

WESTERN AUSTRALIA

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**LIQUOR LICENSING  
AMENDMENT ACT 1998**

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**No. 12 of 1998**

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**AN ACT to amend the *Liquor Licensing Act 1988*.**

[Assented to 12 May 1998.]

The Parliament of Western Australia enacts as follows:

**Short title**

**1.** This Act may be cited as the *Liquor Licensing Amendment Act 1998*.

**Commencement**

2. This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation.

**Principal Act**

3. In this Act the *Liquor Licensing Act 1988*\* is referred to as the principal Act.

[\* Act No. 54 of 1988.

*For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 134.]*

**Long title amended**

4. The long title to the principal Act is amended by inserting after “**sale of liquor,**” the following —

“  
**to minimize harm or ill-health caused to people, or any group of people due to the use of liquor,**  
”.

**Section 3 amended**

5. (1) Section 3 (1) of the principal Act is amended —

(a) by deleting the definition of “licence” and substituting the following definition —

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

- (b) by deleting the definitions of “certificate of exemption”, “obligatory trading hours” and “Registrar”;
- (c) in paragraph (a) of the definition of “liquor” by inserting after “volume” the following —
- “ , or such other proportion as is prescribed ”;
- (d) in the definition of “meal” by inserting after “table” the following —
- “ or counter ”;
- (e) in the definition of “proprietary company” by deleting “means a proprietary company within the meaning of the *Companies (Western Australian) Code* or a corresponding law in force in another State or in a Territory;” and substituting the following —
- “ has the same meaning as it has in the Corporations Law; ”;
- (f) in the definition of “protection order” by inserting after “section 87” the following —
- “ or 89 ”;
- (g) in the definition of “related body corporate” by deleting “, in relation to a body corporate, means a body corporate that is, within the meaning of the *Companies (Western Australian) Code*, related to that body corporate;” and substituting the following —
- “ has the same meaning as it has in the Corporations Law; ”;
- and

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- (h) by inserting in the appropriate alphabetical positions the following definitions —

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

“**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);

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

”.

- (2) After section 3 (5) of the principal Act the following subsection is inserted —

“ (6) A reference in a provision of this Act to the Commissioner of Police shall include a police officer authorized 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 4 amended**

- 6.** (1) Section 4 (6) of the principal Act is repealed and the following subsection is substituted —

“ (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

authorized 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.

”.

(2) Section 4 (8) of the principal Act is amended by deleting “as a consequence of an offer to sell made in the State by an unlicensed person or the employee or agent of an unlicensed person in the State,”.

### **Section 5 amended**

7. Section 5 of the principal Act is amended —

(a) by inserting after the section designation “5.” the following subsection —

“

(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.

”;

and

(b) by deleting “The objects of this Act are — ” and substituting the following —

“

(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 —

”.

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**Section 7 amended**

**8.** (1) Section 7 (1) of the principal Act is amended by deleting “section 30 and section 31” and substituting the following —

“ this Act ”.

(2) After section 7 (3) of the principal Act, the following subsection is inserted —

“

(4) Subsection (3) (b) does not apply in relation to a condition imposed or varied by the Director under section 117 (5) (a).

”.

**Section 10 amended**

**9.** (1) Section 10 (2) of the principal Act is amended by deleting “subsection (4)” and substituting the following —

“ this section ”.

(2) After section 10 (4) of the principal Act, the following subsection is inserted —

“ (5) Section 9 (8) does not apply to an Acting Judge. ”.

**Section 12 repealed and consequential amendments**

**10.** (1) Section 12 of the principal Act is repealed.

(2) Section 16 (4) (a) of the principal Act is amended by deleting “or of the Registrar”.

(3) Section 16 (5) (a) of the principal Act is amended by deleting “or is before the Registrar”.

(4) Section 16 (6) of the principal Act is amended by deleting “Registrar may, if the Court so directs,” and substituting the following —

“ Court may ”.

(5) Section 16 (7) of the principal Act is amended by deleting “the Registrar and”.

(6) Section 18 (2) (a) of the principal Act is amended by deleting “or the Registrar”.

(7) Section 18 (3) (a) of the principal Act is amended by deleting “, the Director, or the Registrar” and substituting the following —

“ or the Director ”.

(8) Section 20 (1) (a) (i) of the principal Act is amended by deleting “, the Registrar”.

(9) Section 69 (11) of the principal Act is amended by deleting “or the Registrar”.

(10) Section 74 (3) of the principal Act is amended —

(a) in paragraph (b) by deleting “, or the Court or the Registrar in a matter to be determined by the Court,”; and

(b) in paragraph (c) by deleting “, or the Court or the Registrar in a matter to be determined by the Court,”.

(11) Section 95 of the principal Act is amended in subsections (3) and (7) by deleting “Registrar” in each place where it occurs and substituting in each place the following —

“ Court ”.

(12) Section 172 (6) (a) of the principal Act is amended by deleting “or the Registrar, or of”.

**Section 16 amended**

**11.** Section 16 (15) of the principal Act is repealed.

**Section 17 amended**

**12.** Section 17 (1) of the principal Act is amended —

- (a) by deleting “or” after paragraph (c);
- (b) by deleting the full stop after paragraph (d) and inserting the following —  
“ ; or ”; and
- (c) by inserting after paragraph (d) the following paragraph —  
“  
(e) by any other person approved by the licensing authority.  
”.

**Section 24 repealed and a section substituted**

**13.** Section 24 of the principal Act is repealed and the following section is substituted —

“

**Director may refer matters to the Court**

**24.** 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 25 amended**

**14.** (1) Section 25 (1) of the principal Act is amended by deleting “subsection (5)” and substituting the following —

“ subsections (3) and (5) ”.

(2) Section 25 (3) of the principal Act is repealed and the following subsection is substituted —

“

(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.

”.

(3) Section 25 (5) of the principal Act is amended —

- (a) by deleting “or” after paragraph (b); and
- (b) by inserting after paragraph (b) the following paragraph —

“

(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

”.

(4) Section 25 (6) of the principal Act is repealed and the following subsection is substituted —

“

(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 28 amended**

**15.** (1) Section 28 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) No appeal lies against a decision of the Court except upon a question of law.

”.

(2) After section 28 (3) of the principal Act the following subsection is inserted —

“  
(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.  
”.

**Section 30 amended and consequential amendment**

**16.** (1) Section 30 (1) to (4) of the principal Act are repealed and the following subsections are substituted —

“  
(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.  
”.

(2) Section 73 (7) of the principal Act is repealed.

**Sections 30A and 30B inserted**

17. Before section 31 of the principal Act the following sections are inserted in Division 1 of Part 3 —

“ **Licensing authority may grant licences to sell liquor**

**30A.** (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.

**Power of attorney does not empower donee to act for licensee under this Act**

**30B.** A power of attorney, whether executed before or after the commencement of the *Liquor Licensing Amendment Act 1998*, 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 31 amended**

18. (1) Section 31 (3) of the principal Act is amended by inserting after “terms” the following —

“ from the buildings or places referred to in the licence or otherwise as provided in the licence

”.

(2) Section 31 (7) (a) of the principal Act is amended by inserting after “class” the following —

“ or in a specified area ”.

**Section 32 amended**

**19.** Section 32 (2) of the principal Act is amended —

- (a) by deleting “or” after paragraph (a);
- (b) in paragraph (b) by deleting “under section 87,” and substituting the following —  
“ ; or ”; and
- (c) by inserting after paragraph (b) the following paragraph —  
“  
(c) an interim authorization has effect under section 86,  
”.

**Section 33 amended**

**20.** (1) Section 33 (4) of the principal Act is repealed.

(2) Section 33 (6) of the principal Act is amended —

- (a) by deleting “a natural person acting” and substituting the following —  
“ approve a natural person ”; and
- (b) by deleting paragraph (b) and substituting the following paragraphs —  
“  
(aa) the character and reputation of that person;

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- (b) the number and nature of any convictions of that person for offences in any jurisdiction;

”.

(3) After section 33 (6) of the principal Act, the following subsection is inserted —

“

(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.

”.

**Section 34 amended**

**21.** (1) Section 34 (1) (c) of the principal Act is amended by deleting subparagraphs (i) and (ii) and substituting the following subparagraphs —

“

- (i) as a manager;
- (ii) as a trustee; or

”.

(2) Section 34 (2) of the principal Act is amended —

- (a) in paragraph (a) by inserting before “by a person” the following —

“ subject to subsection (3), ”;

- (b) in paragraph (a) (iv) by deleting “under receivership or official management or is in liquidation” and substituting the following —

“ an externally-administered body corporate within the meaning of the Corporations Law

”;

- (c) by deleting paragraph (b) and substituting the following paragraph —

“ (b) by a juvenile; ”; and

- (d) in paragraph (c) by deleting “special circumstances apply” and substituting the following —

“ there is no conflict of interest between the applicant’s employment and the operation of the licence ”.

- (3) After section 34 (2) of the principal Act, the following subsection is inserted —

“ (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 35 repealed and sections 35, 35A and 35B substituted**

- 22.** Section 35 of the principal Act is repealed and the following sections are substituted —

“ **Persons who may hold licences**

- 35.** (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.

### **Trustees**

**35A.** (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.

### **Approval of person as manager**

**35B.** (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 37 amended**

**23.** (1) Section 37 (1) of the principal Act is repealed and the following subsection is substituted —

“

(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) Section 37 (4) of the principal Act is amended —

- (a) by deleting “licence or permit is held by a body corporate, club or other body of persons and a manager approved by the licensing authority” and substituting the following —

“  
manager of premises which must, under section 100, be supervised and managed by a manager

”;

and

(b) in paragraph (c) by inserting before “such” the following —

“ a trustee or ”.

**Section 37A inserted**

**24.** After section 37 of the principal Act the following section is inserted in Division 1 of Part 3 —

“

**Director to be informed of convictions**

**37A.** 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 38 amended**

**25.** (1) After section 38 (2) of the principal Act the following subsections are inserted —

“

(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.

”.

(2) Section 38 (5) of the principal Act is amended by deleting “shall be heard by the licensing authority within 12” and substituting the following —

“ may be lodged within 36 ”.

### **Sections 39 and 40 repealed and sections substituted**

**26.** Sections 39 and 40 of the principal Act are repealed and the following sections are substituted —

“

#### **Certificate of local government**

**39.** (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).

#### **Certificate of local planning authority**

**40.** (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 town 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 town 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 41 amended**

**27.** Section 41 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) Subject to this Act, during permitted hours the licensee of a hotel licence is authorized to keep open the licensed premises, or part of those premises, and, while those premises are open, is required —

- (a) to sell liquor on the premises to any person for consumption on the premises; and

- (b) unless the licence is a hotel restricted licence, to sell packaged liquor on and from the premises to any person.

”.

**Section 45 amended**

**28.** Section 45 (1) (a) and “and” after it of the principal Act are deleted.

**Section 46 repealed and a section substituted**

**29.** Section 46 of the principal Act is repealed and the following section is substituted —

“

**Special facility licences**

**46.** (1) The licensing authority may, in accordance with this Act, grant a special facility licence to provide for the needs of persons of a particular class or in particular circumstances, or for a particular purpose.

(2) A special facility licence shall not be granted where a licence of another class, or the imposition of a condition on a licence of another class, would be reasonably adequate.

(3) A special facility licence —

- (a) may, without limiting the discretion of the licensing authority under subsection (1), be granted to provide for the needs of persons of a prescribed class, in prescribed circumstances or for a prescribed purpose; and
- (b) is to be granted on such terms and conditions as are necessary to ensure that the licence is used only for the reasons for which it is to be granted.



(4) The licensee of a special facility licence is authorized 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 authorized 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 47 amended**

**30.** Section 47 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) Subject to this Act, during permitted hours the licensee of a liquor store licence is authorized to keep open the licensed premises and to sell packaged liquor on and from the premises to any person.

”.

**Section 48 amended**

**31.** Section 48 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) At a time when a sale of packaged liquor to a member who was not a lodger would not be within

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permitted hours or at a time authorized 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. ”.

**Section 49 amended**

**32.** (1) Section 49 (1) (a) of the principal Act is amended by deleting “section 37 (1) (a) (iv)” and substituting the following —

“ section 37 (1) (c) (i) ”.

(2) Section 49 (6) of the principal Act is amended by deleting “Where a club licence is held by a body — ” and paragraphs (a) and (b) and “and” after paragraph (a) and substituting the following —

“

Where a club licence is held by a body which was not previously incorporated under the *Associations Incorporation Act 1987*,

”.

**Section 50 amended**

**33.** After section 50 (1) of the principal Act the following subsection is inserted —

“

(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 authorized 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.

”.

**Section 51 amended**

**34.** Section 51 (1) of the principal Act is repealed.

**Section 54 repealed and consequential amendments**

**35.** (1) Section 54 of the principal Act is repealed.

(2) Section 6 (2) of the principal Act is amended by deleting “or a certificate of exemption”.

(3) Section 95 (8) (a) of the principal Act is amended by deleting “to a certificate of exemption under section 54, and to a protection order under section 87” and substituting the following —

“ and to a protection order ”

(4) Section 95 (8) (b) and (c) of the principal Act are amended by deleting “certificate of exemption or”.

(5) Section 122 (1) (b) of the principal Act is amended by deleting “or a certificate of exemption”.

(6) Section 129 of the principal Act is amended in the definition of “producer” by deleting “, a special facility licence or a certificate of exemption” and substituting the following —

“ or a special facility licence ”.

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**Section 55 amended**

- 36.** (1) Section 55 (1) of the principal Act is amended —
- (a) in paragraph (a) by inserting after “to sell on” the following —  
“ or from ”; and
  - (b) in paragraph (b) by deleting “to supply that liquor, by way of free sample” and substituting the following —  
“ to sell or supply that liquor, by way of sample ”.

(2) Section 55 (2) of the principal Act is repealed and the following subsection is substituted —

“  
(2) A producer’s licence shall not be granted other than in accordance with this Act and any conditions prescribed.”

**Section 57 amended**

**37.** Section 57 of the principal Act is amended by deleting paragraph (c) and “and” after paragraph (b) and substituting the following —

“  
(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 58 amended**

**38.** (1) After section 58 (1) of the principal Act the following subsection is inserted —

“

(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 authorized by law to sell liquor; or
- (b) any employee of the licensee.

”.

(2) Section 58 (3) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

(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 authorized 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;

”.

(3) Section 58 (4) of the principal Act is amended —

- (a) by deleting “or” after paragraph (a);

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- (b) by deleting the comma at the end of paragraph (b) and inserting the following —

“ ; or ”; and

- (c) by inserting after paragraph (b) the following paragraph —

“

- (c) to a person who is not resident in Australia where delivery of the liquor is to be effected outside Australia,

”.

**Section 59 amended and consequential amendment**

- 39.** (1) After section 59 (6) of the principal Act, the following subsection is inserted —

“

- (7) The Director may cancel an occasional licence at any time if satisfied that the licence is no longer appropriate.

”.

- (2) Section 32 (1) (b) of the principal Act is amended by deleting “section 93 or section 96” and substituting the following —

“ this Act ”.

**Section 60 amended**

- 40.** (1) Section 60 (3) of the principal Act is amended by —

- (a) inserting “and” after paragraph (a);

(b) deleting “; and” after paragraph (b) and inserting a full stop; and

(c) deleting paragraph (c).

(2) After section 60 (4) (c) of the principal Act the following paragraphs are inserted —

“

(ca) a restaurant, authorizing 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) authorizing 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);

”.

**Heading to Division 5 of Part 3 amended**

**41.** The heading to Division 5 of Part 3 of the principal Act is amended by inserting after “*grants*” the following —

“ *or approvals* ”.

**Section 62 repealed and sections 62, 62A and 62B substituted**

**42.** Section 62 of the principal Act is repealed and the following sections are substituted —

“

**Conditional grants or removals for uncompleted premises**

**62.** (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 authorize 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.

**Conditional grants pending local authority approvals etc.**

**62A.** (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,

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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.

**Conditional approvals pending local authority approvals etc.**

**62B.** (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 63 amended**

**43.** (1) Section 63 (b) of the principal Act is amended by deleting “(whether imposed by way of obligatory trading hours under section 98 or as a term or condition of that licence)” and substituting the following —

“ imposed by or under this Act ”.

(2) After section 63 (c) of the principal Act the following paragraphs are inserted —

“

(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;

”.

**Section 64 amended**

**44.** (1) Section 64 (2) (b) of the principal Act is amended by deleting “served”.

(2) Section 64 (3) of the principal Act is amended —

(a) by inserting after “conditions” the following —

“ which it considers to be in the public interest or ”;

- (b) by inserting after paragraph (b) the following paragraph —

“  
(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) by inserting after paragraph (c) the following paragraphs —

“  
(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) in paragraph (e) (ii) by inserting after “containers” the following —

“ , or number or types of containers, ”;

- (e) in paragraph (e) (iii) by deleting “the times at which” and substituting the following —

“ the days on which, and the times at which, ”;

and

(f) by inserting after paragraph (g) the following paragraphs —

- “
- (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;
- ”.

(3) After section 64 (3) of the principal Act, the following subsections are inserted —

“

(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 65 amended**

45. Section 65 (1) (c) of the principal Act is amended by deleting “applies” and substituting the following —

“ or a special facility licence so authorized ”.

**Section 66 amended**

46. (1) Section 66 (4) of the principal Act is amended by deleting “(5)”.

(2) Section 66 (6) of the principal Act is amended by deleting “Where” and substituting the following —

“ If, at any time, ”.

**Section 67 amended**

47. (1) Section 67 (1) of the principal Act is amended by —

- (a) inserting after paragraph (b) the following —

“ or ”; and

- (b) by deleting paragraph (c) and “or” after it.



(2) Section 67 (5) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (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;

”.

**Section 69 amended**

**48.** (1) Section 69 (4) (a) of the principal Act is amended by deleting “, or an officer nominated by the Commissioner of Police”.

(2) After section 69 (8) of the principal Act the following subsection is inserted —

“

- (8a) The Executive Director, Public Health within the meaning of the *Health Act 1911*, or a person authorized 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.

”.

(3) Section 69 (12) of the principal Act is amended by deleting “lodge —

- (a) in the case of a matter to be determined by the Court, with, and in a form approved by, the Registrar; or
- (b) otherwise, with, and in a form approved by, the Director,

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a notice” and substituting the following —

“  
lodge with, and in a form approved by, the Director, a  
notice  
”.

**Section 71 amended**

**49.** Section 71 (1) (a) of the principal Act is amended by inserting after “grant” the following —

“ , or removal, ”.

**Section 72 amended**

**50.** (1) Section 72 (1) (b) of the principal Act is amended by deleting “(otherwise than by way of temporary removal under section 80)”.

(2) Section 72 (6) of the principal Act is amended by inserting after “lessor” in the first place where it occurs the following —

“ of the premises to which a licence is sought to be removed ”.

**Section 73 amended**

**51.** (1) After section 73 (4) of the principal Act, the following subsection is inserted —

“  
(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.  
”.

(2) Section 73 (5) of the principal Act is amended by deleting “shall” and substituting the following —

“ may ”.

**Section 74 amended**

**52.** (1) Section 74 (1) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph —

“

(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;

”.

(2) Section 74 (1) of the principal Act is amended by deleting paragraphs (c), (e) and (f).

(3) Section 74 (4) of the principal Act is repealed and the following subsection is substituted —

“

(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

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- (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 75 amended**

**53.** Section 75 (1) of the principal Act is amended by deleting “7 days” and substituting the following —

“ 14 days ”.

**Section 76 amended**

**54.** Section 76 (1) of the principal Act is amended by deleting “7 days” and substituting the following —

“ 14 days ”.

**Section 81 amended**

**55.** (1) Section 81 (3) of the principal Act is amended by deleting paragraph (a).

(2) Section 81 (4) of the principal Act is amended by inserting after “the Director” in the first place where it occurs the following —

“ , at the written request of the applicant, ”.

(3) Section 81 (7) of the principal Act is repealed.

**Section 82 amended**

**56.** Section 82 (1) of the principal Act is amended by deleting “and the exception to section 30 (4) (b) (iii)”.

**Section 82A inserted**

**57.** After section 82 of the principal Act the following section is inserted —

“

**Transfer of licence between licence holders**

**82A.** (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 84 amended**

**58.** (1) Section 84 (4) (a) (ii) of the principal Act is amended by deleting “section 37 (1) (a) and (b)” and substituting the following —

“ section 37 (1) (a), (b), (c) and (d) ”.

- (2) Section 84 (6) of the principal Act is amended —
- (a) by inserting after paragraph (a) the following —  
“ or ”;
  - (b) by deleting paragraph (b) and “or” after it; and
  - (c) in paragraph (c) by deleting “under section 87”.

**Section 86 amended**

**59.** (1) Section 86 (5) of the principal Act is amended by deleting “becomes bankrupt or is insolvent, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or compounds with creditors or makes an assignment of remuneration for their benefit, an official receiver, trustee or assignee in possession of the licensed premises” and inserting the following —

“  
is insolvent under administration, within the meaning of the Corporations Law, the person who has lawful control of the licensed premises  
”.

(2) Section 86 (6) of the principal Act is repealed and the following subsection is substituted —

“  
(6) Where a licensee that is a body corporate becomes an externally-administered body corporate, within the meaning of the Corporations Law, 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.  
”.

**Section 87 amended**

**60.** (1) Section 87 (1) (b) of the principal Act is amended by deleting “is suspended, or a licence other than a liquor store licence ceases for any reason to be in force,” and substituting the following —

“ , other than a liquor store licence, is suspended ”.

(2) Section 87 (5) of the principal Act is amended by deleting “, or a licence ceases to be in force,”.

(3) Section 87 (6) of the principal Act is repealed and the following subsection is substituted —

“

(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.

”.

**Section 88 amended**

**61.** Section 88 (1) of the principal Act is amended —

- (a) by deleting “under section 87” and substituting the following —

“

, or the carrying on of business under section 86,  
or an authorization under section 86

”;

and

- (b) by deleting paragraph (b).

**Section 89 amended**

**62.** Section 89 of the principal Act is amended by inserting after “former lease,” the following —

“  
which the Director considers has an impact on requirements to be met under this Act,  
”.

**Section 92 amended**

**63.** Section 92 of the principal Act is amended by deleting “if it appears to the Director that the licensee has ceased to carry on business at the licensed premises.” and inserting the following —

“  
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 92A inserted**

**64.** After section 92 of the principal Act the following section is inserted —

“

**Cancellation of suspension**

**92A.** 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 93 amended**

**65.** (1) Section 93 (1) of the principal Act is amended —

(a) by deleting “Court, on application by the Director and” and substituting the following —

“ Director ”;

(b) by deleting “or” after paragraph (a) and substituting the following —

“ and ”;

(c) by deleting paragraph (b) and substituting the following paragraph —

“

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

”;

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- (d) by deleting “Court may order that the licence be cancelled by the Director” and substituting the following —

“  
Director may, by notice in writing, specify that  
the licence is cancelled  
”;

and

- (e) by deleting “order” in both places where it occurs and substituting in both places the following —

“ notice ”.

- (2) Section 93 (2) of the principal Act is amended by deleting “order” and substituting the following —

“ notice ”.

- (3) Section 93 (3) (d) of the principal Act is amended by deleting “Court” and substituting the following —

“ Director ”.

**Section 95 amended**

- 66.** (1) Section 95 (4) of the principal Act is amended —

- (a) in paragraph (e) (ii) by deleting “has”;
- (b) in paragraph (f) by deleting subparagraph (ii) and substituting the following subparagraph —

“  
(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;  
”;

and

- (c) by inserting after paragraph (f) the following paragraph —

“

(fa) the licensee has been given an infringement notice under section 167 and the modified penalty has been paid in accordance with that section;

”.

- (2) Section 95 (5) of the principal Act is amended by deleting “shall be lodged with the licensing authority, and”.

- (3) After section 95 (5) of the principal Act the following subsection is inserted —

“

(5a) The complainant is to lodge the complaint with the Court and is to serve a copy of the complaint on the licensee.

”.

- (4) After section 95 (8) of the principal Act the following subsections are inserted —

“

(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 96 amended**

- 67.** (1) Section 96 (1) of the principal Act is amended —
- (a) by inserting after “complaint,” in the first place where it occurs the following —
    - “ or complaints, under section 95 ”;
  - (b) by deleting “a complaint made under section 95 relates” and substituting the following —
    - “ the complaint, or complaints, relate ”;
  - (c) by inserting after “complaint was” the following —
    - “ , or complaints, were ”; and
  - (d) in paragraph (m) by deleting “\$5 000” and substituting the following —
    - “ \$30 000 ”.
- (2) Section 96 (2) of the principal Act is repealed.
- (3) Section 96 (3) of the principal Act is amended —
- (a) by deleting “or subsection (2)” and substituting the following —
    - “  
or on a person liable to a penalty as a result of  
section 164  
”;
- and

- (b) in paragraph (b) by inserting after “complaint” the following —

“ , or complaints, ”.

- (4) Section 96 (6) of the principal Act is amended —

- (a) by deleting “cancelled” and substituting the following —

“ suspended ”;

- (b) in paragraph (a) by deleting “person who was” and substituting the following —

“ licensee or person who was ”;

- (c) in paragraph (a) by deleting “cancellation” and substituting the following —

“ suspension ”; and

- (d) in paragraph (b) by deleting “under section 87”.

**Section 97 amended**

- 68.** (1) Section 97 (2) of the principal Act is amended —

- (a) in paragraph (a) by deleting subparagraphs (i) and (ii) and substituting the following —

“

(i) between 6 a.m. and midnight;

(ii) on a New Year’s Day, up to 2 a.m.; and

”;

and

- (b) by deleting paragraph (b) and substituting the following paragraph —

“  
(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;  
”.

- (2) Section 97 (3) of the principal Act is amended —

- (a) in paragraph (a) by deleting subparagraphs (i) and (ii) and substituting the following —

“  
(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  
”;

- (b) in paragraph (b) by deleting subparagraph (ii) and substituting the following —

“  
(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  
”;

and

- (c) in paragraph (c) by deleting subparagraphs (i) and (ii) and substituting the following —

“  
    (i) up to 6 a.m. if the hours immediately before midnight were permitted hours; and  
    (ii) between 8 p.m. and midnight;  
”.

- (3) Section 97 (4) of the principal Act is amended —

- (a) by deleting paragraph (a) and substituting the following paragraph —

“  
    (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) in paragraph (b) by deleting “or” and substituting the following —

“ and ”; and

- (c) by deleting paragraph (e) and “and” after it and substituting the following —

“  
    (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  
”.

(4) Section 97 (5) of the principal Act is amended —

(a) by deleting paragraph (a) and substituting the following paragraph —

“ (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) in paragraph (b) by deleting “or” and substituting the following —

“ and ”; and

(c) by deleting paragraph (c) and substituting the following paragraphs —

“ (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; ”.

(5) Section 97 (6) of the principal Act is amended —

(a) in paragraphs (a) and (b) by deleting “or” and substituting the following —

“ and ”; and



- (b) in paragraph (c) by inserting after subparagraph (i) the following —

“ and ”.

**Section 98 repealed**

- 69.** Section 98 of the principal Act is repealed.

**Section 99 amended and consequential amendments**

- 70.** (1) Section 99 (4) of the principal Act is repealed.

(2) Section 99 (5) of the principal Act is amended by deleting “, and in subsection (4) means specified in the directions given”.

(3) Section 99 (6) of the principal Act is amended by deleting “or a direction given under subsection (4)”.

- (4) Section 99 (7) of the principal Act is amended —

- (a) by deleting “licensee — ” and paragraphs (a) and (b) and substituting the following —

“  
licensee fails to comply with a requirement made  
under subsection (2) or (3)  
”;

- (b) by deleting “or the direction”; and

- (c) by deleting “\$100” and substituting the following —

“ \$500 ”.

(5) Section 3 (1) of the principal Act is amended —

- (a) in the definition of “wine” by deleting the semicolon and inserting a full stop; and
- (b) by deleting the definition of “work order”.

(6) Section 95 (4) (d) of the principal Act is amended by deleting “a requirement made under section 99 (3), or a direction given under section 99 (4);” and substituting the following —

“ or a requirement made under section 99; ”.

(7) Section 95 (4) (n) of the principal Act is amended by deleting “work order” and substituting the following —

“ requirement made under section 99 ”.

### **Section 100 repealed and a section substituted**

**71.** Section 100 of the principal Act is repealed and the following section is substituted —

“

#### **Supervision and management**

**100.** (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).

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 101 amended**

**72.** (1) Section 101 (2) of the principal Act is amended —

(a) by deleting “appointed as the manager and approved by the Director” and substituting the following —

“ a manager of licensed premises ”; and

(b) by deleting “have been appointed as” and substituting the following —

“ be ”.

(2) Section 101 (3) (b) of the principal Act is amended by deleting “otherwise than as a manager approved by the licensing authority” and substituting the following —

“ other than in accordance with section 100 ”.

**Section 104 amended**

**73.** (1) Section 104 (2) of the principal Act is amended by inserting after “licensing authority” the following —

“ or is of a kind prescribed for the purpose of this subsection ”.

(2) Section 104 (3) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

(a) on application by an interested person, approve an agreement or arrangement;

”.

**Section 106 amended**

74. (1) Section 106 (1) of the principal Act is amended by deleting “a lodger” and substituting the following —

“ lodgers and other persons ”.

(2) Section 106 (1) (b) of the principal Act is amended by deleting “the lodger” and substituting the following —

“ each lodger ”.

(3) Section 106 (1) (c) (i) of the principal Act is amended by deleting “the lodger” and substituting the following —

“ a lodger ”.

(4) Section 106 (1) (c) (ii) of the principal Act is amended by deleting “the lodger” in the first place where it occurs and substituting the following —

“ a lodger ”.

(5) After section 106 (2) of the principal Act the following subsection is inserted —

“ (3) On any licence which authorized 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 108 amended**

75. (1) Section 108 (1) of the principal Act is amended —
- (a) by inserting “or” after paragraph (a);
  - (b) by deleting “; or” after paragraph (b) and substituting a full stop; and
  - (c) by deleting paragraph (c).
- (2) Section 108 (2) (a) of the principal Act is amended —
- (a) by inserting after “subsection (3)” the following —  
“ and any condition of the licence ”; and
  - (b) by deleting “within obligatory trading hours” and substituting the following —  
“  
at any time that the premises are open for business during permitted hours  
”.

**Section 110 amended**

**76.** (1) Section 110 (1) of the principal Act is amended by deleting all the words from the beginning of the subsection to the end of paragraph (a) and substituting the following —

“

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, authorized under this Act;
- (aa) acts in any way that contravenes this Act or any term or condition of the licence or permit;

”.

(2) Section 110 (4) of the principal Act is amended by deleting “from — ” and paragraphs (a), (b) and (c) and substituting the following —

“ from a licensee or the employee or agent of a licensee ”.

(3) Section 110 (7) of the principal Act is amended —

- (a) by inserting “ or ” after paragraph (a); and
- (b) by deleting “; or” after paragraph (b) and substituting a comma; and
- (c) by deleting paragraph (c).

(4) Section 110 (8) of the principal Act is repealed.



**Section 111 amended**

77. After section 111 (2) of the principal Act the following subsection is inserted —

“  
(2a) To avoid doubt, an act referred to in this section constitutes an offence if done while a licence is suspended.”

**Section 112 amended**

78. Section 112 (1) (b) of the principal Act is amended by deleting “sale to, or possession or consumption by,” and substituting the following —

“ possession or consumption by ”.

**Section 114 amended**

79. (1) Section 114 (1) (a) of the principal Act is amended by deleting “or a breach of the peace” and substituting the following —

“ , a breach of the peace or a threat to public safety ”.

(2) Section 114 (1) (b) of the principal Act is amended by inserting after “peace” the following —

“ or ensuring public safety ”.

**Section 115 amended**

**80.** (1) Section 115 (3) of the principal Act is repealed and the following subsections are substituted —

“

(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 authorized 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.

”.

(2) Section 115 (4) (a) of the principal Act is amended —

(a) by inserting after “be,” the following —

“ or is an associate of, ”; and

(b) by deleting “or supplier of unlawful drugs” and substituting the following —

“

, 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

”.

(3) Section 115 (8) of the principal Act is amended by deleting “assist in preventing entry by, or in removing” and substituting the following —

“ prevent entry by, or remove, ”.

(4) After section 115 (8) of the principal Act the following subsection is inserted —

“

(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 116 repealed and a section substituted**

**81.** Section 116 of the principal Act is repealed and the following section is substituted —

“

#### **Certain documents to be kept on premises, displayed and produced**

**116.** (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 authorized 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

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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 117 amended**

**82.** (1) Section 117 (2) of the principal Act is amended by deleting paragraph (c) and “or” after paragraph (b) and substituting the following —

- “
- (c) a government agency or statutory authority; or

(d) a person claiming to be adversely affected by the subject matter of that complaint who —

(i) resides, works or worships;

(ii) attends, or is a parent of a child who attends, a school; or

(iii) attends, or is a patient in, a hospital,

in the vicinity of the licensed premises concerned.

”.

(2) Section 117 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) The Director shall give notice of each complaint lodged to the licensee of the licensed premises with respect to which the complaint is made.

”.

#### **Section 121 amended**

**83.** (1) Section 121 (4) of the principal Act is repealed and the following subsection is substituted —

“

(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.

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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.

”.

(2) Section 121 (8) of the principal Act is amended by  
inserting after “applies” the following —

“

or a juvenile who is present at a place to which  
section 120 (1) (e) applies

”.

**Section 125 amended**

**84.** (1) Section 125 (1) (c) of the principal Act is amended by  
inserting before “if the defendant” the following —

“

where the offence is alleged to have occurred on regulated  
premises,

”.

(2) Section 125 (2) (b) of the principal Act is amended by  
deleting “who — ” and subparagraphs (i) and (ii) and substituting  
the following —

“

who is a parent, step-parent, spouse or legal guardian of the  
juvenile, or other person in *loco parentis* to the juvenile.

”.

(3) After section 125 (2) of the principal Act the following  
subsection is inserted —

“

(3) In subsection (2) (b) the spouse of a juvenile  
includes a person who is residing with the juvenile in a  
marriage-like relationship.

”.

**Section 126 amended**

- 85.** (1) Section 126 (1) of the principal Act is amended —
- (a) by deleting “suspects on reasonable grounds” and inserting the following —
    - “ knows, or suspects on reasonable grounds, ”;
  - (b) in paragraph (a) by inserting after “the” the following —
    - “ juvenile or ”; and
  - (c) by deleting paragraph (b) and substituting the following paragraph —
    - “ (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.

”.

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(2) Section 126 (3) (a) of the principal Act is amended by deleting “suspected juvenile” and substituting the following —

“ juvenile, or suspected juvenile, ”.

**Section 145 amended**

**86.** Section 145 (2) of the principal Act is repealed and the following subsection is substituted —

“  
(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.  
”.

**Section 157 amended**

**87.** Section 157 of the principal Act is amended by deleting “any wilful act,”.

**Section 160 amended**

**88.** Section 160 (1) (a) of the principal Act is amended by inserting after “person” the following —

“  
or of any witness to an offence, or a suspected offence, against this Act  
”.



**Section 164 amended**

**89.** (1) After section 164 (1) of the principal Act the following subsection is inserted —

“

(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) Section 164 (2) of the principal Act is amended by deleting “section 5 (1) of the *Companies (Western Australian) Code*” and substituting the following —

“ the Corporations Law ”.

(3) Section 164 (3) of the principal Act is amended by deleting “subsection (1) applies” and substituting the following —

“ subsections (1) and (1a) apply ”.

(4) Section 164 (4) of the principal Act is amended —

(a) by inserting after “offence” in the first place where it occurs the following —

“ , or that a proper cause for disciplinary action under section 96 is made out in respect of a licensee,  
”;

and

(b) in paragraph (b) by inserting after “offence” the following —

“ , or to have disciplinary action taken against him or her  
”.

(5) Section 164 (5) of the principal Act is amended by deleting “, be convicted on the proceedings on which the body corporate is convicted” and substituting the following —

“  
be dealt with in the same proceedings as the body corporate is dealt with  
”.

**Section 167 amended**

**90.** (1) Section 167 (2) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“ (a) has committed a prescribed offence against this Act; ”.

(2) Section 167 (5) of the principal Act is amended by deleting “28 days” and substituting the following —

“ 2 years ”.

(3) After section 167 (5) of the principal Act the following subsection is inserted —

“

(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.

”.

**Section 169 amended**

**91.** (1) Section 169 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) Notwithstanding section 29 of the *Justices Act 1902*, a trial for an offence under this Act shall be heard and determined by a stipendiary 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 defendant pleads not guilty.

”.

(2) Section 169 (2) of the principal Act is amended by deleting “2” and substituting the following —

“ 4 ”.

(3) Section 169 (3) of the principal Act is amended —

(a) by inserting after “purchase” the following —

“ or other disposal or acquisition ”; and

(b) by deleting “2” and substituting the following —

“ 4 ”.

#### **Section 170 amended**

**92.** After section 170 (d) of the principal Act the following paragraphs are inserted —

“

(da) where a member of the police force purports to be authorized 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 authorized 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;

”.

**Section 172 amended**

**93.** Section 172 (1) of the principal Act is amended —

- (a) in paragraph (b) by deleting subparagraph (iv) and substituting the following subparagraph —

“  
    (iv) approved as a manager under  
        section 35B;  
”;

and

- (b) by inserting after paragraph (n) the following paragraph —

“  
    (na) that on a specified date the person named  
        in the complaint 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  
        complaint consumed liquor at that date;  
”.

**Section 175 amended**

**94.** After section 175 (1) (c) of the principal Act the following paragraphs are inserted —

- “  
    (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;  
”.

**Section 178 amended**

**95.** Section 178 of the principal Act is amended by deleting “coming into operation of this Act” and substituting the following —

“ commencement of section 95 of the *Liquor Licensing Amendment Act 1998* ”.

**Schedule 2 amended**

**96.** Division 2 of Schedule 2 to the principal Act is amended in clause 2 by inserting after “Creek” in the second place where it occurs the following —

“ , at the corner of Marmion Avenue and Baltimore Parade, Merriwa and at 133 Mandurah Terrace, Mandurah ”.

**Amendments to gender references**

**97.** (1) Sections 34 (2) (a), 150 (2) and 154 (3) (c) of the principal Act are amended by inserting after “his” in each place where it occurs the following —

“ or her ”.

(2) Section 60 (6) (b) of the principal Act is amended by inserting after “he” the following —

“ or she ”.

(3) Section 154 (3) (c) of the principal Act is amended by inserting after “him” the following —

“ or her ”.

**Schedule 1 — Transitional provisions**

**98.** Schedule 1 has effect.

**SCHEDULE 1 — TRANSITIONAL PROVISIONS**

[Section 98]

**Interpretation**

1. In this Schedule —

“**commencement**” means the commencement of section 98 of the *Liquor Licensing Amendment Act 1998*.

**Transitional provisions with respect to applications**

2. (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.

**Certificates of exemption**

3. 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.

**Disciplinary proceedings**

4. (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.

**Managers and trustees approved under principal Act**

5. 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.

**Application of Interpretation Act**

6. Nothing in this Schedule affects any saving provided by the *Interpretation Act 1984*, except insofar as the saving is inconsistent with this Schedule.

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