



Western Australia

Liquor Licensing Act 1988

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Western Australia

Liquor Licensing Act 1988

An Act to regulate the sale, supply and consumption of liquor, the use of premises on which liquor is sold, and the services and facilities provided in conjunction with or ancillary to the sale of liquor, to minimize harm or ill-health caused to people, or any group of people due to the use of liquor, to repeal the *Liquor Act 1970*, and for related matters.

[Long title amended by No. 12 of 1998 s. 4 (correction in Gazette 31 Jul 1998 p. 3942).]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Liquor Licensing Act 1988*¹.

2. Commencement

The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation¹.

3. Interpretation

(1) In this Act, unless the contrary intention appears —

“**affected area**”, in relation to an application, means the area specified by the Director under section 71;

“**assessment**” in relation to a subsidy includes determining eligibility to receive the subsidy and the calculation of the subsidy;

“**authorised officer**” means —

- (a) the Director;
- (b) an inspector appointed under section 14(1)(a);
- (c) a person specifically authorised by the Director under a delegated authority conferred pursuant to section 15 to carry out the functions, or particular functions, of an authorised officer; or
- (d) a member of the Police Force;

“**authorised person**”, in relation to licensed or regulated premises, means —

- (a) the licensee or occupier of the premises;
- (b) the manager of the premises;
- (c) an employee or agent of the licensee, occupier or manager; or
- (d) a member of the Police Force;

“beer” means liquor of the type known as beer, ale, lager, porter, or stout or any other type of liquor produced by brewing;

“cabaret licence” means a licence granted under section 42;

“casino”, “casino complex”, “casino complex agreement”, and **“casino gaming licence”** have the same respective meanings as in the *Casino Control Act 1984*;

“casino liquor licence” means a licence granted under section 44;

“Category A licence” means —

- (a) a hotel licence, which may be granted —
 - (i) without restriction;
 - (ii) as a hotel restricted licence; or
 - (iii) as a tavern licence;
- (b) cabaret licence;
- (c) a casino liquor licence;
- (d) a special facility licence; or
- (e) a liquor store licence;

“Category B licence” means —

- (a) a club licence, which may be granted without restriction or as a club restricted licence;
- (b) a restaurant licence;
- (c) a producer’s licence;
- (d) a wholesaler’s licence; or
- (e) an occasional licence;

“closing time”, in relation to any part of licensed premises, means the latest time at which liquor is authorised to be sold in that part in any period of permitted hours, to a person other than a lodger;

“club licence” means a licence granted under section 48;

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“club restricted licence” means a club licence of the kind referred to in section 48(1);

“Commissioner of Police” means the Commissioner of Police appointed under the *Police Act 1892* or a police officer authorised to act on behalf of the Commissioner of Police under subsection (6);

“condition” includes —

- (a) a limitation, restriction or prohibition; and
- (b) in relation to a licence, any provision of that licence affecting the authorisation conferred,

whether or not it purports to be expressed by way of a condition;

“Court” means the Liquor Licensing Court referred to in section 8;

“decision” includes an order, direction or determination;

“dining area” means —

- (a) a separate room or defined area; or
- (b) a clearly distinct part of a separate room or defined area,

used solely or primarily for the supply of meals;

“the Director” means a person holding or acting in the office of the Director of Liquor Licensing appointed under section 13;

“a director”, in relation to a body corporate, includes —

- (a) a member of the board or committee of management of the body corporate;
- (b) a person occupying or acting in a position to which paragraph (a) refers, by whatever name the position is called and whether or not validly appointed to occupy or duly authorised to act in the position; and

- (c) any person in accordance with whose directions or instructions directors of the body corporate are accustomed to act;

“disqualified” means —

- (a) in relation to an applicant for a licence — a person to whom section 34(2) applies; and
- (b) in relation to the occupier of a position of authority in a body corporate that holds or seeks a licence — a person to whom section 34(2) or an order made under section 96(1)(g) applies;

“extended trading permit” means a permit issued under section 60;

“a function” means a gathering, occasion or event (including a sporting contest, show, exhibition, trade or other fair, or reception) at which it is proposed that liquor be sold or supplied to those present;

“Gaming and Wagering Commission” means the Gaming and Wagering Commission established under the *Gaming and Wagering Commission Act 1987*;

“gross turnover”, in relation to a licence, means the gross proceeds derived by the licensee from the sale of liquor under the licence;

“guest”, in relation to licensed premises under a club licence, means a person who not being a member of the club is introduced to the club by a member in accordance with the rules of the club;

“hotel licence” means a licence granted under section 41 and includes a hotel restricted licence and a tavern licence;

“hotel restricted licence” means a hotel licence of the kind referred to in section 41(1)(b);

“inspector” means an inspector of licensed premises appointed pursuant to section 14;

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“interest of the community”, in relation to an area, includes the interest of the community in the protection of the amenity of the area;

“the Judgejudge” means a Liquor Licensing Court Judgejudge nominated or deemed to have been nominated under this Act;

“a juvenile” means a person under the age of 18 years;

“a kind”, in relation to liquor, means one of the following kinds —

- (a) wine made from grapes;
- (b) wine not made from grapes;
- (c) spirits;
- (d) beer; or
- (e) any other kind prescribed;

“lease” includes any tenancy or letting of, or licence to occupy, premises, in writing or otherwise and, if in writing, whether by deed or otherwise, and **“lessee”** and **“lessor”** shall be construed accordingly;

“licence” means a Category A licence or a Category B licence;

“licence fee” means the fee payable for a licence in respect of a licence period;

“licence period”, in relation to a licence, means each calendar year during which, or during any part of which, the licence is in force;

“licensed premises” means the premises specified or defined by the licensing authority in relation to a licence, protection order or permit as the building or place to which that licence, order or permit relates;

“licensee” means a person who holds a licence or permit under this Act, includes a person who is authorised under section 86 or 87 to carry on business under a licence or as if that person were a licensee, and may in accordance with

section 101 include a reference to a person appointed or permitted to conduct, supervise or manage the business;

“licensing authority” means —

- (a) in relation to an application or matter that is, under this Act, to be determined by the Court — the Court; and
- (b) otherwise — the Director;

“liquor” means —

- (a) a beverage which at 20° Celsius contains more than 1.15% ethanol by volume, or such other proportion as is prescribed;
- (b) any other substance prescribed as being liquor for the purposes of this Act; and
- (c) any thing that, for the purposes of sale, is held out to be such a beverage or substance;

“liquor merchant” means a person who is —

- (a) licensed under this Act, otherwise than by an occasional licence only; or
- (b) authorised under the law of another State, or of a Territory,
to sell liquor;

“liquor store licence” means a licence granted under section 47;

“lodger”, other than in section 105(2), means a person residing, whether casually or permanently, on the premises;

“low alcohol liquor” means liquor in which the concentration of ethanol does not exceed a prescribed level;

“manager” means a person approved as a manager under section 35B and, unless the contrary intention appears, includes a person managing premises under section 100(3);

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“meal” means a genuine meal, not supplied in sandwich form, eaten or to be eaten by a person while seated at a dining table or counter;

“member”, in relation to a club, includes a person who is a member of the club by reason of reciprocal arrangements with another club made in accordance with rules approved, or deemed to have been approved, by the Director;

“metropolitan area” means —

- (a) the part of the State that was, as at 1 June 1988, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959*², and
- (b) such other area as may be prescribed;

“occasional licence” means a licence granted under section 59;

“owner”, in relation to licensed premises, means a person —

- (a) entitled to the rents or profits of the premises;
- (b) who would be so entitled if the premises were let at a rent;
- (c) who is a mesne lessor of the premises; or
- (d) who is attorney or agent for such a person and is capable of giving a valid receipt for the rent, when such a person is absent from the State,

and includes, where the premises are the subject of a contract for sale or assignment, both vendor and purchaser;

“packaged liquor” means liquor delivered to or on behalf of the purchaser in sealed containers for consumption off the licensed premises;

“party to proceedings” includes an objector and, except in relation to any review of a determination made by the Director or any appeal in which that person is not a respondent, an intervenor;

“permit” means an extended trading permit issued under section 60;

“permitted hours”, in relation to licensed premises, means the hours during which the licensee is, under section 97 or the terms and conditions of the licence, authorised to sell liquor;

“person authorised to sell liquor” means —

- (a) a licensee; or
 - (b) a person authorised under —
 - (i) any other law of the State; or
 - (ii) the law of another State, or of a Territory or of the Commonwealth,
- to sell liquor;

“premises” includes —

- (a) land;
- (b) a vehicle; or
- (c) a part of premises,

and in relation to an application to which section 62 applies includes premises proposed to be erected and premises as proposed to be altered;

“producer’s licence” means a licence granted under section 55;

“proprietary company” has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth;

“protection order” means an order made under section 87 or 89;

“reception” includes a convention, conference, seminar or similar function at which people gather in substantial numbers for a particular purpose (but of which the consumption of liquor is not a predominant purpose);

“reception area” means a part of any premises on which liquor is supplied for consumption ancillary to a meal but not necessarily during the meal;

“record” means —

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- (a) any book, account, document, paper or other source of information compiled, recorded or stored in written form or on microfilm, or by electronic or other means or process;
- (b) the contents (in an intelligible form) of records that are kept by computer or are otherwise kept not in a readily intelligible form; and
- (c) any other sources of information prescribed for the purposes of this definition;

“regulated premises” means premises to which section 122 applies;

“related body corporate” has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth;

“relative”, in relation to a licensee, includes a de facto partner of the licensee;

“removal”, in relation to a licence, has the meaning assigned by section 31(1)(b);

“restaurant” means premises on which meals are, or upon the grant of a licence in relation to the premises are proposed to be, regularly prepared for sale, or supplied, and are eaten;

“restaurant licence” means a licence granted under section 50;

“Secretary”, in relation to a club, means the principal executive officer of the club, for the time being, by whatever name called and whether or not that person is a member of the club;

“sell”, in relation to liquor, includes —

- (a) agree or attempt to sell;
- (b) offer or expose for the purpose of selling;
- (c) send, forward or deliver for sale or on sale;
- (d) barter or exchange;
- (e) dispose, by lot or chance or by auction;
- (f) supply, or offer, agree or attempt to supply —

- (i) in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit; or
- (ii) gratuitously, but with a view to gaining or maintaining custom or other commercial advantage;

or

- (g) authorise, direct, cause or permit to be done any act referred to in this definition,

and includes, in relation to a club, supply to or to the order of members otherwise than by way of sale, but does not in relation to any class of licence include the provision of a free sample authorised by this Act;

“ship” includes a boat or vessel;

“special facility licence” means a licence granted under section 46;

“spirits” means potable spirit which at 20° Celsius contains more than 20.06% ethanol by volume;

“subsidy” means subsidy within the meaning of Division 2 of Part 5;

“tavern licence” means a hotel licence of the kind referred to in section 41(1)(a);

“this Act” includes subsidiary legislation made under it;

“townsite” means a townsite under the *Land Administration Act 1997*;

“trustee” means a person appointed under section 35A;

“vehicle” includes a ship, train or aircraft and any other conveyance used for the carriage of persons;

“wholesaler’s licence” means a licence granted under section 58;

“wine” includes —

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- (a) liquor of the type known as mead, cider, cyser, or perry;
 - (b) liquor obtained from the alcoholic fermentation of grapes or the must of grapes;
 - (c) liquor obtained from the alcoholic fermentation of other fruit, vegetables, berries or honey; or
 - (d) liquor prescribed as wine,
but does not include liquor which at 20° Celsius contains more than 20.06% ethanol by volume.
- (2) For the purposes of this Act, liquor shall not be regarded as having been provided by way of free sample if a charge is made —
- (a) for admission to the premises on which the liquor is supplied;
 - (b) for the hire of glasses or containers or the use of any facility on the premises; or
 - (c) for entertainment or refreshments provided on those premises in circumstances in which the provision of entertainment or refreshments is related to the provision of liquor by way of sample, one being incidental or ancillary to the other.
- (3) Where a provision of this Act operates by reference to a prescribed minimum quantity of liquor, that provision shall be deemed to allow for a tolerance not exceeding 2% of the quantity so prescribed.
- (4) For the purposes of this Act, a person occupies a position of authority in a body corporate if that person —
- (a) is a director of the body corporate;
 - (b) exercises or exerts, or is in a position to exercise or exert, control or substantial influence over the body corporate in the conduct of its affairs; or

(c) manages, or is to manage, the business of the body corporate to be conducted under a licence,

or, where the body corporate is a proprietary company, if that person is a shareholder in that proprietary company.

- (5) A requirement under this Act to provide or produce a record is, where the record is not written or not written in the English language, a requirement to provide or produce a statement, written in the English language, setting forth such of the particulars in the record as are not written or are not written in the English language.
- (6) A reference in a provision of this Act to the Commissioner of Police shall include a police officer authorised in writing by the Commissioner of Police to act on his or her behalf for the purposes of this Act, or for the purposes of the particular provision.

[Section 3 amended by No. 56 of 1997 s. 26(1), (2) and (3); No. 12 of 1998 s. 5 and 70(5); No. 23 of 2000 s. 4; No. 27 of 2000 s. 9; No. 10 of 2001 s. 220; No. 28 of 2003 s. 105; No. 35 of 2003 s. 173(2).]

4. Storage of liquor on licensed and approved premises etc.

[(1)-(4) repealed]

- (5) Where the sale of liquor is authorised under a licence on or from the licensed premises and not otherwise, liquor may be supplied and delivered to the purchaser from the stock of liquor kept on those premises, or on premises to which approval under subsection (6) relates, and not otherwise.
- (6) On application by a licensee, the Director may, in writing, approve premises other than the licensed premises for the purposes of this subsection, and the licensee is then authorised to store liquor on the approved premises and to supply or deliver liquor from those premises, whether or not the licence includes a condition that liquor be sold only on the licensed premises.

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- (7) A person who is required to make and maintain under this Act records of transactions involving liquor shall record, and in any return under this Act may be required to state —
- (a) whenever a delivery of liquor by the licensee was effected otherwise than at the licensed premises; and
 - (b) the place at which it was delivered.
- (8) Where delivery to a purchaser of liquor is to be effected in the State then, notwithstanding that the sale otherwise took place outside the State, the sale of that liquor shall for the purposes of this Act be deemed to have been concluded in the State unless the regulations otherwise provide.

[Section 4 amended by No. 56 of 1997 s. 27; No. 12 of 1998 s. 6.]

5. Objects of the Act

- (1) The primary objects of this Act are —
- (a) to regulate the sale, supply and consumption of liquor; and
 - (b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor.
- (2) In carrying out its functions under this Act, the licensing authority shall have regard to the primary objects of this Act and also to the following objects —
- (a) to regulate, and to contribute to the proper development of, the liquor, hospitality and related industries in the State;
 - (b) to cater for the requirements of the tourism industry;
 - (c) to facilitate the use and development of licensed facilities reflecting the diversity of consumer demand;
 - (d) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and

- (e) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

[Section 5 amended by No. 12 of 1998 s. 7.]

6. Act not to apply in certain cases

- (1) Subject to subsection (2), this Act does not apply —
 - (a) to liquor supplied or consumed as part of a religious service, or sold to a religious organization or its representative for sacramental or similar religious purposes;
 - (b) where liquor is sold or administered for medicinal purposes —
 - (i) by a registered pharmaceutical chemist; or
 - (ii) by or on the prescription of a legally qualified medical practitioner or dentist;
 - (c) where liquor is supplied in the course of an educational course, declared by the regulations to be an approved course for the purposes of this section;
 - (d) where liquor is sold or consumed in Parliament House, by permission of the proper authority;
 - (e) where liquor is sold by, or under the authority of, the Public Transport Authority of Western Australia, under the *Government Railways Act 1904*;
 - (f) to the sale or supply of liquor in a Police Force canteen, under the *Police Act 1892*;
 - (g) to the sale, by auction —
 - (i) by any person authorised by the sheriff;
 - (ii) by a bailiff; or
 - (iii) by a member of the Police Force,of liquor taken in execution or seized under, or forfeited by operation of, a written law;

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- (h) to the official receiver or trustee in bankruptcy of a bankrupt estate selling liquor that is the property of that estate for the purposes of winding up that estate;
 - (j) to an executor or administrator of the estate of a deceased person selling liquor that is the property of that estate for the purposes of winding up that estate;
 - (k) to an insurer selling liquor to which title was acquired by virtue of the settlement of a claim made under a policy of insurance, but not by purchase;
 - (m) to the sale of distilled spirits in bond, by the occupier of a vineyard to the occupier of another vineyard;
 - (n) where the liquor is an allowance supplied to a member of the crew of a ship; or
 - (o) where the sale is exempted by the regulations from the application of this Act.
- (2) An authorised officer may require any person who is in a position to provide information relating to the sale or supply of liquor in circumstances to which subsection (1) is alleged to apply to answer any question put to that person on that subject by the authorised officer, and to produce any record in the possession of that person that relates to any such transaction.

[Section 6 amended by No. 12 of 1998 s. 35(2); No. 31 of 2003 s. 151.]

Part 2 — The licensing authority

Division 1 — The licensing authority

7. Constitution of the licensing authority

- (1) The licensing authority comprises —
- (a) the Liquor Licensing Court; and
 - (b) the Director of Liquor Licensing,
- and may be constituted by either, but the jurisdiction which may be exercised by it depends upon the manner in which it is constituted and the powers conferred by this Act.
- (2) The licensing authority as constituted by the Court may sit and exercise the jurisdiction of the Court notwithstanding that the licensing authority as constituted by the Director is at the same time exercising jurisdiction, and the Director may exercise jurisdiction while the Court is sitting, but not in relation to the same application or matter.
- (3) Subject to this Act, the Director shall not —
- (a) exercise jurisdiction in respect of a matter before the Court, or within the jurisdiction of the Court; or
 - (b) impose any condition —
 - (i) which is inconsistent with a condition imposed by the Court; or
 - (ii) which the Court has refused to impose,
- and is not subject to direction by the Court, except as a party to proceedings or as may be specifically provided by this Act.
- (4) Subsection (3)(b) does not apply in relation to a condition imposed or varied by the Director under section 117(5)(a).

[Section 7 amended by No. 12 of 1998 s. 8.]

Division 2 — The Liquor Licensing Court

8. Establishment and constitution of the Liquor Licensing Court

- (1) The court known as the Liquor Licensing Court established under the repealed Act is preserved and continued in being under and for the purposes of this Act.
- (2) The Court is a court of record, shall have an official seal of which judicial notice shall be taken, and has the jurisdiction conferred on it by this Act.
- (3) The Court shall be constituted by the Liquor Licensing Court **Judgejudge**, but may be constituted by a Liquor Licensing Court **Judgejudge** nominated under section 9(4), and the **Judgejudge** may give directions as to the sittings of, and the disposal of the business of, the Court.
- (4) The Court constituted by the Liquor Licensing Court **Judgejudge** may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by a Liquor Licensing Court **Judgejudge** nominated under section 9(4) is at the same time sitting and exercising the jurisdiction of the Court.

[Section 8 amended by No. 27 of 2000 s. 10; No. 23 of 2002 s. 13.]

9. Appointment of the **Judgejudge of the Liquor Licensing Court**

- (1) Subject to subsection (2), the Liquor Licensing Court **Judgejudge** shall be such District Court **Judgejudge**, or Commissioner of the District Court appointed under section 24 of the *District Court of Western Australia Act 1969*, as the Chief Judge of the District Court of Western Australia shall from time to time nominate, either generally or for a specified time, to be the Liquor Licensing Court **Judgejudge**.

- (2) On the day on which Part-3 of the *Courts Legislation Amendment Act 2000* comes into operation¹, the person who, immediately before that day, held office as the Liquor Licensing Court **Judgejudge**, is deemed to have been nominated as the Liquor Licensing Court **Judgejudge** under subsection (1) and shall continue to hold that office as if section 9 had not been repealed until he or she dies, retires, or otherwise ceases to hold the office.
- (3) In the exercise of that office, the Liquor Licensing Court **Judgejudge** has the same protection and immunity as a **Judgejudge** has in respect of proceedings in the Supreme Court.
- (4) Where the person who is deemed under subsection (2) to have been nominated as the Liquor Licensing Court **Judgejudge** —
- (a) is or is expected to be absent from duty for any reason; or
 - (b) declines to deal with any matter,

the Chief Judge is to nominate a District Court **Judgejudge** or a Commissioner of the District Court to be a Liquor Licensing Court **Judgejudge** for such period, or in respect of such applications or matters, as may be specified in the instrument of appointment.

[Section 9 inserted by No. 27 of 2000 s. 11.]

[10-11. Repealed by No. 27 of 2000 s. 12.]

[12. Repealed by No. 12 of 1998 s. 10(1).]

Division 3 — The Director of Liquor Licensing

13. The Director

- (1) There shall be a Director of Liquor Licensing, who shall be appointed under, and shall hold office subject to and in accordance with, Part-3 of the *Public Sector Management Act 1994*.

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- (2) The Director is responsible for the administration of this Act, other than those aspects of administration that relate to the Court, to the chief executive officer of the relevant department of the Public Service.
- (3) A person appointed to be, or to act in the office of, Director of Liquor Licensing in the exercise of the jurisdiction conferred by that office —
 - (a) has the jurisdiction conferred on that office by this Act, and shall exercise that jurisdiction faithfully and impartially; and
 - (b) has in the exercise of that jurisdiction the same protection and immunity as has the ~~Judge~~judge of the Liquor Licensing Court.
- (4) The Director shall expeditiously and informally determine applications and matters under this Act not subject to the jurisdiction of the Court, having regard to the requirements of justice but without regard to legal forms or solemnities, and may defer consideration or further consideration of any application or matter if it is necessary to obtain more information.
- (5) The Director —
 - (a) without conducting a hearing, may determine any application or matter; but
 - (b) where the Director decides to conduct a hearing, may —
 - (i) fix a time and place for the hearing; and
 - (ii) cause notice to be given to the applicant and to any other person interested in the application or matter to be heard,and a person so given notice shall be entitled to attend the hearing and to be heard.
- (6) Any hearing before the Director shall be in private unless the Director considers that, in the circumstances of the case, the hearing should be in public, and where the hearing is to be in

private the Director may, subject to subsection (4) and section 17, determine who shall be present.

[Section 13 amended by No. 32 of 1994 s. 3(2).]

14. Staff

- (1) There shall be appointed, as may be necessary —
 - (a) inspectors to —
 - (i) ensure that licensed premises conform to proper standards; and
 - (ii) examine records relating to liquor transactions and subsidies;
 - and
 - (b) such other officers as are required to assist the Court and the Director in the administration of this Act.
- (2) A person appointed pursuant to subsection (1) shall be appointed under, and shall hold office subject to and in accordance with, Part 3 of the *Public Sector Management Act 1994*.
- (3) The Director shall furnish to —
 - (a) an inspector appointed pursuant to subsection (1)(a); and
 - (b) a person specifically authorised by the Director under a delegated authority conferred pursuant to section 15 to carry out the functions, or particular functions, of an authorised officer,

a certificate of identity in the prescribed form.

[Section 14 amended by No. 32 of 1994 s. 3(2); No. 56 of 1997 s. 28.]

Division 4 — Other staff of the licensing authority

15. Delegation and authorisation by the Director

- (1) The Director, by an instrument in writing signed personally by the Director and either generally or as otherwise provided by that instrument, may —
- (a) delegate to an inspector or other officer appointed pursuant to section 14 any of the functions of the Director under this Act other than this power of delegation;
 - (b) authorise any other person to carry out any of the functions —
 - (i) for which a person was, or may be, appointed to assist the Director pursuant to section 14(1)(b); or
 - (ii) which may be delegated under paragraph (a);and
 - (c) authorise a person to whom paragraph (a) or (b) applies to sign determinations or other records on behalf of the Director —
 - (i) making use of a facsimile of the signature of the Director; or
 - (ii) otherwise,as may be approved by the Director.
- (2) An authorisation under subsection (1)(b) or (c) shall be deemed to be a delegation for the purposes of sections 58 and 59 of the *Interpretation Act 1984*.

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Division 5 Proceedings before the licensing authority

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- (4) Any application, or any step taken in proceedings, may be set aside for irregularity —
- (a) by the Court, if a requirement or order of the Court is contravened; or
 - (b) by the Director, if a requirement or order of the Director is contravened,
- by the person by whom or on whose behalf that application is made or those proceedings are taken.
- (5) Subject to this Act, the procedure of the licensing authority shall be determined —
- (a) when any application or matter is before the Court or within the jurisdiction of the Court, by the Court; but
 - (b) otherwise, by the Director.
- (6) The Court may appoint —
- (a) counsel to argue or make representations as to any matter before the Court; or
 - (b) an independent expert to inquire into and report upon any question of fact or opinion not involving a question of law.
- (7) For the purposes of the *Evidence Act 1906* the judicial proceedings of the licensing authority, however constituted, shall be deemed to be proceedings of a court within the meaning of that Act, and subject to this section that Act applies, as if the licensing authority were a court and the Licensing Court ~~Judge~~judge were a judge within the meaning of that Act, to and in relation to the Court, the Liquor Licensing Court ~~Judge~~judge, the Director, and any officer of the licensing authority and judicial notice shall be taken of the signature of any such person if it purports to be appended to any judicial or official document.
- (8) Subject to subsection (9), the hearing of a proceeding before the Court shall be in public.

- (9) If the Court, of its own motion or on the application of a party to the proceedings in relation to any evidence or matter, is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Court may —
- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present;
 - (b) give directions prohibiting or restricting the publication of evidence given before the licensing authority, whether in public or in private, or of matters contained in documents lodged with the licensing authority or received in evidence by the licensing authority; and
 - (c) give directions prohibiting or restricting the disclosure, to some or all of the parties to a proceeding, of evidence given before the licensing authority, or of the contents of a document lodged with the licensing authority or received in evidence by the licensing authority, in relation to the proceedings.
- (10) In considering —
- (a) whether the hearing of a proceeding should be held in private; or
 - (b) whether publication or disclosure, to some or all of the parties, of evidence given before the licensing authority, or of a matter contained in a document lodged with the licensing authority or received in evidence by the licensing authority, shall be prohibited or restricted,

the Court shall take as the basis of its consideration the principle that it is desirable that proceedings should be public and that evidence given before the Court and the contents of documents lodged with the licensing authority or received in evidence by the licensing authority should be made available to the public and to all the parties, but shall pay due regard to any reasons given to the licensing authority why the hearing should be held

in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

- (11) Subject to subsections (8) and (9), the licensing authority shall ensure that each party to a proceeding before it is given a reasonable opportunity to present its case and, in particular, to inspect any documents to which the licensing authority proposes to have regard in making a determination in the proceedings and to make submissions in relation to those documents.
- (12) Where applications are heard together, the evidence relating to one of them is evidence relating to the other or others.
- (13) If, in respect of anything done or omitted to be done under this Act —
- (a) proceedings are brought against a person; and
 - (b) the licensing authority wishes to make a determination under this Act,

the licensing authority may make the determination despite the bringing of the proceedings.

- (14) If a licensee or manager is convicted of an offence against this Act, the registrar of the court in which that conviction occurred shall, as soon as practicable after the conviction, give notice in writing of the conviction to the Director.

[Section 16 amended by No. 12 of 1998 s. 10(2), (3), (4) and (5) and 11; No. 27 of 2000 s. 13; No. 59 of 2004 s. 141.]

17. Representation

- (1) A party to proceedings being determined by the licensing authority may appear —
- (a) personally;
 - (b) by counsel;
 - (c) if the party is a member of an association which the licensing authority recognises as having been formed to

promote or protect the interests of a section of the liquor industry, or of employees in the liquor industry — by an officer or employee of that association;

- (d) if the party is a body corporate — by an officer or employee of the body corporate who has obtained leave of the licensing authority to appear on its behalf; or
 - (e) by any other person approved by the licensing authority.
- (2) The Commissioner of Police may be represented before the licensing authority by a member of the Police Force, and where a member of the Police Force purports in any proceedings to represent the Commissioner of Police that person shall be deemed, in the absence of proof to the contrary, to have been authorised by the Commissioner of Police so to do.

[Section 17 amended by No. 12 of 1998 s. 12.]

18. Powers with respect to witnesses and evidence

- (1) The licensing authority may —
- (a) by summons require any person to attend before the licensing authority at a time and place specified in the summons for the purpose of giving evidence relevant to any application or matter before the licensing authority;
 - (b) by summons require the production of records;
 - (c) inspect records produced before it, and take copies of, or extracts from, them;
 - (d) require any person who is a party to or concerned in the proceedings to take an oath or affirmation or provide a statutory declaration verifying evidence given, or to be given, to the licensing authority; and
 - (e) require any person appearing before it to answer a question put to that person by the licensing authority or by some other person appearing before the licensing authority.

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- (2) A summons under subsection (1) may be issued, whether on the application of any party to proceedings before the licensing authority or on its own motion, on behalf of the licensing authority —
- (a) where the matter is to be determined by the Court, by the ~~Judge~~judge; or
 - (b) where the matter is to be determined by the Director, by the Director or a person authorised by the Director under section 15.
- (3) Any person who —
- (a) being an officer of the licensing authority, is for the time being so authorised by the ~~Judge~~judge or the Director;
 - (b) is a Justice of the Peace; or
 - (c) is a person prescribed, by Rules of Court or the regulations, for the purposes of this subsection,

may take and administer oaths and affirmations in, or for the purposes of, any application or matter that is being or is to be determined by the licensing authority.

[Section 18 amended by No. 12 of 1998 s. 10(6) and (7).]

19. Enforcement of orders

- (1) The Court has and may exercise the same power and authority for compelling obedience to, and for punishing disobedience of, any judgement or order of the licensing authority, however constituted, as the Supreme Court may exercise in relation to a judgement given or order made by the Supreme Court.
- (2) If under this Act a monetary penalty is imposed or the Court makes an order for the payment of costs, the amount of the penalty or the costs is to be paid, and its payment may be enforced, under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* as if the amount were a fine, but under that Act neither a work and development order nor a

warrant of commitment may be issued in respect of such an amount.

[Section 19 amended by No. 92 of 1994 s. 22.]

20. Contempt etc.

(1) Where —

- (a) at, or on the way to or from, a hearing by the licensing authority —
 - (i) the Liquor Licensing Court **Judgejudge**, the Director or any other officer of the licensing authority is wilfully insulted by any person; or
 - (ii) a person hinders, obstructs, threatens or assaults any such officer, or any party or witness;
- (b) a person wilfully interrupts the proceedings of the licensing authority; or
- (c) in relation to proceedings before the licensing authority, a person —
 - (i) does any other act or thing; or
 - (ii) refuses or neglects to do any act or thing,in respect to those proceedings which, had that conduct occurred in respect to proceedings of the District Court, would have rendered that person liable to apprehension under section 63 of the *District Court of Western Australia Act 1969*,

the Liquor Licensing Court **Judgejudge** may direct the apprehension of the person and by warrant, sealed with the Seal of the Court and signed by the **Judgejudge**, commit the person to imprisonment and impose any penalty or combination of penalties or penalty for default that may under that section of that Act be imposed by a District Court **Judgejudge**.

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- (2) Effect shall be given to subsection (1) in relation to any hearing or proceedings before the licensing authority, however constituted.
- (3) A person who —
- (a) having been served with a summons to attend before the Court fails, without reasonable excuse, to attend in obedience to the summons;
 - (b) having been served with a summons to produce records to the Court fails, without reasonable excuse, to comply with the summons; or
 - (c) refuses to be sworn or to affirm, or to answer a relevant question, when required to do so by the ~~Judge~~judge,
- commits an offence.
- Penalty: \$5 000.
- (4) Commitment or a fine under this section —
- (a) does not exempt a person from obeying any summons to appear before the Court, to answer any relevant question or to produce any records; or
 - (b) prejudice any proceedings taken or to be taken under section 158.

[Section 20 amended by No. 12 of 1998 s. 10(8).]

21. Costs

- (1) Subject to this Act, the costs of and incidental to all proceedings to be determined by the Court, including any adjournment, shall be in the discretion of the Court, and the Court has power to determine by whom, in what manner and to what extent costs are to be paid.
- (2) The costs may be recovered in any manner in which costs payable in respect of proceedings of the District Court may be recovered.

- (3) Subject to this Act, the Liquor Licensing Court ~~Judge~~judge has the same power in relation to the payment of costs by any person as a ~~Judge~~judge of the Supreme Court has.
- (4) Costs and expenses, to be payable by or to a party to the proceedings, may be awarded by the Court in respect of an objection whether the application to which the objection relates is granted, refused or withdrawn, except that costs shall not be awarded in relation to an objection made under section 73(1) by a person authorised to intervene under section 69(6), (7), (8) or (11).
- (5) Where, in the opinion of the Court, a person has —
- (a) brought proceedings; or
 - (b) exercised a right, or attempted to exercise a purported right, to object to an application,
- frivolously or vexatiously, the Court may award costs against that person.
- (6) The Director does not have power to award costs.

22. Rules of Court

Rules of Court may be made, by the Liquor Licensing Court ~~Judge~~judge, under this Act —

- (a) regulating the practice and procedure of the Court and matters that are related; and
- (b) subject to the regulations, as to the costs and charges payable in relation to proceedings under this Act.

23. Proof of authority and indemnity

- (1) If an action is brought against a person for anything done under a process issued under this Act, the production of that process under the Seal of the Court is sufficient proof of the authority of the Court prior to the issuing of the process.

- (2) Where a person is engaged in the administration or enforcement of this Act, the person incurs no liability for anything done by that person in good faith and in the exercise or purported exercise of official powers or of functions under this Act.
- (3) No proceedings, civil or criminal, shall be taken or lie against any person for any act, matter or thing done or omitted to be done, or required to be done or omitted to be done —
- (a) by a person purportedly for the purposes of this Act; or
 - (b) in reliance on or pursuant to any order, direction, warrant, request or document apparently given, issued or made in accordance with the provisions of this Act,
- unless it was malicious or lacked reasonable and probable cause.

Division 6 — Reference to the Court, review and appeals

24. Director may refer matters to the Court

The Director may, if he or she considers it appropriate, refer the whole or part of any matter that is to be determined by the Director, or any question of law arising from such a matter, for hearing and determination by the Court.

[Section 24 inserted by No. 12 of 1998 s. 13.]

25. Application for review of a decision by the Director

- (1) Subject to subsections (3) and (5), where a person who is a party to proceedings before the Director is dissatisfied with a decision made by the Director in respect of those proceedings the person may apply to the Court for a review of that decision.
- (2) An application under subsection (1) must be made within a month after the applicant receives notice of the decision or such longer period as the Court may allow.
- (3) A review of a decision under this section shall not reconsider any finding of fact by the Director as to —

- (a) the qualifications, reputation or character of a person, or the fitness or propriety of a person in relation to an application or licence;
- (b) the adequacy or suitability of any premises, accommodation or services provided, or proposed to be provided, under a licence; or
- (c) in relation to a club licence or an application for such a licence, the existence of the club,

unless the review is sought by the person who lodged the application in respect of which the decision was made or, where a finding referred to in paragraph (a) is made, by the person in respect of whom the finding was made.

- (4) On a review under this section, the Court may —
 - (a) affirm, vary or quash the decision subject to the review;
 - (b) make a decision in relation to any application or matter that should, in the opinion of the Court, have been made in the first instance;
 - (c) give directions —
 - (i) as to any question of law, reviewed; or
 - (ii) to the Director, to which effect shall be given;and
 - (d) make any incidental or ancillary order.
- (5) This section does not apply to any decision —
 - (a) in respect of or incidental to —
 - (i) an application for or the conduct of business under an extended trading permit or an occasional licence;
 - (ii) the specification of an affected area under section 71; or
 - (iii) the assessment of a subsidy;
 - (b) that by this Act is stated not to be subject to review;

- (ba) which is a decision made in the course of, or for the purposes of, an application or matter but is not the decision, or one of the decisions, disposing of the application or matter, and in particular does not apply to —
 - (i) a decision relating to the hearing of an objection; or
 - (ii) a finding of fact required to be made in order for the matter or application to be disposed of;or
 - (c) which is a decision made in the course of, and for the purposes of, the administrative duties of the Director not directly related to the outcome of any application or matter before the licensing authority.
- (6) For the purposes of this section —
- (a) a person who lodged an objection to an application, and did not withdraw it, is a party to any proceedings on the application, whether or not the objection was heard;
 - (b) the transferor of a licence is a party to any proceedings relating to the transfer of the licence;
 - (c) a person who held a licence which was cancelled under section 93 is a party to any proceedings relating to its cancellation under that section.

[Section 25 amended by No. 56 of 1997 s. 29; No. 12 of 1998 s. 14.]

26. Decision of Director to be given effect unless otherwise directed

Where the holder of a licence applies to the Court for a review of a decision made by the Director in respect of that licence effect shall be given to the decision made by the Director unless the Court, by way of interim order, otherwise directs.

27. Case stated on question of law

- (1) The Court may state a case on a question of law to the Supreme Court.
- (2) A question of law arising on a case stated under this section shall be determined by the Court of Appeal.

[Section 27 amended by No. 45 of 2004 s. 37.]

28. Appeals

- (1) Subject to subsections (2) and (3), a person who is a party to the proceedings and is dissatisfied with a decision of the Court may appeal to the Supreme Court.
- (2) No appeal lies against a decision of the Court except upon a question of law.
- (3) No appeal lies against a decision of the Court made on review of a determination made by the Director, except upon a question of law.
- (3a) No appeal lies against a decision of the Court under section 96 to suspend the operation of a licence for a period of 2 weeks or less.
- (4) An appeal under this section —
 - (a) shall be heard and determined by the Court of Appeal; and
 - (b) must be instituted within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
- (5) Upon the hearing of the appeal, the Supreme Court may —
 - (a) allow or dismiss the appeal;
 - (b) affirm, vary or quash the decision subject to the appeal, or remit the matter to the Court for further hearing with such directions (if any) as it thinks fit; and
 - (c) make any incidental or ancillary order.

[Section 28 amended by No. 12 of 1998 s. 15; No. 45 of 2004 s. 37.]

29. Licence or permit continues to have effect pending appeal

Where the holder of a licence appeals against a decision of the Court in respect of that licence or a permit relating to that licence —

- (a) effect shall not be given to that decision of the Court; and
- (b) the licence or permit shall (subject to the payment of any fees then due and payable) continue to have effect,

unless the Supreme Court, by way of interim order, otherwise directs.

Division 7 — Division of responsibility between the Court and the Director

30. Division of responsibilities

(1) The Court shall hear and determine —

- (a) any application or matter requiring, or relating to, the imposition, variation or cancellation of a condition in respect of a Category A licence, where the Director certifies that the condition is a condition to which section 7(3)(b) applies;
- (b) any complaint under section 95;
- (c) any matter or question referred to the Court by the Director under section 24; and
- (d) any application under section 25 for a review of a decision of the Director.

(2) The Director, subject to section 25, may hear and determine any application or matter under this Act, other than —

- (a) any application or matter in respect of which jurisdiction is specifically invested in the Court; or

(b) proceedings for an offence.

~~[(3) and]~~ (4) *repealed*

- (5) The Director, subject to section 25, shall exercise any jurisdiction which is by any other Act conferred on licensing magistrates or on a licensing bench.
- (6) Subject to subsection (1), the licensing authority, however constituted, is invested with jurisdiction to determine any matter necessary or expedient for the determination of, or incidental or ancillary to, any application before the licensing authority as so constituted, save that any question in relation to a subsidy shall be determined by the Director.

[Section 30 amended by No. 56 of 1997 s. 30; No. 12 of 1998 s. 16(1).]

Part 3 — Licences and permits

Division 1 — General matters

30A. Licensing authority may grant licences to sell liquor

- (1) The licensing authority may grant licences in accordance with this Act.
- (2) A licence vests personally in the licensee to whom it is granted, and is not capable of being —
 - (a) made subject to, or used as security for, any lien, charge or other adverse interest; or
 - (b) vested in any other person, except in accordance with this Act.

[Section 30A inserted by No. 12 of 1998 s. 17.]

30B. Power of attorney does not empower donee to act for licensee under this Act

A power of attorney, whether executed before or after the commencement of the *Liquor Licensing Amendment Act 1998*¹, empowering a person to act for a person who is a licensee does not empower the donee to act for the licensee under this Act and to that extent is of no effect.

[Section 30B inserted by No. 12 of 1998 s. 17.]

31. Licences, generally

- (1) In this Act —
 - (a) an application for approval to the transfer of a licence means an application to vary the licence in respect of any premises by substituting the name of the transferee for that of a person who holds or has held the licence for the same premises; and
 - (b) an application for the removal of a licence means an application seeking the variation of the licence so that it

no longer has effect in relation to the premises to which it most recently applied and takes effect in relation to other premises.

- (2) Where an applicant for approval to the transfer of a licence applies also for the removal of the licence the applications may be dealt with at the same time.
- (3) Subject to —
- (a) this Act;
 - (b) any other written law; and
 - (c) its conditions,

a licence authorises the holder to sell and supply liquor in accordance with its terms from the buildings or places referred to in the licence or otherwise as provided in the licence but, except to the extent that its terms or conditions may be varied by a permit or otherwise under this Act, in no other manner.

- (4) The authorisation conferred by a licence, other than an occasional licence, may be varied by an extended trading permit issued by the licensing authority under section 60 by —
- (a) endorsement on the licence to which it relates; or
 - (b) a notice setting out the particulars of the variation.
- (5) A licence granted or an extended trading permit issued by the licensing authority shall be in a form approved by the Director.
- (6) Any term or condition applicable to a licence or permit —
- (a) unless imposed by this Act, shall on the grant of the licence or the issue of the permit be included in or endorsed thereon; and
 - (b) if thereafter imposed, varied (otherwise than pursuant to subsection (4)), or cancelled, shall be evidenced —
 - (i) by a notice setting out particulars of the term or condition concerned, which shall, unless

subsection (7)(a) applies, refer to the licence to which it relates and be served on the licensee; or

- (ii) by being endorsed on it or included in a revised version,

as the Director may require.

- (7) A notice for the purposes of subsection (4) or (6) —
 - (a) which is published in the *Gazette* and is (whether or not subject to specified exceptions) of general application, or to apply generally to licences of a specified class or in a specified area, is not required to refer to the particular licence to which it relates or to be served on the licensee; but
 - (b) shall be signed personally by the Director.
- (8) In subsection (7), “**specified**” means specified in the notice published in the *Gazette*.

[Section 31 amended by No. 12 of 1998 s. 18.]

32. Duration of licences

- (1) Subject to subsections (2), (3), (4) and (5), a licence continues in force for all purposes, unless —
 - (a) surrendered under section 94; or
 - (b) cancelled by the licensing authority under this Act,but may be surrendered, as a condition of and on the coming into force of, another licence granted by way of transfer or removal of that licence.
- (2) Notwithstanding that —
 - (a) the licensee may cease to carry on business under the licence;
 - (b) a protection order has effect; or

- (c) an interim authorisation has effect under section 86, a licence remains in force, for all other purposes, subject to subsection (1).
- (3) A special facility licence expires —
- (a) where it is expressed to be granted for a specific period, when that period has elapsed; or
 - (b) where the Director determines that a special facility licence is no longer necessitated, on a date specified by the Director in a notice in writing given to the licensee, unless the Court otherwise orders.
- (4) An occasional licence expires in accordance with its terms, or where the occasion in respect of which it was granted has taken place, or on the period during which it was specified to have effect having elapsed.
- (5) A licence the operation of which is suspended continues in force and is capable of being removed or transferred, but does not during the period of suspension authorise the sale of liquor.
- (6) The suspension of the operation of a licence does not affect liabilities incurred by the licensee under this Act up to the date on which the suspension takes effect.

[Section 32 amended by No. 12 of 1998 s. 19 and 39(2).]

33. Discretion vested in licensing authority

- (1) Subject to this Act, the licensing authority has an absolute discretion to grant or refuse an application under this Act on any ground, or for any reason, that the licensing authority considers in the public interest.
- (2) An application —
- (a) may be refused, even if the applicant meets all the requirements of this Act; or

- (b) may be granted, even if a valid ground of objection is made out,

but is required to be dealt with on its merits, after such inquiry as the licensing authority thinks fit.

- (3) The licensing authority may waive or modify any requirement for formal compliance with any procedure relating to an application, but may impose conditions in relation to the waiver or modification.

[(4) repealed]

- (5) The licensing authority may, on the application of a person who is, or is to be, appointed to a position of authority in a body corporate that holds a licence, approve the occupation of that position in the body corporate by that person.

- (6) Where the licensing authority is to determine whether an applicant is a fit and proper person to hold a licence or whether approval should be given to a person seeking to occupy a position of authority in a body corporate that holds a licence, or to approve a natural person as a manager or trustee —

- (a) the creditworthiness of that person;
- (aa) the character and reputation of that person;
- (b) the number and nature of any convictions of that person for offences in any jurisdiction;
- (c) the conduct of that person in respect to other businesses or to matters to which this Act relates; and
- (d) any report submitted, or intervention made, under section 69,

shall be taken to be relevant and amongst the matters to which consideration should be given.

- (6a) In making a determination under subsection (6), the licensing authority may require a person to demonstrate knowledge relevant to managing licensed premises, and may require a

person to undertake an examination or an approved course of instruction.

- (7) Where the licensing authority is to determine whether any premises are of a sufficient standard or suitable for the proper conduct of any business —
- (a) the class of licence or kind of permit sought, and the obligations thereby imposed and the accommodation and facilities required;
 - (b) the customary requirements of those persons from whom the applicant would ordinarily be expected to derive trade;
 - (c) any requirements made known, or reasons appearing, in a certificate under section 39 or section 40; and
 - (d) any report submitted, or intervention made, under section 69,

shall be taken to be relevant and amongst the matters to which consideration should be given.

[Section 33 amended by No. 12 of 1998 s. 20.]

34. Restrictions on certain applications

- (1) Subsection (2) applies to any application made to the licensing authority for —
- (a) the grant or removal of a licence;
 - (b) approval to the transfer of a licence; or
 - (c) approval to a person —
 - (i) as a manager;
 - (ii) as a trustee; or
 - (iii) as the occupant of a position of authority in a body corporate that holds a licence.

- (2) The licensing authority shall not hear or determine any application to which this subsection applies, if that application is made —
- (a) subject to subsection (3), by a person who —
 - (i) is bankrupt or has assigned his or her estate for the benefit of creditors;
 - (ii) by reason of mental disorder, is incapable of managing his or her affairs;
 - (iii) is, or under any written law is deemed to be, under sentence of imprisonment;
 - (iv) being a body corporate, is an externally-administered body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
 - (v) is disqualified from holding a licence, or holds a licence which is suspended, pursuant to an order made in disciplinary proceedings under this Act;
 - (b) by a juvenile; or
 - (c) by a person who —
 - (i) holds office or is employed in the Public Service of the State or of the Commonwealth, or in any agency or instrumentality of the Crown; or
 - (ii) is a sheriff's officer, bailiff or other person employed or authorised to execute any legal process,unless the licensing authority is satisfied that there is no conflict of interest between the applicant's employment and the operation of the licence.
- (3) The licensing authority may approve a person referred to in subsection (2)(a)(i) as a manager if it is satisfied that special circumstances apply.

[Section 34 amended by No. 12 of 1998 s. 21 and 97(1); No. 10 of 2001 s. 220.]

35. Persons who may hold licences

- (1) A licence may be granted —
 - (a) to a natural person;
 - (b) to a body corporate;
 - (c) to an unincorporated body of persons in accordance with section 35A; or
 - (d) jointly, to 2 or more of the above.
- (2) Where a licence is granted to 2 or more persons, those persons are jointly and severally liable —
 - (a) as licensee; and
 - (b) in respect of any civil or criminal liability that attaches to the licensee under this Act.

[Section 35 inserted by No. 12 of 1998 s. 22.]

35A. Trustees

- (1) If a licence is granted to an unincorporated body of persons who are not joint holders of the licence, then the body must appoint a natural person as a trustee to hold the licence on its behalf.
- (2) The body shall use a method of appointing a trustee which is approved in writing by the Director.
- (3) A person shall not be appointed as trustee unless the Director is satisfied that the person is a fit and proper person for the position and has approved the appointment of the person in writing.
- (4) Subject to section 100, a trustee may be manager of licensed premises.

[Section 35A inserted by No. 12 of 1998 s. 22.]

35B. Approval of person as manager

- (1) The Director may, in writing, approve a natural person as a manager of licensed premises if the Director is of the opinion that the person is a fit and proper person to manage the licensed premises.
- (2) Where an application for a person to be approved as a manager has been made to the Director and has not been refused, that person shall be deemed for the purposes of this Act to be a manager approved under this section.
- (3) The Director may withdraw the approval of a person as a manager if the Director is satisfied, on reasonable grounds —
 - (a) that the manager has failed to conduct any licensed premises in a proper manner; or
 - (b) that the conduct of the manager is such as to show that he or she is not a suitable person to manage licensed premises.
- (4) The Director shall not withdraw the approval of a person as a manager unless the manager and the licensee of the premises concerned, have been given the particulars of the allegations against the manager and afforded a reasonable opportunity to make submissions and to be heard in relation to those allegations.
- (5) If the Director considers that it is desirable, the withdrawal of approval of a person as manager may be expressed to operate only —
 - (a) for a specified period; or
 - (b) in specified circumstances.
- (6) The Director may approve of more than one person as a manager of any licensed premises at any one time.

[Section 35B inserted by No. 12 of 1998 s. 22.]

36. Limitation on dual licensing of premises

- (1) Subject to subsections (2) and (3), 2 or more licences shall not be granted in respect of the same part of any premises, but licences may be granted in respect of defined separate parts of the same premises.
- (2) More than one club restricted licence may be granted in respect of the same premises, subject to section 48(4)(a)(i), where at no time or day do the permitted hours specified in the respective licences coincide or overlap.
- (3) An occasional licence may be granted in respect of premises, or a part of premises, in respect of which some other licence is granted.

36A. Petrol stations in some areas not to be granted licences

- (1) In this section —
 - “**country townsite**” means a townsite that is outside the metropolitan area;
 - “**packaged liquor outlet**” means licensed premises from which packaged liquor is sold but does not include premises in respect of which a club licence is in force;
 - “**petrol station**” means a business that involves the retail sale of fuel for road vehicles to people travelling in them, whether or not other goods or services are also sold or supplied to those people.
- (2) The licensing authority shall not approve the grant or removal of a licence that would authorise the sale of packaged liquor from any premises if there is a petrol station on the premises and the premises are —
 - (a) in the metropolitan area; or
 - (b) in, or within a prescribed distance outside, a country townsite in which there is a packaged liquor outlet.

- (3) Subsection (2) does not apply in the case of an application for the removal of a licence that is in respect of premises on which there is a petrol station to other premises situated not more than 500 metres from the premises from which the licence is sought to be removed.

[Section 36A inserted by No. 23 of 2000 s. 5.]

37. Requirements relating to licences and permits, generally

- (1) An application to the licensing authority for the grant of a licence, for approval to the transfer of a licence, or for a permit to be issued, shall not be granted by the licensing authority unless the licensing authority is satisfied —
- (a) if the applicant, or one of the applicants, is a natural person or a body corporate — that the person is a fit and proper person to be a licensee of the premises to which the application relates;
 - (b) if the applicant, or one of the applicants, is a body corporate —
 - (i) that each person who occupies a position of authority in the body corporate is a fit and proper person to occupy that position in a body corporate that is a licensee of the premises to which the application relates; and
 - (ii) that the conduct of business at the premises is, or will be, personally supervised and managed in accordance with section 100;
 - (c) if the applicant is an unincorporated body of persons who will not be joint holders of the licence —
 - (i) that the persons have a common interest of a political, literary, sporting, social or other lawful nature and that the sale of liquor is incidental to, and not the primary purpose of, so associating; and

- (ii) that a trustee is, or will be, appointed in accordance with section 35A;
 - (d) that each person directly or indirectly interested in the application or in the business, or the profits or proceeds of the business, to be carried on under the licence or permit is a fit and proper person to be so interested;
 - (e) in the case of an application for —
 - (i) an occasional licence; or
 - (ii) a special facility licence or an extended trading permit where the licensing authority determines that the requirements, or some of the requirements, of paragraph (f) would not be appropriate,
that the liquor will not be sold or consumed in a place or on premises unsuitable for the purpose; and
 - (f) except where paragraph (e) applies —
 - (i) that the premises to which the application relates are, or when constructed will be, of a sufficient standard and suitable for the proper conduct of the business to be carried on there;
 - (ii) as to the matters referred to in subsection (2);
and
 - (iii) as to the matters referred to in any certificate required to be produced under section 39 or section 40.
- (2) On any application the licensing authority may require to be satisfied that any approval, consent or exemption required —
- (a) under the law relating to planning to permit the use of the premises for the sale of liquor; and

- (b) under any written law, for the carrying out of building work that is to be carried out before the licence or permit sought takes effect,

has been obtained.

- (3) An application shall not be granted where the licensing authority is satisfied that an undue degree of offence, annoyance, disturbance or inconvenience to —
 - (a) persons who reside or work in the vicinity of the place or premises to which the application relates; or
 - (b) persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school, would be likely to occur.
- (4) Where a manager of premises which must, under section 100, be supervised and managed by a manager resigns or for any other reason ceases so to act —
 - (a) in the case of a company, the directors;
 - (b) in the case of a body corporate other than a company, the committee of management; and
 - (c) in any case, a trustee or such other persons as may be responsible for the conduct of the affairs of that body,are jointly and severally liable for the conduct of business under the licence and for the licensed premises until such time as another person is appointed as a manager approved by the licensing authority.
- (5) Every licence, other than a club restricted licence or an occasional licence, is subject to the condition that the licensee occupies, and retains a right to occupy, the licensed premises to the exclusion of others, and —
 - (a) an application for the grant or removal of such a licence shall not be granted unless the licensing authority is satisfied that the applicant can, or on the grant of the

application will be enabled to, comply with that condition; and

- (b) if the licensee ceases to occupy the licensed premises, whether or not to the exclusion of others, the interest of the licensee in the licence terminates.

[Section 37 amended by No. 12 of 1998 s. 23.]

37A. Director to be informed of convictions

A licensee, a person who occupies a position of authority in a body corporate which is a licensee, or a person approved as a manager under section 35B who is convicted of an offence in any jurisdiction is to inform the Director within 14 days of being convicted.

Penalty: \$5 000.

[Section 37A inserted by No. 12 of 1998 s. 24.]

Division 2 — Category A licences

38. Requirements for the grant or removal of a Category A licence

- (1) An applicant for the grant or removal of a Category A licence must satisfy the licensing authority that, having regard to —
 - (a) the number and condition of the licensed premises already existing in the affected area;
 - (b) the manner in which, and the extent to which, those premises are distributed throughout the area;
 - (c) the extent and quality of the services provided on those premises; and
 - (d) any other relevant factor, being a matter as to which the licensing authority seeks to be satisfied,

the licence is necessary in order to provide for the reasonable requirements of the public for liquor and related services or accommodation in that area.

- (2) Taking into account the matters referred to in subsection (1), the licensing authority in considering what the requirements of the public may be shall have regard to —
- (a) the population of, and the interest of the community in, the affected area;
 - (b) the number and kinds of persons residing in, resorting to or passing through the affected area, or likely in the foreseeable future to do so, and their respective expectations; and
 - (c) the extent to which any requirement or expectation —
 - (i) varies during different times or periods; or
 - (ii) is lawfully met by other premises, licensed or unlicensed.
- (2a) In considering what the reasonable requirements of the public may be for the purposes of an application under subsection (1) the licensing authority may have regard to —
- (a) the subjective requirements of the public, or a section of the public, in the affected area for liquor and related services, whether those requirements are objectively reasonable or not; and
 - (b) whether the grant or removal of the licence will convenience the public or a section of the public in the affected area,

but the licensing authority may disregard either or both such considerations as it sees fit.

- (2b) Notwithstanding anything else in this section —
- (a) a liquor store licence shall not, other than in accordance with paragraph (b), be granted in respect of, or removed to, premises unless the licensing authority is satisfied that the reasonable requirements of the public for liquor and related services in the affected area cannot be provided for by licensed premises already existing in that area; and

- (b) where application is made for the removal of a liquor store licence to premises situated not more than 500 metres from the premises from which the licence is sought to be removed, the licensing authority need not have regard to the reasonable requirements of the public for liquor and related services in the affected area.
- (3) Having regard to likely future demand for residential accommodation or other facilities, amenities or services, the licensing authority on the grant or removal of a Category A licence may impose a condition that —
 - (a) in respect of a hotel licence (other than a tavern licence) or a special facility licence, residential accommodation; and
 - (b) in all cases, facilities, amenities or services, be provided, or be extended or improved, on or adjacent to the licensed premises, if and when the licensing authority so requires.
- (4) A reference in this section to licensed premises already existing in an affected area extends to any premises in that area, or premises proposed for that area, in respect of which —
 - (a) a conditional grant is made under section 62;
 - (b) a licence is granted; or
 - (c) an application for the removal of a licence to those premises is granted.
- (5) Where an application to which this section applies is not granted by reason of a finding that a licence of the class to which the application related is not necessary in order to provide for the requirements of the public in any area, no application for the grant or removal of a licence of the same class in respect of the same premises or land may be lodged within 36 months of the date of that finding unless the Director certifies —
 - (a) that the affected area in relation to the proposed application would be substantially different to that

specified in relation to the application which was not granted; or

- (b) that the proposed application is of a kind sufficiently different from the application which was not granted to be distinguished and heard notwithstanding the previous finding.

[Section 38 amended by No. 12 of 1998 s. 25.]

39. Certificate of local government

- (1) An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises shall be accompanied by a certificate from the local government for the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines.
- (2) A certificate referred to in subsection (1) shall state —
- (a) whether or not the premises comply with all relevant requirements of —
- (i) the *Health Act 1911*;
 - (ii) any written law applying to the sewerage or drainage of those premises;
 - (iii) the *Local Government Act 1995*; and
 - (iv) the *Local Government (Miscellaneous Provisions) Act 1960*;
- and
- (b) where the premises do not so comply, the manner in which the premises could be made to comply or that the premises could not reasonably be made to comply.
- (3) The licensing authority may, where it is satisfied that it is desirable to do so, impose a condition on a licence relating to the submission, or further submission, to the licensing authority of a certificate referred to in subsection (1).

[Section 39 inserted by No. 12 of 1998 s. 26.]

40. Certificate of local planning authority

- (1) An application made to the licensing authority for the grant or removal of a licence, or for a change in the use or condition of any premises shall be accompanied by a certificate from the authority responsible for planning matters in the district in which the premises to which the application relates are situated, or are to be situated, unless the licensing authority otherwise determines.
- (2) A certificate referred to in subsection (1) shall state that the proposed use of the premises —
 - (a) will comply with the requirements of the written laws relating to planning specified;
 - (b) would comply with the requirements specified if consent were to be given by a specified authority, if it is known whether that authority will give the consent, and what specified conditions or specifications should be, or are likely to be, imposed; or
 - (c) will not comply with the requirements specified for the reasons specified.
- (3) In this section —
“specified” means specified in the planning certificate.
- (4) The licensing authority may, where it is satisfied that it is desirable to do so, impose a condition on a licence relating to the submission, or further submission, to the licensing authority of a certificate referred to in subsection (1).

[Section 40 inserted by No. 12 of 1998 s. 26; amended by No. 38 of 2005 s. 15.]

41. Hotel licences

- (1) For the purposes of this Act —

- (a) where a hotel licence is not subject to the condition referred to in subsection (4) it shall be referred to as a tavern licence; and
 - (b) where a hotel licence is subject to a condition —
 - (i) prohibiting the sale of packaged liquor to persons other than lodgers; and
 - (ii) restricting other sales to liquor sold for consumption on the licensed premises,it shall be referred to as a hotel restricted licence,
and an application may be made for a tavern licence if the applicant does not seek a licence for a hotel offering accommodation, or for a hotel restricted licence only.
- (2) Subject to this Act, during permitted hours the licensee of a hotel licence is authorised to keep open the licensed premises, or part of those premises, and, while those premises are open —
- (a) is required to sell liquor on the premises to any person for consumption on the premises; and
 - (b) may, unless the licence is a hotel restricted licence, sell packaged liquor on and from the premises to any person.
- (3) At a time when a sale of packaged liquor to any other person would not be within permitted hours, the authority to sell packaged liquor to a lodger extends only to such quantities as might reasonably be consumed by the lodger on that day.
- (4) A hotel licence, unless it is a tavern licence, is subject to the condition that the licensee, subject to subsection (5) and to any variation under subsection (6), provides —
- (a) residential accommodation for any person;
 - (b) breakfast for lodgers, between 7 a.m. and 9 a.m.; and
 - (c) dinner for lodgers, between 6 p.m. and 8 p.m.
- (5) A licensee is not required to comply with a condition of the kind referred to in subsection (4) if —

- (a) the person seeking the residential accommodation or the meal is a person whom, under section 108(3), the licensee would have reasonable cause to refuse to receive;
 - (b) the licensee has no available accommodation, or can not provide a meal, by reason of prior bookings; or
 - (c) some other proper reason exists.
- (6) Where the licensing authority is satisfied —
- (a) that there is not, at any time or during any specific period, a significant need for residential accommodation in the locality;
 - (b) that, notwithstanding the existence of such a need, adequate residential accommodation is available to the public; or
 - (c) that circumstances that would justify a temporary removal of the licence or redefinition of the licensed premises exist,

and that in consequence no useful purpose will be served by the continuance, or the continuance during that period, of a requirement to provide residential accommodation, the licensing authority may, on application, vary the conditions of a hotel licence so as to reduce the extent of the accommodation required or the times at which it is to be provided or may order that, either permanently or at specified times, the licence shall have effect as a tavern licence.

- (7) Where the licensing authority is satisfied that, at any time or during any specific period, there is no significant need to provide for the sale of packaged liquor to persons other than lodgers it may, on application, vary the conditions of a hotel licence so that it has effect as a hotel restricted licence.

[Section 41 amended by No. 12 of 1998 s. 27; No. 26 of 2001 s. 4.]

42. Cabaret licences

- (1) Subject to this Act the licensee of a cabaret licence is, during permitted hours, authorised to sell liquor on the licensed premises, for consumption on the licensed premises only, ancillary to continuous entertainment provided live by one or more artists present in person performing there or by way of recorded music presented personally by a person employed or engaged by the licensee to do so.
- (2) For the purpose of determining whether or not entertainment is continuous, no account shall be taken of reasonable intervals between acts, or between the performances of artists, so long as substantial compliance with the requirement for continuity is observed.
- (3) Every cabaret licence is subject to the condition that liquor shall not be permitted to be consumed on the licensed premises except at a time when live entertainment is being provided there and liquor may be lawfully sold under the licence, unless an extended trading permit applies.

43. Requirements relating to a cabaret licence

An applicant for the grant of a cabaret licence must satisfy the licensing authority that the premises in respect of which the licence is sought —

- (a) are so constructed as to enable entertainment of a kind referred to in section 42 to be provided there; and
- (b) are suitable, having regard to any condition imposed as to the nature or extent of the entertainment required to be provided.

44. Casino liquor licences

- (1) Subject to this Act the licensee of a casino liquor licence is, during permitted hours, authorised to sell liquor for consumption on the premises at the casino, or at other premises within the casino complex concerned or adjacent to that

complex, within such one or more defined areas as may from time to time be approved by the Gaming and Wagering Commission.

- (2) The terms of, and the conditions imposed in relation to, a casino liquor licence may make differing provisions so as to apply —
- (a) as though a defined area were premises to which a hotel licence, or a cabaret licence, or a restaurant licence, or a special facility licence, or an extended trading permit applied; and
 - (b) at all times, or at a specified time,
- by reference to the respective areas defined.
- (3) The licensing authority shall not impose or vary a condition, or redefine the area of the licensed premises or approve an alteration to the premises, in relation to a casino liquor licence which has been granted unless the Gaming and Wagering Commission has been informed of the nature of the application and its proposed effect, has made known its recommendations, and consents to the proposed determination of the licensing authority.

[Section 44 amended by No. 35 of 2003 s. 173(4).]

45. Requirements relating to a casino liquor licence

- (1) The licensing authority shall not grant a casino liquor licence unless —
- [(a) deleted]*
 - (b) the premises sought to be licensed are premises approved for the purpose by the Gaming and Wagering Commission and are comprised within or are adjacent to the casino complex to which that casino gaming licence relates.

- (2) A casino liquor licence shall not be granted otherwise than subject to such conditions as are recommended by the Gaming and Wagering Commission.
- (3) The licensing authority shall not grant to an applicant to whom subsection (1) applies any authorisation to sell liquor in the casino complex that contravenes, or exceeds the authorisation contemplated by, the casino complex agreement pursuant to which the casino gaming licence was granted.
- (4) Where any particular part of the premises to which a casino liquor licence relates constitutes a defined area and those premises by virtue of an order made under section 21F(1b) of the *Casino Control Act 1984* cease to be part of the casino complex the licensing authority shall, on the application of the prospective licensee, but subject to —
 - (a) the consent of the Gaming and Wagering Commission and of the holder of the casino liquor licence; and
 - (b) where the Director so requires, the casino liquor licensee having first provided to the Director a return of liquor purchased or sold and such other records as the Director may require appropriate to the former usage of that defined area up to a date specified by the Director,

grant to the prospective licensee in respect of that defined area a licence under this Act, as may be appropriate having regard to the usage of the area, as though it were a licence the transfer of which to the prospective licensee had been approved by the licensing authority.

[Section 45 amended by No. 12 of 1998 s. 28; No. 35 of 2003 s. 173(4).]

46. Special facility licences

- (1) The licensing authority shall not grant a special facility licence except for a prescribed purpose.

- (2) The licensing authority shall not grant a special facility licence if granting or varying a licence of another class, or imposing, varying or cancelling a condition on a licence of another class, or issuing an extended trading permit in respect of another class of licence, would achieve the purposes for which the special facility licence is sought.
- (2a) Subsection (2) applies —
 - (a) whether or not an application has been made for a grant, variation, imposition, cancellation or issue referred to in that subsection; and
 - (b) even if such an application has been made and has been refused.
- (2b) The application for a special facility licence must demonstrate how the business for which the licence is sought meets any of the prescribed purposes for which a special facility licence may be granted.
- (3) If a special facility licence is granted, it must be granted on such terms and conditions as are necessary to ensure that the licence is used only for the prescribed purpose for which it is granted.
- (4) The licensee of a special facility licence is authorised to sell liquor in accordance with the terms and conditions of the licence.
- (5) At a time when a sale of packaged liquor to any other persons would not be within permitted hours or at a time authorised by the licence, any authority conferred by a special facility licence to sell packaged liquor to a lodger or to any other specified class of person extends only to such quantities as might reasonably be consumed by the person to whom the liquor is sold on that day.
- (6) If the Director so approves, section 37(5) or section 38, or both of those provisions, or parts of either of those provisions, do not apply in respect of a special facility licence of a type prescribed.

[Section 46 inserted by No. 12 of 1998 s. 29; amended by No. 26 of 2001 s. 5(1).]

47. Liquor store licences

- (1) Subject to this Act, during permitted hours the licensee of a liquor store licence is authorised to keep open the licensed premises and to sell packaged liquor on and from the premises to any person.
- (2) The licensee of a liquor store licence is authorised to supply liquor, by way of free sample —
 - (a) for consumption on a part of the licensed premises approved for the purpose by the Director; or
 - (b) for consumption off the premises.

[Section 47 amended by No. 12 of 1998 s. 30.]

Division 3 — Category B licences

48. Club or club restricted licences

- (1) For the purposes of this Act a club licence —
 - (a) which is expressed to be granted as a club restricted licence; or
 - (b) which is subject to conditions —
 - (i) restricting the sale of liquor to liquor purchased for the purpose by or on behalf of the club from a supplier selected by the club from a list of suppliers nominated by the Secretary of the club in writing to, and approved by, the Director; and
 - (ii) prohibiting the sale of liquor for consumption off the premises, or the removal of liquor from the premises, unless subsection (9) applies,

shall be referred to as a club restricted licence.

- (2) Subject to this Act a club licence authorises the sale, during permitted hours, of liquor —
- (a) to a member and to the guests of that member in the company of that member —
 - (i) for consumption on the licensed premises, subject to subsection (4)(b); or
 - (ii) ancillary to a meal supplied at the club by or on behalf of the club to a member and to each of the guests of that member (without limitation as to number), being guests of whose attendance prior notice was given to the club in accordance with rules approved by the Director;
 - (b) to a member, for consumption by the guests of that member (without limitation as to number) at a function held by or on behalf of that member at the club if in accordance with rules approved by the Director; or
 - (c) to a member, if —
 - (i) the licence is not a club restricted licence; or
 - (ii) subsection (9) applies,and the liquor is packaged liquor, subject to subsection (3) and subsection (4)(c),
if the constitution and rules of the club, as approved by the Director, are not thereby contravened.
- (3) At a time when a sale of packaged liquor to a member who was not a lodger would not be within permitted hours or at a time authorised by the licence, any authority conferred by a club licence to sell packaged liquor to a member who is a lodger extends only to such quantities as might reasonably be consumed by the lodger on that day.
- (4) Every club licence is subject to the conditions that —
- (a) unless an extended trading permit otherwise authorises, the club has —

- (i) where a club restricted licence applies — a right to occupy the licensed premises to the exclusion of others during the times when the sale of liquor is authorised by the licence; and
 - (ii) in any other case — exclusive right to occupy the licensed premises;
- (b) the authority to sell liquor for consumption by the guests of a member, otherwise than ancillary to a meal or at a function under subsection (2)(b), extends only to such persons, not exceeding 5 or such lesser number as may be permitted by rules approved by the Director, as are introduced as the guests of that member on that day;
- (c) packaged liquor be not removed —
 - (i) from premises to which a club restricted licence applies, unless subsection (9) applies; or
 - (ii) in any other case, from the premises except by or on the instructions of the member to whom it was sold;
- (d) as soon as is practicable after the making of any proposal for a change —
 - (i) in the appointment of a person as trustee to hold the licence for the club; or
 - (ii) to the constitution or rules of the club, the Secretary of the club shall provide to the Director certified particulars of the change proposed, and that effect is not given to the change without the prior approval of the Director;
- (e) an up to date register of members, in respect of each class of membership, be continually available for inspection at the club premises; and
- (f) the club ensures that its constitution and rules, as approved by the Director, are not contravened.

- (5) Subject to subsection (6), where a club has as one of its principal objects the conduct of a sport a person who is on any day visiting the club —
- (a) as a member or an official of, or a person assisting, a team that is to contest a pre-arranged event in that sport on that day; or
 - (b) at the invitation of a member, to engage in that sport on that day,

may for the purposes of this Act be taken to be a person who is accorded temporary membership on that day in accordance with rules approved by the Director.

- (6) Where the Director is satisfied that the circumstances so require the Director may impose a condition on the licence requiring a club specifically to seek the approval of the Director before admitting persons to temporary membership.
- (7) Where in relation to the sale of liquor a club permits any contravention of its constitution or rules as approved by the Director a complaint may be lodged under section 95 on the ground that the licensed premises are not properly managed in accordance with this Act.
- (8) The list of suppliers to be nominated by the Secretary of a club which holds a club restricted licence shall, unless —
- (a) there is no such licensee; or
 - (b) there are so few such licensees that —
 - (i) the club's choice of supplier would be unreasonably restricted if confined to them alone; and
 - (ii) the Director so authorises,

consist of licensees who have hotels or liquor stores situated within 8 kilometres of the club premises.

- (9) Where the Director is satisfied that the members of a club which holds a club restricted licence cannot, without great

inconvenience, obtain supplies of packaged liquor from a supplier other than the club —

- (a) the Director may, by endorsement on that licence and subject to such conditions as may be imposed, authorise the sale of packaged liquor to members of the club; and
- (b) effect shall be given to the endorsement as a variation of the terms of the licence fixed by this Act.

[Section 48 amended by No. 12 of 1998 s. 31.]

49. Requirements relating to a club licence

- (1) Subject to this section, the licensing authority shall not grant a club licence unless the applicant satisfies the licensing authority —
 - (a) that the applicant is a society, club, institution or other body of persons which —
 - (i) is incorporated or deemed to be incorporated under the *Associations Incorporation Act 1987* or some other written law; or
 - (ii) is a body to which Schedule 2 applies or otherwise is of such a size or nature that it is appropriate that the body should be licensed notwithstanding that it is unincorporated, subject to the licence being held for the applicant by a trustee,

and that it comprises a body of persons (in this Act referred to as a “**club**”) associated by reason of a common interest of the kind referred to in section 37(1)(c)(i);
 - (b) that the club has been, or in a case where the applicant is formed by the amalgamation of 2 or more clubs each of them has been, well managed for a period of not less than 12 months prior to the application; and
 - (c) unless subsection (4) applies, that the constitution and rules of the club are of a kind appropriate for the

purposes of a club seeking to be licensed, having regard to the terms and conditions of the licence sought,

and the content of that constitution and those rules is approved by the Director.

- (2) Where the Director finds that the constitution or rules of an applicant club are not adequate to give effect to the requirements of this Act, the licensing authority may —
- (a) adjourn the hearing of the application to enable the constitution or rules to be varied; or
 - (b) grant the application subject to a condition requiring amendment of the constitution or rules.
- (3) Subject to subsection (4), the Director shall not approve the constitution or rules of a club for the purposes of this Act unless satisfied —
- (a) that proper provision is made for the management of the affairs of the club by a committee of management elected by the general body of members and for the appointment of a Secretary;
 - (b) that provision is made for regular meetings of the general body of members and of the committee of management;
 - (c) that appropriate conditions governing admission to membership of the club exist and, in particular —
 - (i) that a person may not become an ordinary member of the club unless duly nominated on proper notice being given to the ordinary members of the club, and subsequently elected by the general body of members or by a committee in accordance with the constitution and rules;
 - (ii) that the number of persons who may be admitted to membership, or to a particular class of membership, does not exceed any limit imposed

- by the licensing authority having regard to the nature of the club or the accommodation in respect of which the licence is sought; and
- (iii) where provision is made for honorary or temporary membership — that the classes of persons entitled to such membership are not unduly large, having regard to the nature of the club;
 - (d) that provision is made for payment in advance of a defined annual, half-yearly or quarterly subscription by the ordinary members of the club; and
 - (e) that provision is made —
 - (i) for proper records to be kept of the proceedings of the club and of the committee of management;
 - (ii) for proper accounts to be kept of the financial affairs of the club; and
 - (iii) in the case of an unincorporated club, for the appointment of a person as trustee to hold the licence for the club.
- (4) The licensing authority may approve the constitution or rules of a club for the purposes of this section notwithstanding that subsection (3) is not complied with if it is satisfied that the club is a body to which Schedule 2 applies or that otherwise, having regard to the nature of the club, a proper reason exists for doing so.
- (5) Notwithstanding any other provision of this section or of section 48, Schedule 2 has effect in relation to —
- (a) the Anzac Club; and
 - (b) the Air Force Association (Western Australia Division) Club,
- respectively.

- (6) Where a club licence is held by a body which was not previously incorporated under the *Associations Incorporation Act 1987*, on a copy of a certificate of incorporation under that Act being lodged with the Director by the Secretary of the club with the consent of the trustee the licence shall be vested in the incorporated body and shall be varied accordingly.

[Section 49 amended by No. 12 of 1998 s. 32.]

50. Restaurant licences

- (1) Subject to this Act the licensee of a restaurant licence is, during permitted hours, authorised to sell to any person liquor on the licensed premises for consumption on the premises ancillary to a meal supplied by the licensee to, and eaten by, that person there.
- (1a) Where the licensee of a restaurant licence holds an extended trading permit under section 60(4)(ca) in respect of the premises, the licensee is authorised to sell liquor to a person, whether or not ancillary to a meal eaten by the person, if —
- (a) the liquor is consumed at a dining table; and
 - (b) not more than 20% of the seating capacity for customers on the premises is available, or being used at any one time, for persons to consume liquor other than ancillary to a meal.
- (2) Where the licensee of a restaurant licence holds an extended trading permit under section 60(4)(c) in respect of residential accommodation provided to the public by the licensee on the same or adjacent premises, the licensee is authorised to sell liquor to a lodger in a room or place in the area to which that permit applies reserved for the private use of lodgers, whether or not ancillary to a meal.
- (3) Every restaurant licence is subject to the conditions that —

- (a) the business conducted at the licensed premises must consist primarily and predominantly of the regular supply to customers of meals to be eaten there; and
- (b) liquor must not be consumed by a person on the licensed premises except ancillary to a meal supplied, or to be supplied, by the licensee to, and eaten by, that person there.

[Section 50 amended by No. 12 of 1998 s. 33.]

51. Liquor in unlicensed restaurants

[(1) repealed]

- (2) Subject to subsection (3), a person who supplies liquor in, or in the vicinity of, an unlicensed restaurant for consumption in that restaurant commits an offence.

Penalty: \$1 000.

- (3) Where a person is charged with a contravention of subsection (2) it shall be a defence to show that the liquor was brought to the restaurant, in such a quantity only as was reasonable in the circumstances, by a customer of the restaurant for consumption ancillary to a meal supplied at that restaurant to, and eaten by, that customer or a guest of that customer there.

- (4) A person who —

- (a) being the occupier, or having the management or control, of an unlicensed restaurant; or
- (b) being employed by or the agent of such a person,

permits or suffers any other person to bring liquor into, or consume liquor in, or to supply liquor for consumption in, that restaurant in contravention of this section commits an offence.

Penalty: \$1 000.

[Section 51 amended by No. 12 of 1998 s. 34.]

52. Liquor sold or consumed ancillary to a meal, and evidentiary matters

- (1) For the purposes of this Act, where an extended trading permit issued in relation to any class of licence authorises the sale or consumption of liquor ancillary to a meal in an area which would not otherwise be comprised in the licensed premises that area shall, at times when the sale or consumption of liquor ancillary to a meal supplied on the licensed premises is authorised, be deemed to be comprised within the licensed premises unless the permit otherwise provides.
- (2) For the purposes of any proceedings under this Act, an allegation in the complaint or charge that liquor purporting to be sold for consumption, or consumed, ancillary to a meal was not so sold or consumed shall be accepted as proved unless the licensee or the person by whom the liquor was consumed, as the case may be, establishes beyond reasonable doubt —
 - (a) that a meal was supplied which was substantial, and was eaten or genuinely intended to be eaten by the persons to whom the liquor was sold or by whom the liquor was consumed;
 - (b) that the meal was served to, or was eaten by, persons seated at a dining table;
 - (c) that the primary and predominant purpose of persons entering the licensed premises was to obtain a genuine meal; and
 - (d) that the supply of liquor, whether before, during or after the meal, was subordinate and incidental to the service of a genuine meal.

[Section 52 amended by No. 84 of 2004 s. 80.]

53. Conditions on authorisation for sale ancillary to a meal

- (1) The authorisation conferred by section 50 or by an extended trading permit issued in relation to any class of licence for the

purpose of the sale of liquor ancillary to a meal may, in appropriate cases, be reduced —

- (a) by the imposition, on the grant of the licence or the issue of the permit, of conditions requiring —
 - (i) that trading be restricted to specified hours;
 - (ii) that liquor be served and consumed at a dining table and not elsewhere;
 - (iii) that furniture or fittings be provided or arranged in a specified manner;
 - (iv) that any specified, or specified kind, of charge is not levied;
 - (v) that the premises be maintained to a specified standard; or
 - (vi) that specified records be kept and made available for inspection on behalf of the licensing authority,

or other conditions which the Director thinks desirable to prevent improper arrangements or practices; and

- (b) subsequently, by further or other conditions imposed by the Director after giving the licensee a reasonable opportunity to make submissions and to be heard.

- (2) In subsection (1), “**specified**” means specified in the condition imposed.

[54. *Repealed by No. 12 of 1998 s. 35(1).*]

55. Producer’s licences

- (1) Subject to this Act the licensee of a producer’s licence is, during permitted hours, authorised —
 - (a) to sell on or from the licensed premises liquor produced by the licensee —

- (i) being wine, or spirits made from grapes, for consumption on a part of the licensed premises approved for the purpose by the Director or for consumption off the premises;
 - (ii) being spirits not made from grapes, in sealed containers for consumption off the premises; or
 - (iii) being beer, in sealed containers in an aggregate quantity per person of not less than 9 litres for consumption off the premises;
- and
- (b) to sell or supply that liquor, by way of sample, for consumption on a part of the licensed premises approved for the purpose by the Director.
- (2) A producer's licence shall not be granted other than in accordance with this Act and any conditions prescribed.
- (3) Where the licensee is a body corporate which produces wine or spirits, wine or spirits produced by a related body corporate shall be deemed to have been produced by the licensee.

[Section 55 amended by No. 12 of 1998 s. 36.]

56. Evidence as to production of liquor

- (1) For the purposes of this Act, a person shall be taken to have produced liquor —
 - (a) being wine made from grapes —
 - (i) if it was fermented by, or under the control or direction of, that person; or
 - (ii) if, in the case of wine produced by blending, all the wine used was fermented from produce grown or produced in Australia;
 - (b) being wine not made from grapes, if it was fermented or otherwise made from produce grown, produced or obtained by that person;

- (c) being spirits, if it was distilled by that person; or
 - (d) being beer, if it was brewed by that person.
- (2) In determining any question as to the fermentation of wine, maturation of the wine after final bottling shall be disregarded.

[Section 56 amended by No. 74 of 2003 s. 78.]

57. Requirements relating to a producer's licence

An applicant for the grant of a producer's licence must satisfy the licensing authority —

- (a) that being a genuine producer of liquor, or a person who the Director is satisfied will become a genuine producer of liquor, the applicant produces or will produce liquor of the kind sought to be authorised for sale under the licence, in a manner to which section 56 applies;
- (b) that the applicant carries on, or proposes to carry on, a genuine business of the sale of that liquor;
- (c) that the premises in relation to which the licence is sought are suitable for the purpose proposed; and
- (d) that the applicant meets such requirements as are prescribed for the purposes of this paragraph.

[Section 57 amended by No. 12 of 1998 s. 37.]

58. Wholesaler's licences

- (1) Subject to this Act, the licensee of a wholesaler's licence is, during permitted hours, authorised to sell packaged liquor on or from the licensed premises, in an aggregate quantity per person of not less than 9 litres, to any person for consumption off the premises.
- (1a) Notwithstanding subsection (1), the licensee of a wholesaler's licence may sell liquor in an aggregate quantity of less than 9 litres to —
- (a) a person who is a liquor merchant or is otherwise authorised by law to sell liquor; or

- (b) any employee of the licensee.
- (2) The licensee of a wholesaler's licence is authorised to supply liquor, by way of free sample, for consumption on a part of the licensed premises approved for the purpose by the Director.
- (3) Every wholesaler's licence is subject to the condition that —
 - (a) liquor may only be sold to a person during the permitted hours applicable to a liquor store licence, other than —
 - (i) as ship's stores;
 - (ii) to a person who is a liquor merchant or is otherwise authorised by law to sell liquor; or
 - (iii) to a person who is not resident in Australia where delivery of the liquor is to be effected outside Australia;and
 - (b) the business conducted must consist, to at least ~~90%~~ of the licensee's gross turnover from the sale of liquor in each financial year, of selling liquor to liquor merchants or other persons authorised by law to sell liquor.
- (4) For the purposes of subsection (3)(b), any amount derived by a licensee from the sale of liquor —
 - (a) as ships' stores;
 - (b) to an employee of the licensee; or
 - (c) to a person who is not resident in Australia where delivery of the liquor is to be effected outside Australia,

shall not be taken into account in calculating gross turnover.

[Section 58 amended by No. 56 of 1997 s. 26(4); No. 12 of 1998 s. 38.]

59. Occasional licences

- (1) An occasional licence authorises the licensee to sell, or the supply or consumption of, liquor —

- (a) at such times, and on such occasion or during such period not exceeding 3 weeks, as may be specified;
 - (b) at such places, and within such designated area, as may be specified; and
 - (c) subject to such terms or conditions as may be specified.
- (2) An occasional licence shall not be granted —
- (a) if, in the opinion of the Director —
 - (i) the place in which the sale, supply or consumption of liquor would be authorised by the licence may not lawfully be used for that purpose;
 - (ii) where the applicant holds another licence, the issue of an extended trading permit issued relating to, or the variation or cancellation of a term or condition of, that licence would be a more appropriate means of achieving the purpose for which the occasional licence is sought;
 - (iii) sufficient facilities and expertise to enable the licence to be operated in a proper manner may not be provided;
 - (iv) adequate measures to ensure that trading is not conducted in a manner detrimental to the public interest may not be taken; or
 - (v) the grant of a further occasional licence would tend to establish an undesirable pattern, where the application is made in respect of a function organized by a particular person or body of persons, or on behalf of a particular cause, to whom or which or on behalf of which previous occasional licences have been granted;
 - or
 - (b) unless the applicant, if so required, satisfies the Director —

- (i) where the licence is sought in respect of a function organized by a person other than the applicant, that the consent of the organizer to the proposed sale of liquor has been obtained; and
 - (ii) that the consent of the occupier, or of the person or authority having control, of the premises where the sale, supply or consumption of liquor will take place has been obtained.
- (3) Where an application is made under this section, a licensee who desires to participate in any arrangement whereby the benefit arising from the holding of the licence accrues to any other person shall inform the Director who may then authorise an arrangement under which the licensee is to pay to that person —
 - (a) a proportion of the gross receipts obtained by the licensee from the sale of liquor under the occasional licence;
 - (b) a proportion of an inclusive charge paid to the licensee or some other person in respect of the sale of liquor with some other service; or
 - (c) a calculable amount, upon a specified basis,in such manner and upon such conditions as the Director may approve notwithstanding that such an arrangement might otherwise contravene a condition of the licence or of the kind referred to in section 60(3)(a) or section 104.
- (4) Where the Director so requires the liquor sold or supplied under an occasional licence shall be purchased for the purpose from a supplier, or a supplier selected from a list of suppliers, specified in the licence.
- (5) An occasional licence may be granted in relation to a festival or other event authorising the organizer and specified persons participating in or associated with that festival or event to sell liquor, or liquor of a specified description, during such period or on such occasions as may be specified.

- (6) In this section, “**specified**” means specified in the licence.
- (7) The Director may cancel an occasional licence at any time if satisfied that the licence is no longer appropriate.

[Section 59 amended by No. 12 of 1998 s. 39(1).]

Division 4 — Permits

60. Extended trading permits

- (1) An extended trading permit authorises the licensee of the licence to which it relates, subject to —
 - (a) this Act;
 - (b) any other written law; and
 - (c) its conditions, which shall take effect as conditions of that licence,to sell and supply liquor under that licence according to the tenor of the permit, upon such terms as are specified in the permit at times, in circumstances, or in a place, to which that licence would not otherwise apply.
- (2) The place or any premises to which an extended trading permit applies shall, where the permit so provides, during any period when the permit has effect be deemed to be licensed premises forming part of the premises licensed under the licence to which the permit relates and, unless the permit or this section otherwise provides, the permit has effect whilst the licence to which it relates remains in force.
- (3) An extended trading permit is subject to the conditions that —
 - (a) the licensee to whom it is issued will not participate in any arrangement whereby the benefit arising from the holding of the permit accrues to any other person, unless subsection (8) applies; and
 - (b) a person nominated by the licensee and approved by the Director attends at the premises specified when liquor is

sold under the permit, unless the permit is issued in relation to a casino liquor licence.

- (4) The purposes for which an extended trading permit may be issued include —
- (a) catering, authorising the licensee to sell liquor on such days other than a Good Friday and between such hours on those days as may be specified, as a caterer on specified premises, which remains in force for the period specified;
 - (b) a dining area in premises to which a hotel licence, cabaret licence or producer's licence applies, authorising the licensee to sell liquor, other than on a Good Friday, at any time unless otherwise specified —
 - (i) in a specified dining area on the licensed premises; and
 - (ii) where the permit so provides, in a specified reception area on or adjacent to the licensed premises,
for consumption there ancillary to a meal supplied in the dining area by the licensee, which remains in force for the period during which the licence is current unless otherwise specified, but is subject to the condition that the Director remains satisfied that the requirements referred to in section 52(2) are met;
 - (c) a restaurant comprised within residential accommodation, authorising the licensee of a restaurant licence to sell, at any time, liquor to a lodger under section 50(2), which remains in force for the period during which the licence is current unless otherwise specified, but is subject to the condition that the Director remains satisfied that the predominant purpose of the premises within which the restaurant is comprised is the provision of residential accommodation for the travelling public;

- (ca) a restaurant, authorising the licensee of a restaurant to sell liquor for consumption on the premises, whether or not ancillary to a meal, during hours which are permitted hours under a hotel licence;
- (cb) authorising the licensee of a club licence to sell liquor on a specified special occasion or a day on which a specified function is held on, or on a specified part of, the licensed premises, to persons other than members, or guests of members, of the club, notwithstanding section 48(2);
- (d) late delivery, authorising the licensee of a liquor store licence to deliver or supply, off the premises, after the end of permitted hours on any day but before 12 midnight, liquor sold or agreed to be sold during permitted hours but not then delivered or supplied, which remains in force for the period during which the licence is current unless otherwise specified;
- (e) an association's permit, authorising the licensee of a club licence (other than a club restricted licence) or of a special facility licence to sell liquor on such days other than a Sunday, Christmas Day or Good Friday and between such hours on those days as may be specified, for consumption on a specified part of the licensed premises to a person who is a member, or the guest of a member, of an association of persons attending a venue together by reason of a common interest, which remains in force for the period specified, but is subject to the conditions that —
 - (i) the authority to sell liquor for consumption by the guests of a member of the association, otherwise than ancillary to a meal, extends in relation to each such member on any day only to not more than 2 persons introduced as guests by that member on that day; and

- (ii) the licensee takes such measures as will ensure that the constitution and rules of the association, if that constitution or those rules were required to be approved by the Director, are observed;
 - (f) a function, authorising the licensee to sell liquor between specified hours on a day other than a Good Friday being a specified special occasion or a day on which a specified function is held on, or on a specified part of, the licensed premises (and where the permit so provides notwithstanding that no meal is supplied in the restaurant, or entertainment is provided in the cabaret, which is the subject of the licence to which the permit relates);
 - (g) extended hours, authorising the licensee to sell liquor under the licence at specified hours that would not otherwise be permitted hours, on such days other than a Good Friday as may be specified, which remains in force for the period specified; or
 - (h) an extended area, authorising the licensee to sell liquor on such days other than a Good Friday and between such hours on those days as may be specified, under the licence but on specified premises or in a specified area that would not otherwise be authorised, which remains in force for the period specified.
- (5) Nothing in subsection (4) precludes the licensing authority from issuing an extended trading permit for a purpose to which that subsection does not refer.
- (6) The licensing authority may, on the application of the licensee or, after giving the licensee a reasonable opportunity of making submissions or of being heard, on its own motion or on the application of —
- (a) a member of the Police Force; or
 - (b) except in the case of an extended trading permit that relates to a casino liquor licence, a person who satisfies

the Director that he or she would have been entitled to make an objection in respect of the licence had an application for the grant of that licence been made at the time of the issue of the permit,

from time to time vary the terms or conditions of a permit in any manner not inconsistent with this Act.

- (7) Where a licence is removed, or licensed premises are altered, an extended trading permit relating to the licence may be varied or cancelled, at the discretion of the licensing authority.
- (8) Where a licence to which an extended trading permit relates is, or would otherwise become, subject to a condition of the kind referred to in subsection (3)(a) the Director may approve an arrangement under which the licensee is to pay to any person —
- (a) a proportion of the gross receipts obtained by the licensee from the sale of liquor under the extended trading permit;
 - (b) a proportion of an inclusive charge paid to the licensee or some other person in respect of the sale of liquor with some other service; or
 - (c) such amount, upon such basis, as the Director may approve.
- (9) In this section, “**specified**” means specified in the extended trading permit.

[Section 60 amended by No. 12 of 1998 s. 40 and 97(2).]

61. Requirements relating to permits for an extended area

- (1) An extended trading permit for the purpose referred to in section 60(4)(h) shall not be issued in relation to any licence unless —
- (a) the premises or a defined area in respect of which the permit is sought are adjacent to the premises to which the licence relates;

- (b) the licensing authority is satisfied that the purpose for which the permit was sought could not be more appropriately achieved by redefining the licensed premises or the grant of an occasional licence;
 - (c) the licensee will, at times when the sale of liquor under the permit is authorised, be entitled to use for that purpose the premises or area to which the permit sought relates; and
 - (d) the applicant satisfies the licensing authority that the local government of the district within which the premises or area to which the application relates are situated has been consulted and has approved the application.
- (2) An extended trading permit shall not be issued so as to permit the sale or consumption of any liquor on a road or footpath unless the local government of the district consents to the application.

[Section 61 amended by No. 14 of 1996 s. 4.]

Division 5 — Conditional grants or approvals

[Heading amended by No. 12 of 1998 s. 41.]

62. Conditional grants or removals for uncompleted premises

- (1) This section applies to an application —
- (a) for a licence in respect of premises; or
 - (b) for the removal of a licence to premises, whether or not to be dealt with at the same time as a related application for the transfer of the licence,
- if, at the date of the final hearing of that application, those premises are uncompleted.
- (2) Where this section applies to an application and the licensing authority is satisfied that a licence of the class sought in the

application, or the removal of a licence to the premises, as the case may be, should be granted to the applicant in relation to the premises on conditions relating to the completion of the premises, the licensing authority shall grant the licence or removal to the applicant subject to those conditions.

- (3) A conditional grant of a licence or removal shall not be made under this section unless the applicant has submitted —
- (a) plans and specifications for the proposed premises; or
 - (b) a plan sufficient to identify the site of the premises together with a description (in which particular emphasis is given to any part of those premises to be used for the sale or consumption of liquor or for related services or amenities) sufficient to give a general indication of the proposed size and character of the proposed premises.
- (4) A conditional grant of a licence or removal under this section shall include —
- (a) if full plans and specifications were not submitted by the applicant in accordance with subsection (3)(a), a condition that they be submitted within 12 months after the conditional grant;
 - (b) a condition that the premises be completed in accordance with the plans and specifications submitted by the applicant; and
 - (c) a condition that the holder of the licence conditionally granted or removed apply on or before a specified day (“**the required day**”) for confirmation of the grant.
- (5) A conditional grant of a licence or removal under this section may be made subject to such further conditions as the licensing authority thinks fit including conditions —
- (a) that the premises shall be completed in accordance with specified plans or specifications, or subject to specified modifications;

- (b) as to a specified manner, or sequence, of the completion of the premises;
 - (c) requiring the applicant to enter into a bond, with or without sureties, conditional on the completion to the satisfaction of the licensing authority of specified work within a specified time;
 - (d) that the grant will be cancelled if the licensing authority is not satisfied as to any specified matter to which section 39 or 40 refers or as to public safety or fire precautions; or
 - (e) that a transfer of the licence to a designated person be effected in a manner approved by the licensing authority.
- (6) On an application by the holder of a licence conditionally granted or removed under this section, the licensing authority may —
- (a) vary any plans or specifications the subject of a condition; or
 - (b) otherwise vary any conditions to which the licence is subject, including a condition imposed under subsection (4).
- (7) Where full plans and specifications are submitted in accordance with the condition imposed under subsection (4)(a), the licensing authority may —
- (a) vary or add to the conditions of the grant of the licence or removal under this section as it thinks fit; or
 - (b) cancel or suspend the operation of the conditional grant,
- if it is not satisfied that the existing conditions are appropriate in relation to the plans and specifications.
- (8) If the licensing authority determines that premises when completed, or likely to be completed, do not or will not substantially comply with any condition imposed or are so

significantly altered that the existing conditions of the grant are inappropriate, the licensing authority may at its discretion cancel or suspend the operation of the licence conditionally granted or removed and require the applicant to make a fresh application, which shall be subject to any objection that may then be made.

- (9) If the holder of a licence conditionally granted or removed under this section applies for confirmation of the grant, and the licensing authority is satisfied that the conditions of the grant have been satisfactorily complied with, it shall confirm the grant or removal of the licence.
- (10) If the holder of a licence conditionally granted or removed under this section fails to apply for confirmation of the grant, the Director may cancel the licence without notice.
- (11) Notwithstanding section 37(5)(b), where the licensing authority makes a conditional grant of a removal under this section, it may also authorise the licensee to cease to occupy the premises from which the licence is to be removed without losing the interest in the licence until the grant is confirmed in accordance with this section.

[Section 62 inserted by No. 12 of 1998 s. 42.]

62A. Conditional grants pending local authority approvals etc.

- (1) Notwithstanding sections 37, 39 and 40, where —
 - (a) an application is made for a licence or a removal of a licence; and
 - (b) the licensing authority is satisfied that it would grant the licence or removal if a certificate referred to in section 39 or 40, or other evidence as to an approval, consent or exemption referred to in section 37(2), were produced,

the licensing authority may grant the licence subject to the condition that the certificate or other evidence be produced on or before a specified day.

- (2) The licensing authority may, on an application by the holder of a licence conditionally granted or removed under this section, substitute a later day as the specified day.
- (3) If the certificate or other evidence is not produced on or before the specified day, the Director may, by notice in writing, cancel the licence conditionally granted or removed.

[Section 62A inserted by No. 12 of 1998 s. 42.]

62B. Conditional approvals pending local authority approvals etc.

- (1) Notwithstanding section 77, where —
 - (a) an application is made for an alteration or redefinition of a licensed premises; and
 - (b) the licensing authority is satisfied that it would approve the alteration or redefinition of the licensed premises but for the production of evidence as to an approval, consent or exemption referred to in section 77(5),

the licensing authority may approve the alteration or redefinition subject to the condition that the evidence be produced on or before a specified day.

- (2) The licensing authority may, on an application by the holder of the licence, substitute a later day as the specified day.
- (3) If the evidence to be produced is not produced on or before the specified day, the Director may, by notice in writing, cancel the conditional approval.

[Section 62B inserted by No. 12 of 1998 s. 42.]

Division 6 — Conditions, generally

63. Restriction on power to vary terms fixed or conditions imposed by the Act

The licensing authority may, of its own motion or on the application of the licensee —

- (a) where the permitted hours applicable under section 97 to particular licensed premises are to be the hours specified in the licence or permit which relates to those premises, vary any term or condition specifying those hours;
- (b) in relation to a particular licence, exempt that licensee from a requirement imposed by or under this Act to keep the premises open for the sale of, and to sell, liquor there during any particular day or part of a day;
- (c) vary a hotel licence in accordance with section 41(6) or (7);
- (ca) remove the restrictions on a club restricted licence so that it is converted to a club licence;
- (cb) in relation to a hotel licence, other than a hotel restricted licence, vary the requirement under section 41(2)(a) to sell liquor, while the licensed premises are open, for consumption on the premises if the premises are temporarily damaged or rendered unsuitable by an unforeseen event;
- (d) vary the terms of a club restricted licence in accordance with section 48(9); or
- (e) vary, in such a manner as to become more restrictive, a term fixed or a condition specifically imposed by this Act in relation to the licence,

but is not otherwise empowered to vary or cancel a term specifically fixed or a condition specifically imposed by this Act, as distinct from pursuant to this Act, in relation to licences of that class or permits of that kind, except in relation to such provisions or circumstances as may be prescribed.

[Section 63 amended by No. 12 of 1998 s. 43.]

64. Power of licensing authority to impose, vary or cancel conditions

- (1) Subject to this Act, in relation to any licence, or to any permit, the licensing authority may at its discretion impose conditions —
- (a) in addition to the conditions specifically imposed by this Act; or
 - (b) in such a manner as to make more restrictive a condition specifically imposed by this Act,

and may vary or cancel any condition previously imposed by the licensing authority, having regard to the tenor of the licence or permit and the circumstances in relation to which the licensing authority intends that it should operate.

- (2) The power conferred by subsection (1) may, subject to compliance with section 31(6)(b), be exercised at any time, but a condition takes effect on —
- (a) the date of the grant of the licence or the issue of the permit in relation to which it was imposed; or
 - (b) such other date as is specified in the notice setting out the particulars, or in the endorsement or revised version of the licence or permit made, under section 31(6),

whichever is the later.

- (3) Without derogating from the generality of the discretion conferred on the licensing authority, the licensing authority may impose conditions which it considers to be in the public interest or which it considers desirable in order to —
- (a) ensure that the noise emanating from the licensed premises is not excessive;
 - (b) minimize the offence, annoyance, disturbance or inconvenience that might be caused to those who reside

or work in the vicinity of the licensed premises, or to persons in or making their way to or from a place of public worship, hospital or school, in consequence of activities on the licensed premises or the conduct of those making their way to or from the licensed premises;

- (ba) ensure that local laws of a local authority under the *Local Government Act 1995* or by-laws of an Aboriginal community under the *Aboriginal Communities Act 1979* are complied with;
- (c) ensure that the safety, health or welfare of persons who may resort to the licensed premises is not at risk;
- (ca) ensure that liquor is sold and consumed in a responsible manner;
- (cb) ensure that all persons involved in conducting business under the licence have suitable training for attaining the primary objects of this Act;
- (cc) minimize harm or ill-health caused to people, or any group of people, due to the use of liquor;
- (cd) limit or prohibit the sale of liquor on credit;
- (d) ensure public order and safety, particularly where circumstances or events are expected to attract large numbers of persons to the premises or to an area adjacent to the premises;
- (e) limit —
 - (i) the kinds of liquor that may be sold;
 - (ii) the manner in which or the containers, or number or types of containers, in which liquor may be sold;
 - (iii) the days on which, and the times at which, liquor may be sold;
- (f) prohibit persons being, or limit the number of persons who may be, present on, or on any particular part of, the licensed premises or any area which is subject to the

- control or management of the licensee and is adjacent to those premises;
- (g) prohibit the provision of entertainment, or limit the kind of entertainment that may be provided, on, or in an area under the control of the licensee adjacent to, the licensed premises;
 - (ga) prohibit promotional activity in which drinks are offered free or at reduced prices, or limit the circumstances in which this may be done;
 - (gb) prohibit any practices which encourage irresponsible drinking;
 - (h) otherwise limit the authority conferred under a licence or permit; or
 - (j) require action therein specified to be undertaken by the licensee —
 - (i) within a time or at times therein specified; or
 - (ii) on occasions or in circumstances therein specified,in relation to the licensed premises or any part of those premises, the conduct of the business carried on under the licence, or otherwise in the public interest;
 - (k) prevent improper arrangements or practices calculated to increase any subsidy payable; or
 - (m) ensure compliance with the requirements of, or with terms fixed or conditions imposed by or under, this Act.
- (4) If there is an inconsistency between a condition imposed under this Act and a requirement of, or made under, any other written law, the condition or requirement which is more onerous for the licensee shall prevail.
- (5) A condition may be imposed under this section which varies the obligation imposed by section 108(2)(a).
- (6) A condition imposed under this section may relate to —

- (a) any aspects of the business carried on under the licence;
and
 - (b) any activity carried on at the licensed premises, at any time and whether or not related to the business carried on under the licence.
- (7) Where a condition imposed under this section in relation to a licence has been contravened the licensing authority may —
- (a) impose a more restrictive condition in relation to that licence; or
 - (b) impose on the licence holder a monetary penalty not exceeding \$500 for each day on which the contravention continues, which shall be payable to the Crown by that person,

or both.

[Section 64 amended by No. 56 of 1997 s. 31; No. 12 of 1998 s. 44.]

65. Conditions relating to sales for consumption off the licensed premises

- (1) Subject to subsection (3), a licence or permit that authorises the sale of packaged liquor or of liquor for consumption off the licensed premises is subject to the conditions that the liquor so sold —
- (a) must be consigned to the purchaser at, and delivered on or from, the licensed premises, unless the Director otherwise approves;
 - (b) must be delivered in sealed containers; and
 - (c) shall not, unless an extended trading permit or a special facility licence so authorised, be or be permitted to be consumed on or, except in the case of wine sold under section 55, in the immediate proximity of the licensed premises,

and a person who contravenes such a condition commits an offence.

Penalty: \$2 000.

- (2) The conditions referred to in subsection (1) shall not be taken to have been contravened where —
- (a) the sale of liquor to the purchaser for consumption on the licensed premises is authorised at the time of sale; and
 - (b) the liquor, although sold for consumption off the licensed premises, is consumed there in circumstances in which it could lawfully have been consumed if sold under that authorisation.
- (3) For the purposes of any disciplinary action taken or proceedings instituted under this Act, liquor may be taken to have been consumed in the immediate proximity of licensed premises if the liquor is consumed in a place nearby where —
- (a) there is frequent drunkenness, or disorderly conduct by persons resorting to the licensed premises; or
 - (b) persons habitually gather for the purpose of consuming liquor sold on or from the licensed premises,

and the court is satisfied that the licensee has not, but could have, taken reasonable steps to prevent such occurrences or that the licensed premises are in any way ill-conducted.

- (4) Liquor may be taken to have been consumed in the immediate proximity of licensed premises notwithstanding that the circumstances referred to in subsection (3) do not apply.

[Section 65 amended by No. 12 of 1998 s. 45.]

65A. Petrol station not to be established on premises from which packaged liquor is sold

- (1) In this section —

“applicable day” means the day on which the *Liquor Licensing Amendment (Petrol Stations and Lodgers’ Registers) Act 2000*¹ comes into operation;

“country townsite” has the same meaning as it has in section 36A;

“petrol station” has the same meaning as it has in section 36A.

- (2) A licence that authorises the sale of packaged liquor and that is in respect of premises in the metropolitan area or in a country townsite is subject to the condition that after the applicable day a petrol station must not be established on the premises.
- (3) Subsection (2) does not apply to premises that are in a country townsite if the Director, on an application by the licensee of the premises, so orders.
- (4) In the case of a breach of the condition referred to in subsection (2) the licensing authority must cancel the licence in respect of the premises unless it is satisfied that the construction of the petrol station commenced before the applicable day in which case the authority may exercise any of the powers in section 96.

[Section 65A inserted by No. 23 of 2000 s. 6.]

Division 7 — Applications

66. Plans and specifications

- (1) An application for —
 - (a) the grant of a licence, other than an occasional licence;
 - (b) the removal of a licence; or
 - (c) approval of a proposed alteration to, or redefinition of, licensed premises,

must be accompanied, unless the Director otherwise approves, by plans of the premises to which the application relates.

- (2) An applicant may, at any time before the application is determined, submit for the approval of the licensing authority a modification of or substitution for any plan previously lodged.
- (3) An applicant for an occasional licence or extended trading permit must, if the Director so requires, submit plans of any premises on which the sale or consumption of liquor is sought to be authorised.
- (4) Subject to section 62, plans submitted under this section must comply with such requirements as may be prescribed, and the licensing authority may require that further or other plans be submitted for consideration.
- (5) Specifications complying with such requirements as may be prescribed shall be submitted with the plans to which they relate, unless the licensing authority otherwise agrees or directs, and the licensing authority may require that further or other specifications be submitted.
- (6) If, at any time, the Director is of the opinion that any plans or specifications submitted under this section are no longer accurate or adequate, the licensing authority may require that further information or plans be provided.

[Section 66 amended by No. 12 of 1998 s. 46.]

67. Advertisement of applications

- (1) An application in respect of any of the following matters must be advertised —
 - (a) the grant of a licence, other than an occasional licence;
 - (b) the removal of a licence; or
 - [(c) deleted]*
 - (d) an application to which section 77(6) applies,and the applicant must comply with any relevant requirement under subsection (3) and with subsection (4).

- (2) An application in respect of any other matter must, if the Director so requires, be advertised.
- (3) The Director may, in an appropriate case —
 - (a) waive or modify any requirement as to advertisement prescribed, or specified in this section;
 - (b) direct that —
 - (i) a requirement as to advertisement shall have effect in relation to a particular application to which it would not otherwise apply; or
 - (ii) for a requirement of this section there shall be substituted a requirement as to advertisement specified by the Director.
- (4) Where an application is required to be advertised —
 - (a) the applicant shall cause a notice, complying with any direction given by the Director and with any prescribed requirement, to be published, within such period after the application is lodged as the Director may specify, by way of advertisement in a daily newspaper specified by the Director; and
 - (b) in the case of an application relating to a Category A licence, the applicant shall take all reasonable steps to ensure that a notice of the application, complying with any direction given by the Director and with any prescribed requirement, is kept posted and conspicuously displayed —
 - (i) on the premises to which the application relates; or
 - (ii) if those premises are not then constructed, on the land on which it is proposed to construct them, so that it can be clearly seen and easily read by passers-by, during such period after the application is lodged as the Director may require, being a period

ending after the last day on which objections to the application should be lodged.

- (5) Where an application is required to be advertised, the Director —
- (a) shall cause a copy of the notice of application, endorsed with the date of its lodgement with the Director, to be publicly displayed at the office of the Director at Perth; and
 - (b) shall cause to be published in the *Gazette* a summary of the notice of application.

[Section 67 amended by No. 12 of 1998 s. 47.]

68. Notice of application, and inspection of records

- (1) Subject to this Act —
- (a) an application to the licensing authority shall, if a form and manner of giving notice of an application of that kind is prescribed, be so made by notice;
 - (b) a notice of application must be accompanied by —
 - (i) the prescribed fees;
 - (ii) the plans and specifications, if any, required by section 66 or otherwise prescribed or required;
 - (iii) records, complying with any prescribed requirements, verifying the background, creditworthiness and reputation of the applicant or of the person to the appointment of whom approval is sought;
 - (iv) any consent required under section 72; and
 - (v) in the case of an application for the grant of a club licence, a copy of the constitution and rules of the club certified as correct by the committee of management, the Secretary or a responsible officer of the club in a manner, and in the form of a text, acceptable to the Director;

and

- (c) the notice of application shall be supported by such further or other documentation or information as the Director may in a particular case require.
- (2) The requirements of subsection (1)(b)(iii), (iv) and (v) do not, unless the Director otherwise requires, apply to or in relation to an application for the grant of an occasional licence.
- (3) A person may, prior to the end of business on the last day on which objections are required to be lodged but without payment, inspect at the office of the Director any notice of application lodged together with the accompanying records, plans and specifications.
- (4) Nothing in this section precludes the Director from accepting lodgement of, or the licensing authority from hearing and determining, any application that does not comply with the requirements of this Act, if considered appropriate.

69. Disposal of applications, and interventions generally

- (1) Every notice of application must be lodged with the Director.
- (2) The Director shall —
 - (a) cause the date of lodgement to be endorsed on each notice of application; and
 - (b) give to the applicant sufficient directions to enable the application to be advertised in accordance with the requirements of this Act and the licensing authority.
- (3) Every advertisement required under section 67(4)(a) and every notice of application displayed under section 67(5)(a) shall be in a form approved by the Director and contain a statement that notices of intention to object to the application should be lodged with the Director by a date specified by the Director and set out in that advertisement or notice.

- (4) Except where an application relates to land or premises the subject of a licence which is held by the applicant and is to be surrendered if that application is granted, or where in other particular circumstances the Director determines that it is not appropriate, the Director shall —
- (a) refer any relevant particulars as to the applicant or the application to the Commissioner of Police; and
 - (b) if the application is for the grant or removal of a Category A licence, and the local government of the district in which the premises or proposed premises are, or are proposed to be, situated, or of any adjoining district appearing to the Director to be likely to have an interest, so requests, give to that local government a copy of the application and of any plans or specifications which accompany it,
- as soon as may be practicable.
- (5) In the case of an application for a club licence the Director shall cause any constitution or rules submitted to be examined.
- (6) The Commissioner of Police —
- (a) is authorised to cause such investigation or inquiry to be made as may be necessary into the background and antecedents of any applicant or person thought by the licensing authority or by an authorised officer to be likely to be interested in an application;
 - (b) is required, upon the licensing authority requesting a report of that kind, to cause a report to be provided to the licensing authority —
 - (i) as to the background, antecedents, character and reputation of any person; and
 - (ii) as to any disqualification under this Act or the repealed Act that may relate to any person,

who is a person thought by the licensing authority or an authorised officer to be likely to be interested in an application; and

- (c) may intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations —
 - (i) as to whether or not any person is a fit and proper person;
 - (ii) on the question of whether, if a particular application were granted, public disorder or disturbance would be likely to result; and
 - (iii) as to the interest that any person may have in a licence.

- (7) A local government to which subsection (4)(b) refers may intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations —
 - (a) as to whether premises are suitable to be, or to continue to be, licensed or the subject of a permit;
 - (b) as to whether a proposed alteration to, or redefinition of, licensed premises should be approved; and
 - (c) on the question of whether, if a particular application were granted, persons who reside, work or worship in the vicinity would be likely to suffer undue offence, annoyance, disturbance or inconvenience,and may submit a report to the licensing authority on those matters.

- (8) A person authorised by the local government may intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations in relation to the requirements of —
 - (a) the *Health Act 1911*;
 - (b) any written law relating to sewerage or drainage; or

(c) the *Local Government Act 1995* or the *Local Government (Miscellaneous Provisions) Act 1960*, in so far as that Act relates to health matters,

and may submit a report to the licensing authority on those matters.

- (8a) The Executive Director, Public Health within the meaning of the *Health Act 1911*, or a person authorised in writing by the Executive Director to act on his or her behalf, may intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations in relation to the harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimization of that harm or ill-health.
- (9) On an application relating to a club licence, a person to whom section 70 applies may intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations in relation to matters to which that section refers.
- (10) The licensing authority shall —
- (a) cause any plans or specifications submitted to the licensing authority to be examined as to their adequacy and suitability and, where they relate to existing premises, accuracy; and
 - (b) cause inquiry to be made into the suitability of any place or premises used, or proposed to be used, for purposes to which this Act applies,

and may take into account any report on those matters made at its request to the licensing authority.

- (11) In proceedings before the Court, the Director may intervene and may introduce evidence, make representations and examine or cross-examine any witness, on any question or matter.

- (12) A person, other than the Commissioner of Police or the Director, who proposes to intervene in proceedings under this section, shall lodge with, and in a form approved by, the Director, a notice giving particulars of the nature of and reasons for the proposed intervention, not later than the last day on which objections should be lodged or, with leave of the licensing authority, before the day appointed for the hearing of the application.
- (13) A person who intervenes in any proceedings —
- (a) may, unless the licensing authority certifies that that person has no interest in the application other than that of providing argument or fact to enable the licensing authority to reach an informed decision, be held on any appeal to have thereby become a party to the proceedings; and
 - (b) may be made a respondent to any appeal.
- (14) If a notice of application is not listed for an initial hearing within 12 months of the date of lodgement —
- (a) it shall not be listed thereafter without the approval of the licensing authority; and
 - (b) except where that approval is given, may be struck out by the Director.

[Section 69 amended by No. 14 of 1996 s. 4; No. 12 of 1998 s. 10(9) and 48.]

70. Intervention by persons interested in a club licence

- (1) This section applies to any person who has, in the opinion of the Director, a proper interest in the matter in question.
- (2) The matters in relation to which a person to whom the section applies may intervene in the proceedings before the Director on an application relating to a club licence are —
 - (a) the hours during which the sale of liquor should be authorised;

- (b) the conditions to which the licence, if granted, should be subject;
- (c) any question as to the variation or cancellation of a condition imposed;
- (d) the removal of the licence; and
- (e) the conduct and management of the club.

71. The affected area

- (1) Where —
 - (a) a notice of application is lodged for the grant, or removal, of a Category A licence; or
 - (b) the Director, having regard to the nature of an application in any other case, determines that it would be appropriate,

the Director shall cause an area surrounding the place where the premises to which the application relates are, or are proposed to be, situate to be specified, and the area so specified shall be taken to be the affected area to which the application relates.

- (2) In specifying an affected area, the Director may take into account —
 - (a) the class of licence to which the application relates;
 - (b) the nature and location of the places from which, and the persons from whom, the prospective licensee might derive trade;
 - (c) planning matters;
 - (d) existing or proposed licensed premises or other recreational venues, facilities or amenities;
 - (e) questions of access, or of limitations on access;
 - (f) established or prospective trading patterns; and
 - (g) any other matter likely to be relevant to the reasonable requirements or expectations of the public.

- (3) A person may obtain a copy of the specification of the affected area from the Director.

[Section 71 amended by No. 12 of 1998 s. 49.]

72. Requirement for consent of an owner or lessor, and objections by an owner, lessor, lessee or mortgagee

- (1) Subject to subsection (2) —

- (a) the licensing authority shall not grant an application for —

- (i) the grant or transfer of a licence;
- (ii) variation or cancellation of any condition imposed on a hotel licence and requiring the provision of residential accommodation;
- (iii) approval to a proposed alteration to, or redefinition of, the licensed premises; or
- (iv) an extended area permit in respect of any place which is to be comprised within the licensed premises,

unless the applicant satisfies the licensing authority that the owner, and where the licensed premises or proposed licensed premises are occupied, or are to be occupied, under a lease, the lessor, has consented to the application; and

- (b) the licensing authority shall not grant an application for the removal of a licence unless the applicant satisfies the licensing authority that —

- (i) the owner of the premises from, and the owner of the premises to, which the licence is sought to be removed have each consented to the application;
- (ii) where either the premises from or the premises to which the licence is sought to be removed are occupied, or are to be occupied, under a lease, the lessor has consented to the application; and

- (iii) notice was given under section 81(3)(c)(ii).
- (2) The licensing authority may waive any requirement under subsection (1) if the licensing authority considers that —
- (a) a consent has been capriciously or unreasonably withheld; or
 - (b) it is in the public interest to do so.
- (3) On an application for the removal of a licence, a person who is the lessee or mortgagee of the premises from which, if the application were granted, the licence would be removed may object to that application on the ground that the interest of that person may be prejudicially affected.
- (4) An owner or lessor of licensed premises, or of premises in respect of which a licence is sought, may object to any application which is required to be advertised if —
- (a) the consent of that person to the application is required by a term of a lease relating to the premises; and
 - (b) that consent has not been obtained in accordance with the lease.
- (5) A right of objection conferred by subsection (4) on a lessor is exercisable whether the interest of the applicant in the premises derives from the lessor directly or from a sublessor.
- (6) For the purposes of this Act, a lessor of the premises to which a licence is sought to be removed will be taken to have consented to an application for the grant or removal of a licence or approval to the transfer of a licence if, at the time of granting or assigning the lease of the premises to the applicant, the lessor was aware that the applicant proposed to sell or supply liquor on the premises.

[Section 72 amended by No. 12 of 1998 s. 50.]

73. The general right of objection

- (1) A person who is authorised to intervene in any proceedings relating to an application may instead or in addition exercise that right by way of objection.
- (2) Where an application is required to be advertised a right to object to the application is conferred —
 - (a) in any case where an affected area is specified, on —
 - (i) any resident of the affected area; and
 - (ii) any person holding a Category A licence for premises which are, or are premises referred to in a licence granted under section 62 and are proposed to be, situated in the affected area, on any ground permitted by section 74; and
 - (b) in relation to any application, on such persons, or persons of such a class, as may be —
 - (i) prescribed; or
 - (ii) specified by the licensing authority and defined in the advertisement required to be made relating to the application, on such of the grounds permitted under section 74 as may be so prescribed or specified.
- (3) For the purposes of subsection (2)(a)(i), the expression “**resident**” shall be taken to include any person or body of persons, corporate or unincorporate, who or which in the opinion of the licensing authority has a proper interest in the affected area, other than as a licensee, and is likely to be affected by the grant of the application.
- (4) Subject to subsections (5) and (6), an objection shall be made by lodging a notice in the prescribed form with the Director, not later than the day specified in the advertisements or notices relating to the application as the last day on which objections should be lodged.

- (4a) A person who lodges an objection under subsection (4) shall, unless the Director otherwise approves, serve a copy of the notice on the applicant.
- (5) The Director may —
- (a) permit a notice of objection to be lodged —
 - (i) by a person on whom, or a body on which, subsection (2) does not confer that right;
 - (ii) which is not in prescribed form, or is otherwise deficient; or
 - (iii) at any time before the determination of an application, notwithstanding that a prescribed time limitation has elapsed;
 - or
 - (b) permit an objection lodged to be amended or substituted, and the licensing authority shall determine, in the public interest in each case, whether the objection so lodged, amended or substituted should be heard.
- (6) Notwithstanding subsection (4), the licensing authority may, if it considers it proper to do so and subject to any conditions imposed, permit any objection to be taken at the hearing of an application.
- [(7) repealed]*
- (8) If the applicant so requests, where —
- (a) a notice of objection —
 - (i) is lodged under subsection (5)(a)(ii); or
 - (ii) is amended or substituted;
 - or
 - (b) an objection is permitted to be taken at a hearing,

the hearing shall be adjourned for such period as the licensing authority thinks necessary to enable the applicant to reply properly to any matter then raised.

- (9) An objection may be made on behalf of an unincorporated body of persons by an agent duly appointed for the purpose.
- (10) The burden of establishing the validity of any objection lies on the objector.

[Section 73 amended by No. 12 of 1998 s. 16(2) and 51.]

74. The general grounds of objection

- (1) No objection shall be made except on one or more of the following grounds —

- (a) that the grant of the application would be contrary to the public interest;
- (b) that the grant of the application would cause undue harm or ill-health to people, or any group of people, due to the use of liquor;

[(c) deleted]

- (d) on an application relating to a Category A licence, that the grant of the application is not necessary in order to provide for the requirements of the public;

[(e) ~~and~~. (f) deleted]

- (g) that if the application were granted —

- (i) undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school, would be likely to occur; or
- (ii) the amenity, quiet or good order of the locality in which the premises or proposed premises are, or

- are to be, situated would in some other manner
be lessened;
- (h) on an application relating to a club licence —
 - (i) that the club does not, or has ceased to, exist;
 - (ii) that persons who are not members are habitually admitted to the club premises, merely for the purpose of obtaining liquor;
 - (iii) that the supply of liquor to the club is not under the control of the members or of the committee appointed by the members; or
 - (iv) that the rules, or some of the rules, of the club are habitually broken or are so administered as not to conform to the requirements of this Act;
- or
- (j) that the grant of the application would otherwise be contrary to this Act.
- (2) The Director may require any objector to verify —
- (a) whether the person has any direct or indirect pecuniary interest in the refusal of the application, or any expectation of such an interest;
 - (b) whether any person other than the objector is interested in the lodging of the objection and, if so —
 - (i) the name of each such person; and
 - (ii) where the person is a proprietary company, the names of the directors and principal shareholders;
- or
- (c) any other matter required by the Director,
- on oath or affirmation or by statutory declaration.
- (3) Where an objection is lodged on the ground that the grant of the application would be contrary to the public interest —

- (a) the notice of objection shall be accompanied by a statement in writing setting out the reasons why the objector considers the objection can be made out;
 - (b) if the Director so requires, the objector shall provide further particulars of the matters to which the objection relates; and
 - (c) the Director may require that notice of any facts or grounds alleged or submission made be given to the applicant in a particular manner.
- (4) Where, in relation to any objection, the Director determines —
- (a) that any objection —
 - (i) is frivolous or vexatious;
 - (ii) is repetitious of other objections; or
 - (iii) relates to matters frequently before the licensing authority of which the licensing authority may be presumed to be aware;
 - (b) that any fact or ground alleged is not relevant or cannot be verified; or
 - (c) that for any reason the objection should not be heard,
- the Director shall give notice of the determination to the objector not later than 7 days before the day appointed for the hearing of the application and the objection shall not then be heard.

[Section 74 amended by No. 12 of 1998 s. 10(10) and 52.]

75. Application for an occasional licence

- (1) An application for the grant of an occasional licence may be made by lodging with the Director an application in the prescribed manner and form not later, unless the Director otherwise approves, than 14 days before the licence is to take effect.

- (2) An application for the grant of an occasional licence —
- (a) is not required to be advertised, unless the Director so directs;
 - (b) is not subject to objection, but may be made the subject of a submission or an intervention under section 69;
 - (c) is not required to be heard, but may be determined by the Director at discretion; and
 - (d) is not subject to review by the Court, or to appeal.

[Section 75 amended by No. 12 of 1998 s. 53.]

76. Applications for extended trading permits

- (1) An application for the issue of an extended trading permit may be made by lodging an application in the prescribed manner and form with the Director not later than 14 days before the permit is to take effect unless —
- (a) the Director otherwise approves; or
 - (b) in relation to an application for a permit of that kind some other requirement for lodgement of the application is prescribed.
- (2) An application for the issue of an extended trading permit —
- (a) is not required to be advertised, unless the Director otherwise directs;
 - (b) if not required to be advertised is not subject to objection, but may be made the subject of a submission or an intervention under section 69;
 - (c) is not required to be heard, but may be determined by the Director at discretion; and
 - (d) is not subject to review by the Court, or to appeal.

[Section 76 amended by No. 12 of 1998 s. 54.]

77. Applications for alteration, or redefinition, of licensed premises

- (1) Subject to subsection (3), an owner, occupier or licensee of licensed premises, shall not, without the prior approval of the Director, make any alteration in —
- (a) the construction or completion of premises the subject of plans or specifications submitted under section 62, in such a way as materially to alter the veracity of those plans or specifications; or
 - (b) any licensed premises.

Penalty: \$5 000.

- (2) Where the Director determines that an alteration has been made which may be a contravention of subsection (1) the Director may —
- (a) give directions in relation to the alteration; and
 - (b) suspend the operation of the licence until such time as the owner, occupier or licensee complies with those directions.

- (3) For the purposes of this section —
- (a) an alteration shall be deemed to be made if it comprises or consists of —
 - (i) a material change, whether structural, decorative or otherwise, affecting the premises or the accommodation or facilities provided;
 - (ii) a substantial change to the use of any premises, accommodation or facilities; or
 - (iii) an addition to, or reduction in the area of, the premises;and
 - (b) the renovation of, or of the accommodation or facilities provided by, the premises shall, if it is not an alteration of a kind referred to in paragraph (a), be deemed to be work that does not require the prior approval of the Director.

- (4) On application in writing being made by the owner or occupier of the licensed premises, or by the licensee with the consent of the owner and any lessor, the licensing authority may approve —
- (a) a proposed alteration of licensed premises; or
 - (b) unless section 80 applies, the redefinition of the licensed premises as defined in the licence.
- (5) The licensing authority shall not approve an application made under subsection (4) unless satisfied that all other approvals, consents or exemptions required by law in respect of that alteration have been obtained, and if so satisfied may vary the terms or conditions of a licence accordingly.
- (5a) An application for the alteration or redefinition of licensed premises as defined in a licence that seeks to include in those licensed premises an area that is not contiguous with those licensed premises shall not be approved by the licensing authority unless section 80 applies or the premises —
- (a) are entered in the Register of Heritage Places compiled under the *Heritage of Western Australia Act 1990*; or
 - (b) are of a prescribed type or class.
- (6) Where the Director is satisfied in relation to a Category A licence that an alteration of the licensed premises or redefinition proposed is likely —
- (a) to lead to a substantial increase in actual or potential liquor sales; and
 - (b) to reduce significantly the actual or potential liquor sales under a Category A licence held by any other person,
- and so directs the application is required to be advertised under section 67.
- (7) If licensed premises are changed, whether or not in a manner amounting to an alteration within the meaning of subsection (3), the licensee shall so advise the Director in writing, not later than

14 days after the change is effected, and shall as soon as is practicable thereafter provide such copies as the Director may require of plans showing the premises as so changed together with —

- (a) a copy of each approval, consent or exemption obtained under any law permitting or approving the change; or
 - (b) evidence to the satisfaction of the Director that all approvals, consents or exemptions required by law in respect of the change have been obtained.
- (8) An owner or lessor of licensed premises may object to an application for approval of alterations to the licensed premises if the licensee has agreed in writing that the consent of the lessor is required for such an application and that consent has not been obtained.
- (9) A right of objection under subsection (8) is exercisable by a lessor whether the interest of the licensee in the premises derives from that person directly or from a sublessor.
- (10) The licensing authority may dispense with the requirement that any approval, consent or exemption be obtained if the licensing authority considers that —
- (a) it has been capriciously or unreasonably withheld; or
 - (b) it is in the public interest to do so.

[Section 77 amended by No. 26 of 2001 s. 6(1).]

Division 8 — Removals

78. Casino liquor licences not removable

A casino liquor licence is not capable of being removed without the consent of the Gaming and Wagering Commission, and a licence of any class granted in respect of premises that were at the time of the grant comprised within or adjacent to a casino complex shall not be removed to premises that are not within or adjacent to that complex as at the date of the application for removal.

[Section 78 amended by No. 35 of 2003 s. 173(4).]

79. Applications for variation or removal of licences relating to transport may be made informally

A licence which relates to one particular means of transport may, on an informal application in writing being made to the Director, be varied or removed so as to apply to another.

80. Temporary removal or redefinition

- (1) Where any licensed premises are, wholly or partially, rendered incapable of use for the business carried on there under the licence by reason of—

- (a) fire or other unforeseen or unavoidable calamity; or
- (b) being repaired or rebuilt, or for the time being required for any public purpose,

the licensee may, on informal application in writing being made to the Director, apply for a removal of the licence temporarily, for a period not exceeding 12 months, to some other portion of the premises or to other premises in the vicinity, or for a redefinition of the licensed premises for that period.

- (2) An application made under subsection (1) may be granted by the Director notwithstanding—
- (a) that any premises to which the licence is to be temporarily removed, or the redefinition of the premises would not, ordinarily, conform to the requirements of the licensing authority;
 - (b) that consents that would normally be required have not been obtained; or
 - (c) that the application has not been advertised, and that no opportunity for objection has been afforded.
- (3) Where the Director is of the opinion that a removal of a licence under subsection (1) is not appropriate, the Director may suspend the operation of the licence or may redefine the

licensed premises notwithstanding that the application made was in respect of a temporary removal.

81. Applications for removal

- (1) Subject to section 78, 79, and 80, the licensing authority has the same jurisdiction in relation to an application for the removal of a licence as it has in relation to an application for the grant of a new licence of that class.
- (2) Subject to section 78, an application to the licensing authority for a removal shall be made by the person wishing to hold the licence after the removal.
- (3) An applicant for the removal of a licence must satisfy the licensing authority —
 - [(a) deleted]*
 - (b) that the requirements of this Act in relation to the grant of a new licence of that class are met in relation to —
 - (i) the licence sought to be removed; and
 - (ii) the premises to which it is sought to be removed;
 - (c) that adequate notice of the proposed application had been given —
 - (i) to the owner and any lessor or lessee of the premises to which the licence is sought to be removed; and
 - (ii) to the owner, and any lessor, lessee or mortgagee of the premises from which it is proposed to remove the licence;

and

 - (d) where the applicant is not the holder of the licence sought to be removed, that the licence should be transferred to the applicant.
- (4) Notwithstanding subsection (3), the Director, at the written request of the applicant, may dispense with any requirement for

advertising, and need not specify an affected area, where the Director considers that the removal of the licence is from and to premises within the same locality and is unlikely to cause significant adverse effects on other licences, or that any other proper reason exists, and that to do so will assist in an expeditious determination of the application in a manner not contrary to the public interest.

- (5) The removal of a licence —
- (a) shall be effected by an endorsement made on the licence by the licensing authority, in a form approved by the Director, substituting the name of the premises to which the licence is removed for that of the premises to which it previously applied; and
 - (b) takes effect on the date specified in that endorsement, on an application for the proposed removal being granted.
- (6) Where a licence the operation of which is suspended is removed, the licence when removed shall then be in force for all purposes, unless the licensing authority in an appropriate case orders that the suspension continues to have effect.

[Section 81 amended by No. 12 of 1998 s. 55.]

Division 9 — Transfers

82. Transfer of a licence

- (1) Subject to section 83, the Director has the same powers in relation to the approval of the transfer of a licence as the licensing authority, appropriately constituted, has in relation to the grant of a new licence of the same class.
- (2) An application to the Director for approval to the transfer of a licence shall be made by the person wishing to hold the licence after the transfer.
- (3) The transfer of a licence —

- (a) shall be effected by an endorsement made on the licence by the licensing authority, in a form approved by the Director, substituting the name of the transferee for that of the person who holds or has held the licence; and
- (b) takes effect on the date specified in that endorsement,

on an application for the approval of the proposed transfer being granted.

[Section 82 amended by No. 12 of 1998 s. 56.]

82A. Transfer of licence between licence holders

- (1) Where a licence is held jointly and one, or more, of the persons who hold the licence no longer wishes to be involved in the conduct of business under the licence, or ceases to occupy the licensed premises, then application is to be made for the licence to be transferred to the other person, or persons, who hold the licence.
- (2) Application is to be made under subsection (1) notwithstanding that the interest of a person in the licence has terminated under section 37(5)(b).
- (3) Where application has not been made under subsection (1) within 28 days of a person ceasing to be involved in the conduct of business under a licence or ceasing to occupy the licensed premises then the Director may suspend the operation of the licence.

[Section 82A inserted by No. 12 of 1998 s. 57.]

83. Certain licences not transferable

- (1) A casino liquor licence is not capable of being transferred without the consent of the Gaming and Wagering Commission.
- (2) A club licence is not capable of being transferred.
- (3) An occasional licence is not capable of being transferred.

[Section ~~83~~ amended by No. 35 of 2003 s. 173(4).]

84. Applications for approval to a transfer

- (1) The Director shall not grant an application for approval of the transfer of the licence in relation to any premises unless the application is made —
- (a) pursuant to a contract for the sale or assignment of the right of the licensee to carry on business under the licence, the licensee consenting to the application;
 - (b) by a person who —
 - (i) has under section 86 a right to carry on the business of the licensee; or
 - (ii) may, under section 87, be granted a protection order;
- or
- (c) with leave of the Director,
- but where the Director is satisfied that a licensee can not be found or has unreasonably or capriciously refused to consent the requirement for that consent may be waived.
- (2) A licensee shall not purport to sell or assign the right to carry on business under the licence or to sell or assign the licence itself unless —
- (a) the contract of sale or assignment is subject to a condition precedent under which the prior approval by the Director of the proposed transfer of the licence is a prerequisite to the contract taking effect; or
 - (b) the Director has approved the proposed transfer.
- (3) Where an application for approval of a transfer is made on the grounds that the licensee has been evicted from, or has ceased to occupy or to carry on business at, the licensed premises or that to the exclusion of the licensee the owner of the licensed premises has come into or become entitled to possession of those premises, the application shall not be determined unless the Director is satisfied —

- (a) that notice of the application was given by the applicant to that licensee at least 3 days before the last day on which objections should be lodged; or
 - (b) that all reasonable steps were taken to give notice to that licensee, and that any failure to give the notice is not attributable to the applicant or a person employed by the applicant.
- (4) An applicant for approval to the transfer of a licence —
- (a) must satisfy the Director —
 - (i) that the applicant is a fit and proper person to hold the licence; and
 - (ii) as to the matters referred to in section 37(1)(a), (b), (c) and (d);
 - (b) shall cause to be provided to the Director, in the prescribed form or such other form as may be required by the Director, a return of liquor purchased or sold by the transferor under the licence up to a date specified by the Director, being the date on which the transfer is to take effect or the date up to which the transferor last carried on business; and
 - (c) shall provide or cause to be provided such further or other records or information as the Director may require,
- but, in particular circumstances, the Director may waive or modify the requirement for the provision of any, or any particular, document or information.
- (5) On an application for approval to a proposed transfer of a licence the Director may make the grant of approval subject to such terms and conditions as the Director thinks fit, including —
- (a) a condition that any moneys due under this Act up to the date of transfer shall be paid to the Director; and
 - (b) a condition requiring the carrying out of works or repairs on the licensed premises.

(6) An application for approval to the transfer of a licence may be granted notwithstanding that —

(a) the operation of the licence is suspended; or

[(b) deleted]

(c) a protection order has effect,

and where a licence is so transferred it shall then be in force for all purposes, unless the Director otherwise determines and so orders.

[Section 84 amended by No. 12 of 1998 s. 58.]

85. Transferee to succeed to certain of transferor's liabilities and rights

(1) Where a licence is transferred the transferee of the licence succeeds to the liabilities of the transferor under this Act, notwithstanding that the licence transferred may be a licence to which section 84(6) refers.

[(2) repealed]

(3) Where a producer's licence is transferred, the transferee may sell, under that licence, liquor produced by the transferor or a previous licensee or occupier of the licensed premises before the date of the transfer as if it had been produced by the transferee.

[Section 85 amended by No. 56 of 1997 s. 32.]

Division 10 — Interim authorisations and protection orders

86. Interim authorisations to carry on business

(1) In this section, a reference to the business of the licensee is a reference to the business carried on by the licensee under the licence immediately before the death of the licensee, or the bankruptcy or other disability or event referred to in this section, occurred.

(2) Subject to subsection (4), where a licensee dies —

- (a) the executor or other person entitled to, or who has obtained, a grant of administration of the estate of the licensee;
- (b) a relative or legatee of the licensee, being a person approved by the Director; or
- (c) a nominee of any such person who is approved by the Director,

may carry on the business of the licensee as though that person were the licensee until the expiration of 28 days from the date of death of the licensee.

- (3) Subject to subsection (4), where a licensee becomes permanently disabled by accident, physical or mental illness, or infirmity from carrying on business under the licence —
- (a) a person authorised or appointed by law to administer the affairs of the licensee;
 - (b) a relative of the licensee, being a person approved by the Director; or
 - (c) a nominee of any such person who is approved by the Director,

may carry on the business of the licensee as though that person were the licensee until the expiration of 28 days from the date of that person going into possession of the licensed premises.

- (4) Where a licence is held jointly and a holder of the licence dies or becomes permanently disabled by accident, physical or mental illness, or infirmity from carrying on business under the licence, the remaining holder or holders of the licence may be treated, for the purposes of this Act, as the sole licensee or as the licensees, if —
- (a) the Director is notified in writing of the name and date of death or disability of that holder and of the reasons for any disability alleged as soon as is practicable; and

- (b) the Director acknowledges that the disability alleged will be regarded by the licensing authority as a permanent disability.
- (5) Where a licensee is insolvent under administration, within the meaning of the *Corporations Act 2001* of the Commonwealth, the person who has lawful control of the licensed premises, or a nominee of any such person who is approved by the Director, may carry on the business of the licensee as though that person were the licensee until the expiration of 28 days from the date of going into possession of the licensed premises.
- (6) Where a licensee that is a body corporate becomes an externally-administered body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, the person who has lawful financial control of the licensed premises, or a nominee of any such person who is approved by the Director, may carry on the business of the licensee as though that person were the licensee until the expiration of 28 days from the date of going into possession of the licensed premises.
- (7) Where a petition for the bankruptcy of a licensee, or to wind up a licensee that is a body corporate, is filed the licensee shall notify the Director in writing of that fact and of the date of filing, within 7 days of the date of filing.
- (8) Where a person applies to the Director —
- (a) for approval to carry on a business; or
 - (b) for some other person sought to be appointed to be approved as nominee by the Director,

under this section, if the Director is satisfied on the information then before the licensing authority that there is nothing that would have precluded the grant of approval to a transfer to that person the application under this subsection may be granted, without advertisement or opportunity for objection, forthwith and the Director shall cause the name of that person and of any approved nominee to be endorsed on the licence but the endorsement is evidence of the authorisation to carry on

business under this section only and does not operate as a transfer or prejudice the consideration of an application for approval to a transfer.

- (9) A person who exercises a right to carry on the business of a licensee, otherwise than with the prior approval of the Director, shall within 7 days after commencing to do so, notify the Director in writing of that fact, of the date of commencing to do so, and of the circumstances by reference to which the right is claimed and shall provide to the Director such further or other information or records as may be required by the Director.
- (10) Where —
- (a) a person purports to exercise the right to carry on the business of a licensee under this section for a period of more than 28 days, and no relevant protection order under section 87 applies;
 - (b) the business of a licensee ceases to be carried on by the licensee but no person exercises a right conferred by this section; or
 - (c) a person who is not authorised under this section or section 87 to carry on the business formerly carried on by a licensee purports to exercise a right to do so,

the operation of the licence may be deemed by the licensing authority to have been suspended as from such date as the Director may determine.

[Section 86 amended by No. 12 of 1998 s. 59; No. 10 of 2001 s. 220.]

87. Protection orders

- (1) Where —
- (a) a licensee ceases to occupy, or to carry on business in, licensed premises other than premises to which a liquor store licence applies, and the owner, lessor or mortgagee

of the licensed premises applies within 28 days thereafter;

- (b) the operation of a licence, other than a liquor store licence, is suspended and a person satisfies the Director that loss is thereby likely to result if an order is not granted under this section;
- (c) a person, being a person who is authorised to carry on the business of a licensee under section 86 but who wishes to carry on that business for a period in excess of 28 days, applies within that period of 28 days;
- (d) following the occurrence of the death of a licensee or other disability or event referred to in section 86, an application for a transfer of a licence is intended to be made or remains to be determined, and the proposed transferee applies; or
- (e) the local government of a district that is situate in a rural area applies on the ground that a hotel or liquor store serving the local community has ceased to carry on business,

the Director may, without advertisement unless the Director otherwise requires but on payment of the prescribed fee and on such conditions as the Director thinks fit, grant to the applicant, or to a nominee of the applicant approved by the Director, an authorisation, in this Act referred to as a “**protection order**”, to sell liquor and to carry on the business of the licensee, or former licensee, on or from the licensed premises as if that person were the licensee, if the Director is satisfied on the information before the licensing authority that there is nothing that would have precluded the grant of approval to a transfer to that applicant.

- (2) A protection order —
 - (a) takes effect on the date specified in the order; and
 - (b) ceases to have effect —

- (i) on the expiry of such period of not more than 6 months, or where subsection (1)(e) applies 12 months, as is specified in the order;
- (ii) on the licensing authority approving the transfer of the licence in respect of the premises to which the order relates, or on the surrender or the cancellation of that licence;
- (iii) on the granting of a new licence in respect of those premises;
- (iv) on the coming into force of a protection order for the premises superseding that previous order; or
- (v) on the date specified in a notice given under subsection (7),

whichever first happens,

and whilst it continues in force this Act applies to the holder as if that person were the holder of a licence.

- (3) A protection order may be made for any premises so as to supersede a previous protection order if the Director is satisfied that —
 - (a) the person granted the previous protection order consents to its being superseded by —
 - (i) a subsequent order granted to that person, whether on the same or different terms or conditions; or
 - (ii) an order granted to some other person who is entitled by subsection (1);
 - or
 - (b) during the period the order has had effect no application has been made for a transfer of the licence or the grant of a new licence in respect of the premises, and that the person granted the previous protection order —

- (i) does not propose or is not qualified so to apply;
or
- (ii) is for any reason unable to carry on business
under the protection order,

and some other person entitled by subsection (1) applies for an order.

- (4) The Director shall cause a memorandum of the terms of, and conditions imposed on, a protection order to be endorsed on the licence to which it relates.
- (5) Where the operation of a licence is suspended and a person is granted a protection order in respect of the premises to which that licence related, all moneys due under this Act (including any moneys that may have fallen due during any period when the operation of the licence concerned was suspended, or it was not in force, and which would not have been payable had the protection order not been made) shall, unless the Director otherwise requires or consents, be payable under that order as though the licence had remained in force and had been held by the person who is the holder of the protection order.
- (6) Where more than one person claims the right to carry on the business of a licensee under a licence or applies for a protection order in respect of the same licence, the Director shall determine the matter and may —
 - (a) suspend the operation of the licence; or
 - (b) grant a protection order to such applicant or claimant as the Director approves.
- (7) A protection order granted under subsection (1)(c) may be cancelled by notice in writing given by the Director to the holder specifying a date on which it is to cease to have effect, where the Director is satisfied that the licensee of the licence to which the order relates is no longer under the disability which occasioned the granting of the order.

[Section 87 amended by No. 14 of 1996 s. 4; No. 12 of 1998 s. 60.]

88. Effect of a protection order

(1) The grant of a protection order, or the carrying on of business under section 86, or an authorisation under section 86 does not —

(a) affect a licence;

[(b) deleted]

(c) operate as a transfer; or

(d) prejudice the consideration of an application for approval to a transfer,

in respect of the premises to which it relates.

(2) Where a protection order has effect in relation to any premises any application under this Act in respect of those premises shall not be determined unless the Director is satisfied —

(a) that notice of the application was given by the applicant to the holder of the protection order at least —

(i) 7 days before any hearing relating to the application; or

(ii) where the application is of a kind to which objection may be lodged, 3 days before the last day on which objections should be lodged;

or

(b) that all reasonable steps were taken to give notice to the holder of the protection order, and that any failure to give the notice is not attributable to the applicant or a person employed by the applicant,

and the holder of the protection order may intervene in the application.

[Section 88 amended by No. 12 of 1998 s. 61.]

89. Disputes as to leases

Where in relation to any premises a dispute arises as between the owner or lessor and a licensee or former licensee as to the terms of any lease under which the licensee carries on or the former licensee carried on business, or as to compensation relating to any such lease or former lease, which the Director considers has an impact on requirements to be met under this Act, the Director may —

- (a) suspend the operation of the licence, pending determination of the dispute in a manner approved by the Director; or
- (b) grant a protection order in respect of the premises to any party to the dispute.

[Section 89 amended by No. 12 of 1998 s. 62.]

Division 11 — Suspensions

90. Application for suspension of a licence or permit

The Director, on informal application in writing being made by the licensee, may suspend the operation of any licence or permit held by the applicant —

- (a) temporarily, on any ground upon which a temporary removal of a licence might be sought under section 80; or
- (b) otherwise, having regard in relation to —
 - (i) any Category A licence, to any detrimental effect which the suspension might have on the interests of the public in the area; and
 - (ii) a hotel licence in respect of which a condition is imposed under section 41(4), to the matters referred to in section 41(6),

in accordance with the wishes of the licensee,

for such period as the Director thinks fit, and the licence shall thereupon be deemed to be varied accordingly.

91. Suspension on ground of public order or safety

The Director may, at discretion or on an application made by or on behalf of the Commissioner of Police, suspend the operation of any licence or permit, for such period or on such occasion as the Director thinks fit, by reason of the requirements of public order or of safety.

92. Suspension where business not carried on

The Director may, after (where practicable) giving the holder a reasonable opportunity to make submissions or to be heard, suspend the operation of a licence if —

- (a) it appears to the Director that the licensee has ceased to carry on business at the licensed premises; or
- (b) where the licensee is a body corporate, an event described in section 102(1)(a) or (b) has occurred.

[Section 92 amended by No. 12 of 1998 s. 63.]

92A. Cancellation of suspension

If the Director is satisfied that the suspension of the operation of a licence or permit under this Division is no longer justified, the Director shall cancel that suspension.

[Section 92A inserted by No. 12 of 1998 s. 64.]

93. Cancellation of suspended licences

- (1) Where the operation of a licence or a permit relating to a licence is suspended, or is deemed to have been suspended, and the Director after (where practicable) giving the holder a reasonable opportunity to make submissions or to be heard, is satisfied —
 - (a) that the licensee does not intend to resume the business carried on in the premises, or on the site of the premises,

for which the licence was granted and that there are no longer any circumstances that justify the licence continuing; and

- (b) that 28 days have elapsed from the day on which the licence or permit was suspended, or deemed to have been suspended,

the Director may, by notice in writing, specify that the licence is cancelled at the expiry of such period as may be specified in that notice unless it is again in force for all purposes before the expiry of that period, and effect shall be given to the notice.

- (2) The Director may, on application, extend the period specified in a notice made under subsection (1).
- (3) Without prejudice to the generality of subsection (1), a licence shall be taken not to be justified if —
 - (a) the licensee has ceased to carry on business at the licensed premises;
 - (b) the licensed premises are no longer suitable to be licensed;
 - (c) the licensee no longer has tenure of the premises; and
 - (d) it appears to the Director that re-establishment of business under the licence by the licensee at the premises is not likely or feasible.

[Section 93 amended by No. 12 of 1998 s. 65.]

Division 12 — Surrenders

94. Surrender of licences

- (1) A person who is the holder of a licence or who is under section 86 authorised to carry on the business of a licensee may, by notice in writing to the Director, give notice of intention to surrender the licence and that licence —
 - (a) shall be deemed to be surrendered; and

(b) shall cease to have effect,

on such date as is, in a notice of acceptance of the surrender given by the Director to that person, specified as the date of surrender.

(2) The surrender of a licence does not affect liabilities incurred by the licensee under this Act up to the date of surrender.

(3) The Director shall not give notice of acceptance of a surrender unless the Director is satisfied —

(a) except where the licence is a club licence, that the written consent of every person entitled to any freehold interest in the licensed premises has been sought;

(b) in the case of a club licence, that —

(i) the members of the club at a duly convened general meeting of members; or

(ii) where no such meeting is convened, any trustees of the club,

have by a majority resolution consented to the surrender, or that the surrender is otherwise appropriate;

(c) in all other cases, that so far as is practicable the consent of every person entitled to any interest in the licensed premises has been sought; and

(d) in all cases, that so far as is practicable the consent of every person entitled to any interest in the licensed premises under —

(i) a lease; or

(ii) a mortgage, charge or security affecting the premises,

has been sought,

and that, except where reasonable cause is shown why a consent can not and should not be required to be obtained, all the persons of whom consent has been sought have so consented.

- (4) In subsection (3), a reference to an interest includes an interest in possession, reversion or remainder.

Division 13 — Disciplinary matters

95. Disciplinary action

- (1) The Court may, on a complaint lodged under this section, take disciplinary action.
- (2) The complaint must allege that proper cause for disciplinary action exists and set out the grounds on which that allegation is based.
- (3) Upon the making of a complaint, the Court may require the complainant to attend a preliminary conference before the Court, and may require a licensee to show cause to the Court why disciplinary action should not be taken, and where the Court is satisfied that the grounds on which the allegation is based are vexatious or can not be made out the Court shall give notice of that determination to the complainant and the complaint shall not then be heard without leave of the Court.
- (4) There shall be proper cause for disciplinary action if —
- (a) the business conducted under the licence is not properly conducted in accordance with the licence;
 - (b) the licensed premises are not properly managed in accordance with this Act;
 - (c) the licensed premises —
 - (i) have fallen into disrepair;
 - (ii) are otherwise in an unsatisfactory condition;
 - (iii) have been altered without the prior approval of the Director; or
 - (iv) contravene the requirements of a written law as to planning, building, health, or safety;

- (d) the owner or occupier of the licensed premises has failed to comply with a direction given under section 77(2), or a requirement made under section 99;
- (e) the licensee has —
 - (i) contravened a requirement of this Act or a term or condition of the licence;
 - (ii) sold or supplied liquor otherwise than in accordance with the authorisation conferred by the licence; or
 - (iii) failed to comply with a summons, direction or order under this Act;
- (f) the licensee has been convicted of —
 - (i) an offence under this Act;
 - (ii) an offence in any jurisdiction, that, in the opinion of the Director, may imply that the person is unfit to be the holder of a licence;
 - (iii) an offence under the *Health Act 1911* in relation to the licensed premises or liquor,or at a material time employed or engaged, in relation to the business carried on under the licence, a person who in the course of that business committed any such offence of which that person was convicted;
- (fa) the licensee has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with that section;
- (g) the licensee otherwise is, or becomes, an unsuitable person to hold a licence under this Act;
- (h) a person holding a position of authority in a body corporate that holds the licence, or who is interested in the business or the profits or proceeds of the business, is or becomes not a fit and proper person to hold that position or to be so interested;

- (j) the continuation of the licence is not in the public interest or the licence has not been exercised in the public interest;
 - (k) the safety, health or welfare of persons who resort to the licensed premises is endangered by an act or neglect of the licensee;
 - (m) a person is convicted of unlawful gaming in respect of events that took place on the licensed premises;
 - (n) a licence fee payable under this Act, or a penalty for failure to pay a fee when it becomes due or to comply with a requirement made under section 99, is not paid on or before the date fixed for payment under this Act; or
 - (o) a determination previously made under section 96 has been contravened.
- (5) A complaint under this section may be made —
- (a) by the Director;
 - (b) by the Commissioner of Police, except on the grounds referred to in subsection (4)(c), (d), (n) or (o); or
 - (c) by the local government of the district in which the licensed premises are situated or of any adjoining district, except on the grounds referred to in subsection (4)(d), (f), (h), (m), (n) or (o).
- (5a) The complainant is to lodge the complaint with the Court and is to serve a copy of the complaint on the licensee.
- (6) Where a complaint is lodged under this section, the Director, if satisfied that the safety, health or welfare of the public so requires, may impose a condition on, or vary or suspend the operation of a previous condition imposed on, a licence, to have effect pending determination of the complaint.
- (7) Notice of a complaint under this section and of the time and place appointed for the hearing of the complaint shall be served by the Court —

- (a) on the licensee;
 - (b) where the complaint is made on the grounds referred to —
 - (i) in subsection (4)(c) or (d), the owner or occupier of the premises; or
 - (ii) in subsection (4)(h), the person concerned, in respect to whom the allegation is made; and
 - (c) any other person the Court may direct.
- (8) In this section and section 96, a reference —
- (a) to a licence, includes a reference to a permit which relates to the licence, and to a protection order;
 - (b) to a licensee, includes a reference to the holder of a protection order; and
 - (c) to licensed premises, includes a reference to premises the subject of a protection order.
- (9) An infringement notice given under section 167 to the employee or agent of a licensee may be used as evidence in respect of a complaint lodged under this section with respect to that licensee.
- (10) The Court may deal jointly with complaints lodged under this section if it considers that the complaints are related.
- (11) It is not a defence to a complaint lodged under this section against a licensee to show that the licensee —
- (a) did not know, or could not reasonably have been aware of or have prevented the act or omission which gave rise to the complaint; or
 - (b) had taken reasonable steps to prevent that act or omission from taking place.

[Section 95 amended by No. 14 of 1996 s. 4; No. 56 of 1997 s. 33; No. 12 of 1998 s. 10(11), 35(3) and (4), 66 and 70(6) and (7).]

96. Disciplinary powers

- (1) Upon the appearance of the licensee, and of any other person required to be given notice of the complaint, or complaints, under section 95 or in the absence of the licensee or other person after due notice was given (where practicable), the Court shall hear and determine the matter to which the complaint, or complaints, relate and, if it is satisfied, on the balance of probabilities, that the ground upon which the complaint was, or complaints, were made has been made out so that a proper cause for disciplinary action exists, the Court may —
- (a) issue a reprimand;
 - (b) impose a condition to which the licence is to be subject or otherwise limit the authority conferred by the licence, and vary the licence accordingly;
 - (c) vary or cancel a condition to which the licence is subject;
 - (d) suspend the operation of the licence —
 - (i) until further order; or
 - (ii) for a specified period;
 - (e) cancel the licence;
 - (f) disqualify, for such period as the Court thinks fit, the licensee from holding a licence;
 - (g) disqualify, for such period as the Court thinks fit, a person against whom a ground of complaint was made out from being —
 - (i) the holder of a position of authority in a body corporate that holds a licence; or
 - (ii) interested in, or in the profits or proceeds of, a business carried on under a licence,subject to subsection (3);

- (h) require a licensee, or a person against whom a ground of complaint was made out, to enter into a bond or give security for future conduct;
- (j) give directions as to the conduct of the business of the licensee;
- (k) require specified action to be taken by the licensee within a specified period;
- (m) order the licensee or a person against whom a ground of complaint was made out to pay to the Crown a monetary penalty not exceeding \$30 000; or
- (n) make such other order as the Court thinks fit, in relation to the licensee or a person against whom a ground of complaint was made out,

or may take no action in the matter.

[(2) repealed]

- (3) The Court shall not impose a penalty under subsection (1)(g) or on a person liable to a penalty as a result of section 164 where it is proved that the person concerned —
 - (a) did not know, and should not have known, of the matter upon which the ground of complaint was made out; or
 - (b) had taken reasonable steps to prevent the occurrence of a matter of the kind to which the complaint, or complaints, related.
- (4) Where the Court is satisfied that a licensee is committing, or permitting the commission of, a continuing breach of any condition of a licence the Court may by order restrain the continuance of that breach, and may make a further order that the licence shall be suspended for a specified period or cancelled with immediate effect if the Director is satisfied that the order has been contravened.
- (5) The continued existence of anything in a state, or the intermittent repetition of any action, contrary to a condition of

the licence shall be deemed for the purposes of subsection (4) to be a continuing breach of that condition.

- (6) Where a licence is suspended or the holder of a licence is disqualified —
- (a) if so required by the Director, the licensee or person who was the holder of the licence shall forthwith provide to the Director, in the prescribed form or in a form approved by the Director, a return of liquor purchased or sold by that person under the licence up to the date of suspension, or the date on which business was last carried on, and shall provide or cause to be provided to the Director such further or other records or information as the Director may require; and
 - (b) a protection order may, if the Director thinks fit, be made on the application of —
 - (i) a member of the family of the licensee;
 - (ii) the owner, lessor or mortgagee of the premises to which the licence relates; or
 - (iii) a person interested in, or in the profits or proceeds of, the business conducted under the licence.

[Section 96 amended by No. 73 of 1994 s. 4; No. 12 of 1998 s. 67.]

Part 4 — The conduct of business

Division 1 — Hours of trading

97. Permitted hours of trading

- (1) Subject to this Act and to any condition imposed by the licensing authority a licensee is authorised to sell liquor during —
 - (a) such of the permitted hours specified in this section; and
 - (b) such of the hours that may be specified under an extended trading permit,as the licensee wishes to do so.
- (2) On a day other than a Sunday, Good Friday, Christmas Day or Anzac Day, the permitted hours are —
 - (a) under a hotel licence, or under a club licence other than a club restricted licence —
 - (i) between 6 a.m. and midnight;
 - (ii) on a New Year's Day, up to 2 a.m.; and
 - (iii) at any time, if the sale is to a lodger — but in the case of a club only if the lodger is a member;
 - (b) under a club licence other than a club restricted licence, up to 12.30 a.m., where the liquor is sold ancillary to a meal supplied by the licensee;
 - (c) under a cabaret licence, between 6 p.m. and 6 a.m., but only if the hours immediately prior to 12 midnight were permitted hours;
 - (d) under a casino liquor licence, such hours as the Gaming and Wagering Commission may, by notice in writing of which a copy is lodged with the Director, permit;
 - (e) under a liquor store licence, between 8 a.m. and 10 p.m.;
 - (f) under a restaurant licence, a producer's licence or a wholesaler's licence, at any time;

- (g) under a club restricted licence or an occasional licence, between such hours as are specified in the particular licence; and
 - (h) under a special facility licence, between such hours as may be specified in the particular special facility licence, unless Schedule 1 applies.
- (3) On a Sunday, not being a Christmas Day or Anzac Day, the permitted hours are —
- (a) under a hotel licence —
 - (i) between 10 a.m. and 10 p.m.;
 - (ii) on a New Year's Eve, between 10 p.m. and midnight;
 - (iia) on a New Year's Day, up to 2 a.m.; and
 - (iii) at any time, if the sale is to a lodger of the premises;
 - (b) under a club licence other than a club restricted licence —
 - (i) up to 1 a.m., whether or not ancillary to a meal;
 - (ia) on a New Year's Eve, between 10 p.m. and midnight;
 - (ib) on a New Year's Day, up to 2 a.m.;
 - (ii) between 10 a.m. and 10 p.m.; and
 - (iii) at any time, if the sale is to a lodger who is a member of the club;
 - (c) under a cabaret licence —
 - (i) up to 6 a.m. if the hours immediately before midnight were permitted hours; and
 - (ii) between 8 p.m. and midnight;
 - (d) under a casino liquor licence, such hours as the Gaming and Wagering Commission may, by notice in writing of which a copy is lodged with the Director, permit;

- (e) under a special facility licence, between such hours as may be specified in the particular licence, unless Schedule 1 applies; and
 - (f) under a licence of any other class except a liquor store licence, between such hours as may be specified in the particular licence but if no hours are specified, and trading on a Sunday is not thereby prohibited, then between the same hours on that day as are permitted in respect of other days under subsection (2) in relation to a licence of that class.
- (4) On a Good Friday, the permitted hours are —
- (a) under a hotel licence —
 - (i) between noon and 10 p.m., where the liquor is sold ancillary to a meal supplied by the licensee; and
 - (ii) at any time if the sale is to a lodger for consumption on the premises;
 - (b) under a club licence other than a club restricted licence —
 - (i) up to 12.30 a.m., where the liquor is sold ancillary to a meal supplied by the licensee; and
 - (ii) at any time, if the sale is to a lodger who is a member of the club;
 - (c) under a cabaret licence, up to 3 a.m.;
 - (d) under a casino liquor licence, such hours as the Gaming and Wagering Commission may, by notice in writing of which a copy is lodged with the Director, permit;
 - (e) under a restaurant licence, at any time;
 - (ea) under a producer's licence, between noon and 10 p.m., where the liquor is sold ancillary to a meal supplied by the licensee; and
 - (f) under a club restricted licence, an occasional licence, or a special facility licence (unless Schedule 1 applies),

between such hours as may be specified in the particular licence.

- (5) On a Christmas Day, the permitted hours are —
- (a) under a hotel licence —
 - (i) between noon and 10 p.m., where the liquor is sold ancillary to a meal supplied by the licensee; and
 - (ii) at any time if the sale is to a lodger for consumption on the premises;
 - (b) under a club licence other than a club restricted licence —
 - (i) up to 12.30 a.m., and between 12 noon and 10 p.m., where the liquor is sold ancillary to a meal supplied by the licensee; and
 - (ii) at any time, if the sale is to a lodger who is a member of the club;
 - (c) under a cabaret licence, up to 3 a.m., but only if the hours immediately before midnight were permitted hours;
 - (ca) under a producer's licence, between noon and 10 p.m., where the liquor is sold ancillary to a meal supplied by the licensee;
 - (d) under a casino liquor licence, such hours as the Gaming and Wagering Commission may, by notice in writing of which a copy is lodged with the Director, permit;
 - (e) under a restaurant licence, at any time; and
 - (f) under a club restricted licence, an occasional licence, or a special facility licence (unless Schedule 1 applies), between such hours as may be specified in the particular licence.

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- (6) On Anzac Day, the permitted hours are —
- (a) under a hotel licence —
 - (i) between 12 noon and 12 midnight; and
 - (ii) at any time, if the sale is to a lodger;
 - (b) under a club licence other than a club restricted licence —
 - (i) between 12 noon and 12 midnight, if Anzac Day is not a Sunday;
 - (ii) up to 1 a.m., and between 12 noon and 12 midnight, if Anzac Day is a Sunday; and
 - (iii) at any time, if the sale is to a lodger who is a member of the club;
 - (c) under a cabaret licence —
 - (i) up to 3 a.m., but only if the hours prior to 12 midnight were permitted hours, and between 6 p.m. and 12 midnight, if Anzac Day is not a Sunday; and
 - (ii) up to 3 a.m. and between 8 p.m. and 12 midnight, if Anzac Day is a Sunday;
 - (d) under a casino liquor licence, such hours as the Gaming and Wagering Commission may, by notice in writing of which a copy is lodged with the Director, permit;
 - (e) under a liquor store licence, between 12 noon and 10 p.m.;
 - (f) under a restaurant licence at any time other than between 3 a.m. and 12 noon;
 - (g) under a producer's licence or a wholesaler's licence, at any time after 12 noon; or
 - (h) under a club restricted licence, an occasional licence or a special facility licence (unless Schedule 1 applies), between such hours as may be specified in the particular licence.

[Section 97 amended by No. 12 of 1998 s. 68; No. 35 of 2003 s. 173(4).]

person to submit a proposal, accompanied by plans and specifications, for that purpose within a specified time.

[(4) repealed]

- (5) In subsections (2) and (3), “**specified**” means specified in the notice given under the respective subsection.
- (6) Where a licensee fails to comply with a requirement made under subsection (2) or (3), the owner of the licensed premises may, notwithstanding any express or implied covenant or agreement to the contrary, enter the premises and cause to be done or do all that was required of the licensee.
- (7) Where an owner or licensee fails to comply with a requirement made under subsection (2) or (3) within the time limited in that requirement, the Director may determine that a monetary penalty, not exceeding \$500 for each day on which the failure continues after the expiration of the time so limited, shall be payable to the Crown by that person and by notice in writing given to that person so direct and whether or not a monetary penalty is imposed a complaint may be made under section 95.
- (8) Where a licensee or owner so requests, a licence may be varied by the Director to facilitate works required by this section.

[Section 99 amended by No. 12 of 1998 s. 70(1) to (4).]

Division 3 — Supervision and management

100. Supervision and management

- (1) The conduct of business under a licence is always the responsibility of the licensee and shall be personally supervised and managed by a natural person, in accordance with this section.
- (2) The licensee shall ensure that the conduct of business at the licensed premises is personally supervised and managed —

- (a) by the licensee, if there is only one licensee and that licensee is a natural person;
- (b) by a natural person approved as a manager under section 35B; or
- (c) in accordance with subsection (3).

Penalty: \$5 000.

- (3) Where the manager of the licensed premises approved under section 35B is absent from the premises or there is no such manager in respect of the premises —
 - (a) a person appointed by the licensee (other than a person who at any time has been found under this Act to be a person who is not a fit and proper person to manage licensed premises) may manage the premises for a period of not more than 7 days; or
 - (b) a person appointed by the licensee who has been approved as a manager in respect of any licensed premises within the last 2 years, or such longer period as is prescribed, and has not had that approval withdrawn may manage the premises for a period of not more than 30 days.
- (4) If a manager approved as a manager of the licensed premises under section 35B ceases to be manager of those premises —
 - (a) the manager shall inform the Director in writing within 30 days of so ceasing; and
 - (b) the licensee of the premises shall lodge an application under section 35B for the approval of a new manager —
 - (i) within 7 days of the previous manager ceasing to be the manager, where the licensee appoints a person under subsection (3)(a); and
 - (ii) within 30 days of the previous manager ceasing to be the manager, where the licensee appoints a person under subsection (3)(b).

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Penalty: In the case of a licensee \$5 000, in the case of a manager \$2 000.

- (5) A person shall not supervise or manage the conduct of business at licensed premises other than in accordance with this section.

Penalty: \$5 000.

- (6) Except with the approval of the licensing authority, a person who supervises and manages a business conducted under a licence shall not be appointed to, and shall not, act simultaneously as supervisor and manager of the business conducted under any other licence.

Penalty: \$5 000.

- (7) A manager of licensed premises, in relation to those premises and the conduct of business there under a licence or permit, may deal and be dealt with, and under section 101 may be liable, as though that person were also a licensee of those premises.

- (8) A licensee shall ensure that the conduct of business at the licensed premises is supervised and managed in accordance with this section.

Penalty: \$5 000.

- (9) Nothing in this section diminishes the liability of the actual holder of the licence or permit.

[Section 100 inserted by No. 12 of 1998 s. 71.]

101. Responsibility of managers, etc.

- (1) Where under this Act —

- (a) a requirement is made of a licensee; or
- (b) an element of an offence is an act or omission on the part of a licensee,

a person appointed as manager, or permitted by the licensee to conduct, supervise or manage the business carried on under the licence on any premises is responsible as though that person

103. Notification of ownership of licensed premises etc.

- (1) A person who, within the meaning of this Act, becomes an owner of licensed premises shall give notice in writing to the Director of the interest acquired within 7 days of acquiring it, and shall in that notice set out full particulars of the full name and the address to which notices under this Act should be sent.
- (2) An owner of licensed premises who changes from the address notified to the Director shall, within 7 days of the change, give notice of the change to the Director.
- (3) A person who contravenes subsection (1) or (2) commits an offence.
Penalty: \$2 000.
- (4) Where a notice is required by this Act to be given to the owner of licensed premises, it may be given to the owner and address notified under subsection (1) in relation to those premises.

Division 4 — Profit sharing

104. Prohibition of profit sharing etc.

- (1) Subject to this Act, if a licensee —
 - (a) enters into partnership with another person in relation to the business carried on under the licence;
 - (b) enters into any agreement or arrangement under which another person may participate in the proceeds of the business carried on under the licence; or
 - (c) remunerates another person by reference to the proceeds or profits obtained from the business carried on under the licence or by reference to the quantity of liquor sold,

the licensee and that other person each commit an offence.

Penalty: \$5 000.

- (2) Subsection (1) does not apply to or in relation to any agreement or arrangement in respect to —
- (a) an occasional licence, where it is authorised under section 59(3);
 - (b) an extended trading permit, where it is approved under section 60(8); or
 - (c) the disbursement of profits or proceeds to a person in a position of authority in a body corporate that holds a licence,

or any other agreement or arrangement that is entered into with the approval of the licensing authority or is of a kind prescribed for the purpose of this subsection.

- (3) The Director may —
- (a) on application by an interested person, approve an agreement or arrangement; or
 - (b) on application by the holder of a producer's licence or wholesaler's licence, approve an agreement or arrangement between that holder and a person who is to act as an unlicensed agent, where the Director is satisfied that the agent is a fit and proper person to so act, under which the agent is to be remunerated by reference to the quantity of liquor sold by the agent.
- (4) This section does not prevent a licensed club from entering into a contract for the provision of services (not being for the sale or supply of liquor at the club) to, or for the benefit of, the members of the club, but the authorisation to sell liquor under the licence shall not be exercisable otherwise than through the members, officers or employees of the club.

[Section 104 amended by No. 12 of 1998 s. 73.]

Division 5 — Lodgers

105. Register of lodgers, etc.

- (1) The holder of a hotel licence, other than a tavern licence, shall maintain a register of lodgers, in a form acceptable to the Director, in accordance with this section.
- (2) For the purposes of subsection (1), a person shall be regarded as a lodger in licensed premises if, and only if —
 - (a) the person spent the previous night at the premises or premises to which subsection (3) refers or is booked to spend the forthcoming night there; and
 - (b) the person is not, and is not a member of the family of, the licensee or the manager or an employee there.
- (3) Where on the licensed premises no bedroom accommodation is available and other residential accommodation is provided there or on adjacent premises by or on behalf of the licensee in a location approved by the Director, a person so accommodated shall be deemed to be a lodger of the licensed premises.
- (4) The licensee, and any employee or agent of the licensee, shall ensure the register required to be maintained by this section —
 - (a) is signed by the lodger;
 - (b) identifies the accommodation provided, and the period for which it was provided;
 - (c) includes the name and address of each lodger, and any further particulars prescribed;
 - (d) is not obliterated, or removed, wholly or in part; and
 - (e) is, unless the Director otherwise approves, kept on the licensed premises.
- (5) Where a person is found on premises to which a hotel licence relates at a time when the sale of liquor to persons other than lodgers is not authorised, if in relation to that person any requirement of this section is contravened it is *prima facie*

evidence against that person and against the licensee, in any proceedings in which the question is relevant, that the person was not at that time a lodger.

- (6) Where a person was during a time when that person carried on business under a licence required to maintain a register under this section —
- (a) on the transfer of the licence, the register shall be handed over to the transferee; and
 - (b) on the surrender or cancellation of the licence, the register shall be handed over to the Director,

by that person.

- (7) A register maintained under this Act or the repealed Act, whether by the licensee or a person who handed it over to the licensee, shall be —
- (a) retained by the licensee for 2 years after the last date appearing in the register; and
 - (b) made available for inspection by an authorised officer,
- unless subsection (6)(b) applies.
- (8) A licensee, or the employee or agent of a licensee, or any other person who —
- (a) fails to maintain, retain or hand over to the Director a register as required by this section;
 - (b) fails to make that register available for inspection by an authorised officer; or
 - (c) contravenes subsection (4),

commits an offence.

Penalty: \$2 000.

[Section 105 amended by No. 23 of 2000 s. 7.]

106. Liquor supplied to lodgers etc.

- (1) It is a condition, subject to subsection (2), of any class of licence under which the sale of liquor to lodgers and other persons for consumption on the premises is authorised that —
- (a) the liquor shall not be supplied to, or consumed by, a juvenile;
 - (b) there shall not be more than 6 adult guests of each lodger present at the time the liquor is consumed; and
 - (c) the liquor shall not be consumed, except either —
 - (i) personally, by a lodger; or
 - (ii) by an adult guest of a lodger, in the presence of the lodger and at the expense of the lodger,

and if any requirement of that condition is contravened the licensee, any employee or agent of the licensee who committed or permitted the contravention, and the lodger each commit an offence.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000, and in the case of a lodger \$1 000.

- (2) Subsection (1)(b) and (c) shall not have effect at a time when the sale of liquor for consumption on the premises to persons other than a lodger is authorised.
- (3) On any licence which authorised the sale of liquor only to lodgers for consumption on the premises, the licensing authority may impose a condition that —
- (a) allows up to 6 adult guests of each lodger to be present at the time the liquor is consumed; and
 - (b) the liquor shall not be consumed, except either —
 - (i) personally by a lodger; or

- (ii) by an adult guest of a lodger in the presence of the lodger and at the expense of the lodger.

Penalty: In the case of a licensee or manager \$5 000, in the case of an employee or agent \$2 000, and in the case of a lodger \$1 000.

[Section 106 amended by No. 12 of 1998 s. 74.]

107. Liability of licensee for loss of property of lodger

A licensee is not liable, beyond such amount as may be prescribed, to a lodger for loss of or damage to the property of the lodger while the property is on the licensed premises, or premises to which section 105(3) applies, unless —

- (a) the property was lost or damaged due to the wilful act, default or neglect of the licensee or a person in the employment of the licensee;
- (b) the property was entrusted to the licensee expressly for safekeeping and the lodger complied with the requirements of the licensee with respect to safekeeping; or
- (c) the licensee did not, at the time the lodger brought the property onto the licensed premises, have displayed, in a manner easily visible to potential lodgers, a notice indicating that liability for loss or damage to the property of a lodger may be limited to the prescribed amount.

Division 6 — The sale and consumption of liquor, etc.

108. Certain services to be provided

- (1) This section applies to and in relation to premises licensed under —
 - (a) any hotel licence; or

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- (b) a special facility licence, if that licence so provides.
- (2) The licensee of any licensed premises to which this section applies —
 - (a) subject to subsection (3) and any condition of the licence, shall not without reasonable cause (the burden of proof of which shall lie on the licensee) refuse —
 - (i) to receive a person on the licensed premises; or
 - (ii) to sell liquor there to any person,at any time that the premises are open for business during permitted hours; or
 - (b) subject to section 41(5) (the burden of proof under which shall lie on the licensee) and to section 41(6), shall not contravene a condition of the kind to which section 41(4) refers, or fail to provide the service necessary to ensure compliance with the condition.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000.

- (3) A licensee has reasonable cause to refuse to receive a person or to sell liquor to a person, and may refuse to permit a person to enter the licensed premises, if —
 - (a) the person appears to be drunk or otherwise appears to be a person whose presence, or the provision of service to whom, on the licensed premises will occasion the licensee to commit an offence under this Act;
 - (b) the licensee has reasonable cause to believe that the person —
 - (i) cannot, or will not, pay;
 - (ii) is, or is known to be, quarrelsome or disorderly; or
 - (iii) is seeking to obtain liquor by begging;

- (c) the person is requesting service on a part of the premises —
 - (i) where the licensee is not authorised to provide the service requested; or
 - (ii) set aside for the purpose of a private function;
 - (d) the person is not dressed in conformity with a particular standard of dress required by the licensee, being a standard that was at the relevant time reasonable in the circumstances, of which requirement notice had been conspicuously displayed at each entrance to any part of the licensed premises where the standard was required to be observed; or
 - (e) the person is behaving in an offensive manner.
- (4) Where a licensee of any premises authorised to sell liquor for consumption on or off the premises at the relevant time —
- (a) sells liquor to a person for consumption off the premises only, if the person requires it for consumption on the premises; or
 - (b) conversely, sells liquor for consumption on the premises only, if the person requires it for consumption off the premises,

the licensee is deemed, for the purposes of subsection (2)(a)(ii), to have refused to sell liquor to that person.

- (5) At a time when a licensee is authorised to sell liquor only with or ancillary to a meal the licensee shall cause to be exhibited in the place where that liquor is sold, for the use of and clearly visible to customers, a price list showing the charges made for meals and for the various types of liquor supplied ancillary to meals.

Penalty: \$500.

- (6) In this section, a reference to a licensee is deemed to include a reference to an employee or agent of the licensee.

[Section 108 amended by No. 12 of 1998 s. 75.]

109. The sale of liquor to be authorised under this Act

(1) Subject to this Act, a person who, whether personally or by an employee or agent, sells any liquor commits an offence unless that person —

- (a) is the holder of a licence or permit —
 - (i) the operation of which is not suspended; and
 - (ii) which authorises the sale;

or

- (b) is an employee or an agent of a person so authorised, and is lawfully acting in that capacity,

or the sale is deemed to have been made under such a licence or permit.

Penalty: \$10 000.

(2) Where liquor is sold in contravention of subsection (1) on any premises, every occupier of the premises who knowingly permits the offence may be charged with an offence of the same kind.

(3) A person who —

- (a) carries liquor about for the purpose of sale;
- (b) offers or exposes liquor for sale at or upon any place other than a place at or upon which liquor may lawfully be sold;
- (c) carries liquor, for the purpose of sale, to a place other than a place at or upon which liquor may lawfully be sold; or
- (d) employs any person, or engages any person as an agent, so to do,

commits an offence.

Penalty: \$5 000.

- (4) Where liquor is carried, offered or exposed by a person in contravention of subsection (3) and is so carried, offered or exposed on behalf of another person, that other person shall be deemed also to have contravened that subsection.
- (5) It is a defence to a prosecution for a contravention of subsection (3) or (4) if it is proved that the liquor was carried, offered or exposed, as the case may be, for the purpose of a sale that may lawfully be made.
- (6) In a prosecution for a contravention of subsection (3), the burden of proving that liquor that has been carried about, or carried to any place, was not so carried for the purpose of sale is on the person carrying it, unless —
- (a) the container or packaging is labelled in writing, on the outside, with the name and address of the vendor, of the purchaser and of any other person to whom the liquor is to be delivered; or
 - (b) those particulars and a description of, and the quantity of, the liquor is set out in an invoice or other document in the possession of the carrier and the invoice or other document is produced to an authorised officer, on demand.
- (7) It is no defence to a charge of an offence under subsection (3) that the accused or the employer or principal of the accused is the holder of a licence or permit.
- (8) Where a person is proved to have committed an offence against this section, any vehicle in which liquor concerned in that offence was carried may be seized, is liable to forfeiture, and may be dealt with as though it were a container to which section 113 applied.

[Section 109 amended by No. 84 of 2004 s. 80 and 82.]

**110. ~~Sale or consumption of liquor, and taking of liquor from,~~
Offences relating to licensed premises ~~or premises to which~~
~~a certificate of exemption relates~~**

- (1) Where the licensee of licensed premises, or a person employed or engaged to perform any function in the business conducted under the licence or at the licensed premises —
- (a) sells liquor on or from the premises otherwise than as, and at the place, authorised under this Act;
 - (aa) acts in any way that contravenes this Act or any term or condition of the licence or permit;
 - (b) takes, or knowingly permits any other person to take, any liquor from the premises for the purpose of its being sold on account of, or for the profit or benefit of, the licensee with intent to evade the terms or conditions of any relevant licence, permit or certificate; or
 - (c) has on the premises without reasonable excuse any kind of liquor the sale of which the licence or permit does not authorise there,

that person commits an offence.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000, in any other case \$1 000.

- (2) Where the licensee of any premises permits, whether personally or by an employee or agent, liquor sold there to be consumed by persons —
- (a) to whom the licensee is not authorised by the licence to sell the liquor for consumption there;
 - (b) for whose consumption there the licensee is not authorised by the licence to sell the liquor to any other person; or

- (c) during permitted hours, but in circumstances not otherwise authorised,

without reasonable excuse, the licensee, and the employee or agent concerned, commits an offence.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000.

- (3) Where a person takes, or is permitted by the licensee or an employee or agent of the licensee to take, liquor from licensed premises or premises deemed to be licensed premises, if the licensee is not authorised by the licence to sell that liquor to that person for consumption off those premises, the person, and the licensee, employee or agent concerned, commits an offence.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000, in any other case \$1 000.

- (4) A person who obtains or attempts to obtain liquor from a licensee or the employee or agent of a licensee otherwise than in a manner or quantity authorised under this Act commits an offence.

- (5) A person who is on any premises for the purpose of purchasing or consuming liquor in contravention of subsection (2) or (4) commits an offence.

Penalty: \$1 000.

- (6) Where a licence authorises —

- (a) the sale of liquor for consumption on the licensed premises ancillary to a meal provided by the licensee; or
(b) the consumption of liquor on the licensed premises ancillary to a meal provided by the licensee,

then, notwithstanding any other provision of this Act, it is lawful for a person —

- (c) to bring liquor onto the licensed premises, with the consent of the licensee, intending to consume it ancillary

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to a meal provided by the licensee on the licensed premises; and

(d) subsequently to take the unconsumed portion of the liquor from the licensed premises.

(7) A licensee, or the employee or agent of a licensee, who —

(a) is drunk on the licensed premises; or

(b) sells or supplies, or causes or permits to be sold or supplied, or keeps on the licensed premises, any liquor under a false or fictitious trade name, brand or description,

commits an offence.

Penalty: \$1 000.

[Section 110 amended by No. 12 of 1998 s. 76.]

111. Trading outside permitted hours

(1) Where a licensee, except during permitted hours —

(a) on or from licensed premises sells or otherwise makes available, whether personally or by an employee or agent, any liquor to any other person, whether consumed or to be consumed on or off the premises; or

(b) whether personally or by an employee or agent, permits liquor to be consumed on the licensed premises,

that licensee, and the employee or agent concerned, commits an offence, unless section 112 applies.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000.

(2) Subject to this Division, where at a particular time a licensee is not authorised to sell liquor to a particular person if that person then —

(a) purchases or consumes liquor, or is in possession of liquor, on the licensed premises; or

- (b) takes liquor from the licensed premises,
that person commits an offence.
Penalty: \$1 000.
- (2a) To avoid doubt, an act referred to in this section constitutes an offence if done while a licence is suspended.
- (3) For the purposes of this Act, evidence that a person was on licensed premises or took liquor from licensed premises at a time when the licensee was not authorised to sell liquor to that person shall, in any proceedings relating to an offence under this Act, be evidence that the person was there for the purpose of purchasing or consuming liquor without proof of actual purchase or consumption and the burden of proving that this section was not contravened shall be upon that person.

[Section 111 amended by No. 12 of 1998 s. 77.]

112. Application of sections 109, 110 and 111

- (1) Sections 109, 110 and 111 do not prohibit or restrict —
- (a) where any liquor was sold on licensed premises during the permitted hours —
- (i) during the first 15 minutes after the end of those hours, or of any period forming part of those hours, the possession or consumption of that liquor on the premises, or, the taking away of that liquor if it is packaged liquor;
- (ii) during the first 30 minutes after the end of those hours, or of any period forming part of those hours, the possession and consumption of the liquor supplied as an ancillary to the meal, by persons taking a meal there;
- (b) the possession or consumption by any person of liquor on premises where the person resides;

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- (c) the consumption, on licensed premises by a guest of a lodger, of liquor supplied in the presence, and at the expense, of the lodger; or
 - (d) as regards licensed premises —
 - (i) the taking of liquor from the premises by a person who resides there;
 - (ii) the supply of liquor to a person (not being a lodger) who resides, or carries on or is in charge of the business, there, or the possession or consumption of liquor supplied at the expense of that person in a private room reserved for the personal use of that person by any members of the family or private guests of that person; or
 - (iii) the supply of liquor for consumption there, to persons employed for the purpose of the business carried on under the licence, at the expense of their employer or a person carrying on or in charge of the business there, or the possession or consumption of the liquor so supplied,but the burden of proving that this paragraph applies lies on the person charged with the offence.
- (2) It is a defence to a charge of an offence that liquor was sold or supplied to a person in contravention of section 109, 110 or 111, in circumstances in which the sale or supply would have been authorised had the liquor been consumed ancillary to a meal, that the person selling or supplying the liquor concerned reasonably believed that the person to whom the liquor was sold or supplied was to be supplied by the licensee with, and would eat, a meal.

[Section 112 amended by No. 12 of 1998 s. 78; No. 84 of 2004 s. 80.]

113. Unlawful dealing in liquor

- (1) A person who is charged with an offence under section 109, 110 or 111 may in the same proceedings be found, for the purposes of this Act, to have unlawfully dealt in liquor.
- (2) Where in any proceedings under this Act a person is found to have unlawfully dealt in liquor the court by or before which that person is convicted may declare all, or any specified part, of the liquor found in the possession of the offender, and the containers and packaging, to be forfeited.
- (3) Where any liquor, container or packaging, is forfeited under this Act it may be sold or destroyed, as the court making the order for forfeiture may direct, and the proceeds of the sale (if any) shall, after payment of the expenses of sale, be credited to the Consolidated Fund.

[Section 113 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]

114. Closure of licensed premises by Police

- (1) Where a member of the Police Force for the time being on duty at any place has reasonable grounds for believing that at or in the vicinity of that place —
 - (a) civil disorder, a breach of the peace or a threat to public safety is occurring or is likely to occur; and
 - (b) in the interests of maintaining the peace or ensuring public safety it is or may be desirable that licensed premises be closed,

that person may require the licensee, or an employee or agent of the licensee, to close the licensed premises or a part of those premises, or to cease the sale, supply or consumption of liquor on the premises or a part of the premises, for a specified period or until further notice, and a person who, without reasonable cause, contravenes a requirement so made commits an offence.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000.

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- (2) It is not an offence against subsection (1) for a licensee, or the employee or agent of a licensee, to permit a lodger, or a person having lawful business (other than the purchase or obtaining of liquor) to conduct on the premises, to enter the premises if liquor is not supplied to that lodger or other person.
- (3) On the orders of the member of the Police Force making a requirement in relation to licensed premises under subsection (1), a person may use such force as may be necessary to ensure compliance with the requirement.

[Section 114 amended by No. 12 of 1998 s. 79.]

115. Disorderly persons etc.

- (1) Where a licensee, whether personally or by an employee or agent —
 - (a) permits —
 - (i) drunkenness; or
 - (ii) violent, quarrelsome, disorderly or indecent behaviour,to take place;
 - (b) permits any reputed thief, prostitute or supplier of unlawful drugs to remain, other than for so long as is necessary to obtain reasonable refreshment; or
 - (c) permits or suffers to be conducted on the licensed premises any gaming or betting which contravenes section 110(1) of the *Gaming and Wagering Commission Act 1987*,

on the licensed premises that licensee, and the employee or agent concerned, commits an offence.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000.

- (2) A person shall not, on licensed premises —

- (a) sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunken person;
- (b) allow or permit a drunken person to consume liquor;
- (c) obtain or attempt to obtain liquor for consumption by a drunken person; or
- (d) aid a drunken person in obtaining or consuming liquor.

Penalty: In the case of the licensee or manager \$5 000, in the case of an employee or agent \$2 000, and in any other case \$1 000.

- (3) A person is drunken for the purposes of this Act if the person's speech, balance, co-ordination, or behaviour is noticeably affected by liquor.
- (3a) If an authorised officer or a person on whom a duty is imposed under this section decides, in accordance with subsection (3), that a person is drunken at a particular time, then, in the absence of proof to the contrary, that person is to be taken to be drunken at that time.
- (4) Without prejudice to any other right to refuse a person admission to the premises or remove a person from the premises, a licensee or a manager or an employee or agent of the licensee may refuse to admit to, and a licensee or the manager of the premises may cause to be removed from, the licensed premises any person who —
 - (a) is, or is known to be, or is an associate of, a reputed thief, prostitute, supplier of unlawful drugs, or person convicted of an offence involving unlawful drugs or violence which is punishable by a term of imprisonment exceeding 3 years; or
 - (b) is, or is known to be likely to be, a person to whom, under section 108(3), a licensee would have reasonable cause to refuse to sell liquor.
- (5) A person who —

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- (a) obtains or attempts to obtain liquor from a licensee or the employee or agent of a licensee by falsely pretending, or representing, that he or she is a lodger of the premises or is there for the purpose of taking a meal or has taken a meal there; or
- (b) without lawful excuse, the burden of proof of which lies on that person —
 - (i) enters; or
 - (ii) having been required by an authorised person to leave the premises, remains on, licensed premises at a time when that part of the premises is authorised or required under this Act to be closed,

commits an offence.

Penalty: \$1 000.

- (6) Where, on being required by an authorised person to do so, a person to whom subsection (4) or (5) applies fails to leave the premises —
 - (a) the person commits an offence; and
 - (b) any other person, on the request of the licensee or manager of the premises, may remove the person to whom subsection (4) or (5) applies from the premises using such force as may be necessary.

Penalty: \$1 000.

- (7) A person who re-enters premises within 24 hours of being required to leave, or being removed from, those premises under this section —
 - (a) commits an offence; and
 - (b) any other person, on the request of the licensee or manager of the premises, may remove the person who re-entered the premises from those premises using such force as may be necessary.

Penalty: \$1 000.

- (8) A member of the Police Force may, and on request by an authorised person shall, prevent entry by, or remove, any person who, under this Act, has been refused entry to, or is liable to be removed from, licensed or regulated premises.
- (9) A person who is aggrieved by having been refused admittance to, or removed from, licensed premises purportedly under subsection (4) may lodge a complaint in writing with the Director.

[Section 115 amended by No. 12 of 1998 s. 80; No. 35 of 2003 s. 173(3).]

116. Certain documents to be kept on premises, displayed and produced

- (1) A licensee shall cause a copy of —
 - (a) the licence;
 - (b) any permit that relates to the licence; and
 - (c) the plans of the premises as approved by the licensing authority showing the definition of the premises,to be kept on the licensed premises at all times, unless the Director otherwise approves.
- (2) A licensee, or a manager, of the business conducted under the licence shall, if so required by an authorised officer, produce for inspection a copy of the licence or of any other documents referred to in subsection (1).
- (3) A person shall not carry on business for which a licence is required under any name other than that of the licensee unless the Director has approved the use of the name.
- (4) A licensee shall cause a copy of the licence to be displayed in a readily legible condition and in a conspicuous position in the licensed premises.
- (5) A licensee, other than the holder of an occasional licence, shall cause a notice in a form approved by the Director to be

displayed in a readily legible condition and in a conspicuous position at or near the front entrance to the licensed premises, showing —

- (a) any name approved under subsection (3);
- (b) the class of the licence;
- (c) the name of the licensee, followed by the word “Licensee”; and
- (d) if the licensed premises are not managed by the licensee personally, the name of the manager, followed by the word “Manager”,

unless the Director otherwise approves.

Penalty: \$1 000.

[Section 116 inserted by No. 12 of 1998 s. 81.]

Division 7 — Complaints about noise, etc.

117. Complaints about noise or behaviour related to licensed premises

- (1) Where, with respect to licensed premises, a complaint under this section is lodged with the Director alleging —
 - (a) that the amenity, quiet or good order of the neighbourhood of the licensed premises is frequently unduly disturbed by reason of any activity occurring at the licensed premises; or
 - (b) that any —
 - (i) behaviour of persons on the licensed premises;
 - (ii) noise emanating from the licensed premises; or
 - (iii) disorderly conduct occurring frequently in the vicinity of the licensed premises on the part of persons who have resorted to the licensed premises,

an opportunity to be heard or to make submissions, determine the matter and, if of the opinion that the allegation in the complaint is established on the balance of probabilities and is of such a nature that the matter cannot be settled by conciliation or negotiation, make an order under this section but otherwise may dismiss the complaint.

- (5) For the purposes of this section, whether pursuant to conciliation or negotiation or by way of an order, the Director may —
- (a) vary the existing conditions of the licence;
 - (b) redefine, or redesignate a part of, the licensed premises;
 - (c) prohibit the licensee from providing entertainment or any other activity of a kind specified by the Director during a period specified by the Director or otherwise than in circumstances specified by the Director, and impose that prohibition as a condition to which the licence is to be subject; or
 - (d) otherwise deal with the matter in such a manner as is likely, in the opinion of the Director, to resolve the subject matter of the complaint.
- (6) Where, under section 25, a determination made by the Director under this section is to be reviewed by the Court —
- (a) effect shall be given to any determination made by the Director; and
 - (b) any order made, or other action taken, by the Director under subsection (5) remains in force until revoked by the Director or quashed by the Court,
- unless the Court, by way of interim order, otherwise directs.
- (7) A licensee who contravenes an order made under this section commits an offence.
- Penalty: \$5 000.

Penalty: \$500.

- (4) It shall not be a defence to a prosecution for an offence relating to the sale of liquor for a person to allege that a licence purporting to authorise the sale was transferred to that person unless the licensing authority has notified that person that approval to the transfer of the licence to that person has been granted.

119. Limitations as to liquor on unlicensed premises, etc.

- (1) A person who consumes liquor in any place or on any premises, including any park or reserve, without the consent of the occupier, or of the person or authority having control, of that place or those premises commits an offence.

Penalty: \$500.

- (2) Subject to subsection (3), a person who —
- (a) brings liquor into;
 - (b) has in his or her possession or control any liquor in; or
 - (c) consumes liquor in,

any sports ground or stadium, whether or not enclosed or fenced, during a period commencing one hour before and ending one half-hour after the holding or conduct of any event, including any sport or game, for public exhibition, commits an offence.

Penalty: \$500.

- (3) Subsection (2) does not apply to or in relation to —
- (a) an event in which the participants take part for their own recreation and not by way of public exhibition;
 - (b) liquor the possession and sale of which is authorised by a licence or permit under this Act;
 - (c) persons attending a private function, not open to the public, at which liquor is supplied without charge; or

- (d) any area within the ground or stadium to which the public is not permitted to have access, in so far as the consumption of liquor there is with the consent of the person or authority having control of that area.
- (4) Except where the supply of that liquor was authorised by a licence or permit under this Act and the place where the liquor is consumed is for the time being a place to which that licence or permit applies, a person who consumes liquor —
 - (a) on any road, within the meaning of the *Road Traffic Act 1974*, within the boundaries of the metropolitan area or of a town or townsite;
 - (b) within 400 metres of any public hall during the conduct of any entertainment in that hall to which the public is permitted to have access; or
 - (c) in any place or on any premises to which the public is permitted to have access, whether on payment of a charge or otherwise, which is a place or premises prescribed for the purposes of this subsection,

commits an offence.

Penalty: \$500.

- (5) Where a person —
 - (a) is the occupier of, or the manager or a person who has the control of, any place or premises to which subsection (2) or (4)(c) applies; or
 - (b) is employed by, or the agent of, such a person,

and permits or suffers any other person to contravene that subsection, the person commits an offence.

Penalty: \$1 000.

- (6) It is not a defence to a charge of an offence against this section that the liquor was in, or was consumed in or upon, a vehicle.

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- (7) Where a person is the occupier or has or takes part in the care, management, or control of any unlicensed premises (other than a place or premises to which subsection (2) or (3) applies) and allows those premises to be kept or used as a place of resort for the consumption of liquor, the person commits an offence.
Penalty: \$500.
- (8) Subsection (7) does not apply to the consumption of liquor —
- (a) by a person on any premises on which that person resides, whether that person is the occupier of the premises or not; or
 - (b) which is supplied to a person by way of gift, or as a guest of, a person who resides on the premises on which the liquor is consumed.
- (9) For the purposes of subsection (7), a person who acts as, or as if he or she were, an occupier or a person having any part in the care, management, or control of any premises shall be deemed to be an occupier of the premises, but without affecting the liability of any other person.
- (10) For the purposes of subsection (7), premises may be deemed to be kept or used as a place of resort for the consumption of liquor even though they are open only for the use of particular persons or particular classes of persons, and not to all persons who wish to use them.
- (11) A person who, not being a member of the Police Force in the execution of his or her duty, is found on any unlicensed premises kept or used in contravention of subsection (7) commits an offence and may be arrested.
Penalty: \$500.
- (12) It is a defence to a charge under subsection (11) if the accused proves that he or she —
- (a) was present on the premises for a lawful purpose; and

- (b) neither took part nor intended to take part in any unlawful sale, supply, or consumption of liquor.

[Section 119 amended by No. 84 of 2004 s. 80 and 82.]

Division 9 — Juveniles

120. Juveniles permitted to be present on certain premises

- (1) This Division does not prohibit juveniles from being permitted entry to, or remaining on, a place where the sale or supply of liquor is authorised if —
 - (a) the place is on premises to which a club licence applies and the presence of the juvenile in question —
 - (i) does not contravene the constitution or rules of the club;
 - (ii) is permitted, expressly or by implication, by the committee of the club; and
 - (iii) does not contravene a condition of the licence;
 - (b) the juvenile is —
 - (i) a member of the family of the licensee, manager or occupier of the premises or of a person employed on the premises, and resides there; or
 - (ii) a member of the family of a lodger of the premises;
 - (c) the place is —
 - (i) for the time being used under an occasional licence for the purposes of a reception;
 - (ii) on premises to which a special facility licence applies authorising their use as a reception centre; or
 - (iii) on premises to which a restaurant licence applies, or is a part of any premises set apart primarily for the supply of meals (being a place not used for

the sale or supply of liquor otherwise than ancillary to a meal supplied there),

if the juvenile is accompanied by, and under the supervision of, a responsible adult or, where subparagraph (iii) applies, the juvenile is present for the purpose of obtaining a meal;

- (d) the place is on premises to which a special facility licence applies authorising the sale of liquor to passengers of private or public transport or persons accompanying or awaiting travellers;
- (e) the place is on a part of licensed premises or of regulated premises which, on application by an authorised person, the Director has for the time being approved for the purposes of this subsection, where no condition to which that approval is subject is contravened; or
- (f) the juvenile is present only for the purpose of carrying on a lawful business, and does not consume liquor, even if that place has for the time being been declared to be out of bounds to juveniles,

and the provisions of this Division shall be construed accordingly.

- (2) This Division does not prohibit a juvenile from being in a place where the sale or supply of liquor is authorised if the juvenile is there solely for the purpose of passing to or from some part of the premises where —
 - (a) liquor is not authorised to be sold or supplied; or
 - (b) the juvenile is not prohibited from being present,

and to and from which there is no other convenient means of passage.

121. Juveniles on licensed premises

- (1) Subject to this Act, where liquor is sold or supplied to a juvenile on licensed premises —

- (a) the licensee;
- (b) the manager of the licensed premises;
- (c) any other person by whom the liquor is sold or supplied;
and
- (d) any person who permits the sale or supply,

each commit an offence.

Penalty: In the case of the licensee or manager \$5 000, in respect of the sale or supply by any other person \$2 000, and in any other case \$1 000.

- (2) A licensee, and any other person by whom liquor is sold or supplied there, who permits a juvenile to consume liquor on the licensed premises, whether or not that liquor was sold or supplied there, commits an offence.

Penalty: In the case of the licensee or manager \$5 000, in any other case \$2 000.

- (3) Where a person, acting at the request of a juvenile on licensed premises, purchases or obtains liquor on behalf of the juvenile on licensed premises, that person and the juvenile each commit an offence.

Penalty: \$2 000.

- (4) Subject to subsection (5), where a juvenile enters or remains on any part of the licensed premises —

- (a) the licensee;
- (b) any employee or agent of the licensee who permits the juvenile to enter or remain on that part of the premises;
and
- (c) the juvenile,

each commit an offence.

Penalty: In the case of the licensee or manager \$5 000, in the case of another employee or agent \$2 000, in the case of the juvenile \$2 000.

- (5) Subsection (4) does not apply —
- (a) to a juvenile who is —
 - (i) accompanied by, and under the supervision of, a responsible adult; or
 - (ii) on the premises for the purpose of obtaining a meal;
 - (b) to the presence on a part of the licensed premises of a juvenile at a time at which —
 - (i) entertainment is, with the approval of the Director, provided on that part of the premises mainly for juveniles; and
 - (ii) liquor is not sold, supplied or consumed there;
 - (c) to a juvenile engaged in a training course approved by the Director, when so present in accordance with the requirements of that course;
 - (d) to the presence of a juvenile employed on the premises otherwise than in the sale or supply of liquor, even if the place where the juvenile is present is a place which has for the time being been declared to be out of bounds to juveniles; or
 - (e) if section 120 applies.
- (6) A licensee —
- (a) with the approval of the Director, may; and
 - (b) if so required by the Director, whether or not under a condition of the licence, shall,
- by notices in the prescribed form posted at each entrance to the out of bounds area, declare the whole or any part of the licensed premises to be out of bounds to juveniles at all times or at specified times.
- (7) Where a juvenile enters licensed premises or a part of licensed premises declared under subsection (6) to be at that time out of bounds to juveniles, an authorised person may require the

juvenile to leave the licensed premises and, if the juvenile fails to do so —

- (a) the juvenile commits an offence; and
- (b) an authorised person, or any other person on the request of an authorised person, may remove the juvenile from the licensed premises using such force as may be necessary.

Penalty: \$1 000.

- (8) Subsections (6) and (7) do not apply to or in relation to a juvenile to whom section 120(1)(b) or (f), 120(2) or 121(5)(c) or (d) applies or a juvenile who is present at a place to which section 120(1)(e) applies.
- (9) Where a person or juvenile is lawfully on licensed premises by reason of being in the company and under the supervision of a responsible adult, if that adult leaves the juvenile on the licensed premises deprived of his or her company and supervision without first informing the licensee or an employee or agent of the licensee the adult commits an offence.

Penalty: \$500.

- (10) A person who employs or engages a juvenile in the sale, supply or serving of liquor on or from —
 - (a) licensed premises; or
 - (b) premises to which an occasional licence or permit applies, even if they are not deemed to be licensed premises,

commits an offence.

Penalty: \$5 000.

[Section 121 amended by No. 12 of 1998 s. 83.]

122. Juveniles on regulated premises

- (1) For the purpose of this Act premises which are not licensed premises but which are of any of the kinds following are deemed to be regulated premises —
- (a) any area which —
 - (i) is adjacent to, and is habitually used in conjunction with, licensed premises; and
 - (ii) is managed, or is reasonably capable of being supervised by, the licensee;
 - (b) any place to which a permit applies, or other premises on which liquor may lawfully be supplied;
 - (c) any premises in a building or covered enclosure which are from time to time let or hired to the public or to which the public is admitted, whether or not on payment, where —
 - (i) amusements are provided;
 - (ii) entertainment or refreshment is available at a charge; or
 - (iii) the premises are otherwise used for the purpose of financial gain;
 - (d) any premises where foods, light refreshments or non-intoxicating drinks are ordinarily sold or served to the public, for consumption on the premises;
 - (e) any premises occupied by a club in respect of which a licence is not in force;
 - (f) any premises prescribed for the purposes of this section; and
 - (g) for the purpose only of the prohibition of the sale or supply to, or the prohibition of the purchase or obtaining by, a juvenile of liquor but not otherwise — any road open to or used by the public, including any footpath or reservation adjoining the road, and vehicle on or adjacent to the road.

- (2) Subject to this Act, a person who sells or supplies, or permits the sale or supply of, liquor to a juvenile on regulated premises commits an offence.

Penalty: \$2 000.

- (3) Subject to this Act, where the juvenile is not the employee or agent of the licensee or occupier and is not, and is not the employee or agent of, a person acting under or employed in connection with a contract with the licensee or the owner or occupier of the premises, a person who —
- (a) being a juvenile enters or remains in any part of regulated premises where liquor is sold or supplied, except for the purpose of obtaining a meal; or
 - (b) being a person who has purported to accompany the juvenile as a responsible adult for the purpose of obtaining a meal, causes or permits the juvenile to enter or remain in any part of regulated premises where liquor is sold or supplied, except for the purpose of permitting the juvenile to obtain a meal,

commits an offence.

Penalty: In the case of a juvenile \$1 000, in any other case \$2 000.

- (4) Subsection (3) does not apply to or in relation to a juvenile to whom section 120(1)(b) or (f), 120(2), or 121(5)(c) or (d) applies.

[Section 122 amended by No. 12 of 1998 s. 35(5).]

123. Possession and consumption by juveniles of liquor

Subject to this Act, where a juvenile —

- (a) purchases or obtains, or attempts to purchase or obtain, liquor from any other person on licensed or regulated premises;
- (b) brings liquor on to licensed or regulated premises; or

- (c) consumes liquor on licensed or regulated premises,
the juvenile commits an offence.
Penalty: \$1 000.

124. Sending juveniles to obtain liquor

Where a person sends another person, knowing or believing that other person to be a juvenile, to any licensed premises or regulated premises for the purpose of obtaining liquor, the person commits an offence.

Penalty: \$1 000.

125. Defences under this Division

- (1) It is a defence to a charge of an offence against this Division relating to the sale or supply of liquor to a juvenile to show —
 - (a) that the juvenile to whom liquor was sold or supplied is —
 - (i) a member of the family of the licensee, occupier or manager of, or of a person employed on, the regulated premises and resides there, and that the supply was gratuitous; or
 - (ii) the spouse or de facto partner of a lodger of the premises;
 - (b) if the accused is the person by whom the liquor was sold or supplied to, or from whom the liquor was purchased or obtained for, the juvenile, that —
 - (i) the person believed on reasonable grounds that the alleged juvenile was not a juvenile; and
 - (ii) that the juvenile was of or above the age of 16 years;

or

- (c) where the offence is alleged to have occurred on regulated premises, if the accused is the licensee,

occupier or manager of the regulated premises and did not personally sell or supply the liquor, that —

- (i) the business was not conducted in such a way as to entice juveniles to the part of the premises where the liquor was sold, supplied or consumed; and
 - (ii) that proper diligence was exercised to prevent the sale, supply or consumption of liquor in contravention of this Division.
- (2) For the purposes of any proceedings under this Division —
- (a) a person who alleges that a juvenile was accompanied by a responsible adult shall be required to establish that the person accompanying the juvenile was a responsible adult; and
 - (b) a person shall be taken to be a responsible adult if that person was an adult who is a parent, step-parent, spouse, de facto partner or legal guardian of the juvenile, or other person in loco parentis to the juvenile.

(3) In this section —

“a member of the family”, in relation to a person, includes a de facto partner of the person.

[Section 125 amended by No. 12 of 1998 s. 84; No. 28 of 2003 s. 106; No. 84 of 2004 s. 80 and 82.]

126. Suspected juvenile may be required to produce evidence of age, or to leave

- (1) Where an authorised person knows, or suspects on reasonable grounds, that a person on licensed premises or regulated premises is a juvenile, the authorised person —
- (a) may require the juvenile or suspected juvenile to state his or her age; and
 - (b) if the age stated is false, or appears to be false —
 - (i) may require the juvenile or suspected juvenile to produce as evidence of that age —

- (I) a current Australian driver's licence with a photograph;
 - (II) a current passport; or
 - (III) another prescribed document;and
 - (ii) if the juvenile does not do so, or the evidence produced does not prove that the person is not a juvenile, may require the juvenile or suspected juvenile to leave the premises.
- (2) A person who —
- (a) fails, without reasonable excuse, to comply with a requirement under subsection (1); or
 - (b) makes a statement, or produces alleged evidence, that is false or misleading in any material respect in response to the requirement,
- commits an offence.
- Penalty: \$1 000.
- (3) An authorised person, or any other person on the request of an authorised person, may —
- (a) remove from licensed premises or regulated premises any juvenile, or suspected juvenile, who has failed to comply with a requirement to leave the premises made under subsection (1); and
 - (b) use such force as may be necessary to ensure compliance with the requirement.
- (4) A person who re-enters licensed premises or regulated premises within 24 hours of being required to leave, or being removed from, those premises under this section —
- (a) commits an offence; and
 - (b) an authorised person, or any other person on the request of an authorised person, may remove the person who

re-entered the premises from those premises using such
force as may be necessary.

Penalty: \$1 000.

[Section 126 amended by No. 12 of 1998 s. 85.]

Part 5 — Financial provisions

Division 1 — Licence fees

127. Licence fees

- (1) Subject to this Act, for so long as a licence is in force the licence fee prescribed in respect of the licence is payable not later than such day as is prescribed in each year in respect of each licence period.
- (2) A new licence shall not come into force until the licence fee prescribed in respect of the licence has been paid, unless otherwise prescribed.
- (3) A licence fee payable under this Part, or a penalty for failure to pay a fee when it becomes due, may be recovered as a debt due to the Crown.

[Section 127 amended by No. 56 of 1997 s. 34.]

128. Regulations relating to licence fees

Regulations may be made for and with respect to the time, place and method of the payment of licence fees, penalties for late payment, the reduction, waiver or refund of such penalties, and the suspension or cancellation of licences or permits after a failure to pay any moneys payable.

[Section 128 inserted by No. 56 of 1997 s. 35.]

Division 2 — Subsidies

[Heading inserted by No. 56 of 1997 s. 36.]

129. Interpretation

In this Division, unless the contrary intention appears —

“**producer**” means the holder of a producer’s licence or a special facility licence;

“wholesaler” means the holder of a wholesaler’s licence, and such other persons as are prescribed.

[Section 129 inserted by No. 56 of 1997 s. 36; amended by No. 12 of 1998 s. 35(6).]

130. Subsidies to wholesalers and producers

(1) Subject to this Division, subsidies are payable to —

- (a) wholesalers; and
- (b) producers,

in respect of such sales of liquor as are prescribed.

(2) A subsidy is not payable in respect of any period during which a person who would otherwise be eligible for a subsidy failed to comply with a condition prescribed, or imposed by the Director in accordance with the regulations.

(3) A subsidy is to be calculated in accordance with the regulations.

[Section 130 inserted by No. 56 of 1997 s. 36.]

131. Application for a subsidy

(1) Application for a subsidy is to be made in accordance with the regulations.

(2) If the Director is not satisfied with information provided in an application the Director may, whether before or after paying a subsidy in respect of the application, request the applicant to provide further information in relation to the application.

(3) If the applicant does not provide the further information requested by the Director or the Director is not satisfied with the information provided, the Director may —

- (a) refuse to pay the subsidy; or
- (b) if the subsidy is already paid, treat the subsidy as having been paid under an incorrect subsidy application and section 135 applies accordingly.

[Section 131 inserted by No. 56 of 1997 s. 36.]

132. Director to pay subsidies

If a person applies for a subsidy in accordance with section 131 the Director is to pay the applicant a subsidy, subject to section 131(3) and 135(5).

[Section 132 inserted by No. 56 of 1997 s. 36.]

133. Consolidated Fund appropriated

The money required to pay subsidies is to be charged to the Consolidated Fund which is appropriated accordingly.

[Section 133 inserted by No. 56 of 1997 s. 36.]

134. Correcting incorrect subsidy payments

- (1) In this section and section 135 a person makes an incorrect subsidy application if the person applies for a subsidy in circumstances where —
 - (a) a subsidy is not payable to the person under this Act; or
 - (b) the amount of the subsidy applied for is greater than the amount of the subsidy that ought to have been applied for.
- (2) If a person makes an incorrect subsidy application, then the person must within 21 days after making the application —
 - (a) notify the Director accordingly; and
 - (b) pay the Director an amount equal to the unjustified benefit that the person has received or will receive.
- (3) The unjustified benefit is the amount by which the subsidy applied for in the incorrect subsidy application is greater than the subsidy to which the person is entitled under this Act.

[Section 134 inserted by No. 56 of 1997 s. 36.]

135. Failure to correct incorrect subsidy application

- (1) If a person makes an incorrect subsidy application and does not comply with section 134(2) the Director may give the person a notice that sets out —
 - (a) details of the incorrect application; and
 - (b) the penalty to be paid by the person.
- (2) The penalty to be paid by a person referred to in subsection (1) is to be double —
 - (a) the amount that the person ought to have paid under section 134(2); or
 - (b) if the Director is not able to determine that amount due to insufficient, false or misleading records or information, such amount as is assessed by the Director.
- (3) If a person who has been given a notice under subsection (1) does not pay the penalty on or before the date for payment specified in the notice, the person commits an offence.
Penalty: \$5 000.
- (4) The date for payment to be specified in a notice under subsection (1) is to be at least 7 days after the date the notice is given to the person.
- (5) Where an amount is unpaid under this section the Director may —
 - (a) recover the amount in a court of competent jurisdiction as a debt due to the Crown; or
 - (b) retain the amount from moneys that would otherwise be paid to the person as a subsidy,

and the Director may suspend the operation of any licence held by that person until the amount is paid.

- (6) The Director is to notify a person in writing before taking any action under subsection (5) in respect of that person.

[Section 135 inserted by No. 56 of 1997 s. 36.]

136. Minister may order subsidies to cease

- (1) The Minister may at any time order that the subsidy to wholesalers or producers, or to both, is no longer to be paid.
- (2) The Minister may by a subsequent order amend or cancel an order referred to in subsection (1).
- (3) The Minister may, either in the initial order or in a subsequent order, give any directions reasonably necessary to give effect to the initial order.
- (4) Without limiting subsection (3), directions may modify the operation of this Act in relation to subsidies.
- (5) An order under this section is to be published in the *Gazette*.
- (6) An order under this section is to be laid before each House of Parliament under section 42 of the *Interpretation Act 1984* and that section applies as if the order were a regulation.

[Section 136 inserted by No. 56 of 1997 s. 36.]

[137, 138. Repealed by No. 56 of 1997 s. 36.]

Division 3 — Power of Court with respect to moneys due

[Heading amended by No. 56 of 1997 s. 37.]

[139-142. Repealed by No. 56 of 1997 s. 38.]

143. Order for payment of money

- (1) The Court may, on the application of the Director, make an order against a licensee or former licensee for payment of any amount that is payable by that person under this Act, including

an amount due under section 135 in respect of an incorrect subsidy application.

- (2) Where an order is made under subsection (1) against a body corporate and —
- (a) the body corporate is dissolved; or
 - (b) the amount referred to in the order is not paid within 14 days after service of a copy of the order on the body corporate,

the order may be enforced against —

- (c) a person who was a director of the body corporate or former body corporate at the time at which —
 - (i) the amount became payable under this Act; or
 - (ii) incorrect or incomplete information was given;
- (d) a body corporate that was a related body corporate at the time at which —
 - (i) the amount became payable under this Act; or
 - (ii) incorrect or incomplete information was given,

or a person who was a director of such a related body corporate at that time.

- (3) An order made under subsection (1) may be enforced by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (4) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

[Section 143 amended by No. 56 of 1997 s. 39; No. 59 of 2004 s. 141.]

[144.] *Repealed by No. 56 of 1997 s. 40.]*

Division 4 — Records and returns

145. Records of liquor transactions

- (1) Such licensees as are prescribed shall make and maintain a record of all transactions entered into by or on behalf of the licensee involving the sale or purchase or other disposal or acquisition of liquor, in accordance with this section.
- (1a) A person who has applied for a subsidy in relation to the sale of liquor shall make and maintain such records relating to the subsidy as are prescribed.
- (2) A record to be kept under subsection (1) or (1a) shall contain the information prescribed and shall be maintained in such a form that the prescribed information is readily available for inspection.
- (3) A person who is required by this section to make a record shall —
 - (a) keep and retain the record on the licensed premises, or in some other place in the State approved by the Director for the purpose, for 6 years after the date on which it was compiled; and
 - (b) make the record available for inspection by an authorised officer.
- (4) A person who —
 - (a) fails to make, maintain, keep or retain a record, as required by this section;
 - (b) fails to make the record available for inspection by an authorised officer; or
 - (c) includes in such a record information that is false or misleading in a material particular,

commits an offence.

Penalty: \$5 000.

[Section 145 amended by No. 56 of 1997 s. 41; No. 12 of 1998 s. 86.]

146. Returns

- (1) A person required to make a record under section 145 shall, if so required by the Director or so prescribed, lodge returns with the Director containing such information as the Director may require or as is prescribed —
- (a) relating to transactions involving —
 - (i) the sale, or other disposal of liquor; or
 - (ii) the purchase or other acquisition of liquor;or
 - (b) relating to the assessment of a subsidy,
- in respect of such period, or in relation to such circumstances, as the Director may require or as is prescribed.
- Penalty: \$5 000.
- (2) Returns required under this section shall —
- (a) be lodged at such times, or periodic intervals, as are prescribed or as may be specified by the Director;
 - (b) be prepared in a form acceptable to the Director; and
 - (c) be verified in such manner and by such a person as may be prescribed.

~~[(3)-(6)]~~ *repealed*

- (7) The Director may, in writing —
- (a) allow an extension of the time within which a return should be lodged; or
 - (b) direct that a requirement of this section shall not have effect in relation to a particular licence.

[Section 146 amended by No. 56 of 1997 s. 42.]

Division 5 — Recovery of illegal gains

[Heading amended by No. 56 of 1997 s. 43.]

147. Illegal gains, and estimated amounts

- (1) Where a person by contravention of this Act or of a condition of a licence or permit gains any financial advantage, the Court may, on the application of the Director, estimate the amount of that advantage and the amount so estimated may be recovered from that person as a debt due to the Crown.
- (2) Subsection (1) applies whether or not the contravention referred to is prosecuted as an offence.

[Section 147 amended by No. 56 of 1997 s. 44.]

Division 6 — Information

148. Power of Director to obtain information and evidence

- (1) For the purpose of ascertaining whether any fee is chargeable or for the purpose of determining the amount of any subsidy or any other monies due under this Act, the Director may by notice in writing require any person —
 - (a) to provide to the Director, within such reasonable period as is specified in that notice, such information specified in that notice as that person may be able to give; and
 - (b) to attend and give evidence before the licensing authority on a date specified in that notice in any case in which it may be necessary to ascertain any facts, and to produce the records specified in that notice.
- (2) The Director by notice in writing may require the information or evidence referred to in subsection (1) to be given —
 - (a) on oath or affirmation and either orally or in writing; or
 - (b) by statutory declaration.

[Section 148 amended by No. 56 of 1997 s. 45.]

149. Power of Director to use information

The Director may use for the purposes of this Act any information concerning the affairs of any other person acquired under or for the purposes of this Act.

150. Powers of Director in relation to entry and records

- (1) For the purposes of this Act, the Director —
- (a) shall at all reasonable times have full and free access to all buildings and places and to all records;
 - (b) may take copies of or extracts from any records;
 - (c) may require any person to produce to the licensing authority for inspection within a reasonable time after demand has been made all records relevant to the assessment of any subsidy in the possession, custody or power of the person.
- (2) A person who has in his or her possession, custody or power any records relevant to the matters referred to in subsection (1)(c) and who, when so required by the Director, refuses or fails to produce to the Director those records commits an offence.

Penalty: \$5 000.

[Section 150 amended by No. 56 of 1997 s. 46; No. 12 of 1998 s. 97(1).]

151. Authority may assist other authorities

The licensing authority may disclose information gained in the course of the administration of this Act to —

- (a) authorities vested with the administration of liquor licensing laws in other States and Territories of the Commonwealth; and

(b) any other authorities that may require the information for the purpose of discharging duties of a public nature, respecting the affairs of any persons or the administration of this Act.

152. Obligation of secrecy

- (1) Any person who is or has been employed in the administration of this Act, shall not while that person is, or after that person ceases to be, so employed —
- (a) either directly or indirectly, except in the performance of a function in relation to this Act or in accordance with section 151, make a record of, or divulge or communicate to any other person any information disclosed or obtained by reason of this Act respecting the affairs of any other person; or
 - (b) produce in any court or to any other person, or permit any other person to have access to, a document that is, in the course of being so employed, in the custody of that person,
- except for the purpose of any proceedings for an offence under this Act, or where it is otherwise necessary to do so for the purpose of carrying into effect the provisions of this Act.
- (2) A person who contravenes subsection (1) commits an offence.
Penalty: \$2 000.

Part 6 — Enforcement

153. Functions of inspectors and other officers of the licensing authority

- (1) An inspector, or a person authorised by the Director under section 15, may examine, and shall report on, any matter affecting the administration of this Act upon which the Director requires a report and, in particular —
 - (a) shall report to the Director on the extent and standard of services provided in licensed premises;
 - (b) shall report to the Director on the nature and extent of premises proposed to be licensed and on plans for proposed new licensed premises or for extensions or alterations to, the rebuilding and reinstatement of, or the change in use of any part or parts of, existing licensed premises; and
 - (c) shall appear before, and assist, the Court, or the Director, whenever so required by the Director.
- (2) Where an inspector or other person authorised by the Director to do so makes a report with respect to any particular licensed premises or premises proposed to be licensed, including any report as to the extent or standard of services provided on the premises, the Director shall —
 - (a) cause a copy of such part of the report as the licensing authority adopts to be sent to the owner of the premises or agent of the owner (if known) and, where the owner is not the licensee or proposed licensee, to or to the agent of the licensee or proposed licensee, as the case may require; and
 - (b) make such part of the report as the licensing authority adopts available for inspection, on request, by the local government or by any person who has lodged an objection to the granting of a licence in respect of those premises.

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- (3) In this section “**licensed premises**” includes premises in respect of which an application has been made, under this Act.

[Section 153 amended by No. 14 of 1996 s. 4.]

154. Powers of authorised officers

- (1) An authorised officer may, at any reasonable time, and in the case of an inspector on production of the certificate furnished under section 14 —
- (a) enter licensed premises or regulated premises;
 - (b) inspect licensed premises or regulated premises;
 - (c) examine each room and part of the premises;
 - (d) take an account of any or all liquor that is on the premises;
 - (e) demand, select, obtain and carry away any sample of that liquor, subject to —
 - (i) the sample being sealed in the presence of the licensee or person in charge of the premises and, if the licensee or that person so requires, by the licensee or that person; or
 - (ii) reasonable payment being made or tendered for the sample;
 - (f) require the licensee or manager to provide any information or assistance reasonably required by the authorised officer relating to any matter within the duties of the licensee or manager;
 - (g) require any person having possession of records relevant to a subsidy, a business conducted under a licence, or to transactions involving the sale or purchase of liquor, to produce those records for inspection; and
 - (h) require any person who is in a position to provide information relating to a subsidy, or to the sale, purchase or supply of liquor to answer any question put to that person by the authorised officer on that subject.

- (2) An authorised officer may —
- (a) examine records produced under this section;
 - (b) make copies of, or take extracts from, any such records; and
 - (c) retain the records for such reasonable period as may be necessary for the purposes of this Act.
- (3) A person who —
- (a) hinders an authorised officer in the exercise of powers conferred by this Act;
 - (b) fails, without reasonable excuse, to comply with a requirement of an authorised officer, under this Act;
 - (c) fails, without reasonable excuse, to answer, to the best of his or her knowledge, information and belief, a question put to him or her by an authorised officer; or
 - (d) impersonates an authorised officer,
- commits an offence.
Penalty: \$5 000.
- (4) In this section “**licensed premises**” includes any premises used by a licensee in connection with the business carried on under the licence.
- (5) Subject to subsection (6), a person may decline to answer a question if the answer would tend to incriminate that person of an offence.
- (6) Where a question put to a person under this Act is relevant to the assessment of a subsidy, a person is not excused from answering the question on the ground that the answer to the question would tend to incriminate the person but, where a person objects to answering a question on that ground, the answer is not admissible in evidence in criminal proceedings (except proceedings for an offence against this Act).

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- (7) The powers conferred by this section may be exercised also in relation to transactions which occurred prior to the coming into operation of this section.
- (8) The regulations may define duties for inspectors or other authorised officers and may prescribe the modes, times and conditions of the performance of those duties.
- (9) The Director, subject to the consent of the Commissioner of Police may delegate to a member of the Police Force of or above the rank of sergeant, or a member of the Police Force in charge of a police station, in a prescribed place other than the metropolitan area, any of the functions of an inspector under this Act.

[Section 154 amended by No. 56 of 1997 s. 47; No. 12 of 1998 s. 97(1) and (3).]

155. Duties of police

- (1) The Commissioner of Police shall issue all such orders, and give all such directions, to members of the Police Force as may, in the opinion of the Commissioner, be necessary to —
 - (a) prevent any sale, supply or consumption of liquor that contravenes this Act;
 - (b) ensure the proper and lawful exercise of any licence granted or permit issued under this Act;
 - (c) ensure the lawful and orderly conduct of licensed premises and of unlicensed premises on which liquor may be publicly consumed and ensure the good behaviour of persons present on those premises; and
 - (d) provide for the making of such reports to, and the bringing of such applications, complaints and objections before, the licensing authority as may be necessary or required for the proper administration of this Act.

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- (2) Nothing in this section shall be read or construed as limiting any power or authority conferred on a member of the Police Force by any other Act or law.
- (3) Where a member of the Police Force suspects on reasonable grounds that on any premises, whether or not licensed premises —
- (a) liquor is being sold, supplied, consumed or stored unlawfully, or an offence against this Act is otherwise being committed; or
 - (b) that there is on licensed or other premises evidence of an offence against this Act,

that member of the Police Force may, without warrant other than this subsection, enter and search the premises, using such force as may be necessary for the purpose.

- (4) A member of the Police Force may seize, carry away and take before a justice any liquor, including any container or packaging, suspected on reasonable grounds of having been illegally sold, supplied, consumed or stored, or to be in the possession of a person unlawfully or for an unlawful purpose, and which may be required as evidence for the purpose of proceedings in respect of an offence under this Act or be liable to forfeiture under section 113.
- (5) Where any thing is, or is liable to be, seized or forfeited under this Act the provisions of section 90B and 90C of the *Police Act 1892* shall apply to and in relation to that thing as if it had been, or had been liable to be, seized under Part V of that Act and as if the proceedings to which the things relate were proceedings for the purposes of that Act.

[Section 155 amended by No. 70 of 2004 s. 82.]

156. Duties of local governments

- (1) Every local government shall, as regards licensed premises in its district, exercise the same powers as are conferred, and carry

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out the same duties as are imposed, on it by any other Act with respect to unlicensed premises.

- (2) Where the holder of a licence under this Act or any employee or agent of such a person is convicted of an offence on a prosecution commenced by an officer of the local government, the local government shall report that event and the nature of the offence to the Director.
- (3) A local government is required to afford the licensing authority such assistance, by way of the examination of, and reporting on, licensed premises, as the licensing authority may reasonably require.

[Section 156 amended by No. 14 of 1996 s. 4; No. 84 of 2004 s. 80.]

157. Evasion of fees due etc.

Any person who, by default or neglect, evades or attempts to evade payment of any licence fee or other money under this Act, commits an offence.

Penalty: \$10 000 and treble the amount of any licence fee or other money attempted to be evaded.

[Section 157 amended by No. 12 of 1998 s. 87; No. 84 of 2004 s. 80.]

158. Failure to comply with requirements of the licensing authority

- (1) A person who —
 - (a) fails duly to lodge a return with, or to provide any information to or to comply with any requirement of, the licensing authority as and when required under this Act; or
 - (b) without just cause shown fails duly to attend and give evidence when required by the licensing authority or to

answer truly and fully any questions put, or to produce any records required by the Director,

commits an offence.

Penalty: \$5 000.

- (2) Any person who, after conviction for an offence against subsection (1), continues to fail to comply with the requirements in respect of which the person was convicted, commits an offence and is punishable as provided in section 157.
- (3) Where an offence against this section arises under subsection (1)(a) by reason of the failure of a person to do anything within a particular period, the offence shall, for the purposes of subsection (2), be deemed to continue for as long as the thing remains undone, notwithstanding that that period has elapsed.

159. False or misleading statements and records

- (1) A person who in, or in relation to, any —
 - (a) application, objection or matter to be determined by the licensing authority; or
 - (b) return or other record required, kept, provided or produced under or for the purposes of this Act,makes a statement that is false or misleading by reason of the inclusion in the statement of false or misleading matter or of the omission from the statement of any matter that is required or may be material, commits an offence.

Penalty: \$5 000.
- (2) It is a defence to a prosecution of a person for an offence under subsection (1) if the person proves that when the statement was made he or she —
 - (a) believed on reasonable grounds that the false matter was true;

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- (b) believed on reasonable grounds that the misleading matter was not misleading;
 - (c) in the case of an omission, believed on reasonable grounds —
 - (i) that no material had been omitted, being material matter the omission of which would make the statement false or misleading; or
 - (ii) that the omitted matter was not material.
- (3) A person who, with intent to falsify or destroy the record, by act or omission alters or destroys any record required to be kept, provided or produced under this Act commits an offence.
Penalty: \$5 000.

160. Power of authorised officers to demand information

- (1) Where any person is found on, or is seen leaving, any licensed premises at a time other than during permitted hours, or an authorised officer has reasonable cause to suspect that any person is committing or is attempting to commit any offence against this Act, the authorised officer may demand particulars of —
 - (a) the name and address of that person or of any witness to an offence, or a suspected offence, against this Act; and
 - (b) the age of that person, where that person's age is or may be material to the suspected offence.
- (2) If the authorised officer has reasonable ground to suppose that any particulars supplied are false, the authorised officer may require the person to supply satisfactory evidence of those particulars.
- (3) If any person, without reasonable excuse, refuses or fails to supply any particulars or evidence when required to do so by any authorised officer under this section, and persists in the refusal or failure after being cautioned by the authorised officer,

that person may be arrested, without warrant, by any member of the Police Force.

- (4) A person who, having been required by any authorised officer to supply any particulars or evidence under this section, without reasonable excuse —
- (a) refuses or fails to supply the particulars or evidence; or
 - (b) supplies any particulars or evidence knowing that the particulars or evidence are false or misleading in any material respect,

commits an offence.

Penalty: \$1 000.

[Section 160 amended by No. 12 of 1998 s. 88.]

161. Search warrants

- (1) If a justice is satisfied, upon an application supported by evidence on oath, that there is reason to suspect that liquor is kept on any premises for purposes contravening section 109, 110 or 111 or that there are on the premises records which are relevant to the assessment of a subsidy the justice may, by warrant in the prescribed form, empower any authorised officer, and any other person requested by that authorised officer to assist, to —
- (a) enter those premises;
 - (b) use such force as may be necessary for entry or for breaking open any receptacle or other thing on the premises;
 - (c) search for and seize any liquor, or any containers or packaging believed to contain any liquor, or any vessels used or believed to be used for the consumption of any liquor, or any records or other article, found on the premises and believed on reasonable grounds to have been involved in the commission of any offence

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- specified in the warrant or any other offence against this Act;
- (d) take possession of, or secure against interference, any records that appear to be relevant to the assessment of a subsidy; and
 - (e) to deliver any records taken into the possession of the Director or a person authorised by the Director to receive them.
- (2) An authorised officer who executes a search warrant shall carry the warrant with him or her, and shall produce it for inspection —
- (a) on first entering the premises, to the person appearing to be in charge of the premises; and
 - (b) whenever subsequently required to do so on the premises by any other person appearing to be in charge of the premises or any part of the premises.
- (3) A search warrant —
- (a) may be directed to an authorised officer by name or to every authorised officer, but in either case may be executed by any member of the Police Force;
 - (b) may be made subject to conditions imposed by the justice when issuing the warrant; and
 - (c) shall have effect for 14 days or, if a particular purpose is specified in the warrant, until the purpose is satisfied.
- (4) Where the occupier of the premises is not present at the time the search warrant is executed, the authorised officer shall leave in a prominent place on the premises a written statement of the time and date of the search, and of that person's name and the address to which enquiries should be made.
- (5) Where any thing is seized in execution of a search warrant, the authorised officer executing the warrant shall leave in a prominent place on the premises, or send to the occupier within

10 days after the date of the search, a written inventory of all of the things that were seized.

- (6) If, under this section, a person takes possession of or secures against interference any records, that person or any person into whose possession they were delivered under subsection (1)(e) —
- (a) may make copies of or take extracts from the records;
 - (b) may retain possession of the records for such period as is necessary to enable them to be inspected, and copies to be made of or extracts to be taken from them, by or on behalf of the Director; and
 - (c) during that period must permit a person who would be entitled to inspect any one or more of those records, if they were not in the possession of the Director or a person authorised by the Director, to inspect at all reasonable times such of those records as that person would otherwise be entitled to inspect.
- (7) A person who hinders or obstructs a person executing a warrant under this section commits an offence.

Penalty: \$5 000.

[Section 161 amended by No. 56 of 1997 s. 48; No. 84 of 2004 s. 80.]

162. Separate offences and continuing offences

- (1) In any proceedings for an offence against this Act, every separate sale or supplying of liquor constitutes a separate offence.
- (2) The conviction or acquittal of a person of a charge of an offence under this Act shall not prevent a further prosecution and conviction in respect of a continuation of that offence after the date on which the person was convicted or acquitted.

[Section 162 amended by No. 84 of 2004 s. 80.]

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163. Presumption where liquor is supplied without charge but other charges are made

- (1) Where liquor is supplied to a person who —
- (a) has paid for admission to the premises where the liquor is supplied or for seating in the premises;
 - (b) has made, or been asked to make, a donation of money, by a collection or otherwise; or
 - (c) is present in an unlicensed restaurant,

the liquor is, in the absence of proof to the contrary, deemed to have been sold to the person to whom it was so supplied.

- (2) A person who, being a dealer in goods other than liquor, gives away or delivers any liquor to a customer for other goods, or under pretence of a person being a customer for other goods, or under any pretence whatever, is deemed to have sold the liquor given away or delivered.

164. Offences by bodies corporate and partnerships

- (1) Where an offence under this Act is found to have been committed by a body corporate, then —
- (a) if the offence is found —
 - (i) to have been committed with the consent or connivance of; or
 - (ii) to be attributable to any failure to take all reasonable steps to secure compliance by the body corporate with this Act on the part of, any officer or other person concerned in the management of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate shall be deemed to have committed an offence; and
 - (b) unless it is proved that —
 - (i) such direction had been given; and

- (ii) such supervision had been exercised or caused to be exercised,

as were reasonably necessary to ensure that an offence against this Act was not committed, the manager of any premises in respect of which the offence was committed shall also be deemed to have committed an offence,

and each shall be liable to the same penalty as is prescribed for the principal offence.

- (1a) Where the ground upon which a complaint under section 95 is made out and the Court imposes, or is empowered to impose, a penalty on a licensee who is a body corporate, then —

- (a) if the grounds upon which the complaint was made are found —

- (i) to have occurred with the consent or connivance of; or
- (ii) to be attributable to any failure to take all reasonable steps to secure compliance by the body corporate with this Act on the part of,

any officer or other person concerned in the management of the body corporate, or any person purporting to act in any such capacity, then the Court may impose a penalty under section 96 on that person as well as a penalty on the body corporate; and

- (b) unless it is proved that —

- (i) such direction had been given; and
- (ii) such supervision had been exercised or caused to be exercised,

as were reasonably necessary to ensure that the grounds upon which the complaint was made did not occur, then the Court may impose a penalty under section 96 on any manager of the licensee's premises, as well as on the licensee.

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- (2) In this section “**officer**”, in relation to a body corporate, includes a person who is an officer of the body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (3) Where the affairs of a body corporate are managed by its members, subsections (1) and (1a) apply in relation to the acts and defaults of a member in connection with functions of management as if the member were a director of the body corporate.
- (4) Where this Act provides that a licensee commits an offence, or that a proper cause for disciplinary action under section 96 is made out in respect of a licensee, in specified circumstances —
 - (a) the reference to the licensee shall be construed as a reference to each person who holds the licence; and
 - (b) if that licence is held by a person who is a member of a partnership which is directly or indirectly interested in the business conducted under that licence, or the profits or proceeds of the business, each member of the partnership is liable for the offence, or to have disciplinary action taken against him or her.
- (5) A person referred to in this section may, on the request of the complainant or prosecutor be dealt with in the same proceedings as the body corporate is dealt with if the court is satisfied that the person had reasonable notice that the complainant or prosecutor intended to make that request.

[Section 164 amended by No. 12 of 1998 s. 89; No. 10 of 2001 s. 220; No. 84 of 2004 s. 80.]

165. Licensee liable for act of employee etc.

- (1) Where, in contravention of this Act, an employee or agent of the licensee, or a person acting, or purporting to act, on behalf of the licensee, commits an offence for which the licensee would have been liable had it been committed by the licensee on the premises to which a licence or permit relates, the licensee shall

be deemed also to have committed an offence and is liable to the same penalty as is prescribed for the principal offence.

- (2) A licensee may be proceeded against and convicted under subsection (1) notwithstanding that the employee or agent has not been proceeded against or has not been convicted under this Act.
- (3) It shall not be a defence to a charge of an offence against subsection (1) to show that the licensee did not know, or could not reasonably have been aware of or have prevented the offence committed by the employee or agent, or had taken reasonable steps to prevent the commission of that offence.

[Section 165 amended by No. 84 of 2004 s. 80.]

166. General penalty

- (1) A person who contravenes any provision of this Act commits an offence against this Act.
- (2) A person who commits an offence against this Act for which no penalty is specifically provided is liable to a penalty not exceeding \$1 000.

167. Infringement notices

- (1) In this section —
 - “**alleged offence**”, in relation to an infringement notice, means the offence to which the infringement notice relates;
 - “**alleged offender**”, in relation to an infringement notice, means the person to whom the infringement notice is given;
 - “**infringement notice**” means a notice given under subsection (2);
 - “**modified penalty**”, in respect of an offence to which an infringement notice relates, means the amount of money specified in the notice as being the modified penalty for that offence.

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- (2) At the time, or within 21 days after, the alleged offence is believed to have been committed, an authorised officer who has reason to believe that a person —
- (a) has committed a prescribed offence against this Act;
 - (b) is guilty of an offence by virtue of section 101, 164 or ~~165~~ in relation to any such offence,

may give to that person a notice in the prescribed form informing the person that a prosecution for the alleged offence may be commenced in a court, unless the alleged offender, within a period of 28 days after the giving of the notice, pays the modified penalty to the Director in the manner specified in the notice.

- (3) The modified penalty specified in an infringement notice shall be 10% of the maximum fine for that offence under this Act, as at the time the alleged offence is believed to have been committed.
- (4) An alleged offender to whom an infringement notice is given may decline to pay the modified penalty, and is deemed to have so declined if it is not paid within 28 days or such further time as may, whether before or after the expiry of that period, be allowed by the Director.
- (5) The Director may, whether or not the modified penalty has been paid, withdraw an infringement notice within 2 years after it was given by sending to the alleged offender a notice in the prescribed form, stating that the infringement notice has been withdrawn.
- (5a) Where an infringement notice is withdrawn later than 28 days after it was given, no proceedings shall be brought in respect of the alleged offence.
- (6) Where an infringement notice is withdrawn after the modified penalty has been paid, the amount paid shall be refunded.

- (7) If the modified penalty is paid within the 28 days or further time allowed and the infringement notice has not been withdrawn, in relation to the events giving rise to the alleged offence —
- (a) the payment of the penalty shall not be taken to be an admission, in any proceedings whether criminal or civil; and
 - (b) no proceedings shall be brought, and no other penalty imposed, other than —
 - (i) proceedings which might have been brought or a penalty which might have been imposed even if a charge of the alleged offence had been heard and determined by a court; or
 - (ii) proceedings or a penalty under sections 95 and 96.
- (8) The amount of any modified penalty paid pursuant to an infringement notice shall, subject to subsection (6), be dealt with as if it were a fine imposed by a court as a penalty for an offence.
- (9) An inspector shall produce the certificate of identity furnished under section 14(3) to an alleged offender to whom the inspector has given or is about to give an infringement notice, when required to do so by the alleged offender.

[Section 167 amended by No. 84 of 2004 s. 80.]

168. Institution of prosecutions

- (1) A prosecution for an offence against this Act may be instituted —
- (a) in the name of the Director, by the Director or any person to whom the Director has delegated that function; or

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(b) by a member of the Police Force,

and any prosecution instituted in the name of the Director shall, in the absence of evidence to the contrary, be deemed to have been authorised by the Director.

(2) An officer of the licensing authority may appear on behalf of the Director in any proceedings for an offence against this Act.

[Section 168 amended by No. 84 of 2004 s. 80.]

169. Trials and prosecutions

(1) A court of summary jurisdiction hearing and determining a charge of an offence under this Act shall be constituted by a magistrate where —

(a) the penalty for the offence is \$1 000 or more; or

(b) the penalty for the offence is less than \$1 000 and the accused pleads not guilty.

(2) Subject to subsection (3), a prosecution for an offence against this Act must be commenced within 4 years after the date on which the offence is alleged to have been committed.

(3) A prosecution for an offence relating to the recording of a transaction involving the sale or purchase or other disposal or acquisition of liquor may be commenced within 4 years after the expiration of the financial year in which the offence is alleged to have been committed.

[Section 169 amended by No. 56 of 1997 s. 26(4); No. 12 of 1998 s. 91; No. 59 of 2004 s. 141; No. 84 of 2004 s. 82.]

170. Evidence of certain matters

In any proceedings for an offence against this Act —

(a) evidence of the delivery or supply of liquor is evidence of a sale of the liquor;

(b) evidence that a person has advertised, or by any other means given the impression, that the person will sell

- liquor shall, in the absence of proof to the contrary, be accepted as proof that the person has sold liquor;
- (c) where the offence alleged is a contravention of section 111, liquor shall be deemed to have been sold or consumed on the licensed premises to which the proceedings relate notwithstanding that it is proved that the licensee took or carried, or employed or suffered another person to take or carry, the liquor out of the licensed premises for the purpose of being sold or consumed at a place in the occupation of the licensee or in a public street or other public place;
 - (d) where the offence alleged relates to the sale or consumption of liquor on any licensed premises or unlicensed premises, it shall not be necessary for the prosecution to prove that any money passed or any liquor was actually consumed, if the court is satisfied that a transaction in the nature of a sale actually took place or that any consumption of liquor was about to take place;
 - (da) where a member of the police force purports to be authorised under section 3(6) for the purposes of this Act, or a particular provision of this Act, that officer shall be taken to be so authorised in the absence of proof to the contrary;
 - (db) where the offence alleged is a contravention of section 100(2)(c), the licensee shall be deemed not to have appointed a person in accordance with section 100(3), in the absence of proof to the contrary;
 - (e) where the offence alleged relates to the sale of liquor on any licensed premises, proof of consumption or intended consumption of liquor on the licensed premises, or of the taking or carrying away of liquor from the licensed premises, by some person other than the licensee or an employee or agent of the licensee, shall, in the absence of proof to the contrary, be accepted as proof that the

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liquor was sold to that person by or on behalf of the licensee;

- (f) where the offence alleged relates to —
 - (i) anything done or omitted to be done on licensed premises; or
 - (ii) the sale or consumption of liquor on unlicensed premises,

it shall not be necessary for the prosecution to prove that the premises are, or were at any material time, licensed premises, or are or were at any material time unlicensed, as may be alleged, unless at least 3 working days before the hearing the accused puts the question in issue by written notice to that effect served on the prosecution.

[Section 170 amended by No. 12 of 1998 s. 92; No. 84 of 2004 s. 82.]

171. Accomplices and evidence

- (1) Where an authorised officer, or any person at the request of an authorised officer, purchases or obtains liquor —
 - (a) that authorised officer or person who acted on the request shall be deemed not to be an accomplice and not to be guilty of an offence where some other person is charged with an offence arising out of the purchase or obtaining of the liquor; and
 - (b) the evidence of the authorised officer or person who acted on the request shall be deemed, on the hearing of the charge, not to be the evidence of an accomplice.
- (2) On the hearing of any charge of an offence under this Act, the court —
 - (a) may, if, in the circumstances of the case, the court thinks it proper to do so, convict the accused on the uncorroborated evidence of an accomplice; and

- (b) shall not acquit an accused by reason only that the only evidence against the accused is the uncorroborated evidence of an accomplice,

unless the court suspects the truth of that evidence.

- (3) In any proceedings against a licensee for an offence against this Act, the acts, admissions and statements of an employee or agent of the licensee are admissible as evidence, whether done, made or given in the presence of the licensee or not.

[Section 171 amended by No. 84 of 2004 s. 80 and 82.]

172. Averments, and other evidentiary matters

- (1) In proceedings under this Act or for an offence against this Act, an allegation in the charge —
 - (a) that a substance referred to in the charge was liquor;
 - (b) that a person named in the charge is (or is not), or was (or was not) on a specified date —
 - (i) licensed;
 - (ii) licensed in respect of any specified premises;
 - (iii) the holder of a specified permit; or
 - (iv) approved as a manager under section 35B;
 - (c) that any premises named in the charge are (or are not), or were (or were not) on a specified date, licensed premises or regulated premises;
 - (d) that a part of any premises specified was a reception area, or declared to be out of bounds to juveniles;
 - (e) that a person named in the charge is, or was on a specified date, a juvenile;
 - (f) that a licence referred to in the charge is, or was on a specified date, subject to specified conditions or not so subject, or was of a specified class, or suspended;

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- (g) that a person named in the charge is (or is not), or was (or was not) on a specified date, a licensee or a manager of specified licensed premises or an employee or agent of that licensee, or an authorised person in relation to any specified premises;
- (h) that a person named in the charge is, or was on a specified date, an authorised officer or an officer of the licensing authority;
- (j) that a person named in the charge has, or had on a specified date, a specified function by virtue of a delegation by the Director under this Act;
- (k) that a delegation by the Director under this Act is, or was on a specified date, subject to specified conditions;
- (m) that a person named in the charge is (or is not), or was (or was not) on a specified date —
 - (i) a lodger of specified licensed premises; or
 - (ii) a resident, worshipper, student, parent of a school child, worker, resident, or hospital patient in the vicinity of specified licensed premises;
- (n) that a specified place is a park, reserve or sportsground or within the boundaries of the metropolitan area, or a specified town or townsite;
- (na) that on a specified date the person named in the charge did not have the consent of the occupier, or of the person or authority having control, of a place or premises where the person named in the charge consumed liquor at that date;
- (o) that a person named in the charge is the Commissioner of Police, or a member of the Police Force; or
- (p) that a member of the Police Force holds a certain rank or is in charge of a police station or is specially authorised in any manner,

shall be accepted as proved in the absence of proof to the contrary, and in this subsection a reference to a charge shall be construed as including a reference to an objection to be determined by the Court.

- (2) In proceedings under this Act against a person as the holder of a licence or permit, the person shall be taken to be the holder of that licence or permit in the absence of proof to the contrary.
- (3) In any legal proceedings, a document apparently certified by the Director to be a licence, permit, notice or other document issued under this Act, or to be a copy of a licence, permit, notice or other document issued under this Act, or to be a document or a copy of a document provided or produced to the licensing authority, shall be —
 - (a) accepted as such in the absence of proof to the contrary; and
 - (b) for all purposes sufficient evidence of the matter contained in the document, without producing the original.
- (4) In all proceedings in which the giving of any notice to a party to the proceedings by the licensing authority, or of any other document required or authorised under this Act, has to be proved, the party is deemed to have received notice to produce that document, and, until the contrary is shown, the giving of the notice or the due service of the document may be sufficiently proved by the production of what purports to be a copy, bearing what purports to be a certificate signed by the person giving that notice or authorised to issue the original document, or the Director, as the case may be, that the copy is a true copy of the original and that the original notice was given or document served on the date specified in the certificate.
- (5) The validity of any notice or other document or of its service is not affected by any error, misdescription, or irregularity which is not calculated to mislead, or which in fact does not mislead.

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- (6) In all courts and before all persons authorised to receive evidence —
- (a) a signature purporting to be that of the Minister, the ~~Judge~~judge, the Director or any other authorised officer, shall be taken to be the signature of the person whose signature it purports to be in the absence of proof to the contrary;
 - (b) a certificate purporting to be signed by the Director that a notice or other document of the description mentioned in the statement has or has not been given to or served on a person under this Act or as to the date of and the particulars contained in any notice so given or any document so served is evidence of the matter specified in the statement; and
 - (c) a notification in the *Gazette* as to the exercise by the licensing authority of any power conferred under this Act, or as to any order made under this Act, is evidence of the facts therein stated.
- (7) Where proceedings are taken in the name of the Director by an authorised officer no proof shall be required of the appointment of that officer or of the authority of that officer to take those proceedings, and the averment in the prosecution notice that the officer is so authorised shall be deemed to be proof of the fact, in the absence of proof to the contrary.
- (8) A certificate, purporting to be signed by the Director, certifying that on a day specified in the certificate a person named in the certificate was a delegate of the Director under section 15 to whom such functions of the licensing authority as are specified in the certificate had been delegated on terms, if any, so specified shall be admissible in evidence in any proceedings and, in the absence of proof to the contrary, shall be proof of the matters stated in the certificate.
- (9) In any proceedings against a person for failing or neglecting duly to provide a return a certificate, purporting to be signed by

the Director, certifying that the return has not been received from that person shall be admissible in evidence in those proceedings and, in the absence of proof to the contrary, shall be proof that the accused has failed duly to provide the return.

- (10) In any proceedings against a person for failing or neglecting duly to provide the licensing authority with any information required by the licensing authority a certificate, purporting to be signed by the Director, certifying —
- (a) that the accused was so required to provide the licensing authority with the information of the nature specified in the certificate; and
 - (b) that the accused failed duly to provide the information when required by the licensing authority,

shall be admissible in evidence in those proceedings and, in the absence of proof to the contrary, shall be proof of the matters so stated therein.

- (11) For the purposes of any proceedings against a person for the recovery of a license fee or penalty payable under this Act, a certificate, purporting to be signed by the Director, certifying —
- (a) that a specified person is liable for the payment of a specified licence fee or penalty in respect of a specified period;
 - (b) that a specified person held a specified licence at a specified time or during a specified period;
 - (c) that a return required by section 145 to be lodged by a specified person had not been lodged in accordance with that section;
 - (d) that a subsidy of a specified amount was paid to a specified person on a specified day in relation to a specified period;
 - (e) that specified conditions were imposed on a specified person by the Director under section 130(2);

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- (f) that notice under section 135 has been given to a specified person that a specified penalty was to be paid by a specified date and that penalty has not been paid; or
- (g) that an amount specified was at the date of the certificate payable as a licence fee or penalty by a specified person in respect of a specified licence for a specified licensing period, and has not been paid,

shall be admissible in evidence in any proceedings against the person for the recovery of a licence fee or penalty and, in the absence of proof to the contrary, shall be proof of the matters stated in the certificate.

- (12) In subsection (11), “**specified**” means specified in the certificate.
- (13) For the purpose of any proceedings against a person for the recovery of an amount payable under section 148 as a debt due to the Crown a certificate, purporting to be signed by the Director, certifying the circumstances and provision under which the amount became payable and certifying the amount estimated to be payable by a person under that section and that the amount has not been paid, shall be admissible in evidence and, in the absence of proof to the contrary, shall be proof of the matters stated in the certificate.
- (14) The production of any document or a copy of a document signed, or purporting to be signed, by the Director, or purporting to have been issued by the licensing authority (that document or copy purporting to be a notice or a copy of a notice specifying a liability of a person under this Act), shall be conclusive evidence —
 - (a) of the due exercise of any act required by this Act to be done or performed by the licensing authority for the purpose of ascertaining the liability so specified; and

- (b) of the correctness of any calculations upon which that liability is ascertained.

[Section 172 amended by No. 56 of 1997 s. 49; No. 12 of 1998 s. 10(12) and 93; No. 84 of 2004 s. 80 and 82.]

Part 7 — General

173. Pending review etc. not to affect liability

- (1) The fact that a review, appeal or case stated is pending which may affect any liability or assessment shall not in the meantime interfere with or affect that liability or assessment and the amount payable may be recovered as if no reviews, appeal or case stated were pending.
- (2) If a liability or assessment is altered in consequence of a review, appeal or case stated, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded together with interest paid at the rate prescribed for the purposes of this subsection, and amounts short paid shall be recoverable.

174. Service of documents

- (1) A notice or other document may be served on a licensee —
 - (a) personally;
 - (b) by leaving it at the licensed premises, in an envelope addressed to the licensee, with a person apparently employed or engaged in the business conducted under the licence; or
 - (c) by sending it by post addressed to the licensee at the licensed premises or at some other address notified by the licensee to the Director.
- (2) A notice or other document may be served on a person who occupies a position of authority in a body corporate that holds a licence —
 - (a) personally;
 - (b) by sending it by post addressed to that person at an address notified by that person to the Director; or
 - (c) by serving it on the licensee, addressed to that person.

175. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be provided for carrying out the purposes of this Act or for giving effect to the objects of this Act, and in particular for or with respect to —
- (a) the payment and collection of licence fees;
 - (b) other fees payable to the licensing authority;
 - (c) Court fees, and the expenses allowable to witnesses;
 - (ca) conditions for the granting of special facility licences;
 - (cb) conditions for the granting of producers' licences;
 - (cc) the seizure of documents issued, or which appear to have been issued, by the licensing authority and prescribed under section 126(1)(b)(i)(III), the use of such documents as evidence and the return or disposal of such documents;
 - (d) advertising, and the content of notices;
 - (e) the endorsement of licences, and their production for that or any other purpose; and
 - (f) procedural matters, including the forms to be used.
- (2) A regulation may provide that contravention of the regulation constitutes an offence punishable by a fine not exceeding —
- (a) in a case where the convicted person is, or was at the time of the offence, a licensee, a manager of licensed premises or a director of a body corporate that holds a licence — \$2 000; and
 - (b) in any other case — \$500.

[Section 175 amended by No. 56 of 1997 s. 50; No. 12 of 1998 s. 94.]

176. Repeal

The *Liquor Act 1970* is repealed.

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177. Transitional provisions

Schedule 1, which contains transitional provisions, has effect.

178. Review of the Act

- (1) The Minister shall carry out, or cause to be carried out, a review of the operation of this Act as soon as is practicable after the expiration of 5 years from the commencement of section 95 of the *Liquor Licensing Amendment Act 1998*, and in the course or as a consequence of such review the Minister shall consider and have regard to —
 - (a) the effectiveness of the operations of the licensing authority; and
 - (b) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review of this Act and shall, as soon as practicable after its preparation, cause that report to be laid before each House of Parliament.

[Section 178 amended by No. 12 of 1998 s. 95.]

Schedule 1

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Transitional provisions

1. Interpretation

- (1) In this Schedule, unless the context otherwise requires —
 - “**Act**” includes subsidiary legislation made under that Act;
 - “**application**” includes notice of an application;
 - “**licence**” includes a licence within the meaning of the repealed Act;
 - “**licensed premises**” includes licensed premises within the meaning of the repealed Act;
 - “**licensee**” includes a licensee within the meaning of the repealed Act;
 - “**permit**” includes a permit granted under the repealed Act;
 - “**the appointed day**” means the day on which the *Liquor Act 1970* is repealed by this Act;
 - “**the repealed Act**” means the *Liquor Act 1970*.
- (2) The mention of particular matters in this Schedule shall be without prejudice to the general application otherwise of section 36 and section 37 of the *Interpretation Act 1984* (which relate to the effect of repeals).
- (3) Any reference, whether express or implied or having effect as such a reference, in any written law or document to, or to any provision of, the repealed Act shall be construed as a reference to this Act or, as the case may be, to the corresponding provision of this Act.
- (4) Any subsidiary legislation (other than regulations) made, or notice given or thing done, or having effect as being made, given or done, under a provision of the repealed Act which corresponds to a provision of this Act shall have effect as if it had been made, given or done under the corresponding provision of this Act.
- (5) A licence under the repealed Act corresponds to a particular class of licence under this Act if the licence would, if in force immediately before the appointed day, have been converted into a licence of that class by the operation of this Schedule.

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- (6) A permit under the repealed Act corresponds to a particular class of licence under this Act or a particular kind of permit under this Act, as the case may be, if the permit would, if in force immediately before the appointed day, have been converted into a licence of that class or a permit of that kind by the operation of this Schedule.
- (7) A reference in this Schedule to the holder of a licence or permit under the repealed Act shall be read as including a person who is the holder of that licence or permit for the time being.
- (8) Any question as to whether —
 - (a) a licence or permit under the repealed Act corresponds to a licence or permit under this Act; or
 - (b) a provision of the repealed Act corresponds to a provision of this Act,

may be determined by the Director and that determination is not subject to review or appeal.

2. Continuing effect of convictions, forfeitures etc.

A conviction or forfeiture imposed or seizure made under the repealed Act shall for the purposes of this Act —

- (a) be treated as though it had been imposed, made or ordered under this Act, where a provision of this Act corresponds with the provision of the repealed Act concerned; and
- (b) be taken into account.

3. Proceedings part heard, Rules of Court, and appointments under the repealed Act

- (1) If, on the appointed day, an application for a licence or a permit had been made under the repealed Act but had not been determined and the decision had not been reserved, the proceedings based on that application may be continued and completed —
 - (a) under this Act as if the application were an application for a licence of the corresponding class or a permit of a corresponding kind under this Act; or
 - (b) subject to any direction or requirement made by the Director, where no corresponding provision appears in this Act as

though for the purpose of determining the application the repealed Act continued to have effect, but any licence granted or permit issued shall be of a class or kind to which this Act applies.

- (2) If, on the appointed day, an application (not being an application for a licence or permit) had been made under a provision of the repealed Act but had not been determined and the decision had not been reserved, the proceedings based on the application may be continued and completed as if the application were an application under this Act in so far as a corresponding provision is contained in this Act.
- (3) Where in relation to any application made under the repealed Act for the renewal of a licence a notice of objection was lodged and that application had not been determined by the appointed day, the hearing of matters relating to that notice of objection may be continued as if the repealed Act continued to have effect but, if the Court determines that a ground of objection is established, effect may be given to section 96 as though the matter had been the subject of proceedings under section 95.
- (4) If, on the appointed day, an application under the repealed Act had been heard and the decision was then reserved, the decision may be given effect to as if the repealed Act continued to have effect but if a licence is granted pursuant to those proceedings it shall have effect as though it had been a licence of the kind granted in force immediately prior to the appointed day.
- (5) The Rules made under section 175 of the repealed Act shall continue to have effect as though —
 - (a) made under section 22; and
 - (b) a reference to the repealed Act or a provision of the repealed Act were a reference to this Act or a corresponding provision of this Act.
- (6) On the appointed day a person who, immediately before that day, held office —
 - (a) as the ~~Judge~~[judge](#) under section 9 of the repealed Act, is deemed to have been appointed as the Liquor Licensing Court ~~Judge~~[judge](#); or

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- (b) as an ~~Acting Judge~~[acting judge](#) under section 11 of the repealed Act, is deemed to have been appointed as an ~~Acting Judge~~[acting judge](#),

for the purposes of this Act, and shall continue in office under this Act upon, subject to this Act, the like conditions.

- (7) On the appointed day, the person who, immediately before that day, held office as Registrar of the Liquor Licensing Court —
- (a) shall be deemed to have been so appointed under the repealed Act; and
- (b) is deemed to have been appointed under the *Public Service Act 1978*²³ as Registrar for the purposes of this Act,

and subject to this Act shall continue in office under this Act, all determinations, decisions and actions taken prior to the appointed day by that person being deemed to have been lawfully taken and executed in compliance with, and under the authority of, the repealed Act.

- (8) On the appointed day, the person who, immediately before that day, held an appointment as Director of Liquor Licensing under the repealed Act is deemed to have been appointed under the *Public Service Act 1978*²³ as Director of Liquor Licensing for the purposes of this Act.
- (9) On the appointed day, a person who, immediately before that day, held an appointment to an office under section 15 of the repealed Act is deemed to have been appointed under the *Public Service Act 1978*^{2,3} to hold a like office for the time being under section 14 for the purposes of this Act.

4. Fees

- (1) The Governor may, by regulation, make transitional provisions —
- (a) fixing, or providing for the assessment and reassessment of, licence fees in respect of licences of any class that come into force by the operation of this Schedule or are granted in accordance with this Schedule in respect of not more than 2 licence years commencing after the appointed day;

- (b) apportioning fees in respect of any licence or permit the period of which is terminated or extended by the operation of this Act; and
 - (c) providing for the payment or refund of those fees.
- (2) Subject to subclause (4), a regulation made under subclause (1) shall have effect notwithstanding that it may be inconsistent with a provision of this Act.
- (3) The provisions of this Act and of the repealed Act, and in particular section 164B of that Act, relevant to the reassessment of licence fees under that Act and the recovery of fees in accordance with the reassessment shall have effect, notwithstanding the repeal of that Act, in respect of licence fees under that Act.
- (4) Where the Director is satisfied that if a licence fee were fixed under regulations made for the purposes of this clause a licensee would be in a less favourable position than if the repealed Act had continued to have effect, the Director may fix a fee at discretion so as to ensure that, so far as is practicable, the licensee is not placed in that position.
- (5) The delivery of distilled spirits in bond, by the occupier of a vineyard to the occupier of another vineyard, in respect of a sale effected prior to the appointed day is authorised and shall be deemed to be exempted from this Act.

5. Continuing effect of conditions, delineated or designated areas, approvals etc.

- (1) Subject to this Schedule, terms or conditions —
 - (a) which were fixed or imposed under the repealed Act, whether by that Act or by the licensing authority, in relation to licences, certificates, permits or other authorisations that are by the operation of this Schedule converted into licences or permits under this Act or otherwise continued in force under this Act; and
 - (b) which are not inconsistent with this Act,

shall have effect as though they had been fixed or imposed under this Act.

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- (2) A delineation or definition of any premises made for the purposes of the repealed Act continues in operation, subject to this Act, for the purpose of ascertaining the extent of those premises.
- (3) Where for the purposes of the repealed Act any part of any premises was designated as an area in which liquor was authorised to be sold, supplied or consumed ancillary to a meal, notwithstanding that it would otherwise have been unlawful, that part of those premises continues, for the purposes of this Schedule, to be such an area.
- (4) The Director may, after giving the licensee a reasonable opportunity to make submissions or to be heard, redefine any licensed premises, within 2 years of the appointed day, in order to —
 - (a) exclude areas not required to be licensed under this Act;
 - (b) bring any area into conformity with the requirements of this Act; or
 - (c) give effect to this Schedule.
- (5) Any approval or authorisation granted under the repealed Act continues in force, subject to this Act, for the purposes of this Act.
- (6) Where under section 118(1)(b) of the repealed Act a licensee was required to cause a notice of the name of a nominee to be maintained, it shall be sufficient compliance with section 115(4) during the period of 6 months after the appointed day to maintain such a notice, if the person named in the notice is the manager.
- (7) Where a person was immediately before the appointed day a person who was approved as the nominee in relation to a licence under the repealed Act that person shall be deemed to have been approved under this Act as the manager in respect of the premises to which the licence under the repealed Act related.

6. Conversion of licences generally

- (1) On and after the appointed day a person who immediately before that date held a licence or a provisional certificate granted or permit issued and currently in force under the repealed Act shall, subject to this Act, be deemed to be the holder of a licence or permit in accordance with this Schedule, relating to the same premises, until —

- (a) where a permit was issued for a specified period or would otherwise have expired under the repealed Act, that permit expires;
 - (b) a licence is granted or a permit is issued to that person in accordance with subclause (2) in respect to those premises;
 - (c) it is surrendered; or
 - (d) that licence or permit is cancelled under this Act by reason of —
 - (i) section 93; or
 - (ii) a determination made under section 96.
- (2) As soon as practicable after the appointed day, the Director shall, without requiring any application unless this Schedule otherwise provides, grant to a person to whom subclause (1) applies a licence under this Act of a corresponding class, or shall issue to him a permit of a corresponding kind, relating to the same premises as were the subject of the former licence or permit under the repealed Act.
- (3) In determining the terms and conditions of the licence or permit to be issued under subclause (2), the Director shall have regard —
- (a) to the type of licence or permit held under the repealed Act; and
 - (b) to any term or condition to which clause 5(1) applies and which relates or formerly related to the premises,
- and the determination of the Director is not subject to review or appeal.
- (4) Where a licence or permit under the repealed Act is converted under this Schedule or a licence is to be granted under this Schedule, no approval or consent that would otherwise have been required in respect of a licence of that class under this Act is required for the purposes of or in relation to that conversion or grant.
- (5) Any conditions that were under the repealed Act imposed in relation to a provisional certificate for the grant or removal of a licence shall be deemed to have been imposed in relation to a conditional grant made under section 62 in respect of a licence of a corresponding class upon the same terms as were applicable to the provisional certificate.

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- (6) Where, for any reason, the operation of a licence or permit was suspended or a licence was temporarily removed under the repealed Act, that licence or permit shall be deemed to be a licence or permit the operation of which is in like manner suspended or temporarily removed under this Act.
- (7) A licence or permit which comes into force or is issued under this Schedule —
 - (a) does not have effect so as to prejudice any proceedings which may have been instituted under the repealed Act in relation to the carrying on of a business under that Act; and
 - (b) is subject to proceedings under section 95 in respect of any matter of complaint which arose prior to the coming into operation of that section and is not the subject of proceedings under the repealed Act.

7. Hotel licences

A hotel licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a hotel licence under this Act subject to the condition referred to in section 41(4) but not subject to the requirements of section 122(3) of the repealed Act.

8. Limited hotel licences

A limited hotel licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a hotel restricted licence under this Act subject to the condition referred to in section 41(4) but not subject to the requirements of section 122(3) of the repealed Act.

9. Tavern licences

A tavern licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a hotel licence under this Act, of the kind referred to as a tavern licence but is not subject to the requirements of section 26(2) of the repealed Act.

10. Obligatory trading hours relating to hotel licences

Where a licence under the repealed Act becomes a hotel licence under clause 7, 8 or 9, on and from the appointed day section 98 applies to

the licensed premises, save that, where notice of a period chosen by the licensee under section 24(2)(a) of the repealed Act has been given by the licensee to the Director and the Director has acknowledged the notice, effect shall be given to that notice in relation to a hotel situated in the metropolitan area as though it had been a notice given and acknowledged under section 98(2).

11. Winehouse licences and Australian wine licences

- (1) A winehouse licence, or an Australian wine licence, that was in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act, subject to the like provisions as to the kind of liquor that may be sold and the conditions under which it may be sold as had effect in relation to that licence immediately before the appointed day, authorising the sale of liquor on the days, within the hours, in so far as they are not inconsistent with the permitted hours applicable to a hotel licence, that were applicable immediately before the appointed day, but not subject to the provisions of section 29(2) and section 39(4) of the repealed Act.
- (2) Notwithstanding clause 6(2), the Director may, instead of granting to a person who immediately before the appointed day held a licence under sections 29 or 39 of the repealed Act in respect of the same premises a special facility licence of the kind referred to in subclause (1), upon the lodging of a notice of application grant to that person in respect of premises comprising the whole or a part of the premises formerly licensed —
 - (a) a special facility licence subject to a condition restricting the sale of liquor to —
 - (i) wine and brandy, for consumption on or off the premises; and
 - (ii) beer (not being beer sold on draught) and spirits (other than brandy), for consumption on the licensed premises only;
 - (b) a restaurant licence; or
 - (c) a cabaret licence,

having regard to any representations made to the Director by or on behalf of the licensee, to the requirements of this Act in relation to the

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grant of licences of that class, and to the premises and the services and facilities provided, or capable of being provided, there and the determination made by the Director is not subject to review or appeal.

12. Casino liquor licences

A casino liquor licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a casino liquor licence under this Act.

13. Cabaret licences

- (1) A cabaret licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a cabaret licence under this Act.
- (2) Notwithstanding subsection (1), where the licensed premises to which the cabaret licence relates were wholly or partly within licensed premises to which another licence related, and the holders of the licences respectively applicable agree or are the same person, the Director may, upon the lodging of a notice of application and the surrender of the cabaret licence, issue in respect of the premises to which the cabaret licence related an extended trading permit relating to that other licence on terms and conditions not less favourable to the licensee than those which applied in respect of the cabaret licence immediately before the appointed day.

14. Restaurant licences

- (1) A restaurant licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a restaurant licence under this Act.
- (2) Where, immediately before the appointed day, the holder of a restaurant licence held a lodger's permit under section 34 of the repealed Act, or a reception area permit under section 40 of the repealed Act, in conjunction with the restaurant licence that permit continues in force as though it were an extended trading permit issued in relation to that licence.

15. Restaurant facilities on premises formerly licensed as a hotel, tavern, limited hotel, or winehouse

- (1) Where, pursuant to the repealed Act, the holder of a hotel licence, a tavern licence, a limited hotel licence or a winehouse licence under the repealed Act had maintained on the licensed premises a dining room in which liquor was sold ancillary to a meal supplied by the licensee, the licensee is authorised, within the hours and upon the same terms and conditions that were applicable immediately before the appointed day, to continue to sell liquor for consumption in that dining room, or in a reception area used in conjunction with that dining room and to which a permit issued under section 40 of the repealed Act applied, ancillary to a meal supplied by the licensee in that dining room, until —
- (a) where the dining room was in a winehouse, a restaurant licence is applied for and granted;
 - (b) an extended trading permit is applied for and issued in respect of that dining room; or
 - (c) a period of 2 years has expired since the appointed day,

whichever first shall happen.

- (2) Where a person to whom subclause (1) applies lodges a notice of application and satisfies the Director that the dining room, and any reception area used in conjunction with it, had immediately before the appointed day habitually been used for consumption of liquor ancillary to a meal supplied by the licensee the Director, as soon as practicable after the appointed day, shall —
- (a) where the dining room was in a winehouse, grant a restaurant licence; or
 - (b) otherwise, issue an extended trading permit relating to the licence held by the applicant under this Act,

to that person in respect of the dining room and any related area or facilities habitually used, or that may be required to be used, by persons dining there.

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16. Store licences

- (1) A store licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a liquor store licence under this Act.
- (2) Where, immediately before the appointed day, the holder of a store licence held a late delivery permit under section 36(3) of the repealed Act in conjunction with the store licence that permit continues in force as though it were an extended trading permit issued in relation to that licence.
- (3) Where hours of trading were chosen by the licensee under section 36(1a)(c) of the repealed Act and notified to the Director, that notification shall be deemed to have effect for the purposes of section 98(5).

17. Vigneron's licences and brewer's licences

- (1) A vigneron's licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a producer's licence under this Act.
- (2) Subject to subclause (4), a brewer's licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a producer's licence under this Act.
- (3) A producer's licence to which this clause applies shall, until a period of 2 years has expired since the appointed day, not be subject to the requirement that liquor supplied by way of free sample is to be consumed only on a part of the licensed premises approved for the purpose by the Director.
- (4) The brewer's licence that was, immediately before the appointed day, held by Carlton and United Breweries Limited in respect of premises at Lot 200 Fargo Way, Welshpool, shall, on that day, become a wholesaler's licence under this Act.
- (5) Where —
 - (a) before the appointed day a person purchased, or assumed the conduct of, a business conducted under a vigneron's licence; and

- (b) that person holds a producer's licence that is converted from a vigneron's licence under this clause,

that person may sell liquor that was, at the time the person purchased or assumed the conduct of the business, part of the trading stock of the business as if it had been produced by that person.

18. Wholesale licences

- (1) A wholesale licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a wholesaler's licence under this Act.
- (2) A wholesaler's licence to which this clause applies shall, until 1 July 1990, be deemed not to be subject to the condition referred to in section 58(3)(b).
- (3) In the assessment period commencing 1 July 1989 the holder of a wholesaler's licence shall not, sell to unlicensed persons a greater percentage of liquor than was sold to unlicensed persons in the assessment period ending on 30 June 1989, that percentage being determined by the Director, and notified to the licensee by the Director in writing, and the determination of the Director not being subject to review or appeal.

19. Club licences and unlicensed club permits

- (1) A club licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a club licence under this Act.
- (2) An unlicensed club permit that was in force under the repealed Act immediately before the appointed day shall, on that day, become a club restricted licence under this Act subject to conditions restricting the authorisation for the sale of liquor —
 - (a) to liquor purchased for the purpose by or on behalf of the club from one or more of suppliers authorised under section 42(2) of the repealed Act;
 - (b) where a term of, or condition applicable to, the permit under the repealed Act restricted the sale of liquor to liquor sold for consumption on the premises or the club's hours of trading,

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or otherwise limited its activities, to liquor sold so as not to contravene that restriction or limitation; or

- (c) in such other manner as the Director may, by notice in writing varying the authorisation conferred by the former permit in a manner not less favourable to the licensee, direct,

and an unlicensed club permit that was in force under the repealed Act immediately prior to 1 January 1989 shall, if the appointed day occurs on or after that date, be deemed to have continued in force under the repealed Act until the appointed day, unless sooner surrendered or cancelled (otherwise than by effluxion of time) under the repealed Act.

- (3) Where, immediately before the appointed day, the holder of a club licence held a voluntary associations permit under section 35 of the repealed Act in respect of the club premises that permit continues in force as though it were an extended trading permit issued in relation to that licence.
- (4) Where, in relation to a club licence held by a body of persons not incorporated, a person was nominated under section 42(4) of the repealed Act to be responsible as permit holder on behalf of the club and was a person approved under the repealed Act, that person shall continue to be the person responsible accordingly in respect of the licence, until such time as some other person is nominated by the club and approved by the Director under this Act to hold the licence as trustee on behalf of the club.
- (5) Where a club comprises a body of persons not incorporated or deemed to be incorporated under the *Associations Incorporation Act 1987* or any other written law and the Director is of the opinion that it is a body which is inappropriate to continue to be licensed by reason of it being unincorporated then —
- (a) if the Director so requires, the club shall seek to become an incorporated body; and
- (b) on lodgement of a copy of the certificate of incorporation, the Secretary of the club with the consent of the trustee may apply for the licence to be vested in that body and the licence shall be varied accordingly,

but, if the licence is not so vested before a period of 2 years has expired since the date on which the requirement was made known by the Director, the Director may cancel the licence.

- (6) Where the constitution or any rules of a club which held a licence or permit under the repealed Act have not been approved by the Director under that Act, they shall for the purposes of this Act be deemed to have been provisionally approved as at the appointed day subject to any subsequent direction given by the Director.

20. Certain licences to become special facility licences

- (1) A canteen licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act, but for the purposes of the continuance in force of the term imposed by section 66(2) of the repealed Act —
- (a) the reference to “will not be renewed after” shall be construed as “, on application to the Court by the Director, may be cancelled on”; and
 - (b) the reference to “an hotel or tavern licence” shall be construed as though it were a reference to a hotel licence, other than a hotel restricted licence, under this Act;
- (2) A theatre licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act.
- (3) A ballroom licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act.
- (4) A reception lodge licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act.
- (5) A packet licence, and where the Director so requires all the packet licences held by the same licensee, in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act, and where a permit was issued under section 33(4) of the repealed Act in relation to a day subsequent to the appointed day the terms and conditions of that permit shall have

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effect as though they were terms and conditions of an extended trading permit relating to the licence.

- (6) A railway refreshment room licence that was in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act.
- (7) Where an Order was made under section 176 of the repealed Act relating to an historic inn, any licence or exemption granted pursuant to the Order that was in force under the repealed Act immediately before the appointed day shall, on that day, become a special facility licence under this Act authorising the sale of liquor on the days and within the hours applicable to a hotel licence under section 97.
- (8) Subject to subclause (7), for so long as a special facility licence remains in force by the operation of this clause in relation to any licence formerly held under the repealed Act it authorises the sale of liquor on the premises to which it relates on the days and within the hours that were authorised in relation to those premises by the repealed Act.

21. Caterer's permit

A caterer's permit that was in force under the repealed Act immediately before the appointed day shall, on that day, become an extended trading permit under this Act in relation to the licence in respect of which it was obtained, subject to clause 6(1)(a).

22. Exempted producers etc.

A person who was immediately before the appointed day the occupier of a vineyard or orchard and regularly conducted there sales to which the exemption conferred by section 6(1)(h) of the repealed Act referred is authorised, subject to the same conditions as related to that exemption, to continue to conduct sales of that kind until —

- (a) a certificate of exemption takes effect under section 54; or
- (b) a period of 2 years has expired since the appointed day,

whichever first shall happen.

23. Certain licences may become special facility licences

Where the holder of a hotel licence, a tavern or a limited hotel licence that was in force under the repealed Act immediately before the appointed day lodges a notice of application before the expiry of a period of 6 months since the appointed day and satisfies the Director —

- (a) that the licensed premises are, and throughout the occupancy of the licensee have consistently been, of an exceptionally high standard; and
- (b) that the requirements of section 46 are met,

the Director may grant a special facility licence on terms and conditions which the licensee, after consultation with the Director, agrees.

24. References in other written laws

- (1) References in a written law other than the repealed Act to the principal clerk or any other clerk of the Licensing Court of Western Australia, or to the Principal Receiver of Revenue, shall, if and to the extent that it is appropriate in the context so to do, be read and construed as references to the Director.
- (2) References in Order 64 of the *Rules of the Supreme Court 1971* to the Licensing Court of Western Australia shall be read and construed as references to the Liquor Licensing Court.
- (3) References in the *Liquor Licensing (Moratorium) Act 1983*³⁴ or in an order made under section 5(1) of that Act to the Licensing Court of Western Australia shall, to the extent that it is appropriate in the context so to do, be read and construed as references to the licensing authority.

Schedule 2

[s. 49(1)(a)]

Division 1 — The Anzac Club

1. Definitions

In this Division —

“**the club**” means the club known as the Anzac Club, which was registered as such under the *Licensing Act 1911* ⁴³;

“**the League**” means the body deemed to be incorporated under the *Associations Incorporation Act 1987* as The Returned Services League of Australia, W.A. Branch (Incorporated);

“**the State Branch Headquarters**” means the premises of the League in Perth, known as Anzac House, and situate at 28 (formerly 30A) St George’s Terrace;

“**the State Executive**” means the State Executive of the League as from time to time constituted under, and elected or appointed in accordance with, the rules of the League.

[\[Clause 1 amended by No. 14 of 1996 s. 4.\]](#)

2. The Anzac Club

(1) Whilst the club is licensed under this Act and has its premises and conducts its business in the State Branch Headquarters —

- (a) the management, conduct and control of the assets and property of the club and of its business and transactions are vested in the State Executive;
- (b) the State Executive is authorised to exercise and have that management, conduct and control subject to this Act insofar as is not inconsistent with this clause;
- (c) the net income from all sources arising from the carrying on, and from the business, of the club, as ascertained from time to time —
 - (i) remains the property of the League; and
 - (ii) may be used, applied or disposed of by the State Executive not only for the purposes of the club but

for any other purpose for which the ordinary funds of the League may be used, applied or disposed of in accordance with the rules of the League;

- (d) subject to paragraph (e), during the period for which the subscription to the League entitles the person to be a member of the League, a subscribing member of the League is —
 - (i) deemed to be a subscribing member of the club, without payment of further subscription to the club; and
 - (ii) entitled, subject to the rules of the club, to enjoy all the privileges of the club;
 - (e) a person who is a member of the League and is unfinancial under the rules of the League is not entitled, and shall not be permitted or suffered, to enjoy the privileges of the club; and
 - (f) the rules of the club shall, insofar as they may be inconsistent with this clause, be read subject to this clause.
- (2) Subclause (1) shall not be construed as preventing a person who is not a subscribing member of the League from being or becoming a member of the club in accordance with the rules of the club.
- (3) If the club ceases to hold a club licence under this Act or is dissolved while the club premises are situated in the State Branch Headquarters, all the assets and property of the club thereupon, without conveyance, transfer, assignment or other assurance, become and shall thereafter remain the property of the League, absolutely.
- (4) The club shall not be removed from the State Branch Headquarters and the business and transactions of the club shall not be carried on other than in that building, except by authority of a resolution duly carried by a three-fifths majority of the delegates present and voting at an Annual Congress of the League or at a special Congress of the League duly convened for the purpose and held in accordance with the rules of the League.

Division 2 — The Air Force Association Club

1. Definitions

In this Division —

“the club” means the club known as the Air Force Association (Western Australia Division) Club;

“the Association” means the body deemed to be incorporated under the *Associations Incorporation Act 1987* as the Australian Flying Corps and Royal Australian Air Force Association (Western Australia Division);

“the Committee of Management” means the Division Committee of the Association as from time to time constituted under, and elected or appointed in accordance with, the rules of the Association.

2. The Air Force Association (Western Australia Division) Club

(1) Whilst the club is licensed under this Act and has its premises and conducts its business at Bull Creek Drive (formerly Benningfield Road) Bull Creek, at the corner of Marmion Avenue and Baltimore Parade, Merriwa and at 133 Mandurah Terrace, Mandurah —

(a) the management, conduct and control of the assets and property of the club and its business and transactions are vested in the Committee of Management;

(b) the Committee of Management is authorised to exercise and have that management, conduct and control subject to this Act insofar as is not inconsistent with this clause;

(c) the net income from all sources arising from the carrying on, and from the business, of the club, as ascertained from time to time —

(i) remains the property of the Association; and

(ii) may be used, applied or disposed of by the Committee of Management not only for the purposes of the club but for any other purpose for which the original funds of the Association may be used, applied or disposed of in accordance with the rules of the Association;

- (d) subject to paragraph (e), during the period for which the subscription to the Association entitles the person to be a member of the Association, a subscribing member of the Association, on payment of such further subscription as the Committee of Management with the approval of the Director may require, is —
 - (i) deemed to be a subscribing member of the club; and
 - (ii) entitled, subject to the rules of the club, to enjoy all the privileges of the club;
 - (e) a person who is a member of the Association and is unfinancial under the rules of the Association is not entitled, and shall not be permitted or suffered, to enjoy the privileges of the club; and
 - (f) the rules of the club shall, insofar as they may be inconsistent with this clause, be read subject to this clause.
- (2) Subclause (1) shall not be construed as preventing a person who is not a subscribing member of the Association from being or becoming a member of the club in accordance with the rules of the club.

[*Schedule Clause 2* amended by No. ~~14 of 1996 s. 4~~; No. 12 of 1998 s. 96.]

Notes

¹ This [reprint](#) is a compilation [as at 9 June 2006](#) of the *Liquor Licensing Act 1988* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Liquor Licensing Act 1988</i>	54 of 1988	9 Dec 1988	1 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)
<i>Financial Administration Legislation Amendment Act 1993</i> s. 11	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i> s. 22	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 66	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Franchise Fees) Act 1997</i> Pt. 4 ⁵⁶	56 of 1997	12 Dec 1997	31 Jan 1998 (see s. 2 and <i>Gazette</i> 30 Jan 1998 p. 577)
<i>Liquor Licensing Amendment Act 1998</i> ⁶⁷	12 of 1998	12 May 1998	23 May 1998 (see s. 2 and <i>Gazette</i> 22 May 1998 p. 2921)
Reprint of the <i>Liquor Licensing Act 1988</i> as at 12 Jun 1998 (includes amendments listed above) (Correction in <i>Gazette</i> 31 Jul 1998 p. 3942)			

Short title	Number and year	Assent	Commencement
<i>Liquor Licensing Amendment (Petrol Stations and Lodgers' Registers) Act 2000</i>	23 of 2000	30 Jun 2000	30 Sep 2000 (see s. 2 and <i>Gazette</i> 29 Sep 2000 p. 5533)
<i>Courts Legislation Amendment Act 2000</i> Pt. 3 ⁷⁸	27 of 2000	6 Jul 2000	6 Jul 2000 (see s. 2(1))
Reprint of the <i>Liquor Licensing Act-1988</i> as at 23 Feb-2001 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Liquor Licensing Amendment Act 2001</i> ^{8,9}	26 of 2001	5 Dec 2001	7 Jan 2002 (see s. 2 and <i>Gazette</i> 4 Jan 2002 p. 3)
<i>Vexatious Proceedings Restriction Act 2002</i> s. 13	23 of 2002	18 Sep 2002	28 Sep 2002 (see s. 2 and <i>Gazette</i> 27 Sep 2002 p. 4877)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 36	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Public Transport Authority Act 2003</i> s. 151	31 of 2003	26 May 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2384)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003</i> s. 173	35 of 2003	26 Jun 2003	30 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Jan 2004 p. 397)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 78	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Reprint 3: The <i>Liquor Licensing Act-1988</i> as at 23-Apr-2004 (includes amendments listed above)			
<i>Acts Amendment (Court of Appeal) Act 2004</i> s. 37	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1-May-2005 (see s.-2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

² ~~Now see the *Public Sector Management Act 1994*.~~

³ [Reprint 4: The Liquor Licensing Act 1988 as at 9 Jun 2006 \(includes amendments listed above\)](#)

² [Repealed by the *Planning and Development \(Consequential and Transitional Provisions\) Act 2005* s. 4. The part of the State that was, as at 1 June 1988, described in the Third Schedule to the *Metropolitan Region Town Planning Scheme Act 1959* is also described in the *Planning and Development Act 2005* Sch. 3 as it was enacted on 12 December 2005.](#)

³ [Repealed by the *Public Sector Management Act 1994*.](#)

⁴ The *Liquor Licensing (Moratorium) Act 1983* expired on 30 June 1988 (see *Liquor Licensing (Moratorium) Order 1987* in *Gazette* 24 Dec 1987 p. 4533).

⁴⁵ Repealed by the *Liquor Act 1970*, which was repealed by this Act.

⁵⁶ The *Acts Amendment (Franchise Fees) Act 1997* s. 51 reads as follows:

“

51. Savings provisions

- (1) A licence fee paid under the principal Act before 6 August 1997 may be re-assessed and, as is appropriate, an amount may be paid to, or recovered from, the licensee, under the principal Act as in force immediately before the commencement of this Act.
- (2) If the Director considers it appropriate to do so, the Director may conduct an inquiry or cause an investigation to be made under the principal Act as in force immediately before the commencement of this Act with respect to the re-assessment of a licence fee referred to in subsection (1).

”

⁶⁷ The *Liquor Licensing Amendment Act 1998* s. 98 reads as follows:

“

98. Schedule 1 — Transitional provisions

Schedule 1 has effect.

Schedule 1 — Transitional provisions

[s. 98]

1. Interpretation

In this Schedule —

“**commencement**” means the commencement of section 98 of the *Liquor Licensing Amendment Act 1998*.

2. Transitional provisions with respect to applications

(1) Subject to subclause (2), an application for a licence or permit under the principal Act made, but not finally determined, by the commencement is to be determined under the principal Act as amended by this Act.

(2) An —

- (a) application for review under section 25; and
- (b) appeal under section 28,

of the principal Act instituted, but not finally determined, by the commencement is to be determined under the principal Act as in force immediately before the commencement.

3. Certificates of exemption

A certificate of exemption held under the principal Act immediately before the commencement of section 35 of this Act shall, on the commencement of that section, be taken to be a producer’s licence held by the same person, and in relation to the same premises, as the certificate.

4. Disciplinary proceedings

(1) A complaint under section 95 of the principal Act which is part heard at the commencement, is to be dealt with under the principal Act as in force immediately before the commencement.

(2) A complaint under section 95 of the principal Act which is lodged at the commencement but in respect of which hearing has not commenced, is to be dealt with under the principal Act as amended by this Act.

5. **Managers and trustees approved under principal Act**

A trustee or manager approved under the principal Act at the commencement is to be taken to be a manager or trustee approved under the principal Act as amended by this Act.

6. **Application of Interpretation Act**

Nothing in this Schedule affects any saving provided by the *Interpretation Act 1984*, except insofar as the saving is inconsistent with this Schedule.

”.

⁷⁸ The *Courts Legislation Amendment Act 2000* s. 14 reads as follows:-

“

~~14. Transitional~~

~~If on the day on which sections 9, 10, 12, and 13 come into operation an Acting Judge is a transitional provision that is of the Liquor Licensing Court is dealing with an application or matter the Acting Judge may continue to deal with the application or matter as if those sections had not come into operation no further effect.~~

”.

⁸⁹ The *Liquor Licensing Amendment Act 2001* s. 5(2) reads as follows:-

“

~~(2) An application for a special facility licensee made under the *Liquor Licensing Act 1988* before the commencement of this section and not determined before then must be determined in accordance with the *Liquor Licensing Act 1988* as amended by this section.~~

”.

⁹ ~~The *Liquor Licensing Amendment Act 2001* s. and 6(2) reads as follows: are transitional provisions that are of no further effect.~~

“

~~(2) An application made under section 77(4) of the *Liquor Licensing Act 1988* before the commencement of this section and not determined before then must be determined in accordance with the *Liquor Licensing Act 1988* as amended by this section.~~

”.