

# **LIQUOR AMENDMENT BILL (NO. 2) 1994**

## **EXPLANATORY NOTE**

### **Objectives**

The Bill enhances the administrative efficiency of the legislation, addresses concerns regarding the availability and adverse effects of liquor, clarifies existing provisions, corrects minor anomalies and unintended consequences and increases flexibility in the application of the legislation.

### **Reasons for Bill**

The *Liquor Act 1992* requires that the Act be reviewed one year after its commencement. The Liquor Act commenced on 1st July, 1992 and resulted from the first major review of the Act since 1912.

A review of the Act commenced in May 1993. This review identified a number of areas requiring attention. Some administrative difficulties have been experienced and these, together with some anomalies detected, necessitated legislative amendments to ensure consistency and efficiency in the administration of the Act.

As well, since 1992, further circumstances have been identified where the increased availability of liquor could lead to an adverse impact on the community. Consequently, legislation is required to ensure that the community's concerns in these areas are addressed by strengthening existing provisions or including additional provisions which will result in better control of trading hours, and ensuring that the sale, supply and consumption of liquor continues to occur in a responsible manner.

### **Estimated Cost of Government Implementation**

The cost of implementing the amendments including the training of both staff and industry, and the production of new forms, brochures and

publications is estimated at \$62,000.00.

## **Consultation**

During the course of the review of the Act, ongoing consultation has occurred with all relevant liquor industry organisations and those interested parties who are registered with the Business Regulation Review Unit. Key Government agencies have also been fully consulted.

*Clause 1* provides for the short title of the Act.

*Clause 2* provides for the commencement of various sections of the Act. The majority of the provisions are to commence on a day to be fixed by proclamation.

*Clause 3* provides for the amendment of the *Liquor Act 1992*.

*Clause 4* amends Section 4 (Interpretation) of the Act by deleting the definitions of “function” and “liquor”. New definitions are inserted by Clause 5.

A new definition of “member of a reciprocal club” is inserted.

Clause 4 also amends the definition of “investigator” by deleting the requirement for a police officer to be designated by a commissioned police officer to act as an investigator for a particular occasion. This requirement was often difficult to fulfil in remote areas of Queensland. A police officer will be able to be designated as an investigator in general rather than on a particular occasion.

*Clause 5* inserts new definitions of “function” and “liquor”. The definition of “function” has been amended by deleting the requirement that the event occur in premises hired for the purpose by the organiser. This requirement was restricting the ability of certain licensees to cater for functions in premises owned by the organiser.

The definition of liquor has been amended to clarify that substances such as methylated spirits are not included within the definition.

*Clause 6* amends the definition of who is a responsible adult for a minor. The adult spouse (legal or de facto) of a minor is no longer a responsible adult for a minor. Minors are permitted in certain circumstances to consume liquor (not on licensed premises) or to be on licensed premises when accompanied by a responsible adult. A minor’s marital status is not regarded as a relevant factor when considering the consumption of liquor.

*Clause 7* amends Section 6 (Acceptable evidence of age) of the Act. This amendment will allow proof of age cards issued by appropriate bodies inter-state to be treated as acceptable evidence of age for the purposes of the *Liquor Act*.

*Clause 8* amends Section 9 (Ordinary trading hours) in various respects. Section 9(3)(a)(i) is amended to specify that, as in the case of Christmas Day and Good Friday, trading before 1:00pm on Anzac Day permits the sale of liquor only to a person to consume on the premises in association with the person eating a meal in that part of the premises ordinarily set aside for dining. This corrects an anomaly in the existing Act.

Section 9(4) has been amended to provide that the hours that a producer/wholesaler may trade are those that are permitted by the *Trading (Allowable Hours) Act 1990*.

Parliamentary Counsel has taken the opportunity to redraft the provisions of Section 9(5)(a), 9(6)(a), 9(7)(a) and 9(10)(a) in modern language.

Section 9(10) which provides for the trading hours of premises that are a cabaret has been amended. Currently cabarets may only sell liquor before 8:00pm to a person who is eating a meal in the premises. This restriction now will only apply before 5:00pm.

The ordinary trading hours of licensed premises which trade to midnight on New Year's Eve have been extended to 2:00am. This will significantly reduce the number of applications for extended hours permits for that night.

*Clause 9* amends Section 24 of the Act by inserting a 28 day time limit in which an appeal from a decision of the Liquor Appeals Tribunal to the Supreme Court on the ground of an error of law must be made. This was an oversight in the 1992 Act.

*Clause 10* inserts a new Section 29A which excludes the makers of submissions under Section 118A from the right to appeal to the Liquor Appeals Tribunal. Section 118A allows members of the public to make written submissions to the Chief Executive regarding the public need for certain applications. Whilst the right to make comment regarding public need has been expanded it is not intended that this be accompanied by expanded appeal rights.

*Clause 11* amends Section 34 of the Act by restricting the right of persons before the Liquor Appeals Tribunal to legal representation. Legal representation will be allowed with the leave of the Tribunal in cases where

complex questions of law may arise or where either party may be disadvantaged by the not having legal representation. When the Tribunal sits to hear a matter there must always be a legally qualified member on the Tribunal. This is to ensure that the rules of natural justice are observed. It is considered that the limitation on the right to legal representation will expedite the proceedings of the Tribunal. The clause does not permit representation by an agent, other than a solicitor or barrister.

The clause also clarifies that an appeal to the tribunal must be set down for hearing within 28 days rather than actually heard within 28 days.

*Clause 12* amends Section 36 (Determination of appeal) by correcting an anomaly in the existing Act. The amendment will allow the Tribunal to refer matters back to the Chief Executive for determination where appropriate.

Clause 13 amends Section 41 by casting it in modern language.

*Clause 14* broadens the application of Section 42 of the Act by allowing the Chief Executive to delegate his or her powers to an officer of a unit of the public sector. The Act currently only allows delegation to an officer of the Department. The *Acts Interpretation Act 1954* defines a unit of the public sector by reference to the *Public Sector Management Commission Act 1990* which provides a broad definition, including all departments and various other entities involved in activities related to government.

*Clause 15* inserts a new Section 44A which requires certain persons to register their interest in a licence within 28 days of acquiring the interest or upon the granting of the licence. Owners, lessees, mortgagees and secured creditors whose interest is likely to be affected by cancellation of the licence are required to notify the Chief Executive of the particulars of their interest. The holders of registered interests have certain rights under Section 131 of the Act which deals with the continuance of trading in an emergency and are also entitled to be notified when action is taken that could lead to a licence being cancelled. It is impossible for the Chief Executive to be aware of the nature of the interest in the licence unless particulars are given to the Chief Executive.

*Clause 16* makes certain consequential and minor amendments to Section 46. Any noise from licensed premises (not just entertainment) can now be the subject of an order under this section. This corrects an anomaly.

*Clause 17* omits Part 3, Division 2 of the Act. This amendment will abolish the Liquor Advisory Board.

*Clause 18* removes the reference to Restricted Club Licence from Section 58.

*Clause 19* amends Section 59 which provides for the authority of a general licence. The Section is amended by correcting an anomaly in that a general licensee was not authorised to sell liquor to a resident at any time for consumption off the premises. This was inconsistent with the authority of other licences, for example, a residential licence.

Section 59 allows the Chief Executive to approve premises for the sale of liquor under the authority of a general licence. These premises are commonly known as detached bottle shops. Section 59 has been amended by providing that as well as allowing the sale of liquor in such premises for consumption off the premises, the sale is permitted for consumption on the premises in the amount and in the circumstances prescribed by Regulation. This amendment will allow a regulation to be made, for example, permitting promotional samplings on detached bottle shop premises.

Section 59 is further amended by allowing the holder of a general licence to cater for functions off the licensed premises.

*Clause 20* amends Section 62 by redrafting it in language that is modern and accords with the amendments to similar sections of the Act.

*Clause 21* clarifies that Section 64(1) only applies at any time other than ordinary trading hours. Section 64 provides the authority for a residential licence to provide liquor to residents and guests of residents. The amendment extends the authority to the provision of liquor in a private dining room in premises containing less than 16 units.

*Clause 22* amends Section 65 by clarifying that restaurants operating on residential licences have the same privilege extended to other such facilities, in that the Chief Executive may allow 20% of the number of persons who can be seated in the dining area to be supplied with liquor without requiring them to eat a meal.

*Clause 23* amends Section 68 relating to on-premises licences by clarifying that the Chief Executive may extend the sale of liquor to premises other than licensed premises for consumption on those other premises. This will allow the holders of on-premises licences to cater for functions other than on the licensed premises.

*Clause 24* inserts a new Section 72A allowing the Chief Executive to authorise the sale and supply of liquor by the holder of an on-premises

(cabaret) licence to persons other than in association with their eating a meal. As in the case of other similar sections this authority extends only to 20% of the number of persons who can be seated in the part of the premises ordinarily set aside for dining. In addition, cabarets will now be able to conduct functions on the licensed premises.

*Clause 25* redrafts Section 73 of the Act to ensure that its wording is consistent with other similar sections.

*Clauses 26 and 27* correct an anomaly by inserting a heading appropriate to Section 78 of the Act.

*Clause 28* amends Section 83 of the Act by redrafting sub-paragraph (c) in a way that is understandable.

*Clause 29* amends Section 84 by allowing the holder of a producer/wholesaler licence to sell to a person (or their agent) authorised by a law of another country to sell liquor.

The section is also amended by allowing sale to a person engaged in an activity specified in Section 206(a). The types of activities described in Section 206(a) include liquor that is sold for export from Australia for consumption outside Australia or to duty free shops or for consumption on ships or aircraft on international journeys or to a foreign embassy or to religious organisations for sacramental purposes.

Further the clause corrects an oversight in the current Act in that under the *Liquor Act 1912*, a brewer was entitled to sell liquor to unlicensed persons. The *Liquor Act 1992* did not contain a similar provision. The amendment corrects this oversight by allowing the holder of a producer/wholesaler licence who is a brewer to sell to unlicensed persons.

*Clause 30* amends Section 88 of the Act by providing that the Chief Executive may exempt certain types of amendments to a club's rules from the requirement (Section 88(1)(b)) to notify the Chief Executive of the amendment within 28 days.

The Clause further amends Section 88 by specifying that a minor or certain specified visitors to the club do not have to sign the visitors book.

*Clause 31* omits the section of the Act dealing with restricted club licences. Restricted club licences are to be replaced by a permit system.

*Clause 32* redrafts Section 93 in modern language. Special facility licences do not have ordinary trading hours under Section 9 of the Act. The

new sub-section (2) of Section 93 provides that the licence is subject to the conditions specified in the licence including, for example, the times when sales may take place.

*Clause 33* amends Section 95 of the Act which deals with limited licences. The authority to sell liquor by the holder of a limited licence for consumption off the premises is limited to sales of 2 litres except where otherwise specified by the Chief Executive.

As with special facility licences, limited licences do not have ordinary trading hours. The trading hours of a limited licence are those specified in the licence.

*Clause 34* omits sub-section (2) of Section 103 dealing with the requirement for special circumstances for extended hours permits beyond 2:00am.

*Clause 35* renumbers Division 13, Part 4.

*Clause 36* inserts a new Division 13, in Part 4. These Sections (103A - 103D) establish a new restricted club permit. A restricted club permit will allow a club to obtain a permit rather than a restricted club licence. This will significantly reduce the cost for such clubs. The same basic rules apply as formerly applied to a restricted club licence. A club must be a non-proprietary club and may trade for not more than 21 hours a week.

A restricted club permit may be granted for a period of at least 3 months but no longer than 1 year.

*Clause 37* inserts a new Section 109A allowing an applicant for a licence or a licensee to apply for an extended hours permit. This was previously dealt with in other sections of the Act.

*Clause 38* amends Section 110 dealing with extended hours permits by specifying that the section now applies only to extended hours permits that do not extend the trading hours on a regular basis.

*Clause 39* amends Section 111 of the Act dealing with variation of licences by clarifying that an application to trade between 7:00am and 10:00am is to be made by application for extended hours permit rather than by way of variation of licence. Some confusion has arisen previously as to whether this was the case. It was always intended that trading between 7:00am and 10:00am be on the basis of extended hours.

*Clause 40* simplifies Section 114 by removing the requirement that a licence must be held for at least 3 months before it may be transferred.

*Clause 41* amends Section 115 by distinguishing between the letting or sub-letting of licensed premises and the letting or subletting of the right to sell liquor.

A new sub-section 2 is inserted specifying that in the case of a change of nominee, the normal checks must be carried out pursuant to Section 107 of the Act.

*Clause 42* replaces Sections 116 - 118 of the Act. These sections have been amended to streamline the application process.

Section 116 has been amended by specifying that an application for approval to operate a detached bottle shop must now comply with the provisions of the Act regarding public need which are set out in Section 116.

The new Section 117 requires the Chief Executive to consult with the local government in the area the premises are located regarding an application for a licence, a club licence, a detached bottle shop or an extended hours permit that would extend trading hours on a regular basis. The police officer in charge of the police service for the area is to be consulted in the case of an extended hours permit.

The local government or the police officer may comment on the reasonable requirements of the public in the area or object to the grant of the application on the grounds that the amenity, quiet or good order of the area would be lessened. Certain time limits are imposed within which these comments or objections must be received.

Currently Section 117 of the Act provides that the Chief Executive must hold a preliminary conference with the applicant regarding public need. As part of the streamlining of the application process this requirement has been deleted.

Section 118 of the Act dealing with the advertisement of applications has been amended by including a requirement for the advertising of an application for the use of premises as a detached bottle shop.

Section 118 has also been amended, by allowing the Chief Executive to specify how an application must be advertised where the remote location of the premises or other special circumstances make the normal requirements inappropriate. The new section further allows the Chief Executive to



approve a method of advertisement that substantially complies with the normal requirements or where advertising has already taken place for another purpose and substantially complies with the requirements of the Act. If an applicant has advertised and displayed a notice, for example, seeking town planning consent and this advertisement substantially complied with the requirements of the Liquor Act, it would be unnecessary for a second round of advertising to occur. The issue of the amenity of the area and how it is effected by the proposed premises will have been dealt with by the relevant Local Government.

New Section 118A allows a member of the public, as defined in Section 119, to make written submissions to the Chief Executive regarding public need. However, no right of appeal lies from a decision about public need.

*Clause 43* amends Section 120 of the Act by providing that all contacts with signatories to a petition that is an objection to the grant of an application, shall be by way of one nominated sponsor. Notification of conferences or any other matter regarding the objection shall be given to the sponsor.

Clause 43 also inserts new Sections 121 and 121A. New Section 121 provides for conferences to be held where a notice of objection is given under Sections 112 or 119. The provisions dealing with objection conferences are essentially the same as currently exist with the exception that the Chief Executive is given a discretion to make a decision consistent with terms agreed upon between the parties to the conference. Previously the Chief Executive did not have this discretion. This was to ensure that parties did not attempt to impose improper solutions on the Chief Executive by using this section.

A new provision has been inserted outlining the matters the Chief Executive must have regard to when making a decision after an objection conference or, in the case where no conference was held, to grant an application. These matters are set out in Section 121(5). The circumstances in which an extended hours permit for extension of hours beyond 2:00am may be granted are set forth. Previously these matters were contained in Section 110 of the Act.

A new restriction on extended hours permits has been imposed. Any permit for extension of hours beyond 3:00am remains in force for a maximum period of six months and must be renewed by application to the Chief Executive.

New Section 121A sets forth the procedures for renewal of permits for extension of hours beyond 3:00am. Once again, the local government and the police in the area are given an opportunity to comment on the application. Section 121A sets forth the matters the Chief Executive must have regard to when renewing such permits.

*Clauses 44 and 45* replace existing Sections 129 and 131 which deal with the continuation of trading in an emergency and in other circumstances such as the death of a licensee. The sections have been redrafted in a clearer manner. The Chief Executive has been given the power to make an interim order in certain circumstances. The person who has been granted authority to continue trading on licensed premises either on an interim basis or on the grant of an application under Section 129 may make application for a transfer of the licence even though they are not otherwise eligible under Section 113. Currently the Act states that a person trading in such circumstances is subject to the same “obligations and liabilities” as a licensee. This has been changed to “liabilities” only due to the effect of Section 36 of *Acts Interpretation Act 1954* which defines “liabilities” to include obligations.

*Clause 46* makes consequential amendments to Section 132.

*Clause 47* amends Section 134 by increasing the Chief Executive’s power to deal with permits. Section 134 currently allows the Chief Executive to cancel or suspend permits in certain circumstances. This amendment gives the Chief Executive the additional power to vary a permit. The amendment also inserts a reference to a restricted club permit.

*Clause 48* makes consequential amendments to Section 135 of the Act.

*Clause 49* makes consequential amendments to Section 136 of the Act. These amendments are linked to the new Section 44A imposing a requirement on owners, lessees, mortgagees and secured creditors to register their interest with the Chief Executive. Currently when proceedings are being taken to cancel a licence pursuant to Section 136, the Chief Executive must conduct searches to ascertain the owner and mortgagee of premises for the purpose of giving a notice to show cause why a licence should not be cancelled. A more important consequence of the absence of a requirement to register is that under Section 44 the Register of Licences is available for inspection by the public upon payment of a fee. Persons inspecting the register are entitled to expect the information recorded in it to be accurate.

*Clause 50* amends Section 145 inserting new sections which extend the requirement to produce the licence or permit document on demand to nominees, managers or to persons for the time being in charge of the premises and additionally require the licence or permit to be kept on the premises.

Clause 50 also inserts a new Section 145B which states clearly that liquor must not be sold to a minor. The penalties for licensee, permittee, nominee or managers is 250 penalty units i.e. \$15,000.00. In any other case, 40 penalty units or \$2,400.00 is the applicable penalty. This section is not restricted by reference to licensed premises or any other place. It makes it clear that a licensee's obligation regarding minors extends to the provision of liquor through delivery schemes.

*Clause 51* amends Section 151 to allow the keeping of machines, apparatus etc. on licensed premises, for the playing of games that are approved under the *Art Unions and Public Amusements Act*. This will allow lucky envelope machines to be sited on licensed premises without the necessity to seek the Chief Executive's prior approval.

*Clause 52* corrects an anomaly that existed in Section 152 of the Act. Section 152 restricts other uses of licensed premises and currently applies only to the holders of a general licence. This has been extended to all licensees.

*Clause 53* replaces Section 153 regarding the letting or sub-letting of licensed premises. The new Section 153 prohibits licensees, with the exception of special facility licences, from letting or sub-letting part of the licensed premises or entering into a franchise or management agreement for part of the licensed premises. The holders of a special facility licence may, with the Chief Executive's approval, let or sub-let part of the premises or let or sub-let the right to sell liquor or enter into a franchise or management agreement.

The existing provisions with respect to franchise and management agreements and letting or sub-letting continue to apply to the whole of the licensed premises. The distinction is made to avoid the situation where general licensees enter into such arrangements allowing part of the premises to be operated, in effect, as a cabaret thereby avoiding the public need provisions of the Act which any other cabaret owner would have to meet.

This links in with the amendment to Section 115 of the Act to ensure that when the right to sell liquor is let or sub-let or a franchise or management agreement entered into that the person obtaining the right is required to meet the provisions of the Act regarding fitness to be a licensee.

*Clause 54* amends Section 154 of the Act. Section 154 currently requires a licensee to give the Chief Executive prior notice of an increase or decrease of the licensed area. The amendment requires not only the licensee but an owner who is not the licensee of licensed premises to give notice to the Chief Executive before altering or rebuilding the premises. Prior approval is required to increase or decrease licensed premises.

*Clause 55* amends Section 155. Section 155 requires a licensee or permittee to remove a minor immediately the minor is found on the premises. It has proven difficult to successfully prosecute for a breach of this section as it is difficult to rebut the assertion by the licensee as to knowledge of an individual's age. The section has been amended to make it an offence for a licensee, permittee and other persons in control of the premises for a minor to be found on the premises. This will encourage licensees to implement systems that will prevent minors gaining access to the premises. Indeed Section 229 of the Act provides a defence in the case where the defendant had exercised the diligence to avoid commission of the offence. One example of due diligence could be to demonstrate to the Court that a rigorous system had been imposed to prevent minors gaining access to the premises. Some other minor consequential amendments have been made to this section.

*Clause 56* amends Section 156 by extending the circumstances in which it is an offence to supply liquor to minors. It is now an offence for a person to supply liquor to a minor in a public place as well as on a street or place adjacent to licensed premises. An exception is made where the minor is supplied liquor, in a public place that has been designated under Section 173C of the Act, and is accompanied by a responsible adult who clearly demonstrates the capacity and readiness to exercise responsible supervision of the minor. This is to cover the situation where (in a place where it is permissible to drink liquor) a parent may wish to give their child a glass of wine. However, minors are never permitted to consume liquor on licensed premises.

*Clause 57* amends Section 157 by correcting an anomaly. The amendment clarifies that minors who are in possession of liquor in the course of performing duties as an employee or receiving training or work experience do not commit an offence.

*Clause 58* amends Section 158 which makes it an offence for a person to falsely represent himself or herself to have reached 18 years with the intent of being supplied with liquor. This section has been extended to also make it an offence for a person to falsely represent himself or herself to have reached 18 years with the intent of entering premises to which a licence or permit relates.

The section has further been amended to create an offence for a person to supply false evidence to obtain a document that is acceptable evidence of age for the purposes of the Act, for example, using a false birth certificate to obtain a proof of age card.

*Clause 59* amends Section 159. The section makes it an offence for a person to give another person a document that is evidence of age, for example, a driver's licence to another person to use as evidence of age for the purposes of this Act. This amendment also makes it an offence for that person to give the other person the document if they suspect it is to be used to obtain a proof of age card.

*Clause 60* amends Section 162 which makes it an offence to take liquor onto premises to which an on-premises licence relates to consume on the premises. This has been amended by excepting premises mentioned in Section 73 i.e. restaurants. Licensed restaurants will be permitted to allow customers to bring liquor for consumption onto the premises. It is a matter of choice for individual licensees.

*Clause 61* amends Section 172 by clarifying the right of the holder of a producer/wholesaler licence or an employee of that holder to take orders elsewhere than at the licensed premises for the purpose of wholesale sales to licensees.

*Clause 62* amends Section 173C by deleting the requirement for a local government to designate public places where liquor may be consumed by resolution. In the absence of this requirement, the *Local Government Act 1994* will allow this function to be delegated to officers of the local government. Local governments have found the requirement to designate these areas by resolution, to be restrictive, particularly in rural areas where

local governments may not meet frequently. It is difficult to be responsive to the needs of the community in those circumstances.

*Clause 63* amends Section 173D by removing the necessity for the local government to advertise and erect the relevant signs itself regarding the designation of a public place and allowing the onus to be placed on the applicant to advertise and erect the signs.

This section has been further amended by providing that in the case of premises used for the primary purpose of eating meals, local governments do not have to advertise or erect signs regarding the designation of the public place. This requirement has become extremely onerous, particularly in larger cities such as Brisbane, with numerous “BYO” restaurants having footpath dining.

However, to assist with the enforcement of the offence provisions of the Act, local government approval for the use of premises, such as liquor consumption with dining on footpaths, must be conspicuously displayed.

*Clause 64* amends Section 173E relating to advertising the repeal or amendment of a designation.

*Clause 65* amends Section 187 by ensuring that noise caused by plant and machinery areas or air conditioning plant rooms of licensed premises is subject to supervision under the Liquor Act the same as the licensed premises themselves.

*Clause 66* amends Sections 199 and 200. Section 199 required a number of minor amendments to simplify and clarify the section.

With the removal of restricted club licences Section 200 was redrafted. The section sets out the licence period and the assessment period for a licence. The scheme of differing licence periods and assessment periods ensures that fees are never paid on current trading. Fees that are assessed are based on the previous year’s trading. This is to avoid constitutional difficulty. This is the same scheme that applies in all liquor licensing regimes in Australia. “Financial year” is defined in the *Acts Interpretation Act 1954* to mean a period of 1 year beginning on 1 July.

*Clause 67* amends Section 203 by removing references to restricted club licences and inserting references to restricted club permits. Section 203 provides for the assessment of a fee on the basis of an estimate when a licence is granted for a portion only of a licensed period. The amendment clarifies that an initial fee is also estimated in the case of a provisional grant

of a licence under Section 123 of the Act and in the case of a licence removed by the Licensing Court under the repealed Act.

This amendment is taken to have commenced on 1st July, 1992 (Clause 2).

*Clause 68* amends Section 205 by inserting an additional power for the Chief Executive to require an audit certificate where he or she is not satisfied with a return of liquor purchases filed by a licensee.

*Clause 69* amends Section 206 which sets out the amounts that may be disregarded when assessing a fee. The amendment allows the Chief Executive to disregard the theft, loss or damage of liquor.

*Clause 70* amends Section 208 by removing references to a restricted club licence.

*Clause 71* amends Section 209 which provides that a failure to pay a licence fee results in immediate suspension and cancellation of the licence at the end of 14 days. A new sub-section is inserted stating that if, within the 14 day period, the fee is paid to the Department, the suspension is lifted and the cancellation does not take effect.

*Clause 72* amends Section 210 which provides for an appeal to the Liquor Appeals Tribunal concerning a failure to pay a fee. The Section has been broadened to enable an owner, mortgagee or person with an interest in the licensed premises registered with the Department to appeal against cancellation of a licence for failure to pay a fee in particular circumstances.

*Clause 73* amends Sections 211 and 212. Section 211 provides that if an appellant is successful in an appeal against cancellation of a licence for failure to pay a fee on the ground of hardship, the fee is payable within 7 days. The amendment empowers the Tribunal, if the circumstances warrant, to extend for payment up to 28 days in the case of a successful appeal. Notwithstanding the extension of time to pay, the licence remains suspended until payment.

Section 212 has been amended to extend the cases where a licence fee may be reassessed. This is to avoid any possible injustices and provide a greater degree of flexibility.

Section 212(1)(e) has been amended to clarify that it only applies to the assessment of initial fees. Section 212 currently provides that where a licence fee has been reviewed and an assessment has been altered, any amount overpaid is paid to the licensee or as directed by the licensee or is

credited against future fees. This has been extended to allow repayment of the fee to a person other than a licensee, for example, in the case where an owner or mortgagee has paid the licence fee.

*Clause 74* amends Section 217 by extending the period from 5 years to 6 years that a licensee is required to keep records relating to the business. This is to ensure that all of the relevant records are available if a fee is reassessed, which can be up to 5 years after the original assessment. As the calculation of a licence fee is based on the period 12 months prior to the licence period it is necessary that the records be kept for 6 years. The section has been extended to include accounting records, as defined.

*Clause 75* amends Section 218. This section deals with the powers of examination of an investigator of records of the business or accounting records. The amendment specifies that if the licensee was a corporation the directors, shareholders, former directors and shareholders are required to produce the relevant records. Former licensees are subject to the same requirement.

*Clause 76* amends Part 9, Division 2. The basis of calculation of a premium has been extended by the addition of three new categories. Additionally the Liquor Act Trust Fund has been abolished.

*Clause 77* redrafts Section 231 of the Act. New Section 231D is inserted making it an offence for a person to pretend to be an investigator.

*Clause 78* amends Section 233. A new provision is added, to allow an analyst certificate to be admitted in proceedings for a breach of the Act, stating that a fluid is liquor.

A provision has been inserted that provides that a statement in a complaint of an offence against the Act, that occurred on licensed premises, that a fluid is liquor is evidence that it is liquor. Experience over the past 2 years since the Liquor Act 1992 was introduced has shown that it can be extremely difficult and in some cases impossible to provide evidence to satisfy a Court that a particular fluid is liquor in a cost-effective manner.

Similarly, a statement in a complaint that occurs off licensed premises, that a fluid was packed in a container of a type that usually holds liquor is evidence that the fluid is liquor. This will allow for prosecution in cases, for example, where a person is observed to be drinking a fluid from a container that normally contains beer, but it would not be cost-effective to take samples and have them analysed. This is a particular problem where offences are being committed in public places.



*Clause 79* amends Section 235 the regulation making power. In particular a new sub-paragraph (i) has been inserted allowing a regulation to be made encouraging the responsible service, supply and promotion of liquor. It is intended that a regulation will be made addressing the issue of irresponsible hospitality practices which encourages binge and excessive drinking. A regulation will be made allowing the developments of Codes of Conduct relevant to particular sectors of the liquor industry.

*Clause 80* amends Section 238 by allowing the Chief Executive to complete matters that were before the Licensing Court. This may only occur with the applicant's consent. There are a number of outstanding matters that have not been formally finalised before the Licensing Court. In most cases these matters have been inactive for a number of years but the applicant has failed to seek its withdrawal from the Court. This amendment allows a simple administrative way of dealing with these outstanding matters.

*Clause 81* inserts a new Section 238(A). This section provides that an application for a removal of a licence under the previous Act that was not disposed of before the 1992 Act commenced may be continued and disposed of as if the Chief Executive were the Licensing Commission. The amendments have been made to remove any doubt that the Chief Executive had the power to perform the functions previously performed by the Licensing Commission. The Licensing Commission ceased to exist when the *Liquor Act 1992* commenced.

*Clause 82* makes some consequential amendments to Section 239.

*Clause 83* removes the reference to restricted club licence in Section 242.

*Clause 84* inserts a new Section 243A. This new section ensures that any spirit merchant's (retail) licences that were transferred to general licences by the introduction of the *Liquor Act 1992* do not gain an advantage over other general licensees. The amendment ensures that such licensees cannot gain added trading advantages merely by varying the conditions under the general licence. To do so would be to avoid the public need, advertising and premium requirements placed on other such licensees. There is no prohibition on varying trading conditions, however, if the effect of the variation would be to increase the trading hours or manner of trading the applicant must comply with the provisions of the Act regarding public need, advertisements and payment of premium.

*Clause 85* amends Section 244 of the Act dealing with transitional provisions. Sub-section (3) has been amended to clarify that permits

granted under the repealed *Liquor Act 1912* ceased to be of effect upon the review of the licence under Section 247.

New sub-section (4) provides that an extended hours permit or licence that extends hours beyond 3:00am expires on 31st March, 1995. After that time any trading beyond 3:00am will be on the basis of renewable permits.

*Clause 86* amends Section 247 to provide that a resort licence under the repealed Act may correspond with either a residential licence, a general licence or a special facility licence under the 1992 Act. This corrects an oversight in the *Liquor Act 1992*. Previously some general licences had been converted to a resort licence to avoid the requirement of providing public bars. These licences correspond to a general licence under the present legislation. Other resort licences have conditions which allow sales of liquor to the public using various resort facilities, for example, golf and tennis. These licences correspond more closely to a special facility licence than a residential licence.

*Clause 87* inserts a new Part 12 dealing with transitional provisions for restricted club licences to restricted club permits.

*Clause 88* amends the Schedule (Rules of Clubs) by removing the distinction between sporting and other clubs with respect to members who are minors.

*Clause 89* provides for amendments to the *Gaming Machine Act 1991* to accord with the amendments regarding a person giving a document to another to be used as evidence of age or to obtain a document that is acceptable evidence of age. These amendments are contained in Schedule 3.

Schedule 1 provides for consequential amendments.

Schedule 2 provides for Acts Review and other minor amendments.