



ANNO TRICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1982

No. 36 of 1982

An Act to amend the Licensing Act, 1967-1981, and to make a related amendment to the Prices Act, 1948-1981.

[Assented to 15 April 1982]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

- 1. (1) This Act may be cited as the "Licensing Act Amendment Act, 1982".
- (2) The Licensing Act, 1967-1981, is in this Act referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Licensing Act, 1967-1982".

Commencement.

- 2. (1) This Act shall come into operation on a day to be fixed by proclamation.
- (2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of s. 4—
Interpretation.

- 3. Section 4 of the principal Act is amended—
 - (a) by inserting in subsection (1) after the definition of "bar-room" the following definition:
 - "beer" means beer, ale, stout, lager, porter and any other liquor produced by the fermentation of malt (but not by a process involving distillation);;
 - and
 - (b) by inserting at the end of the definition of "wine" in subsection (1) passage ", but does not include beer or spirituous or distilled liquors".

Amendment of s. 5—
Constitution of Licensing Court.

- 4. Section 5 of the principal Act is amended by striking out subsections (5) and (6) and substituting the following subsections:

(5) The remuneration of the Judge shall be at the same rate as for a person (other than the Senior Judge) holding judicial office under the Local and District Criminal Courts Act, 1926-1982.

(6) The Governor may appoint, on an acting or temporary basis, and at a rate of remuneration determined by him, a person holding, or qualified to hold, judicial office under the Local and District Criminal Courts Act, 1926-1982, to exercise powers and functions conferred on the Judge under this Act.

5. Section 9 of the principal Act is amended by striking out subsection (1a). Amendment of s. 9—
Appeal to Supreme Court.

6. Section 12 of the principal Act is amended by striking out the passage “, and no licensed auctioneer”. Amendment of s. 12—
Disqualification for licence.

7. Section 14 of the principal Act is amended— Amendment of s. 14—
Classes of licences.

(a) by striking out from subsection (1) the passage “of seventeen classes” and substituting the passage “of eighteen classes”;
and

(b) by inserting after paragraph (p) of subsection (1) the following paragraph:

(q) “Tourist facility licence”.

8. Section 19 of the principal Act is amended— Amendment of s. 19—
Full publican’s licence.

(a) by inserting after subsection (1b) the following subsections:

(2) The court may, by endorsement on a full publican’s licence, authorize the holder to sell and dispose of liquor under the licence on a Sunday during a period of not more than two hours or during two separate periods each of which is not more than two hours and which are separated by an interval of not less than two hours.

(2a) The court shall not grant an application for an authorization under subsection (2) unless it is satisfied that—

(a) the sale and disposal of liquor by the licensee on a Sunday is required to satisfy a demand by tourists in the vicinity of the licensed premises;

and

(b) persons residing or worshipping in the vicinity of the licensed premises will not be unduly inconvenienced as a result of the granting of the application.

(2b) The periods to which an authorization under subsection (2) applies shall not be earlier than eleven o’clock in the morning nor later than eight o’clock in the evening.;

and

(b) by striking out subsection (5) and substituting the following subsections:

(5) The holder of a full publican’s licence is obliged to keep his licensed premises open to the public for the sale of liquor—

(a) on every day (except Christmas Day, Good Friday and a Sunday) between the hours of eleven o'clock in the morning and eight o'clock in the evening;

and

(b) where he is authorized to sell liquor under subsection (2) on a Sunday—during the periods in respect of which he is so authorized,

and a licensee who fails to comply with this subsection shall be guilty of an offence.

(6) Upon the hearing of an application for the grant, renewal, transfer or removal of a full publican's licence the court may attach such conditions to the licence as it thinks fit.

Amendment of
s. 20—
Limited
publican's
licence.

9. Section 20 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) Upon the hearing of an application for the grant, renewal, transfer or removal of a limited publican's licence the court may attach such conditions to the licence as it thinks fit.

Amendment of
s. 23—
Wine licence.

10. Section 23 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) Upon the hearing of an application for the grant, renewal, transfer or removal of a wine licence the court may attach such conditions to the licence as it thinks fit.

Amendment of
s. 25—
Distiller's
storekeeper's
licence.

11. Section 25 of the principal Act is amended—

(a) by striking out from subsection (2) the passage "The aggregate" and substituting the passage "Subject to subsection (4), the aggregate";

and

(b) by striking out subsection (4) and substituting the following subsections:

(4) The holder of a distiller's storekeeper's licence may, if the court so authorizes by endorsement on the licence—

(a) sell or supply liquor in any quantity for consumption on a specified part of the licensed premises with, or ancillary to, a *bona fide* meal;

or

(b) supply liquor by way of sample, free of charge and in any quantity for consumption on a specified part of the licensed premises.

(4a) An authorization may be granted in respect of a distiller's storekeeper's licence under either paragraph (a) or paragraph (b) of subsection (4) or under both those paragraphs.

Amendment of
s. 26—
Vigneron's
licence.

12. Section 26 of the principal Act is amended—

(a) by striking out from subsection (1a) the passage "Where the wine" and substituting the passage "Subject to subsection (1d), where the wine";

and

(b) by striking out subsection (1d) and substituting the following subsections:

(1d) The holder of a vigneron's licence may, if the court so authorizes by endorsement on the licence—

(a) sell or supply wine or brandy in any quantity for consumption on a specified part of the licensee's premises with, or ancillary to, a *bona fide* meal;

or

(b) supply wine or brandy by way of sample, free of charge and in any quantity for consumption on a specified part of the licensee's premises.

(1e) An authorization may be granted in respect of a vigneron's licence under either paragraph (a) or paragraph (b) of subsection (1d) or under both those paragraphs.

13. Section 27 of the principal Act is amended—

Amendment of
s. 27—
Club licence.

(a) by striking out from subsection (3) the passage "but subject to subsection (4) of this section,";

(b) by inserting in subsection (3) after the passage "all the liquor" the passage " , or all the liquor of a specified kind,";

and

(c) by striking out subsections (3a) and (4) and substituting the following subsections:

(3a) Where the court grants a club licence after the commencement of this subsection—

(a) the court shall exercise its powers under subsection (3) to impose a condition under which the licensee is required to purchase all the beer that he requires for the purposes of the club from the holder of a full publican's licence or a retail storekeeper's licence;

and

(b) the court shall not revoke the condition, or vary it so that it ceases to impose that requirement,

unless the licensee satisfies the court that it is unreasonable that such a requirement should apply in his case.

(4) A club licence that was, immediately before the commencement of this subsection, subject to a condition requiring that all liquor required for the purposes of the club be purchased from the holder of a full publican's licence or a retail storekeeper's licence shall, after the commencement of this subsection, cease to be subject to that condition but shall be subject to a condition requiring that the beer (but no other liquor) required for the purposes of the club be purchased from such a source.

(4a) The court shall not revoke or vary a condition imposed by subsection (4) unless the licensee satisfies the court that it is unreasonable that the condition should continue to apply in his case.

Amendment of
s. 33—
Theatre
licence.

14. Section 33 of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) Upon the hearing of an application for the grant, renewal, transfer or removal of a theatre licence the court may attach such conditions to the licence as it thinks fit.

Insertion of
new s. 33a.

15. The following section is inserted after section 33 of the principal Act:

Tourist
facility
licence.

33a. (1) A tourist facility licence shall authorize the licensee to sell or supply liquor in the premises, and upon conditions, specified in the licence.

(2) A tourist facility licence shall not be granted unless the court is satisfied that—

(a) by reason of—

(i) the position, nature or quality of the premises to be licensed;

or

(ii) the attractions existing or to be provided on or in the vicinity of the premises,

the licensing of those premises is likely to enhance the tourist industry in the State;

and

(b) no other single licence under this Act (other than a full publican's licence) would provide adequately for the needs of members of the public resorting to those premises.

(3) Upon the hearing of an application for the grant, renewal, transfer or removal of a tourist facility licence the court may attach such conditions to the licence as it thinks fit.

(4) Without limiting the power of the court to attach conditions to a licence granted under this section, the court may, when granting or renewing such a licence, restrict—

(a) the liquor that may be sold or supplied under the licence by reference to its class, quantity or origin;

and

(b) the class of persons to whom liquor may be sold or supplied under the licence or who may consume liquor on the licensed premises.

(5) Until an award, determination or agreement is made under the Industrial Conciliation and Arbitration Act, 1972-1979, in relation to persons employed in a business conducted under the authority of a tourist facility licence those persons shall be employed in accordance with an award, determination or agreement that applies to persons employed in a business conducted under the authority of a full publican's licence.

Amendment of
s. 37—
Licence fees.

16. Section 37 of the principal Act is amended—

(a) by striking out subsection (1a) and substituting the following subsection:

(1a) The fee for a club licence where the licensee is required under the conditions of its licence to purchase liquor, or some

of the liquor, required for the purposes of the club from the holder of a full publican's licence or a retail storekeeper's licence shall be—

(a) the fee (if any) payable under subsection (1);

or

(b) a fee of not less than one hundred dollars nor more than five hundred dollars fixed in accordance with the rules of the court,

whichever is the greater.;

and

(b) by striking out from subsection (2) the word "Where" and substituting the passage "Except as provided by subsection (1a), where".

17. Section 38 of the principal Act is amended—

(a) by striking out from subsection (1b) the passage "of this section" and substituting the passage "or fixed by the court on a previous reassessment under this subsection";

(b) by striking out from paragraph (a) of subsection (1b) the passage "the original assessment" and substituting the passage "the previous assessment";

(c) by striking out from subsection (1c) the passage "The application" and substituting the passage "An application";

and

(d) by striking out from subsection (1c) the word "fixed" and substituting the passage "first assessed".

Amendment
of s. 38—
Court to
fix percentage
fee.

18. Section 48a of the principal Act is repealed and the following section is substituted:

48a. (1) Subject to this Act, the court may, at any time, on the application of a licensee—

(a) extend the operation of the licence in a manner contemplated by this Act;

(b) approve an alteration or addition to the premises licensed;

or

(c) attach conditions to the licence or remove or vary conditions attached to the licence.

(2) Where, in the opinion of the court, it is likely that the granting of—

(a) an application under subsection (1);

or

(b) an application for a permit,

will affect substantially the nature or extent of the business conducted under the authority of a licence it shall order notice of the application to be given in the manner and form prescribed by rules of court.

Repeal of
s. 48a and
substitution
of new section.

Variation
of terms of
licence.

(3) Notice of every application for a late night permit shall be given, in the manner and form prescribed by the rules of court, to the municipal or district council for the area in which the licensed premises to which the permit will relate are situated.

(4) Where notice of an application is given under subsection (2), a person may, or, where notice of an application is given under subsection (3), the municipal or district council to which the notice is given may, in the manner and form prescribed by rules of court, object to the application.

(5) The objection must set out in detail the grounds upon which it is made.

Amendment of
s. 61—
Discretion
of court as to
applications.

19. Section 61 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “with or without conditions”;

and

(b) by inserting after subsection (1) the following subsection:

(1a) Upon the hearing of an application referred to in subsection (1), the court may attach such conditions to the licence as it thinks fit or may, subject to this Act, revoke or vary a condition that previously attached to the licence.

Amendment
of s. 66—
Permits.

20. Section 66 of the principal Act is amended by striking out from subsection (20) the definition of “entertainment” and substituting the following definition:

“entertainment” means a gathering of two or more persons at which it is proposed that liquor will be consumed.

Insertion of
new s. 66b.

21. The following section is inserted after section 66a of the principal Act:

Late night
permit.

66b. (1) The court may grant a late night permit to the holder of a full publican’s licence, a limited publican’s licence or a restaurant licence where the court is satisfied—

(a) that the licensee proposes to provide entertainment on premises of a high standard;

and

(b) that the permit will be of benefit to members of the public attending that entertainment.

(2) Subject to subsection (3), a late night permit shall authorize the sale, supply and consumption of liquor in accordance with the licence held by the permit holder on that part of the licensed premises to which the permit relates—

(a) between the hours of nine o’clock in the evening and three o’clock in the following morning;

or

(b) during such shorter period between those hours as the court fixes.

(3) Liquor shall not be sold, supplied or consumed under a late night permit at any time on Good Friday or in the evening of a Sunday or Christmas Day and the mornings following those days.

(4) The holder of a late night permit shall, if requested by a person who wishes to consume liquor under the authority of the permit, provide a *bona fide* meal with that liquor.

(5) A late night permit shall specify the part of the licensed premises to which it relates and shall be subject to the following conditions:

(a) the number of persons on that part of the licensed premises must not exceed the number prescribed in the permit;

(b) the holder of the permit shall provide entertainment on that part of the licensed premises throughout the period that the permit authorizes the sale, supply and consumption of liquor;

and

(c) such other conditions as are imposed by the court.

(6) A late night permit shall, subject to this Act, remain in force for not more than one year.

(7) The fee for a late night permit shall be as prescribed by regulation.

(8) The court may, on the complaint of the Superintendent of Licensed Premises and on being satisfied, on the balance of probabilities, that the holder of a late night permit has failed to comply with this section or with a condition of the permit, suspend or cancel the permit.

(9) The court may make an order under subsection (8) in the absence of the holder of the permit if he has been summoned to appear at the hearing of the complaint but has failed to appear in obedience to the summons.

22. Section 67 of the principal Act is amended by striking out paragraph (d) of subsection (4). Amendment of
s. 67—
Club permit.

23. Section 72 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “a licensed auctioneer” and substituting the passage “a person carrying on business as an auctioneer”;

and

(b) by striking out from subsections (3) and (4) the passage “a licensed” and substituting, in each case, the word “an”.

Amendment of
s. 72—
Permits for
auctioneers.

24. Section 82 of the principal Act is amended—

(a) by striking out from subsection (10) the word “or” between paragraphs (g) and (h);

and

(b) by inserting after paragraph (h) the following paragraph:

or

(i) tourist facility licence:.

Amendment of
s. 82—
Power of
company to
hold licence.

Insertion
of new
s. 86d.

Suspension
of licence
for
inconvenience
to nearby
occupiers.

25. The following section is inserted after section 86c of the principal Act:

86d. (1) Where it appears to the court, upon the complaint of a person referred to in subsection (4), that—

(a) a licensee is conducting business on licensed premises in a manner that unduly disturbs or inconveniences persons who reside in the vicinity of the licensed premises;

or

(b) members of the public when on licensed premises or when arriving at or departing from licensed premises have unduly disturbed or inconvenienced persons who reside in the vicinity of the premises,

the court may, by summons served on the licensee, require him to show cause why an order should not be made under this section.

(2) On the hearing of a summons under this section the court may—

(a) suspend the operation of the licence or of any permits granted to the licensee for such period as the court thinks fit;

or

(b) attach conditions to the licence or to any permits granted to the licensee,

in order to obviate or mitigate the disturbance or inconvenience.

(3) The court may make an order under this section in the absence of the licensee if he fails to appear before the court in obedience to the summons.

(4) The following persons may make a complaint under this section—

(a) the Superintendent of Licensed Premises;

(b) a police officer;

(c) a municipal or district council;

or

(d) a person acting on the written authority of not less than twenty persons who reside in the vicinity of the licensed premises.

Amendment of
s. 87—
Licensing of
Clubs.

26. Section 87 of the principal Act is amended by striking out paragraph (b) of subsection (5).

Amendment of
s. 167—
Permits for
liquor tasting.

27. Section 167 of the principal Act is amended—

(a) by striking out from paragraph (a) the passage "Prior application in the prescribed form" and substituting the passage "Subject to subsection (2), application";

(b) by striking out paragraphs (b) and (c) and substituting the following paragraphs:

(b) If the applicant is not the occupier of the premises the application must be accompanied by the written consent of the occupier:

- (c) The permit shall authorize the supply of liquor to the public for the purpose of tasting only;
- (c) by striking out paragraphs (g) and (h) and substituting the following paragraphs:
- (g) The liquor shall be supplied free of charge:
- (h) A person attending premises to taste liquor supplied pursuant to a permit under this section shall not be charged for admission to, or for entertainment or refreshments provided on, those premises;
- (d) by striking out from paragraph (i) the passage "the holding of the proposed gathering" and substituting the passage "the function at which liquor is to be supplied for tasting";

and

- (e) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:
- (2) The court may, if it considers that, in all the circumstances, it is reasonable to do so, grant an application for a permit under this section where the application is made less than seven days before the day, or the first day, on which the permit is to have effect.

28. Section 179 of the principal Act is amended by striking out paragraph (f).

Amendment of s. 179—
Duties of inspectors.

29. The following sections are inserted after section 179 of the principal Act:

Insertion of new ss. 179a and 179b.

179a. (1) Every licensee shall—

Records.

(a) record, in the English language in a clear and legible manner—

(i) particulars relating to the quantity, price and identity of liquor dealt with by him;

and

(ii) such other particulars as may be prescribed;

and

(b) retain those records in South Australia for a period of three years (whether he continues to be licensed under this Act during that period or not) in a form that permits quick and convenient reference.

(2) A person who fails to comply with a requirement of this section is guilty of an offence.

179b. (1) An inspector may examine, make copies of or take extracts from records and for that purpose may require a person in possession of records to produce them to him.

Inspection of records, etc.

(2) An inspector may require a licensee, the manager of licensed premises, an employee of a licensee or, where a licensee is a company, a director or other officer of the licensee to answer questions relating to records or to the business conducted on licensed premises.

(3) A person may decline to answer a question put to him under this section by an inspector if the answer to the question would tend to incriminate him of an offence.

(4) An inspector may, at any reasonable time, enter premises (whether licensed or not) for the purpose of exercising his powers under this section.

(5) In this section—

“licensee” includes a person who was previously licensed under this Act:

“records” means records made in accordance with a requirement of this Act.

Repeal of
s. 182.

30. Section 182 of the principal Act is repealed.

Insertion of
new s. 185a.

31. The following section is inserted after section 185 of the principal Act:

Penalty
for
obstructing
inspector.

185a. A person who—

(a) fails to produce records or to answer truthfully questions as required under this Act;

or

(b) hinders or obstructs an inspector in the performance of his duties or the exercise of his powers under this Act,

is guilty of an offence.

Amendment
of s. 189—
Amendment to
Prices Act,
1948-1981.

32. Section 189 of the principal Act is amended by striking out paragraph (b).

Amendment
of s. 194—
Penalty
for not
appearing
as witness.

33. Section 194 of the principal Act is amended by striking out from subsection (1) the passage “Any person duly summoned to attend and give evidence in the matter of any application for the grant, renewal, transfer, or removal of any licence or permit” and substituting the passage “A person summoned by the court to attend and give evidence at any proceedings of the court”.

Amendment of
Prices Act,
1948-1981.

34. (1) Section 22f of the Prices Act, 1948-1981, is repealed.

(2) The Prices Act, 1948-1981, as amended by this section, may be cited as the “Prices Act, 1948-1982”.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

W. R. CROCKER, Governor's Deputy