

LIQUOR AMENDMENT BILL 2003

EXPLANATORY NOTES

Objectives of the Bill

The objectives of the Bill are to:

- require new licensees and nominees to provide evidence of having attended a licensee's course as part of their liquor application process; and
- introduce a scheme for the approval of trainers to deliver the licensee's course;
- to clarify that areas under a special facility licence may be subleased by the licensee to another person.

Reasons for the Bill

The need for the compulsory training of liquor licensees has emerged from concerns within the liquor and hospitality industry and government sectors that compliance issues and local disturbances stem from poorly trained licensees and nominees. This lack of knowledge has resulted in management practices which in many cases have a direct adverse impact on the community. The flow-on effect of poor management practices often compels other licensees to the same level to compete and exacerbates the already high incidence of business closures across the industry. It is considered that a mandatory training scheme for prospective licensees will provide the capacity within the industry to improve business practices and reduce local area disturbances.

Additionally, the Bill includes an amendment relating to special facility licences. A recent decision of the Supreme Court of Queensland has raised questions regarding the validity of subleases for these licences. The proposed amendment seeks to confirm that subleasing agreements may be approved for this category of licence.

Estimated cost of government implementation

Any expenditure associated with the implementation of the amendments will be met through existing budget allocations. Approval has been obtained for fees to be charged for course delivery and materials where officers of the department will be involved in delivery.

Fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation***Queensland Government—***

Department of Employment and Training

Department of Premier and Cabinet

Department of Primary Industries (Office of Rural Communities)

Department of State Development (Business Regulation Reform Unit)

Office of Gaming Regulation

Queensland Health

Queensland Police Service

Queensland Treasury

Tourism Queensland

Industry / Community

Clubs Queensland

Queensland Cabarets Association

Queensland Hotels Association

Restaurant and Catering Queensland

Local authorities through the Local Government Association of Queensland

NOTES ON CLAUSES

Clause 1 sets out the short title of the Act.

Clause 2 provides that sections 3, 4(1)(2)(4) and (5), 5, 8 and 14 to 17 of the Bill commence on assent and that the remaining clauses relating to mandatory training for licensees are to commence on 1 January 2004.

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

Clause 4 amends section 4 (Definitions) by inserting new definitions relating to the licensee's training course and the approval of trainers by the chief executive.

The definition of "**disciplinary action**" is amended to allow the chief executive to require a licensee to undertake a licensee's course as a result of disciplinary action taken against the licensee for irresponsible trading practices.

Amendments are also made to definitions where renumbering has taken place under the *Liquor Act* and other related Acts.

Clause 5 inserts a new paragraph for the jurisdiction of the tribunal. This will ensure that the tribunal is able to hear and determine appeals made to it regarding the approval of trainers.

Clause 6 inserts section 107AAA requiring an applicant for a new licence or transfer of a licence to undertake a licensee's course. The licence application may only be granted if within the previous 3 years, the person has completed the course or has been the holder of, or nominee for a similar licence under the Act. The chief executive is able to consider granting the application on the condition that the person undertakes the course within 12 months, if satisfied that the person could not attend a course before making the application or during the time the application was being considered, because of their current residential locality or the previous locality in which they lived.

Also, the chief executive may grant the application if satisfied that having regard to the type of licence applied for and the nature and extent of the business to be conducted, the applicant need not undertake the course.

A new section 107AAB inserts training provisions in relation to an application for a permit under the Act. An applicant for a permit may be notified in writing by the chief executive if a licensee's course must be undertaken. The chief executive's decision will be based upon concerns to

minimise potential harm that may be associated with the activity proposed under the permit.

Clause 7 inserts new section 109AAA relating to training for nominees under the Act. This section requires nominees for new licences or applicants for a change of nominee to undertake a licensee's course. The licence application or application for a change of nominee may only be granted if within the previous 3 years, the proposed nominee has completed the course or has been the holder of, or nominee for a similar licence under the Act. The chief executive is able to consider granting the application on the condition that the person undertakes the course within 12 months, if satisfied that the person could not attend a course before making the application or during the time the application was being considered, because of their current residential locality or the previous locality in which they lived.

Also, the chief executive may grant the application if satisfied that having regard to the type of licence applied for and the nature and extent of the business to be conducted, the applicant need not undertake the course.

Clause 8 inserts a new paragraph (g) in section 111. This section enables the chief executive to vary a licence. The new paragraph ensures that the chief executive is able to vary a licence to ensure compliance with the Act, for example to adhere to, or reduce noise emissions, and to ensure that harm is minimised consistent with the objects of the Act.

Clause 9 omits section 114. This section required licence fees to be paid in full prior to a transfer of licence. Licence fees are no longer collected by the State Government.

Clause 10 amends section references as section re-numbering will occur under the Bill.

Clause 11 amends section references as section re-numbering will occur under the Bill.

Clause 12 inserts a new subsection (5) in section 125. This section relates to temporary authorities to trade which are issued in certain circumstances, for example when licensed premises are destroyed by fire and other premises are used temporarily for the conduct of the business. The amendment will enable the chief executive to impose conditions on the temporary authority. The conditions may differ from conditions on the licence as they relate to other premises.

Clause 13 inserts a new subsections (2A) and (2B) in section 131A. This section relates to authorities to continue to trade in cases where the

licensee has ceased to conduct the business or an administrator or executor is appointed in relation to the business. The amendment will enable the chief executive to impose conditions on the authority to continue trading. The conditions may include requiring the new operator to undertake a licensee's course within 3 months after the authority to trade is granted.

Clause 14 inserts new parts 5A and 5B relating to the licensee's course.

PART 5A—TRAINERS FOR LICENSEE'S COURSE

Division 1 provides for the appointment by the chief executive of a public servant to deliver the licensee's course.

Division 2 allows applications to be made by individuals for approval to deliver the licensee's course. In considering an application, the chief executive must be satisfied of the applicant's knowledge and experience in the liquor industry and their expertise as a trainer. If the applicant has held a liquor licence their previous conduct in discharging their duties may also be considered.

If the application is granted, the chief executive must provide written notice of the decision and the term of the approval which may be granted for not more than 3 years.

Division 3 enables an approved trainer to apply to renew their approval. The chief executive may consider the same issues considered in the original application, together with the person's previous conduct as trainer for the licensee's course.

Division 4 states that an application for approval as a trainer or for a renewal of a trainer's approval will lapse if the chief executive requests in writing, further details to support the application and the details are not provided within a stated time at least 21 days after the request.

Division 5 provides the grounds for cancellation of a trainer's approval which include obtaining the approval on a false statement or representation or by not conducting the course in an appropriate manner. A cancellation procedure is provided which allows the trainer to make written representation after receiving a written notice from the chief executive stating the grounds for the proposed cancellation.

PART 5B—REVIEW OF DECISIONS

This part provides an application review mechanism for persons who have been refused a training approval or for trainers who have had their renewal application refused. An application for a review must be made in writing within 28 days after notification is given to the person about the decision. Upon review of the application, the applicant is to be given a written decision and the reasons for it. A further appeal may be made to the appeals tribunal in relation to the decision.

Clause 15 amends section 149 to clarify that while licensees cannot allow another person to be in the keeping of the licensed premises, this does not apply to approved sublessees or persons with management agreements under a special facility licence.

Clause 16 amends section 153 to clarify that the holder of a special facility licence does not commit an offence under section 149 by allowing the premises to be in the keeping of another person under a sublease or management agreement approved by the chief executive under this section.

Clause 17 amends section 226. This section makes it an offence to breach a condition of a licence or permit. The amendment proposes to extend the offence to include temporary authorities to trade (when the premises or part of the premises has been destroyed or damaged) and authorities to continue the business of the licence (when the licensee has ceased to conduct the business or an executor or administrator has been appointed). These authorities are able to be issued with conditions, in the same manner as a licence to ensure compliance with the Act or for harm minimisation purposes. This amendment will ensure that a breach of a condition of an authority is treated in the same manner as a breach of a condition of a licence.

Clause 18 is a transitional provision relating to the commencement of the training amendments. The new requirement to undertake a licensee's course will apply to persons who lodge applications for a new licence, permit, a transfer of licence or change of nominee from 1 January 2004. Applications lodged before this date will not be subject to the new provisions.