

WESTERN AUSTRALIA

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# LIQUOR AMENDMENT ACT

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No. 49 of 1986

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AN ACT to amend the *Liquor Act 1970*.

[Assented to 1 August 1986.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## Short title

1. This Act may be cited as the *Liquor Amendment Act 1986*.

## Commencement

2. (1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Section 12 shall come into operation on such day as is fixed by proclamation.

**Principal Act**

3. In this Act the *Liquor Act 1970\** is referred to as the principal Act.

[\*Reprinted as approved 27 July 1984 and amended by Acts Nos. 10, 19, 29, 50 and 102 of 1985.]

**Section 6 amended**

4. Section 6 of the principal Act is amended in subsection (2) by deleting “Court” and substituting the following—

“ Principal Receiver of Revenue ”.

**Section 7 amended**

5. Section 7 of the principal Act is amended in subsection (1)—

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

“ “liquor” means spirits, wine or beer with an alcoholic content of more than 1.15% by volume at a temperature of 20 degrees celsius; ”; and

(b) in the definition of “specified fee”, by deleting “in the Fourth Schedule or”.

**Section 159 amended**

6. Section 159 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) The annual fee payable in respect of a licence for any year—

(a) shall, except as provided in subsection (4), in the case of a licence other than a wholesale licence, a

brewer's licence or vigneron's licence be the sum of—

- (i) the amount equal to 11% of the gross amount paid or payable by the licensee in respect of all liquor, other than prescribed liquor, purchased for the premises to which the licence relates during the period of 12 months immediately preceding the commencement of that year; and
  - (ii) the amount equal to 7% of the gross amount paid or payable by the licensee in respect of all prescribed liquor purchased for the premises to which the licence relates during the period of 12 months immediately preceding the commencement of that year;
- (b) shall, in the case of a wholesale licence and a brewer's licence, be the sum of—
- (i) the amount equal to 11% of the gross amount paid or payable in each case by persons who are not holders of a licence, for liquor, other than prescribed liquor, sold to them by the holder of a wholesale licence or a brewer's licence, during the period of 12 months immediately preceding the commencement of that year;
  - (ii) the amount equal to 7% of the gross amount paid or payable in each case by persons who are not holders of a licence, for prescribed liquor sold to them by the holder of a wholesale licence or brewer's licence, during the period of 12 months immediately preceding the commencement of that year;
- and
- (iii) a fee of \$250;
- (c) shall, in the case of a vigneron's licence, be a fee of \$100. ”;

- (b) by repealing subsection (2) and substituting the following subsection—

“ (2) In subsection (1) “prescribed liquor” means—

- (a) any undiluted and unadulterated liquor with an alcoholic content of not more than 3.8% by volume at a temperature of 20 degrees celsius;
- (b) any undiluted and unadulterated wine with an alcoholic content of not more than 6.1% by volume at a temperature of 20 degrees celsius. ”; and

- (c) in subsection (4)—

- (i) by deleting “, pursuant to paragraph (a) of subsection (1) of this section, at a percentage of the gross amount paid or payable in respect of all liquor purchased for the premises to which a licence relates” and substituting the following—

“ under subsection (1)(a) ”; and

- (ii) in paragraph (a) by deleting “so purchased” and substituting the following—

“ purchased for the premises to which a licence relates ”.

### **Section 159A inserted**

7. After section 159 of the principal Act the following section is inserted—

Licence fees for year commencing 1 July 1986

“ 159A. (1) Notwithstanding section 159(1) and (2), the annual fee payable in respect of a licence for the year commencing 1 July 1986—

- (a) shall, except as provided in section 159(4), in the case of a licence other than a tavern, store, vigneron's, wholesale or brewer's licence, be the sum of—

- (i) the amount equal to 1.75% of the gross amount paid or payable by the licensee in respect of all liquor purchased for the premises to which the licence relates during the year commencing 1 July 1985;

- (ii) the amount equal to 8.25% of the gross amount paid or payable by the licensee in respect of all liquor, other than prescribed liquor, purchased for the premises to which the licence relates during the year commencing 1 July 1985; and
  - (iii) the amount equal to 5.25% of the gross amount paid or payable by the licensee in respect of all prescribed liquor purchased for the premises to which the licence relates during the year commencing 1 July 1985;
- (b) shall, except as provided in section 159 (4), in the case of a tavern licence and a store licence, be the sum of—
- (i) the amount equal to 2% of the gross amount paid or payable by the licensee in respect of all liquor purchased for the premises to which the licence relates during the year commencing 1 July 1985;
  - (ii) the amount equal to 8.25% of the gross amount paid or payable by the licensee in respect of all liquor, other than prescribed liquor, purchased for the premises to which the licence relates during the year commencing 1 July 1985; and
  - (iii) the amount equal to 5.25% of the gross amount paid or payable by the licensee in respect of all prescribed liquor purchased for the premises to which the licence relates during the year commencing 1 July 1985;
- (c) shall, in the case of a wholesale licence and a brewer's licence, be the sum of—
- (i) the amount equal to 1.75% of the gross amount paid or payable in each case by persons who are not holders of a licence, for liquor sold to them by the holder of a wholesale licence or a brewer's licence, during the year commencing 1 July 1985;
  - (ii) the amount equal to 8.25% of the gross amount paid or payable in each case by persons who are not holders of a licence, for liquor, other than prescribed liquor, sold to them by the holder of a wholesale licence or a brewer's licence, during the year commencing 1 July 1985;
  - (iii) the amount equal to 5.25% of the gross amount paid or payable in each case by persons who are not holders of a licence, for prescribed liquor sold

to them by the holder of a wholesale licence or a brewer's licence, during the year commencing 1 July 1985; and

(iv) a fee of \$250; and

(d) shall, in the case of a vigneron's licence, be a fee of \$100.

(2) To the extent that they may be applied, subsections (1a) and (4) of section 159 apply to the assessment of fees under paragraphs (a) and (b) of subsection (1).

(3) Notwithstanding section 161(1), where a licensee, not being the holder of a wholesale licence, a brewer's licence or a vigneron's licence, elects to pay the annual fee for the year commencing 1 July 1986 in 4 amounts—

(a) the first of these amounts shall be equal to the amount referred to in subsection (1)(a)(i) or subsection (1)(b)(i), as the case may be; and

(b) the balance of the amount payable under subsection (1) shall be paid in 3 amounts, as nearly equal as practicable.

(4) Notwithstanding section 161(2), the holder of a wholesale licence or a brewer's licence who has not paid an annual licence fee for the year commencing 1 July 1986 before the coming into operation of this section shall pay as the amount of that annual licence fee—

(a) the sum of—

(i) the fee of \$250 specified in subsection (1)(c)(iv);

and

(ii) the amount of the annual licence fee, excluding the specified fee of \$60, that would have been payable had this section not come into operation,

on or before 31 July 1986; and

(b) the difference between the amount referred to in subparagraph (ii) of paragraph (a) and the sum of the amounts referred to in subparagraphs (i), (ii) and (iii) of paragraph (c) of subsection (1), within such time, not prior to 1 October 1986, as the Principal Receiver of Revenue may direct.

(5) Notwithstanding that a licensee has paid an amount as the whole of an annual licence fee for the year commencing 1 July 1986 before the coming into operation of this section, the annual licence fee payable by that licensee shall be assessed in accordance with

subsection (1) and any difference between the amount paid and the balance of that annual licence fee as so assessed shall be paid within such time, not prior to 1 October 1986, and in such manner, as the Principal Receiver of Revenue directs.

(6) For the purposes of subsection (1)(a)(iii) and (1)(b)(iii), the gross amount paid or payable by a licensee in respect of all prescribed liquor purchased for the premises to which the licence relates during the year commencing 1 July 1985 shall be taken to be 6.5% of the gross amount paid or payable by that licensee in respect of all liquor purchased for the premises to which the licence relates during the year commencing 1 July 1985, unless the licensee, on or before 31 December 1986, satisfies the Principal Receiver of Revenue that the gross amount paid or payable for that prescribed liquor during the year commencing 1 July 1985 exceeds the amount taken to be the gross amount under this subsection.

(7) For the purposes of subsection (1)(c)(iii), the gross amount paid or payable in each case by persons who are not holders of a licence for all prescribed liquor sold to them by the holder of a wholesale licence or a brewer's licence during the year commencing 1 July 1985 shall be taken to be 6.5% of the gross amount paid or payable in each case by persons who are not holders of a licence for all liquor sold to them by the holder of a wholesale licence or a brewer's licence during the year commencing 1 July 1985, unless the licensee, on or before 31 December 1986, satisfies the Principal Receiver of Revenue that the gross amount paid or payable for that prescribed liquor during the year commencing 1 July 1985 exceeds the amount taken to be the gross amount under this subsection.

(8) In this section "prescribed liquor" means—

- (a) any undiluted and unadulterated liquor with an alcoholic content of not more than 3.8% by volume at a temperature of 20 degrees celsius;
- (b) any undiluted and unadulterated wine with an alcoholic content of not more than 6.1% by volume at a temperature of 20 degrees celsius. "

## **Section 161 amended**

8. Section 161 of the principal Act is amended—

- (a) in subsection (1) by inserting after "in that event," the following—

“ subject to subsection (4), ”;

- (b) in subsection (2) by deleting “A licensee” and substituting the following—

“ Subject to subsection (4), a licensee ”; and

- (c) by inserting after subsection (3) the following subsection—

“ (4) The Principal Receiver of Revenue may, in writing, allow an extension of the time within which the amount of an annual licence fee or part of an annual licence fee shall be paid. ”.

### **Section 162 amended**

- 9.** Section 162 of the principal Act is amended—

- (a) by repealing subsections (1) and (2) and substituting the following subsections—

“ (1) If the amount of an annual licence fee, or part of an annual licence fee, is not paid within the time limited under section 159A, 161 or 164B(5)(c), as the case may be, or within such extension of that time as the Principal Receiver of Revenue has allowed, there shall be payable by the person liable to pay the fee, in addition to the amount of the annual licence fee or part of the annual licence fee due and payable—

- (a) a penalty equal to 2% of the outstanding amount for each week or part thereof during which the amount remains unpaid after the last day on which the amount is required to be paid, up to a maximum penalty equal to 10% of the outstanding amount; or

- (b) a penalty of \$50,

whichever is greater.

(1a) If the sum of the amount of an annual licence fee, or part of an annual licence fee, referred to in subsection (1) and the penalty imposed under that subsection are not paid within the period of one month after the last day on which the amount of the fee was required to be paid the licence shall, at the expiration of that period, be void and of no further effect.



(1b) The Court may, if the case so requires, on the payment of the fee or part of the fee and the penalty imposed under subsection (1), reinstate any licence that has become void by operation of subsection (1a).

(2) The Principal Receiver of Revenue may, if he is satisfied that it is proper, in the circumstances of any particular case, to do so, remit the amount or any part of the amount, of a penalty imposed under subsection (1). ”; and

(b) in subsection (3) by deleting “fine” and substituting the following—

“ penalty ”.

### **Section 163 amended**

**10.** Section 163 of the principal Act is amended—

(a) in subsection (1), by deleting paragraph (a) and substituting the following paragraph—

“ (a) the various kinds of liquor purchased for his licensed premises; ”;

(b) in paragraph (c) of subsection (2) by deleting “a wholesale licence or”;

(c) by repealing subsection (4);

(d) in subsection (5) by inserting after “159” the following—

“ or the power conferred on the Principal Receiver of Revenue under section 164B ”;

(e) by repealing subsections (7) and (8); and

(f) by inserting after subsection (9) the following subsections—

“ (10) Notwithstanding section 163A, if a licensee neglects or fails to furnish a return within the time specified in this section, there shall be payable by the licensee—

(a) a penalty equal to 2% of the annual licence fee assessed by the Principal Receiver of Revenue as payable on the furnishing of the return for each week or part thereof that the return is not furnished, up to a maximum penalty equal to 10% of that fee; or

(b) a penalty of \$50,

whichever is greater.

(11) Notwithstanding section 163A, if a licensee neglects or fails to furnish a return within a period of one month after the last day on which the return is required to be furnished under this section, the licence in respect of which the return is to be furnished is suspended until—

(a) the return is furnished; and

(b) the penalty imposed under subsection (10) is paid.

(12) Notwithstanding section 163A, if the Principal Receiver of Revenue is satisfied that an annual licence fee has or would have been underassessed by reason of—

(a) the neglect or failure of a licensee to furnish a return in accordance with this section;

or

(b) a false statement or error by a licensee in a return,

the licensee is liable, in addition, where appropriate, to the penalty referred to in subsection (10), to pay a penalty equal to the amount that, in the opinion of the Principal Receiver of Revenue, represents the amount by which the annual licence fee was or would have been underassessed.

(13) Payment of a penalty under this section shall not relieve a licensee from liability to pay any annual licence fee for which he would otherwise be liable.

(14) The Principal Receiver of Revenue may, if he is satisfied that it is proper, in the circumstances of any particular case, to do so, remit the amount or any part of the amount, of a penalty imposed under this section.

(15) A penalty imposed under this section is a debt due to the Crown, and may be sued for and recovered in any court of competent jurisdiction. ”.

### **Section 163A inserted**

**11.** After section 163 of the principal Act the following section is inserted—

#### **Offences**

“ 163A. (1) A licensee who fails or neglects to furnish a return as required under section 163 setting forth such information as is prescribed commits an offence.

Penalty: \$2 000.

(2) A licensee who knowingly includes in a return information that is false or misleading in any material particular commits an offence.

Penalty: \$2 000 and a fine equal to treble the amount of annual licence fee avoided or attempted to be avoided as a consequence of that false or misleading information. ”.

### **Section 163B inserted**

12. Before section 164 of the principal Act the following section is inserted—

#### Records

“ 163B. (1) A licensee shall make and keep records of all transactions entered into by him and involving the sale or purchase of liquor.

(2) The records shall—

- (a) be in a prescribed form or in a form approved by the Principal Receiver of Revenue;
  - (b) be maintained in a manner approved by the Principal Receiver of Revenue;
  - (c) contain the prescribed information;
- and
- (d) be made up as soon as practicable after the transactions to which they relate.

(3) Records made under subsection (1) shall be kept on the licensed premises to which they relate, together with all working papers used in making those records, by—

- (a) the licensee by whom they were made;

or

- (b) where that licensee ceases to hold the licence, any person to whom the licence is transferred,

for 6 years after the date on which the records were made.

(4) Where a person ceases to hold a licence he shall pass all records and papers referred to in subsection (3) to the person to whom the licence is transferred.

(5) A licensee who fails to keep or retain or pass records and papers as required by this section commits an offence.

Penalty: \$2 000. ”.

### **Section 164A amended**

**13.** Section 164A of the principal Act is amended in paragraph (b) of subsection (1) by deleting “Court” in both places where it occurs and substituting the following—

“ Principal Receiver of Revenue ”.

### **Section 164B inserted**

**14.** After section 164A of the principal Act the following section is inserted—

#### **Reassessment by Principal Receiver of Revenue**

“ 164B. (1) Where the Principal Receiver of Revenue is—

- (a) of the opinion that an annual licence fee was assessed incorrectly; or
- (b) of the opinion that the assessment of an annual licence fee was made on the basis of information later found to be false or misleading,

the Principal Receiver of Revenue may reassess the amount of the annual licence fee payable and such reassessment is, subject to any further reassessment by the Principal Receiver of Revenue, final and conclusive.

(2) A reassessment may be made under this section at any time within 5 years of the original assessment.

(3) Where—

- (a) an annual licence fee is reassessed after the fee, as previously assessed, has been paid in full; and

- (b) the amount paid is equal to, or greater than, the fee as reassessed,

the Principal Receiver of Revenue shall refund to the person who paid the fee any difference between the amount paid and the amount of the fee as reassessed.

(4) Where—

- (a) an annual licence fee is reassessed after part only of the fee, as previously assessed, has been paid;
- (b) the amount paid is less than the fee as reassessed; and
- (c) the sum of—
  - (i) the amount paid; and
  - (ii) the balance of the fee before reassessment,

is greater than the fee as reassessed,

that balance is reduced by the amount of the difference between the amount of the fee as previously assessed and the amount of the fee as reassessed.

(5) Where the Principal Receiver of Revenue makes a reassessment of an annual licence fee under subsection (1) and the reassessed fee is greater than the fee as previously assessed, he shall notify the person by whom the licence fee is payable of the amount of the reassessment and—

- (a) where no part of the annual licence fee has been paid, the annual licence fee payable shall be the fee reassessed by the Principal Receiver of Revenue;
- (b) where part only of the annual licence fee has been paid, the balance of the annual licence fee payable is increased by the amount of the difference between the fee as previously assessed and the fee as reassessed by the Principal Receiver of Revenue;
- (c) where the annual licence fee has been paid in full, the person by whom the licence fee is payable shall pay to the Principal Receiver of Revenue, within 30 days of receiving the notice, the balance of the annual licence fee, being the amount by which the reassessment of the Principal Receiver of Revenue is greater than the amount of the fee as previously assessed.

## (6) Where—

- (a) an annual licence fee is reassessed after the fee, as previously assessed has been paid in full; and
- (b) at the time the Principal Receiver of Revenue notifies the reassessment—
  - (i) the premises to which the licence related are no longer licensed premises; or
  - (ii) the licensee at that time is not the same person as the licensee at the time of payment of the fee to which the reassessment relates,

responsibility for payment of the amount of the difference between the amount of the fee paid and that fee as reassessed may be apportioned by the Principal Receiver of Revenue, in such manner as he thinks fit, between—

- (c) the licensee at the time the fee was previously assessed;
- and
- (d) the person who furnished the incorrect information, or failed to furnish any information.

(7) An amount payable under subsection (5) is a debt due to the Crown, and may be sued for and recovered in any court of competent jurisdiction.

(8) The Principal Receiver of Revenue shall not make a reassessment under subsection (1) with respect to a return furnished by a licensee before 1 July 1986. ”.

**Fourth Schedule repealed**

15. The Fourth Schedule to the principal Act is repealed.