

LIQUOR AMENDMENT BILL 2001

EXPLANATORY NOTES

Objectives of the Bill

The objectives of the Bill are:

- to implement recommendations arising from the National Competition Policy Review of the *Liquor Act 1992* (“the Act”); and
- to amend the Act in order to enhance the administrative efficiency, clarify existing provisions and address anomalies.

Reasons for the Bill

The National Competition Policy Review of the Act identified a number of provisions which are considered to be either barriers to market entry or restrictions on trading practices which are not in the public interest. A number of changes to the Act arise from this Review including:

- abolition of the payment of premiums for general and special facility licences;
- an increase in the allowable distance between a detached bottle shop and the main licensed premises from 5 km to 10 km;
- abolition of the 18 litre per member per day take-away limit for clubs and reduction in the current distance for casual visitors from 40 km to 15 km;
- allowing casual drinking in on-premises (meals), on-premises (cabaret) licences (before 5pm) and the restaurant part of residential licences providing that the business conducted on the premises or part of the premises continues to meet the primary purpose of providing meals;
- an exemption for small bed and breakfast and host farm style operations catering for up to 6 guests from the requirement to obtain a liquor licence;

- the introduction of a limited take away facility for restaurants for patrons who have dined and wish to purchase a single bottle of wine for consumption off the premises;
- the strengthening of the provisions relating to public interest for a licence to ensure that the interests of the community are fully considered before the approval of a new licence;

Additionally, other miscellaneous and administrative amendments are required to ensure the continued effective administration of the Act. The *Liquor Act 1992* recognised contemporary trends in the tourism and hospitality industries, together with changing consumer preferences in leisure and lifestyle pursuits. The Act has been amended a number of times since 1992 and the amendments in this Bill continue to recognise the changing trends and customer preferences. As well, improvements in general administration of the Act result from legal decisions regarding certain provisions of the Act and ongoing consultation with industry stakeholders. The amendments in this category include:

- a restriction on trading between 5 am and 7 am;
- the improvement of the provisions relating to the administrative review of decisions made under the Act;
- the strengthening the primary purpose provisions for each licence type;
- improving the process related to disciplinary action;
- improving enforcement and administrative provisions relating to noise emanating from licensed premises.

Estimated Cost of Government Implementation

Any expenditure associated with implementation of the amendments will be met through existing budget allocations.

Fundamental Legislative Principles

Aspects of the Bill which raise potential fundamental legislative principles are outlined below:

Retrospective effect of prohibition on drive-through facilities for clubs

Clause 54 amends section 85 of the Act by specifically stating (in new subsection (1C)) that 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. This had been a long-standing Government policy although it was never in the legislation.

Clause 106 inserts new section 264 which specifies that section 85(1C) has effect even if before the commencement of the section, the holder of the club licence could sell from a facility ordinarily known as a drive-in or drive-through bottle shop.

The operation of these two sections together will preclude any clubs that currently operate such facilities from continuing to do so. In fact, there is only one club that currently operates such a facility.

The policy to prohibit facilities of this nature resulted from the National Competition Review of the Act and was publicly announced in March 2000. Subsequent to this announcement a club appealed to the Liquor Appeals Tribunal against a decision of the chief executive to refuse an application to operate a drive-in bottle shop. The Tribunal granted the application in June 2000 and the club commenced trading in October 2000.

The Government advised the club in July 2000 that it intended to pursue a legislative amendment to prohibit these facilities.

It could be argued that the effect of the Bill is to adversely affect the interests of this club. However the section does not purport to operate retrospectively, in that it does not affect the trading that occurred prior to the commencement of the Bill.

Even if the view is taken that a fundamental legislative principle is infringed, it is considered that the infringement is justified. The policy was well known within the industry and of long-standing. Additionally, reasonable steps were taken to ensure that the particular club did not incur costs without full knowledge of the Government's intention in this regard. As stated earlier, the policy was publicly announced and the particular club was advised in writing of the intended amendment.

Urgent Suspension of Licence

Clause 85 inserts a new section 137C which allows the chief executive to immediately suspend a licence, where the chief executive believes there is ground to take a disciplinary action with respect to the licence and harm may be caused to members of the public if urgent action to suspend the licence is not taken.

At the same time the chief executive must take disciplinary action. The suspension lapses after 60 days unless earlier it is revoked or a decision made about the disciplinary action. Licensees have the right to make representations in the course of a disciplinary action and have a right of appeal to the Liquor Appeals Tribunal.

There is no right for the licensee to make representations before the suspension is imposed. It could be argued that this denies the licensee natural justice. A suspension may affect a licensee's financial position.

However, the exercise of this power is subject to two conditions before it may be imposed. A ground for taking disciplinary action must exist and harm to the public a result if urgent action not taken.

In the past circumstances have arisen where such a power could have been used. The circumstances in which an urgent suspension may be required include an activity such as a rave or dance party where a significant number of persons attending require medical attention due to drug use.

On balance, it is considered that such a power is justified.

Reversal of the onus of proof

Clause 93 amends section 155 of the Act relating to minors on licensed premises.

Section 155 specifies that 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 and if the minor is on the premises the licensee, permittee and other person in control of the premises each commits an offence.

Section 155(4) of the Act specifies the categories of minors to whom section 155 restrictions do not apply.

Clause 93 replaces subsection (3) with new subsections (3) and (3A). New subsection (3) clarifies that an employee or an agent of the licensee or permittee also must not allow a minor to enter the premises to which the licence or permit relates.

New subsection (3A) re-states the current position under subsection (3) that the licensee, permittee and if another person is in control of the premises, that person, are equally responsible criminally for failure to ensure that a minor is not on the premises. It further specifies that if an employee or agent of the licensee or permittee allowed a minor to enter the premises that person is also equally responsible and commits an offence.

Each of the categories of persons is deemed criminally liable for each other's failure to ensure that a minor is not on the premises.

Section 230 provides a defence to a charge under section 155 where the defendant honestly and reasonably believed that the person was of the age of and they had sighted acceptable evidence of age.

Additionally section 229 provides a defence for licensee's if they are able to prove that the offence occurred without their knowledge or authority and that they had exercised due diligence to avoid the offence. Due diligence could be providing proper training for staff.

The provision is considered necessary to prevent persons from avoiding their obligations with respect to minors on licensed premises by shifting responsibility to security staff and door staff. Licensees have been able to avoid liability as a result of other persons not appropriately checking identification and allowing minors to enter.

Whilst the onus of proof is reversed by providing that each person commits an offence if a minor is found on the premises, the defence provisions available mitigate the apparent harshness of the provision.

The reversal of the onus of proof is necessary to ensure that licensees, persons in charge of licensed premises and others involved in the industry take their responsibilities in terms of underage persons seriously.

Increase in maximum penalty for breach of regulation

Clause 101 of the Bill amends section 235(3)(b) of the Act by increasing the amount that may be fixed for an offence against the regulation from 10 penalty units to 40. This increase makes the penalty for a breach of the regulation the same as that for a breach of a condition of an adult entertainment permit.

The increase in penalty recognises reflects the nature of the regulatory breaches that frequently occur. Matters dealing with adult entertainment permits and responsible hospitality practices are detailed in the Regulation.

Consultation

The National Competition Review of the Act was carried out by an independent panel which prepared a report which was released for public comment in September 1999.

An Interdepartmental Working Group was established which as part of its duties consulted with Aboriginal and Torres Strait Islander Community Councils.

The following agencies were also consulted:

Queensland Government

Arts Queensland

Department of Aboriginal and Torres Strait Islander Policy Development

Department of Communication & Information, Local Government,
Planning & Sport

Department of Employment, Training, & Industrial Relations

Department of Families, Youth,

& Community Care and Disability Services Queensland

Queensland Health

Department of Justice and Attorney-General

Department of Primary Industries (Office of Rural Communities)

Department of Premier and Cabinet

Department of State Development (Business Regulation Reform Unit)

Environmental Protection Agency

Liquor Appeals Tribunal

Queensland Police Service

Queensland Treasury

Queensland Treasury, National Competition Policy Unit

Tourism Queensland

Industry / Community

Brisbane City Council

Clubs Queensland

Gold Coast City Council

Queensland Bar Association

Queensland Cabarets Association

Queensland Golf Union

Queensland Hotels Association

Queensland Law Society

Restaurant & Caterer's Association

Royal Queensland Bowls Association

RSL & Services Clubs

Association Queensland

Valley Music Council

All Local Councils through the

Local Government Association

NOTES ON CLAUSES

Clause 1 sets out the short title of the Act.

Clause 2 provides that this Bill commences on a day to be fixed by proclamation.

Clause 3 states that the *Liquor Act 1992* is amended.

Clause 4 inserts a new section 3A which outlines the underlying principle of the Act. A person selling liquor does so as part of conducting a business on premises. That business is the primary purpose under the licence. Subsection 2 specifies that the Act states the primary purpose of each business under each licence type. Subsection 3 provides that the Act must be administered in accordance with the underlying principle and subsection 4 makes a construction promoting the underlying principle the preferred one. This clause reflects the increased importance of the primary purpose provisions of the Act as the authority given by the various licence types becomes more general and less unique to the individual licence.

Clause 5 amends section 4 (Definitions) by inserting new definitions including:

“Detached bottle shop” – a new definition is inserted in the Act to formally recognise the term that is commonly used in the industry for premises approved under section 59(1)(d).

“Disciplinary action” – this definition outlines the disciplinary actions that the chief executive may take against a licensee in certain circumstances. The actions include cancelling the licence, suspending the licence (not more than one year), closing the premises or part of the premises for a stated period, varying the licence, reducing the times at which the licensee may conduct business, disqualifying the licensee from holding a licence (not more than five years) or requiring the licensee to pay the department an amount of not more than \$10,000 or reprimanding the licensee. These actions are the same available to the chief executive under the existing disciplinary procedures in sections 136 and 137. However, as these sections have been amended this new definition is required.

New definitions of all the on-premises licence sub-categories are inserted. In each case, the section refers to the substantive provisions of the Act for the particular licence.

“Ordinarily set aside for dining” – this phrase is used in various sections of the Act as the basis for particular sales of liquor in particular circumstances, for example, on Christmas Day. The definition specifies that such an area must not be set aside merely for a particular occasion. It is the ordinary use of the area that is relevant.

“Provisional licence” – means a licence under section 123(2).

“Unlicensed person” – the effect of the amendment to this definition is that a licensee under the *Wine Industry Act 1994* and a person who is the holder of an approval from the Commonwealth allowing them to sell liquor, is a licensee under the Act for the purposes of section 84. Section 84 specifies that the holder of a producer/wholesaler may sell liquor to a licensee. A different amount of fees are payable by producer/wholesaler licensees for sales made to unlicensed persons.

Subsection 3 amends the definition of **“cabaret”** by deleting words which are no longer necessary as there is a new definition of entertainment contained in section 4AA.

Clause 6 inserts new section 4AA, a definition of “entertainment” for on-premises (cabaret) licence. The new definition does not change the requirements in this respect. It merely places them in a separate section.

Clause 7 amends section 6 (Acceptable evidence of age) by providing that the chief executive may approve a form of identification in writing that is acceptable evidence of the age of a person for purposes of the Act. This amendment will allow the chief executive to approve other forms of evidence of age which may be suitable such as other licences issued by the State.

Clause 8 amends section 7 which specifies that certain containers of liquor are taken to be a total quantity of liquor.

Many producer/wholesaler licences have conditions which restrict sales to a minimum quantity of 9 litres. Previously many spirits were packaged in 750ml containers and the Act stated that 12 (one carton) of these containers were an acceptable equivalent of 9 litres.

However, the industry standard has changed to 700 ml containers and therefore a wholesaler would breach the Act by selling only one carton. This amendment will correct this situation.

Similarly, the standard container for beer has been reduced from 375 ml to 345 ml.

Clause 9 amends section 9 (Ordinary Trading Hours), in subsection (3)(a)(i) by clarifying that for all licensed premises, on Anzac Day, ordinary trading hours do not include any period before 1 pm except for a person consuming a meal on the premises between 10 am and 1 pm or a period between 6 am and 1 pm that the chief executive approves in a particular case.

Clause 10 inserts a new section 10A dealing with meals prepared and served to be eaten on the premises. A number of provisions of the Act refer to meals prepared and served to be eaten on the premises. In particular, this phrase is used when restricting the circumstances of trade on special days such as Good Friday, Christmas Day and Anzac Day. This phrase is also critical in the provision relating to the primary purpose of an on-premises (meals) licence.

New section 10A provides that such meals must involve adding value to the food comprising the meal. It further specifies that a person does not add value to food comprising a meal by merely heating a product that the person purchased as a pre-prepared product such as a pre-packaged pie. Subsection 3 however, states that the section does not prevent the provider of the meals offering a menu that includes some items to which no value is added providing the majority of menu items are meals that involve adding value. Subsection 3 requires that the menu items must not only be offered but also be available.

Clause 11 inserts a new section 12(2) stating the types of sales to which the Act does not apply and therefore a licence is not required. These exemptions from the Act are currently detailed in the *Liquor Regulation 1992*. Such an approach is an inappropriate delegation of the legislative power and the opportunity has been taken to correct it.

As well, a further category of exemption has been added – a sale to a guest at bed and breakfast and host farm accommodation. Definitions of “bed and breakfast accommodation” and “host farm accommodation” are included in subsection (4). Currently such establishments must obtain a residential licence. Given the low level of impact on the community by the sale of liquor in such establishments, it is considered an unnecessary imposition for them to obtain a licence.

Clause 12 inserts new sections 20A and 20B. Section 20A provides that a member of the Liquor Appeals Tribunal has, in performance of his or her duties as a member, the same protection and immunity as a District Court judge has in performance of the judge's duties.

Section 20B requires the chairperson of the Tribunal to give the Minister a report containing a review of the operation of the Tribunal for the previous year ending 30 June no later than 31 August each year.

Clause 13 amends section 21, which relates to the jurisdiction and powers of the Tribunal, to reflect the new definition of disciplinary action inserted in the Act.

Clause 14 amends section 22 which provides for the constitution of the Tribunal. The Act currently provides that the Tribunal is properly constituted by three of its members, one of whom must be legally qualified. This amendment will allow the Tribunal to be constituted by one member alone with legal qualifications for a minor appeal. New subsection (3) specifies the meaning of minor appeal.

Clause 15 makes some consequential amendments to section 23 necessitated by the introduction of the concept of a minor appeal.

Clause 16 makes consequential amendments to section 26 reflecting the introduction of minor appeals.

Clause 17 inserts new section 26A, a power for the Tribunal to give directions about a matter within its jurisdiction. This new power will complement the existing powers the Tribunal exercises when considering appeals. Section 25 of the Act requires the Tribunal to operate with as little formality as possible whilst still ensuring a fair hearing and a proper consideration of the matter. The Tribunal is not bound by rules or practice as to evidence and may inform itself on any matter that it considers appropriate and may regulate its own procedures. Section 26 sets out the powers of the Tribunal in proceedings. Section 26A is intended to complement the existing powers.

Clause 18 replaces sections 30 and 31. Section 30 is amended to clarify that licensees or permittees can appeal to the Tribunal against decisions of the chief executive relating to disciplinary action or an urgent suspension of a licence or cancellation, suspension or imposition or variation of conditions of a permit.

Section 31 provides the process for starting an appeal under the Act. Currently, an appeal may be started by a person filing a notice of appeal with the registrar of the Tribunal within 28 days after receipt of notice of the chief executive's decision. However, a copy of the notice of appeal does not have to be given to the chief executive until 7 days after it is filed with the registrar. This delay does not serve any purpose and can result in unnecessary delays in the hearing of appeals. This amendment requires the registrar to give a copy of the notice of appeal to the chief executive within 3 days of receiving it.

Clause 19 amends section 34 by omitting the existing subsection 1 which states that an appeal is by way of re-hearing of the matter unaffected by the decision appealed against and specifying that it is by a rehearing on the evidence that was before the original decision maker. This amendment makes the appeal a review of the original decision by the chief executive. It is part of a series of amendments contained in this Bill which will streamline the appeal process without interfering with a person's rights. Proper supervision of the decision-making process is ensured.

Subsection 2 amends Section 34(2) by allowing extra time within which an appeal must be set down for hearing. Currently, the time frame is 28 days after the filing of a notice of appeal with the registrar. This is extended to 2 months. This will allow applicants more time to prepare their case for the Tribunal.

Clause 20 inserts new Section 35A into the Act. This section ensures that despite the operation of Section 34(1) which requires an appeal to be by way of rehearing on the evidence that was before the original decision maker, an appellant is not unjustly dealt with. In certain circumstances the Tribunal may grant a participant leave to adduce fresh, additional or substituted evidence ("new evidence"). The Tribunal must be satisfied that the person who wishes to adduce the new evidence did not know, or could not reasonably be expected to have known of the existence of the new evidence at the original proceeding, or in the special circumstances it would be unfair not to allow that evidence to be adduced. If the Tribunal grants leave to adduce new evidence, it has a number of options available. It may:

- adjourn to allow the chief executive to reconsider the decision together with the new evidence; or
- if appropriate for the applicant to make a new application – require the applicant to make a new application to the chief executive; or

- continue with the appeal by way of re-hearing on the evidence before the decision-maker and on the new evidence.

The section also gives the chief executive a right to apply to reconsider the decision together with the new evidence and the Tribunal must grant an adjournment for a reasonable time.

Subsection 5 sets out the criteria the Tribunal must consider when deciding if it is appropriate for the applicant to make a new application. This includes whether the new evidence substantially changes the application, the subject of the appeal, or whether additional people may be affected by the amended application and the additional people should have an opportunity to comment or object to the amended application. This section addresses the scenario where applicants present particular material to the chief executive for consideration in making the original decision and then upon appeal present further material to the Tribunal. People who the Act intends to have an opportunity to comment or object to the application are therefore prevented from doing so.

Clause 21 amends section 38 which deals with the costs on appeal. The section provides that each party must bear their own costs except in the limited circumstances set out in subsection (2). As new section 26A gives the Tribunal power to order expert witnesses to prepare a report, it is necessary to amend section 38 to give the Tribunal the power to order costs as it considers appropriate.

Clause 22 omits existing section 39 and inserts a new section clarifying that, with the consent of all parties to an appeal, the Tribunal may deal with the appeal or part of the appeal without holding a hearing. In some cases, all parties to an appeal may be satisfied with the matter being considered on the basis of the written material before the Tribunal. This amendment clarifies that this may occur. This may be of particular benefit to appellants who live in remote areas.

Clause 23 inserts new section 41A. The section reflects current practice by formally requiring the Tribunal to keep a written record of its decisions. This record is to be available for inspection by members of the public. A participant may ask the Tribunal to suppress information about the person's reputation, history of behaviour or attitude to the management and discharge of the person's financial obligations. This request may be made at the time of the proceeding or at a later time. The Tribunal may order that the sensitive information not form part of the record. Before making such an

order the Tribunal must ask the chief executive about the extent of publication of the information and the time required to remove it. The type of information that can be suppressed is "sensitive information" as defined in subsection (6).

New section 47A allows the publication of such material on the internet or other media pursuant to an arrangement between the Tribunal and the chief executive. Together these clauses reflect existing practice but safeguards are inserted to ensure that an individual's privacy is protected.

Clause 24 amends section 42 by allowing the chief executive's powers under the Act to be delegated to a person employed by a local government. This reflects the change in delivery of government services that has occurred. Some functions under the Act may be delivered through local government in the future. The section is further amended by requiring persons to whom a delegation of powers is given by the chief executive must be appropriately qualified. This accords with comments previously made by the Scrutiny of Legislation Committee in this regard but also reflects current practice.

Clause 25 amends section 43 which requires the chief executive to keep a register of licences permits and applications. The new section 43 specifies further the types of matters to be kept in the register. It also requires the chief executive to ensure the register does not contain sensitive information. "Sensitive information" is defined in section 41A(6). The chief executive must ensure the register does not contain information the chief executive reasonably considers is commercially sensitive. Particulars about convictions given to the chief executive by court staff as required under section 45 may not form part of the register. It is important that the details of the register be specified to protect the privacy of individuals as the register is available to the public.

Clause 26 amends the heading of section 45 to more accurately reflect the content of the section.

Clause 27 inserts a new section 47A allowing the chief executive to publish specific information in a way that the chief executive considers appropriate including on the internet or through some other telecommunication media. Specifically the chief executive may publish all or part of the register of licences, permits and applications and, with the agreement of the Tribunal, the decisions of the Tribunal. This section is necessary due to the general restriction on release of information contained in section 48 of the Act.

Clause 28 amends section 48 by adding categories that are exempted from the general secrecy provisions contained in subsection (1). The categories enhance the transparency of the administrative process in the Act by allowing disclosure of appropriate information.

Clause 29 amends section 58(2) which currently specifies that only one licence may be granted or held for any premises or any part of premises. This provision is continued but clarified by stating that 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 of the premises. The section further specifies that in such circumstances, the licensee under both Acts must be the same person and the nominee under the *Liquor Act* must be a nominee under the *Wine Industry Act 1994* and liquor may be sold under the licence under this Act only for the trading hours authorised under the licence.

Clause 30 inserts new section 58A specifying the primary purpose of a business conducted under a general licence. The primary purpose of a business conducted under a general licence is the sale of liquor for consumption on the premises or the sale of liquor for consumption on and off the premises. A general licensee may be required to provide meals and accommodation under the licence.

Subsection (2) provides that the authority under a general licence to sell or supply liquor does not apply unless a business is conducted on the licensed premises in accordance with the primary purpose specified in subsection (1).

The section further specifies 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. To obtain a general licence it is necessary to sell liquor for consumption on the premises and not only sell take away liquor.

There are a small number of existing general licences that are permitted to sell take-away only. These premises were originally licensed as spirit merchant (retailer's) under the *Liquor Act 1912* and the trading conditions were preserved by the 1992 Act. To ensure that no individual is disadvantaged by the operation of this section, these unique licences will continue to be preserved by the transitional arrangements of this Act.

Clause 31 inserts a new section 60 which restricts the granting of a general licence for premises that the chief executive considers are, or are to be, used primarily for a supermarket. Such premises may not be granted a general licence.

Clause 32 inserts new section 61A. Section 61A provides that the primary purpose of the business conducted under a residential licence is the provision of accommodation. As with the other primary purpose sections, subsection (2) provides that the authority to sell or supply liquor does not apply unless the business conducted on the licensed premises complies with the primary purpose for the licence type.

Clause 33 amends Section 62. Subsection (1)(b) is amended by clarifying that the authority of a residential licence to sell liquor to persons dining on the premises, applies to the part of the premises stated in the licence as ordinarily set aside for dining. In other words, the authority extends to the restaurant section of such premises. Many holders of residential licences such as motels have restaurant sections that are open to the public. The Act specifies that such licensees may sell to the public as if the licence were an on-premises (meals) licence for that part of the premises. However, unlike on-premises (meals) licences, this authority does not extend to the sale of liquor for consumption off the premises.

Subsection (5) inserts a new subsection (4) which clarifies that where the holder of a residential licence is catering for a function on premises other than licensed premises, the sale of liquor must be to a person genuinely attending the function and there must be some aspect of provision of food by the licensee. This is consistent with similar provisions applying to other licence types with this privilege.

Subsection (5) requires the chief executive, in deciding whether a licensee of a residential licence is selling or will sell as if the licence were an on-premises (meals) licence, to consider the indicators set out in section 73(3) and any other relevant factor. Section 73 deals with on-premises (meals) licences.

Previously the authority under a residential licence to sell to persons (other than residents) was restricted in a similar manner to on-premises (meals) licence. Except in limited circumstances a person had to be consuming a meal to be supplied with liquor. Like on-premises (meals) licences the restriction has now be removed and liquor may be supplied, in the dining area, other than in conjunction with the consumption of a meal

providing the primary purpose of that part of the premises is the provision of meals prepared and served to be eaten on the premises.

Clause 34 omits section 63(c) which specified the number of residential units required on premises to which a residential unit related. This is an unnecessary restriction given that the requirement to comply with the primary purpose has been strengthened.

Clause 35 inserts a new section 64 which clarifies the circumstances in which liquor may be supplied under authority of a residential licence to a resident or a guest of a resident (in the resident's company). Outside ordinary trading hours liquor must be consumed in a residential unit on the licensed premises or a part of the licensed premises approved for the time being by the chief executive for the purpose, for example, a guest's lounge.

Clause 36 inserts a new section 65 which specifies that liquor supplied under the 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 licence as set aside for dining. This section does not prevent persons attending a genuine function from consuming liquor elsewhere on the premises. The restriction merely relates to members of the public using the restaurant facilities, whether to dine or just drink liquor as is now permissible.

Clause 37 amends section 67 of the Act by omitting subsections (2) and (3). Subsection (2) is now covered by section 62. Subsection (3) contained a reference to certain types of premises under section 63(c) which has now been omitted.

Clause 38 amends section 70. It clarifies that the authority under an on-premises licence to sell liquor for consumption off the licensed premises is restricted to the sale of liquor as ancillary to a function. It does not include the authority to sell liquor for consumption off the premises, that is, take away. It also provides that the licensee must provide food for the function. This provision applies to all the different types of on-premises licences.

In the case of an on-premises (other activity) licence the function must relate to the activity as specified in the licence by the chief executive.

This section does not inhibit the right of the holder of an on-premises (meals) licence to sell liquor to persons in accordance with section 73A(b). Section 70 deals with sales where the licensee is catering for a function.

Clause 39 inserts a new section 70A which specifies that the primary purpose of an on-premises (function) licence is the provision of premises and catering facilities for use by persons genuinely attending a function held on the premises.

The authority of the licence to sell does not apply in the absence of a business being conducted on the premises complying with the primary purpose.

Clause 40 inserts a new section 71A which provides for the primary purpose of a business under an on-premises (cabaret) licence. Such premises are unique in that there is a different primary purpose for one part of the day compared to the other. Between the hours of 10 am and 5 pm such premises must trade as if it was an on-premises (meals) licence. After 5 pm the primary purpose of cabaret premises is the provision of entertainment. The section specifies that the indicators relevant to on-premises (meals) licences stated in section 73A(3) are also relevant for cabaret licences.

Clause 41 inserts a new section 72A which reflects the change in trading conditions for on-premises (meals) licences which these amendments are introducing. Previously, the holders of such licences could only sell and supply liquor in conjunction with the consumption of a meal. There was an exception to this rule to the extent of 20% of the number of persons who can be seated to eat a meal in the part of the premises ordinarily set aside for dining. On-premises (cabaret) licences were subject to the same restriction between the hours of 10am and 5pm. The restaurant section of residential licences were also subject to this restriction. This Bill removes the 20% restriction, allowing liquor to be sold or supplied without requiring the consumption of a meal providing that the primary purpose of the business conducted on the premises at that time, ie the provision of meals, is still met.

The authority of the holder of an on-premises (cabaret) licence to sell and supply liquor to persons who are dining on the premises does not extend to the sale of liquor for consumption off the premises.

Clause 41 also inserts a new section 72B which extends the authority to supply liquor on cabaret premises to persons genuinely attending a function held on the premises.

Clause 42 inserts new sections 73, 73A and 73B. Section 73 provides for the primary purpose of a business conducted under an on-premises (meals) licence. The primary purpose of such licences is the provision of meals prepared and served to be eaten on the licensed premises.

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

Subsection (3) specifies some indicators that are to be considered in deciding whether the primary purpose of the licence is or will comply with subsection (1). The indicators include matters such as seating and standing arrangements, the number of staff for preparing and serving meals, kitchen arrangements including the hours of operation of the kitchen and a comparison of the number of meals consumed and the amount of liquor sold. This list is not exhaustive and other matters may be considered. The types of indicators outlined demonstrate that the entire operation of a particular business will be considered rather than individual incidents in determining whether the primary purpose is being met.

Section 73A specifies that under the authority of an on-premises (meals) licence liquor may be sold or supplied for consumption on the premises to a person eating a meal on the premises and to other persons. Each adult diner may be sold or supplied with one unopened bottle and one opened bottle of wine to take away.

Section 73B extends the authority under an on-premises (meals) licence to the supply and sale of liquor to persons genuinely attending a function on the premises, if the chief executive specifies so on the licence.

Clause 43 amends section 74 by substituting the new definition of on-premises (meals) licence in place of the previous wording. It also makes a consequential amendment to the section by deleting paragraph (b) which was necessary when restaurants could have approval for up to 20% of diners to be supplied liquor without having to consume a meal.

The opportunity has been taken to redraft this section to clarify who is responsible for displaying the details as required under the section.

Clause 44 inserts a new section 74A specifying the primary purpose of a business conducted under an on-premises (transport) licence. The primary purpose is carrying passengers commercially on a boat, train, vehicle or aircraft.

Clause 45 amends section 75 by making some consequential amendments.

Clause 46 inserts section 75A specifying that the primary purpose of a business under an on-premises (presentations) licence is the provision of facilities for sporting, cultural, theatrical or cinematographic presentations. As with all the sections a business consistent with the primary purpose must be conducted on the premises for the authority of the licence to apply.

This does not alter the primary purpose currently existing under the Act; it just expresses it in a manner consistent with the other sections of the Act.

Clause 47 amends section 76 by making a consequential amendment.

Clause 48 amends section 77(1) by making a consequential amendment.

Clause 49 inserts new sections 78, 79, 80 and 81. Section 78 specifies that 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 and links the authority of the licence to the conduct of the business.

Section 79 continues the existing requirement for the sale of liquor on such premises to be at a liquor outlet specified in the licence for consumption within that outlet. Subsection (2) of section 79 specifies that liquor may be sold and supplied to persons genuinely attending a function held on the premises on the conditions the chief executive states in the licence.

A new subdivision 8 is inserted headed – Other Activity. New section 80 specifies the primary purpose of a business conducted under an on-premises (other activity) licence as the provision by the licensee of an activity for persons on the licensed premises as stated in the licence. The Act previously provided, in Section 69(1)(h) that an on-premises licence can be granted where the primary purpose of the premises is for the use of any other activity and purpose approved by the chief executive. The Act however was silent with respect to any further provisions relating to licences in this category.

The types of businesses that currently hold on-premises (other activity) licences are commercial sporting enterprises, for example, indoor cricket centres. Such businesses are ineligible to apply for other categories of licence such as a club licence as they are a commercial venture and to obtain a club licence under the Act a body must be non-profit.

Section 81 extends the authority, in certain cases, of an on-premises (other activity) licence to the sale of liquor to persons on the licensed premises genuinely attending a function relating to the activity stated in the licence. This particular extension of the authority of the licence requires the chief executive to state it on the licence and is subject to the conditions stated in the licence.

Clause 50 inserts new section 81A providing that the primary purpose of a business conducted under a producer/wholesaler licence is either or both of the following –

- the production and wholesale sale on the premises of liquor made on the premises;
- the wholesale sale on the premises of liquor.

Subsection (2) requires the business conducted on the premises to comply with the primary purpose for the authority to apply.

Clause 51 makes a consequential amendment to section 83 resulting from the new primary purpose provision.

Clause 52 amends section 84. Section 84 specifies the types of sale that the holder of the producer/wholesale licence is permitted to make. The section is deficient in that it fails to make provision for the holders of approvals under the Commonwealth to sell liquor, although it does refer to a person authorised by the law of another state or territory or foreign country. This deficiency is rectified.

The section is also clarified by specifying further categories of persons to whom a producer/wholesaler may sell.

Section 84(4) is amended by clarifying that the section does not apply, where a licensee also holds a brewery licence under *The Excise Act 1901*, to sales of the licensee's liquor. "Licensee's liquor" is liquor produced on the licensed premises. This ensures there is no conflict between the Commonwealth legislation and the Act. Where such licensees are selling liquor other than licensee's liquor, the provisions of section 84 apply.

Clause 53 inserts new section 84A specifying the primary purpose of a business conducted under a club licence. The primary purpose of the 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 objectives. It is intended that the focus of the club should be these things and not the sale of liquor. Whilst the sale of liquor could be seen to be a service to

members, it is intended that it be ancillary to the other services the club provides.

Clause 54 amends section 85. Section 85(1)(a)(v) states that liquor may be sold to a visitor to the club whose ordinary place of residence is in the state at least 40 km from the club's premises for consumption on the premises. This distance is reduced to 15 km by this amendment.

The amendment to this section will also allow RSL or services clubs to sell liquor for consumption on the premises to defence members. Defence member is later defined in section 85(5). This provision is not mandatory, it merely allows RSL or services clubs to sell to defence members if the club chooses to do so.

A new subsection (1A) is inserted into section 85 which will eliminate the need for many clubs to apply for general purpose permits to sell liquor from areas on the playing fields attached to the club or at another location. The licensed premises under a club licence covers the clubhouse and not the playing fields attached to the clubhouse. When sporting fixtures are played on the fields adjoining the clubhouse, a general purpose permit is required to enable the sale of liquor from specified areas on the field. Similarly clubs must obtain general purpose permits where their playing fields may be located some distance from the clubhouse.

This amendment will allow a club to specify, in the licence, the areas from which it intends to sell liquor on particular occasions, for example, its sporting fixtures to be held at the playing fields either adjacent to the club house or at some distance to the club house. If these areas are specified on the licence the club will be authorised to sell liquor from the areas during the ordinary trading hours for the club licence to members of the public attending the particular event for consumption in that defined area. The event must be the playing of a sport or game for which the club is established.

At least fourteen days before the event the club must give written notice about the event to the police officer in charge of the locality in which the event is to be held. No take away liquor may be sold in these defined areas.

New section (1B) specifies that the defined area referred to in subsection (1A) becomes part of the licensed premises for the period the licensee is authorised to sell liquor. This ensures that the obligations and rights of a licensee continue to apply in those areas.

New subsection (1C) specifies that a club licence must not operate a facility ordinarily known as a drive-in or drive through bottle shop. Section 264 states that this section applies to existing operations of this nature.

Subsection (5) makes some consequential amendments to section 85(2) and subsection (6) inserts a definition of “defence member” for the purposes of subsection (1)(a)(vii).

Clause 55 amends section 86 by inserting a new paragraph (a) in subsection (1) stating that the chief executive may only grant a club licence where the primary purpose of the business to be conducted on the premises is as mentioned in section 84A(1).

Clause 56 omits section 87 which restricted a club from selling more than 18 litres of liquor on each day to a member of the club or a reciprocal club for consumption off the premises. There will no longer be any limitation on the amount clubs can sell to members.

Clause 57 inserts a new section 92 which specifies the primary purpose of a business under a special facility licence.

Clause 58 amends section 94 by inserting a reference to the primary purpose specified in section 92 in subsection (1). Section 94 is also amended by the addition of subsection (3) which specifies that the chief executive must not grant a special facility licence to a person for premises that the chief executive reasonably considers is or is to be, used primarily as a supermarket.

Clause 59 inserts a new section 94A stating the primary purpose of a business under a limited licence. Again, the authority under the licence does not apply unless such a business is conducted on the licensed premises.

Clause 60 inserts a new subsection (2) in section 96 specifying that premises used primarily as a supermarket may not be granted a limited licence.

Clause 61 amends section 97 by inserting a reference to a new type of permit - a catering away permit.

Clause 62 omits section 103 and inserts new sections 102A-G and 103.

New section 102A replaces existing section 103 which restricts the grant of an extended hours permit. The existing restriction regarding the granting of extended hours permit on Good Friday, Christmas Day or Anzac Day is continued.

Sections 102B and 102C establish a scheme for the consideration of applications for extended hours permits that would result in the trading between 5 am and 7 am. Section 102B relates to such applications that would extend trading hours on a regular basis. In such cases the chief executive must give a copy of the application to the local government for the area in which the premises are situated asking for a recommendation and reasons about the application. Before deciding the application, the chief executive must have regard to the recommendation of the local government and so far as practicable having regard to the objects of the Act, adopt the recommendation.

Such permits may not be for more than six months. However renewal of a permit is possible. The same procedure applies for a renewal as applies for the initial application. The views of the local government for the area in which the licensed premises are situated must again be sought for the forthcoming period.

Subsection (5) of section 102B ensures that the other matters required by the Act to be considered when deciding an application for an extended hours permit that would extend trading hours on a regular basis must still be considered. In particular, the matters set out in sections 116, 118, 121 and 121A must still be considered.

Section 102C deals with applications for an extended hours permit that include trading between 5 am and 7 am in other circumstances that is, one-off occasions. Subsection (2) states some limitations on the chief executive's discretion to grant such applications.

Subsection (3) specifies that any other section that would apply to such an extended hours permit continues to apply, for example section 110.

Section 102D defines the terms used in the new *Division 12A - Catering away permits for public events*. For the purposes of this division "**licence**" means a general licence, a residential licence, an on-premises licence and a limited licence. Each of these licences has an extension of the authority under the licence which allows the sale of liquor on premises that are not the main premises. This allows the holder of such licences to cater for functions away from the licensed premises.

"Main premises" means the licensed premises described in a licence.

The terms "**private event**" and "**public event**" are defined in this section.

Section 102E requires a licensee who is planning to sell or supply liquor at a public event to apply for a catering away permit. Subsection (2) states that an application must 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. Additionally such an application must be accompanied by a proposed event management plan for the public event stating matters about which the chief executive is to be satisfied.

This section does not limit the general powers regarding the making of applications which are contained in section 105 of the Act.

Section 102F lists the matters about which the chief executive must be satisfied before granting a catering away permit for a public event. In general, in catering for the public event, the licensee must be complying with the primary purpose of the business under the licensee's licence. This does not apply in the case of residential licences where the primary purpose is the provision of accommodation which obviously would not be part of catering for a function.

Whilst this section requires the chief executive be satisfied that appropriate planning for the public event has been carried out with the Police Service and the local government for the locality in which the public event is to be held, it does not mean that the applicant for the permit must have carried out such planning. At large events such as a race meeting or a rock concert the licensee who is providing the catering does not have the sole responsibility for carrying out such planning. This is recognised in the section. What the chief executive would require would be evidence that such planning has been carried out by the organiser of the event.

Similar considerations apply with respect to the matters specified in paragraphs (c) and (d) of section 102F which relate to amenity and safety issues in the locality in which the event is to be held.

Subsection (3) specifies that the chief executive must not grant catering away permits at any time on Good Friday or Christmas Day or before 1 pm on Anzac Day. This provision is consistent with restrictions on trading hours for all licensed premises on these special days.

Section 102G specifies that for the period the licensee is authorised to sell liquor at the public event the area defined in the permit forms part of the licensee's licensed premises. This ensures that the obligations and rights of a licensee apply in such circumstances, for example, licensees may not serve intoxicated persons on licensed premises.

New section 103 sets out the authority under a catering away permit which includes selling liquor at the public event stated in the permit; and at the time or days stated in the permit and subject to the conditions stated in the permit. Subsection (2) states that the authority extends to the sale or supply for consumption within the defined area at the public event. It does not extend to the sale of take-away liquor.

A licensee who, for example, has a contract to cater at regular events at the same venue may apply for a permit that would cover all such events. An example, might be the contract to supply catering at the Brisbane Cricket Ground for all cricket matches for the next two years.

Clause 63 amends section 103G(1)(v) to clarify that an adult entertainment permit is for the time stated in the permit. Existing section 103G(3) states that adult entertainment permits are subject to the conditions prescribed under a regulation or imposed by the chief executive. There is some doubt as to whether this includes times that are different to ordinary or extended trading hours. This amendment clarifies that an adult entertainment permit may be granted for times that differ from such hours.

Further, this amendment omits section 103G(2) which restricted a permittee to providing adult entertainment in one approved area at any time. In practice, some premises are configured in such a way that it is acceptable for adult entertainment to be provided in more than one area at any time.

Clause 64 inserts new section 103K which restricts the grant of an adult entertainment permit. An adult entertainment permit relating to premises where a public or private event is to be held may not be granted other than at the main premises under a licence or in the case of a general purpose permit or a restricted club permit, the premises to which the permit relates. Main premises in this context do not include a detached bottle shop or areas defined in accordance with section 85(1A) in the case of a club licence.

Clause 65 amends section 104 by omitting subsection (2). Section 104 allows patrons of licensed premises to consume liquor purchased before the end of trading hours for a period of thirty minutes after the end of trading time. Subsection 2 specifically excluded approved areas where adult entertainment was being provided from this privilege. However, in practice, it has been found that this restriction is very difficult for licensees to enforce as the customers from the approved area mingle with customers from other areas on the licensed premises.

Clause 66 inserts new subsections (2), (3) and (4) in section 105. The purpose of this amendment is to enhance the administrative process under the Act by requiring applicants to provide further information within a stated time. Withdrawal of the application is the penalty for failure to provide the requested information within the stated time. Together with the new powers given to the Liquor Appeals Tribunal to refer matters back to the chief executive this section should prevent a practice in the industry of presenting too few details to the chief executive and then providing enhanced material to the Tribunal upon appeal.

Clause 67 inserts new section 107AA. This section clarifies that the chief executive may impose conditions on licences and permits to ensure appropriate compliance with the Act or to give effect to an agreement that has resulted from a conference held under section 121 or a decision of the Tribunal.

Clause 68 amends section 109. This amendment makes some minor and consequential amendments and also omits subsection (4) and (5). The contents of subsections (4) and (5) are contained in new section 113A which deals with a transfer of a licence or permit held on behalf of an unincorporated association.

Clause 69 amends section 110 by replacing a reference to the Assistant Commissioner for Police with a reference to the police officer in charge of the locality. Section 110(2) requires an applicant for an extended hours permit to give a copy of the application to the relevant police office for the locality to which the relevant premises is situated, who may then comment or object to the chief executive about the application within fourteen days. It is not considered necessary for the matter to be referred to the Assistant Commissioner in each case.

Clause 70 amends section 112 by inserting subsection (2) specifying that when a variation of a licence results from a disciplinary action under section 137A of the Act it is not necessary to follow the notice provisions set out in 112 of the Act. This is because the disciplinary procedures of the Act require notification to be given to the licensee and an opportunity be given for the licensee to object or comment on the proposed variation.

Clause 71 inserts new section 113A which sets out the process where a licence is held by a person for or on behalf of an unincorporated association and the association becomes incorporated. The section requires that the licensee and the association must, within three months after the association

is incorporated, apply for the licence to be transferred to the association. These provisions were formerly contained in section 109 of the Act.

Clause 72 amends section 116. Currently the Act refers to the concept of public need in section 116. This amendment changes that concept to public interest. The amendment makes it clear that rather than the reasonable requirements of the public for liquor and related services being the relevant issue, it is the public interest that is important. The omission of section 116(3)(d) and the amendment to subsection (2) emphasise that it is the public interest that is the paramount consideration. The change in emphasis has resulted from the National Competition Review of the legislation. Whilst the concept of proving a “public need” may be considered to have created a barrier to competition, the amended section has a different focus. It supports the aim of the National Health Policy on Alcohol, which is an objective of the Act (section 3).

Subsection (4) has been amended by expanding the factors that must be taken into account with respect to public interest. In particular the impact the licence or new trading hours will have on the community and sub-communities within the community must be considered.

Clause 73 amends section 118 in a number of ways. Subsection (1)(b) is amended to reflect the new definition of detached bottle shop.

Subsection (1) is also amended by inserting a new paragraph (d) that will require an adult entertainment permit (other than a one-off permit or subsequent permit) to be advertised. One-off applications for adult entertainment or subsequent permits may still be required to be advertised if the chief executive requires, by written notice to the applicant, this to occur under paragraph (e).

Subsection (3) is omitted and replaced with new subsection (2A) and new (3). These amendments allow more flexibility in the way signage relating to an application must be displayed on the premises.

Subsection (6) and (7) are omitted as the requirement to keep a list of all applications that are required to be advertised is now found in section 43 relating to the register of licences permits and applications.

New subsection (6) sets out matters the chief executive must have regard to in deciding whether an application for an adult entertainment permit must be advertised.

Subsection (7) inserts definitions of “one-off permit” and “subsequent permit”.

Clause 74 makes some consequential amendments to section 118A resulting from the change from public need to public interest.

Clause 75 amends section 119 by drawing a distinction between the grounds of objection for application generally and the grounds of objection for an adult entertainment permit. This ensures that any additional concerns that may arise due to the nature of the entertainment may be considered.

Clause 76 amends section 121(5). This subsection specified the powers of the chief executive in making a decision upon an application. The subsection mentions the situation where a conference was held and an agreement was reached and a situation where no conference was held. However it does not consider the situation where a conference was held but no agreement was reached.

Clause 77 inserts new sections 123, 123A-C and 124 which deal with a provisional grant of licence and a staged development approval.

New section 123 expands upon the existing provisions of the Act by clarifying the circumstances in which a provisional grant of licence may be made. In particular it emphasises that before a provisional grant may be made the chief executive must be satisfied that the primary purpose of the proposed licence will be met and the requirements under section 107 relating to the suitability of the applicant have been fulfilled. It also emphasises that development approval from the relevant local government is a requirement before the granting of such a licence.

If the preconditions are met, but final certificates relating to building work or such things as hygiene certificates are still required, the chief executive may grant the application for licence provisionally, subject to the condition that the applicant produce the required approvals or certification within one year. If the applicant does not produce the required material the provisional licence is cancelled.

New section 123A deals with the situation where the proposed premises are to be developed in stages and one or more of the stages have been completed. Again the primary purpose of the proposed licence and the requirements of section 107 must be met. Providing the completed stage meets the primary purpose of the proposed licence and has received certification as required by law for use as licensed premises or for conduct in the premises of a business for which the licence was sought and the chief

executive would grant the application if all the other stages were completed, then the chief executive may grant the application provisionally and issue a staged development approval subject to the applicant completing the remaining stages within one year.

Section 123B provides that a provisional licence or staged development approval remains in force for the stated reasonable time from the day on which it is granted or if no time is stated, one year from which it is granted. A provisional licence may be renewed for a period of not more than one year if the chief executive considers that there are special circumstances for the applicant not producing the evidence stated in the licence within the stated time. This would include for example delays in completing the proposed premises because of adverse weather conditions. A provisional licence cannot be renewed more than once.

A staged development approval may be renewed more than once.

Section 123C sets out the effect of a provisional licence. The most important aspect is that a provisional licence does not give the applicant authority to trade until the licence is granted.

If the appropriate requirements are met the section states that the chief executive must grant the appropriate licence. It also provides that if the requirements are not met the chief executive must cancel the licence.

Section 124 states the effect of a staged development approval. In this case trading can commence in that part of the premises subject to the approval.

Clause 78 amends section 125. A new subsection is inserted allowing, for example, in the case of a general licence, where the main premises are destroyed, the detached bottle shop to continue trading.

New subsection 4 provides that a temporary authority to trade where premises are wholly or partially destroyed can be granted for no more than two years. The chief executive must be satisfied that special circumstances exist to extend for further terms each of which may not be longer than two years.

Clause 79 amends section 128. Existing paragraph (b) provides that where a licence is held by or for the benefit of a club and at any time there is no nominee each of the members of the club's management committee is subject to the same liabilities under this act as a licensee. In practice, licences are held either by an incorporated body with a nominee, in which

case the absence of the nominee is dealt with in paragraph (a) or by a individual person by or for the benefit of an unincorporated association. In the latter case, as the licence is held by a individual there may be no nominee. The amendment corrects this anomaly.

Clause 80 amends section 129 which makes provision for circumstances where trading may continue, such as a licensee's death or bankruptcy or a licensee ceasing to conduct business on the premises. The section allows certain people to apply for authority to continue trading. The section is amended by the addition of subsection (4) which provides that certain people may apply to the chief executive to conduct the business of a club licence where that person is in possession of the licensed premises. The application must state the way in which the person will continue trading under the club licence for the benefit of the club. The persons who may apply include a owner or mortgagee or the owner of a financial interest in the trading of the licensed premises who have given the chief executive particulars of their interest in the licence under section 44A.

Subsection (4) does not prevent the other persons specified in sections 129 from applying in the relevant circumstances with respect to a club.

Clause 81 amends section 131A by inserting new subsection (3A) which restricts persons mentioned in new section 129(4) to a maximum period for an authority of not more than six months after the date of application.

Clause 82 amends section 132 which allows for the discharge of a licensee or a permittee from obligations in certain circumstances. The amendment specifies that the chief executive may do all or any of the things specified in paragraphs (d) and (e). The Act currently states that the chief executive must both, discharge the nominee or licensee and suspend the licence. In cases where it is the nominee being discharged, it may not be necessary to also suspend the licence.

Clause 83 amends section 133 which provides for the process upon surrender of a licence. The section requires that a request to surrender a licence must be accompanied by the consent of all mortgagees or lessees of the licensed premises or any part of the licensed premises. The amendment clarifies that it is those mortgages and lessees who have given the chief executive their particulars under section 44A whose consent is required. Unless mortgagees and lessees register under section 44A the chief executive has no knowledge of their interest in the premises.

Clause 84 inserts new sections 134A-C which provide a procedure for the chief executive to take action in relation to a person's adult entertainment permit on the ground that the person is no longer suitable to provide adult entertainment. The sections set out a scheme whereby the chief executive must give a person written notice of the action proposed to be taken including the grounds and the facts and circumstances forming the basis for the grounds. The notice must invite the person to show cause why the relevant action should not be taken within a stated period of not less than fourteen days.

After making a decision regarding the proposed action, the chief executive must give written notice regarding the proposed action to the licensee including the reasons for the decision and details of appeal rights to the Liquor Appeals Tribunal.

Clause 85 omits section 136 and 137 and replaces them with new sections. The new sections establish a new procedure for taking disciplinary action against a licensee, although the grounds for taking action and the action that may be taken have not changed.

The wording of the existing sections require the chief executive when taking action against a licensee, to specify in the notice that the licensee must show cause why the licence should not be cancelled. Naturally, many licensees feel compelled to take action, such as engaging legal representation, and appearing personally in order to protect their interests. In many cases the chief executive does not intend cancelling the licence but rather to take one of the other disciplinary actions that are available under the Act.

The amendment allows the chief executive to specify at the start of the proceeding what action he or she intends to take. Licensees are given an opportunity to respond and may choose to do so in a manner that corresponds to the seriousness of the proposed action.

A power for the chief executive to urgently suspend the licence is inserted in section 137C. This power may only be used where a ground exists for taking disciplinary action and harm may be caused to the public if the licence is not suspended. Where this power is exercised a notice must be given to the licensee outlining the reasons for the suspension and the avenues for appealing the decision. At the same time the chief executive must give the licensee a notice under section 137 relating to the disciplinary action.

Unless revoked or a decision is made about the disciplinary action the suspension continues for 60 days.

New section 137B repeats the provisions of existing section 137(4).

Clause 86 amends section 143 which specifies the particulars that a licensee must display on the exterior of licensed premises. The section specifies that the particulars must be in legible character at least 50 mm in height. This requirement has been reduced to 15mm.

Clause 87 amends section 147 by extending its application to employees or agents of the licensee or permittee. Section 147 creates offences of allowing liquor to be consumed or removed from the premises outside the approved hours. In line with similar offences under the Act it is extended to include persons who may be in charge at the time these offences are committed.

Clause 88 amends section 148 which provides a defence to offences committed under section 146 or 147. This amendment extends that defence to employees or agents of the licensee or permittee. It also makes a minor amendment to paragraph (d).

Clause 89 amends section 150 by making a minor amendment and inserting a new subsection (2). Section 150 requires a corporation to give the chief executive written notice of every change in the beneficial ownership of the controlling interest in the corporation. Subsection 2 deals with special facility licences where part of the licence premises are let or sublet; or the right to sell liquor is let or sublet; or a franchise or management agreement for part of the licensed premises has been entered into. The chief executive must be notified as to any change in these arrangements including a change in the beneficial ownership of the controlling interest in any lessee, sub-lessee, franchisee or holder of management rights. It is an offence to fail to notify the chief executive in accordance with subsection (2).

Clause 90 amends section 152 by correcting a anomaly. Subsection (2) was expressed to apply only to a general licence. The amendment corrects this by applying it to all licensees. The section prevents the name of the licensed premises being used for or in connection with a business or service to the public other than the business or service that may be conducted or supplied on the licence premises under subsection (1). Subsection 1 sets out the types of businesses that may be conducted on the licensed premises, including that authorised by the licence.

Clause 91 amends section 154 by omitting the heading and subsection (1) and (2). New subsections are inserted. Currently the owner and licensee of licensed premises must notify the chief executive before altering or rebuilding the licensed premises. Subsection (2) prescribed the way in which owners and licensees of licensed premises could change the area of those licensed premises.

The new subsections require owners, licensees or other persons in control of licensed premises to gain the chief executive's approval before altering, rebuilding, changing or increasing the area of the licensed premises. Subsection (2) requires the chief executive to have regard to the primary purpose of the licence in giving an approval. It also specifies that a change in the area includes not using a part of the licence premises as if the part were not licensed premises.

Clause 92 inserts new sections 154A and 154B providing for the relocation and transfer of detached bottle shops. An application may be made under section 154A to relocate an existing detached bottle shop within the same shopping precinct. The chief executive must consider whether the application should be advertised. The new location may not be further from the main licensed premises than is allowable under the *Liquor Regulation 1992*, unless the bottle shop the subject of the application had approval to operate outside the distance prescribed. This can occur as the relevant distance was changed in 1994.

Section 154B allows the transfer of a detached bottle shop from one general licensee to another. The transfer must not be granted if the proposed operator of the bottle shop would then have more than 3 detached bottle shops under the particular general licence to which the detached bottle shop is attached.

Clause 93 amends section 155 which makes it an offence for certain persons to allow a minor on the premises. The amendment applies this section to an employee or agent of the licensee or permittee as well. An employee or agent of the licensee or permittee who allows a minor to enter the premises is guilty of an offence.

Clause 94 amends section 155AA by inserting new subsection (3). The subsection removes any doubt by declaring that a minor cannot be in an approved area in the capacity of a performer of adult entertainment.

Clause 95 amends section 162(2)(a) which relates to the taking of liquor onto or away from on-premises licences. Currently it is an offence to take liquor from such premises unless it was opened on the premises or brought to the premises. In conjunction with the amendment to section 73, the Act has been clarified to state that a person may take one open and one unopened bottle of wine from such premises, providing the person has consumed a meal on the premises.

Clause 96 amends section 187 dealing with the abatement of nuisance or dangerous activity on licensed premises. Section 187 provides that if an investigator believes on reasonable grounds that noise from licensed premises or an attached utility area is a nuisance to persons residence on the licensed premises or other premises near or contravenes an order under section 46 the investigator may give written notice to the licensee, permittee or person who appears to be in charge of the premises requiring that the noise stop or be reduced to a level that is no longer a nuisance. Additionally an investigator can order that premises be closed immediately. The Act does not provide any guidance to assist an investigator in making assessments as to the appropriate level of noise.

Section 187 is amended by omitting the concept of nuisance and inserting instead a concept of “unreasonable noise”. Unreasonable noise is noise that exceeds limits prescribed under a regulation. It is intended that the regulations prescribe limits that are currently used by investigators as a guide to assist in their assessment. These limits have been developed in consultation with the Environment Protection Authority.

New subsection (2A) of section 187 specifies that a number of factors must be considered by an investigator in deciding whether to give a written notice to reduce or cease noise from licensed premises. The subsection recognises that the problem of noise from licensed premises, particularly in inner city areas, calls for a balanced approach to the interests of all parties involved.

Clause 97 omits section 193 to 196. These sections were repealed in 1994, however, due to an administrative printing error were not deleted from the Act.

Clause 98 inserts new section 221 specifying that division 2 of part 9 expires one year after the commencement of this section. This division requires a premium to be paid by an applicant for a general licence or a special facility licence. This was identified as creating a barrier to entry to

the market in the National Competition Review of the Act and is therefore to be phased out over a 12 month period.

Clause 99 amends section 226 which makes it an offence for a person to contravene a condition specified in a licence or permit. The penalty for such an offence is increased from 25 penalty units to 40 penalty units. The penalty is increased in recognition of the potential harm non-compliance with conditions of licences may cause in the areas of health, safety or public nuisance.

Clause 100 inserts new section 232 into the Act. The Act is currently silent as to the way proceedings for an offence against the Act are to be taken. Accordingly, this section requires that proceedings for an offence against the Act be taken in a summary way under the *Justices Act 1886*.

Clause 101 amends section 235, the regulation making power in the Act. This section is amended by inserting new paragraphs in subsection (2) dealing with:

- the requirements for event management plans for the conduct of public functions;
- the requirements for management plans for the conduct of an establishment under an adult entertainment permit;
- the limits for noise coming from licensed premises.

Section 235 is also amended by increasing the maximum penalty for an offence against a regulation from 10 penalty units to 40 penalty units. With the introduction of adult entertainment permits in addition to regulations dealing with other important matters such as responsible hospitality practices, it is necessary to increase the penalty for a breach of the regulations to a level that reflects the gravity with which a breach is regarded.

Clause 102 amends section 238 which was a transitional provision relating to the completion of proceedings in the Licensing Court, previously constituted under the *Liquor Act 1912*. The amendment provides that the section stop applying on the 30th June 2003. All proceedings remaining before the Licensing Court must be completed by that date.

Clause 103 amends section 238A by providing that the section stop applying after 30th June 2003. The section preserved the power of the Licensing Court under the *Liquor Act 1912* to deal with a particular type of application. All such matters must be completed by the 30th June 2003.

Clause 104 amends section 239 which provided that on completion of all proceedings under section 238 or 238A the Licensing Court ceased to exist. If the Court has not ceased to exist by 30th June 2003, the amendment provides that it ceases to exist on that day.

Clause 105 amends section 241 by providing that the section stops applying on the 30th June 2003. This section gave the chief executive the power to deal with applications under the 1912 Act that had not been completed before the 1992 Act commenced. Any such applications must be completed by 30th June 2003.

Clause 106 inserts new part 12, division 2 after section 258. This new division contains transitional provisions for the bill.

Section 259 provides that an appeal started before the Liquor Appeals Tribunal, but not decided, before the commencement of this section is to be heard in the same way that it would have been as if the Liquor Amendment Act 2000 had not commenced.

Section 260 ensures that the change in provisions relating to the primary purpose of general licences does not disadvantage particular general licences.. Under the *Liquor Act 1912* a number of spirit merchants (retail) licences, existed where the licensees were able to sell take-away liquor only. With the introduction of the 1992 Act, there was no category of licence that directly corresponded with such a licence type. The transitional provisions of the 1992 Act preserved the trading rights of those individual licences.

Section 260 ensures that this Bill, with its requirement to comply with a primary purpose of selling liquor for consumption on the premises as well as off the premises does not prohibit such licensees from continuing to trade.

Section 261 specifies that subject to subsections (3) and (4) an application made before the commencement of this Act must be decided as if the Act had not commenced.

Subsection (3) provides that new section 105(2) to (4) applies to applications already made at the commencement of the legislation. These new subsections give the chief executive the power to require the applicant to give further information about the application within a reasonable time to help the chief executive decide the application. If the information is not provided the application is taken to be withdrawn. The application of these provisions to existing applications before the chief executive does not alter

the nature of the application to be considered or the factors that the chief executive must take into account.

Subsection (4) specifically requires that an application for extended trading hours that includes trading between the hours of 5am and 7am must comply with the new provisions of section 102B or 102C.

Section 262 is a transitional provision applying to temporary authorities granted before the commencement of the legislation. Such an authority may be extended under section 125 (4)(b) as if the authority were granted after the commencement of the legislation.

Section 263 ensures that notices given under section 187(2), relating to noise on licensed premises continue to have effect after the commencement of the legislation.

Section 264 specifies that section 85(1C) has effect in relation to a club licence even, if before the commencement of the section, the licensee could sell or supply liquor from a facility known as a drive-in or drive-through bottle shop.

Section 265 requires the chief executive to review all licences to ensure that the conditions to which the licence is subject are not inconsistent with the current Act and that the licence is endorsed with all conditions considered appropriate by the chief executive following the commencement of this Act.

The section gives the chief executive the power to require the licensee to produce the licence.

Section 107 is an amendment to omit headings following cross-references.

Section 108 amends the Schedule to the Act by correcting a cross reference and deleting paragraph (e). This paragraph prevented an officer or employee of a club being paid an amount by way of commission or allowance calculated by reference to the quantity of liquor sold or supplied by the club or the receipts of the club for such liquor. This amendment reflects the changed business and trading environment in which clubs operate in the year 2000.

The Schedule to the Bill makes consequential and minor amendments to the Act.

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