



LIQUOR LICENSING ACT 1997

No. 65 of 1997

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ANNO QUADRAGESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1997

No. 65 of 1997

An Act to regulate the sale, supply and consumption of liquor; to repeal the Liquor Licensing Act 1985; and for other purposes.

[Assented to 7 August 1997]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Liquor Licensing Act 1997*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Objects of this Act

3. The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, in particular—

- (a) to encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor, to develop and implement principles directed towards that end (the **responsible service and consumption principles**) and minimise the harm associated with the consumption of liquor; and
- (b) to further the interests of the liquor industry and industries with which it is closely associated—such as tourism and the hospitality industry—within the context of appropriate regulation and controls; and
- (c) to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and
- (d) to ensure as far as practicable that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life; and
- (e) to encourage a competitive market for the supply of liquor.

Interpretation

4. In this Act, unless the contrary intention appears—

"**adjacent**"—places or premises are adjacent if they adjoin (either in a horizontal or vertical plane) or if they are in close proximity to each other;

"**assessment period**" means a period of 12 months commencing on the first day of July in one year and ending on the thirtieth day of June in the next;

"**authorised trading hours**", in relation to a licence, means the hours during which the sale, supply or consumption of liquor is authorised by the licence;

"**beer**" means beer, ale, lager, stout or liquor of any other kind produced by brewing;

"**beneficiary**" includes an object of a discretionary trust;

"**close associate**"—*see section 7*;

"**Commissioner**" means the Liquor and Gaming Commissioner;

"**council**" means a municipal or district council;

"**Court**" means the Licensing Court of South Australia;

"**designated dining area**" means a part of licensed premises designated by the licensing authority as a dining area;

"**designated reception area**" means a part of licensed premises designated by the licensing authority as a reception area;

"**director**" of a body corporate means a member of the board or committee of management of the body corporate;

"**entertainment**" means—

- (a) a dance, performance, exhibition or event (including a sporting contest) calculated to attract and entertain members of the public; or
- (b) a visual display but not if provided by means of a television screen not exceeding dimensions fixed under the regulations;

"**extended trade**" in liquor means the sale of liquor—

- (a) between midnight and 5 am on any day; or
- (b) between 8 am and 11 am, or 8 pm and midnight, on a Sunday; or
- (c) between midnight and 2 am on Christmas Day,

(but does not include the sale of liquor to a lodger or to a diner with or ancillary to a meal);

"**extended trading authorisation**" means a condition of a licence specifically authorising extended trade in liquor;

"function" means a gathering of people on any occasion at which liquor is to be sold, supplied or consumed and for which licensed premises, or a part of licensed premises, has been booked in advance;

"gross turnover" means the gross proceeds of the sale of liquor under a licence;

"inspector" means a person authorised by the Commissioner to exercise the powers of an inspector under this Act;

"Judge" means the Licensing Court Judge or some other Judge with authority to exercise the jurisdiction of the Court;

"licence" means a licence under this Act;

"licence fee" means a licence fee payable under this Act and includes a fee payable on surrender or revocation of a licence;

"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 person" or **"licensee"** means a person who holds a licence (including a temporary or limited licence) under this Act and includes—

- (a) if a licence is held by a trustee—the trust; or
- (b) a person authorised to carry on business under a licence;

"licensed premises" means premises in respect of which a licence is in force and includes premises for which the licence is currently under suspension;

"licensing authority" means—

- (a) in relation to a matter that is to be decided by the Court under this Act—the Court;
- (b) in relation to any other matter—the Commissioner;

"Licensing Court Judge" means a District Court Judge designated by proclamation as the Licensing Court Judge;

"liquor" means a beverage which at 20° Celsius contains more than 1.15 per cent alcohol by volume and includes any substance declared by regulation to be liquor for the purposes of this Act;

"liquor merchant" means—

- (a) a person who holds a licence under this Act (except a person who holds only a limited licence); or
- (b) a person who is authorised under the law of another State, or a Territory, of the Commonwealth to sell liquor;

"live entertainment" means—

- (a) a dance or other similar event at which a person is employed or engaged to play music (live or pre-recorded); or
- (b) a performance at which the performers, or at least some of them, are present in person; or
- (c) a performance of a kind declared by regulation to be live entertainment;

"lodger"—*see section 5*;

"low alcohol liquor" means liquor in which the concentration of alcohol does not exceed a level fixed by regulation;

"manager" of licensed premises includes a person approved by the licensing authority to supervise and manage the business conducted under the licence;

"meal" means a genuine meal eaten while seated at a table;

"officer" means—

- (a) in relation to a body corporate—a director of the body corporate;
- (b) in relation to a trust—a trustee;

"packaged liquor" means liquor in sealed containers for consumption off licensed premises;

"party" includes—

- (a) an intervener or an objector;
- (b) in relation to an application for the transfer of a licence—the transferor;

"police officer" includes any member of the police force;

"premises" includes—

- (a) land;
- (b) any building or structure on land;
- (c) a public conveyance;
- (d) a part of premises;

"public conveyance" means an aeroplane, vessel, bus, train, tram, or other vehicle used for public transport or available for hire by members of the public;

"public place" means a place (not being licensed premises) to which the public has access (whether or not admission is obtained by payment of money);

"reception" includes a convention, conference or similar function—

- (a) at which people gather in substantial numbers for a particular purpose; and
- (b) for which licensed premises, or a part of licensed premises, has been booked in advance,

(but does not include a function of which the consumption of liquor is the sole or a predominant purpose);

"records" means—

- (a) books, papers or documents; or
- (b) microfilm records; or
- (c) the contents (in an intelligible form) of records that are kept by computer; or
- (d) records of a kind declared by regulation to be records to which this definition applies;

"regulated premises" means—

- (a) licensed premises; or
- (b) a restaurant, cafe or shop; or
- (c) an amusement parlour or amusement arcade; or
- (d) a public place—
 - (i) to which admission is gained on payment of a charge, presentation of a ticket or compliance with some other condition; or
 - (ii) in which entertainment or refreshments are provided, or are available, at a charge; or
 - (iii) that is used in some other way for the purpose of financial gain; or
- (e) a public conveyance; or
- (f) premises of a kind declared by regulation to be regulated premises,

and includes an area appurtenant to any such premises;

"related body corporate"—bodies corporate are related for the purposes of this Act if they are related within the meaning of the *Corporations Law*;

"relevant assessment period", in relation to a licence period, means the assessment period ending on the thirtieth day of June last preceding the commencement of that licence period;

"retail"—a sale is by retail if made to a person who is not a liquor merchant;

"retail licence" means a licence other than a wholesale liquor merchant's licence, a producer's licence or a special circumstances licence authorising the sale of liquor by wholesale;

"sell" includes—

- (a) to barter or exchange;
- (b) to offer or expose for sale, barter or exchange;
- (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit;
- (d) to supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain;

"spirits" means liquor of any kind produced wholly or in part by distillation;

"trust"—a trust is considered for the purposes of this Act as a single entity consisting of the trustees and the beneficiaries;

"trust or corporate entity" means a trust or a body corporate;

"unlicensed person" means a person who does not hold a licence under this Act;

"unlicensed premises" means premises in respect of which a licence is not in force under this Act (but if a licence for the premises is under suspension, the premises are not to be regarded as unlicensed premises for the period of the suspension);

"wholesale"—a sale is by wholesale if made to a liquor merchant;

"wine" includes mead, cider, perry and any other fermented liquor produced from fruit, vegetables, berries or honey but does not include a product produced by blending wine with other beverages.

Lodgers

5. (1) A person is regarded as a lodger in licensed premises at a particular time if, and only if—

- (a) the person has spent the previous night at the licensed premises or is booked to spend the next night (or the present night) at the licensed premises; and
- (b) the person's name has been entered in the record of lodgers required to be kept by the licensee under this Act.

(2) None of the following persons is a lodger:

- (a) the licensee or a member of the licensee's family;
- (b) a manager of the licensed premises or a member of the manager's family;
- (c) an employee of the licensee or a member of the employee's family.

Persons with authority in a trust or corporate entity

6. (1) A person occupies a position of authority in a trust or corporate entity if the person—

(a) in the case of a body corporate—

- (i) is a director of the body corporate;
- (ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs;
- (iii) manages, or is to manage, the business of the body corporate to be conducted under a licence;
- (iv) if the body corporate is a proprietary company—is a shareholder in the body corporate; or

(b) in the case of a trust—is a trustee or beneficiary of the trust.

(2) However—

- (a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not for that reason to be regarded as a person occupying a position of authority; and
- (b) a charitable organisation that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.

Close associates

7. Two persons are close associates if—

- (a) one is a spouse, parent, brother, sister or child of the other; or
- (b) they are members of the same household; or
- (c) they are in partnership; or
- (d) they are joint venturers; or
- (e) they are related bodies corporate; or
- (f) one is a body corporate and the other is a director, manager, secretary or public officer of the body corporate; or
- (g) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
- (h) one is a body corporate whose shares are listed on a stock exchange and the other is a substantial shareholder (within the meaning of the Corporations Law) in the body corporate; or
- (i) one has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or

- (j) one is in a position to exercise control of significant influence over the conduct of the other; or
- (k) a chain of relationships can be traced between them under any one or more of the above paragraphs.

PART 2
LICENSING AUTHORITIES

DIVISION 1—THE COMMISSIONER AND STAFF

The Liquor and Gaming Commissioner

8. (1) The office of *Liquor and Gaming Commissioner* continues.

(2) The Commissioner is responsible to the Minister for the administration of this Act.

(3) The Commissioner is appointed, and holds office, in accordance with the *Public Sector Management Act 1995*.

Inspectors and other officers

9. (1) The Commissioner's staff consists of the inspectors and other officers necessary to assist the Commissioner in the administration and enforcement of this Act.

(2) The Commissioner must provide each inspector with a certificate of identity and an inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, powers under this Act, produce that certificate.

Delegation

10. (1) The Commissioner may delegate powers or functions (under this Act or any other Act or instrument) to any person.

(2) A delegation under this section—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the Commissioner to act personally in any matter; and

(c) is revocable at will.

Disclosure of information

11. The Commissioner may disclose information gained in the course of the administration of this Act—

(a) to authorities responsible for the administration of liquor licensing laws in other States and Territories of the Commonwealth; and

(b) to any other authorities that may require the information for the purpose of discharging duties of a public nature; and

(c) if the information is disclosed in a form that does not identify the person to whom it relates—to any other person, or in any other way, the Commissioner (in the exercise of an absolute discretion) considers appropriate in the public interest.

DIVISION 2—THE LICENSING COURT OF SOUTH AUSTRALIA

Continuation of Court

12. The Licensing Court of South Australia continues in existence.

Court to be court of record

13. The Court is a court of record.

Constitution of the Court

14. (1) The Court is constituted of—

- (a) the Licensing Court Judge; or
- (b) some other District Court Judge, or former District Court Judge, with authority to exercise the jurisdiction of the Court.

(2) The Court, separately constituted of different Judges, may sit at the same time to hear and determine separate proceedings.

Judges

15. (1) The Governor may, by proclamation—

- (a) designate a District Court Judge as the Licensing Court Judge; or
- (b) confer on other District Court Judges, or former District Court Judges, authority to exercise the jurisdiction of the Court; or
- (c) vary or revoke a proclamation under this section.

(2) If a proclamation under subsection (1)(a) or (b) so provides, it lapses at the end of a specified period.

Jurisdiction of the Court

16. The Court has the jurisdiction conferred on it by this Act or any other Act.

**DIVISION 3—DIVISION OF RESPONSIBILITIES BETWEEN
THE COMMISSIONER AND THE COURT****Division of responsibilities between the Commissioner and the Court**

17. The powers and responsibilities of a licensing authority under this Act are divided between the Commissioner and the Court as follows:

- (a) the Commissioner is to determine—
 - (i) all non-contested matters except those that are, under some other provision of this Act, to be determined by the Court; and
 - (ii) all contested applications for a limited licence;
- (b) if an application is contested (and the application does not relate to a matter that is, under some other provision of this Act, within the exclusive jurisdiction of the Court), the Commissioner must make reasonable attempts to achieve agreement between the parties by conciliation and—
 - (i) if the differences between the parties are resolved by conciliation, the Commissioner must determine the matter so as to reflect the agreement reached by conciliation; and

- (ii) if the differences between the parties are not resolved by conciliation—
 - if the dispute arises on an application for a limited licence—the Commissioner must determine the application; and
 - if the dispute arises on an application (but not an application for a limited licence) and the parties request the Commissioner to determine the application—the Commissioner must determine the application; and
 - in any other case—the Commissioner must refer the matter for hearing and determination by the Court;
- (c) the Court must determine the following matters:
 - (i) all matters referred for hearing and determination by the Court under paragraph (b); and
 - (ii) all other matters that are, under some other provision of this Act, to be determined by the Court.

DIVISION 4—PROCEEDINGS BEFORE THE COMMISSIONER

Proceedings before the Commissioner

18. In proceedings under this Act, the Commissioner—

- (a) must act without undue formality; and
- (b) is not bound by the rules of evidence but may inform himself or herself on any matter as the Commissioner thinks fit.

Powers of Commissioner with respect to witnesses and evidence

19. (1) The Commissioner may exercise the following powers:

- (a) by summons, require any person to attend before the Commissioner at a time and place specified in the summons for the purpose of giving evidence relevant to proceedings before the Commissioner;
- (b) by summons, require the production of records;
- (c) inspect records, and take copies of, or extracts from, them;
- (d) require any person to take an oath or affirmation verifying evidence given, or to be given, before the Commissioner;
- (e) require any person appearing before the Commissioner to answer a question put by the Commissioner or some other person.

(2) A person who—

- (a) having been served with a summons to attend before the Commissioner fails, without reasonable excuse, to attend in obedience to the summons; or

- (b) having been served with a summons to produce records fails, without reasonable excuse, to comply with the summons; or
- (c) refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Commissioner,

is guilty of an offence.

Maximum penalty: \$2 500.

Representation

20. (1) A party to proceedings before the Commissioner may appear in those proceedings—

- (a) personally; or
- (b) by counsel; or
- (c) if the party is a member of a genuine association formed to promote or protect the interests of a section of the liquor industry, or employees in the liquor industry—by an officer or employee of that association; or
- (d) if the party is a trust or corporate entity—by an officer or employee of the entity; or
- (e) by leave of the Commissioner—by any other person.

(2) The Commissioner of Police may be represented in proceedings before the Commissioner by a police officer.

Power of Commissioner to refer questions to the Court

21. The Commissioner may refer for hearing and determination by the Court—

- (a) any proceedings that involve questions of substantial public importance; or
- (b) any question of law that arises in proceedings before the Commissioner; or
- (c) any other matter that should, in the public interest or in the interests of a party to the proceedings, be heard and determined by the Court.

Application for review of Commissioner's decision

22. (1) A party to proceedings before the Commissioner who is dissatisfied with a decision made by the Commissioner in the proceedings may apply to the Court for a review of the Commissioner's decision.

(2) However, if the Commissioner's decision relates to a subject on which the Commissioner has an absolute discretion, the decision, insofar as it was made in the exercise of that discretion, is not reviewable by the Court.

(3) An application for review of a decision of the Commissioner must be made within 1 month after the party receives notice of the decision or a longer period allowed by the Court.

(4) A review is in the nature of a rehearing except where the review relates to the assessment or reassessment of a licence fee by the Commissioner, in which case the onus lies upon the applicant for the review to establish that the assessment or reassessment is incorrect.

- (5) On a review, the Court may exercise any one or more of the following powers:
- (a) affirm, vary or quash the decision subject to the review;
 - (b) make any decision that should, in the opinion of the Court, have been made in the first instance;
 - (c) refer a matter back to the Commissioner for rehearing or reconsideration;
 - (d) make any incidental or ancillary order.

DIVISION 5—PROCEEDINGS BEFORE THE COURT

Proceedings before the Court

23. In proceedings before the Court (under this Act or any other Act) the Court—

- (a) must act without undue formality; and
- (b) is not bound by the rules of evidence but may inform itself on any matter as it thinks fit.

Powers with respect to witnesses and evidence

24. (1) The Court may exercise any of the following powers:

- (a) by summons, require any person to attend before the Court at a time and place specified in the summons to give evidence relevant to proceedings before the Court;
- (b) by summons, require the production of records;
- (c) inspect records, and take copies of, or extracts from, them;
- (d) require any person to take an oath or affirmation verifying evidence given, or to be given, before the Court;
- (e) require any person appearing before it to answer a question put by the Court or some person appearing before the Court.

(2) A person who—

- (a) having been served with a summons to attend before the Court fails, without reasonable excuse, to attend in obedience to the summons; or
- (b) having been served with a summons to produce records fails, without reasonable excuse, to comply with the summons; or
- (c) refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Court,

is guilty of an offence.

Maximum penalty: \$2 500.

(3) A summons may be issued on behalf of the Court, on the application of any party to proceedings before the Court, by—

- (a) a Judge; or
- (b) the Commissioner.

Representation

25. (1) A party to proceedings before the Court may appear in the proceedings—

- (a) personally; or
- (b) by counsel; or
- (c) if the party is a member of a genuine association formed to promote or protect the interests of a particular section of the liquor industry, or employees in the liquor industry—by an officer or employee of that association; or
- (d) if the party is a trust or corporate entity—by an officer or employee of the entity; or
- (e) by leave of the Court—by any other person.

(2) The Commissioner of Police may be represented in proceedings before the Court by a police officer.

Power to award costs

26. If, in the opinion of the Court, a person has brought proceedings, or has exercised the right to object to an application, frivolously or vexatiously, the Court may award costs against that person.

Appeal from orders and decisions of the Court

27. (1) A party to proceedings before the Court may, by leave of the Supreme Court, appeal against any order or decision of the Court.

(2) However, no appeal lies against—

- (a) an order or decision of the Court made on a review of a decision of the Commissioner under this or some other Act; or
- (b) an order or decision of the Court excluded from appeal under a provision of this or some other Act.

(3) An appeal must be commenced within the time, and in accordance with the procedure, prescribed by rules of the Supreme Court.

(4) An appeal under this section must be heard and determined by the Full Court.

(5) On an appeal under this section, the Supreme Court may—

- (a) affirm, vary or quash the order or decision subject to the appeal;
- (b) make any order or decision that should, in the opinion of the Supreme Court, have been made in the first instance;

- (c) remit the subject matter of the appeal for further hearing by the Court;
- (d) make any incidental or ancillary order.

Case stated on question of law

28. (1) The Court may state a case on a question of law to the Supreme Court.

(2) A question of law arising on a case stated under this section must be determined by the Full Court.

**PART 3
LICENCES**

DIVISION 1—REQUIREMENT TO HOLD LICENCE

Requirement to hold licence

29. A person who sells liquor without being licensed under this Act to do so is guilty of an offence.

Maximum penalty: \$20 000.

Cases where licence is not required

30. A licence is not required for the sale of liquor—

- (a) where the liquor is sold for medicinal purposes—
 - (i) by a registered pharmaceutical chemist; or
 - (ii) by or on the prescription of a registered medical practitioner or registered dentist; or
- (b) where the liquor is sold to a religious organisation or a representative of a religious organisation for sacramental or other similar religious purposes; or
- (c) where the 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; or
- (d) where the liquor is sold in Parliament House by the proper authority; or
- (e) where the liquor is an allowance supplied by the master of a ship to a member of the ship's crew; or
- (f) where the liquor is supplied to a patient in a hospital by or under the authority of the body responsible for administering the hospital; or
- (g) where the liquor is won as a prize in a game of skill or chance; or
- (h) where the sale is exempted by the regulations from the application of this Act.

DIVISION 2—LICENCES

Authorised trading in liquor

31. (1) A licence authorises the licensee to sell and supply liquor in accordance with the terms and conditions of the licence.

(2) Licences are to be of the following classes:

- (a) hotel licence;
- (b) residential licence;
- (c) restaurant licence;

- (d) entertainment venue licence;
- (e) club licence;
- (f) retail liquor merchant's licence;
- (g) wholesale liquor merchant's licence;
- (h) producer's licence;
- (i) special circumstances licence;
- (j) limited licence.

Hotel licence

32. (1) A hotel licence authorises the licensee—

- (a) to sell liquor on the licensed premises for consumption on or off the licensed premises on any day (except Sunday, Good Friday and Christmas Day) between 5 am and midnight; and
- (b) to sell liquor on the licensed premises for consumption on or off the licensed premises on a Sunday (not being Christmas Day) between 11 am and 8 pm or if the Sunday is New Year's Eve, between 11 am and midnight; and
- (c) to sell liquor on the licensed premises for consumption on or off the licensed premises on Christmas day between 9 am and 11 am; and
- (d) to sell liquor on the licensed premises for consumption on or off the licensed premises on New Year's day between the hours of midnight and 2 am (in addition to the hours authorised under paragraph (a) or (b)); and
- (e) to sell liquor at any time on the licensed premises to a lodger for consumption on or off the licensed premises; and
- (f) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and
- (g) to sell liquor at any time in a designated reception area to a person attending a reception for consumption in that area; and
- (h) if an extended trading authorisation is in force—
 - (i) to sell liquor for consumption on the licensed premises in accordance with the authorisation; and
 - (ii) subject to any conditions of the authorisation excluding or limiting the authority conferred by this subparagraph—to sell liquor on a Sunday (not being Christmas Day) for consumption off the licensed premises between 8 am and 11 am and between 8 pm and 9 pm.

- (2) A hotel licence is subject to the following conditions:
- (a) a condition requiring the licensee to keep the licensed premises open to the public for the sale of liquor on every day (except Good Friday, Christmas Day or Sunday) between 11 am and 8 pm;
 - (b) a condition requiring the licensee to provide a meal, at the request of a member of the public, between noon and 2 pm, and between 6 pm and 8 pm, on any day on which the licensed premises are open to the public for the sale of liquor.
- (3) However—
- (a) the licensing authority may exempt a licensee from the obligation to keep the licensed premises open for the sale of liquor to an extent the authority considers appropriate in the circumstances of a particular case; and
 - (b) a licensee is not required by a condition under this section to provide a meal for a person if—
 - (i) the person appears to be intoxicated; or
 - (ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the meal; or
 - (iii) the licensee cannot comply with the request because of prior obligations to provide meals for others; or
 - (iv) there is some other proper reason for not complying with the request; and
 - (c) the licensing authority may exempt a licensee from the obligation to provide meals wholly or to a specified extent.

Residential licence

33. (1) A residential licence—

- (a) authorises the licensee to sell liquor on the licensed premises at any time—
 - (i) to a lodger for consumption on or off the licensed premises; and
 - (ii) to a diner in a designated dining area for consumption with or ancillary to a meal provided by the licensee in that area; and
 - (iii) to a person attending a reception for consumption in a designated reception area; and
- (b) if the conditions of the licence so provide—authorises the licensee to sell liquor on any day except Good Friday and Christmas Day for consumption on the licensed premises by persons—
 - (i) seated at a table; or
 - (ii) attending a function at which food is provided,

(but extended trading in liquor is not authorised under this paragraph unless an extended trading authorisation is in force).

(2) A residential licence is subject to the following conditions:

- (a) the licensee must provide accommodation for a member of the public on request;
- (b) the licensee must, if a lodger requests breakfast or an evening meal, comply with the request (but the licensee is not obliged to provide breakfast before 8 am or after 9.30 am and is not obliged to provide an evening meal before 6 pm or after 8 pm).

(3) However—

- (a) a licensee is not required by a condition under this section to provide accommodation or a meal for a person if—
 - (i) the person appears to be intoxicated; or
 - (ii) the licensee has reasonable grounds to believe that the person cannot or will not pay for the accommodation or the meal; or
 - (iii) the licensee cannot comply with the request because of prior obligations to provide accommodation or meals for others; or
 - (iv) there is some other proper reason for not complying with the request; and
- (b) the licensing authority may exempt the licensee from the obligation to provide accommodation or meals wholly or to a specified extent.

Restaurant licence

34. (1) A restaurant licence—

- (a) authorises the consumption of liquor on the licensed premises at any time with or ancillary to a meal provided by the licensee; and
- (b) authorises the licensee to sell liquor at any time for consumption on the licensed premises with or ancillary to a meal provided by the licensee; and
- (c) if the conditions of the licence so provide—authorises the licensee to sell liquor on any day except Good Friday and Christmas Day for consumption on the licensed premises by persons—
 - (i) seated at a table; or
 - (ii) attending a function at which food is provided,

(but extended trading in liquor is not authorised under this paragraph unless an extended trading authorisation is in force).

(2) It is a condition of a restaurant licence that the business conducted at the licensed premises must consist primarily and predominantly of the regular supply of meals to the public.

Entertainment venue licence

35. (1) An entertainment venue licence authorises the licensee—

- (a) to sell liquor at any time for consumption on the licensed premises, in a designated dining area, with or ancillary to a meal provided by the licensee; and
- (b) to sell liquor on the licensed premises for consumption on the licensed premises at a time when live entertainment is provided on the licensed premises between 9 pm on one day and 5 am on the next but not at any time falling between—
 - (i) 9 pm on Christmas Day and 5 am on the following day;
 - (ii) 9 pm on Maundy Thursday and 5 am on Good Friday;
 - (iii) 9 pm on Good Friday and 5 am on the following day.

(2) An entertainment venue licence must be subject to the following conditions:

- (a) a condition that the business conducted at the licensed premises must consist primarily and predominantly of the provision of live entertainment; and
- (b) a condition requiring the licensee to implement appropriate policies and practices to guard against the harmful and hazardous use of liquor; and
- (c) any conditions the licensing authority considers appropriate to prevent undue offence, annoyance, disturbance noise or inconvenience; and
- (d) any other conditions the licensing authority considers appropriate in view of the nature and extent of the trade authorised under the licence.

Club licence

36. (1) A club licence authorises the licensee—

- (a) to sell liquor on the licensed premises for consumption on the licensed premises on any day (except Sunday, Good Friday and Christmas Day) between 5 am and midnight; and
- (b) to sell liquor on the licensed premises for consumption on the licensed premises on a Sunday (not being Christmas Day) between 11 am and 8 pm or if the Sunday is New Year's Eve, between 11 am and midnight; and
- (c) to sell liquor on the licensed premises for consumption on the licensed premises on Christmas day between 9 am and 11 am; and
- (d) to sell liquor on the licensed premises for consumption on the licensed premises on New Year's day between the hours of midnight and 2 am (in addition to the hours authorised under paragraph (a) or (b)); and
- (e) to sell liquor at any time on the licensed premises to a lodger for consumption on or off the licensed premises; and
- (f) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and

- (g) to sell liquor at any time in a designated reception area to a person attending a reception for consumption in that area; and
- (h) if an extended trading authorisation is in force—to sell liquor for consumption on the licensed premises in accordance with the authorisation; and
- (i) if the licensing authority is satisfied that members of the club cannot, without great inconvenience, obtain supplies of packaged liquor from a source other than the club and includes in the licence a condition authorising the sale of liquor under this paragraph—to sell liquor on any day except Good Friday and Christmas Day to a member of the club for consumption off the licensed premises.

(2) However, a club licence does not authorise extended trade in liquor unless the licence contains an extended trading authorisation.

Retail liquor merchant's licence

37. (1) A retail liquor merchant's licence authorises the licensee—

- (a) to sell liquor on any day except Good Friday and Christmas Day between the hours of 8 am and 9 pm, or over a continuous period authorised by the licensing authority, for consumption off the licensed premises (but a period authorised by the licensing authority must begin no earlier than 5 am, must end no later than midnight, and must not exceed 13 hours); and
- (b) to sell or supply liquor by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority.

(2) It is a condition of a retail liquor merchant's licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.

Exceptions—

1. Goods may be sold in the same premises if they are of the kind normally associated with, and incidental to, the sale of liquor (eg glasses, decanters, cheeses and pates).
2. The licensing authority may grant an exemption from the above condition if satisfied that the demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption.

Wholesale liquor merchant's licence

38. (1) A wholesale liquor merchant's licence authorises the licensee—

- (a) to sell liquor on the licensed premises to a liquor merchant at any time for consumption off the licensed premises; and
- (b) to sell liquor on the licensed premises between the hours of 8 am and 9 pm on any day (other than Good Friday and Christmas Day) to a person other than a liquor merchant for consumption off the licensed premises; and

- (c) to sell or supply liquor by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority.
- (2) A wholesale liquor merchant's licence is subject to the following conditions—
- (a) liquor must not be sold to a purchaser (other than a liquor merchant) in an aggregate quantity of less than 4.5 litres; and
 - (b) at least 90 per cent of the licensee's gross turnover from the sale of liquor in each assessment period (excluding sales of liquor to the licensee's own employees) must be derived from the sale of liquor to liquor merchants.

Producer's licence

39. (1) A producer's licence authorises the licensee—

- (a) to sell liquor produced by the licensee on the licensed premises at any time for consumption off the licensed premises; and
- (b) if the conditions of the licence so provide—to sell liquor produced by the licensee, at any time, for consumption in a designated dining area with or ancillary to a meal; and
- (c) to sell or supply liquor by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority.

(2) Liquor is to be regarded as produced by a licensee if—

- (a) in the case of beer—it was brewed by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product;
- (b) in the case of spirits—it was produced by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product;
- (c) in the case of wine—
 - (i) the wine was fermented by or under the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product; or
 - (ii) the wine was produced by blending wine produced from Australian primary produce and a substantial proportion of the blended wine was fermented by or under the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product;

and the licensee (or a related body corporate) assumed the financial risk of the production;

- (d) in the case of other liquor—it was produced by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product.

- (3) The premises for which a producer's licence is granted must be—
- (a) premises the licensee uses, or is to use in the near future, for the production of liquor; or
 - (b) premises adjacent to such premises or other premises approved by the licensing authority.

Special circumstances licence

40. (1) A special circumstances licence authorises the licensee to sell liquor for consumption on or off the licensed premises in accordance with the terms and conditions of the licence.

(2) A special circumstances licence cannot be granted unless the applicant satisfies the licensing authority that—

- (a) a licence of no other category (either with or without an extended trading authorisation) could adequately cover the kind of business proposed by the applicant; and
- (b) the proposed business would be substantially prejudiced if the applicant's trading rights were limited to those possible under a licence of some other category.

(3) A special circumstances licence does not authorise extended trade in liquor unless the licence contains an extended trading authorisation.

Limited licence

41. (1) A limited licence authorises the licensee to sell liquor in accordance with the terms and conditions of the licence in circumstances in which the sale of liquor would otherwise be unlawful.

(2) A limited licence may only be granted for a special occasion or series of special occasions.

(3) A limited licence is not to be granted for a term of more than one month unless the licensing authority is satisfied that there are special circumstances justifying a longer term.

(4) A limited licence may be granted either to a person who holds a licence of some other class or to an unlicensed person.

(5) A limited licence is not to be granted if—

- (a) the licence is sought for a function organised by a particular person or group; and
- (b) limited licences have been granted for previous functions organised by the same person or group; and
- (c) the licensing authority is of the opinion that the trade to be authorised by the licence would, in view of the frequency of applications, be better authorised by a permanent licence or by condition of a permanent licence.

DIVISION 3—CONDITIONS OF LICENCE**Mandatory conditions**

42. (1) It is a condition of every licence that the licensee must comply with codes of practice prescribed or approved under the regulations—

- (a) to minimise the harmful and hazardous use of liquor; and
- (b) to promote responsible attitudes in relation to the promotion, sale, supply and consumption of liquor.

(2) It is a condition of a licence authorising the sale of liquor for consumption off the licensed premises that liquor sold under that authorisation—

- (a) must be delivered to the purchaser in sealed containers or containers of a kind approved by the licensing authority; and
- (b) if the liquor is not delivered personally to the purchaser at the licensed premises—must, unless the licensing authority gives an authorisation to the contrary, be despatched to the purchaser from the licensed premises; and
- (c) must not be consumed on the licensed premises unless the licence also authorises the sale of liquor for consumption on the licensed premises and the liquor could have been lawfully sold and consumed on the licensed premises under that authorisation.

Power of licensing authority to impose conditions

43. (1) The licensing authority may impose licence conditions the authority considers appropriate.

Examples—

Conditions to ensure that the noise emanating from the licensed premises is not excessive.

Conditions to minimise offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the licensed premises resulting from activities on the licensed premises, or the conduct of people making their way to or from the licensed premises.

Conditions to prevent offensive behaviour on the licensed premises (including offensive behaviour by persons providing or purporting to provide entertainment (whether live or not) on the licensed premises).

Conditions to protect the safety, health or welfare of customers, staff (or both).

Conditions to ensure that the nature of the business to be conducted under the licence conforms with representations made to the licensing authority in proceedings for the grant of the licence or other proceedings under this Act.

Conditions to prevent improper arrangements or practices calculated to reduce licence fees.

Conditions to ensure public order and safety at events expected to attract large crowds.

Conditions to prevent the consumption of liquor sold for consumption off the licensed premises in the vicinity of the licensed premises.

Other conditions to ensure compliance with the objects of this Act.

(2) A licensing authority may impose a condition under subsection (1)—

- (a) on the grant, transfer or removal of a licence; or
- (b) on application by the licensee; or
- (c) on application by the Commissioner of Police; or
- (d) if the licensing authority is the Court—on application by the Commissioner; or
- (e) in any other proceedings under this Act involving the licensee; or
- (f) if the licensing authority considers the condition necessary for public order or safety—on the Commissioner's own initiative.

(3) The licensing authority may vary or revoke a condition imposed under this section.

Extended trading authorisation

44. (1) An extended trading authorisation is a condition of a licence authorising extended trade in liquor.

(2) An extended trading authorisation cannot be given unless the licensing authority is satisfied that—

- (a) the grant of the authorisation would be unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience; and
- (b) the licensee will implement appropriate policies and practices to guard against the harmful and hazardous use of liquor.

(3) On granting an extended trading authorisation, the licensing authority may include further conditions in the licence that it considers appropriate in view of the extended trading authorisation.

(4) An extended trading authorisation cannot authorise the sale of liquor on—

- (a) Good Friday;
- (b) the day after Good Friday;
- (c) the day after Christmas Day.

Compliance with licence conditions

45. If a condition of a licence is not complied with—

- (a) the licensee is guilty of an offence; and

- (b) if the condition regulates the consumption of liquor, the licensee and a person who consumes liquor knowing the consumption to be contrary to the condition are each guilty of an offence.

DIVISION 4—GENERAL PROVISIONS

Unauthorised sale or supply of liquor

46. (1) A licensee who sells liquor in circumstances in which the sale of liquor is not authorised by the licence is guilty of an offence.

Maximum penalty: \$20 000.

(2) A licensee who supplies liquor to a person in or in the vicinity of licensed premises in circumstances in which the licensee would not be authorised to sell liquor to that person is guilty of an offence.

Maximum penalty: \$20 000.

How licences are to be held

47. (1) A licence may be held jointly by two or more persons.

(2) Where a licence is held jointly by two or more persons, those persons are jointly and severally liable to any civil or criminal liability that attaches to the licensee under this Act.

(3) If the trustee of a trust holds a licence for the purposes of a business conducted by the trustee under a trust—

- (a) the name of the trust is to be specified in the licence; and
- (b) the trust is to be considered as an entity holding the licence jointly with the trustee.

Plurality of licences

48. (1) A person may hold two or more licences subject to the following exceptions.

(2) If a person holds a wholesale liquor merchant's licence, that person or a close associate of that person must not simultaneously hold any of the following licences:

- (a) a hotel licence; or
- (b) a retail liquor merchant's licence; or
- (c) a special circumstances licence,

unless the licensing authority is satisfied that the conditions of the respective licences are such as to prevent arrangements or practices calculated to reduce licence fees.

Maximum penalty: \$20 000.

(3) Two or more licences are not to be granted for the same premises except as follows:

- (a) two or more licences may be granted for different parts of the same premises that are separated by walls or partitions that effectively prevent their use for a common purpose; and

- (b) two or more club licences may be granted for the same premises provided that the trading hours authorised under the licences do not coincide or overlap; and
- (c) a limited licence may be granted for premises or a part of premises in respect of which a licence of some other class is in force.

Special provision for club licences

49. (1) A club licence may only be held by a club that is a non-profit association incorporated under the *Associations Incorporation Act 1985*.

(2) However, the licensing authority may grant a club licence to a trustee for an association if satisfied that—

- (a) the association is unable to become incorporated; or
- (b) it is inappropriate to require the incorporation of the association.

(3) A club is not eligible to hold a club licence unless that licensing authority is satisfied that—

- (a) the club will be entitled to exclusive possession of the licensed premises at times when the sale of liquor is authorised by the licence; and
- (b) the rules of the club make appropriate provision for admission to membership of the club and, in particular, provision to the following effect:
 - (i) a person may not become an ordinary member of the club unless duly nominated after proper notice of the nomination is given to the ordinary members of the club; and
 - (ii) if the rules provide for honorary or temporary membership—the classes of person entitled to such membership are not unduly large, having regard to the nature and objects of the club; and
- (c) the rules of the club also make appropriate provision for—
 - (i) management of the affairs of the club by a management committee elected by the general body of members; and
 - (ii) regular meetings of the general body of members and the management committee; and
 - (iii) the payment of subscriptions by the ordinary members of the club; and
 - (iv) the keeping of proper records of the proceedings of the club and its financial affairs.

Minors not to be licensees

50. A minor must not—

- (a) hold a licence; or
- (b) occupy a position of authority in a trust or corporate entity that holds a licence,

(but a minor may be a shareholder in a proprietary company or a beneficiary of a trust that holds a licence).

PART 4
APPLICATIONS, INTERVENTIONS AND OBJECTIONS

DIVISION 1—FORMAL REQUIREMENTS

Form of application

51. (1) An application to a licensing authority—

- (a) must be made in a manner and form approved by the Commissioner; and
- (b) must be accompanied by the plans and specifications required under the regulations; and
- (c) if a time limitation is prescribed by the regulations—must be made within the prescribed time; and
- (d) must be accompanied by the fee required under the regulations.

(2) An applicant or other person who makes a false or deliberately misleading statement in, or in support of, an application is guilty of an offence.

(3) A licensing authority may allow an applicant to vary the application at any time before the application is decided.

(4) If a licensing authority allows variation of an application, the authority must ensure that the other parties to the application are given notice of the variation a reasonable time before the hearing of the application.

(5) An applicant must, at the request of the licensing authority, produce documents and other materials that the authority considers relevant to the application.

Certain applications to be advertised

52. (1) This section applies to applications for—

- (a) the grant of a licence (other than a temporary or limited licence);
- (b) the transfer of a licence;
- (c) the removal of a licence;
- (d) an extended trading authorisation;
- (e) the conversion of a temporary licence into a permanent licence;
- (f) a condition authorising sale of liquor under a club licence for consumption off the licensed premises;
- (g) consent to use part of the licensed premises or an area adjacent to the licensed premises to provide entertainment;
- (h) the variation of trading hours previously fixed in relation to the licence.

(2) Notice must be given of an application to which this section applies as follows:

- (a) the applicant must, at least 28 days before the date fixed for hearing the application, give written notice to—
- (i) the council for the area in which the licensed premises are, or are to be, situated; and
 - (ii) the occupiers of land or premises adjacent to the licensed premises or proposed licensed premises; and
- (b) the applicant must, at least 28 days before the date fixed for hearing the application, give notice of the application by publication of an advertisement, in the prescribed form—
- (i) in a newspaper circulating generally throughout the State; and
 - (ii) in another newspaper circulating in the area in which the licensed premises are or are to be situated; and
 - (iii) in the *Gazette*; and
- (c) the applicant must, for 28 days immediately preceding the date fixed for hearing the application, keep posted a notice of the application, in the dimensions and form prescribed under the regulations, in a prominent position—
- (i) on the premises to which the application relates; or
 - (ii) if the premises have not been constructed—on the land on which it is proposed to construct the premises,

so as to be clearly visible to, and legible by, persons passing the premises or land.

(3) The licensing authority—

- (a) may, in an appropriate case, dispense with, or modify, a requirement of this section; or
- (b) may direct that—
- (i) notice be given under this section of other applications to the authority; or
 - (ii) notice be given to specified authorities and persons in addition to the notice specifically required by this section.

DIVISION 2—GENERAL POWERS AND DISCRETIONS OF LICENSING AUTHORITY

Discretion of licensing authority to grant or refuse application

53. (1) Subject to this Act, the licensing authority has an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application).

(2) A licensing authority should not grant an application as a matter of course without proper inquiry into its merits (whether or not there are objections to the application).

(3) A licensing authority may, on such conditions (if any) as it thinks fit, vary or waive compliance with formal requirements relating to an application.

Order for determining applications

54. The order in which applications for new licences are determined must be consistent with the requirements of the regulations.

Factors to be taken into account in deciding whether a person is fit and proper to hold licence

55. (1) In deciding whether a person is a fit and proper person for a particular purpose under this Act, a licensing authority—

- (a) must take into consideration the reputation, honesty and integrity (including the creditworthiness) of the person; and
- (b) may take into consideration the reputation, honesty and integrity of people with whom the person associates.

(2) If a licensing authority is to decide whether a person is a fit and proper person to supervise or manage, or to be involved in the supervision or management of, the business conducted or to be conducted under a licence, the licensing authority must also give consideration to—

- (a) whether the person has the appropriate knowledge, experience and skills for the purpose; and
- (b) in particular—whether the person has knowledge, experience and skills in encouraging the responsible supply and consumption of liquor.

DIVISION 3—APPLICATION FOR NEW LICENCE

Applicant to be fit and proper person

56. (1) An applicant for a licence must satisfy the licensing authority—

- (a) that the applicant is a fit and proper person to hold the licence; and
- (b) if the applicant is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of the class sought in the application.

(2) If a person referred to in subsection (1) is to supervise or manage, or be actively involved in the supervision or management of, the business conducted under the licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless grant the licence on the condition that the person undertake specified training within a specified time after the grant of the licence.

Requirements for premises

57. (1) An applicant for a licence must satisfy the licensing authority—

- (a) that the premises for which the licence is sought are, or, in the case of premises not yet constructed, will be, of sufficient standard for the purpose of properly carrying on business under the licence; and
- (b) that the operation of the licence would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the licensed premises.

(2) An application for a licence for premises or proposed premises must not be granted unless the licensing authority is satisfied—

- (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and
- (b) that any approvals, consents or exemptions that are required by law for the carrying out of building work before the licence takes effect have been obtained; and
- (c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.

Grant of hotel licence or retail liquor merchant's licence

58. (1) An applicant for a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.

(2) An applicant for a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated, do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.

(3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under a certificate of approval.

Certificate of approval for proposed premises

59. (1) If—

- (a) an application is made for a licence in respect of premises that are, at the date of the application, uncompleted; and
- (b) the licensing authority is satisfied that, if the premises are completed in accordance with the plans submitted by the applicant, a licence with the trading rights sought in the application should be granted to the applicant in respect of those premises,

the licensing authority may grant to the applicant a certificate (a **certificate of approval**) stating that it is so satisfied.

(2) A certificate of approval—

- (a) may be granted on conditions the licensing authority thinks fit; and

- (b) must state the trading rights to be conferred by the licence and may state conditions to which the licence should be subject.
- (3) If—
- (a) a certificate of approval has been granted; and
 - (b) the holder of the certificate satisfies the licensing authority—
 - (i) that the conditions (if any) on which the certificate was granted have been complied with; and
 - (ii) that the premises have been completed in accordance with plans approved by the licensing authority on the grant of the certificate or a variation of those plans later approved by the licensing authority,

a licence conferring the trading rights, and subject to the conditions, specified in the certificate must be granted to the holder of the certificate in respect of the premises.

(4) A certificate under this section is, for the purposes of the provisions of this Act relating to the transfer of a licence, taken to be a licence.

(5) A transaction under which the holder of a certificate of approval agrees to the transfer of the certificate for a monetary or other consideration is void unless the proposed transfer is to a close associate.

DIVISION 4—REMOVAL OF LICENCE

Premises to which licence is to be removed

60. (1) An applicant for the removal of a licence must satisfy the licensing authority—
- (a) that the premises to which removal of the licence is sought are, or, in the case of premises not yet constructed, will be, of an appropriate standard for carrying on business under the licence; and
 - (b) that the removal of the licence is unlikely to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the licensed premises.
- (2) An application for the removal of a licence to premises or proposed premises cannot be granted unless the licensing authority is satisfied—
- (a) that any approvals, consents or exemptions that are required under the law relating to planning to permit the use of the premises or proposed premises for the sale of liquor have been obtained; and
 - (b) that any approvals, consents or exemptions that are required by law for carrying out of building work before the removal of the licence takes effect have been obtained; and
 - (c) that any other relevant approvals, consents and exemptions required for carrying on the proposed business from the premises have been obtained.

Removal of hotel licence or retail liquor merchant's licence

61. (1) An applicant for removal of a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality to which licence is to be removed, the licence is necessary in order to provide for the needs of the public in that locality.

(2) An applicant for the removal of a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the licence is to be removed do not adequately cater for the public demand for liquor for consumption off licensed premises and the removal of the licence is necessary to satisfy that demand.

(3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under an existing certificate of approval.

Certificate for proposed premises

62. (1) If—

- (a) an application is made for the removal of a licence to premises that are, at the date of the application, uncompleted; and
- (b) the licensing authority is satisfied that, if the premises are completed in accordance with the plans submitted by the applicant, the licence should be removed to those premises,

the licensing authority may grant to the applicant a certificate (a **certificate of approval**) stating that it is so satisfied.

(2) A certificate of approval—

- (a) may be granted on conditions the licensing authority thinks fit; and
- (b) may include a statement of conditions to which, in the opinion of the licensing authority, the licence should be subject on its removal (either in addition to, or in substitution for, existing conditions of the licence).

(3) If—

- (a) a certificate has been granted under subsection (1); and
- (b) the holder of the certificate satisfies the licensing authority—
 - (i) that the conditions (if any) on which the certificate was granted have been complied with; and
 - (ii) that the premises have been completed in accordance with plans approved by the licensing authority on the grant of the certificate or a variation of those plans later approved by the licensing authority,

the licence must be removed to the new premises and, if the certificate of approval provides for the addition or substitution of conditions, the licence then becomes subject to the new conditions in accordance with the terms of the certificate.

(4) A transaction under which the holder of a certificate of approval agrees to the transfer of the certificate for a monetary or other consideration is void unless the proposed transfer is to a close associate.

DIVISION 5—TRANSFER OF LICENCE

Applicant for transfer must be fit and proper person

63. (1) An applicant for the transfer of a licence must satisfy the licensing authority—

- (a) that the applicant is a fit and proper person to hold the licence; and
- (b) where the applicant is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of the class to which the application relates.

(2) If a person referred to in subsection (1) is to supervise or manage, or be actively involved in the supervision or management of, the business conducted under the licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless transfer the licence and impose a condition of the licence that the person undertake specified accredited training within a specified time after the transfer of the licence.

(3) A club licence or a limited licence is not transferable.

Limitation on sale or assignment of rights under licence

64. (1) A licensee cannot sell or assign rights to carry on business under the licence unless the transfer of the licence to the purchaser or assignee has been approved by the licensing authority.

(2) This section does not prevent a licensee from entering into a contract for the sale or assignment of rights to carry on business under the licence if the contract is subject to a condition precedent under which the sale or assignment will not take effect unless and until the transfer of the licence to the purchaser or assignee has been approved by the licensing authority.

Transferee to succeed to transferor's liabilities and rights

65. (1) Where a licence is transferred, the transferee succeeds to the liabilities of the transferor under this Act.

(2) However, if a licence fee is underassessed by virtue of incorrect information provided by a licensee or an error of assessment, a transferee of the licence is not liable to pay—

- (a) an amount by which the licence fee was underassessed, being an amount payable in respect of a licence period or portion of a licence period antecedent to the date of transfer; nor
- (b) any pecuniary penalty imposed in respect of the underassessment.

(3) If a licence authorising the sale of liquor produced by the licensee is transferred, the transferee may sell, under the licence, liquor produced by the transferor before the date of the transfer as if it had been produced by the transferee.

DIVISION 6—VOLUNTARY SUSPENSION AND REVOCATION OF LICENCE**Suspension and revocation of licence**

66. (1) The Commissioner may, on the application of a licensee, suspend the licence held by that licensee.

(2) A suspension—

- (a) may be made for a specified period or until revoked by a licensing authority; and
- (b) may operate generally or in relation to a particular part of the licensed premises or a particular aspect of the licensee's business.

(3) The Commissioner may revoke a licence if it appears that the licensee has ceased to carry on business under the licence.

Surrender of licence

67. (1) A licensee may, by written agreement with the Commissioner, surrender the licence as from a date fixed in the agreement.

(2) Before agreeing to the surrender of a licence, the Commissioner must inquire into the proposed use of the premises to which the licence applies.

(3) The surrender of a licence does not affect liabilities incurred by the licensee under this Act up to the date on which the surrender takes effect.

DIVISION 7—ALTERATION AND REDEFINITION OF LICENSED PREMISES**Alteration and redefinition of licensed premises**

68. (1) The licensing authority may, on the application of a licensee—

- (a) approve an alteration or proposed alteration to the licensed premises;
- (b) redefine the licensed premises as defined in the licence;
- (c) designate a part of licensed premises as a dining area or a reception area.

(2) An application for approval of an alteration to licensed premises must not be granted unless the licensing authority is satisfied that all other approvals, consents or exemptions required by law have been obtained.

(3) If licensed premises are altered without approval under this section, the licensee is guilty of an offence.

DIVISION 8—EXTENSION OF TRADING AREA**Extension of trading area**

69. (1) The licensing authority may, on application by a licensee who holds a licence authorising the sale of liquor for consumption on the licensed premises, extend the authority conferred by the licence so that the licensee is authorised to sell liquor in a place adjacent to the licensed premises for consumption in that place.

(2) The place to which the authorisation relates is, when the sale of liquor is authorised, taken to form part of the licensed premises.

(3) An authorisation cannot be granted under this section unless—

- (a) the licensing authority is satisfied that the object of the application could not be more appropriately achieved by redefinition of the licensed premises; and
- (b) the licensee will, when the sale of liquor is authorised, be entitled to sell or supply liquor to customers in the relevant place; and
- (c) the relevant place can be adequately defined and supervised; and
- (d) the owner of the relevant place (if not owned by the licensee) consents to the application; and
- (e) if the relevant place is under the control of a council—the council approves the application.

DIVISION 9—VARIATION OF NON-STATUTORY CONDITIONS OF LICENCE

Variation of non-statutory conditions of licence

70. (1) The licensing authority may, on application by a licensee—

- (a) vary trading hours previously fixed by the licensing authority in relation to the licence;
- (b) vary or revoke a condition of the licence.

(2) Nothing in this section authorises the licensing authority to vary or revoke a condition fixed or imposed by this Act.

DIVISION 10—APPROVAL OF MANAGEMENT AND CONTROL

Approval of management and control

71. (1) The licensing authority may, on application by a licensee, approve a natural person or persons as manager or managers of the business conducted under the licence.

(2) The licensing authority may, on the application of a person who seeks to assume a position of authority in a trust or corporate entity that holds a licence, approve the assumption by that person of that position in the entity.

(3) The licensing authority may only approve a person as a manager, or approve the assumption by a person of a position of authority in a trust or corporate entity that holds a licence, if satisfied that he or she is a fit and proper person.

(4) However, if an applicant for approval is to supervise and manage, or be actively involved in the supervision or management of, the business conducted under a licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless approve the person and impose a condition of the licence that the person undertake specified accredited training within a specified time of obtaining the approval.

(5) An approved manager must, at all times while on duty on the licensed premises, wear identification in a form and manner approved by the Commissioner.

Maximum penalty: \$1 250.

DIVISION 11—LESSOR'S CONSENT

Consent of lessor or owner required in certain cases

72. (1) Subject to this section—

(a) the licensing authority must not grant an application—

(i) for a new licence;

(ii) for approval of an alteration or proposed alteration to the licensed premises,

if the licensed premises or proposed licensed premises are occupied, or are to be occupied, under a lease and the lessor has not consented to the application;

(b) the licensing authority must not grant an application for the removal of a licence if the premises to which the licence is to be removed are held under lease and the lessor has not consented to the application;

(c) the licensing authority must not grant an application for transfer of a licence if the licensed premises are occupied under a lease and the lessor has not consented to the application.

(2) A lessor is taken to have consented to an application for a licence or for the removal or transfer of a licence if, before the lessor granted or approved the assignment of the lease, the applicant gave the lessor written notice of the applicant's intention to use the premises for trading in liquor.

(3) The licensing authority may dispense with a consent required under this section if, in its opinion, the consent has been capriciously or unreasonably withheld.

(4) A reference in this section to the lessor of premises is, in relation to premises held from the Crown under lease or licence, a reference to the Crown.

DIVISION 12—DEVOLUTION OF LICENSEE'S RIGHTS

Devolution of licensee's rights

73. (1) If a licensee or one of two or more joint licensees dies—

(a) the executor of the will or the administrator of the estate; or

(b) a relative of the deceased acting with the permission of the licensing authority,

may, for 1 month after the date of death or a longer period approved by the licensing authority, carry on business as the licensee or one of the licensees (as the case requires) under the licence.

(2) If a licensee or one of two or more joint licensees becomes physically or mentally incapable of carrying on business under the licence—

- (a) a person authorised or appointed by law to administer the licensee's affairs; or
- (b) a relative of the licensee acting with the permission of the licensing authority,

may, for 1 month after the commencement of the incapacity or a longer period approved by the licensing authority, carry on business as the licensee or one of the licensees (as the case requires) under the licence.

(3) If a licensee ceases to occupy the licensed premises to which the licence relates, a landlord, mortgagee or other person acting with the permission of the licensing authority may, for a period of 1 month or a longer period approved by the licensing authority, carry on business as the licensee under the licence.

(4) If a licence is surrendered or revoked, the licensing authority may, on application by a landlord, mortgagee or other person who satisfies the authority that it stands to suffer loss in consequence of the surrender or revocation, grant a temporary licence—

- (a) of the same class, and subject to the same conditions, as the licence that was surrendered or revoked; but
- (b) subject to a condition that the licence will expire at the end of a term fixed by the licensing authority not exceeding 6 months.

(5) An approval, permission or temporary licence may be granted under this section by the licensing authority—

- (a) on the application of the person seeking it without hearing or inviting representations from any other person; and
- (b) on conditions the licensing authority thinks fit.

(6) A temporary licence under this section may be converted into an ordinary licence by revocation of the condition referred to in subsection (4)(b) but an application for revocation of such a condition must not be granted unless the licensing authority is satisfied—

- (a) that the person who is to hold the licence on revocation of the condition is a fit and proper person to hold a licence of the relevant class; and
- (b) if that person is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of that class.

(7) If the person who is to hold the licence on revocation of the condition is to supervise or manage, or be actively involved in the supervision and management of, the business conducted under the licence but does not have the appropriate knowledge, experience and skills for that purpose, the licensing authority may nevertheless grant the application for revocation of the condition and impose a condition of the licence that the person undertake specified accredited training within a specified time after the grant of the application.

(8) A fee of an amount fixed by the Commissioner is payable for—

- (a) a temporary licence under this section; or

- (b) the conversion of a temporary licence into an ordinary licence under this section.

Bankruptcy or winding up of licensee

74. (1) If a licensee becomes bankrupt or insolvent, the official receiver may carry on business as the licensee under the licence.

(2) If a corporate licensee is being wound up or is under administration, receivership or official management, a person vested by law with power to administer the affairs of the body corporate may carry on business as the licensee under the licence.

Notice to be given of exercise of rights under this Division

75. A person who exercises rights under this Division (except by prior permission of the licensing authority) must, within 7 days after starting to do so, give notice in writing of that fact to the Commissioner.

DIVISION 13—RIGHTS OF INTERVENTION AND OBJECTION

Rights of intervention

76. (1) The Commissioner of Police may intervene in proceedings before a licensing authority under this Act for the purpose of introducing evidence, or making representations, on any question before the authority.

(2) A council in whose area licensed premises or premises proposed to be licensed are situated may intervene in proceedings before a licensing authority for the purpose of introducing evidence, or making representations, on any question before the authority.

(3) If a licensing authority directs that notice of a particular application be given to a particular body or person, that body or person may intervene in proceedings based on that application for the purpose of introducing evidence, or making representations, on any question arising in the proceedings.

(4) The Commissioner may intervene in proceedings before the Court under this Act for the purpose of introducing evidence, or making representations, on any question before the Court.

General right of objection

77. (1) If an application has been advertised under this Part, any person may, by notice in the prescribed form lodged with the licensing authority at least 7 days before the day appointed for the hearing of the application, object to the application.

(2) A copy of the notice of objection must be served by the objector on the applicant at least 7 days before the day appointed for the hearing of the application.

(3) However, the licensing authority may (in its absolute discretion) accept an objection even though it is lodged, or served on the applicant, out of time.

(4) An objection may be made on behalf of an unincorporated association under this section by an agent duly appointed for the purpose.

(5) An objection may be made on one or more of the following grounds:

- (a) that the grant of the application would not be consistent with the objects of this Act or would be contrary to this Act in some other way;

- (b) in the case of an application for the grant or removal of a hotel licence—that the grant of the application is not necessary in order to provide for the needs of the public in the area in which the premises or proposed premises to which the application relates are situated;
- (c) in the case of an application for the grant or removal of a retail liquor merchant's licence—that the grant of the application is not necessary in order to provide for the public demand for liquor for consumption off licensed premises in the area in which the premises or proposed premises to which the application relates are situated;
- (d) in the case of an application by a natural person for the grant or transfer of a licence, or for the conversion of a temporary licence into an ordinary licence—that the applicant is of bad reputation or character or is in other respects not a fit and proper person to be licensed;
- (e) in the case of an application by a trust or corporate entity for the grant or transfer of a licence, or for the conversion of a temporary licence into an ordinary licence—that the applicant is not a fit and proper person to be licensed or that a person who occupies a position of authority in the entity is of bad reputation or character or is in other respects not a fit and proper person to hold such a position in an entity that holds a licence;
- (f) in the case of an application for the grant or removal of a licence—that the position, nature or quality of the premises renders them unsuitable to be licensed, or to be licensed under a licence of the kind to which the application relates;
- (g) that if the application were granted—
 - (i) undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises or proposed premises to which the application relates would be likely to result; or
 - (ii) the amenity of the locality in which the premises or proposed premises to which the application relates are situated would be adversely affected in some other way.

Lessor's special right of objection

78. (1) A lessor of licensed premises may object to an application for removal of a licence from the premises to some other premises if it is a term of the lease that the lessor's consent is required for such an application and the consent has not been obtained in accordance with the lease.

(2) A 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 lessor's consent is required for such an application and the lessor's consent has not been obtained.

Variation of objections

79. (1) A licensing authority may allow a person who has made an objection to vary the objection at any time before the proceedings are determined.

(2) If a licensing authority allows an objection to be varied, the authority must ensure that the parties to the proceedings are given notice of the variation a reasonable time before the time fixed for the hearing.

**PART 5
LICENCE FEES**

DIVISION 1—FEES

Licence fee

80. (1) A licence fee is payable under this Act in respect of each licence period.

(2) Subject to the following exceptions and qualifications, the amount of the fee is—

- (a) for a retail licence—11 percent of gross amount paid or payable by the licensee for liquor purchased during the relevant assessment period from a person other than the holder of a retail licence;
- (b) for a wholesale liquor merchant's licence—11 per cent of the gross amount paid or payable to the licensee for liquor by purchasers who are not liquor merchants during the relevant assessment period;
- (c) for a producer's licence—11 per cent of the gross amount paid or payable to the licensee for liquor (other than wine or brandy) by purchasers who are not liquor merchants during the relevant assessment period.

Exceptions and qualifications—

- 1. If the gross amount paid or payable for liquor is less, in the Commissioner's opinion, than the reasonable wholesale or retail value (as the case requires) of the liquor, the licence fee is to be based on the Commissioner's assessment of the reasonable wholesale or retail value.
- 2. Low alcohol liquor is not to be taken into account in assessing a licence fee.
- 3. Liquor produced in Australia that is delivered to a purchaser outside Australia for consumption outside Australia is not to be taken into account in assessing the licence fee for a wholesale liquor merchant's licence or a producer's licence.
- 4. A transaction under which a licence is transferred and the transferee acquires liquor from the transferor as trading stock of the business conducted under the licence is not to be taken into account in assessing the licence fee for the licence.
- 5. A special circumstances licence may contain special conditions about the assessment of the licence fee, or for fixing the licence fee, and the conditions prevail to the extent of inconsistency over the provisions of this Act.
- 6. The fee cannot be less than a prescribed minimum fixed by the regulations.

(3) In fixing special licence conditions governing the assessment of a licence fee, the licensing authority must ensure, as far as practicable, that the basis of assessment is not more favourable to the licensee than the basis of assessment applicable to other comparable classes of licence.

(4) In assessing for the purposes of this Act the gross amount paid or payable for liquor or the reasonable wholesale or retail value of liquor—

- (a) excise duty and sales tax paid or payable under the law of the Commonwealth are to be taken into account as part of the cost or value of the liquor;
 - (b) the cost of bottling and packaging the liquor is to be taken into account as part of the cost or value of the liquor;
 - (c) any separate charges for freight and delivery are, to the extent that the Commissioner considers the charges reasonable, not be taken into account as part of the cost or value of the liquor.
- (5) For the purpose of assessing a licence fee—
- (a) liquor sold (at auction or otherwise) under a limited licence; and
 - (b) liquor sold to a person who holds a limited licence and no other licence; and
 - (c) liquor of a particular type sold to a person who holds a licence but not one that authorises the sale of liquor of that type,

is conclusively presumed not to have been sold to a liquor merchant.

Licence fee where licence granted during course of licence period

81. (1) If a licence is granted during the course of a licence period, a licence fee calculated in accordance with the following formula is payable for the remainder of the licence period:

$$F = \frac{A}{365} \times B$$

where—

- F** is the amount of the fee payable
- A** is the number of days remaining in the licence period
- B** is the amount of the fee that would have been payable in respect of the licence period if the licence had been in force for the whole of the licence period.

(2) The licence fee is payable as follows:

- (a) if there is, on the date of the grant of the licence, only one-quarter or less remaining in the licence period or the licence fee is less than an amount prescribed by regulation—the fee is payable in a single instalment on the grant of the licence;
- (b) in any other case—the fee is payable in equal instalments, the first being payable on the grant of the licence and the later instalment or instalments being payable on or before the first day of the remaining quarter or each of the remaining quarters (as the case may require).

(3) A new licence does not come into force until the first instalment of the licence fee is paid.

Fee payable on surrender or abandonment of licence

82. (1) If a licensee surrenders a licence, or a licence is revoked on the ground that the licensee has ceased to carry on business under the licence, the former licensee is, if the Commissioner so determines, liable to pay a fee equal to—

- (a) the licence fee that would have been payable in respect of the next licence period if the licence had remained in force but no business had been transacted under the licence after the date of its surrender or revocation,

less

- (b) the amount of the licence fee assessed in respect of the current licence period.

(2) A liability to pay a fee must not be imposed on a former licensee under this section unless the Commissioner is of the opinion that, if the licence had remained in force, there would have been an increase in the licence fee reflecting a change in trading practices on the part of the licensee (occurring either during or prior to the licence period in the course of which the licence was surrendered or revoked).

(3) A fee payable under this section may be recovered as a debt due to the Crown from the former licensee.

(4) The Commissioner may (in the exercise of an absolute discretion) remit a fee payable under this section wholly or in part.

Payment of licence fee

83. (1) A licence fee is payable in full on the first day of the licence period in respect of which it is payable but may be paid in equal quarterly instalments on or before the first day of January, the first day of April, the first day of July and the first day of October in the licence period.

(2) However, if a licence fee is equal to or less than the prescribed minimum fee, the licence fee must be paid in a single instalment on or before the first day of the licence period in respect of which it is due.

(3) If a licence fee or any part of a licence fee is outstanding for 14 days after the day on which it is to be paid, the licensee incurs a fine of 10 per cent of the outstanding amount.

(4) The Commissioner may (in the exercise of an absolute discretion) remit a fine payable under this section wholly or in part.

Deferment of payment of licence fee

84. (1) If a licence has been suspended on the application of the licensee, the Commissioner may defer for a specified period payment of the licence fee or an instalment of the licence fee.

(2) If payment of a licence fee or an instalment of a licence fee is deferred, no fine is incurred for failure to pay the fee or instalment within 14 days of the due date.

DIVISION 2—ASSESSMENT OF FEES**Commissioner to assess and determine fees**

85. The Commissioner must assess and determine all licence fees (except those fixed by regulation) under this Act.

Estimate by Commissioner on grant of licence

86. (1) If a licence is granted or a licence has not been in force during the whole of a relevant assessment period, the licence fee must be assessed on the basis of an estimate made by the Commissioner of the nature and volume of the trade in liquor that would have occurred if the licence had been in force during the whole of the relevant assessment period.

(2) For the purpose of the estimate, the Commissioner must assume that business of the same nature and scale as the business to be conducted under the licence had been conducted on the licensed premises during the relevant assessment period.

Power to estimate licence fee where information inadequate

87. (1) If—

- (a) a licensee fails to furnish a return in accordance with this Act; or
- (b) the information provided by a licensee is, in the opinion of the Commissioner, unreliable or incomplete,

the Commissioner may assess and determine the fee on a basis the Commissioner considers appropriate.

(2) If the Commissioner is of the opinion—

- (a) that a licence fee, as assessed in accordance with the preceding provisions of this Part, is affected by an agreement, arrangement or understanding between the licensee and some other person; and
- (b) that the licence fee, as so assessed, is less than would have been payable if no such agreement, arrangement or understanding existed,

the Commissioner may assess and determine the fee on a basis the Commissioner considers appropriate.

Reassessment of licence fee

88. (1) The Commissioner may, on the Commissioner's own initiative or on application by a licensee, reassess a licence fee—

- (a) if the Commissioner is satisfied that some error or misestimation was made in the original assessment; or
- (b) if the original assessment was made on the basis of information later found to be false or incomplete; or
- (c) if the original assessment was made on the basis of an estimate made on the assumption that the business to be conducted under the licence would be of a particular nature or scale and that assumption has proved to be incorrect.

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

(3) If it appears from a reassessment that a further amount is payable by the licensee, the amount must be paid as required in the reassessment.

Review of Commissioner's assessment

89. (1) If the Commissioner assesses a licence fee and the licensee applies to the Court for a review of the assessment, the fee as assessed by the Commissioner is payable in accordance with this Act despite the review.

(2) If on a review of the Commissioner's assessment of a licence fee the assessment is altered by the Court, a due adjustment must be made and—

- (a) any amount underpaid may be recovered as arrears;
- (b) any amount overpaid must be refunded to the licensee or credited against future licence fees that may become payable by the licensee.

(3) If a licence is surrendered or cancelled, any amount credited against future licence fees must be refunded to the licensee.

DIVISION 3—RECOVERY OF LICENCE FEES**Recovery by civil process**

90. A licence fee payable under this Act, or a penalty for failure to pay a fee or instalment of a fee when it becomes due, may be recovered as a debt due to the Crown.

Suspension of licence on non-payment of licence fee

91. (1) If a licence fee or penalty payable by a licensee under this Act is not paid on or before the date fixed for payment under this Act, the Commissioner may serve on the licensee a letter of demand for the licence fee or penalty.

(2) If the amount to which the letter of demand relates is not paid within 14 days of the date of the letter, the Commissioner may suspend the licence until the amount is paid.

Penalty for providing incorrect information

92. (1) The Court may, on application by the Commissioner, impose a pecuniary penalty on a licensee or former licensee if the Court is satisfied that a licence fee has been underassessed because of incorrect information provided by the licensee or former licensee or because of a failure on the part of the licensee or former licensee to provide information as required by or under this Act.

(2) The amount of the penalty is to be an amount that represents, in the opinion of the Court, the amount by which the fee was underassessed.

(3) The imposition of a penalty on a person under this section does not derogate from the liability of that person to pay the licence fee in accordance with the correct assessment.

(4) A penalty imposed under this section may be recovered as a debt due to the Crown.

Order for the payment of money

93. (1) The Court may, on application by the Commissioner, make an order for payment of any amount that is payable under this Part against a licensee or former licensee liable for the payment and, if the licensee or former licensee is a body corporate, the order may also be made against any one or more of the following:

- (a) a related body corporate;

- (b) a person who was a director of the body corporate or a related body corporate when the liability arose.

(2) An order under this section may be registered in the Magistrates Court or the District Court and enforced as a judgment of the court in which it is registered.

DIVISION 4—RECORDS AND RETURNS

Records of liquor transactions

94. (1) A licensee must keep records of all transactions involving the sale or purchase of liquor.

(2) The records—

- (a) must be kept in the form required by the licensing authority; and
- (b) must contain the information required by the licensing authority; and
- (c) must be made up as soon as practicable after the transactions to which they relate.

(3) A person who is required by this section to keep records must retain the records in this State for 6 years after the date on which they were compiled.

(4) A person who fails to keep or retain records as required by this section is guilty of an offence.

Returns

95. (1) A licensee must, within 2 months after the end of each assessment period, lodge with the Commissioner a return containing the information required under the conditions of the licence or the regulations.

(2) An auctioneer who sells liquor during a financial year must, within 2 months after the end of that financial year, lodge with the Commissioner a return containing the information required under the regulations.

(3) A licensee must, if so required by the Commissioner, lodge returns with the Commissioner containing information the Commissioner requires—

- (a) relating to transactions involving the sale or purchase of liquor; or
- (b) relating to any other matters, specified by the Commissioner, that may be relevant to the assessment or recovery of licence fees.

(4) If returns are required under subsection (3), they must be lodged at the times, or periodic intervals, specified by the Commissioner.

(5) If a licensee—

- (a) fails to lodge a return as required by or under this section; or

(b) includes in such a return information that is false or misleading in a material particular,
the licensee is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

DIVISION 5—INQUIRIES INTO CERTAIN ARRANGEMENTS

Inquiries into certain arrangements

96. The Commissioner may, and must at the request of the Minister or the Court, conduct an inquiry to determine whether an agreement, arrangement or understanding exists between licensees, or between a licensee and any other person, the object or effect of which is to reduce a licence fee.

PART 6
CONDUCT OF LICENSED BUSINESS

DIVISION 1—SUPERVISION AND MANAGEMENT

Supervision and management of licensee's business

97. (1) The business conducted under a licence must be personally supervised and managed by a natural person (a **responsible person**) who is—

- (a) the licensee or a director of the licensee; or
- (b) a person approved by the licensing authority.

(2) If, at any time when licensed premises are open to the public, the business is not properly supervised and managed by a responsible person, the licensee is guilty of an offence.

(3) A person (other than the licensee) who supervises or manages the business conducted under a licence without the approval of the licensing authority is guilty of an offence.

(4) The person for the time being supervising and managing the business conducted under a licence must, at all times while on the licensed premises, wear identification in a form and manner approved by the Commissioner.

Maximum penalty: \$1 250.

Approval of assumption of positions of authority in corporate or trust structures

98. (1) A person must not assume a position of authority in a trust or corporate entity that holds a licence (other than a limited licence) without the approval of the licensing authority.

- (2) A person who contravenes subsection (1) is guilty of an offence.

DIVISION 2—PROFIT SHARING

Prohibition of profit sharing

99. (1) Subject to this Act, if a licensee—

- (a) enters into partnership with an unlicensed person in relation to the business carried on under the licence; or
- (b) enters into any agreement or arrangement under which an unlicensed person may participate in the proceeds of the business carried on under the licence (but this paragraph does not prevent the members of a licensed club from benefiting as members of the club from the proceeds of the business conducted under the licence); or
- (c) remunerates an unlicensed 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; or
- (d) permits an unlicensed person (not being a person approved by the licensing authority) to conduct, superintend or manage the business carried on at licensed premises under the licence; or

(e) permits an unlicensed person to exercise control or substantial influence, without authorisation or approval under this Act, over the business conducted under the licence; or

(f) permits an unlicensed person to hold himself or herself out to the public as the licensee,

the licensee and the unlicensed person are each guilty of an offence.

(2) The Commissioner may, on application by an interested person, approve an agreement or arrangement if—

(a) the agreement or arrangement—

(i) is likely to assist the liquor industry and industries with which it is closely associated—such as tourism and the hospitality industry; or

(ii) is otherwise in the public interest,

or there is some other good reason for approving the agreement or arrangement; and

(b) the agreement or arrangement does not adversely affect the rights and reasonable expectations of persons presently in employment.

(3) If an agreement or arrangement approved under subsection (2) provides for a trust or corporate entity to conduct, superintend or manage the business conducted under a licence, that business must nevertheless be conducted under the personal supervision and management of a natural person approved by the licensing authority.

(4) The Commissioner may, on application by the holder of a licence authorising the sale of liquor by wholesale, approve an agreement or arrangement between that holder and an unlicensed agent under which the agent is to be remunerated by reference to the quantity of wholesale sales of liquor made by the agent.

(5) The Commissioner must not approve an agreement or arrangement under subsection (4) unless satisfied—

(a) that the agent is a fit and proper person to act as an agent of the licensee; and

(b) that the nature and scale of the business to be conducted by the agent under the proposed agreement or arrangement is not such that, taken alone or in conjunction with the business conducted under all other similar agencies held by the agent with other holders of wholesale licences, the agent should properly hold an appropriate licence under this Act in relation to that business.

(6) Subsection (1) does not apply to—

(a) an agreement or arrangement approved under subsection (2) or (4) or any other provision of this Act, or anything done under any such approved agreement or arrangement; or

- (b) any contractual provision for the remuneration of an employee of a licensee (other than a provision that confers on the employee a right to a share of the profits of the business conducted under the licence or provides that the remuneration of the employee is to vary by reference to the quantity of liquor sold); or
 - (c) an agreement or arrangement providing for the disbursement of profits or proceeds to a person in a position of authority in a trust or corporate entity that holds the licence or to a shareholder or beneficiary approved by the licensing authority as being a fit and proper person.
- (7) For the purposes of subsection (2)—

"interested person" includes an association formed to protect or further the interests of—

- (a) the liquor industry or a particular section of the liquor industry; or
- (b) employees in the liquor industry or a particular section of the liquor industry.

DIVISION 3—SUPPLY OF LIQUOR TO LODGERS

Supply of liquor to lodgers

100. (1) The following conditions must be observed in relation to liquor supplied under a licence authorising the sale of liquor to lodgers:

- (a) if the liquor is supplied to a lodger for consumption on the licensed premises and the licence does not (when the liquor is supplied) authorise the sale of liquor to the public for consumption on the licensed premises—
 - (i) the liquor must be consumed by the lodger personally or by a guest of the lodger in the presence of the lodger and at the lodger's expense;
 - (ii) there must be no more than 6 adult guests of the lodger present at the time the liquor is consumed;
 - (iii) liquor must not be supplied to, or consumed by, a minor;
- (b) if the liquor is supplied to a lodger for consumption off the licensed premises and the licence does not authorise the sale of liquor to the public for consumption off the licensed premises—the liquor may only be supplied in quantities likely to be consumed by the lodger and guests on the day on which it is supplied.

(2) If any of the conditions prescribed by subsection (1) is contravened, the licensee and the lodger are each guilty of an offence.

Record of lodgers

101. (1) A licensee who holds a licence that authorises the sale of liquor to lodgers must keep a record of all lodgers for whom accommodation is provided at the licensed premises.

(2) The record—

- (a) must be kept in writing or by computer; and
- (b) must contain the name and address of the lodger; and

- (c) must include any other prescribed information.
- (3) A person who fails to keep a record as required by this section is guilty of an offence.

DIVISION 4—REMOVAL AND CONSUMPTION OF LIQUOR

Restriction on taking liquor from licensed premises

102. (1) Subject to this Division—

- (a) if a licensee is not authorised under the licence to sell liquor for consumption off the licensed premises, a person who takes liquor away from the licensed premises is guilty of an offence;
- (b) if a licensee is authorised under the licence to sell liquor for consumption off the licensed premises during certain authorised trading hours, a person who takes liquor away from the licensed premises more than 30 minutes after the relevant trading hours is guilty of an offence.

(2) This section does not prevent the removal of liquor won as a prize.

Restriction on consumption of liquor in, and taking liquor from, licensed premises

103. (1) Subject to this Division, if at a particular time a licensee is not entitled under the licence to sell liquor to a particular person, that person is not then entitled—

- (a) to purchase or consume liquor on the licensed premises; or
- (b) to be in possession of liquor on the licensed premises; or
- (c) to take liquor from the licensed premises,

and a person who does so is guilty of an offence.

(2) A person who is on licensed premises for the purpose of purchasing or consuming liquor contrary to subsection (1)(a) is guilty of an offence.

(3) In any proceedings for an offence against subsection (2) in which it is proved that the defendant was on licensed premises when not entitled to purchase or consume liquor, it will be presumed, in the absence of proof to the contrary, that the person was there for the purpose of purchasing or consuming liquor in contravention of subsection (1)(a).

(4) A licensee who permits a person to act in contravention of this section is guilty of an offence.

(5) No offence is committed by a person under this section—

- (a) because the person, within 15 minutes of the conclusion of the relevant authorised trading hours—
 - (i) consumes; or
 - (ii) has possession of,

liquor lawfully sold by the licensee for consumption on the licensed premises; or

- (b) because the person, within 30 minutes of the conclusion of the relevant authorised trading hours—
- (i) has possession of; or
 - (ii) takes from licensed premises,
- liquor lawfully sold by the licensee for consumption off the licensed premises.
- (6) No offence is committed under this section—
- (a) because of the consumption of liquor on licensed premises—
- (i) by a lodger; or
 - (ii) by a person who is resident on the licensed premises being the licensee or a member of the licensee's family or the manager of the licensed premises or a member of the manager's family; or
 - (iii) by a guest of a person referred to in subparagraph (i) or (ii), if the liquor was supplied in the presence, and at the expense, of that person; or
 - (iv) by a non-resident licensee; or
 - (v) by an employee of the licensee; or
- (b) because of the taking of liquor from licensed premises—
- (i) by a lodger; or
 - (ii) by a person who is resident on the licensed premises being the licensee or a member of the licensee's family or the manager of the licensed premises or a member of the manager's family.

Liquor may be brought onto, and removed from, licensed premises in certain cases

104. If a licence authorises the consumption of liquor (or the sale and consumption of liquor) on the licensed premises with or ancillary to a meal provided by the licensee, then, despite any other provision of this Act, it is lawful for a person—

- (a) to bring liquor onto the licensed premises, with the consent of the licensee, intending to consume it with or ancillary to a meal provided by the licensee on the licensed premises; and
- (b) later to take the unconsumed portion of the liquor from the licensed premises.

DIVISION 5—ENTERTAINMENT

Entertainment on licensed premises

105. (1) A licensee must not use any part of the licensed premises, or any area adjacent to the licensed premises for the purpose of providing entertainment without the consent of the licensing authority.

- (2) The licensing authority may only grant its consent if satisfied that—

- (a) the giving of the consent would be consistent with the objects of this Act; and
- (b) the entertainment is unlikely to give undue offence to people who reside, work or worship in the vicinity of the premises.

(3) The licensing authority may grant its consent under subsection (1) subject to conditions it considers necessary or desirable.

(4) Any conditions imposed under subsection (3) have effect as conditions of the licence and operate according to their terms whether or not entertainment is being provided in accordance with the consent of the licensing authority.

- (5) A licensee who contravenes subsection (1) is guilty of an offence.

DIVISION 6—NOISE

Complaint about noise, etc., emanating from licensed premises

106. (1) If—

- (a) an activity on, or the noise emanating from, licensed premises; or
- (b) the behaviour of persons making their way to or from licensed premises,

is unduly offensive, annoying, disturbing or inconvenient to a person who resides, works or worships in the vicinity of the licensed premises, a complaint may be lodged with the Commissioner under this section.

(2) A complaint under this section may be lodged by—

- (a) the Commissioner of Police; or
- (b) the council for the area in which the licensed premises are situated; or
- (c) a person claiming to be adversely affected by the subject matter of the complaint.

(3) A complaint cannot be made under subsection (2)(c) unless—

- (a) the complainant is authorised to make the complaint by at least 10 persons who reside, work or worship in the vicinity of the licensed premises; or
- (b) the Commissioner is satisfied that the nature or gravity of the complaint is such that it should be admitted despite non-compliance with paragraph (a).

(4) If a complaint is lodged with the Commissioner under this section, the Commissioner must endeavour to resolve the subject matter of the complaint by conciliation and—

- (a) the Commissioner may, before or during the course of the conciliation proceedings, make an interim order about the subject matter of the complaint; and
- (b) if the matter is settled by conciliation, the Commissioner may make a final order against the licensee reflecting the terms of the settlement,

(and the terms of an interim or final order under this subsection become conditions of the licence).

(5) If the Commissioner fails to settle the subject matter of the complaint by conciliation, the Commissioner must refer the complaint to the Court.

(6) If a complaint is referred to the Court under subsection (5), the Court may, after giving the complainant, the licensee and any other person whom the Court thinks fit to hear an opportunity to be heard, make an order against the licensee resolving the subject matter of the complaint.

(7) The order may add to or vary the conditions of the licence.

(8) If a proposal for settlement of the subject matter of the complaint is made in the course of proceedings before the Commissioner, evidence of the proposal is inadmissible in proceedings before the Court.

DIVISION 7—EMPLOYMENT OF MINORS

Minors not to be employed to serve liquor in licensed premises

107. (1) If a minor is employed to sell, supply or serve liquor on licensed premises, the licensee is guilty of an offence.

(2) However, this section does not prevent the employment of a minor to sell, supply or serve liquor on licensed premises if the minor is of or above the age of 16 years and is a child of the licensee or of a manager of the licensed premises.

DIVISION 8—SALE OR SUPPLY TO INTOXICATED PERSONS

Liquor not to be sold or supplied to intoxicated persons

108. (1) If liquor is sold or supplied on licensed premises to a person who is intoxicated, the licensee, the manager of the licensed premises and the person by whom the liquor is sold or supplied are each guilty of an offence.

Maximum penalty: \$20 000.

(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—

- (a) if the defendant is the person by whom the liquor was sold or supplied—that the defendant believed on reasonable grounds that the person to whom it was supplied was not intoxicated; or
- (b) if the defendant is the licensee or manager of the licensed premises and did not personally sell or supply the liquor—that the defendant exercised proper care to prevent the sale or supply of liquor in contravention of subsection (1).

DIVISION 9—MISCELLANEOUS REQUIREMENTS**Copy of licence to be kept on licensed premises**

109. (1) A licensee must keep a copy of the licence, showing all conditions of, and endorsements on, the licence displayed at or near the front entrance to the licensed premises at all times.

(2) A person who fails, without reasonable excuse, to comply with subsection (1) is guilty of an offence.

**PART 7
MINORS**

Sale of liquor to minors

110. (1) If liquor is sold or supplied to a minor on licensed premises, the licensee, the manager of the licensed premises, and the person by whom the liquor is sold or supplied are each guilty of an offence.

Maximum penalty:

For the licensee, or the manager of the licensed premises—\$20 000;

For any other person—\$5 000.

(2) A licensee who permits a minor to consume liquor on the licensed premises is guilty of an offence.

Maximum penalty: \$20 000.

(3) It is a defence to a charge of an offence against subsection (1) or (2) to prove that—

- (a) the licensee or some person acting on behalf of the licensee required the minor to produce evidence of age; and
- (b) the minor made a false statement, or produced false evidence, in response to that requirement; and
- (c) in consequence the person who served the minor reasonably assumed that the minor was of or above the age of 18 years.

(4) If a person, acting at the request of a minor, purchases liquor on behalf of the minor on licensed premises, that person and the minor are each guilty of an offence.

Maximum penalty: \$5 000.

(5) This section does not apply to the gratuitous supply of liquor to, or the consumption of liquor by, a minor if—

- (a) the liquor is supplied by a parent or guardian of the minor; and
- (b) the minor is a child of—
 - (i) the licensee; or
 - (ii) a manager of the licensed premises; or
 - (iii) an employee of the licensee,and is resident on the licensed premises.

(6) In this section—

"licensed premises" includes areas appurtenant to the licensed premises.

Areas of licensed premises may be declared out of bounds to minors

111. (1) A licensee may, with the approval of the licensing authority, declare any part of the licensed premises (not being a dining room or bedroom) to be out of bounds to minors.

(2) If a part of licensed premises is declared out of bounds to minors, a notice of that fact, in the prescribed form, must be erected at each entrance to that part of the licensed premises.

(3) If a minor (not being a child of the licensee or a manager of the licensed premises) enters a part of licensed premises that has been declared to be out of bounds to minors, and in respect of which notices have been erected, under this section, the licensee, an agent or employee of the licensee, or a police officer may require the minor to leave, and, if the minor fails to do so, may exercise reasonable force to remove the minor.

(4) An approval may be granted under subsection (1) on such conditions as the licensing authority thinks fit.

Minors not to enter or remain in certain licensed premises

112. (1) A minor—

(a) may not enter, or remain in, a part of licensed premises subject to an entertainment venue licence (other than a part of the licensed premises approved by the licensing authority) between the hours of 9 pm on one day and 5 am of the next; and

(b) may not enter, or remain in, a part of licensed premises subject to a licence of some other class (other than a dining room, a bedroom or some other part of the licensed premises approved by the licensing authority) between the hours of midnight and 5 am if liquor may be sold in the relevant part of the licensed premises at that time.

(2) If a minor enters or remains in licensed premises in contravention of this section or in contravention of a condition of the licence, the licensee, an employee of the licensee, or a police officer may require the minor to leave, and, if the minor fails to do so, may exercise reasonable force to remove the minor.

(3) If a minor enters or remains in licensed premises or any part of licensed premises in contravention of this section or in contravention of a condition of the licence, the minor and the licensee are each guilty of an offence.

(4) If a licensee is charged with an offence against subsection (3), it is a defence to prove that the licensee took reasonable care to prevent minors from entering or remaining on the relevant part of the licensed premises at the relevant time.

(5) A licensee must ensure that a notice in the prescribed form is displayed at each entrance of licensed premises, or part of licensed premises, at any time when access is prohibited to minors under this section or under a condition of the licence.

(6) This section does not apply in relation to minors of a class exempted by the regulations from its ambit.

Notice to be erected

113. (1) A licensee must ensure that a notice in the prescribed form is displayed in a prominent position in each part of the licensed premises to which access is permitted to minors by the licensee—

- (a) stating—
 - (i) the minimum age at which liquor may be consumed in the licensed premises; and
 - (ii) that persons suspected of being under the minimum age may be required to provide evidence of their age; and
 - (iii) that minors are prohibited from obtaining or consuming liquor on the licensed premises; and
 - (iv) the penalties for the unlawful obtaining or consumption of liquor on licensed premises by a minor; and
 - (b) including any other information required under the regulations.
- (2) A licensee who fails to comply with this section is guilty of an offence.

Offences by minors

114. (1) A minor who obtains or consumes liquor in regulated premises is guilty of an offence.

(2) A person who supplies liquor to a minor in regulated premises is guilty of an offence.

(3) This section does not apply to the gratuitous supply of liquor to, or the consumption of liquor by, a minor if—

- (a) the liquor is supplied by a parent or guardian of the minor; and
 - (b) the minor is a child of—
 - (i) a licensee; or
 - (ii) a manager of licensed premises; or
 - (iii) an employee of the licensee;
- and is resident on the licensed premises.

Evidence of age may be required

115. (1) If an authorised person suspects on reasonable grounds that a person (the **suspected minor**) is under the age of 18 years, the authorised person may require the suspected minor to produce evidence that complies with the requirements of the regulations if—

- (a) the suspected minor is on regulated premises; or
 - (b) the suspected minor is, or has recently been, in possession of liquor in a public place.
- (2) A person who—
- (a) fails, without reasonable excuse, to comply with a requirement under this section; or

(b) makes a false statement, or produces false evidence, in response to such a requirement, is guilty of an offence.

(3) In this section—

"authorised person" means—

- (a) in relation to regulated premises or a public place—an inspector or a police officer;
- (b) in relation to regulated premises—the occupier or manager of the premises or an agent or employee of the occupier.

Power to require minors to leave licensed premises

116. (1) If an authorised person suspects on reasonable grounds that a person on licensed premises—

- (a) is under the age of 18 years; and
- (b) is on the licensed premises for the purpose of consuming liquor in contravention of this Act,

the authorised person may require that person to leave the licensed premises.

(2) If a person fails to comply forthwith with a requirement under subsection (1), an authorised person may remove the person from the licensed premises, using such force as may be reasonably necessary for the purpose.

(3) If a person re-enters licensed premises within 24 hours of being required to leave, or being removed from, the licensed premises under this section—

- (a) the person is guilty of an offence; and
- (b) an authorised person may remove the person from the licensed premises using such force as may be reasonably necessary for the purpose.

(4) In this section—

"authorised person" means—

- (a) the licensee or an agent or employee of the licensee; or
- (b) a manager of the licensed premises; or
- (c) an inspector or a police officer;

"licensed premises" includes areas appurtenant to licensed premises.

Minors may not consume or possess liquor in public places

117. (1) A minor who consumes or has possession of liquor in a public place is guilty of an offence.

(2) A person who supplies liquor to a minor in a public place is guilty of an offence.

Maximum penalty: \$5 000.

(3) This section does not apply to the consumption or possession of liquor by, or the supply of liquor to, a minor who is in the company of an adult guardian or spouse of the minor.

(4) In this section—

"guardian" in relation to a minor, means a parent (including a step-parent) or legal guardian of the minor.

**PART 8
DISCIPLINARY ACTION**

Application of this Part

118. This Part applies to—

- (a) a person who is or has been licensed or approved under this Act;
- (b) a person who has sold liquor without a licence;
- (c) a person who occupies or has occupied a position of authority in a licensed entity or an entity that has sold liquor without a licence;
- (d) a person who supervises or manages or has supervised or managed a business conducted under a licence or a business in the course of which liquor has been sold without a licence;
- (e) an unlicensed person who has entered into an arrangement contrary to this Act with a licensee;
- (f) a lessor of licensed premises.

Cause for disciplinary action

119. (1) There is proper cause for disciplinary action against a person to whom this Part applies—

- (a) if the person has improperly obtained a licence or approval under this Act; or
- (b) in relation to a business that is being or has been conducted under a licence—
 - (i) if liquor has been sold or supplied contrary to this Act or without proper authority under this Act; or
 - (ii) if there has been a breach of a condition of the licence; or
 - (iii) if the licensed premises have been altered without the approval of the licensing authority; or
 - (iv) if the licensed premises are or have been in disrepair or in an unsatisfactory condition; or
 - (v) if the safety, health or welfare of persons resorting to the licensed premises is or has been endangered by neglect of the premises or neglect in the conduct, supervision or management of the business; or
 - (vi) if a person has been convicted of unlawful gaming in respect of events occurring (wholly or partly) on the licensed premises; or
 - (vii) if a contravention or failure to comply with an industrial award or enterprise agreement has occurred; or
 - (viii) if the business has otherwise not been properly conducted, supervised or managed in accordance with this or any other Act; or

- (c) if the person is or has been licensed or approved under this Act but is not a fit and proper person; or
- (d) if the person has been guilty of—
 - (i) a breach of this Act (which may be a breach by virtue of which this Part applies to the person); or
 - (ii) a breach of a term or condition of a licence; or
 - (iii) a breach of an order under this Act; or
 - (iv) a breach of an undertaking under subsection (2).

(2) If the Commissioner is of the opinion that proper grounds for disciplinary action exist, and the person liable to the disciplinary action is willing to give an undertaking under this section, the Commissioner may obtain from the person an undertaking directed against continuation or repetition of the relevant conduct and, if such an undertaking is given, the person is exempt from disciplinary action in relation to the relevant conduct while the terms and conditions of the undertaking are complied with.

Disciplinary action before the Court

120. (1) A complaint may be lodged with the Court alleging that proper grounds for disciplinary action exist, on grounds stated in the complaint, against a specified person.

(2) A complaint may be lodged—

- (a) by the Commissioner; or
- (b) by the Commissioner of Police; or
- (c) if the subject matter of the complaint is relevant to the responsibilities of the council in whose area the licensed premises are situated—by the council.

(3) A complaint may be lodged and disciplinary action taken against a person for conduct that constitutes an offence despite the fact that the person has not been prosecuted for the offence.

(4) Notice of a complaint and of the time and place appointed for the hearing of the complaint must be served on the person to whom the complaint relates.

Disciplinary action

121. (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

- (a) in the case of a person licensed under this Act, add to, or alter, the conditions of the licence;
- (b) in the case of a person licensed or approved under this Act, suspend or revoke the licence or approval;
- (c) in the case of any person—

- (i) reprimand the person;
- (ii) impose a fine not exceeding \$15 000 on the person;
- (iii) disqualify the person from being licensed or approved under this Act.

(2) The Court may—

- (a) direct that a disqualification is to apply permanently;
- (b) direct that a suspension or disqualification is to apply—
 - (i) for a specified period; or
 - (ii) until the fulfilment of stipulated conditions; or
 - (iii) until further order;
- (c) direct that an order is to have effect at a specified future time;
- (d) vary an order imposing a suspension or disqualification.

(3) If—

- (a) a person has been found guilty of an offence; and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section for conduct giving rise to the offence.

(4) If a licensee is convicted of an offence involving the unlawful sale or supply of liquor to a minor and a complaint is lodged on the ground of the breach of duty leading to the conviction, the Court must—

- (a) take disciplinary action against the licensee; and
- (b) if the conviction follows a previous conviction for an offence involving the unlawful sale or supply of liquor to a minor or previous disciplinary action for an incident involving the unlawful sale or supply of liquor to a minor—suspend or revoke the licence unless the licensee shows cause why that action should not be taken.

(5) A condition may be imposed under this section—

- (a) limiting the kinds of liquor that may be sold under the licence;
- (b) limiting the times when liquor, or liquor of a particular kind, may be sold under the licence;
- (c) limiting in some other way the authority conferred by the licence.

(6) An order imposing a fine may be registered in the Magistrates Court or the District Court and enforced as an order of the court in which it is registered.

PART 9
ENFORCEMENT

DIVISION 1—POWERS OF ENTRY ETC

Powers of authorised officers

122. (1) An authorised officer may, at any reasonable time—

- (a) enter licensed premises; and
- (b) inspect licensed premises; and
- (c) require any person who has possession of books of account, or other records, relevant to a business conducted under a licence, or to transactions involving the sale or purchase of liquor, to produce those books of account or other records for inspection; and
- (d) require any person who is in a position to provide information relating to the sale, purchase or supply of liquor to answer any question put by the authorised officer on that subject.

(2) An authorised officer may—

- (a) examine books of account or other records produced under this section; and
- (b) make copies of, or take extracts from, any such books of account or other records; and
- (c) retain the books of account or other records for a reasonable period for the purposes referred to above.

(3) A person who—

- (a) hinders or obstructs an authorised officer in the exercise of powers under this section; or
- (b) fails, without reasonable excuse, to comply with a requirement of an authorised officer under this section; or
- (c) fails, without reasonable excuse, to answer, to the best of the person's knowledge, information and belief, a question put by an authorised officer; or
- (d) falsely represents that he or she is an authorised officer,

is guilty of an offence.

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

(5) However, if a question is relevant to the assessment of a licence fee, a person is not excused from answering the question on the ground that the answer to the question would tend to incriminate the person of an offence but, where a person objects to answering a question on that ground, the answer is not admissible against the person in criminal proceedings (except proceedings for an offence against this section).

(6) In this section—

"authorised officer" means—

- (a) the Commissioner; or
- (b) an inspector; or
- (c) a police officer.

Power to enter and search premises and confiscate liquor

123. (1) If a police officer suspects on reasonable grounds—

- (a) that an offence against this Act is being committed on any premises; or
- (b) that there is on licensed or other premises evidence of an offence against this Act,

the officer may enter and search the premises, using the force necessary for the purpose.

(2) A police officer may confiscate liquor that the officer suspects on reasonable grounds to have been illegally sold or supplied, or to be in the possession of a person unlawfully or for an unlawful purpose.

DIVISION 2—POWER TO REMOVE OR REFUSE ENTRY

Power to refuse entry or remove persons guilty of offensive behaviour

124. (1) An authorised person may, if necessary, use reasonable force to—

- (a) remove from licensed premises any person who is intoxicated or behaving in an offensive or disorderly manner; or
- (b) prevent the entry of such a person onto licensed premises.

(2) A police officer must, at the request of a licensee or a manager of licensed premises, exercise the power conferred by subsection (1) in relation to a person who is behaving in an offensive or disorderly manner or is intoxicated.

(3) A person removed from licensed premises under subsection (1) who re-enters the licensed premises within 24 hours of being removed from them is guilty of an offence.

(4) A person who—

- (a) is removed from licensed premises, or refused entry to, or prevented from entering, licensed premises under this section; and
- (b) enters or attempts to enter the licensed premises within the following 24 hours,

is guilty of an offence.

(5) A police officer may arrest, without warrant, any person who commits an offence against subsection (4).

(6) In this section—

"authorised person" means—

- (a) the licensee or an agent or employee of the licensee; or
- (b) a manager of the licensed premises; or
- (c) a police officer.

DIVISION 3—POWER TO BAR

Power to bar

125. (1) A licensee or the manager of licensed premises may, by order served on a person, bar the person from entering or remaining on the licensed premises (including areas adjacent to the licensed premises that are under the licensee's control) for a specified period, not exceeding three months—

- (a) if the person commits an offence, or behaves in an offensive or disorderly manner, on, or in an area adjacent to, the licensed premises; or
- (b) on any other reasonable ground.

(2) A person who enters or remains in a place from which he or she is barred under this section is guilty of an offence.

Maximum penalty: \$1 250.

(3) A licensee or the manager of licensed premises may, by subsequent order served on a person, revoke an order.

(4) A licensee, the manager of licensed premises or an employee of the licensee who allows a person to enter or remain in a place from which the person is barred is guilty of an offence.

Maximum penalty: \$1 250.

Orders

126. (1) An order under this Division must be in writing in a form prescribed by regulation.

(2) A copy of the order must be kept at the licensed premises to which the order relates.

Power to remove person who is barred

127. (1) If a person is on premises from which the person is barred under this Division, an authorised person may require that person to leave the premises.

(2) If a person who is barred from premises under this Division—

- (a) seeks to enter the premises; or
- (b) refuses or fails to comply with a requirement under subsection (1),

an authorised person may prevent the person from entering the premises, or remove the person from the premises, using the force reasonably necessary for the purpose.

(3) In this section—

"authorised person" means—

- (a) the licensee or an agent or employee of the licensee; or
- (b) a manager of the licensed premises; or
- (c) a police officer.

Commissioner may review order

128. (1) A person in respect of whom one or more orders have been made under this Division barring the person from premises—

- (a) for a period exceeding one month; or
- (b) for periods exceeding one month in aggregate during a period of three months,

may apply to the Commissioner for a review of the order under which the person is barred from the premises.

(2) The Commissioner may, on an application under this section, confirm, vary or revoke the order.

(3) A decision of the Commissioner under this section is not subject to review.

(4) The Commissioner may, if he or she thinks fit, suspend an order pending determination of an application for review of the order.

PART 10
UNLAWFUL CONSUMPTION OF LIQUOR

Consumption on regulated premises

129. (1) If regulated premises are unlicensed, a person who consumes liquor on the premises is guilty of an offence.

(2) If regulated premises are unlicensed, a person who supplies liquor on or in the vicinity of the premises for consumption on the premises is guilty of an offence.

Unlawful consumption of liquor

130. (1) If—

- (a) a prescribed entertainment is held on unlicensed premises; and
- (b) the organisers of the entertainment have stipulated, in a manner calculated to come to the attention of those attending the entertainment, that no liquor is to be consumed on, or brought onto, the premises during the entertainment,

a person who consumes liquor on or in a place adjacent to the premises during a period commencing 30 minutes before the entertainment commences and ending 30 minutes after it concludes is guilty of an offence.

(2) This section does not prevent the consumption of liquor on licensed premises.

(3) It is a defence to a charge of an offence against this section to prove the defendant—

- (a) did not come to the relevant place for the purpose of attending or participating in the entertainment or for any other purpose connected with the entertainment; and
- (b) did not know and could not reasonably be expected to have known of the circumstances rendering the consumption of liquor in that place unlawful.

(4) In this section—

"prescribed entertainment" means—

- (a) a dance;
- (b) any other entertainment declared by regulation to be a prescribed entertainment for the purposes of this section.

Control of consumption etc of liquor in public places

131. (1) A person who, in a public place—

- (a) consumes liquor; or
- (b) has possession of liquor,

in contravention of a prohibition imposed by regulation is guilty of an offence.

Maximum penalty: \$1 250.
Expiation fee: \$160.

(2) A prohibition imposed for the purposes of subsection (1)—

- (a) may relate to a specified public place or to public places of a specified kind;
- (b) may be absolute or conditional;
- (c) may operate continuously or at specified times.

PART 11
MISCELLANEOUS

DIVISION 1—OFFENCES AND PROCEDURE

Penalties

132. A person who is guilty of an offence against this Act for which no penalty is specifically provided is liable to the following penalty:

- (a) if the person is, or was at the time of the offence, a licensee, a manager of licensed premises or an officer of a trust or corporate entity that holds a licence—a fine not exceeding \$10 000;
- (b) in any other case—a fine not exceeding \$2 500.

Recovery of financial advantage illegally obtained

133. (1) If a person, by contravention of, or non-compliance with, a provision of this Act or a condition of a licence gains any financial advantage, the Court may, on the application of the Commissioner, assess the amount of that advantage and the amount so assessed may be recovered from that person as a debt due to the Crown.

(2) This section applies whether or not the contravention or non-compliance referred to in subsection (1) has been prosecuted as an offence.

Vicarious liability

134. (1) If a body corporate is guilty of an offence against this Act, each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the body corporate.

(2) If the trustee of a trust for which a licence is held is guilty of an offence against this Act, every other person occupying a position of authority in the trust is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

(3) If there is proper cause for disciplinary action against a trust or corporate entity under Part 8, there is proper cause for disciplinary action under that Part against each person occupying a position of authority in the entity unless it is proved that the person could not, by the exercise of reasonable care, have prevented the misconduct.

Evidentiary provision

135. (1) In proceedings for an offence against this Act or in disciplinary proceedings against a licensee, an allegation in the complaint—

- (a) that a substance referred to in the complaint was liquor;
- (b) that a person named in the complaint is, or was on a specified date, a licensed person or an unlicensed person;
- (c) that premises referred to in the complaint are, or were on a specified date, licensed premises;
- (d) that a person named in the complaint is, or was on a specified date, a minor;

- (e) that a licence referred to in the complaint is, or was on a specified date, subject to specified conditions;
- (f) that a person named in the complaint is, or was on a specified date, a manager of licensed premises;
- (g) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a trust or corporate entity that holds a licence under this Act;
- (h) that a person named in the complaint is, or was on a specified date, an inspector,

must be accepted as proved in the absence of proof to the contrary.

(2) In legal proceedings, a document apparently certified by the Commissioner to be a licence, certificate or other document issued under this Act, or to be a copy of a licence, certificate or other document issued under this Act, must be accepted as such in the absence of proof to the contrary.

(3) In legal proceedings, proof that a person has advertised, or has by any other means given the impression, that the person will sell liquor must, in the absence of proof to the contrary, be accepted as proof that the person has sold liquor.

(4) In legal proceedings, a document apparently signed by the Commissioner stating—

- (a) that a specified person has, or had on a specified date, a specified power or function because of a delegation by the Commissioner under this Act; or
- (b) that a delegation by the Commissioner under this Act is, or was on a specified date, subject to specified conditions,

is, in the absence of proof to the contrary, proof of the facts as stated.

DIVISION 2—GENERAL

Service

136. (1) A notice or other document may be served on a licensee—

- (a) personally; or
- (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 posting it to the licensee in an envelope addressed to the licensee at the licensed premises or some other appropriate address of which the person who is to serve the notice or document has had notice.

(2) A notice or other document may be served on any other person—

- (a) personally; or
- (b) if the person has nominated an address for service—by leaving it at or posting it to that address in an envelope addressed to the person; or

- (c) by posting it to the person's usual place of business or residence in an envelope addressed to the person; or
- (d) by leaving it at or posting it to the address of the person's solicitor in an envelope addressed to the solicitor.

(3) A notice or other document posted to a person under this section will be conclusively presumed to have been served on the person at the time when it would, in the ordinary course of post, reach the address to which it was posted.

Immunity from liability

137. (1) An officer engaged in the administration or enforcement of this Act incurs no liability for anything done in good faith and in the exercise or purported exercise of official powers or functions.

(2) A liability that would, but for subsection (1), attach to an officer, attaches instead to the Crown.

Regulations

138. (1) The Governor may make regulations for the purposes of this Act.

(2) A regulation may be of general or limited application and may vary in operation according to factors stated in the regulation.

(3) A regulation may provide that contravention of or non-compliance with the regulation constitutes a summary offence punishable—

- (a) if the convicted person is, or was at the time of the offence, a licensee, a manager of licensed premises or an officer of a trust or corporate entity that holds a licence—by a fine not exceeding \$10 000;
- (b) in any other case—by a fine not exceeding \$1 250.

SCHEDULE
Repeal and Transitional Provisions

Definitions

1. In this Schedule—

"appointed day" means the day on which the repeal of the *Liquor Licensing Act 1985* takes effect;

"repealed Act" means the *Liquor Licensing Act 1985* repealed by this Act.

Repeal

2. The *Liquor Licensing Act 1985* is repealed.

Existing licences

3. (1) A hotel licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a hotel licence under this Act and if a late night permit is in force in relation to the licence, the permit is to be regarded as an extended trading authorisation.

(2) A residential licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a residential licence under this Act.

(3) A restaurant licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a restaurant licence under this Act.

(4) An entertainment venue licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, an entertainment venue licence under this Act.

(5) A club licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a club licence under this Act.

(6) A retail liquor merchant's licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a retail liquor merchant's licence under this Act.

(7) A wholesale liquor merchant's licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a wholesale liquor merchant's licence under this Act.

(8) A producer's licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a producer's licence under this Act.

(9) A limited licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a limited licence under this Act.

(10) A general facility licence in force under the repealed Act immediately before the appointed day becomes, on the appointed day, a special circumstances licence but such a licence is taken to be subject to a condition under which it will lapse two years after the appointed day unless within that period the licensing authority, on application by the licensee—

(a) converts the licence into a licence of some other licence class that the licensing authority considers appropriate; or

(b) decides that there is no other licence class into which the licence could appropriately be converted.

(11) The trading rights under a licence are not diminished on the appointed day Act and to the extent that an extended trading authorisation or other special licence condition would be required to replicate those trading rights under this Act, the licence will, on the commencement of this Act, be taken to include such an authorisation or special condition.

Continuation of other administrative acts, etc.

4. Any administrative, disciplinary or judicial act done under or for the purposes of the repealed Act remains in force for the purposes of the corresponding provisions of this Act.

Examples—

- A temporary licence in force under the repealed Act immediately before the commencement of this Act remains in force as a temporary licence under the corresponding provisions of this Act.
- A certificate granted under the repealed Act in relation to proposed premises remains in force as a certificate of approval under the corresponding provisions of this Act.
- An assessment of licence fee for a future licence period remains in force and a reassessment may be made under the provisions of this Act.
- An order barring a person from licensed premises remains in force as if made under the corresponding provision of this Act.

Requirements for notices

5. A notice that is required to be publicly exhibited within 2 months after the commencement of this Act is taken to comply with the requirements of this Act as to its form and dimensions if it complies with the requirements of the repealed Act as to the form and dimensions of a corresponding notice under the repealed Act.

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

E. J. NEAL Governor