

Queensland



**LOCAL GOVERNMENT
(ABORIGINAL LANDS)
AMENDMENT BILL 1995**



LOCAL GOVERNMENT (ABORIGINAL LANDS) AMENDMENT BILL 1995

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1995

A BILL

FOR

An Act to amend the Local Government (Aboriginal Lands) Act 1978

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The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Local Government (Aboriginal Lands) Amendment Act 1995*.

3

4

Commencement

5

Clause **2.** This Act commences on a day to be fixed by proclamation.

6

Act amended

7

Clause **3.** This Act amends the *Local Government (Aboriginal Lands) Act 1978*.

8

Amendment of s 3 (Meaning of terms)

9

Clause **4.(1)** Section 3, heading—

10

omit, insert—

11

‘Definitions’.

12

(2) Section 3, definition **“liquor”**—

13

omit.

14

(3) Section 3—

15

insert—

16

‘ “Aboriginal police officer” means a person who is appointed under section 33¹ as a member of the Aboriginal police force for a shire.’.

17

18

Amendment of s 30 (Mineral rights in shires)

19

Clause **5.** Section 30(1)(a), *‘Mining Act 1968’*—

20

¹ Section 33 (Law and order in shires)

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omit, insert—

‘Mineral Resources Act 1989’.

Amendment of s 33 (Law and order in shires)

Clause 6. Section 33(2B), after ‘on them by’—

insert—

‘this Act or’.

Insertion of s 33A

Clause 7. After section 33—

insert—

‘Indemnification of Aboriginal police officer for liability for tort

‘33A.(1) If—

(a) an Aboriginal police officer incurs legal liability for committing a tort while acting, or purporting to act, in the execution of duty as an officer; and

(b) the officer acted honestly and without gross negligence;

the State may indemnify the officer for the liability.

‘(2) If—

(a) an Aboriginal police officer incurs legal liability for helping, directly or indirectly, a person suffering, or apparently suffering, from illness or injury in circumstances that the officer reasonably considers to be an emergency; and

(b) the officer acted honestly and without gross negligence;

the State must indemnify the officer for the liability.’.

Omission of s 36 (Sale and supply of beer in shires)

Clause 8. Section 36—

omit.

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Omission of s 37 (Prohibition orders upon liquor abuse)

Clause **9.** Section 37—
 omit.

Omission of s 38 (Search for and seizure of liquor)

Clause **10.** Section 38—
 omit.

Amendment of s 39 (Roads within shires)

Clause **11.** Section 39(4)(b), ‘*Traffic Act 1940*’—
 omit, insert—
 ‘*Traffic Act 1949*’.

Insertion of new pts 6–8

Clause **12.** After section 39—
 insert—

**‘PART 6—CONTROL OF POSSESSION OR
CONSUMPTION OF ALCOHOL AT AURUKUN**

‘Division 1—Preliminary

‘Objects of part

‘**40.(1)** The objects of this part include controlling alcohol being brought into the Shire of Aurukun, deterring illegal selling of alcohol in the Shire, and minimising alcohol related disturbances in the Shire.

‘**(2)** The objects are to be achieved particularly by—

(a) providing a legal framework for the declaration of places to control the quantity or type of alcohol that may be possessed or

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consumed in the Shire; and	1
(b) establishing a decision-making body that is recognised under Aboriginal tradition and, as far as appropriate, operates under Aboriginal tradition; and	2 3 4
(c) providing for community participation in the decision-making process; and	5 6
(d) recognising an important advisory role for the decision-making body.	7 8
‘Application of part	9
‘41. This part applies to the Shire of Aurukun.	10
‘Definitions	11
‘42. In this part—	12
“ACI” means Aurukun Community Incorporated Pty. Ltd. Australian Company Number 009 925 777.	13 14
“alcohol” has the same meaning as “liquor” in the <i>Liquor Act 1992</i> . ²	15
“approved form” means a form approved by the chief executive. ³	16
“at” a place includes in or on the place.	17
“authorised officer” means—	18

² The *Liquor Act 1992*, section 4B provides as follows—

‘Meaning of “liquor”

‘4B.(1) “Liquor” is a spiritous or fermented fluid of an intoxicating nature intended for human consumption.

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

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

³ The chief executive is the chief executive of the department—see *Acts Interpretation Act 1954*, s 33(5B).

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(a) a police officer; or	1
(b) an Aboriginal police officer acting under an authority under section 68. ⁴	2 3
“closing day for objections and submissions” see section 60(3).	4
“controlled place” means a place that is declared a controlled place. ⁵	5
“conviction” includes a finding of guilt, and the acceptance of a plea of guilty, by a court.	6 7
“deal with” includes sell, dispose of and destroy.	8
“dry place” means a place that is declared a dry place. ⁶	9
“enter” , for a boat or aircraft, includes board.	10
“entity” includes—	11
(a) a department; and	12
(b) a division, branch or other part of a department.	13
“Law Council” means the Aurukun Alcohol Law Council.	14
“member” means a member of the Law Council.	15
“obstruct” includes hinder, resist and attempt to obstruct.	16
“occupier” , of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.	17 18
“offence” means an offence against this part.	19
“on” a place or vehicle includes in the place or vehicle.	20
“owner” , of a seized thing, includes the person from whom the thing was seized unless the authorised officer concerned is aware of the actual owner.	21 22 23
“person in control” , of a vehicle, includes—	24

⁴ Section 68 (Police officer may authorise Aboriginal police officers to investigate)

⁵ The right to possess or consume liquor in a controlled place is limited under section 67(1).

⁶ A person must not possess or consume liquor on a dry place (s 67(2)).

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- (a) the driver of the vehicle; or 1
- (b) the person who reasonably appears to be the driver; or 2
- (c) the person who appears to be, claims to be or acts as if he or she 3
is in control of a vehicle. 4
- “place”** includes premises and a place on waters or land, but does not 5
include a vehicle. 6
- “possess”** alcohol includes— 7
 - (a) have custody or control of the alcohol; and 8
 - (b) have an ability or right to obtain custody or control of the alcohol. 9
- “premises”** includes— 10
 - (a) a building, wharf or other structure; and 11
 - (b) part of a building, wharf or other structure; and 12
 - (c) land or waters where a building, wharf or other structure is 13
situated. 14
- “private place”** means— 15
 - (a) a place occupied by a person, a group of persons, or an entity 16
(other than the State or Shire Council); or 17
 - (b) a place to which a person or group of persons have the authority 18
to control access under Aboriginal tradition; or 19
 - (c) any other place that is not a public place. 20
- “prosecuting authority”**, for a proceeding for an offence, means— 21
 - (a) if the proceeding is brought by an authorised officer—the 22
Commissioner of the Police Service; or 23
 - (b) if the proceeding is brought by the Law Council—the Law 24
Council; or 25
 - (c) if the proceeding is brought by someone else—the person 26
bringing the proceeding. 27
- “public place”** means— 28
 - (a) a road; or 29

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(b) a place occupied by, or under the control of, the Shire Council; or 1

(c) a place occupied by the State, or under the control of, the State. 2

Examples of paragraph (b)— 3

The barge landing area and airport at Aurukun. 4

Examples of paragraph (c)— 5

The hospital and school at Aurukun. 6

“reasonably believes” means believes on grounds that are reasonable in all the circumstances. 7

“reasonably suspects” means suspects on grounds that are reasonable in all the circumstances. 9

“recognised traditional group” means a group of Aboriginal people that is declared a recognised traditional group. 11

“secretary” means the secretary to the Law Council. 13

“Shire” means the Shire of Aurukun. 14

“Shire Council” means the Council of the Shire. 15

“vehicle” includes a boat and an aircraft. 16

‘Division 2—Aurukun Alcohol Law Council

‘Establishment of Law Council

‘43. A body called the Aurukun Alcohol Law Council is established. 18

‘Functions and powers

‘44.(1) The functions of the Law Council are to— 20

(a) declare controlled places and dry places under this part; and 21

(b) decide applications for permits; and 22

(c) consult with, and report to, the Aurukun community, and groups within the Aurukun community, about the performance of its functions; and 23

24
25
26

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(d) advise the State Government and the Shire Council on the operation and effectiveness of this part; and	1 2
(e) provide advice generally on the administration and enforcement of this part; and	3 4
(f) carry out other functions given to it under this part.	5
<i>Example of consulting with the Aurukun community—</i>	6
Calling public meetings.	7
‘(2) The Law Council has power to do all things necessary or convenient to be done for, or in connection with, performing its functions.	8 9
 ‘Law Council is body corporate etc.	 10
‘45. The Law Council—	11
(a) is a body corporate; and	12
(b) has perpetual succession; and	13
(c) has a common seal; and	14
(d) may sue and be sued in its corporate name.	15
 ‘Recognised traditional groups	 16
‘46. The Minister may, by Gazette notice, declare a group of Aboriginal people recognised under Aboriginal tradition to be a recognised traditional group.	17 18 19
 ‘Composition of Law Council	 20
‘47. The members of the Law Council are the elders of the recognised traditional groups currently nominated to represent the groups on the Law Council.	21 22 23
 ‘Nominees of recognised traditional groups	 24
‘48.(1) Each recognised traditional group is to nominate at least 1 elder from the group to represent it on the Law Council.	25 26

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‘(2) A recognised traditional group may, at any time, nominate other
elders from the group to represent it on the Law Council, or withdraw a
nomination previously made by the group.

‘Traditional groups to tell Minister of nominations etc.

‘49.(1) A recognised traditional group must tell the Minister about each
nomination, and withdrawal of nomination, made by it.

‘(2) However, the nomination or withdrawal of nomination does not take
effect until it is notified by the Minister under section 50 or, if a later time is
stated in the notification, the later time.

‘Notification by Minister

‘50.(1) The Minister must, by Gazette notice, notify details of all
nominations and withdrawals of nominations of which the Minister is told.

‘(2) The Gazette notice must include—

(a) the names of the elders nominated or withdrawn; and

(b) the recognised traditional group to be represented by the
nominated person.

‘(3) The Minister may also, from time to time by Gazette notice, notify
the names of the persons who are elders of the recognised traditional groups
they currently represent.

‘Meetings of Law Council

‘51.(1) The Law Council may only make decisions about how it will
carry out its functions or exercise its powers at a meeting of the Law
Council at which the secretary is present.

‘(2) Meetings of the Law Council are to be held at the times and places it
decides.

‘(3) The secretary may at any time call a meeting, and must call a
meeting if asked by a majority of members.

‘(4) A meeting must not be attended by more than 1 member of each

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recognised traditional group.	1
‘(5) A regulation may make provision about the number of members who must be present at meetings to make decisions.	2 3
‘Chairperson	4
‘52. At each meeting of the Law Council, the members present must choose a member present to preside.	5 6
‘Conduct of meetings	7
‘53. The Law Council may conduct its business (including its meetings) in the way it considers appropriate, including, for example, by following Aboriginal tradition.	8 9 10
‘Arriving at decisions	11
‘54.(1) The Law Council may arrive at decisions in the way it considers appropriate, including, for example, by following Aboriginal tradition.	12 13
‘(2) However, a question is decided only if a majority of the members present are in agreement.	14 15
‘Secretary	16
‘55.(1) There is a secretary to the Law Council.	17
‘(2) The secretary is the police officer in charge of the police station at Aurukun or the officer’s nominee.	18 19
‘(3) The secretary is not a member of the Law Council.	20
‘(4) The secretary must attend every meeting of the Law Council and may advise it on any issue coming before it.	21 22
‘(5) The secretary must ensure minutes of the Law Council’s meetings are kept.	23 24
‘(6) The Shire Council must keep the minutes open for inspection.	25
‘(7) In this section—	26

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“open for inspection” has the same meaning as in the <i>Local Government Act 1993</i> .	1 2
‘Reporting requirements	3
‘56.(1) The Law Council must report on its activities to the Shire Council and ACI at least every 6 months.	4 5
‘(2) As soon as practicable after giving a report to the Shire Council and ACI, the Law Council must publish a notice in a newspaper circulating generally within the Shire advising that copies of the report are available from the offices of the Shire Council and ACI.	6 7 8 9
‘Administrative support	10
‘57.(1) The Shire Council must—	11
(a) provide administrative support to the Law Council; and	12
(b) keep separate accounting records of the cost of providing the support.	13 14
<i>Examples of administrative support—</i>	15
1. Taking minutes.	16
2. Arranging meetings in consultation with the secretary.	17
3. Ensuring notification requirements are met.	18
4. Preparing permits granted by the Law Council.	19
5. Preparation and distribution of the Law Council’s six-monthly reports.	20
‘(2) The cost of providing the administrative support must be borne equally by the Shire Council and ACI.	21 22
‘(3) Amounts received by the Shire Council for permit fees, and amounts received from the disposal of alcohol and other things seized under this part, must be used to offset the cost of providing the administrative support to the Law Council.	23 24 25 26

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‘Division 3—Controlled and dry places

‘Declarations

‘58.(1) The Law Council may, on its own initiative or on written application by the Shire Council or a nominee of a department, declare a public place to be a controlled place or dry place or revoke or amend a declaration of a place as a controlled or dry place.

‘(2) The Law Council may, on written or personal application by the occupier of the place, or a person or group of persons with authority to control access to the place under Aboriginal tradition, declare the private place to be a controlled place or dry place, or revoke or amend a declaration of the place as a controlled or dry place.

‘(3) The Law Council must consider an application made to it under this section as soon as reasonably practicable.

‘(4) A declaration may be for a limited time specified in it and may state conditions to which it is subject.

‘(5) The Law Council may also, on its own initiative, revoke a declaration made under subsection (2) if it is satisfied it is necessary to revoke the declaration because the occupier of the place, or a person or group with authority to control access to the place under Aboriginal tradition, has acted in a way that is contrary to the effect of, or hinders the enforcement of, the declaration.

‘(6) The Law Council must ensure that a person or group of persons who wish to make a written application under subsection (2) are given help to make the application.

‘(7) The Law Council may invite applications about particular private places.

‘Directions about controlled places

‘59.(1) If the Law Council declares a place to be a controlled place, it must include in the declaration directions about the possession or consumption of alcohol on the controlled place.

‘(2) Without limiting subsection (1), directions may be made about—

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(a) the type of alcohol that may be possessed or consumed on the controlled place; or	1 2
(b) the quantity of alcohol that a person may possess or consume on the controlled place; or	3 4
(c) the quantity of alcohol that may be carried in a vehicle on the controlled place; or	5 6
(d) the quantities or type of alcohol that may be possessed on the controlled place over a particular period.	7 8
‘Notice of proposal	9
‘60.(1) Before deciding whether to declare a place to be a controlled place or dry place, the Law Council must cause written notice of the proposal to be displayed—	10 11 12
(a) in at least 1 prominent place in the township of Aurukun; and	13
(b) if it considers it practicable, at the place.	14
‘(2) The notice must be displayed for 14 days immediately before the last day for making written submissions about the proposal.	15 16
‘(3) The notice must—	17
(a) state the type of declaration to be considered; and	18
(b) sufficiently identify the place; and	19
(c) for a proposal to declare a place a controlled place—the directions proposed to be given about the place; and	20 21
(d) state the right of a person to object or make a supporting submission; and	22 23
(e) state the day on or before which a written objection or supporting submission (the “closing day for objections and submissions”) must be made, or written notice that a person wishes to object or make a supporting submission in person to the Law Council, must be made; and	24 25 26 27 28
(f) if the proposed declaration is for a limited time—state that fact and the period proposed.	29 30

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‘(4) In addition to causing written notice of the proposal to be displayed as required by this section, the Law Council may consult with the Aurukun community in any way it considers appropriate.

‘(5) This section applies to the amendment or revocation of a declaration of a place as a controlled place or dry place (including the directions about the place if it is a controlled place) in the same way as it applies to the making of the declaration.

‘Objections and supporting submissions

‘61.(1) A person whose interests are affected by a proposed declaration of a public place may object to or support the public place being declared a controlled or dry place.

‘(2) A proposed declaration of a private place as a controlled or dry place may be objected to or supported by—

- (a) a person or group of persons with the authority to control access to the place or a neighbouring place under Aboriginal tradition; or
- (b) the occupier of, or a person or group who use, the place or a neighbouring place.

‘(3) The objection or supporting submission may be made—

- (a) by written notice filed at the Shire Council’s public office on or before the closing day for objections and submissions; or
- (b) if the objector or supporter files a written notice at the public office, on or before that day, that he or she wishes to appear before the Law Council to make a submission—personally to the Law Council.

‘(4) The Law Council must consider all objections and supporting submissions made on or before the closing day for objections and submissions.

‘(5) If the Law Council gives a person who has filed a written notice under subsection (3)(b) a reasonable opportunity to appear before it and put the objection or supporting submission but the person fails to appear, the person loses the right to have the objection or supporting submission considered by the Law Council.

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- ‘(6) No fee is payable by an objector or supporter. 1
- ‘(7) This section applies to the amendment or revocation of a place as a 2
controlled place or dry place (including any directions about the place if it is 3
a controlled place) in the same way as it applies to the making of the 4
declaration. 5
- ‘Notice about declarations 6**
- ‘62.(1) The Law Council must cause written notice of the declaration of a 7
place as a controlled place or dry place to be displayed— 8
- (a) in at least 1 prominent place in the township of Aurukun; and 9
 - (b) if it considers it practicable, at the place. 10
- ‘(2) The notice must— 11
- (a) state the type of declaration; and 12
 - (b) sufficiently identify the place; and 13
 - (c) state that the declaration takes effect on the day on which the 14
declaration is displayed; and 15
 - (d) if the declaration is for a limited time—state that fact and the 16
period of the declaration; and 17
 - (e) for the declaration of a place as a controlled place—the directions 18
made about the possession or consumption of alcohol on the 19
place; and 20
 - (f) set out the provisions of section 67.⁷ 21
- ‘(3) This section applies to the amendment or revocation of a place as a 22
controlled or dry place (including any directions about the place if it is a 23
controlled place) in the same way as it applies to the making of the 24
declaration. 25

⁷ Section 67 (Possession or consumption of alcohol on controlled or dry place)

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Division 4—Permits

‘Application for permit

‘63.(1) If directions about a controlled place authorise the possession or consumption of alcohol on the place under a permit, application for a permit may be made to the Law Council.

‘(2) Only an adult may apply for a permit.

‘(3) An application—

- (a) must be in writing and identify the applicant; and
- (b) may be made for a group of adults; and
- (c) if made for a group—must identify the group; and
- (d) must identify the quantity and type of alcohol to be covered by the permit; and
- (e) must state the proposed period of the permit; and
- (f) may state conditions suggested by the applicant to which the permit is proposed to be subject.

‘Consideration of application for permit

‘64.(1) The Law Council must consider an application made to it for a permit as soon as reasonably practicable.

‘(2) The Law Council may grant or refuse the application.

‘(3) If the Law Council grants the application, the application granted may differ from the application sought in relation to the following particulars—

- (a) the quantity and type of alcohol to be covered by the permit;
- (b) if relevant, how and when the alcohol is to be transported;
- (c) the period of the permit;
- (d) the conditions to which the permit is to be subject.

‘(4) The permit may be made subject to conditions to be stated in the

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permit.	1
‘(5) However, a permit must not be inconsistent with this part.	2
‘(6) The Law Council may amend a permit (including any of the conditions to which it is subject) or revoke a permit.	3 4
 ‘Issue of permit	 5
‘65.(1) If an application for a permit is granted, the secretary must ensure the applicant is issued with a permit in accordance with the Law Council’s decision.	6 7 8
‘(2) A permit must—	9
(a) identify the person or group, and the quantity and type of alcohol, covered by the permit; and	10 11
(b) if relevant, state how and when the alcohol is to be transported; and	12 13
(c) state the period of the permit; and	14
(d) state the conditions to which the permit is subject.	15
 ‘Permit fees	 16
‘66.(1) The Law Council may charge a fee for issuing a permit and decide its amount.	17 18
‘(2) The amount of the fee must not be more than \$5.	19
‘(3) The fee must be paid to the Shire Council before the permit is issued.	20 21
 ‘Possession or consumption of alcohol on controlled or dry place	 22
‘67.(1) A person must not possess or consume alcohol on a controlled place other than in accordance with the directions, or a permit (including its conditions), in force for the place.	23 24 25
Maximum penalty—250 penalty units.	26
‘(2) A person must not possess or consume alcohol on a dry place.	27

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Maximum penalty—250 penalty units.	1
‘(3) A police officer may arrest a person without a warrant if the officer reasonably believes that—	2 3
(a) the person is committing, or has just committed, an offence against this section; and	4 5
(b) proceedings by way of complaint and summons against the person for the offence would be ineffective.	6 7
 <i>‘Division 5—Authorisation of Aboriginal police officers</i>	 8
 ‘Police officer may authorise Aboriginal police officers to investigate	 9
‘68.(1) A police officer may authorise an Aboriginal police officer to investigate contraventions of section 67. ⁸	10 11
‘(2) The authority must be in writing.	12
 <i>‘Division 6—Authorised officer’s entry to places and vehicles</i>	 13
 ‘Entry to places	 14
‘69.(1) An authorised officer may enter a place only if—	15
(a) its occupier consents to the entry; or	16
(b) the entry is authorised by a warrant.	17
‘(2) However, an authorised officer may, without the occupier’s consent or a warrant, enter—	18 19
(a) a public place; or	20
(b) a place covered by a declaration or permit, if a condition of the declaration or permit requires that the place be open to inspection and the entry is made when the place is required to be open to inspection; or	21 22 23 24

⁸ Section 67 (Possession or consumption of alcohol on controlled or dry place)

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- (c) the land around premises to ask its occupier for consent to enter the premises.

‘Consent to entry

‘70.(1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another officer entering the place.

‘(2) Before asking for the consent, the officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

‘(3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.

‘(4) The acknowledgment must state—

- (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) that the occupier gives an authorised officer consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

‘(5) If the occupier signs an acknowledgment of consent, the officer must immediately give a copy to the occupier.

‘(6) Subsection (7) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether the occupier of a place consented to an authorised officer entering the place under this part; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved that the occupier consented to the entry.

‘(7) The court may presume that the occupier did not consent.

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‘Warrants to enter

‘71.(1) An authorised officer may apply to a Magistrate for a warrant for a place.

‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The Magistrate may refuse to consider the application until the officer gives the Magistrate all the information the Magistrate requires about the application in the way the Magistrate requires.

Example—

The Magistrate may require additional information supporting the application to be given by statutory declaration.

‘(4) The Magistrate may issue a warrant only if the Magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence; and

(b) the evidence is, or may be within the next 7 days, at the place.

‘(5) The warrant must state—

(a) that a stated authorised officer may, with necessary and reasonable help and force, enter the place and exercise the officer’s powers under this part; and

(b) the offence for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 7 days after the warrant’s issue, the warrant ends.

‘Warrants—applications made other than in person

‘72.(1) An authorised officer may apply for a warrant by phone, fax, radio or another form of communication if the officer considers it necessary.

‘(2) Before applying for the warrant, the officer must prepare an application stating the grounds on which the warrant is sought.

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- ‘(3) The officer may apply for the warrant before the application is sworn. 1
2
- ‘(4) After issuing the warrant, the Magistrate must immediately fax a copy to the officer if it is reasonably practicable to fax a copy. 3
4
- ‘(5) If it is not reasonably practicable to fax a copy to the officer— 5
- (a) the Magistrate must— 6
 - (i) tell the officer what the terms of the warrant are; and 7
 - (ii) tell the officer the date and time the warrant was issued; and 8
 - (b) the officer must complete a form of warrant (“**warrant form**”) and write on it— 9
10
 - (i) the Magistrate’s name; and 11
 - (ii) the date and time the Magistrate issued the warrant; and 12
 - (iii) the terms of the warrant. 13
- ‘(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the entry and the exercise of the other powers stated in the warrant issued by the Magistrate. 14
15
16
- ‘(7) The officer must, at the first reasonable opportunity, send the Magistrate— 17
18
- (a) the sworn application; and 19
 - (b) if the officer completed a warrant form—the completed warrant form. 20
21
- ‘(8) On receiving the documents, the Magistrate must attach them to the warrant. 22
23
- ‘(9) Subsection (10) applies to a court if— 24
- (a) an issue arises, in a proceeding in or before the court, whether a power exercised by an authorised officer was not authorised by a warrant issued under this section; and 25
26
27
 - (b) the warrant is not produced in evidence. 28
- ‘(10) The court must presume that the exercise of the power was not 29

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authorised by a warrant issued under this section, unless the contrary is proved.	1 2
‘General powers after entering places	3
‘73.(1) This section applies to an authorised officer who enters a place.	4
‘(2) For monitoring or enforcing compliance with this part, the officer may—	5 6
(a) search any part of the place; or	7
(b) inspect, measure, test, photograph or film any part of the place or anything at the place; or	8 9
(c) take a thing, or a sample of or from a thing, at the place for analysis; or	10 11
(d) copy a document at the place; or	12
(e) take into or onto the place any persons, equipment and materials the officer reasonably requires for exercising a power under this part; or	13 14 15
(f) require the occupier of the place, or a person at the place, to give the officer reasonable help to exercise the officer’s powers under paragraphs (a) to (e).	16 17 18
‘(3) A person must comply with a requirement under subsection (2)(f), unless the person has a reasonable excuse for not complying.	19 20
Maximum penalty—60 penalty units.	21
‘(4) If the requirement is to be complied with by the person giving information, or producing a document (other than a document required to be issued to or kept by the person under this part), it is a reasonable excuse for the person to fail to comply with the requirement, if complying with the requirement might tend to incriminate the person.	22 23 24 25 26
‘(5) This section applies to an authorised officer who enters a place to get the occupier’s consent only if the consent is given or the entry is otherwise authorised.	27 28 29

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‘Entry and search of vehicles etc.

‘74.(1) This section applies to an authorised officer who reasonably suspects—

- (a) a vehicle is being, or has just been, used to commit an offence; or
- (b) a vehicle, or a thing in a vehicle, may provide evidence of an offence that is being, or has just been, committed.

‘(2) The officer may—

- (a) enter the vehicle, using necessary and reasonable help and force; or
- (b) search any part of the vehicle; or
- (c) inspect, measure, test, photograph or film any part of the vehicle or anything in the vehicle; or
- (d) take samples of anything in the vehicle; or
- (e) copy a document in the vehicle; or
- (f) take into the vehicle the persons, equipment and materials the officer reasonably requires for exercising a power under this section; or
- (g) require the person in control of the vehicle to give the officer reasonable help to exercise the powers mentioned in paragraphs (a) to (f).

‘(3) A person must comply with a requirement under subsection (2)(g), unless the person has a reasonable excuse for not complying.

Maximum penalty—60 penalty units.

‘(4) Before entering an unattended vehicle, an authorised officer must take reasonable steps to advise its owner, or the person in control of it, of the intention to enter.

‘Powers to enable vehicle to be entered

‘75.(1) This section applies if an authorised officer intends to enter a vehicle.

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- ‘(2) If the vehicle is moving or about to move, the officer may require the person in control of the vehicle to stop or not to move it. 1
2
- ‘(3) The requirement may be given by a sign or hand signal. 3
- ‘(4) A person must comply with a requirement under subsection (2), unless the person has a reasonable excuse for not complying. 4
5
- Maximum penalty—40 penalty units. 6
- ‘(5) It is a reasonable excuse for the person not to comply with a requirement if— 7
8
- (a) the person believes that to immediately comply with the requirement would endanger the person or another person; and 9
10
 - (b) the person complies with the requirement at the first reasonable opportunity. 11
12

‘Division 7—Power to seize evidence 13

‘Power to seize evidence etc. 14

- ‘76.(1) An authorised officer who enters a place with the occupier’s consent may seize a thing at the place if— 15
16
- (a) the officer reasonably believes the thing is evidence of an offence; 17
and 18
 - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier’s consent. 19
20
- ‘(2) An authorised officer who enters a place with a warrant may seize the evidence for which the warrant was issued. 21
22
- ‘(3) An authorised officer may also seize anything else at a place (including alcohol or a vehicle) if the officer reasonably believes— 23
24
- (a) the thing is evidence of an offence; and 25
 - (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence. 26
27
- ‘(4) Also, an authorised officer may seize a thing (including alcohol or a 28

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vehicle) if the officer reasonably believes it has just been used in committing an offence.

‘Powers supporting seizure

‘77.(1) Having seized a thing, an authorised officer may—

- (a) move the thing from the place or vehicle where it was seized (the **“place of seizure”**); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

Examples of restricting access to a thing—

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

‘(2) If an authorised officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an authorised officer’s approval.

Maximum penalty—60 penalty units.

‘(3) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

‘(4) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

‘(5) The person must comply with the requirement, unless the person has a reasonable excuse for not complying.

Maximum penalty—60 penalty units.

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‘(6) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

‘Receipt for seized things

‘78.(1) As soon as practicable after an authorised officer seizes a thing (including alcohol or a vehicle), the officer must give a receipt for it to the person from whom it was seized.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

‘(3) The receipt must describe generally each thing seized and its condition.

‘(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the notice required by the section (given the thing’s nature, condition and value).

‘Forfeiture of seized things

‘79.(1) A seized thing is forfeited to the Shire Council if the authorised officer who seized the thing—

- (a) cannot find its owner, after making reasonable inquiries; or
- (b) cannot return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence.

‘(2) Subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

‘(3) If the officer decides to forfeit a thing under subsection (1)(c), the officer must tell the owner of the decision by written notice.

‘(4) Subsection (3) does not apply if—

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(a) the officer cannot find its owner, after making reasonable inquiries; or	1 2
(b) it is impracticable or would be unreasonable to give the notice.	3
‘(5) The notice must state—	4
(a) the reasons for the decision; and	5
(b) that the owner may appeal against the decision within 28 days; and	6 7
(c) how the owner may appeal.	8
‘(6) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing’s nature, condition and value.	9 10 11
<i>Example—</i>	12
No inquiries or efforts would be required to return beer cans that were open. Similarly, notice would not be required for them.	13 14
‘Return of seized things	15
‘80.(1) If a seized thing has not been forfeited, the authorised officer must return it to its owner at the end of—	16 17
(a) 6 months; or	18
(b) if a proceeding for an offence involving it is started within the 6 months—the proceeding and any appeal from the proceeding.	19 20
‘(2) Despite subsection (1), unless the thing has been forfeited, the authorised officer must immediately return a thing seized as evidence to its owner if the officer stops being satisfied its continued retention as evidence is necessary.	21 22 23 24
‘Access to seized things	25
‘81.(1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.	26 27
‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.	28 29

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‘Division 8—General powers

‘Power to require name and address

‘82.(1) This section applies if—

- (a) an authorised officer finds a person committing an offence; or
- (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has just committed an offence.

‘(2) The officer may require the person to state the person’s name and residential address.

‘(3) When making the requirement, the officer must warn the person it is an offence to fail to state the person’s name or residential address, unless the person has a reasonable excuse.

‘(4) The officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address is false.

‘(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(6) A person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person’s name and address by an authorised officer who suspected the person had committed an offence; and
- (b) the person is not proved to have committed the offence.

‘(7) An authorised officer who is an Aboriginal police officer may ask a police officer to help with the enforcement of this section.

‘Steps police officer may take for failure to give name and address

‘83. A police officer may take the following steps if a person fails to comply with a requirement made by the officer or another authorised officer

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under section 82(2) or (4) ⁹ —	1
(a) the police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement and, if the person gives an excuse, ask for details or further details of the excuse;	2 3 4 5
(b) if the person does not answer the question or gives an excuse that the police officer reasonably believes is not a reasonable excuse, the officer may—	6 7 8
(i) tell the person that the officer is considering the arrest of the person for failing to comply with the requirement; and	9 10
(ii) require the person to state the person’s name and residential address (or, if the person has no residential address, an address at which the person can most likely be contacted) and, if the officer reasonably suspects that the stated name or address is false, require the person to give evidence of the correctness of the stated name or address;	11 12 13 14 15 16
(c) the police officer may arrest the person without a warrant if the officer reasonably believes—	17 18
(i) the person has not complied with a requirement of the officer under paragraph (b)(ii); and	19 20
(ii) proceedings by way of complaint and summons against the person for an offence would be ineffective.	21 22
 ‘Power to require production of permits	 23
‘84.(1) An authorised officer may require a person to produce for inspection a permit issued to the person.	24 25
‘(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying.	26 27
Maximum penalty—50 penalty units.	28

⁹ Section 82 (Power to require name and address)

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<i>‘Division 9—Other enforcement matters</i>	1
‘False or misleading statements	2
‘85.(1) A person must not—	3
(a) state anything to an authorised officer or the Law Council that the person knows is false or misleading in a material particular; or	4 5
(b) omit from a statement made to an authorised officer or the Law Council anything without which the statement is, to the person’s knowledge, misleading in a material particular.	6 7 8
Maximum penalty—60 penalty units.	9
‘(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person’s knowledge.	10 11 12
‘False, misleading or incomplete documents	13
‘86.(1) A person must not give an authorised officer or the Law Council a document containing information the person knows is false, misleading or incomplete in a material particular.	14 15 16
Maximum penalty—60 penalty units.	17
‘(2) Subsection (1) does not apply to a person if the person, when giving the document—	18 19
(a) tells the authorised officer or Law Council, to the best of the person’s ability, how it is false, misleading or incomplete; and	20 21
(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.	22 23
‘(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false, misleading or incomplete to the person’s knowledge.	24 25 26

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‘Obstructing authorised officers

‘87.(1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse for the obstruction.

Maximum penalty—60 penalty units.

‘(2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person.

‘(3) In warning a person under subsection (2), an authorised officer must warn the person that—

- (a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person’s conduct is an obstruction.

‘(4) If, after an authorised officer who is an Aboriginal police officer has warned the person, the person continues with the conduct or repeats the conduct, the officer may ask a police officer to assist with the enforcement of this section.

‘Steps a police officer may take for obstruction

‘88. A police officer may take the following steps if a person has obstructed the police officer or another authorised officer—

- (a) the officer may ask the person whether the person has a reasonable excuse for the conduct and, if the person gives an excuse, ask for details or further details of the excuse;
- (b) if the person does not answer the question or gives an excuse the officer reasonably believes is not a reasonable excuse—the officer may—
 - (i) tell the person that the officer is considering arresting the person for obstruction; and
 - (ii) require the person to stop, or not repeat, the conduct;
- (c) the officer may arrest the person without a warrant if the officer reasonably believes—

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(i) the person has not complied with a requirement under paragraph (b)(ii); and	1 2
(ii) proceedings by way of complaint and summons against the person for an offence against section 87 ¹⁰ would be ineffective.	3 4 5
‘Impersonating authorised officers	6
‘89. A person must not pretend to be an authorised officer.	7
Maximum penalty—60 penalty units.	8
‘Forfeiture on conviction	9
‘90.(1) On the conviction of a person for an offence, the court may order the forfeiture to the Shire Council of—	10 11
(a) anything (including alcohol or a vehicle) used to commit the offence; or	12 13
(b) anything else the subject of the offence.	14
‘(2) The court may make the order—	15
(a) whether or not the thing has been seized; and	16
(b) if the thing has been seized—whether or not the thing has been returned to its owner.	17 18
‘(3) The court may make any order to enforce the forfeiture that it considers appropriate.	19 20
‘(4) This section does not limit the court’s powers under the <i>Penalties and Sentences Act 1992</i> or another law.	21 22
‘Dealing with forfeited things etc.	23
‘91. On the forfeiture of a thing to the Shire Council, the thing becomes	24

¹⁰ Section 87 (Obstructing authorised officers)

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the Shire Council's property and may be dealt with by the Shire Council under the *Local Government Act 1993*.

'Authorised officer to give notice of damage

'92.(1) This section applies if—

- (a) an authorised officer damages something when exercising or purporting to exercise a power; or
- (b) a person (the **"other person"**) acting under the direction of an authorised officer damages something.

'(2) The officer must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

'(3) If the officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's or other person's control, the officer may state it in the notice.

'(4) If, for any reason, it is impracticable to comply with subsection (2), the officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

'(5) This section does not apply to damage the officer reasonably believes is trivial.

'(6) In this section—

"owner" of a thing includes the person in possession or control of it.

'Compensation

'93.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following divisions, including, for example, in complying with a requirement made of the person—

- division 6 (Authorised officer's entry to places and vehicles)
- division 7 (Power to seize evidence)
- division 9 (Other enforcement matters).

'(2) Compensation may be claimed and ordered in a proceeding—

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(a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or	1 2
(b) for an offence brought against the person claiming compensation.	3
‘(3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.	4 5
‘(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.	6 7
<i>‘Division 10—Review of decisions</i>	8
‘Who may apply for review	9
‘94.(1) A person whose interests are affected by a decision of the Law Council may apply for the decision to be reviewed.	10 11
‘(2) The person has a right to receive a statement of the reasons for the decision.	12 13
‘(3) In this section—	14
“ decision ” does not include a decision—	15
(a) to invite applications about declaring a particular private place to be a controlled or dry place; or	16 17
(b) to publish a notice about a proposal to declare a place to be a controlled or dry place.	18 19
‘Applying for review	20
‘95.(1) A person may apply for the review of a decision only within 28 days after notice of the decision was given to the person or the person became aware of the decision.	21 22 23
‘(2) However, if—	24
(a) either—	25
(i) the person was given notice of the decision, but the notice did not state the reasons for the decision; or	26 27

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(ii) the person was not given notice of the decision, but became aware of the decision; and	1 2
(c) the person asked for a statement of the reasons within the 28 days mentioned in subsection (1);	3 4
the person may apply within 28 days after the person is given the statement of the reasons.	5 6
‘(3) Also, the Law Council may extend the period for applying, whether or not the period has ended.	7 8
‘(4) The application must be written and state in detail the grounds on which the applicant wants the decision to be reviewed.	9 10
 ‘Stay of operation of decision	 11
‘96.(1) If a person applies under this division for a decision to be reviewed, the person may immediately apply to a Magistrates Court for a stay of the decision.	12 13 14
‘(2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.	15 16
‘(3) A stay—	17
(a) may be given on conditions the court considers appropriate; and	18
(b) operates for the period fixed by the court; and	19
(c) may be revoked or amended by the court.	20
‘(4) The period of a stay must not extend past the time when the Law Council reviews the decision and any later period the court allows the person to appeal against the decision.	21 22 23
‘(5) An application made for the review of a decision of the Law Council affects the decision, or the carrying out of the decision, only if the decision is stayed.	24 25 26
 ‘Decision on reconsideration	 27
‘97.(1) After considering the applicant’s representations, the Law Council may confirm or amend the decision appealed against or substitute a	28 29

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new decision.

‘(2) The Law Council must immediately give the applicant written notice of the decision.

‘(3) If the decision is not the decision sought by the applicant, the notice must state—

- (a) the reasons for the decision; and
- (b) that the applicant may appeal against the decision to a Magistrates Court within 28 days.

‘Division 11—Appeals

‘How to start appeal

‘98.(1) A person may appeal against—

- (a) a decision under section 79¹¹ to forfeit a thing; or
- (b) a decision under section 97.¹²

‘(2) A person may only appeal within 28 days after notice of the decision was given to the person.

‘(3) However, if—

- (a) the notice did not state the reasons for the decision; and
- (b) the person asked for a statement of the reasons within the 28 days mentioned in subsection (2);

the person may apply within 28 days after the person is given a statement of the reasons.

‘(4) Also, the court may extend the period for appealing, whether or not the period has ended.

¹¹ Section 79 (Forfeiture of seized things)

¹² Section 97 deals with the Law Council’s decision after review.

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‘Stay of operation of decisions

‘99.(1) The Magistrates Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

‘(2) A stay—

- (a) may be given on the conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

‘(3) The period of a stay under this section must not extend past the time when the court decides the appeal.

‘(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

‘Powers of Magistrates Court on appeal

‘100.(1) In deciding an appeal, the Magistrates Court—

- (a) has the same powers as the Law Council; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or chambers.

‘(2) An appeal is by way of rehearing.

‘(3) The court may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the Law Council with the directions the court considers appropriate.

‘Effect of Magistrates Court’s decision on appeal

‘101. If the Magistrates Court substitutes another decision, the

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substituted decision is, for this part (other than division 10 or this division),
taken to be the Law Council's decision.

'Appeals

'102. An appeal to a District Court from a decision of a Magistrates
Court may be made only on a question of law.

'Division 12—Miscellaneous

'Evidence of alcohol by label

'103.(1) This section applies in a proceeding for an offence if it is
relevant to prove that a substance was alcohol.

'(2) The substance is proved to have been alcohol if—

- (a) there is evidence that the container containing the substance had a
label indicating the substance was alcohol; and
- (b) an authorised person gives evidence that the authorised person
believes the container contained alcohol; and
- (c) written notice under section 104(4) has not been received from
the defendant by the prosecuting authority; and
- (d) the court considers the belief mentioned in paragraph (b) is
reasonable; and
- (e) there is no evidence to the contrary.

'Evidence of alcohol—notice of challenge required

'104.(1) This section applies if a summons is served on a person for, or
a person is charged with, an offence to which section 103¹³ applies.

'(2) At the time of serving the summons on the person or charging the
person, a notice in the approved form must be served on the person.

¹³ Section 103 (Evidence of alcohol by label)

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- ‘(3) The notice may be served on the person in the same way as a summons may be served under the *Justices Act 1886*, section 56.¹⁴
- ‘(4) The notice must inform the person that, if the person intends challenging that a substance claimed in the charge to be alcohol was alcohol, the person must give the prosecuting authority written notice of the intention at least 14 days before the day fixed for the hearing.
- ‘(5) If the person is served with a summons and a statement is made in a deposition under the *Justices Act 1886*, section 56(3)(b) that the notice was served as permitted by subsection (3), the statement is evidence that the person was served with the notice as permitted by the subsection.
- ‘(6) The *Justices Act 1886*, section 56(5) applies to the deposition.
- ‘(7) If the person is charged with the offence and a statement is made in a deposition under the *Justices Act 1886*, section 56(7) that the notice was served as permitted by subsection (3), the statement is evidence that the person was served with the notice as permitted by the subsection.
- ‘(8) Section 56(8) of the *Justices Act 1886* applies to the deposition.
- ‘Application forms**
- ‘105. Application forms for this part are to be available free of charge during ordinary business hours at the Shire Council’s public office.
- ‘Filing of applications**
- ‘106.(1) An application for this part may be filed during ordinary business hours at the Shire Council’s public office.
- ‘(2) No fee is payable for an application to have a place declared to be a controlled or dry place under this part or to have a declaration amended or revoked.

¹⁴ *Justices Act 1886*, section 56 deals with service of summonses.

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‘Law Council’s common seal	1
‘107.(1) The Law Council’s common seal is to be kept by the secretary and may be used only as authorised by the Law Council.	2 3
‘(2) Judicial notice must be taken of the imprint of the Law Council’s common seal appearing on a document and the document must be presumed to have been properly sealed until the contrary is proved.	4 5 6
‘Certain provisions of Liquor Act do not apply to Shire	7
‘108. The <i>Liquor Act 1992</i> , part 6, division 4 does not apply to places in the Shire. ¹⁵	8 9
 ‘Division 13—Expiry of part	 10
‘Expiry of part	11
‘109. This part expires 2 years from its commencement.	12
 ‘PART 7—MISCELLANEOUS	 13
‘Regulation making power	14
‘110. The Governor in Council may make regulations under this Act.	15

¹⁵ The *Liquor Act 1992*, part 6, division 4 deals with the consumption of liquor in certain public places.

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‘PART 8—TRANSITIONAL PROVISIONS

‘General licences

‘111.(1) On the commencement, the Mornington Shire Council is taken to have been issued a general licence under the *Liquor Act 1992*, section 59,¹⁶

‘(2) This section is a section to which the *Acts Interpretation Act 1954*, section 20A applies.

‘Expiry of part

‘112. This part expires 2 years after its commencement.’.

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¹⁶ *Liquor Act 1992*, section 59 (General licences)