



Western Australia

Liquor Control Act 1988

Compare between:

[18 Oct 2010, 06-f0-02] and [05 Nov 2010, 06-g0-02]

Western Australia

Liquor Control 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 minimise harm or ill-health caused to people, or any group of people due to the use of liquor, to provide for orders that may prohibit persons from being employed at, or from entering, licensed premises, to repeal the *Liquor Act 1970*², and for related matters.

[Long title amended by No. 12 of 1998 s. 4 (correction in Gazette 31 Jul 1998 p. 3942); No. 73 of 2006 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Liquor Control Act 1988*¹.
[Section 1 amended by No. 73 of 2006 s. 5.]

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. Terms used

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

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;

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;

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;

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;

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;

chairperson means the chairperson of the Commission;

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, which may be granted without restriction or as a club restricted licence;

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

Commission means the Liquor Commission established under section 8;

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;

confidential police information means any information or document classified by the Commissioner of Police as confidential under section 30(1);

consume, in relation to liquor, includes inhale and absorb;

crowd control agent has the same meaning as it has in the *Security and Related Activities (Control) Act 1996* section 34;

crowd controller's licence means a licence issued for the purposes of the *Security and Related Activities (Control) Act 1996* section 37;

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;

Director or Director of Liquor Licensing means the chief executive officer of the department of the Public Service principally assisting in the administration of this 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;

drunk has the meaning given by section 3A(1);

extended trading permit means a permit issued under section 60;

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, which may be granted without restriction, as a hotel restricted licence, as a tavern licence or as a small bar 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;

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

lawyer means an Australian lawyer within the meaning of that term in the *Legal Profession Act 2008* section 3;

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 licence granted under this Act;

licence fee means the fee payable for a licence in respect of a licence period or the fee payable in respect of a permit;

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 Commission — the Commission; and
- (b) otherwise — the Director;

liquor means —

- (a) a substance intended for human consumption 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 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 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);

meal means food —

- (a) that is eaten by a person sitting at a table, or a fixed structure used as a table, with cutlery provided for the purpose of eating the food; and
- (b) that is of sufficient substance as to be ordinarily accepted as a meal; and
- (c) that may consist of one or more courses,

but does not include any food prescribed by the regulations not to be a meal;

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 regulations referred to in section 49(3)(c)(iv) and rules approved, or deemed to have been approved, by the Director;

member, in relation to the Commission, means a member of the Commission and includes the chairperson;

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*³; and
- (b) such other area as may be prescribed;

nightclub licence means a licence granted under section 42;

occasional licence means a licence granted under section 59;

owner, in relation to licensed premises or regulated 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 Part 4 Division 1 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 —

- (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;

sample, in relation to a type of liquor, means the prescribed quantity of that type of liquor;

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;

small bar licence means a hotel licence of the kind referred to in section 41(1)(aa);

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;

substance, in the definition of **liquor**, includes a vapour;

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 —

- (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;

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- (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 any device 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; or
 - (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

(d) occupies a position, in relation to the body corporate, prescribed by the regulations to be a position of authority,

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.
- (7) In the definition of *authorised person* in subsection (1) — *employee* includes —
- (a) a person engaged under a contract for services by the licensee, occupier or manager of licensed or regulated premises; and
 - (b) a person holding a crowd controller's licence who is employed by a crowd control agent engaged under a contract for services by the licensee or occupier or a manager of licensed premises to supply the services of crowd controllers at those premises.

[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); No. 73 of 2006 s. 6 and 106; No. 21 of 2008 s. 675(2).]

s. 3A

3A. Term used: drunk

- (1) A person is *drunk* for the purposes of this Act if —
 - (a) the person is on licensed premises or regulated premises; and
 - (b) the person's speech, balance, co-ordination or behaviour appears to be noticeably impaired; and
 - (c) it is reasonable in the circumstances to believe that that impairment results from the consumption of liquor.
- (2) If an authorised officer or a person on whom a duty is imposed under section 115 decides, in accordance with subsection (1), that a person is drunk at a particular time, then, in the absence of proof to the contrary, that person is to be taken to be drunk at that time.

[Section 3A inserted by No. 73 of 2006 s. 7.]

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

[(1)-(4) deleted]

- (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.

- (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.

[Section 4 amended by No. 56 of 1997 s. 27; No. 12 of 1998 s. 6; No. 73 of 2006 s. 8.]

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 minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; and
 - (c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.
- (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 secondary objects —
- (a) to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
- [(b), (c) deleted]*
- (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.
- (3) If, in carrying out any of its functions under this Act, the licensing authority considers that there is any inconsistency between the primary objects referred to in subsection (1) and the secondary objects referred to in subsection (2), the primary objects take precedence.

[Section 5 amended by No. 12 of 1998 s. 7; No. 73 of 2006 s. 9.]

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 organisation or its representative for sacramental or similar religious purposes;
 - (b) where liquor is sold or administered for medicinal purposes —
 - (i) by a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the pharmacy profession; or
 - (ii) by or on the prescription of a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law or registered under that Law in the medical profession;
 - (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;
 - (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.

s. 6

[Section 6 amended by No. 12 of 1998 s. 35(2); No. 31 of 2003 s. 151; No. 35 of 2010 s. 104.]

Part 2 — The licensing authority

Division 1 — The licensing authority

7. Constitution of the licensing authority

(1) The licensing authority comprises —

- (a) the Liquor Commission; 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 Commission may sit and exercise the jurisdiction of the Commission 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 Commission is sitting, but not in relation to the same application or matter.

(3) Subject to this Act, the Director —

- (a) is not to exercise jurisdiction in respect of a matter before the Commission or within the jurisdiction of the Commission; and
- (b) is not subject to direction by the Commission, except as a party to proceedings or as may be specifically provided by this Act.

[Section 7 amended by No. 12 of 1998 s. 8; No. 73 of 2006 s. 10 and 106.]

Division 2 — The Liquor Commission

[Heading inserted by No. 73 of 2006 s. 11.]

8. Commission established

A commission called the Liquor Commission is established.

[Section 8 inserted by No. 73 of 2006 s. 11.]

9. The Commission's jurisdiction

- (1) The Commission has the jurisdiction conferred on it by this Act and any other written law.
- (2) The Commission constituted in accordance with this Act may sit and exercise the jurisdiction of the Commission even though the Commission differently constituted in accordance with this Act is at the same time sitting and exercising the jurisdiction of the Commission.

[Section 9 inserted by No. 73 of 2006 s. 11.]

9A. Constitution of Commission

- (1) Except as otherwise stated in this Act or determined by the chairperson under subsection (2), the Commission is to be constituted by one member.
- (2) The chairperson may determine that, in respect of any particular matter or any matter of a particular kind, the Commission is to be constituted by 3 members.
- (3) If the Commission is constituted by 3 members and they are divided on a question they are required to decide, the question is decided according to the opinion of the majority of them.

[Section 9A inserted by No. 73 of 2006 s. 11.]

Division 2A — Members of the Commission

[Heading inserted by No. 73 of 2006 s. 11.]

9B. Commission members

- (1) The Commission is to have —
 - (a) a chairperson; and
 - (b) other members as determined by the Minister.
- (2) The chairperson and other members are to be appointed in writing by the Minister.

- (3) A person may be appointed as a member if, in the opinion of the Minister, the person has knowledge or experience relevant to the functions of the Commission.
- (4) The Minister is to ensure that at least one member is a lawyer.
[Section 9B inserted by No. 73 of 2006 s. 11; amended by No. 21 of 2008 s. 675(3).]

9C. Tenure of office

- (1) A member is to be appointed to hold office on a full-time basis, part-time basis or sessional basis.
- (2) The term for which a person is appointed as a member is to be fixed in the instrument of appointment and is to be not longer than 5 years.
- (3) A person's eligibility for reappointment or the term for which a person may be reappointed is not affected by an earlier appointment.
[Section 9C inserted by No. 73 of 2006 s. 11.]

9D. Deputy chairperson

- (1) The Minister is to appoint a member as the deputy chairperson of the Commission.
- (2) The deputy chairperson may act as chairperson —
 - (a) in the absence of the chairperson; or
 - (b) if so requested by the chairperson; or
 - (c) during a vacancy in the office of chairperson.
- (3) While acting as chairperson the deputy chairperson has, and may perform, the functions of chairperson.
- (4) No act or omission of a person acting in the place of the chairperson under this section is to be questioned on the ground that the occasion for acting had not arisen or had ceased.

[Section 9D inserted by No. 73 of 2006 s. 11.]

9E. Removal or resignation

- (1) The Minister may terminate the term of office of a member if —
 - (a) the member has been convicted of an indictable offence or an offence that, if committed in Western Australia, would be an indictable offence; or
 - (b) the member is an insolvent under administration according to the meaning of that term in the *Commonwealth Corporations Act 2001*; or
 - (c) the Minister is satisfied that the member has become incapable of performing, or has neglected to perform, the duties of office; or
 - (d) the Minister is satisfied that the member is unfit to hold office because of misconduct.
- (2) A member may resign office by giving the Minister a signed letter of resignation.

[Section 9E inserted by No. 73 of 2006 s. 11.]

9F. Leave of absence

The Minister may grant leave of absence to a member on the terms and conditions that the Minister thinks fit.

[Section 9F inserted by No. 73 of 2006 s. 11.]

9G. Termination of term of office may be deferred

Despite the term of office of a member having expired by the passage of time, the member may continue in office —

- (a) until the member is reappointed, or a successor is appointed; and
- (b) in any event for the purpose of completing any part-heard proceedings,

unless the Minister otherwise directs.

[Section 9G inserted by No. 73 of 2006 s. 11.]

9H. Remuneration and conditions of members

- (1) The remuneration and allowances and other conditions of office of a member are to be determined by the Minister after consultation with the Minister for Public Sector Management.
- (2) Subsection (1) has effect subject to the *Salaries and Allowances Act 1975* if that Act applies to the member.
- (3) The remuneration and allowances and conditions of office of a member are not to be varied while the member is in office so as to become less favourable to the member.

[Section 9H inserted by No. 73 of 2006 s. 11.]

Division 2B — Other matters

[Heading inserted by No. 73 of 2006 s. 11.]

9I. Decisions of the Commission

- (1) A decision of the Commission is to be given in writing and authenticated in accordance with rules of the Commission.
- (2) The Commission is to give a copy of a decision to each party to the proceedings.
- (3) A failure of the Commission to comply with subsection (1) or (2) does not affect the validity of a decision.

[Section 9I inserted by No. 73 of 2006 s. 11.]

9J. Official seal

- (1) The Commission is to have a seal.
- (2) All courts and persons acting judicially are required to take judicial notice of the official seal of the Commission affixed to a document.

- (3) If the official seal of the Commission is affixed to a document, a court or person acting judicially is to presume that it was properly affixed unless the contrary is proved.

[Section 9J inserted by No. 73 of 2006 s. 11.]

9K. Annual reports

- (1) The chairperson is required, on or before 30 September in each year, to submit to the Minister an annual report on the activities of the Commission during the year ending on the preceding 30 June.
- (2) The annual report is to include details of —
- (a) the number, nature and outcome of matters that have come before the Commission; and
 - (b) the number and nature of matters that are outstanding; and
 - (c) any trends or special problems that may have emerged; and
 - (d) forecasts of the workload of the Commission in the year after the year to which the report relates; and
 - (e) any proposals for improving the operation of the Commission.
- (3) The Minister is to cause a copy of each report submitted under subsection (1) to be laid before each House of Parliament within 28 days after submission of the report.
- (4) The chairperson, if requested to do so by the Minister, is to report to the Minister about the jurisdiction and functions of the Commission or any matter connected with the exercise of that jurisdiction or the performance of those functions.
- (5) The chairperson may, from time to time, report to the Minister about anything referred to in subsection (4) whether or not the chairperson has been requested to do so.

[Section 9K inserted by No. 73 of 2006 s. 11.]

9L. Laying annual report before House of Parliament not sitting

- (1) If —
- (a) at the commencement of the period within which section 9K(3) requires a copy of a report to be laid before a House of Parliament, the House is not sitting; and
 - (b) the Minister is of the opinion that the House will not sit during that period,

the Minister is to transmit a copy of the report to the Clerk of the House.

- (2) A copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.
- (3) The laying of a copy of a report that, under subsection (2), is to be regarded as having occurred is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 9L inserted by No. 73 of 2006 s. 11.]

9M. Immunity

- (1) A member has, in the performance of his or her functions as member, the same protection and immunity as a judge of the Supreme Court has in the performance of his or her duties as a judge.
- (2) A person representing a party in proceedings in the Commission has the same protection and immunity as a lawyer has in representing a party in proceedings in the Supreme Court.
- (3) A party to proceedings in the Commission has the same protection and immunity as a party to proceedings in the Supreme Court.

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- (4) A person appearing as a witness before the Commission has the same protection and immunity as a witness has in proceedings in the Supreme Court.

[Section 9M inserted by No. 73 of 2006 s. 11; amended by No. 21 of 2008 s. 675(3).]

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

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

Division 3 — The Director of Liquor Licensing

13. The Director

[(1) deleted]

- (2) The Director is responsible for the administration of this Act, other than those aspects of administration that relate to the Commission.
- (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 a member of the Commission.
- (3a) Subsection (3) does not limit the functions of the Director as a chief executive officer under the *Public Sector Management Act 1994*.
- (4) The Director is to determine applications and matters under this Act that are not subject to the jurisdiction of the Commission, 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); No. 73 of 2006 s. 12.]

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 Commission and the Director in the administration of this Act.

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- (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 form approved by the Director.

[Section 14 amended by No. 32 of 1994 s. 3(2); No. 56 of 1997 s. 28; No. 73 of 2006 s. 106 and 111(1).]

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*.

Division 5 — Proceedings before the licensing authority

16. Procedure

- (1) In any proceedings under this Act, the licensing authority, however constituted —
 - (a) shall act without undue formality;
 - (b) may —
 - (i) obtain information as to any question that arises for decision in such manner as it thinks fit; and
 - (ii) make its determination on the balance of probabilities;
 - (c) may, upon its own motion or upon the application of any party, adjourn the hearing or further hearing of any application or matter from time to time either to the same place or to any other place; and
 - (d) may consider and dismiss or determine applications, and receive submissions and representations in relation to any application before it, as it thinks fit.
- (2) The licensing authority, when constituted by the Commission —
 - (a) may sit at such times and such places as it thinks fit; and

- (b) may exercise in Chambers any jurisdiction of the Commission except the hearing of applications for a new licence, or for a removal, where an objection is lodged and not withdrawn.
- (3) The licensing authority, when constituted by the Director, may conduct or arrange hearings, meetings, consultations, and negotiations as the Director thinks fit, at such times and places as the Director may appoint.
- (4) Any application, or any step taken in proceedings, may be set aside for irregularity —
- (a) by the Commission, if a requirement or order of the Commission 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 Commission or within the jurisdiction of the Commission, by the Commission; but
 - (b) otherwise, by the Director.
- (6) The Commission may appoint —
- (a) counsel to argue or make representations as to any matter before the Commission; or
 - (b) an independent expert to inquire into and report upon any question of fact or opinion not involving a question of law.
- (7) The *Evidence Act 1906* does not apply to the proceedings of the licensing authority, however constituted, and the licensing authority —

- (a) is not bound by the rules of evidence or any practices or procedures applicable to courts of record, except to the extent that the licensing authority adopts those rules, practices or procedures or the regulations make them apply; and
 - (b) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
 - (c) is to act as speedily and with as little formality and technicality as is practicable.
- (8) The hearing of a proceeding before the Commission is to be in private unless the Commission considers that, in the circumstances of the case, the hearing should be in public.
- (9) When the hearing of a proceeding before the Commission is in private, the Commission, of its own motion or on the application of a party to the proceeding, may —
- (a) subject to section 17, give directions as to the persons who may be present; and
 - (b) give directions prohibiting or restricting the publication of evidence given before the licensing authority 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) deleted]*
 - (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 Commission shall take as the basis of its consideration the principle that it is desirable that evidence given before the Commission and the contents of documents lodged with the licensing authority or received in evidence by the licensing authority should be made available to all the parties, but shall pay due regard to any reasons given to the licensing authority why the 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) and section 30, 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 person 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; No. 73 of 2006 s. 13 and 106.]

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;

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- (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.
- (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 Commission, by a member; 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 chairperson or the Director;
 - (b) is a Justice of the Peace; or
 - (c) is a person prescribed, by rules of the Commission 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); No. 73 of 2006 s. 14 and 106.]

18A. Enforcement of decisions

- (1) Subject to sections 19 and 143, a decision of the licensing authority, however constituted, may be enforced under this section.
- (2) A person seeking to enforce a decision under this section may file in the Supreme Court —
 - (a) a copy of the decision that the licensing authority has certified to be a true copy; and
 - (b) the person's affidavit stating to what extent the decision has not been complied with; and
 - (c) a certificate from the licensing authority stating that the decision is appropriate for filing in the Supreme Court.
- (3) No charge is to be made for filing a copy of a decision, an affidavit or a certificate under this section.
- (4) On filing, the decision is to be taken to be a decision of the Supreme Court and may be enforced accordingly.

[Section 18A inserted by No. 73 of 2006 s. 15.]

19. Enforcement of monetary penalty

[(1) deleted]

- (2) If under this Act a monetary penalty is imposed by the licensing authority, however constituted, the amount of the penalty 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; No. 73 of 2006 s. 16.]

20. Contempt etc.

(1) Where —

(a) at, or on the way to or from, a hearing by the licensing authority —

(i) a member, 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 chairperson may report the matter to the District Court, and the District Court has jurisdiction to deal with the matter as if it were a contempt of the District Court.

(1a) If subsection (1) applies to an act or omission by a person and that act or omission is also an offence under this Act, the person is not liable to be punished twice.

(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 Commission fails, without reasonable excuse, to attend in obedience to the summons;
- (b) having been served with a summons to produce records to the Commission 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 a member,

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 Commission, 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); No. 73 of 2006 s. 17 and 106.]

21. Costs

- (1) Subject to this Act, the costs of and incidental to all proceedings to be determined by the Commission, including any adjournment, shall be in the discretion of the Commission, and the Commission 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) deleted]*
- (4) Costs and expenses, to be payable by or to a party to the proceedings, may be awarded by the Commission 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 Commission, 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 Commission may award costs against that person.

- (6) The Director does not have power to award costs.

[Section 21 amended by No. 73 of 2006 s. 18 and 106.]

22. Rules of the Commission

Rules of the Commission may be made, by the Commission, under this Act —

- (a) regulating the practice and procedure of the Commission 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.

[Section 22 amended by No. 73 of 2006 s. 19 and 106.]

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 Commission is sufficient proof of the authority of the Commission 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.

[Section 23 amended by No. 73 of 2006 s. 106.]

Division 6 — Reference to the Commission, review and appeals

[Heading amended by No. 73 of 2006 s. 20.]

24. Director may refer matters to the Commission

- (1) 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 Commission.
- (2) When hearing and determining a matter or part of a matter referred under subsection (1), the Commission is to be constituted by 3 members if —
- (a) the matter or part of a matter relates to an application for the grant or removal of a licence; or
 - (b) the matter or part of a matter relates to the making, variation or revocation of a prohibition order under Part 5A; or
 - (c) the chairperson so determines under section 9A(2).

[Section 24 inserted by No. 12 of 1998 s. 13; amended by No. 73 of 2006 s. 21 and 106.]

25. Application for review of a decision made 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 Commission 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 Commission may allow.
- (2a) An application for a review of a decision made by the Director under section 93 to cancel a licence can be made only on a question of law.
- (2b) When carrying out a review of a decision made by the Director, the Commission is to be constituted by 3 members if —
 - (a) the decision relates to an application for the grant or removal of a licence; or
 - (b) the decision is to make, vary or revoke a prohibition order under Part 5A; or
 - (c) the chairperson so determines under section 9A(2).
- (2c) When conducting a review of a decision made by the Director, the Commission may have regard only to the material that was before the Director when making the decision.
- (2d) When conducting a review of a decision involving a question of law or giving directions under subsection (4)(c)(i), the Commission is to be constituted by, or is to include, a member who is a lawyer.
- (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 Commission 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 Commission, 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; or
 - (ii) the imposition, variation or cancellation of a term or condition of an extended trading permit or an occasional licence; or
 - (iia) the cancellation of, or suspension of the operation of, an extended trading permit or an occasional licence; 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.
- (5a) Despite subsection (5)(a)(i), this section does apply to a decision in respect of or incidental to an application for an extended trading permit of a kind prescribed.
- (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; No. 73 of 2006 s. 22 and 106; No. 21 of 2008 s. 675(3).]

26. Certain decisions of Director to be given effect unless otherwise directed

Where —

- (a) the holder of a licence applies to the Commission for a review of a decision made by the Director in respect of that licence; or
- (b) the person subject to a prohibition order under Part 5A applies to the Commission for a review of a decision made by the Director in respect of that order,

effect is to be given to the decision made by the Director unless the Commission, by way of interim order, otherwise directs.

[Section 26 inserted by No. 73 of 2006 s. 23.]

27. Case stated on question of law

- (1) The Commission 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 a single judge of the Supreme Court.

[Section 27 amended by No. 45 of 2004 s. 37; No. 73 of 2006 s. 24 and 106.]

28. Appeals

- (1) Subject to this section, a person who —
 - (a) is a party to proceedings before the Commission (including the Director intervening in proceedings before the Commission under section 69(11)); and
 - (b) is dissatisfied with a decision of the Commission,may appeal under this section.
- (2) No appeal lies against a decision of the Commission constituted by 3 members except to the Supreme Court on a question of law.

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- (2a) No appeal lies against a decision of the Commission constituted by 3 members if the decision was made solely or partly on the basis of confidential police information.
- (2b) No appeal lies against a decision of the Commission constituted by one member except to the Commission constituted in accordance with subsection (4a)(a).
- (2c) No appeal lies against a decision of the Commission constituted by one member if the decision was made on a review under section 25 of a decision of the Director.
- (3) No further appeal lies against a decision of the Commission under this section on an appeal against a decision of the Commission constituted by one member.
- (3a) No appeal lies against a decision of the Commission under section 96 to suspend the operation of a licence for a period of 2 weeks or less.
- (4) An appeal under this section against a decision of the Commission constituted by 3 members —
 - (a) shall be heard and determined by a single judge of the Supreme Court; and
 - (b) must be instituted within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.
- (4a) An appeal under this section against a decision of the Commission constituted by one member —
 - (a) is to be heard and determined by the Commission constituted by 3 other members, including a member who is a lawyer; and
 - (b) must be instituted and conducted in accordance with rules of the Commission.
- (5) On an appeal under this section to the Supreme Court, the Supreme Court may —

- (a) affirm, vary or quash the decision appealed against; or
- (b) make any decision that the Commission could have made instead of the decision appealed against; or
- (c) send the decision back to the Commission for reconsideration in accordance with any directions or recommendations that the Court considers appropriate,

and, in any case, may make any ancillary or incidental order the Supreme Court considers appropriate.

- (6) On an appeal under this section to the Commission constituted in accordance with subsection (4a)(a), the Commission may —
 - (a) affirm, vary or quash the decision appealed against; or
 - (b) make any decision that the Commission could have made instead of the decision appealed against,

and, in any case, may make any ancillary or incidental order the Commission considers appropriate.

[Section 28 amended by No. 12 of 1998 s. 15; No. 45 of 2004 s. 37; No. 73 of 2006 s. 25 and 106; No. 21 of 2008 s. 675(3).]

29. Licence or permit continues to have effect pending appeal

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

- (a) effect shall not be given to that decision of the Commission; 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 or the Commission as constituted under section 28(4a)(a), as the case requires, by way of interim order, otherwise directs.

[Section 29 amended by No. 73 of 2006 s. 26 and 106.]

Division 7 — Confidential police information

[Heading inserted by No. 73 of 2006 s. 27.]

30. Confidential police information

- (1) For the purposes of this section, the Commissioner of Police may classify as confidential any information or document held by the Commissioner of Police.
- (2) Despite any other provision of this Act, any information or document provided by the Commissioner of Police to the licensing authority for the purposes of this Act must not be published or disclosed by the licensing authority to any person (except to the Minister, the Parliamentary Commissioner for Administrative Investigations appointed under section 5 of the *Parliamentary Commissioner Act 1971*, the Corruption and Crime Commission established under the *Corruption and Crime Commission Act 2003*, the Parliamentary Inspector of the Corruption and Crime Commission appointed under the *Corruption and Crime Commission Act 2003*, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information or document is classified as confidential police information.
- (3) If —
 - (a) the licensing authority —
 - (i) refuses an application for a licence, for approval of the transfer of a licence, or for approval of a person's occupation of a position of authority in a body corporate under section 33(5); or
 - (ii) refuses approval of the appointment of a person as a trustee under section 35A; or
 - (iii) refuses or withdraws approval of a person as a manager under section 35B; or
 - (iv) takes disciplinary action against a person under Part 3 Division 13; or

(v) makes or varies a prohibition order in respect of a person under Part 5A;

and

(b) the decision to do so is made solely or partly on the basis of confidential police information provided to the licensing authority,

the licensing authority is not required to give any reasons for the decision other than that the decision is made in the public interest.

- (4) If the Commissioner of Police lodges an objection to an application under section 73 solely or partly on the basis of confidential police information —
- (a) the Commissioner of Police is not required to serve a copy of the notice under section 73(4a); and
 - (b) the licensing authority must, at least 7 days before the hearing of the application, give the applicant written notice that the Commissioner of Police has objected to the application on the ground that the grant of the application would not be in the public interest.
- (5) If the Director or the Commissioner of Police lodges a complaint under section 95 in respect of a person solely or partly on the basis of confidential police information, the complaint need only state that it would not be in the public interest if the person were to be or continue to be licensed or approved, as the case may be.
- (6) In any proceedings under this Act (other than proceedings for an offence), the Director, the Commission or a court —
- (a) must, on the application of the Commissioner of Police, take all reasonable steps to maintain the confidentiality of confidential police information, including steps —
 - (i) to receive evidence and hear argument about confidential police information in private and in the absence of any party to the proceedings other

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than the Director or the Commissioner of Police or their representatives; and

- (ii) to prohibit the publication of evidence about confidential police information;

and

- (b) may take evidence consisting of or relating to confidential police information by way of an affidavit of a member of the Police Force of or above the rank of Superintendent.

- (7) The Commissioner of Police must not delegate the function of classifying information or documents as confidential police information except to a Deputy Commissioner of Police or an Assistant Commissioner of Police.

[Section 30 inserted by No. 73 of 2006 s. 27.]

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 Commission 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); No. 73 of 2006 s. 106.]

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) deleted]

(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) For the purposes of a determination under subsection (6) in respect of a person, the character and reputation of any person suspected by the licensing authority to be associated with that

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

(6b) Unless the Director otherwise approves, a determination cannot be made under subsection (6) that a person —

- (a) is a fit and proper person to hold a licence; or
- (b) is approved to occupy a position of authority in a body corporate,

unless the person has successfully completed —

- (c) a course of training or an assessment, approved by the Director, in the management of licensed premises; and
- (d) a course of training or an assessment, approved by the Director, in responsible practices in the sale, supply and service of liquor.

(6c) The regulations may modify the operation of subsection (6b) for the purposes of applications for or in respect of an occasional licence.

(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; No. 73 of 2006 s. 28.]

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, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
 - (ii) by reason of mental disorder, is incapable of managing his or her affairs; or
 - (iii) is, or under any written law is deemed to be, under sentence of imprisonment; or
 - (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; No. 18 of 2009 s. 51.]

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; or

- (c) that the manager has not, within the period specified by the Director after being approved, successfully completed —
 - (i) a course of training or an assessment, approved by the Director, in the management of licensed premises; and
 - (ii) a course of training or an assessment, approved by the Director, in responsible practices in the sale, supply and service of liquor.
- (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, subject to section 30, 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.
- (7) The regulations may modify the operation of this section for the purposes of the approval of a person as a manager in respect of an occasional licence.

[Section 35B inserted by No. 12 of 1998 s. 22; amended by No. 73 of 2006 s. 29.]

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, and there is then no person approved under section 35B as a manager of the premises or appointed under section 100(3) to manage the premises —
- (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.
- (6) The condition referred to in subsection (5) continues to apply to a licence during any period that the operation of the licence is suspended.

[Section 37 amended by No. 12 of 1998 s. 23; No. 73 of 2006 s. 30.]

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: \$10 000.

[Section 37A inserted by No. 12 of 1998 s. 24; amended by No. 73 of 2006 s. 110.]

37B. Taking of fingerprints and palm prints

- (1) The licensing authority may by notice in writing (an **identification notice**) require a person to whom subsection (2) or (3) applies to attend at a specified place and there have his or her fingerprints and palm prints taken by a member of the Police Force.
- (2) This subsection applies to a person who makes an application to the licensing authority —
 - (a) for a licence; or
 - (b) for approval to occupy a position of authority in a body corporate that is a licensee; or
 - (c) for approval as a manager under section 35B.
- (3) This subsection applies to —
 - (a) a licensee; or

- (b) a person who occupies a position of authority in a body corporate that is a licensee; or
 - (c) a person approved as a manager under section 35B, whose fingerprints and palm prints have not been taken in accordance with an identification notice given for the purposes of an application referred to in subsection (2).
- (4) If a person to whom subsection (2) applies refuses to comply with an identification notice, the licensing authority may refuse the relevant application.
- (5) If a person to whom subsection (3) applies refuses to comply with an identification notice, a proper cause for disciplinary action under section 96 is to be taken to have been made out in respect of the person.
- (6) The Commissioner of Police is to cause fingerprints and palm prints taken under this section and any copy of them to be destroyed —
 - (a) in the case of fingerprints or palm prints taken from a person to whom subsection (2) applies —
 - (i) if the relevant application is not granted; or
 - (ii) if, after the relevant application is granted, the person ceases to be a licensee, to occupy a position of authority in a body corporate that is a licensee, or to be a manager;
 - or
 - (b) in the case of fingerprints or palm prints taken from a person to whom subsection (3) applies — if the person ceases to be a licensee, to occupy a position of authority in a body corporate that is a licensee, or to be a manager.
- (7) The licensing authority is to provide the Commissioner of Police with any information that the Commissioner of Police requires to comply with subsection (6).

[Section 37B inserted by No. 73 of 2006 s. 31.]

Division 2 — Licences

[Heading inserted by No. 73 of 2006 s. 32.]

38. Licensing authority to be satisfied that certain applications are in the public interest

- (1) Subsection (2) applies to —
 - (a) an application for the grant or removal of a licence; or
 - (b) an application for a permit of a kind prescribed; or
 - (c) any other application to which the Director decides it is appropriate for subsection (2) to apply.
- (2) An applicant who makes an application to which this subsection applies must satisfy the licensing authority that granting the application is in the public interest.
- (3) For the purpose of subsection (2), the applicant must provide to the licensing authority —
 - (a) any prescribed document or information; and
 - (b) any other document or information reasonably required by the licensing authority for those purposes.
- (4) Without limiting subsection (2), the matters the licensing authority may have regard to in determining whether granting an application is in the public interest include —
 - (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
 - (b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and
 - (c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
 - (d) any other prescribed matter.

- (5) If an application referred to in subsection (1)(a) is not granted because the licensing authority is not satisfied that granting the application is in the public interest, an application for the grant or removal of a licence in respect of the same premises or land cannot be made within 3 years after the licensing authority's decision unless the Director certifies that the proposed application is of a kind sufficiently different from the application that was not granted.
- (6) A decision by the Director under subsection (1)(c) or (5) in relation to an application is not subject to review under section 25.

[Section 38 inserted by No. 73 of 2006 s. 33.]

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*;
 - (ia) the *Food Act 2008*;
 - (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; amended by No. 43 of 2008 s. 148(2).]

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

- (1aa) For the purposes of this Act, where a hotel licence is not subject to any condition referred to in subsection (4) and is subject to —
- (a) a condition prohibiting the sale of packaged liquor; and
 - (b) a condition limiting the number of persons who may be on the licensed premises to a maximum of 120,

it is to be referred to as a small bar licence, and an application may be made for a small bar licence if the applicant does not seek another kind of hotel licence.

- (1) For the purposes of this Act —
- (a) where a hotel licence is not subject to any condition referred to in subsection (4) and is not a small bar licence 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) may sell liquor on the premises to any person for consumption on the premises; and
 - (b) may, unless the licence is a small bar licence or 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) Unless it is a small bar licence or a tavern licence, a hotel licence —
- (a) subject to subsection (5) and to any variation under subsection (6), is subject to the condition that the licensee provides guest accommodation for any person; and
 - (b) subject to subsection (5) and without limiting section 64, is subject to any condition imposed by the licensing authority requiring meals to be provided to lodgers.
- (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 guest accommodation or, if applicable, the meal, is a person who may be refused entry to the licensed premises by the licensee under section 115(4); or
 - (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 guest accommodation in the locality;

- (b) that, notwithstanding the existence of such a need, adequate guest 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 guest 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; No. 73 of 2006 s. 34 and 108.]

42. Nightclub licences

- (1) Subject to this Act the licensee of a nightclub 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 nightclub 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.

[Section 42 amended by No. 73 of 2006 s. 107.]

43. Requirements relating to a nightclub licence

An applicant for the grant of a nightclub 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.

[Section 43 amended by No. 73 of 2006 s. 107.]

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 nightclub 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); No. 73 of 2006 s. 107.]

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.
- (1a) The licensing authority is not to grant a special facility licence only because —
 - (a) the grant or variation of a licence of another class; or
 - (b) the imposition, variation or cancellation of a condition on a licence of another class; or
 - (c) the issue of an extended trading permit in respect of a licence of another class,

is not possible because an approval, consent or exemption required under another written law cannot be obtained.

- (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); No. 73 of 2006 s. 35.]*

46A. Variation of special facility licences

- (1) The licensing authority is not to vary a special facility licence, or impose, vary or cancel a condition on a special facility licence, if —
- (a) granting or varying a licence of another class; or
 - (b) imposing, varying or cancelling a condition on a licence of another class; or
 - (c) issuing an extended trading permit in respect of a licence of another class,
- would achieve the purposes for which —
- (d) the variation of the special facility licence is sought; or
 - (e) the imposition, variation or cancellation of a condition on the special facility licence is sought.
- (2) Subsection (1) applies —
- (a) whether or not an application has been made for a grant, variation, imposition, cancellation or issue referred to in paragraph (a), (b) or (c) of that subsection; and
 - (b) even if such an application has been made and has been refused.

[Section 46A inserted by No. 73 of 2006 s. 36.]

46B. Alternatives to, and replacements of, special facility licences

- (1) If the licensing authority does not grant or vary a special facility licence because section 46(2) or 46A(1) applies, the licensing authority may, with the agreement of the applicant, treat the application for, or for the variation of, the special facility licence as an application for —
- (a) the grant or variation of a licence of another class; or

- (b) the imposition, variation or cancellation of a condition on a licence of another class; or
 - (c) the issue of an extended trading permit in respect of a licence of another class.
- (2) The licensing authority may of its own motion or on the application of the licensee —
- (a) cancel a special facility licence; and
 - (b) in respect of the premises to which the special facility licence related —
 - (i) grant to the person who was the licensee a licence of another class; and
 - (ii) if considered appropriate by the licensing authority, issue to that person an extended trading permit.
- (3) If the licensing authority of its own motion proposes to cancel a special facility licence and grant a licence of another class under subsection (2), the licensing authority —
- (a) is to give the licensee a notice that sets out the proposal and the reasons for it; and
 - (b) is to give the licensee a reasonable opportunity to make submissions or to be heard in relation to the proposal.

[Section 46B inserted by No. 73 of 2006 s. 36.]

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.]

[Heading deleted by No. 73 of 2006 s. 37.]

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 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 subsections (3) and (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), a person who is on any day visiting a club (the *host club*) as a member or an official of another club —
- (a) that is to engage in a pre-arranged event with the host club conducted for the purposes of one of the host club's principal objects; or
 - (b) that is to hold a pre-arranged function at the host club involving the use of the host club's sporting facilities,
- may, for the purposes of this Act, be taken to be a person who is accorded temporary membership of the host club 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) deleted]

- (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; No. 73 of 2006 s. 38.]

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; and
 - (b) that provision is made for regular meetings of the general body of members and of the committee of management; and
 - (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; and

- (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 number of persons who may be admitted to such membership does not exceed any limit that the licensing authority, having regard to the nature of the club, may impose; and
- (iv) without limiting subparagraph (iii), that any provision for membership of the club by reason of reciprocal arrangements with another club is made in accordance with the regulations;

and

- (d) that provision is made for payment in advance of a defined annual, half-yearly, quarterly or monthly 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; and
 - (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; No. 73 of 2006 s. 39.]

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 on the licensed premises by a person while sitting at a table, or at a fixed structure used as a table; and

- (b) the sale and consumption of the liquor are in accordance with any conditions —
 - (i) imposed on the permit by the licensing authority; or
 - (ii) prescribed for the purposes of this paragraph.
- (2) Where the licensee of a restaurant licence holds an extended trading permit under section 60(4)(c) in respect of guest 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) subject to subsection (1a), 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; and
 - (c) the licensed premises must contain kitchen facilities that are suitable for the preparation of the meals to be supplied by the licensee.

[Section 50 amended by No. 12 of 1998 s. 33; No. 73 of 2006 s. 40 and 108.]

51. Liquor in unlicensed restaurants

[(1) deleted]

- (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: \$2 000.

(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: \$2 000.

[Section 51 amended by No. 12 of 1998 s. 34; No. 73 of 2006 s. 110.]

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. Deleted 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 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.
- (1a) The licensee of a producer's licence is authorised to supply liquor, by way of a free sample, at the licensed premises of another licensee (the *other licensee*) for consumption on the other licensee's licensed premises by —
- (a) the other licensee; or
- (b) a manager of the other licensee's licensed premises; or

- (c) an employee or agent of the other licensee.
- (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; No. 73 of 2006 s. 41.]

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.
- (2a) The licensee of a wholesaler's licence is authorised to supply liquor, by way of a free sample, at the licensed premises of another licensee (the *other licensee*) for consumption on the other licensee's licensed premises by —
 - (a) the other licensee; or

- (b) a manager of the other licensee's licensed premises; or
 - (c) an employee or agent of the other licensee.
- (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, primarily and predominantly and 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; No. 73 of 2006 s. 42.]

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 organised 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 organised by a person other than the applicant, that the consent of the organiser 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 organiser 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 at the discretion of the Director 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.
- (3a) In addition to the conditions imposed by subsection (3), an extended trading permit issued for the purposes of subsection (4)(ca) or (g) is, unless the Director otherwise determines, subject to any condition prescribed for the purposes of this subsection.
- (4) The purposes for which an extended trading permit may be issued are —
 - (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; or
 - (b) a dining area in premises to which a hotel licence, nightclub 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; or
 - (c) a restaurant comprised within guest 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 guest accommodation for the travelling public; or

- (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; or
- (cb) authorising the licensee of a club licence to sell liquor, despite section 48(2), to persons other than members, or guests of members, of the club —
 - (i) on a specified special occasion or specified special occasions; or
 - (ii) on a day on which a specified function is, or on days on which specified functions are, held on, or on a specified part of, the licensed premises;

or

- (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; or
- (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 or in such circumstances 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 5 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;

or

- (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 nightclub, which is the subject of the licence to which the permit relates); or
- (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, or in relation to such occasion as may be specified, which remains in force for the period, not exceeding 5 years, 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; or
- (i) any other prescribed purpose.

[(5) deleted]

- (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) Without limiting subsection (8a), 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.
- (8a) The licensing authority may cancel an extended trading permit at any time if satisfied that the permit is no longer appropriate.

- (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); No. 73 of 2006 s. 43, 107 and 108.]

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.]

61A. Limitations relating to permits for extended hours

The regulations may limit the permitted hours that may be authorised by an extended trading permit issued for the purpose referred to in section 60(4)(g).

[Section 61A inserted by No. 73 of 2006 s. 44.]

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 certain approvals, consents and exemptions 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 certain approvals, consents and exemptions 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 Part 4 Division 1 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;
- (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; No. 73 of 2006 s. 45.]

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.

- (1a) The licensing authority may impose, vary or cancel a condition under subsection (1) —
 - (a) of its own motion; or
 - (b) on the application of the licensee; or

- (c) at the written request of the parties to a liquor accord.
- (1b) In subsection (1a) —
- liquor accord** means a written agreement or other arrangement —
- (a) that is entered into by 2 or more licensees in a local community, and persons who represent the licensing authority, departments of the Public Service, State agencies or local government, and other persons; and
 - (b) that has the purposes of minimising the harm caused in the local community by the excessive consumption of liquor and promoting responsible practices in the sale, supply and service of liquor in the local community; and
 - (c) that is approved by the Director.
- (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.
- (2a) If the licensing authority proposes to impose, vary or cancel a condition under this section, the licensing authority may, by notice in writing, require the licensee to show cause to the licensing authority why the condition should not be imposed, varied or cancelled.
- (2b) Subsection (2a) does not apply in relation to a condition proposed to be imposed, varied or cancelled in accordance with an application under subsection (1a)(b).

- (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; or
 - (b) minimise 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; or
 - (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; or
 - (c) ensure that the safety, health or welfare of persons who may resort to the licensed premises is not at risk; or
 - (ca) ensure that liquor is sold and consumed in a responsible manner; or
 - (cb) ensure that all persons involved in conducting business under the licence have suitable training for attaining the primary objects of this Act; or
 - (cc) minimise harm or ill-health caused to people, or any group of people, due to the use of liquor; or
 - (cd) limit or prohibit the sale of liquor on credit; or
 - (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; or
 - (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;
- or
- (ea) without limiting paragraph (e)(iii), limit the times when packaged liquor may be sold on and from the licensed premises to those times when liquor may be purchased for consumption on those premises; or
 - (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; or
 - (fa) prohibit entry to the licensed premises after a specified time; or
 - (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; or
 - (ga) prohibit promotional activity in which drinks are offered free or at reduced prices, or limit the circumstances in which this may be done; or
 - (gb) prohibit any practices which encourage irresponsible drinking; or
 - (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; or
 - (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) deleted]*
- (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.
- (8) The imposition, variation or cancellation of a condition, or the imposition of a monetary penalty, under this section is not to be

regarded as the taking of disciplinary action for the purposes of section 96.

[Section 64 amended by No. 56 of 1997 s. 31; No. 12 of 1998 s. 44; No. 73 of 2006 s. 46.]

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.]

65B. Prescribed conditions relating to the responsible promotion of liquor

- (1) The regulations may prescribe conditions that —
- (a) prohibit promotional activity in which liquor is offered free or at reduced prices; or
 - (b) limit the circumstances in which promotional activity referred to in paragraph (a) may take place,
- and may provide that any licence, or any licence of a prescribed class, is subject to those conditions.
- (2) Regulations made for the purposes of subsection (1) do not limit the conditions that the licensing authority may impose under section 64(3)(ga) in relation to a particular licensee or particular licensed premises.

[Section 65B inserted by No. 73 of 2006 s. 47.]

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 matter must, if the Director so requires, be advertised in the manner specified by the Director.

[(2)-(4) deleted]

- (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; No. 73 of 2006 s. 48.]

68. Notice of application, and inspection of records

(1) Subject to this Act —

- (a) an application to the licensing authority shall be made in the form and manner approved by the licensing authority;
- (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.
- (2a) An application for the grant of a licence may be made only by, or on behalf of, the person or persons wishing to carry on business under the licence after it is granted.
- (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.

[Section 68 amended by No. 73 of 2006 s. 49 and 111(2).]

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 any requirement under section 67(1).
- (3) Every advertisement required under section 67(1) 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 hotel licence, nightclub licence, casino liquor licence, special facility licence or liquor store 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; and
 - (ii) on the question of whether, if a particular application were granted, public disorder or disturbance would be likely to result, or as to any other matter relevant to the public interest; 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*;

- (aa) the *Food Act 2008*;
- (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 —

- (a) is required, on the licensing authority requesting a report of that kind in relation to an application, to cause a report to be provided to the licensing authority as to any matter arising from the application that relates to the relevant matters; and
- (b) may intervene in proceedings before the licensing authority for the purpose of introducing evidence or making representations in relation to the relevant matters.

(8b) In subsection (8a) —

Executive Director means the Executive Director, Public Health as defined in the *Health Act 1911* section 3(1) and, for the purposes of subsection (8a)(b), includes a person authorised in writing by the Executive Director;

relevant matters means the harm or ill-health caused to people, or any group of people, due to the use of liquor, and the minimisation 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) The Director may intervene in any proceedings before the Commission, including proceedings relating to a decision or determination made by the Director, 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; No. 73 of 2006 s. 50; No. 43 of 2008 s. 148(3).]

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. Deleted by No. 73 of 2006 s. 51.]

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

- (1) Subject to subsection (2), the licensing authority must not grant an application for approval of a proposed alteration to, or redefinition of, licensed premises unless the applicant satisfies the licensing authority that —
 - (a) the owner; and
 - (b) where the licensed premises are occupied under a lease, the lessor,

have consented to the application.

- (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.

[Section 72 amended by No. 12 of 1998 s. 50; No. 73 of 2006 s. 52.]

73. 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 on any person on any ground permitted by section 74.

[(3) deleted]

- (4) Subject to subsections (5) and (6), an objection shall be made by lodging a notice with the Director in the form approved by 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 or section 30(4) applies, 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 the approved 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) deleted]

- (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; No. 73 of 2006 s. 53, 111(3) and (4).]

74. 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 not be in the public interest; or
 - (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; or
- [(c)-(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;

or

[(h) deleted]

(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 not be in 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; No. 73 of 2006 s. 54.]

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 manner and form approved by the Director not later than 14 days before the licence is to take effect unless —
- (a) the Director otherwise approves; or
 - (b) in relation to an application for the grant of an occasional licence of a kind prescribed, some other requirement for lodgement of the application is prescribed.
- (2) An application for the grant of an occasional licence —
- [(a) deleted]*
 - (b) is not subject to objection, but may be made the subject of a submission or an intervention under section 69; and

- (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 Commission, or to appeal.

[Section 75 amended by No. 12 of 1998 s. 53; No. 73 of 2006 s. 55, 106 and 111(5).]

76. Application for an extended trading permit

- (1) An application for the issue of an extended trading permit may be made by lodging with the Director an application in the manner and form approved by 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 the issue of a permit of a kind prescribed, some other requirement for lodgement of the application is prescribed.

- (2) An application for the issue of an extended trading permit —
 - [(a) deleted]*
 - (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; and
 - (c) is not required to be heard, but may be determined by the Director at discretion; and
 - (d) unless the permit is of a kind prescribed for the purposes of section 25(5a), is not subject to appeal.

[Section 76 amended by No. 12 of 1998 s. 54; No. 73 of 2006 s. 56 and 111(6).]

77. Application 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: \$10 000.

- (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) deleted]*
 - (ii) a 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) deleted]*
- (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); No. 73 of 2006 s. 57 and 110.]

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. Application 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 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.

[Section 80 amended by No. 73 of 2006 s. 58.]

81. Application 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) deleted]

- (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.

- (7) An application for the removal of a licence cannot be made if —
- (a) the licence has been conditionally granted under section 62; and
 - (b) the grant of the licence has not been confirmed under section 62(9).

[Section 81 amended by No. 12 of 1998 s. 55; No. 73 of 2006 s. 59.]

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. Application 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 day on which the application is to be determined; 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 such 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; No. 73 of 2006 s. 60 and 111(7).]

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) deleted]

(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 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; No. 73 of 2006 s. 61.]

87. Protection orders

(1) Where —

- (a) a licensee ceases to occupy, or to carry on business in, licensed premises, and the owner, lessor or mortgagee of the licensed premises applies within 28 days thereafter;
- (b) the operation of a 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, 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; No. 73 of 2006 s. 62.]

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. Deleted by No. 73 of 2006 s. 63.]

91. Suspension on ground of public interest

- (1) 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, if the Director considers it is in the public interest to do so.
- (2) Without limiting subsection (1), the Director may, after giving the licensee a reasonable opportunity to make submissions or to be heard, suspend the operation of a licence if —
 - (a) the licence is other than an occasional licence; and
 - (b) it appears to the Director that —
 - (i) contrary to the condition referred to in section 37(5), the licensee has ceased to occupy the licensed premises to the exclusion of others; or
 - (ii) in the case of a club restricted licence — contrary to the condition referred to in section 48(4)(a)(i) the licensee has ceased to occupy the licensed premises to the exclusion of others during the times when the sale of liquor is authorised by the licence.

[Section 91 amended by No. 73 of 2006 s. 64.]

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
 - (b) that the relevant period has 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.

- (1a) In subsection (1)(b) —

relevant period means 28 days or any greater period prescribed.

- (2) The Director may, on application, extend the period specified in a notice made under subsection (1).

[Section 93 amended by No. 12 of 1998 s. 65; No. 73 of 2006 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 Commission 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 Commission may require the complainant to attend a preliminary conference before the Commission, and may require a licensee to show cause to the Commission why disciplinary action should not be taken, and where the Commission is satisfied that the grounds on which the allegation is based are vexatious or can not be made out the Commission shall give notice of that determination to the complainant and the complaint shall not then be heard without leave of the Commission.

- (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;
 - (ia) an offence under the *Food Act 2008* in relation to the licensed premises;
 - (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 Commission 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 Commission —
 - (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 Commission may direct.
- (7a) When hearing a complaint under this section, the Commission is to be constituted by 3 members, including a member who is a lawyer.
- (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 Commission 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, 70(6) and (7); No. 73 of 2006 s. 66 and 106; No. 21 of 2008 s. 675(3); No. 43 of 2008 s. 148(4).]

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 Commission 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 Commission 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 Commission thinks fit, the licensee from holding a licence;
- (g) disqualify, for such period as the Commission 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 Commission 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) deleted]

- (3) The Commission 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 Commission is satisfied that a licensee is committing, or permitting the commission of, a continuing breach of any condition of a licence the Commission 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 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; No. 73 of 2006 s. 106 and 111(8).]

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 Division; and
 - (b) such of the hours that may be specified under an extended trading permit,

as the licensee wishes to do so.

[(2) deleted]

[Section 97 amended by No. 12 of 1998 s. 68; No. 35 of 2003 s. 173(4); No. 73 of 2006 s. 67.]

98. Permitted hours under a hotel licence

- (1) The permitted hours under a hotel licence are —
- (a) on a day other than a Sunday — from 6 a.m. to midnight;
 - (b) on a Sunday — from 10 a.m. to 10 p.m.;
 - (c) on a Sunday that is New Year's Eve — from 10 p.m. to 12 midnight;
 - (d) on New Year's Day — from immediately after 12 midnight on New Year's Eve to 2 a.m.;
 - (e) on Good Friday or Christmas Day — from 12 noon to 10 p.m., but only for liquor sold ancillary to a meal supplied by the licensee;
 - (f) on ANZAC Day — from 12 noon to 12 midnight.

- (2) The permitted hours under a hotel licence for the sale of liquor to a lodger are unrestricted.

[Section 98 inserted by No. 73 of 2006 s. 68.]

98A. Permitted hours under a nightclub licence

- (1) The permitted hours under a nightclub licence are —
- (a) on a Monday, Tuesday, Wednesday or Thursday — from 6 p.m. to 12 midnight and then continuing to 5 a.m. on the next day;
 - (b) on a Friday or Saturday — from 6 p.m. to midnight and then continuing to 6 a.m. on the next day;
 - (c) on a Sunday that is not New Year's Eve — from 8 p.m. to midnight;
 - (d) on a Sunday that is New Year's Eve — from 8 p.m. to midnight and then continuing to 6 a.m. on the next day;
 - (e) on Good Friday — from immediately after 12 midnight on the previous day to 3 a.m., and there are no further permitted hours before 6 p.m. on the following day;
 - (f) on Christmas Day — subject to subsection (2), from immediately after 12 midnight on the previous day to 3 a.m., and there are no further permitted hours —
 - (i) before 6 p.m. on the following day; or
 - (ii) if the following day is a Sunday — before 8 p.m. on the following day;
 - (g) on ANZAC Day — from immediately after 12 midnight on the previous day to 3 a.m. and then in accordance with paragraph (a), (b) or (c), as the case requires.
- (2) If Christmas Day falls on a Monday —
- (a) there are no permitted hours under a nightclub licence on that day; and

- (b) there are no further permitted hours before 6 p.m. on the following day.

[Section 98A inserted by No. 73 of 2006 s. 68.]

98B. Permitted hours under a casino liquor licence

- (1) The permitted hours under a casino liquor licence are as permitted by the Gaming and Wagering Commission by notice in writing given to the licensee.
- (2) The Gaming and Wagering Commission is to lodge a copy of a notice under subsection (1) with the Director.

[Section 98B inserted by No. 73 of 2006 s. 68.]

98C. Permitted hours under a special facility licence

The permitted hours under a special facility licence are as specified in the particular licence.

[Section 98C inserted by No. 73 of 2006 s. 68.]

98D. Permitted hours under a liquor store licence

- (1) The permitted hours under a liquor store licence are —
 - (a) on a day other than a Sunday, Good Friday, Christmas Day or ANZAC Day — from 8 a.m. to 10 p.m.;
 - (b) on a Sunday that is not ANZAC Day — subject to subsection (2), from 10 a.m. to 10 p.m.;
 - (c) on ANZAC Day — from 12 noon to 10 p.m..
- (2) Subsection (1)(b) applies only to liquor stores in the metropolitan area.
- (3) There are no permitted hours under a liquor store licence on Good Friday or Christmas Day.

[Section 98D inserted by No. 73 of 2006 s. 68.]

98E. Permitted hours under a club licence and club restricted licence

- (1) The permitted hours under a club licence (other than a club restricted licence), excluding Good Friday, Christmas Day or ANZAC Day, are —
- (a) on a day other than a Sunday —
 - (i) from 6 a.m. to 12 midnight; and
 - (ii) then continuing, if the following day is other than a Sunday or New Year's Day, to 12.30 a.m., but only for liquor sold ancillary to a meal supplied by or on behalf of the licensee;
 - (b) on a Sunday that is not New Year's Eve —
 - (i) from immediately after 12 midnight on the previous day to 1 a.m.; and
 - (ii) from 10 a.m. to 10 p.m.;
 - (c) on a Sunday that is New Year's Eve —
 - (i) from immediately after 12 midnight on the previous day to 1 a.m.; and
 - (ii) from 10 a.m. to 12 midnight;
 - (d) on New Year's Day — from immediately after 12 midnight on the previous day to 2 a.m..
- (2) The permitted hours under a club licence (other than a club restricted licence) on Good Friday, Christmas Day and ANZAC Day are —
- (a) on Good Friday — from immediately after 12 midnight on the previous day to 12.30 a.m., but only for liquor sold ancillary to a meal supplied by or on behalf of the licensee;
 - (b) on Christmas Day —
 - (i) from immediately after 12 midnight on the previous day to 12.30 a.m.; and

- (ii) from 12 noon to 10 p.m.,
but only for liquor sold ancillary to a meal supplied by
or on behalf of the licensee;
- (c) on ANZAC Day —
 - (i) that is a Sunday — from immediately after
12 midnight on the previous day to 1 a.m. and
from 12 noon to 12 midnight; or
 - (ii) that is not a Sunday — from 12 noon to
12 midnight.
- (3) The permitted hours under a club licence (other than a club
restricted licence) for the sale of liquor to a lodger who is a
member of the club are unrestricted.
- (4) The permitted hours under a club restricted licence are as
specified in the particular licence.

[Section 98E inserted by No. 73 of 2006 s. 68.]

98F. Permitted hours under a restaurant licence

The permitted hours under a restaurant licence are at any time
except from 3 a.m. to 12 noon on ANZAC Day.

[Section 98F inserted by No. 73 of 2006 s. 68.]

98G. Permitted hours under a producer's licence

The permitted hours under a producer's licence are —

- (a) on a day other than Good Friday, Christmas Day or
ANZAC Day — at any time;
- (b) on Good Friday or Christmas Day — from 12 noon to
10 p.m., but only for liquor sold ancillary to a meal
supplied by the licensee;
- (c) on ANZAC Day — from 12 noon to 12 midnight.

[Section 98G inserted by No. 73 of 2006 s. 68.]

98H. Permitted hours under a wholesaler's licence

- (1) The permitted hours under a wholesaler's licence are —
 - (a) on a day other than Good Friday, Christmas Day or ANZAC Day — at any time;
 - (b) on ANZAC Day — from 12 noon to 12 midnight.
- (2) There are no permitted hours under a wholesaler's licence on Good Friday and Christmas Day.

[Section 98H inserted by No. 73 of 2006 s. 68.]

Division 2 — Maintenance of the premises

99. Obligation to keep clean and in repair, and directions to make alterations or provide facilities, services etc.

- (1) Every licence is subject to the conditions that the licensee —
 - (a) maintain the licensed premises at a standard that is reasonable having regard to the class of licence, the locality and the expectations of the public; and
 - (b) keep the premises and all fittings and fixtures in the premises thoroughly cleansed, in a hygienic condition and in good repair.
- (2) Where the Director is of the opinion that the licensee has failed to comply with a condition referred to in subsection (1) the Director may, by notice in writing, require —
 - (a) the licensee; or
 - (b) where the Director considers that the licensee might reasonably have complied with a requirement notified under this subsection but has not, the owner,

of the premises to take specified action, carry out specified works, or provide specified things.

- (3) Where the Director determines that in the public interest —
- (a) licensed premises should be altered; or
 - (b) the furniture, fittings, accommodation, facilities, amenities or services in, or provided or to be provided by, any licensed premises are inadequate or unsuitable,

the Director may, by notice in writing, require the owner or the licensee of those premises, or both of them, to make the alteration or remedy the inadequacy or unsuitability in such manner as is specified by the Director and may require any such person to submit a proposal, accompanied by plans and specifications, for that purpose within a specified time.

[(4) deleted]

- (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: \$10 000.

- (2a) Without limiting subsection (2), the licensee shall ensure, unless the Director otherwise approves, that a person approved as a manager under section 35B or appointed under subsection (3) is present at the licensed premises at any time when business is conducted at those premises.

Penalty: \$10 000.

- (2b) Subsection (2a) does not apply in relation to the conduct of business at licensed premises at a particular time if —
 - (a) there is only one licensee and that licensee is a natural person; and
 - (b) the licensee is present at those premises at that time.
- (3) Where the manager, or if there is more than one manager, each 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) if there is then no person approved as a manager of the premises under that section, 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 \$10 000, 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: \$10 000.

- (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: \$10 000.

(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: \$10 000.

(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; amended by No. 73 of 2006 s. 69 and 110.]

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 were also a licensee of those premises and is liable accordingly, and that person may be charged with the offence.

(2) A person who is not a manager of licensed premises but is permitted by a licensee to conduct, supervise or manage the business carried on under the licence, shall, for the purposes of any prosecution for an offence under this Act arising out of the conduct of the business, be deemed to be, and is liable as though that person were, the manager of the premises concerned.

(3) Where the licensee of any premises permits another person —

- (a) to hold himself or herself out to the public as the licensee; or
- (b) to conduct, supervise or manage the business carried on there under the licence, other than in accordance with section 100,

the licensee commits an offence.

Penalty: \$10 000.

[Section 101 amended by No. 12 of 1998 s. 72; No. 84 of 2004 s. 80; No. 73 of 2006 s. 110.]

102. Approval of corporate management and control

- (1) A person who, without the approval of the licensing authority —
 - (a) assumes a position of authority in a body corporate that holds a licence; or
 - (b) subject to subsection (3), being a shareholder in a proprietary company that holds a licence, increases or decreases that shareholding,

commits an offence.

Penalty: \$10 000.

- (2) Subsection (1) does not apply to or in relation to an occasional licence.
- (3) Subsection (1)(b) does not apply to a person who is a shareholder in a proprietary company that holds a licence if —
 - (a) at the time the person's shareholding in the proprietary company changes, the occupation by the person of a position of authority in the proprietary company has been approved by the licensing authority under section 33(5); and
 - (b) the person gives the licensing authority written notice of the change in the person's shareholding within 14 days after the change occurs.

- (4) If a person is convicted of an offence under subsection (1) in relation to a body corporate (including a proprietary company) that holds a licence, the body corporate is to be taken to have also committed an offence and is liable to the penalty provided for in that subsection.

[Section 102 amended by No. 73 of 2006 s. 70 and 110.]

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 3A — Responsible practices in selling, supplying and serving liquor

[Heading inserted by No. 73 of 2006 s. 71.]

103A. Responsible practices in selling, supplying and serving liquor

- (1) The regulations may —
- (a) require persons, or persons of a specified class, who are —

- (i) employed or engaged in the sale, supply or service of liquor on or from licensed premises; or
 - (ii) employed or engaged in the performance of other prescribed functions at licensed premises, to complete successfully within a specified period a course of training or an assessment, approved by the Director, in responsible practices in the sale, supply and service of liquor; and
 - (b) require licensees to maintain a register that records the prescribed details in respect of that course of training or assessment and the persons employed or engaged as described in paragraph (a) who have successfully completed it; and
 - (c) provide for transitional arrangements for successfully completing that course of training or assessment that apply to persons who, immediately before the commencement of the *Liquor and Gaming Legislation Amendment Act 2006* section 71, were employed or engaged as described in paragraph (a).
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection —
- (a) may operate by reference to persons employed or engaged for the purposes of a specified class of licence; and
 - (b) may authorise the Director to approve exemptions from those regulations.
- (3) Regulations made for the purposes of subsection (1)(a) do not apply to a person who is a licensee or an approved manager.
- [Section 103A inserted by No. 73 of 2006 s. 71.]*

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: \$10 000.

- (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); or
 - (b) an extended trading permit, where it is approved under section 60(8); or
 - (ba) the provision of entertainment solely for juveniles on licensed premises or a part of licensed premises, where it is approved under section 126B(5); 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.
- (3a) An agreement or arrangement approved under subsection (3) is of no effect to the extent that it purports —
 - (a) to authorise a person other than the licensee to conduct the business carried on under the licence; or
 - (b) to exclude, modify or restrict any requirement, responsibility or duty imposed on the licensee by or under this Act.
- (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; No. 73 of 2006 s. 72, 92(2) and 110.]

Division 5 — Lodgers

105. Certain persons deemed to be lodgers of licensed premises

[(1), (2) deleted]

- (3) Where on the licensed premises no bedroom accommodation is available and other guest 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.

[Section 105 amended by No. 23 of 2000 s. 7; No. 73 of 2006 s. 73 and 108.]

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 the number approved by the Director of 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 \$10 000, in the case of an employee or agent \$4 000, and in the case of a lodger \$2 000.

- (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 —

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- (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 \$10 000, in the case of an employee or agent \$4 000, and in the case of a lodger \$2 000.

[Section 106 amended by No. 12 of 1998 s. 74; No. 73 of 2006 s. 74 and 110.]

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 licensees to exhibit charges for meals and liquor

At a time when —

- (a) a licensee is authorised to sell liquor only with or ancillary to a meal; or

- (b) a licensee of a restaurant licence is authorised to sell liquor whether or not ancillary to a meal,

the licensee is to 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 or otherwise.

Penalty: \$2 000.

[Section 108 inserted by No. 73 of 2006 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: \$20 000.

- (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;

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- (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: \$10 000.

- (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; No. 73 of 2006 s. 76 and 110.]

110. Offences relating to licensed premises

- (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 \$10 000, in the case of an employee or agent \$4 000, in any other case \$2 000.

- (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;

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- (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 \$10 000, in the case of an employee or agent \$4 000.

- (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 \$10 000, in the case of an employee or agent \$4 000, in any other case \$2 000.

- (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: \$2 000.

- (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 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.

(6a) Where —

- (a) a licence authorises the sale of liquor for consumption on the licensed premises ancillary to a meal provided by the licensee; and
- (b) liquor is sold for that purpose,

then, despite any other provision of this Act, it is lawful for a person subsequently to take any 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: \$10 000.

[Section 110 amended by No. 12 of 1998 s. 76; No. 73 of 2006 s. 77 and 110.]

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 \$10 000, in the case of an employee or agent \$4 000.

- (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: \$2 000.

- (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; No. 73 of 2006 s. 110.]

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;
 - (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

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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.

[Section 113 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 59 of 2006 s. 54; No. 77 of 2006 s. 4.]

113A. Licensees to include certain details on website

Where —

- (a) an internet website is maintained by or on behalf of a licensee for the purpose of advertising, promoting or otherwise facilitating the business carried on under the licence; and

(b) the licence is of a prescribed class,
the licensee is to include on the website any information
prescribed in respect of a licence of that class.
Penalty: \$5 000.

[Section 113A inserted by No. 73 of 2006 s. 78.]

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 (including the sale of packaged liquor) on or from 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 \$10 000, in the case of an employee or agent \$4 000.

- (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

reasonably necessary to ensure compliance with the requirement.

[Section 114 amended by No. 12 of 1998 s. 79; No. 73 of 2006 s. 79, 109 and 110.]

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 on the licensed premises; or

(b) permits any reputed thief, prostitute or supplier of unlawful drugs to remain on the licensed premises; 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* or any other activity which contravenes a provision of another written law,

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

Penalty: In the case of the licensee or manager \$10 000, in the case of an employee or agent \$4 000.

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

(a) sell or supply liquor, or cause or permit liquor to be sold or supplied, to a drunk person;

(b) allow or permit a drunk person to consume liquor;

(c) obtain or attempt to obtain liquor for consumption by a drunk person; or

(d) aid a drunk person in obtaining or consuming liquor.

Penalty for an offence on licensed premises: In the case of the licensee or manager \$10 000, in the case of an employee or agent \$4 000, and in any other case \$2 000.

Penalty for an offence on regulated premises: In the case of the owner of the regulated premises \$10 000, in any other case \$2 000.

- (3) It is a defence to a charge of an offence against subsection (2)(a) of selling or supplying liquor to a drunk person to show that the person charged was instructed by the licensee, an approved manager or another person in a position of authority in relation to the person charged to sell or supply the liquor to the drunk person.
- (4) If subsection (4a) applies to a person —
- (a) an authorised person may refuse the person entry to the licensed premises or a part of the premises; or
 - (b) an authorised person may require the person to leave the licensed premises or a part of the premises; or
 - (c) if the requirement under paragraph (b) is not complied with — an authorised person, or any other person on the request of an authorised person, may remove the person from the licensed premises or a part of the premises using such force as may be reasonably necessary; or
 - (d) an authorised person may refuse to sell liquor to the person.
- (4a) This subsection applies to a person who —
- (a) is or appears to be drunk; or
 - (b) is behaving in an offensive manner; or
 - (c) is not dressed in conformity with the licensee's requirements for a standard of dress, being requirements —

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- (i) that were at the relevant time reasonable in the circumstances; and
 - (ii) notice of which had been conspicuously displayed at each entrance to any part of the premises where the requirements were to be complied with;
- or
- (d) is a person who the authorised person has reasonable cause to believe —
 - (i) cannot or will not pay; or
 - (ii) is or is known to be quarrelsome or disorderly; or
 - (iii) is seeking to obtain liquor by begging;
- or
- (e) 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 that is punishable by a term of imprisonment exceeding 3 years; or
- (f) is or appears to be a person whose presence, or to whom the provision of service, on the licensed premises will occasion the licensee to commit an offence under this Act; or
- (g) seeks to enter or enters or remains on the licensed premises at a time when they are closed or are required under this Act to be closed; or
- (h) requests 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 purposes of a private function.
- (5) A person who —
 - (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, enters licensed premises at a time when they are closed or are required under this Act to be closed; or
- (c) having been required under subsection (4) to leave the licensed premises or a part of the premises, does not do so,

commits an offence.

Penalty: \$2 000.

- (6) A person who —
 - (a) under this section —
 - (i) has been refused entry to; or
 - (ii) has been required to leave and has left, or been removed from,
licensed premises; and
 - (b) remains —
 - (i) on any footpath; or
 - (ii) in any area subject to the control or management of the licensee,
that is adjacent to the licensed premises,

commits an offence.

Penalty: \$2 000.

- (7) A person who re-enters premises within 24 hours of being refused entry to, required to leave, or being removed from, those premises under this section —
 - (a) commits an offence; and

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- (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 reasonably necessary.

Penalty: \$2 000.

- (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) This section does not limit any other right to refuse a person entry to premises or to remove a person from premises.

[Section 115 amended by No. 12 of 1998 s. 80; No. 35 of 2003 s. 173(3); No. 73 of 2006 s. 80, 109 and 110.]

115A. Free drinking water to be provided at certain licensed premises

- (1) Subsection (2) applies to licensed premises at which liquor is authorised to be sold under the licence for consumption on the premises.
- (2) The licensee of any licensed premises to which this subsection applies must ensure that water suitable for drinking is provided, free of charge, at all times when liquor is sold for consumption on the premises.

Penalty: In the case of a licensee, \$10 000, in the case of a manager, \$4 000.

[Section 115A inserted by No. 73 of 2006 s. 81.]

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, or the name of each manager if there is more than one, followed by the word “Manager”,

unless the Director otherwise approves.

Penalty: \$2 000.

[Section 116 inserted by No. 12 of 1998 s. 81; amended by No. 73 of 2006 s. 82 and 110.]

116A. Register of incidents at licensed premises to be maintained

- (1) A licensee must maintain a register of the incidents, of the prescribed kind, that take place at the licensed premises.
Penalty: \$5 000.
- (2) The register is to be maintained in a form acceptable to the Director and is to contain the prescribed information.
- (3) A licensee, or the employee or agent of a licensee, must, at the request of an authorised officer, make the register available for inspection by the authorised officer.
Penalty: \$5 000.

[Section 116A inserted by No. 73 of 2006 s. 83.]

Division 7 — Complaints to Director

[Heading inserted by No. 73 of 2006 s. 84.]

117. Complaints about noise or behaviour related to licensed premises

- (1) A complaint in writing may be 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,is unduly offensive, annoying, disturbing or inconvenient to persons who reside or work in the

vicinity, or to persons in or making their way to or from
a place of public worship, hospital or school.

- (2) A complaint under subsection (1) may be lodged by —
- (a) the Commissioner of Police;
 - (b) the local government of the district in which the licensed premises are situated, or of any other district adjacent to the licensed premises and appearing to the Director to have an interest in the amenity, quiet or good order of the neighbourhood of the licensed premises;
 - (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.
- (2a) If a complaint is lodged by a person referred to in subsection (2)(d), the complaint is to be signed, unless the Director otherwise approves, by 3 unrelated adults (including the complainant).
- (2b) In subsection (2a) —
- 3 unrelated adults** means 3 adults each of whom —
- (a) resides at different residential premises; and
 - (b) is not —
 - (i) a child; or
 - (ii) a parent; or
 - (iii) a brother or sister; or
 - (iv) an aunt or uncle; or
 - (v) a spouse or former spouse; or

- (vi) a de facto partner or former de facto partner, of either of the other 2 adults.
- (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.
- (3a) When a complaint is lodged with the Director under subsection (1), the Director is to attempt to settle the matter by conciliation or negotiation.
- (3b) If the Director determines at any stage of the proceedings under this section that the complaint is frivolous or vexatious, the Director is to dismiss the complaint.
- (4) If the matter referred to in a complaint is not settled by conciliation or negotiation, the Director is to give the complainant, the licensee and any other person appearing to the Director to have a relevant interest in the matter a reasonable opportunity to be heard or to make submissions.
- (4a) Having complied with subsection (4), the Director —
 - (a) subject to subsection (4c), may determine the matter; and
 - (b) if of the opinion that the allegation in the complaint is established on the balance of probabilities and that the licensee has failed to show cause why an order should not be made under this section — may make an order under this section,but otherwise the Director is to dismiss the complaint.
- (4b) Without limiting the matters that the Director may have regard to when making a determination under subsection (4a), the Director may have regard to —
 - (a) any alteration, including any structural change, made —
 - (i) to the licensed premises; or

- (ii) if the complainant is a person referred to in subsection (2)(d) — to any relevant premises where the complainant (or, if subsection (2)(d)(ii) applies, the complainant's child) resides, works, worships, attends or is a patient;
- and
- (b) any changes that have taken place over time to the activities that take place on the licensed premises; and
 - (c) the kind of business conducted under the licence and how that business is managed; and
 - (d) if the complainant is a person referred to in subsection (2)(d) — whether the complainant (or, if subsection (2)(d)(ii) applies, the complainant's child) began to reside, work, worship, attend or be a patient at any relevant premises before or after the licensee began to conduct business at the licensed premises; and
 - (e) any provision of the *Environmental Protection Act 1986*, or of any regulations made under that Act, that is relevant to the subject matter of the complaint.
- (4c) The Director —
- (a) may defer making a determination under subsection (4a) for any period the Director considers appropriate; and
 - (b) may make an interim order that has effect for that period for any purpose for which an order may be made under subsection (5).
- (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;

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- (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 Commission —
- (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 Commission,

unless the Commission, by way of interim order, otherwise directs.

- (7) A licensee who contravenes an order made under this section commits an offence.

Penalty: \$10 000.

[Section 117 amended by No. 14 of 1996 s. 4; No. 12 of 1998 s. 82; No. 73 of 2006 s. 85, 106 and 110.]

Division 8 — Liquor on unlicensed premises

118. Persons purporting to be a licensee

- (1) Where a person, otherwise than as an employee or agent of another person authorised by a licence or permit so to do, sells or permits the sale of any liquor on premises where that person carries on business as though that person were the licensee, being premises —
- (a) which are licensed premises;

- (b) of which that person purports to be the licensee;
- (c) in respect to which that person alleges a licence was transferred; or
- (d) to which a purported authorisation conferred by section 86 applies,

that person is liable for any contravention of this Act occurring in the course of the conduct of the business carried on as though that person were a licensee of the premises.

- (2) Where a person is to be deemed under subsection (1) to be liable as though that person were a licensee of any premises, any power conferred or duty imposed by this Act may be exercised in relation to —
 - (a) that person as though the person were a licensee of those premises; or
 - (b) those premises, as though the premises were licensed premises.
- (3) A person who, not being the holder of a licence, keeps up any notice, advertisement, sign or mark, on or near any premises, implying or giving reasonable cause to believe that the premises are licensed for the sale or supply of liquor or that liquor is sold or supplied there, commits an offence.
Penalty: \$2 000.
- (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.

[Section 118 amended by No. 73 of 2006 s. 110.]

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: \$2 000.

- (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: \$2 000.

- (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*; or
- (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: \$2 000.

- (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: \$2 000.

- (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.
- (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: \$2 000.

- (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

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- (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: \$2 000.
- (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; No. 73 of 2006 s. 86 and 110.]

Division 8A — Conduct of unapproved businesses on or from licensed premises

[Heading inserted by No. 73 of 2006 s. 87.]

119A. Conduct of unapproved businesses on or from licensed premises

- (1) A person who, without the approval of the licensing authority, conducts on or from licensed premises a business other than the business conducted under the licence commits an offence.

Penalty: In the case of the licensee \$10 000, in any other case \$4 000.

- (2) A licensee who, without the approval of the licensing authority, causes or permits another person to conduct on or from the licensed premises a business other than the business conducted under the licence commits an offence.

Penalty: \$10 000.

[Section 119A inserted by No. 73 of 2006 s. 87.]

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 \$10 000, in respect of the sale or supply by any other person \$4 000, and in any other case \$2 000.

- (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 \$10 000, in any other case \$4 000.

- (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 \$10 000, in the case of another employee or agent \$4 000, 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 under section 126A, provided on that part of the premises solely 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 form approved by the Director 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 reasonably necessary.

Penalty: \$2 000.

(7a) A person who —

(a) has been required to leave and has left, or been removed from, licensed premises under this section; and

(b) remains —

(i) on any footpath; or

(ii) in any area subject to the control or management of the licensee,

that is adjacent to the licensed premises,

commits an offence.

Penalty: \$2 000.

- (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: \$2 000.

- (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: \$10 000.

- (11) Subsection (10) does not apply in relation to the employment or engagement of a juvenile to serve liquor ancillary to a meal if —
- (a) the juvenile is of or above the age of 16 years; and
 - (b) the juvenile's employment or engagement is approved by the Director; and
 - (c) the work carried out by the juvenile —
 - (i) is supervised at all times; and
 - (ii) will be assessed for the purposes of a prescribed training course in which the juvenile is engaged.

- (12) This section does not limit any other right to refuse a person entry to premises or to remove a person from premises.

[Section 121 amended by No. 12 of 1998 s. 83; No. 73 of 2006 s. 88, 109, 110 and 111(9).]

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 —
- (a) sells or supplies, or permits the sale or supply of, liquor to; or
- (b) permits the consumption or possession of liquor by, a juvenile on regulated premises commits an offence.
- Penalty: \$10 000.
- (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 \$2 000, in any other case \$4 000.
- (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); No. 73 of 2006 s. 89 and 110.]

123. Possession and consumption by juveniles of liquor

- (1) 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: \$2 000.

- (2) Without limiting section 119, a juvenile who has any liquor in his or her possession or control in any place or on any premises to which the public is permitted to have access, whether on payment of a charge or otherwise, commits an offence.

Penalty: \$2 000.

[Section 123 amended by No. 73 of 2006 s. 90 and 110.]

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: \$2 000.

[Section 124 amended by No. 73 of 2006 s. 110.]

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: \$2 000.

- (2a) If an authorised person suspects on reasonable grounds that a document produced by a juvenile under subsection (1)(b) is a forged, false or counterfeit document, the authorised person may confiscate the document.
- (2b) An authorised person who confiscates a document under subsection (2a) must deal with the document in accordance with the regulations.
- (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 reasonably 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 reasonably necessary.

Penalty: \$2 000.

- (5) A person who —

- (a) has been required to leave and has left, or been removed from, licensed premises or regulated premises under this section; and
- (b) remains —
 - (i) on any footpath; or
 - (ii) in any area subject to the control or management of the licensee or occupier of the regulated premises,
that is adjacent to the licensed premises or regulated premises,

commits an offence.

Penalty: \$2 000.

- (6) This section does not limit any other right to remove a person from premises.

[Section 126 amended by No. 12 of 1998 s. 85; No. 73 of 2006 s. 91, 109 and 110.]

126A. Licensees may apply for approval of entertainment for juveniles on licensed premises

- (1) The licensee of any licensed premises may apply to the Director, in a form approved by the Director, for approval of the provision of entertainment solely for juveniles on the licensed premises or a part of the licensed premises.
- (2) The application is to be accompanied by the prescribed fee and is to be supported by any further or other documentation or information that the Director may require.
- (3) The application is to be lodged with the Director not later than 14 days before the day on which the entertainment that is the subject of the application is proposed to be provided.

- (4) Part 3 Division 7 does not apply to an application under this section.

[Section 126A inserted by No. 73 of 2006 s. 92(1).]

126B. Director may approve entertainment for juveniles on licensed premises

- (1) The Director, by notice in writing given to a licensee who has made an application under section 126A, may approve the provision of entertainment solely for juveniles on the licensed premises, or a part of the licensed premises, if the Director is satisfied that, in the circumstances of the particular case, it is appropriate to do so.
- (2) The Director may, by notice in writing given to the licensee at any time before the entertainment is provided, withdraw the approval if the Director is no longer satisfied in accordance with subsection (1).
- (3) The Director may make the approval subject to such terms and conditions as the Director thinks fit and specifies in the notice under subsection (1).
- (4) Without limiting subsection (3), each approval under subsection (1) is subject to the condition that the licensee is not to participate in any arrangement for the benefit arising from the provision of the entertainment to accrue to any other person unless —
- (a) details of the arrangement were set out in the relevant application under section 126A or otherwise provided under that section; and
 - (b) the Director has granted approval under subsection (5).
- (5) The Director may, by notice in writing given to the licensee, approve an arrangement referred to in subsection (4).

[Section 126B inserted by No. 73 of 2006 s. 92(1).]

Division 10 — Miscellaneous

[Heading inserted by No. 73 of 2006 s. 93.]

126C. Crowd controllers to be authorised when exercising powers of removal

- (1) A person (the *crowd controller*) who —
- (a) holds a crowd controller's licence; and
 - (b) is employed by a crowd control agent engaged under a contract for services by the licensee or occupier or a manager of licensed premises to supply the services of crowd controllers at those premises,

is not an authorised person for the purposes of removing a person from licensed premises under section 115(4)(c), 121(7)(b) or 126(3), or requesting another person to do so, unless the crowd controller is authorised under subsection (2).

- (2) The licensee, occupier or manager of licensed premises may authorise a crowd controller to exercise the powers referred to in subsection (1) in respect of those premises by written notice given to the crowd controller or the crowd control agent.
- (3) The licensee, occupier or manager may withdraw the authority referred to in subsection (2) at any time by written notice given to the crowd controller or the crowd control agent.

[Section 126C inserted by No. 73 of 2006 s. 93.]

126D. Sale of undesirable liquor products

- (1) The Governor, on the recommendation of the Minister, may make regulations under section 175 that declare liquor in the form of a specified product, or a product of a specified class, to be an undesirable liquor product.
- (2) Where a licensee, whether personally or by an employee or agent, sells or supplies any product declared to be an undesirable liquor product on or from the licensed premises, the

licensee, and the employee or agent concerned, commits an offence.

Penalty: In the case of the licensee or manager \$10 000, in the case of an employee or agent \$4 000.

- (3) The Minister may recommend the making of regulations for the purposes of subsection (1) only if —
- (a) the Minister considers that —
 - (i) designs, motifs or characters on the packaging of the product concerned are of such a kind that the product is, or is likely to be, attractive to juveniles; or
 - (ii) the product is likely, for any reason, to be confused with soft drinks or confectionery; or
 - (iii) the product, for any other reason, has or is likely to have a special appeal to juveniles; or
 - (iv) it is otherwise in the public interest to do so;and
 - (b) the Minister has complied with subsection (4).
- (4) Before recommending the making of regulations for the purposes of subsection (1), the Minister is to consult with relevant liquor industry representatives and the manufacturer of any product proposed to be declared to be an undesirable liquor product (if the manufacturer is known to the Minister).
- (5) A failure to comply with subsection (3) does not affect the validity of the regulation concerned.

[Section 126D inserted by No. 73 of 2006 s. 93.]

126E. Modified operation of Act for special events

- (1) In this section —
- special event notice*** means a notice under subsection (2);
- specified*** means specified in a special event notice.

- (2) The Minister may, by notice published in the *Gazette*, declare that, for the purposes of this Act, a specified event to be held in the State is a special event.
- (3) Subject to subsection (4), a special event notice may declare that, for the purposes of the special event, specified provisions of this Act have a specified modified operation —
 - (a) during a specified period; and
 - (b) in relation to a specified area of the State or the whole of the State.
- (4) A special event notice may make a declaration under subsection (3) only in relation to prescribed provisions of this Act.
- (5) For the purposes of the special event, provisions of this Act that are the subject of a declaration under subsection (3) have effect in accordance with any specified modified operation.
- (6) The Minister may, by notice published in the *Gazette*, vary or revoke a special event notice.

[Section 126E inserted by No. 73 of 2006 s. 93.]

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 (including any period when its operation is suspended) 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; No. 73 of 2006 s. 94.]

128. Regulations relating to licence fees

- (1) 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 licence fees or such penalties, and the suspension or cancellation of licences or permits after a failure to pay any moneys payable.
- (2) Without limiting subsection (1) or section 127, regulations may prescribe licence fees by reference to —
 - (a) classes of licence; or
 - (b) the extension of the operation of a licence by a permit; or
 - (c) the purposes for which a permit is to be issued, or the period during which a permit is to have effect.

[Section 128 inserted by No. 56 of 1997 s. 35; amended by No. 73 of 2006 s. 95.]

Division 2 — Subsidies

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

129. Terms used

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 Account appropriated

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

[Section 133 inserted by No. 56 of 1997 s. 36; amended by No. 77 of 2006 s. 4.]

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. Deleted by No. 56 of 1997 s. 36.]

Division 3 — Power of Commission with respect to moneys due

[Heading amended by No. 56 of 1997 s. 37; No. 73 of 2006 s. 96.]

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

143. Order for payment of money

- (1) The Commission 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; No. 73 of 2006 s. 106.]

[144. Deleted 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: \$10 000.

[Section 145 amended by No. 56 of 1997 s. 41; No. 12 of 1998 s. 86; No. 73 of 2006 s. 110.]

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: \$10 000.

- (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) deleted]

- (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; No. 73 of 2006 s. 110.]

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 Commission 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; No. 73 of 2006 s. 106.]

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: \$10 000.

[Section 150 amended by No. 56 of 1997 s. 46; No. 12 of 1998 s. 97(1); No. 73 of 2006 s. 110.]

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: \$5 000.

[Section 152 amended by No. 73 of 2006 s. 110.]

Part 5A — Prohibition orders

[Heading inserted by No. 73 of 2006 s. 97.]

152A. Terms used

In this Part —

employed includes engaged under a contract for services;

prohibition order means an order made under section 152E;

relevant person means the person who, as the case requires, is the subject of —

- (a) an application under section 152B; or
- (b) a prohibition order;

serious and organised crime has the same meaning as it has in the *Australian Crime Commission (Western Australia) Act 2004*.

[Section 152A inserted by No. 73 of 2006 s. 97.]

152B. Commissioner of Police may apply for prohibition orders

The Commissioner of Police may apply in writing to the Director in a form approved by the Director for an order to be made in respect of a person that —

- (a) prohibits the relevant person from being employed by a licensee at specified licensed premises, licensed premises of a specified class or any licensed premises; or
- (b) prohibits the relevant person from entering specified licensed premises, licensed premises of a specified class or any licensed premises.

[Section 152B inserted by No. 73 of 2006 s. 97.]

152C. Evidence in support of application

- (1) An application under section 152B is to —
 - (a) set out the reasons why the Commissioner of Police considers a prohibition order should be made in respect of the relevant person; and
 - (b) set out any other information and be accompanied by any document that the Commissioner of Police considers relevant to the application.
- (2) Without limiting subsection (1), the Commissioner of Police is authorised to include in or with the application —
 - (a) details of any criminal convictions of the relevant person for offences under the law of the Commonwealth or a State or Territory; and
 - (b) any information that the Commissioner of Police has regarding any involvement, or suspected involvement, of the relevant person in serious and organised crime.

[Section 152C inserted by No. 73 of 2006 s. 97.]

152D. Relevant person to be given notice of application

- (1) The Director is to give the relevant person a written notice that —
 - (a) states that the application has been made and explains the proposed effect of the order applied for; and
 - (b) describes the information and documents provided in support of the application; and
 - (c) informs the relevant person that he or she will be given a reasonable opportunity to make submissions or to be heard in relation to the application.
- (2) Nothing in subsection (1) requires or authorises the Director to disclose confidential police information.

[Section 152D inserted by No. 73 of 2006 s. 97.]

s. 152E

152E. Director may make prohibition orders

- (1) The Director may dispose of the application —
 - (a) by making a prohibition order; or
 - (b) by dismissing the application; or
 - (c) at the request of the Commissioner of Police — by discontinuing the application.
- (2) The Director may make a prohibition order that —
 - (a) prohibits the relevant person from being employed by a licensee at specified licensed premises, licensed premises of a specified class or any licensed premises; or
 - (b) prohibits the relevant person from entering specified licensed premises, licensed premises of a specified class or any licensed premises.
- (3) The Director may make a prohibition order only if satisfied that it is in the public interest to do so after —
 - (a) having given the relevant person a reasonable opportunity to make submissions or to be heard in relation to the application; and
 - (b) having regard to —
 - (i) any information or document provided by the Commissioner of Police in or with the application; and
 - (ii) any information or document provided by the relevant person under paragraph (a).
- (4) A prohibition order has effect subject to such terms or conditions as the Director thinks fit and specifies in the order.

[Section 152E inserted by No. 73 of 2006 s. 97.]

152F. Term of prohibition orders

- (1) The Director is to specify in a prohibition order the term for which the prohibition order remains in force.
- (2) The term cannot be more than 5 years or, for a prohibition order in respect of a juvenile, more than 2 years, after it is made, but an application may be made for a further prohibition order.

[Section 152F inserted by No. 73 of 2006 s. 97.]

152G. Applications to vary or revoke prohibition orders

- (1) The Commissioner of Police or the relevant person may apply in writing to the Director in a form approved by the Director for an order varying or revoking a prohibition order.
- (2) If the application is made —
 - (a) by the Commissioner of Police, the relevant person is the respondent; or
 - (b) by the relevant person, the Commissioner of Police is the respondent.

[Section 152G inserted by No. 73 of 2006 s. 97.]

152H. Evidence in support of application

The application is to —

- (a) set out the reasons why the applicant considers a prohibition order should be varied or revoked; and
- (b) set out any other information and be accompanied by any document that the applicant considers relevant to the application.

[Section 152H inserted by No. 73 of 2006 s. 97.]

152I. Respondent to be given notice of application

- (1) The Director is to give the respondent a written notice that —

s. 152J

- (a) states that the application has been made and explains the proposed effect of the order applied for; and
 - (b) describes the information and documents provided in support of the application; and
 - (c) informs the respondent that he or she will be given a reasonable opportunity to make submissions or to be heard in relation to the application.
- (2) Nothing in subsection (1) requires or authorises the Director to disclose confidential police information.

[Section 152I inserted by No. 73 of 2006 s. 97.]

152J. Director may vary or revoke prohibition orders

- (1) The Director may dispose of the application —
- (a) by making an order that varies or revokes a prohibition order; or
 - (b) by dismissing the application; or
 - (c) at the request of the applicant — by discontinuing the application.
- (2) The Director may make an order varying or revoking a prohibition order only if satisfied that it is in the public interest to do so —
- (a) having given the respondent a reasonable opportunity to make submissions or to be heard in relation to the application; and
 - (b) having regard to —
 - (i) any information or document provided by the applicant in or with the application; and
 - (ii) any information or document provided by the respondent under paragraph (a).

[Section 152J inserted by No. 73 of 2006 s. 97.]

152K. Notification of orders

- (1) If the Director makes a prohibition order, the Director is to give a copy of the order —
 - (a) to the relevant person; and
 - (b) if the order is made under section 152E(2)(a) and the Director is aware that the relevant person is employed by a licensee at licensed premises to which the order applies — to the licensee.
- (2) If the Director makes an order varying or revoking a prohibition order, the Director is to give a copy of the order to the applicant and the respondent.

[Section 152K inserted by No. 73 of 2006 s. 97.]

152L. Failure to comply with orders

- (1) A person given a copy of a prohibition order under section 152K(1)(a) who fails, without reasonable excuse, to comply with the order commits an offence.
Penalty: \$10 000.
- (2) A person given a copy of a prohibition order under section 152K(1)(b) who continues, without reasonable excuse, to employ the relevant person, commits an offence.
Penalty: \$10 000.

[Section 152L inserted by No. 73 of 2006 s. 97.]

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 Commission, 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.

- (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; No. 73 of 2006 s. 106.]

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: \$10 000.

- (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).

- (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); No. 73 of 2006 s. 110.]

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 reasonably necessary for the purpose.

- (4) A member of the Police Force may seize 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 this Act.
- (5) Subject to section 161, sections 146 to 150 of the *Criminal Investigation Act 2006*, with any necessary changes, apply to and in respect of seizing a thing that is or may be seized under this Act.
- (6) Despite subsections (4) and (5) —
- (a) if a person is consuming liquor contrary to section 119 during a period, and in an area, specified in a special event notice under section 126E, a member of the Police Force may seize and, as soon as is practicable, dispose of any opened or unopened container of liquor that is in the possession of the person; or

- (b) if a person is otherwise consuming liquor contrary to section 119, a member of the Police Force may seize and, as soon as is practicable, dispose of any opened container of liquor that is in the possession of the person.

[Section 155 amended by No. 70 of 2004 s. 82; No. 59 of 2006 s. 55; No. 73 of 2006 s. 98 and 109.]

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 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.]

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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: \$10 000.

- (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.

[Section 158 amended by No. 73 of 2006 s. 110.]

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: \$10 000.

- (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;
 - (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: \$10 000.

[Section 159 amended by No. 73 of 2006 s. 110.]

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 —

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- (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: \$5 000.

[Section 160 amended by No. 12 of 1998 s. 88; No. 73 of 2006 s. 110.]

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 reasonably 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 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;

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- (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: \$10 000.

[Section 161 amended by No. 56 of 1997 s. 48; No. 84 of 2004 s. 80; No. 73 of 2006 s. 109 and 110.]

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.]

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 —

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- (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 Commission 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 Commission 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 Commission may impose a penalty under section 96 on any manager of the licensee's premises, as well as on the licensee.

- (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

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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; No. 73 of 2006 s. 106.]

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.
- (4) In this section —
employee, of the licensee, includes —
- (a) a person engaged under a contract for services by the licensee; and
 - (b) a person holding a crowd controller's licence who is employed by a crowd control agent engaged under a contract for services by the licensee or occupier or a

manager of the premises to which a licence or permit relates to supply the services of crowd controllers at those premises.

[Section 165 amended by No. 84 of 2004 s. 80; No. 73 of 2006 s. 99.]

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 \$2 000.

[Section 166 amended by No. 73 of 2006 s. 110.]

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.
- (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,

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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.
- (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; No. 73 of 2006 s. 100.]

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
 - (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 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,

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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;
 - (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;

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- (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 Commission.

- (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.
- (6) In all courts and before all persons authorised to receive evidence —
- (a) a signature purporting to be that of the Minister, the chairperson or any other member of the Commission, 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 licence 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);
- (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

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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; No. 73 of 2006 s. 101 and 106.]

172A. Forfeiture

- (1) If a court convicts a person of an offence under this Act of illegally selling, supplying, consuming or storing liquor, or of unlawfully possessing liquor, or of possessing liquor for an unlawful purpose, the court may declare all, or any specified part, of the liquor, including any container or packaging, that relates to the offence to be forfeited.

- (2) If under section 167 an infringement notice is issued to an alleged offender in respect of an alleged offence under this Act of illegally selling, supplying, consuming or storing liquor, or of unlawfully possessing liquor, or of possessing liquor for an unlawful purpose, and the modified penalty is paid and the notice is not withdrawn, any liquor, including any container or packaging, that relates to the offence and has been seized is forfeited.

[Section 172A inserted by No. 59 of 2006 s. 56.]

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.

174A. Application of *Criminal and Found Property Disposal Act 2006*

- (1) The *Criminal and Found Property Disposal Act 2006* applies to and in respect of any thing that is seized or forfeited under this Act.
- (2) For the purposes of the *Criminal and Found Property Disposal Act 2006* the department of the Public Service that principally assists the Minister to administer this Act is a prescribed agency.

[Section 174A inserted by No. 59 of 2006 s. 57.]

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) Commission 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.

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- (1a) The Governor, on the recommendation of the Minister, may make regulations for any or all of the following purposes —
- (a) declaring an area of the State specified in the regulations to be a restricted area;
 - (b) restricting or prohibiting —
 - (i) the bringing of liquor into the restricted area; or
 - (ii) the possession of liquor in the restricted area; or
 - (iii) the consumption of liquor in the restricted area;
 - (c) in relation to any offence in the regulations of failing to comply with restrictions or prohibitions referred to in paragraph (b) and without limiting any other power of a member of the Police Force under this Act — conferring powers on members of the Police Force in relation to the seizure and disposal of opened or unopened containers of liquor.
- (1b) The Minister may recommend the making of regulations under subsection (1a) only if, after consultation with —
- (a) the Commissioner of Police; and
 - (b) each local government in the district of which any part of the proposed restricted area would be situated; and
 - (c) any other person the Minister considers it appropriate to consult,
- the Minister is satisfied that the regulations are in the public interest.
- (1c) Regulations made under subsection (1a) must state the period during which the regulations are to have effect.
- (1d) Regulations made under subsection (1a) expire at the end of the period referred to in subsection (1c).

- (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 — \$5 000; and
 - (b) in any other case — \$2 000.

[Section 175 amended by No. 56 of 1997 s. 50; No. 12 of 1998 s. 94; No. 73 of 2006 s. 102 and 106.]

[176. Omitted under the Reprints Act 1984 s. 7(4)(f).]

177. Transitional provisions

Schedule 1, which contains transitional provisions, has effect.

177A. Transitional provisions relating to the *Liquor and Gaming Legislation Amendment Act 2006*

Schedule 1A sets out transitional provisions relating to amendments made to this Act by the *Liquor and Gaming Legislation Amendment Act 2006*.

[Section 177A inserted by No. 73 of 2006 s. 103.]

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.

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- (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 — Transitional provisions

[s. 177]

[Heading amended by No. 19 of 2010 s. 4.]

1. Terms used

- (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*² is repealed by this Act;
the repealed Act means the *Liquor Act 1970*².
- (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 under section 9 of the repealed Act, is deemed to have been appointed as the Liquor Licensing Court judge; or

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- (b) as an acting judge under section 11 of the repealed Act, is deemed to have been appointed as an 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*⁴ 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*⁴ 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*⁴ 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.
- (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.

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- (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.
- (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

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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 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.

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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.

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

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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, 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,

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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 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.

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- (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*⁵ 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 1A — Transitional provisions relating to the
*Liquor and Gaming Legislation Amendment Act 2006***

[s. 177A]

[Heading inserted by No. 73 of 2006 s. 104.]

1. Terms used

In this Schedule, unless the context otherwise requires —

commencement day means the day on which the *Liquor and Gaming Legislation Amendment Act 2006* section 103 comes into operation;

Court means the Liquor Licensing Court preserved and continued under section 8 of the former Act;

former Act means this Act as in force immediately before the commencement day;

new Act means this Act as in force on the commencement day.

[Clause 1 inserted by No. 73 of 2006 s. 104.]

2. Liquor Licensing Court

(1) The Court is abolished —

- (a) on the commencement day; or
- (b) if subclause (2) applies — on the date specified in the notice under subclause (3).

(2) The Court is to continue in operation on and after the commencement day for the purposes of continuing to deal with any application or matter referred to in clause 5(1) that the Court has begun, but not completed, hearing or determining.

(3) When the Minister is satisfied that there is no further application or matter to be dealt with by the Court under clause 5(1), the Minister is to publish a notice in the *Gazette* specifying the date on which the Court is to cease to continue in operation under that subclause.

[Clause 2 inserted by No. 73 of 2006 s. 104.]

3. Liquor Licensing Court judge

The person holding office, immediately before the commencement day, as the Liquor Licensing Court judge referred to in section 9 of the former Act ceases to hold that office on the abolition of the Court under clause 2.

[Clause 3 inserted by No. 73 of 2006 s. 104.]

4. Pending cases stated and appeals to Supreme Court

- (1) If a case stated on a question of law to the Supreme Court under section 27 of the former Act has not been determined immediately before the commencement day, the question of law is to be determined under that section on or after that day by the Court of Appeal.
- (2) If an appeal made to the Supreme Court under section 28 of the former Act has not been determined immediately before the commencement day, the appeal is to be determined under that section on or after that day by the Court of Appeal.

[Clause 4 inserted by No. 73 of 2006 s. 104.]

5. Pending applications and matters

- (1) Subject to subclause (2), if the licensing authority has begun, but not completed, hearing or determining an application or matter immediately before the commencement day, the application or matter is to continue to be dealt with on or after that day in accordance with the relevant provisions of the former Act.
- (2) If the licensing authority has begun, but not completed, hearing or determining an application for a cabaret licence immediately before the commencement day, the application is to continue to be dealt with on or after that day as an application for a nightclub licence under the new Act.
- (3) If—
 - (a) an application or matter was before the licensing authority under the former Act; but

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- (b) the licensing authority has not begun to hear or determine the application or matter immediately before the commencement day,

the application or matter is to be dealt with on or after that day in accordance with the relevant provisions of the new Act.

- (4) If—

- (a) the Court determined under the former Act that an application or matter is to be referred to or further considered by the Court; and
- (b) the application or matter has not been referred to or further considered by the Court immediately before the commencement day,

then, on or after that day, the application or matter may be referred to or further considered by either the Director or the Commission under the new Act.

[Clause 5 inserted by No. 73 of 2006 s. 104.]

6. Licences granted and permits issued by Liquor Licensing Court

A licence granted or a permit issued by the Court that has effect immediately before the commencement day continues to have effect, on and after that day, as if it had been granted or issued by the Commission.

[Clause 6 inserted by No. 73 of 2006 s. 104.]

7. Cabaret licences

- (1) A cabaret licence granted under section 42 of the former Act that has effect immediately before the commencement day continues to have effect, on and after that day, as a nightclub licence granted under that section of the new Act.
- (2) A reference in a written law or other document or instrument to a cabaret licence may, where the context so requires, be read as if it had been amended to be a reference to a nightclub licence.

[Clause 7 inserted by No. 73 of 2006 s. 104.]

8. Courses of training and assessments

For the purposes of the application of paragraph (c) of section 35B(3) of the new Act to a person who was employed as a manager immediately before the commencement day, the period referred to in that paragraph is to be taken to be the period of 12 months after that day.

[Clause 8 inserted by No. 73 of 2006 s. 104.]

9. References to the Liquor Licensing Court and Liquor Licensing Court judge

- (1) A reference in a written law or other document or instrument to the Court may, where the context so requires, be read as if it had been amended to be a reference to the Commission.
- (2) A reference in a written law or other document or instrument to the Liquor Licensing Court judge, or a Liquor Licensing Court judge, may, where the context so requires, be read as if it had been amended to be a reference to the Commission.

[Clause 9 inserted by No. 73 of 2006 s. 104.]

10. Transitional regulations

- (1) If this Schedule does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the amendments made to this Act by the *Liquor and Gaming Legislation Amendment Act 2006*, the Governor may make regulations under this clause (***transitional regulations***) prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.
- (2) If the transitional regulations provide that a state of affairs specified or described in the regulations is taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.

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- (3) If the transitional regulations contain a provision referred to in subclause (2), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before the day of publication of those regulations; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.

[Clause 10 inserted by No. 73 of 2006 s. 104.]

- (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. Terms used

In this Division —

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 club means the club known as the Air Force Association (Western Australia Division) Club;

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 in the State —
- (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

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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.

[Clause 2 amended by No. 12 of 1998 s. 96; No. 73 of 2006 s. 105.]

Notes

- ¹ This is a compilation of the *Liquor Control Act 1988* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Liquor Licensing Act 1988</i> ⁷	54 of 1988	9 Dec 1988	s. 1 and 2: 9 Dec 1988; Act other than s. 1 and 2: 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 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>	12 of 1998	12 May 1998	s. 1 and 2: 12 May 1988; Act other than s. 1 and 2: 23 May 1998 (see s. 2 and <i>Gazette</i> 22 May 1998 p. 2921)

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Short title	Number and year	Assent	Commencement
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)			
<i>Liquor Licensing Amendment (Petrol Stations and Lodgers' Registers) Act 2000</i>	23 of 2000	30 Jun 2000	s. 1 and 2: 30 Jun 2000; Act other than s. 1 and 2: 30 Sep 2000 (see s. 2 and <i>Gazette</i> 29 Sep 2000 p. 5533)
<i>Courts Legislation Amendment Act 2000</i> Pt. 3 ⁸	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 Cwlth. <i>Gazette</i> 13 Jul 2001 No. S285)
<i>Liquor Licensing Amendment Act 2001</i> ⁹	26 of 2001	5 Dec 2001	s. 1 and 2: 5 Dec 2001; Act other than s. 1 and 2: 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)

Short title	Number and year	Assent	Commencement
<i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	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 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
Reprint 4: The Liquor Licensing Act 1988 as at 9 Jun 2006 (includes amendments listed above)			
<i>Criminal Investigation (Consequential Provisions) Act 2006 Pt. 10</i>	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and <i>Gazette</i> 22 Jun 2007 p. 2838)
<i>Liquor and Gaming Legislation Amendment Act 2006 Pt. 2</i>	73 of 2006	13 Dec 2006	s. 6(1)(b) and (u), 67, 68 and 107: 17 Dec 2006 (see s. 2(2) and <i>Gazette</i> 15 Dec 2006 p. 5661); s. 3-5, 6(1)(a), (c)-(t), (v)-(z), (2)-(4), 7-26, 28-66, 69-77, 79-82, 84-106 and 108-111: 7 May 2007 (see s. 2(2) and <i>Gazette</i> 1 May 2007 p. 1893) s. 78 and 83: 1 Aug 2007 (see s. 2(2) and <i>Gazette</i> 20 Jul 2007 p. 3629); s. 27: 14 Jun 2008 (see s. 2(2) and <i>Gazette</i> 13 Jun 2008 p. 2515)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 5: The Liquor Control Act 1988 as at 3 Jul 2007 (includes amendments listed above except those in the <i>Liquor and Gaming Legislation Amendment Act 2006 s. 27, 78 and 83</i>)			
<i>Legal Profession Act 2008 s. 675</i>	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)

Short title	Number and year	Assent	Commencement
<i>Food Act 2008</i> s. 148	43 of 2008	8 Jul 2008	24 Oct 2009 (see s. 2(1)(b) and (2) and <i>Gazette</i> 23 Oct 2009 p. 4157)
<i>Acts Amendment (Bankruptcy) Act 2009</i> s. 51	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Reprint 6: The Liquor Control Act 1988 as at 20 Nov 2009 (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 31	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Prostitution Amendment Act 2008</i> s. 32 ¹⁰	13 of 2008	14 Apr 2008	To be proclaimed (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89 ¹¹	39 of 2010	1 Oct 2010	To be proclaimed 1 Dec 2010 (see s. 2(b)) and Gazette 5 Nov 2010 p. 5563

² The provision in this Act repealing the *Liquor Act 1970* has been omitted under the *Reprints Acts 1984* s. 7(4)(f).

³ 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.

⁴ Repealed by the *Public Sector Management Act 1994*.

- ⁵ The *Liquor Licensing (Moratorium) Act 1983* expired on 30 June 1988 (see *Liquor Licensing (Moratorium) Order 1987* in *Gazette* 24 Dec 1987 p. 4533).
- ⁶ Repealed by the *Liquor Act 1970*, which was repealed by this Act.
- ⁷ Now known as the *Liquor Control Act 1988*; short title changed (see note under s. 1).
- ⁸ The *Courts Legislation Amendment Act 2000* s. 14 is a transitional provision that is of no further effect.
- ⁹ The *Liquor Licensing Amendment Act 2001* s. 5(2) and 6(2) are transitional provisions that are of no further effect.
- ¹⁰ On the date as at which this compilation was prepared, the *Prostitution Amendment Act 2008* s. 32 had not come into operation. It reads as follows:

32. Liquor Control Act 1988 amended

- (1) The amendment in this section is to the *Liquor Control Act 1988*.
- (2) After section 37(6) the following subsection is inserted —
- (7) An application shall not be granted where the licensing authority is satisfied that the premises to which the application relates are premises at or from which a sexual service business within the meaning of the *Sexual Services Act 2000* section 3 operates.

- ¹¹ On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

89. Various references to “Minister for Public Sector Management” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

Table

<i>Liquor Control Act 1988</i>	s. 9H(1)
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