar.

(4) If a notice of appeal has been filed with the registrar, the licence or permit will not be cancelled at the end of 14 days mentioned in section 209, but continues suspended until it is restored or cancelled as provided by section 211.

(5) In this section—

**“person aggrieved”** includes any of the persons who gave the chief executive particulars of their interest under section 44A.

### **211 Powers of Tribunal on appeal**

(1) The Tribunal must decide an appeal under section 210(1) within 30 days after notice of appeal is filed with the registrar.

(2) If it appears to the Tribunal that an appellant is not prosecuting an appeal diligently, it may strike out the appeal.

(3) In deciding an appeal, the Tribunal may—

- (a) allow the appeal on condition that the fee is paid to the department within a period stated by the Tribunal (the **“time allowed”**); or
- (b) dismiss the appeal.

(4) The time allowed must be at least 7 days, and not more than 28 days, after the day on which the appeal is allowed.

(5) If an appeal is allowed and the fee is paid to the department within the time allowed, the suspension of the licence or permit ceases on payment of the fee.

(6) The licence or permit is immediately cancelled if an appeal is—

- (a) dismissed or struck out; or
- (b) allowed but the fee payable is not paid within the time allowed.

(7) If a licence or permit is cancelled under subsection (6), the part of the fee assessed or payable for the entire licence period in which it was suspended that is proportionate to the part of the licence period that had ended before the suspension happened is a debt payable to the State.

## **212 Reassessment of fee**

(1) This section applies if—

- (a) the licence fee has been paid; or
- (b) the licence fee has been assessed and no fee is payable; or
- (c) the licence has been cancelled.

(2) The chief executive may on the chief executive's own initiative, and must on application made by the licensee, review an assessment for the fee payable in relation to the licence if—

- (a) an error or miscalculation in the assessment is suspected; or
- (b) the assessment was based on incorrect or incomplete information; or
- (c) for an assessment under section 203(2)—the assessment was based on an incorrect assumption about the nature, scale or duration of the business to be conducted under authority of the licence.

(3) A review may be made under subsection (2) only within 5 years after the date of the assessment.

(4) If on review under subsection (2) an assessment is changed, an adjustment is to be made and—

- (a) any amount overpaid must be—
  - (i) refunded to, or as directed by, the licensee; or
  - (ii) credited against future fees that may become payable by the licensee in relation to the licence;as the chief executive, by written notice given to the licensee, elects; and
- (b) any amount underpaid must, subject to section 213, be paid to the department by the licensee within 14 days after the licensee is given notice of the reassessment.



(5) Despite subsection (4)(a), if the chief executive is satisfied the amount overpaid was paid by a person for the licensee, the chief executive may refund the amount to, or as directed by, the person.

(6) If a reassessment is made of the fee payable for a licence period in which 2 or more persons held the licence, the chief executive may apportion an entitlement to refund, or a liability to pay, among the persons as the chief executive considers just, and the persons are entitled to refund, or are liable to make payment, as apportioned.

(7) If a licence is surrendered or cancelled, any amount credited under subsection (4)(a) in relation to the licence must be refunded to, or as directed by, the former licensee.

(8) The chief executive may impose on the licensee a supplementary fee in relation to the licence if—

- (a) a fee as reassessed is more than the fee as previously assessed; and
- (b) the chief executive is satisfied that the fee was previously assessed on the basis of information disclosed by the licensee that was known, or ought to have been known, by the licensee to be incorrect.

(9) The supplementary fee must be—

- (a) at least the amount by which the fee as reassessed is more than the fee previously assessed; and
- (b) not more than 3 times the amount.

(10) The licensee must pay the supplementary fee to the department within 14 days after the licensee is given notice of the imposition of the supplementary fee.

(11) Sections 210 to 212 apply to payment of a fee as reassessed or a supplementary fee imposed.

### **213 Liability for reassessed fee in certain cases**

(1) If, at the time notification of the reassessment is to be given to a person—

- (a) the premises to which the licence related are no longer licensed premises; or

- (b) the licensee at that time is not the licensee at the time of payment of the fee previously assessed;

responsibility for payment to the department of the difference between the amount of fee paid and the fee as reassessed may be allotted or apportioned as the chief executive considers just to, between or among—

- (c) the licensee at the time the fee was previously assessed; and
- (d) the persons who, at the time of payment of the fee previously assessed, were directly or indirectly interested in the business, or the profits of the business, conducted under authority of the licence; and
- (e) the person (if any) who gave incorrect information, or failed to give information, because of which the fee has been reassessed;

or any of them.

(2) A person to whom responsibility is allotted or apportioned under subsection (1) is liable to pay to the department the amount so allotted or apportioned.

## **214 Discontinuance fee**

(1) If—

- (a) a licensee surrenders the licence; or
- (b) a licence is cancelled;

the chief executive may, on such surrender or cancellation, assess a discontinuance fee.

(2) A discontinuance fee is the amount of fee that, in the chief executive's opinion, would have been payable in respect of the licence had it continued in force for the next licence period of the licence, less the fee last paid in respect of the licence.

## **215 Refund of fee**

If the chief executive—

- (a) accepts a surrender of a licence or permit; or
- (b) cancels a licence or permit;

in respect of which a fee, other than a discontinuance fee, has been paid for any period subsequent to the date of surrender or cancellation, a refund must be made to, or as directed by, the former licensee or permittee of the portion of the fee that is proportionate to the unexpired period for which the fee has been paid.

### **215A Refund of fees—general**

(1) The chief executive may refund a fee paid by a person only if the chief executive is satisfied—

- (a) that the person has not received, and will not receive, an amount from someone else for any part of the fee; or
- (b) if the person has received an amount from someone else for any part of the fee—the person will reimburse, or will take reasonable steps to reimburse, the other person for the amount received.

(2) If subsection (1)(b) applies to the person—

- (a) the person must—
  - (i) within 90 days after receiving the refund (the “**relevant period**”), reimburse the other person for the amount received from the other person (the “**received amount**”); and
  - (ii) within 7 days after the relevant period, give the chief executive written notice that the other person has been reimbursed for the received amount; and
- (b) if the other person is not reimbursed for the received amount within the relevant period—the person must, within 7 days after the relevant period—
  - (i) give the chief executive written notice that the other person was not reimbursed for the received amount; and
  - (ii) pay the chief executive the received amount plus interest at the rate of 20% a year calculated from the day the refund was made.

Maximum penalty—50 penalty units.

(3) If the person does not pay the received amount under subsection (2)(b)(ii), the person must also pay the chief executive interest

at the rate of 20% a year calculated from the end of the 7 days mentioned in subsection (2)(b) to the day the received amount is paid.

(4) An amount payable under subsection (2)(b)(ii) or (3) is a debt payable by the person to the State.

(5) In this section—

“**fee**” means a fee under, or purportedly under, this Act, and includes a supplementary fee.

“**part**” of a fee or other amount includes the whole of the fee or amount.

“**pay**” a fee means pay the fee voluntarily or under compulsion (whether or not the fee is paid under a mistake of law or fact), and includes recover the fee by legal proceeding.

“**receive**” an amount for a part of a fee includes obtain a part of the amount through the price charged for goods either in anticipation of a fee to be paid or after the fee is paid.

“**refund**” an amount to a person includes—

- (a) refund the amount at the person’s direction; and
- (b) credit the amount against future fees that may become payable.

## **216 Unpaid fees a debt to State**

An amount due and payable to the department as a fee payable in respect of a licence or permit is a debt due and payable to the State by the licensee, permittee or other person liable for payment.

## **217 Records to be kept by licensee**

(1) A licensee must make and maintain a true and up-to-date record of all transactions (the “**transactions record**”) made by or on behalf of the licensee that involve—

- (a) the purchase or other acquisition of liquor by or for the licensee;  
or
- (b) the sale or supply of liquor by or on behalf of the licensee.

Maximum penalty—350 penalty units.

(2) The transactions record—

- (a) must be in a language and form acceptable to the chief executive; and
- (b) must contain—
  - (i) the particulars prescribed by regulation; or
  - (ii) such of the prescribed particulars as are decided by the chief executive in relation to licences of a specified description; and
- (c) must be kept, on the licensed premises to which it relates or in some other place approved by the chief executive for 6 years after the day on which the record is made, by the licensee by whom it is made or, if the licence has since been transferred, by the licensee to whom it is last transferred.

**(3)** A licensee must establish accounting records of a business conducted under authority of the licence that correctly record and explain the transactions and financial position of the business.

Maximum penalty—350 penalty units.

**(4)** The following persons must keep accounting records on the licensed premises to which they relate, or in some other place approved by the chief executive, for 6 years after the day on which the record is made—

- (a) the licensee by or for whom the records are made;
- (b) if the licence has since been transferred—the licensee to whom it was last transferred.

**(5)** A licensee commits an offence if—

- (a) the licensee's transactions record is not kept as required by subsection (2); or
- (b) the licensee's accounting records are not kept as required by subsection (4).

Maximum penalty—350 penalty units.

**(6)** On a transfer of a business conducted under authority of a licence, the transferor must surrender to the transferee every record made and kept under this section relating to the business.

Maximum penalty—25 penalty units.

(7) The licensee who for the time being has possession or control of the record made and kept under this section must make it available for examination by an investigator on demand.

Maximum penalty—25 penalty units.

## **218 Powers of examination by investigator**

(1) This section applies to—

- (a) a licensee or a former licensee; and
- (b) if a licensee is, or former licensee was, a corporation—the directors and shareholders, and former directors and shareholders, of the corporation.

(2) An investigator may, on reasonable notice, require a person to whom this section applies—

- (a) to produce to the investigator, at a reasonable place stated in the notice, the following records of which the person has control—
  - (i) a record made and kept under section 217; or
  - (ii) an accounting record or other record about the business conducted under authority of the licence; and
- (b) to permit the investigator to examine the record and—
  - (i) to make copies of, or take extracts from, the record; or
  - (ii) if the investigator considers, on reasonable grounds, that it is necessary to remove the record to examine or copy it—to remove the record from the person's control.

(3) A person must comply with a requirement under subsection (2) unless the person has a reasonable excuse.

Maximum penalty—25 penalty units.

(4) While an investigator has custody or control of a record removed under subsection (2)—

- (a) section 217(2)(c) is taken to be complied with; and
- (b) the investigator must permit, at all reasonable times—
  - (i) inspection of the record; and
  - (ii) the making of additions to the record;

by a person who, if the record had not been removed, would be entitled to inspect the record or make the additions.

(5) The investigator who has removed a record under subsection (2) must, as soon as is practicable after the removal—

- (a) examine, and if the investigator considers it necessary, copy the record; and
- (b) return it to the person from whom it was removed.

## **PART 10—MISCELLANEOUS PROVISIONS**

### **226 Contravention of conditions of licences etc.**

A person who contravenes a condition specified in—

- (a) a licence or permit; or
- (b) an authorisation to sell and supply liquor mentioned in section 197;

commits an offence against this Act.

Maximum penalty—

- (a) if the licensed premises or premises to which the permit or authorisation relates is in a restricted area—
  - (i) for a first offence—500 penalty units; or
  - (ii) for a second offence—700 penalty units or 6 months imprisonment; or
  - (iii) for a third or later offence—1 000 penalty units or 18 months imprisonment; or
- (b) if paragraph (a) does not apply—40 penalty units.

### **227 Payment of penalties to consolidated fund**

Amounts recovered by way of penalty for an offence must be paid to the consolidated fund.

**228 Suspension of licence for offences concerning minors**

If, within a period of 2 years, 2 convictions are recorded against the holder of a licence for offences consisting of contraventions of—

- (a) section 155(3A); or
- (b) section 156(1) or (2);<sup>49</sup>

(whether for the same or different offences) the licence that relates to the premises on or from which the latest of the offences was committed, if it is still held by, or under the control of, the licence holder, is suspended—

- (c) for a period of 2 months; or
- (d) until the chief executive otherwise orders;

whichever period is less.

**228A Disqualification from holding licence or permit on conviction of certain offences**

(1) A person is disqualified from holding a licence or permit on the person's second or later conviction of an unlicensed sales offence.

(2) The person remains disqualified for the following period—

- (a) if the conviction was the person's second conviction of an unlicensed sales offence—5 years from the date of the conviction;
- (b) if the conviction was the person's third or later conviction of an unlicensed sales offence—10 years from the date of the conviction.

(3) To remove doubt, it is declared that, in deciding for this section whether a conviction is a second, third or later conviction of an unlicensed sales offence, an expired conviction of an unlicensed sales offence must not be counted.

(4) In this section—

**“expired conviction”** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and

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<sup>49</sup> Section 155 (Minors on premises) or 156 (Liquor prohibited to certain persons)



(b) that has not been revived under that Act.

“**unlicensed sales offence**” means an offence against section 169 or 171.<sup>50</sup>

## **229 Liability for certain offences against Act**

(1) Despite section 7 or 23 of the Criminal Code,<sup>51</sup> if an offence against section 155, 156, 157 or 161<sup>52</sup> is committed by a person as agent or employee, the principal or employer is presumed to have participated in the offence, may be charged with actually committing the offence and, subject to subsection (2), may be punished for the offence.

(2) It is a defence to a charge made against a person under subsection (1) that—

- (a) the offence happened without the defendant’s knowledge or authority; and
- (b) the defendant had exercised due diligence to avoid the commission of the offence.

## **230 Defence to charge if age material**

(1) If the age of a person is material to a charge of an offence against this Act, it is a defence to prove that, at the time of the offence, the defendant (if the defendant is the actual offender) or an agent or employee (if the defendant is charged merely because of being principal or employer of the actual offender)—

- (a) honestly and reasonably believed that the person whose age is material to the offence had attained 18 years; or
- (b) had sighted acceptable evidence of age of the person whose age is material to the offence that indicated the person had attained 18 years;

and the operation of section 24 of the Criminal Code<sup>53</sup> is excluded.

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50 Section 169 (Authority required for sale) or 171 (Carrying or exposing liquor for sale)

51 Criminal Code, section 7 (Principal offenders) or 23 (Intention—motive)

52 Section 155 (Minors on premises), 156 (Liquor prohibited to certain persons), 157 (Prohibitions affecting minors) or 161 (Consumption or removal of liquor outside trading hours)

53 Criminal Code, section 24 (Mistake of fact)

(2) Evidence that the defendant (if the defendant is the actual offender) or an agent or employee (if the defendant is charged merely because of being principal or employer of the actual offender) did not request the person whose age is material to the offence to produce acceptable evidence of age is evidence that any belief that the person had attained 18 was not reasonable.

### **231 False or misleading statements**

(1) A person must not—

- (a) state anything for this Act that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made for this Act anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—100 penalty units or imprisonment for 6 months.

(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

### **231A False, misleading or incomplete documents**

(1) A person must not give a document for this Act containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or imprisonment for 6 months.

*Example—*

A minor knowingly using a forged driver licence or a licence belonging to someone else.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the person to whom the document is given, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person giving the document has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

### **231B Impersonation of investigator**

A person must not pretend to be an investigator.

Maximum penalty—200 penalty units.

### **232 Summary proceedings for offences**

Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.

### **232A Proof of signature unnecessary**

A signature purporting to be the signature of a member of the Tribunal, the registrar or the presiding case manager is evidence of the signature it purports to be.

### **233 Evidentiary provisions**

(1) In a proceeding under this Act, a signature purporting to be the signature of the chief executive is evidence of the signature it purports to be.

(2) Also, in a proceeding under this Act—

- (a) a copy of, or extract from, an entry in the register, bearing a certificate purporting to be that of the chief executive that it is a true copy of, or extract from, the register is admissible as evidence of the entry in the register; and
- (b) a copy of—
  - (i) a licence or permit; or
  - (ii) an endorsement on a licence;

bearing a certificate purporting to be that of the chief executive that it is a true copy of the licence or permit or the endorsement is admissible as evidence of the original licence or original endorsement; and

*Liquor Act 1992*

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- (c) a copy of a notice of assessment of fees payable in respect of a licence or permit bearing a certificate purporting to be that of the chief executive that it is a true copy of the original notice of assessment is admissible as evidence of the original notice of assessment; and
- (d) an averment or allegation in a complaint of an offence against this Act that—
  - (i) a person specified has not, or had not at a material time, attained 18 years; or
  - (ii) a machine, apparatus or device is capable of being used for betting or gaming; or
  - (iii) a specified art union or lottery was not authorised by law at a material time;is sufficient proof of the truth of the averment or allegation until the contrary is proved; and
- (e) if a statement of the results of the analysis of a fluid includes a certificate purporting to be the certificate of an analyst that the statement is a true statement of the results of the analysis—the statement that the fluid is liquor is evidence of the results of the analysis; and
- (f) if in a statement in a complaint for an offence against this Act it is claimed that the offence happened on licensed premises and a fluid was liquor—the statement is evidence that the fluid was liquor; and
- (g) if in a statement in a complaint for an offence against this Act it is claimed that the offence happened off licensed premises and a fluid was packed in a container of a type that usually holds liquor—the statement is evidence that the fluid was liquor.

**(3)** In addition, in a proceeding under this Act, a certificate signed by the chief executive stating any of the following matters is evidence of the matter—

- (a) on a stated date, a stated person was or was not the holder of a restricted area permit;
- (b) on a stated date, a stated place was or was not, in a restricted area;
- (c) the conditions of a restricted area permit;

- (d) a notice complying with section 173J(2) was, at a stated time, erected or displayed at a place mentioned in section 173J(1)(c).<sup>54</sup>

(4) In this section—

“**analyst**” means a person who is appointed as a State analyst under the *Health Act 1937*, section 153Z.

### **233A Use of code in proceedings**

(1) This section applies in a proceeding for an offence against this Act or another Act.

(2) A document purporting to be the code is admissible as evidence of the code.

### **234 Service of documents**

(1) Without limiting the ways by which a document may be served, a document to be given for the purposes of this Act to a licensee, permittee or nominee may be given—

- (a) by leaving it with a person who appears to be in charge of the premises to which the licence or permit relates; or
- (b) by affixing it to some conspicuous place on the premises to which the licence or permit relates.

(2) Service of a document given under subsection (1) or transmitted by telex, facsimile or electronic means is taken to have been effected at the time when it is so given or transmitted unless the contrary is proved.

### **235 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made with respect to—

- (a) requirements in respect of an application made to the chief executive; and
- (b) obligations of holders of licences or permits, or holders of particular licences or permits; and

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54 Section 173J (Notice about prohibition of possession of liquor in restricted area)

- (c) fees under this Act and the way and purpose of their payment; and
  - (d) particulars to be given for the purposes of this Act; and
  - (e) the consumption or possession of liquor in a public place; and
  - (f) the circumstances in which the chief executive may grant a general purpose permit; and
  - (g) the circumstances in which, and purposes for which, the chief executive may grant a restricted area permit; and
  - (h) the circumstances in which the chief executive may approve premises mentioned in section 59 and the conditions the chief executive may impose on the approval; and
  - (i) the monitoring by local governments of the use of sections 173A to 173E; and
  - (j) encouraging responsible practices in the service, supply and promotion of liquor; and
  - (k) advertising in relation to adult entertainment;
  - (l) the requirements for event management plans for the conduct of public events; and
  - (m) the requirements for management plans for the conduct of an establishment under an adult entertainment permit; and
  - (n) the limits for noise coming from licensed premises.
- (3)** A regulation may be made—
- (a) creating offences against the regulation; and
  - (b) fixing a maximum penalty of a fine of 40 penalty units for an offence against the regulation.

## PART 11—TRANSITIONAL PROVISIONS

### *Division 1—General*

#### **236 Object of part**

The object of this part is to provide for transition from the repealed Act to the current Act.

#### **237 Interpretation**

In this part—

“**Commission**” means the Licensing Commission constituted under the repealed Act.

“**Court**” means the Licensing Court constituted under the repealed Act.

“**current Act**” means this Act (other than this part).

“**licence**” includes a licence within the meaning of the repealed Act.

“**licensed premises**” includes licensed premises within the meaning of the repealed Act.

“**licensee**” includes a licensee within the meaning of the repealed Act.

“**permit**” includes a permit granted under the repealed Act.

“**proclaimed day**” means the day of commencement of this part.

“**repealed Act**” means the *Liquor Act 1912*.

### *Division 2—Transitional provisions*

#### **238 Completion of proceedings in the Court**

(1) Subject to subsections (2) and (3), a proceeding that—

- (a) has been started in the Court; and
- (b) has not been completed;

before the proclaimed day may be completed by the Court as if this Act had not been enacted, and for this purpose the Court’s jurisdiction conferred by the repealed Act is preserved.

(2) A proceeding to which subsection (1) applies may, with the applicant's consent, be finished by the chief executive as if the chief executive were the Court.

(3) Subsection (1) does not apply to a proceeding whose completion requires only that the Court approve of compliance with conditions ordered by the Court to be fulfilled before a licence or permit is to be issued to a particular applicant.

(4) If, in a proceeding to which subsection (1) applies, a decision or an order is to be made for issue of a licence or permit, the decision or order must be for the issue of a licence under this Act that corresponds to a licence or permit applied for in the proceeding.

(5) A proceeding mentioned in subsection (3) may be continued before the chief executive, who may grant or withhold approval as if the chief executive were the Court.

(6) A proceeding continued before the chief executive is subject to part 2, division 3.

(7) This section stops applying on 30 June 2003.

### **238A Disposal of applications for removal**

(1) An application for removal of a licence under section 49A of the repealed Act, that had not been disposed of before the proclaimed day, may be continued and disposed of as if the chief executive were the Commission.

(2) To remove any doubt, it is declared that—

- (a) since the proclaimed day, the chief executive has had power to perform the functions performed by the Commission under the repealed Act; and
- (b) the Court's power under the repealed Act to order that a licence be removed has continued under this part.

*Example of subsection (2)(a)—*

The chief executive has power to decide whether there is a public need in the locality to which it is proposed to remove a licence on application for removal of the licence under the repealed Act.

(3) This section stops applying on 30 June 2003.



**239 Termination of Court**

(1) On completion of all proceedings to which section 238(1) or 238A applies, the Court ceases to exist.

(2) If the Court has not ceased to exist under subsection (1) by 30 June 2003, it ceases to exist on that day.

**241 Disposal of applications made to Commission**

(1) An application for a permit or for an approval under section 5(vi) of the repealed Act that has not been disposed of before the proclaimed day may be continued before, and be disposed of by, the chief executive.

(2) A proceeding before the chief executive on an application mentioned in subsection (1) is subject to part 2, division 3.

(3) A decision that an application mentioned in subsection (1) be granted must be for the grant of—

- (a) a licence under the current Act that corresponds to the permit or approval applied for; or
- (b) if no licence so corresponds—a general purpose permit.

(4) This section stops applying on 30 June 2003.

**242 Table of corresponding licences**

A licence specified in the following table, column 1 is the licence under the current Act that corresponds to a licence or permit under the repealed Act specified in column 2 opposite the reference to the first licence—

**TABLE**

<b>Column 1</b> <b>Corresponding licence</b>	<b>Column 2</b> <b>Licence or permit under repealed Act</b>
general licence	licensed victualler's licence; tavern licence; canteen licence; spirit merchant's (retail) licence.
residential licence	limited hotel licence; resort licence.

<b>Column 1</b> <b>Corresponding licence</b>	<b>Column 2</b> <b>Licence or permit under repealed Act</b>
on-premises licence	restaurant licence; cabaret licence; function room licence; bistro licence; cultural centre licence; tourist park licence; theatre licence; airport licence; packet licence; railway refreshment room licence; college or institutional approval under section 5(vi).
producer/wholesaler licence	spirit merchant's licence.
club licence	golf club licence; bowling club licence; registered club licence; ex-servicemen's club licence; principal sporting club licence; workers' club licence.
special facility licence	public facility licence; casino licence; historic inn licence.
limited licence	caterer's licence; canteen permit under section 5(iv) or (v); vigneron-vintner's licence.

### **243 Continuance of existing licences**

(1) A licence that has been issued under the repealed Act, and has not been surrendered or cancelled before the proclaimed day, continues in force and is taken to be a licence under the current Act that corresponds to it.

(2) Until a licence continued in force by subsection (1) is reviewed by the chief executive (on application of the licensee or on the chief executive's own initiative) it remains subject to the terms and conditions to which it is subject at the proclaimed day.

**243A Variation of general licence (previously spirit merchant's (retail) licence)**

If the holder of a general licence, that before the proclaimed day was held as a spirit merchant's (retail) licence, applies to the chief executive to vary the conditions of the licence, the chief executive may require the applicant to satisfy the requirements of sections 116 and 219 of the current Act as if the applicant were an applicant for a general licence.

**244 Continuance of existing permits**

(1) A permit that has been issued under the repealed Act and has not expired, or been surrendered or cancelled, before the proclaimed day—

- (a) if it is a permit under section 75 of the repealed Act or of limited duration—continues in force until it expires or is earlier surrendered or cancelled; and
- (b) if it is another permit—continues in force for 6 months after the proclaimed day or until it is earlier surrendered or cancelled.

(2) A term or condition of a permit under section 75 of the repealed Act that requires a place to be used for a particular purpose ceases to have effect.

(3) A permit continued in force under subsection (1)(a) remains in force only until the review of the licence under section 247.

(4) An extended hours permit that extends hours beyond 3 a.m., or an extension of hours for a licence beyond 3 a.m., in force on the day the *Liquor Amendment Act (No. 2) 1994* commenced, expires on 31 March 1995.

(5) Subsection (4) does not apply to a special facility licence or a limited licence.

**246 Continuance of business of spirit merchant**

Despite the provisions of the current Act, it is lawful for a person who at the proclaimed day holds a producer/wholesaler licence that before the proclaimed day was held as a spirit merchant's licence to sell liquor under authority of the licence as conferred immediately before the proclaimed day, subject to—

- (a) the terms and conditions specified in the licence; and

- (b) the relevant provisions of the repealed Act, which for this purpose are to be taken as continuing in force;

until—

- (c) transfer of the licence; or
- (d) if the holder of the licence is a body corporate—a change in the beneficial ownership of the controlling interest in the holder.

### **247 Review of licences**

(1) The chief executive must review every licence that is in force at the proclaimed day with a view to ensuring that—

- (a) the terms and conditions to which the licence is subject are not inconsistent with the current Act; and
- (b) the licence is endorsed with all terms and conditions considered by the chief executive as appropriate to be determined and specified in the licence consequent on the enactment of this part.

(2) If the chief executive considers that the conditions of a resort licence issued under the repealed Act, and taken to be a residential licence under section 243, are more appropriate to a general licence or special facility licence under the current Act, the licence is taken to be the licence under the current Act to which the chief executive considers its conditions are more appropriate.

(3) Subsection (1)(a) does not apply to a term or condition varying or extending hours under section 17A of the *Liquor Regulation 1955*.

(4) For the purpose of reviewing a licence under subsection (1), the chief executive may direct the licensee to produce the licence to the chief executive within a specified reasonable period.

(5) A person must not, without reasonable excuse, contravene a direction under subsection (4).

Maximum penalty for subsection (5)—25 penalty units.

### **248 Enforcement of orders etc. under repealed Act**

(1) Every—

- (a) order of the Court; or
- (b) direction or requisition;

made or issued under the repealed Act, and not complied with before the proclaimed day, continues in force until it is complied with, and is taken to be an order of the chief executive, or a requisition of an investigator, made or issued under the current Act.

(2) A person must not, without reasonable excuse, contravene an order, direction or requisition mentioned in subsection (1).

Maximum penalty for subsection (2)—25 penalty units.

### **249 Recovery of outstanding amounts**

All amounts due and payable under or for the purposes of the repealed Act at or after the proclaimed day are debts due and payable to the State.

### **249A Apportionment of licence fees under s 18B of repealed Act**

(1) Despite the repeal of the repealed Act and subject to subsections (3) and (5), section 18B of the repealed Act continues to apply to every case to which it applied under the repealed Act immediately before the proclaimed day as if the section had not been repealed.

(2) In applying section 18B of the repealed Act under this section—

- (a) a reference to a licensed victualler under the repealed Act—
  - (i) is a reference to the holder of a licence under this Act that corresponds under section 242 to a licensed victualler's licence, or a licence that was taken to be a licensed victualler's licence, under the repealed Act; and
  - (ii) includes a reference to the holder of any licence under the repealed Act to which section 18B applied, or was taken to have applied, immediately before the proclaimed day; and
- (b) a reference to licensed premises under the repealed Act is a reference to licensed premises under this Act; and
- (c) a reference to a licensed victualler's licence under the repealed Act—
  - (i) is a reference to a licence under this Act that corresponds under section 242 to a licensed victualler's licence, or a licence that was taken to be a licensed victualler's licence, under the repealed Act; and

- (ii) includes a reference to any licence under the repealed Act to which section 18B applied, or was taken to have applied, immediately before the proclaimed day; and
  - (d) a reference to a fee payable under the repealed Act is a reference to a fee payable in respect of a licence under this Act; and
  - (e) all other necessary changes are taken to be made.
- (3) The rights that a person has because of subsection (1)—
- (a) cease when the term (including a further term arising under the exercise of an option of renewal) of the person's lease, agreement for lease or other tenancy agreement relating to the licensed premises, and in force immediately before the proclaimed day, expires or is lawfully terminated, whichever happens first; and
  - (b) if the licence concerned is transferred under section 113—are, subject to paragraph (a), exercisable by the transferee.

(4) Subsection (3)(a) does not affect the enforcement of any right that a person has under this section if the right accrued before the expiry or termination.

(5) Subsection (1) does not apply to persons (and their transferees) who, between 1 July 1992 and the day of the introduction into the Legislative Assembly of the Bill for this Act—

- (a) entered into an agreement; or
- (b) varied a lease, agreement for lease or tenancy agreement;

relating to licensed premises to which subsection (1) would otherwise apply in a way that has the effect of providing for the adjustment between them of financial obligations that arise out of or relate to the apportionment of licence fees relating to licensed premises under section 18B of the repealed Act or licence fees payable in relation to the premises under this Act.

## **250 Compensation for certain surrendered general licences**

This Act, as in force immediately before the commencement of the *Liquor Amendment Act (No. 2) 1993*, continues to apply to a request to the chief executive to accept the surrender of a general licence if, before the commencement—

- (a) the request was received; and

- (b) section 250 as then in force applied to the request; and
- (c) matters under the Act about the request were not finalised.

## **251 References to Liquor Act 1912**

In an Act or document, a reference to the *Liquor Act 1912* is taken to be a reference to this Act.

## **PART 12—FURTHER TRANSITIONAL PROVISIONS**

### ***Division 1—Transitional provisions about restricted club licences for the Liquor Amendment Act (No. 2) 1994***

#### **252 Object of division**

The object of this division is to provide a transition from restricted club licences to restricted club permits.

#### **253 Continuance of existing licences**

(1) A restricted club licence granted under repealed section 90, that has not expired or been surrendered or cancelled before the commencement, continues in force until it expires or is earlier surrendered or cancelled.

(2) The chief executive may, in writing, require the holder of a restricted club licence that has expired or been surrendered or cancelled to produce the licence to the chief executive.

### ***Division 2—Transitional provisions for Liquor (Evictions, Unlicensed Sales and Other Matters) Amendment Act 1999***

#### **254 Meaning of “amending Act”**

In this division—

“**amending Act**” means the *Liquor (Evictions, Unlicensed Sales and Other Matters) Amendment Act 1999*.

**255 Transitional provision for amendment of s 169**

(1) This section applies for deciding the penalty for an offence against section 169<sup>55</sup> committed by a person after the commencement.

(2) Another offence against section 169 committed by the person before the commencement must not be counted in deciding whether the offence mentioned in subsection (1) is a first, second, third or later offence against section 169.

(3) In this section—

“**commencement**” means the commencement of section 11 of the amending Act.

**256 Transitional provision for amendment of s 171**

(1) This section applies for deciding the penalty for an offence against section 171(1)<sup>56</sup> committed by a person after the commencement.

(2) Another offence against section 171(1) committed by the person before the commencement must not be counted in deciding whether the offence mentioned in subsection (1) is a first, second, third or later offence against section 171.

(3) In this section—

“**commencement**” means the commencement of section 12 of the amending Act.

**257 Transitional provision for amendment of s 173**

(1) This section applies to a sale of liquor on unlicensed premises after the commencement.

(2) In deciding under section 173(2)(a)<sup>57</sup> whether, during the 2 years before the sale, liquor has been sold on the premises on at least 3 other occasions, an occasion before the commencement must not be counted.

(3) In this section—

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55 Section 169 (Authority required for sale)

56 Section 171 (Carrying or exposing liquor for sale)

57 Section 173 (Occupier and owner of unlicensed premises liable for sale of liquor etc.)



“**commencement**” means the commencement of section 13 of the amending Act.

### **258 Transitional provision for amendment of s 228A**

(1) A person may be disqualified under section 228A<sup>58</sup> only on conviction of an unlicensed sales offence committed after the commencement.

(2) However, a conviction of an unlicensed sales offence committed before the commencement, whether the conviction happens before or after the commencement, must be counted in deciding whether the conviction mentioned in subsection (1) is a second, third or later conviction of an unlicensed sales offence.

(3) Subsection (2) applies subject to section 228A(3).

(4) In this section—

“**commencement**” means the commencement of section 19 of the amending Act.

### *Division 3—Transitional provisions for Liquor Amendment Act 2001*

### **259 Transitional provision for Tribunal**

(1) This section applies to an appeal started, but not decided, before the commencement of this section.

(2) The appeal is to be heard in the same way as it would have been if the *Liquor Amendment Act 2001* had not commenced.

### **260 Transitional provision for certain general licences**

(1) This section applies to a licence that—

- (a) immediately before the commencement of section 243<sup>59</sup> was a spirit merchant’s (retail) licence and after the commencement of

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58 Section 228A (Disqualification from holding licence or permit on conviction of certain offences)

59 Section 243 (Continuance of existing licences)

that section continued as a general licence that authorised only the sale of liquor for consumption off the premises; and

- (b) was in force immediately before the commencement of this section.

(2) For section 58A(1),<sup>60</sup> the primary purpose of the business conducted under the general licence is taken to be only selling liquor for consumption off the premises.

(3) Subsection (2) applies despite section 58A(3).

## **261 Transitional provision for applications under pt 5**

(1) This section applies to an application made under part 5, but not decided, before the commencement of this section.

(2) Subject to subsections (3) and (4), the application must be decided as if the *Liquor Amendment Act 2001* had not commenced.

(3) Section 105(2) to (4)<sup>61</sup> applies to the application as if the application had been made after the commencement of that section.

(4) If the application is an application for an extended hours permit that includes trading between 5 a.m. and 7 a.m., section 102B or 102C<sup>62</sup> applies to the application as if the application had been made after the commencement of that section.

## **262 Transitional provision for temporary authority**

(1) This section applies to a temporary authority granted before the commencement of this section that continues after the commencement.

(2) To remove doubt, it is declared that the temporary authority may be extended under section 125(4)(b)<sup>63</sup> as if the authority were an authority granted after the commencement.

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60 Section 58A (Primary purpose of a business conducted under a general licence)

61 Section 105 (Requirements for applications)

62 Section 102B (Application for an extended hours permit on a regular basis that includes trading between 5 a.m. and 7 a.m.) or 102C (Other application for an extended hours permit that includes trading between 5 a.m. and 7 a.m.)

63 Section 125 (Temporary authority)

**263 Continuation of notices under s 187**

(1) This section applies if, immediately before the commencement of this section, a written notice under section 187(2)<sup>64</sup> was in force for licensed premises in relation to noise coming from the premises or a utility area for the premises.

(2) On and after the commencement, the notice continues to have effect as if the noise were unreasonable noise under section 187(5) and the notice had been issued after the commencement.

**264 Effect of s 85(1C) in relation to club licences**

Section 85(1C) has effect in relation to a club licence even if, before the commencement of this section, the holder of the licence could lawfully sell or supply liquor from a facility ordinarily known as a drive-in or drive through bottle shop.

**265 Review of licences**

(1) The chief executive must review every licence that is in force on the commencement of this section to ensure that—

- (a) the conditions to which the licence is subject are not inconsistent with the current Act; and
- (b) the licence is endorsed with all conditions considered by the chief executive as appropriate to be decided and stated in the licence consequent on the enactment of the *Liquor Amendment Act 2001*.

(2) For reviewing a licence under subsection (1), the chief executive may, by written notice to a licensee, direct the licensee to give the licence to the chief executive within a stated reasonable time.

(3) The licensee must comply with the notice unless the licensee has a reasonable excuse.

Maximum penalty for subsection (3)—25 penalty units.

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64 Section 187 (Abatement of nuisance or dangerous activity)

***Division 4—Transitional provision for Indigenous Communities Liquor Licences Act 2002***

**266 Licence applications for community areas**

(1) This section applies if—

- (a) before the commencement of this section, an application was made for a licence or permit for premises in a community area of a Council; and
- (b) immediately before the commencement, the application had not been finalised.

(2) On and from the commencement, sections 188 to 191 continue to apply to the application as if they had not been repealed.

**SCHEDULE****RULES OF CLUBS**

sections 88 and 103D

Rules of a club—

- (a) must provide that a person cannot be admitted as a member unless the person makes written application for membership and the application is approved at a meeting of the club's management committee; and
- (b) must provide that the members of the club entitled to vote at any meeting of the club do not include temporary or honorary members or minors; and
- (c) must provide that the club's management committee must be elected by the voting members of the club at a general meeting of the club for a period of at least 1 year; and
- (d) must provide that the management committee of the club must present to each annual general meeting of the club—
  - (i) a written report of the club's operation throughout the year; and
  - (ii) an audited statement of the club's financial position; and
- (e) must be consistent with the club being a non-proprietary club.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 30 December 2002. Future amendments of the Liquor Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	1 July 1992	1 October 1992
2	to Act No. 50 of 1992	30 November 1992	1 December 1992
3	to Act No. 10 of 1993	20 May 1993	8 June 1993
4	to Act No. 62 of 1993	23 November 1993	17 December 1993
5	to Act No. 80 of 1994	2 December 1994	24 January 1995
5A	to Act No. 57 of 1995	28 November 1995	12 July 1996
5B	to Act No. 47 of 1996	1 December 1996	11 February 1997
5C	to Act No. 54 of 1999	1 December 1999	3 December 1999
5D	to Act No. 5 of 2000	1 July 2000	21 July 2000
5E	to Act No. 51 of 2000	1 December 2000	8 December 2000
5F	to Act No. 40 of 2001	1 July 2001	13 July 2001
6	to Act No. 40 of 2001	1 July 2001	3 October 2001
6A	to Act No. 13 of 2002	24 April 2002	8 May 2002

Reprint No.	Amendments included	Effective	Reprint date (Column discontinued) Notes
6B	to Act No. 13 of 2002	1 August 2002	
6C	to Act No. 51 of 2002	24 September 2002	
6D	to Act No. 58 of 2002	6 December 2002	

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	5
Corrected minor errors	3, 6

## 6 List of legislation

### **Liquor Act 1992 No. 21**

date of assent 22 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1992 (1992 SL No. 136)

amending legislation—

### **Nature Conservation Act 1992 No. 20 ss 1–2, 159 sch 2 (this Act is amended, see amending legislation below)**

date of assent 22 May 1992

commenced 19 December 1994 (1994 SL No. 472)

amending legislation—

### **Nature Conservation Amendment Act 1994 No. 42 ss 1–2 sch (amends 1992 No. 20 above)**

date of assent 14 September 1994

commenced on date of assent

### **Liquor Amendment Act 1992 No. 50**

date of assent 30 November 1992

ss 3 and 5 commenced 1 July 1992 (see s 2)

remaining provisions commenced on date of assent

### **Liquor Amendment Act 1993 No. 10**

date of assent 20 May 1993

commenced on date of assent

### **Liquor Amendment Act (No. 2) 1993 No. 57**

date of assent 20 November 1993

commenced on date of assent



**Licensing Fees Legislation (Liquor and Tobacco Products) Amendment Act 1993  
No. 62 pts 1–2**

date of assent 23 November 1993  
commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 1994 No. 15 ss 1–3 sch 2**

date of assent 10 May 1994  
commenced on date of assent

**Liquor Amendment Act 1994 No. 28**

date of assent 28 June 1994  
commenced on date of assent

**Liquor Amendment Act (No. 2) 1994 No. 59**

date of assent 4 November 1994  
ss 1–2 commenced on date of assent  
s 8(3), (4) and (7) commenced 1 December 1994 (see s 2(1))  
ss 67(4), 81–2 commenced 1 July 1992 (see s 2(2))  
remaining provisions commenced 2 December 1994 (1994 SL No. 409)

**Wine Industry Act 1994 No. 80 ss 1–2, 67 sch 1**

date of assent 1 December 1994  
ss 1–2 commenced on date of assent  
remaining provisions commenced 31 March 1995 (1995 SL No. 70)

**Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch**

date of assent 22 November 1995  
commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995  
commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Keno Act 1996 No. 47 ss 1, 244 sch 3**

date of assent 15 November 1996  
commenced on date of assent

**Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3**

date of assent 2 September 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 December 1999 (see s 2(1))

**Liquor (Evictions, Unlicensed Sales and Other Matters) Amendment Act 1999 No. 54**

date of assent 18 November 1999  
commenced on date of assent

**Prostitution Act 1999 No. 73 ss 1, 2(2)–(3) pt 9**

date of assent 14 December 1999  
ss 1–2 commenced on date of assent  
remaining provisions commenced 1 July 2000 (see s 2(2)–(3))

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3**

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**Gambling Legislation Amendment Act 2000 No. 51 pts 1, 7**

date of assent 17 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2000 (see s 2)

**Liquor Amendment Act 2001 No. 39**

date of assent 7 June 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 98)

**Wine Industry Amendment Act 2001 No. 40 pts 1, 3**

date of assent 7 June 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 97)

**Health Legislation Amendment Act 2001 No. 78 ss 1–2, 237 sch 4**

date of assent 15 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 2002 (see s 2)

**Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 s 1, pt 14**

date of assent 24 April 2002

commenced on date of assent

**Indigenous Communities Liquor Licences Act 2002 No. 47 ss 1–2, pt 6**

date of assent 24 September 2002

s 45 commenced 30 December 2002 (see s 2(1) and 2002 SL No. 380)

s 62 not yet proclaimed into force (see s 2(2))

remaining provisions commenced on date of assent

**Tribunal Provisions Amendment Act 2002 No. 51 pts 1–2, s 101 sch**

date of assent 24 September 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 6 December 2002 (2002 SL No. 325)

**Racing Act 2002 No. 58 ss 1–2(1), 398(1) sch 2 pt 1**

date of assent 14 November 2002

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(1))**7 List of annotations****Title** amd 1999 No. 73 s 143**Objects of Act**

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- def “**on-premises (meals) licence**” ins 2001 No. 39 s 5(2)
- def “**on-premises (other activity) licence**” ins 2001 No. 39 s 5(2)
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s 14 amd 2002 No. 51 s 5

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s 15 amd 2002 No. 51 s 101 sch

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s 15A ins 2002 No. 51 s 6

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s 18 amd 2002 No. 51 s 7

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s 20A ins 2001 No. 39 s 12

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s 20B ins 2001 No. 39 s 12  
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s 39 amd 1994 No. 59 s 3 sch 2  
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s 47A ins 2001 No. 39 s 27  
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s 58A          ins 2001 No. 39 s 30

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**Primary purpose of a business under a residential licence**

s 61A          ins 2001 No. 39 s 32

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s 62            amd 1994 No. 59 s 20; 2001 No. 39 s 33

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s 63            amd 2001 No. 39 s 34

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s 64            amd 1994 No. 59 s 21  
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prov hdg    sub 1994 No. 59 s 22(1)  
s 65            amd 1994 No. 59 s 22(2)  
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s 66            amd 2001 No. 39 s 3 sch

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s 67            amd 1994 No. 59 s 3 sch 2; 2001 No. 39 s 37

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s 68            amd 1994 No. 59 s 23

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s 70            amd 2001 No. 39 s 38

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s 71A          ins 2001 No. 39 s 40

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s 72A ins 1994 No. 59 s 24  
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**Restriction on sale of liquor under an on-premises (meals) licence**

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**Primary purpose of a business under an on-premises (transport) licence**

s 74A ins 2001 No. 39 s 44

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s 75A ins 2001 No. 39 s 46

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s 83 amd 1994 No. 59 s 28; 2001 No. 39 s 51

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s 84 amd 1994 No. 59 s 29; 2001 No. 39 s 52; 2001 No. 40 s 26

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s 84A ins 2001 No. 39 s 53

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s 85 amd 1994 No. 59 s 3 sch 2; 2001 No. 39 s 54

**Restrictions on grant of club licence**

s 86 amd 1993 No. 10 s 3; 2001 No. 39 s 55

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s 87 om 2001 No. 39 s 56

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s 88 amd 1994 No. 59 s 30; 2001 No. 39 ss 107, 3 sch

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**Primary purpose of a business under a special facility licence**

s 92 prev s 92 om 1994 No. 59 s 31

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**Restriction on grant of special facility licence**

s 94 amd 2001 No. 39 s 58

**Primary purpose of a business under a limited licence**

s 94A ins 2001 No. 39 s 59

**Authority of limited licence**

s 95 sub 1994 No. 59 s 33

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s 96 amd 2001 No. 39 s 60

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s 97 amd 1994 No. 59 s 3 sch 1; 1999 No. 73 s 147; 2001 No. 39 s 61; 2002 No. 47 s 49

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s 99 amd 1994 No. 59 s 3 sch 1; 2002 No. 47 s 50

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s 102A ins 2001 No. 39 s 62

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s 102B ins 2001 No. 39 s 62

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s 102C ins 2001 No. 39 s 62

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s 102E ins 2001 No. 39 s 62

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s 102F ins 2001 No. 39 s 62

**Area in catering away permit forms part of licensed premises**

s 102G ins 2001 No. 39 s 62

**Authority of catering away permit**s 103 amd 1994 No. 59 s 34  
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div hdg ins 1994 No. 59 s 36

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s 103A ins 1994 No. 59 s 36

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s 103B ins 1994 No. 59 s 36

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**Controllers**

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s 109A ins 1994 No. 59 s 37

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s 110 amd 1994 No. 59 s 38(2)–(3); 1999 No. 73 s 156; 2001 No. 39 s 69

**Variation of licence**

s 111 amd 1994 No. 59 s 39; 2001 No. 39 s 107; 2002 No. 47 s 54

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s 113A ins 2001 No. 39 s 71

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s 115 amd 1994 No. 59 s 41; 2001 No. 39 s 107

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s 117 sub 1994 No. 59 s 42

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s 118 sub 1994 No. 59 s 42

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- prov hdg** amd 2001 No. 39 s 74(1)  
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- s 119** amd 2001 No. 39 s 75

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- prov hdg** sub 1994 No. 59 s 3 sch 2  
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- s 123A** ins 2001 No. 39 s 77

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- s 123B** ins 2001 No. 39 s 77

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- s 123C** ins 2001 No. 39 s 77

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**Temporary authority**

- prov hdg** amd 2001 No. 39 s 78(1)  
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**Liability of licensees in certain cases**

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- s 129** sub 1994 No. 59 s 44  
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- s 131A** ins 1994 No. 59 s 45  
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**s 132** amd 1994 No. 59 s 46; 2001 No. 39 s 82

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s 155A (prev s 145B) ins 1994 No. 59 s 50  
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s 158 amd 1994 No. 59 s 58; 2001 No. 39 ss 107, 3 sch

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s 159 amd 1994 No. 59 s 59; 2001 No. 39 s 107

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s 162 sub 1994 No. 59 s 60  
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s 164 amd 1993 No. 10 s 4; 1994 No. 28 s 3; 1999 No. 54 s 2 sch; 2000 No. 5 s 461  
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s 219 sub 1994 No. 59 s 76  
amd 2001 No. 39 s 107  
exp 1 July 2002 (see s 221)

**Basis of calculation of premium**

s 220 sub 1994 No. 59 s 76  
exp 1 July 2002 (see s 221)

**Expiry of pt 9, div 2**

s 221 prev s 221 om 1994 No. 59 s 76  
pres s 221 ins 2001 No. 39 s 98  
exp 1 July 2002 (see s 221)

**Application of Trust Fund**

s 222 amd 1993 No. 57 s 5  
om 1994 No. 59 s 76

**Supplementary payments to Trust Fund**

s 223 sub 1993 No. 57 s 6  
om 1994 No. 59 s 76

**Amount of allocation from Trust Fund**

s 224 om 1994 No. 59 s 76

**Review of Act**

s 225 om 1994 No. 59 s 3 sch 2

**Contravention of conditions of licences etc.**

s 226 amd 1999 No. 73 s 167; 2001 No. 39 s 99; 2002 No. 47 s 81

**Suspension of licence for offences concerning minors**

s 228 amd 2002 No. 47 s 82

**Disqualification from holding licence or permit on conviction of certain offences**

s 228A ins 1999 No. s 19

**False or misleading statements**

s 231 sub 1994 No. 59 s 77

**False, misleading or incomplete documents**

s 231A ins 1994 No. 59 s 77  
amd 1999 No. 42 s 54(3) sch pt 3

**Impersonation of investigator**

s 231B ins 1994 No. 59 s 77

**Summary proceedings for offences**

s 232 prev s 232 om 1999 No. 54 s 20  
pres s 232 ins 2001 No. 39 s 100

**Proof of signature unnecessary**

s 232A ins 2002 No. 51 s 19

**Commissioner to give information to chief executive**

s 232B ins 2002 No. 58 s 398(1) sch 2 pt 1

**Evidentiary provisions**

s 233 amd 1994 No. 59 s 78; 2001 No. 39 s 3 sch; 2001 No. 78 s 237 sch 4; 2002 No. 47 s 83

**Use of code in proceedings**

s 233A ins 1999 No. 73 s 168

**Regulation-making power**

prov hdg sub 2002 No. 47 s 84(1)

s 235 amd 1994 No. 59 s 79; 1999 No. 73 s 169; 2001 No. 39 ss 101, 107; 2002 No. 47 s 84 (2)–(5)

**PART 11—TRANSITIONAL PROVISIONS**

pt hdg amd R4 (see RA s 37)

**Object of part**

s 236 sub 1993 No. 57 s 7

**Completion of proceedings in the Court**

s 238 amd 1994 No. 59 s 80; 2001 No. 39 s 102

**Disposal of applications for removal**

s 238A ins 1994 No. 59 s 81  
amd 2001 No. 39 s 103

**Termination of Court**

s 239 amd 1994 No. 59 s 82; 2001 No. 39 s 104

**Termination of Commission**

s 240 om R1 (see RA s 38)

**Disposal of applications made to Commission**

s 241 amd 2001 No. 39 s 105

**Table of corresponding licences**

s 242 amd 1994 No. 59 s 83; 1995 No. 57 s 4 sch 2

**Variation of general licence (previously spirit merchant's (retail) licence)**

s 243A ins 1994 No. 59 s 84  
amd 2001 No. 39 s 107

**Continuance of existing permits**

s 244 amd 1994 No. 59 s 85; 2001 No. 39 s 107

**Continuance of business of brewers etc.**

s 245 om 1993 No. 57 s 8

**Review of licences**

s 247 amd 1994 No. 59 s 86; 2001 No. 39 s 107

**Enforcement of orders etc. under repealed Act**

s 248 amd 2001 No. 39 s 3 sch

**Apportionment of licence fees under s 18B of repealed Act**

s 249A ins 1992 No. 50 s 5

**Division 3—Compensation for surrendered general licences**

div hdg om 1993 No. 57 s 9

**Compensation for certain surrendered general licences**

s 250 sub 1993 No. 57 s 9

**Division 4—Repeals**

div hdg om R1 (see RA s 37)

**References to Liquor Act 1912**

s 251 prev s 251 om R1 (see RA s 40)  
pres s 251 ins 1994 No. 15 s 3 sch 2

**PART 12—FURTHER TRANSITIONAL PROVISIONS**

pt hdg ins 1994 No. 59 s 87  
sub 1999 No. 54 s 2 sch

**Division 1—Transitional provisions about restricted club licences for the Liquor Amendment Act (No. 2) 1994**

div hdg ins 1999 No. 54 s 2 sch

**Object of division**

div hdg amd 1999 No. 54 s 2 sch  
s 252 (prev s 251) (2nd occurring) ins 1994 No. 59 s 87  
renum 1995 No. 57 s 4 sch 2  
amd 1999 No. 54 s 2 sch

**Continuance of existing licences**

s 253 (prev s 252) ins 1994 No. 59 s 87  
renum 1995 No. 57 s 4 sch 2

**Division 2—Transitional provisions for Liquor (Evictions, Unlicensed Sales and Other Matters) Amendment Act 1999**

div 2 (ss 254–258) ins 1999 No. 54 s 21

**Division 3—Transitional provisions for Liquor Amendment Act 2001**

div 3 (ss 259–265) ins 2001 No. 39 s 106

**Division 4—Transitional provision for Indigenous Communities Liquor Licences Act 2002**

div 4 (s 266) ins 2002 No. 47 s 85

**SCHEDULE—RULES OF CLUBS**

amd 1994 No. 59 s 88; 2001 No. 39 s 108

**8 List of forms notified or published in the gazette****Form 1 Version 1—Application for a Liquor Licence (other than a club licence)**

pubd gaz 17 March 1995 p 1115

**Form 2 Version 1—Application for a Club Licence**

pubd gaz 17 March 1995 p 1115

**Form 3 Version 2—Application for Transfer of a Liquor Licence**

pubd gaz 17 March 1995 p 1115

**Form 4 Version 1—Application for Acceptance of New Nominee or Master**

pubd gaz 17 March 1995 p 1115

**Form 5 Version 2—Application Schedule**

pubd gaz 17 March 1995 p 1115

**Form 6 Version 2—Application for Registration of a Financial Interest**

pubd gaz 17 March 1995 p 1115

**Form 7 Version 3—Application for General Purpose Permit**

pubd gaz 17 March 1995 p 1115

**Form 8 Version 1—Application for Restricted Club Permit**

pubd gaz 17 March 1995 p 1115

**Form 9 Version 1—Application for Extended Hours Permit (on a regular basis)**

pubd gaz 17 March 1995 p 1115

**Form 10 Version 1—Application for Extended Hours Permit (not on a regular basis)**

pubd gaz 17 March 1995 p 1115

**Form 11 Version 3—Application for Variation of Licence**

pubd gaz 17 March 1995 p 1115

**Form 12 Version 1—Application for Approval under Section 59(1)(d) (Bottle shop)**

pubd gaz 17 March 1995 p 1115

**Form 13 Version 1—Application for Alterations and Additions to Licensed Premises**

pubd gaz 17 March 1995 p 1115

**Form 14 Version 1—Application for Temporary Licence**

pubd gaz 17 March 1995 p 1115

**Form 18 Version 2—Application for Permission to be Absent from Licensed Premises**

pubd gaz 17 March 1995 p 1115



## **9 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Indigenous Communities Liquor Licences Act 2002 No. 47 s 62 reads as follows—**

### **62 Insertion of new s 148A**

After section 148—

*insert—*

#### **‘148A Obligations of licensees and permittees relating to the service, supply and promotion of liquor**

‘(1) This section imposes obligations on licensees and permittees in the conduct of business on licensed premises or premises to which a permit relates for—

- (a) maintaining a safe environment for patrons and staff of the premises; and
- (b) ensuring liquor is served, supplied and promoted in a way that is compatible with minimising harm from the use of liquor and preserving the peace and good order of the neighbourhood of the premises.

‘(2) The licensee or permittee must not engage in a practice or promotion that may encourage rapid or excessive consumption of liquor.

Maximum penalty—100 penalty units.

‘(3) The licensee or permittee must engage in practices and promotions that encourage the responsible consumption of liquor.

Maximum penalty—100 penalty units.

‘(4) The licensee or permittee must provide and maintain a safe environment in and around the premises.

Maximum penalty—100 penalty units.

‘(5) A regulation may prescribe examples of what are acceptable or unacceptable practices or promotions for subsections (2) to (4).

‘(6) A practice or promotion prescribed under a regulation for a subsection does not limit the subsection.’.

**Racing Act 2002 No. 58 s 398(1) sch 2 pt 1 reads as follows—**

## **LIQUOR ACT 1992**

**1 Section 134(1)(a)(i), after ‘Act’—**

*insert—*

‘, or the *Racing Act 2002*, section 321 or 323<sup>65</sup>’.

**2 Section 136(1)(b)(iii)—**

*renumber* as section 136(1)(b)(iv).

**3 Section 136(1)(b)—**

*insert—*

‘(iii) an offence against the *Racing Act 2002*, section 321 or 323; or’.

**4 After section 151—**

*insert—*

**‘151A Betting on licensed premises**

‘(1) A licensee or permittee must not allow the premises to which the licence or permit relates to be used for betting.

Maximum penalty—

- (a) for a first offence—100 penalty units or 6 months imprisonment; and

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<sup>65</sup> *Racing Act 2002*, section 321 (Unlawful bookmaking other than by racing bookmakers etc.) or 323 (Prohibition on opening, keeping, using or promoting an illegal betting place)

- (b) for a second offence—200 penalty units or 1 year’s imprisonment; and
- (c) for a third or subsequent offence—400 penalty units or 2 years imprisonment.

‘(2) It is a defence to a charge of an offence against subsection (1) if the person proves that—

- (a) the person has issued proper instructions and used all reasonable means to secure observance of the subsection; and
- (b) the offence in question was committed without the person’s knowledge; and
- (c) the person could not, by the exercise of reasonable diligence, have prevented the commission of the offence.

‘(3) Subsection (1) does not apply to licensed premises if—

- (a) the licensed premises are located inside a licensed venue under the *Racing Act 2002* and the betting takes place during times that betting may be conducted under that Act; or
- (b) the betting is conducted under any of the following Acts—
  - (i) the *Casino Control Act 1982*;
  - (ii) the *Charitable and Non-Profit Gaming Act 1999*;
  - (iii) the *Gaming Machine Act 1991*;
  - (iv) the *Interactive Gambling (Player Protection) Act 1998*;
  - (v) the *Keno Act 1996*;
  - (vi) the *Lotteries Act 1997*;
  - (vii) the *Wagering Act 1998*’.

#### **4A Amendment of s 152 (Prohibition on other use of premises)**

Section 152(1)(a)(ii), from ‘on behalf’—

*omit, insert—*

‘for which the licensee is a wagering agent under the *Wagering Act 1998*; or’.

**5 Part 9, division 1, heading—**

*omit.*

**6 Before section 233—**

*insert—*

**‘232B Commissioner to give information to chief executive**

‘(1) This section applies to a conviction of a person in relation to premises to which a licence or permit relates for an offence against—

- (a) section 151A(1); or
- (b) the *Racing Act 2002*, section 321 or 323.<sup>66</sup>

‘(2) The commissioner must give the chief executive written notice of the particulars of the conviction.’.

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<sup>66</sup> *Racing Act 2002*, sections 321 (Unlawful bookmaking other than by racing bookmakers etc.) and 323 (Prohibition on opening, keeping, using or promoting an illegal betting place)