

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT ACT 2000

No. 55 of 2000

[Assented to 20 July 2000]

An Act to amend the Liquor Licensing Act 1997.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Liquor Licensing (Miscellaneous) Amendment Act 2000*.

(2) The *Liquor Licensing Act 1997* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 4—Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "director" the following definition:

"direct sales transaction" means a transaction for the sale of liquor in which—

- (a) the liquor is ordered by the purchaser by mail, telephone, facsimile transmission or internet or other electronic communication; and
- (b) the liquor is delivered to the purchaser, or a person nominated by the purchaser, at the residence or place of business of the purchaser, or some place (other than premises at which the liquor has been stored prior to delivery) nominated by the purchaser;;

(b) by inserting after the definition of "related body corporate" the following definition:

"responsible person" for licensed premises means a person who is, in accordance with section 97, responsible for supervising and managing the business conducted under the licence;.

Amendment of s. 5—Lodgers

4. Section 5 of the principal Act is amended by striking out paragraph (b) of subsection (2) and substituting the following paragraph:

- (b) a responsible person for the licensed premises or a member of a responsible person's family;.

Amendment of s. 31—Authorised trading in liquor

5. Section 31 of the principal Act is amended by inserting after paragraph (h) of subsection (2) the following paragraph:

- (ha) direct sales licence;.

Amendment of s. 32—Hotel licence

6. Section 32 of the principal Act is amended by inserting after paragraph (h) of subsection (1) "and" and the following paragraph:

- (i) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only during trading hours fixed by or under a preceding paragraph for the sale of liquor for consumption off the licensed premises).

Amendment of s. 34—Restaurant licence

7. Section 34 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

- (2) Except as otherwise allowed by a condition of the licence, it is a condition of a restaurant licence that business must be so conducted at the licensed premises that the supply of meals is at all times the primary and predominant service provided to the public at the premises.

Amendment of s. 35—Entertainment venue licence

8. Section 35 of the principal Act is amended by inserting after paragraph (b) of subsection (1) "and" and the following paragraph:

- (c) if the conditions of the licence so provide—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).

Amendment of s. 36—Club licence

9. Section 36 of the principal Act is amended by striking out paragraph (i) of subsection (1) and substituting the following paragraph:

- (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—

- (i) to sell liquor on the licensed premises on any day except Good Friday and Christmas Day to a member of the club for consumption off the licensed premises; and
- (ii) to sell liquor at any time through direct sales transactions to members of the club (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8.00 a.m. and 9.00 p.m. and not on Good Friday or Christmas Day).

Amendment of s. 37—Retail liquor merchant's licence

10. Section 37 of the principal Act is amended—

(a) by inserting in subsection (1)(a) "on the licensed premises" after "sell liquor";

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

(ab) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8.00 a.m. and 9.00 p.m. and not on Good Friday or Christmas Day); and.

Amendment of s. 38—Wholesale liquor merchant's licence

11. Section 38 of the principal Act is amended—

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

(ba) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State and the purchaser of the liquor is not a liquor merchant, the liquor is despatched and delivered only between the hours of 8.00 a.m. and 9.00 p.m. and not on Good Friday or Christmas Day); and;

(b) by inserting in subsection (2)(b) "and sales for the delivery of liquor outside Australia" after "own employees".

Amendment of s. 39—Producer's licence

12. Section 39 of the principal Act is amended—

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

(a) to sell the licensee's product 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 the licensee's product at any time for consumption in a designated dining area with or ancillary to a meal or in a specified area subject to restrictions specified by the licensing authority; and

(ba) to sell the licensee's product at any time through direct sales transactions; and;

(b) by striking out from subsection (2) "regarded as produced by a licensee" and substituting "regarded as a licensee's product".

Insertion of s. 39A

13. The following section is inserted after section 39 of the principal Act:

Direct sales licence

39A. (1) A direct sales licence authorises the licensee to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8.00 a.m. and 9.00 p.m. and not on Good Friday or Christmas Day).

(2) It is a condition of a direct sales licence that the licensee does not, as part of, or in connection with, the business authorised by the licence, invite or admit prospective purchasers of liquor to any premises or place at which liquor is displayed or stored for sale by the licensee.

Amendment of s. 40—Special circumstances licence

14. Section 40 of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) If liquor is sold by a licensee under a special circumstances licence for consumption at a function off the licensed premises, the licensed premises of the licensee are, for the period for which the licensee supplies liquor at the function, to be regarded as including the premises at which the function is held.

Amendment of s. 42—Mandatory conditions

15. Section 42 of the principal Act is amended by striking out from subsection (2)(b) "unless" and substituting "except in the case of a direct sales licence or where".

Amendment of s. 43—Power of licensing authority to impose conditions

16. Section 43 of the principal Act is amended by inserting in the second example in subsection (1) ", or to minimise prejudice to the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the licensed premises," after "in the vicinity of the licensed premises".

Amendment of s. 45—Compliance with licence conditions

17. Section 45 of the principal Act is amended by striking out paragraph (b) and substituting the following paragraph:

(b) if the breach of the condition involves conduct of another person that the other person knows might render the licensee liable to a penalty—the other person is also guilty of an offence.

Amendment of s. 57—Requirements for premises

18. Section 57 of the principal Act is amended—

(a) by inserting in subsection (1) "for premises or proposed premises" after "for a licence";

(b) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) that the operation of the licence would be unlikely—

(i) to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or

- (ii) to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises;;

(c) by inserting after subsection (2) the following subsection:

(3) The licensing authority may dispense with the requirement that an applicant for a direct sales licence or limited licence—

- (a) satisfy the licensing authority as to a matter referred to in this section; or
- (b) submit plans.

Amendment of s. 59—Certificate of approval for proposed premises

19. Section 59 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The licensing authority may refuse an application for a licence for proposed premises having regard to the extent to which the proposed premises are uncompleted, but may instead, if satisfied as to the matters as to which it is required to be satisfied for the grant of the licence, grant a certificate (a **certificate of approval**) approving the plans submitted by the applicant in respect of the proposed premises.

Amendment of s. 60—Premises to which licence is to be removed

20. Section 60 of the principal Act is amended—

(a) by inserting in subsection (1) "to premises or proposed premises" after "removal of a licence";

(b) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) that the removal of the licence would be unlikely—

- (i) to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises; or
- (ii) to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises.;

(c) by inserting after subsection (2) the following subsection:

(3) The licensing authority may dispense with the requirement that an applicant for the removal of a direct sales licence—

- (a) satisfy the authority as to a matter referred to in this section; or
- (b) submit plans.

Amendment of s. 61—Removal of hotel licence or retail liquor merchant's licence

21. Section 61 of the principal Act is amended by striking out from subsection (2) "in which the premises or proposed premises".

Amendment of s. 62—Certificate for proposed premises

22. Section 62 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The licensing authority may refuse an application for the removal of a licence to proposed premises having regard to the extent to which the proposed premises are uncompleted, but may instead, if satisfied as to the matters as to which it is required to be satisfied for the grant of the application, grant a certificate (a **certificate of approval**) approving the plans submitted by the applicant in respect of the proposed premises.

Amendment of s. 71—Approval of management and control

23. Section 71 of the principal Act is amended—

- (a) by striking out from subsection (1) "manager or managers of" and substituting "a responsible person or responsible persons for";
- (b) by striking out from subsection (3) "manager" and substituting "responsible person";
- (c) by striking out subsection (5).

Amendment of s. 77—General right of objection

24. Section 77 of the principal Act is amended by inserting after subparagraph (i) of subsection (5)(g) the following subparagraph:

- (ia) the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises or proposed premises to which the application relates would be likely to be prejudiced; or.

Amendment of s. 97—Supervision and management of licensee's business

25. Section 97 of the principal Act is amended—

- (a) by inserting in subsection (1)(a)(i) "and qualified for the purpose in accordance with subsection (1a)" after "director of the licensee";
- (b) by striking out from subsection (1)(a)(ii) "to be a manager of" and substituting "as a responsible person for";
- (c) by striking out subparagraph (iii) of subsection (1)(a);
- (d) by inserting after subsection (1) the following subsection:

(1a) The licensee or a director of the licensee is qualified for supervising and managing the business conducted under a licence if—

- (a) the licensee has satisfied the licensing authority that the licensee or the director (as the case may be) is a fit and proper person for the purpose; or
- (b) the licence has been made subject to a condition that the licensee or the director (as the case may be) undertake specified accredited training within a specified time and the specified time has not elapsed or the condition has been satisfied.;

(e) by striking out subsections (5), (6) and (7) and substituting the following subsection:

(5) A responsible person for licensed premises must, while acting as such on the licensed premises, wear identification in a form and manner approved by the Commissioner.

Maximum penalty: \$1 250.

Amendment of s. 103—Restriction on consumption of liquor in, and taking liquor from, licensed premises

26. Section 103 of the principal Act is amended by striking out "the manager of the licensed premises or a member of the manager's family" wherever occurring and substituting, in each case, "a responsible person for the licensed premises or a member of a responsible person's family".

Amendment of s. 106—Complaint about noise, etc., emanating from licensed premises

27. Section 106 of the principal Act is amended by inserting after subsection (8) the following subsection:

(9) An interim order of the Commissioner under this section continues in force until the making of a final order on the complaint by the Commissioner or the Court, or earlier revocation of the interim order by the Commissioner or the Court.

Amendment of s. 107—Minors not to be employed to serve liquor in licensed premises

28. Section 107 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) However, this section does not prevent the employment of a minor to sell, supply or serve liquor on licensed premises if—

(a) the minor is of or above the age of 16 years, a child of the licensee or a responsible person for the licensed premises and resident on the premises; or

(b) —

(i) the minor is of or above the age of 16 years and a child of the licensee or a responsible person for the licensed premises; and

(ii) the licensing authority, on application, approves the employment of the minor for that purpose.

Amendment of s. 108—Liquor not to be sold or supplied to intoxicated persons

29. Section 108 of the principal Act is amended by striking out "manager of" wherever occurring and substituting, in each case, "responsible person for".

Amendment of s. 110—Sale of liquor to minors

30. Section 110 of the principal Act is amended—

(a) by striking out "manager of" wherever occurring and substituting, in each case, "responsible person for";

(b) by inserting in subsection (1) "by or on behalf of the licensee" after "on licensed premises";

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

(1a) If a licensee sells or supplies liquor to a minor otherwise than on licensed premises, the licensee is guilty of an offence.

Maximum penalty: \$20 000.;

(d) by inserting in subsection (3) ", (1a)" after "subsection (1)".

Amendment of s. 111—Areas of licensed premises may be declared out of bounds to minors

31. Section 111 of the principal Act is amended by striking out from subsection (3) "manager of" and substituting "responsible person for".

Amendment of s. 114—Offences by minors

32. Section 114 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

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

(a) the liquor is supplied to the minor by a parent or guardian of the minor; and

(b) the minor is a child of—

(i) the licensee; or

(ii) a responsible person for the licensed premises; or

(iii) an employee of the licensee,

and is resident on the licensed premises.

Amendment of s. 116—Power to require minors to leave licensed premises

33. Section 116 of the principal Act is amended by striking out from subsection (4) "manager of" and substituting "responsible person for".

Amendment of s. 119—Cause for disciplinary action

34. Section 119 of the principal Act is amended—

(a) by striking out from subsection (1)(d)(iv) "subsection (2)" and substituting "section 119A(1)(a)";

(b) by striking out subsection (2).

Insertion of s.119A

35. The following section is inserted after section 119 of the principal Act:

Commissioner's power to deal with disciplinary matter by consent

119A. (1) If the Commissioner is of the opinion that proper grounds for disciplinary action exist, and the person liable to the disciplinary action consents to such a course of action, the Commissioner may determine not to lodge a complaint with the Court and instead—

- (a) obtain from the person an undertaking directed against continuation or repetition of the relevant conduct; or
- (b) in the case of a person licensed under this Act, add to, or alter, the conditions of the licence; or
- (c) in the case of a person licensed or approved under this Act, suspend or revoke the licence or approval.

(2) The Commissioner may, in determining whether to exercise a power under this section in relation to a person, take into account any previous action under this section or a previous finding by the Court that there was proper cause for taking disciplinary action against the person.

Amendment of s. 124—Power to refuse entry or remove persons guilty of offensive behaviour

36. Section 124 of the principal Act is amended by striking out "manager of" wherever occurring and substituting, in each case, "responsible person for".

Amendment of s. 125—Power to bar

37. Section 125 of the principal Act is amended—

- (a) by striking out "the manager of" wherever occurring and substituting, in each case, "a responsible person for";
- (b) by striking out from subsection (1) "3 months" and substituting "any applicable limit fixed by this section";
- (c) by inserting before paragraph (a) of subsection (1) the following paragraph:
 - (aa) if the licensee or responsible person is satisfied that the welfare of the person, or the welfare of a person residing with the person, is seriously at risk as a result of the consumption of alcohol by the person; or;
- (d) by inserting after subsection (4) the following subsections:
 - (5) A person may be barred under this section—
 - (a) if the person is barred under subsection (1)(aa)—for an indefinite period or any specified period; or
 - (b) in any other case—
 - (i) if the person has not previously been barred from entering or remaining on the licensed premises—for a period not exceeding 3 months; or
 - (ii) if the person has on one previous occasion been barred from entering or remaining on the licensed premises—for a period not exceeding 6 months; or
 - (iii) if the person has on at least 2 previous occasions been barred from entering or remaining on the licensed premises—for an indefinite period or any specified period.

(6) If a person is barred under this section for an indefinite period or a period exceeding 6 months, the order will cease to have effect unless, within 7 days of the service of the order, the Commissioner is provided with—

- (a) in the case of an order under subsection (1)(aa)—details of the information in response to which the order was made; or
- (b) in any other case—details of the conduct giving rise to the order.

Amendment of s. 127—Power to remove person who is barred

38. Section 127 of the principal Act is amended by striking out from subsection (3)(b) "manager of" and substituting "responsible person for".

Amendment of s. 128—Commissioner may review order

39. Section 128 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

(1a) The licensee of the premises must be given reasonable notice by the Commissioner of the hearing of an application under this section and is entitled to appear at the hearing personally or by a representative.

(2) The Commissioner may, on the hearing of an application under this section—

- (a) confirm, vary or revoke the order;
- (b) if the Commissioner thinks fit to do so in a case where the applicant has been barred from the premises for an indefinite period or a period exceeding six months—vary the order so that the person is barred from entering or remaining on the premises until further order of the Commissioner, in the making of which the Commissioner will have regard to whether the person has undertaken a behaviour management course, obtained medical assistance or taken other action to address the problem.

Amendment of s. 132—Penalties

40. Section 132 of the principal Act is amended by striking out from paragraph (a) "manager of" and substituting "responsible person for".

Amendment of s. 135—Evidentiary provision

41. Section 135 of the principal Act is amended—

- (a) by striking out from subsection (1) "disciplinary proceedings against a licensee" and substituting "disciplinary proceedings under Part 8";
- (b) by striking out from subsection (1)(f) "manager of" and substituting "responsible person for".

Amendment of s. 138—Regulations

42. Section 138 of the principal Act is amended by striking out from subsection (3)(a) "manager of" and substituting "responsible person for".