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ELIZABETHAE II REGINAE

A.D. 1990

No. 24 of 1990

An Act to amend the Liquor Licensing Act, 1985.

[Assented to 26 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Liquor Licensing Act Amendment Act, 1990*.
- (2) The *Liquor Licensing Act, 1985*, 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.

Interpretation

3. Section 4 of the principal Act is amended—

(a) by striking out paragraph (a) of the definition of “live entertainment” in subsection (1) and substituting the following paragraph:

(a) a dance or other similar event at which a person is employed to play music (whether live or pre-recorded);;

(b) by inserting after the definition of “prescribed premises” in subsection (1) the following definition:

“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);;

and

(c) by striking out paragraph (g) from the definition of “retail licence” in subsection (1) and substituting the following paragraph:

(g) general facility licence (not being a wholesale licence);.

Inspectors and other officers

4. Section 7 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) The inspectors and other officers are Public Service employees.;

and

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

(3) 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.

Division of responsibilities between Commissioner and Court

5. Section 13 of the principal Act is amended by inserting after subparagraph (v) the following subparagraph:

(vi) any matter (other than the assessment of a licence fee) incidental or ancillary to a matter determined under the preceding subparagraphs;

Application for review of Commissioner's decisions

6. Section 18 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) For the purposes of this section, the transferor of a licence is a party to any proceedings relating to the transfer of the licence.

Substitution of s. 22

7. Section 22 of the principal Act is repealed and the following section is substituted:

Power to award costs

22. Where, 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.

Hotel licence

8. Section 26 of the principal Act is amended—

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

(e) 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;

(f) to sell liquor at any time in a designated reception area to a person attending a reception for consumption in that area.;

and

(b) by striking out from paragraph (b) of subsection (4) “the grant of a late night permit in respect of the licensed premises is” and substituting “the operation of a late night permit in respect of the licensed premises would be”.

Conditions governing grant, etc., of entertainment venue licence

9. Section 33 of the principal Act is amended by inserting in subparagraph (i) of paragraph (b) of subsection (2) “in that area” after “licensee”.

Club licence

10. Section 34 of the principal Act is amended—

(a) by striking out subsection (3) and substituting the following subsection:

(3) Where, under the condition referred to in subsection (2) (a), liquor is to be purchased from a licensee who holds a hotel licence or a retail liquor merchant's licence, the liquor must be purchased—

- (a) from a licensee whose licensed premises are in the vicinity of the club premises and who is nominated by the licensing authority;
 - or
 - (b) from a licensee who is a member of a group of licensees nominated by the licensing authority in relation to the club licence.;
- (b) by striking out from subsection (4) “The” and substituting “A”;
- and
- (c) by striking out subparagraph (iii) of paragraph (a) of subsection (5) and substituting the following subparagraph:
- (iii) the Adelaide Sports Club.;

Conditions of wholesale liquor merchant’s licence

11. Section 40 of the principal Act is amended—

- (a) by inserting in subsection (1) after paragraph (a) the following paragraph:
 - (ab) liquor may only be sold to a person who is not a liquor merchant during the trading hours applicable to a retail liquor merchant’s licence under section 37 (1).;
- and
- (b) by inserting after subsection (2) the following subsection:
 - (3) In this section, “liquor merchant” has the meaning assigned to it by this Act but also includes a person authorized under the law of the Commonwealth to sell liquor.

Premises in respect of which a producer’s licence may be granted

12. Section 42 of the principal Act is amended by striking out paragraph (b) and the word “or” immediately before that paragraph and substituting the following paragraphs and word:

- (b) premises that the licensing authority is satisfied will, in the near future, be used by the licensee for the production of liquor;
- or
- (c) premises adjacent to premises referred to in paragraph (a) or (b).

Limited licence

13. Section 45 of the principal Act is amended by inserting in subsection (1) “, supply” after “sale”.

Circumstances in which limited licence may be granted

14. Section 46 of the principal Act is amended—

- (a) by inserting in paragraph (d) of subsection (1) “or other” after “admission”;
- (b) by striking out subsection (2) and substituting the following subsection:
 - (2) A limited licence must not be granted if, in the opinion of the licensing authority—
 - (a) some other licence (not being a general facility licence);
 - or
 - (b) where the applicant already holds another licence, an extension of the authority conferred by that licence or a variation or revoca-

tion of a condition of that licence (not being a condition imposed by this Act),

would be reasonably adequate for the purposes for which the limited licence is sought.;

and

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

(4) A limited licence must not be granted if the licensing authority is satisfied that the place in which the sale, supply or consumption of liquor would be authorized by the licence may not lawfully be used for that purpose.

General condition as to liquor sold for off premises consumption

15. Section 49 of the principal Act is amended by inserting in subsection (1) after paragraph (a) the following paragraph:

(ab) must be consigned to the purchaser at the licensed premises unless the licensing authority approves otherwise.;

Power of licensing authority to impose conditions

16. Section 50 of the principal Act is amended—

(a) by inserting in subsection (2) after paragraph (d) the following paragraphs:

(da) on the approval by the licensing authority of a person to assume a position of authority in a body corporate;

(db) on the approval by the Court of an agreement or arrangement under section 106.;

and

(b) by inserting in paragraph (f) of subsection (2) “, variation or revocation” after “imposition”.

Form of application

17. Section 56 of the principal Act is amended by inserting after subsection (2) the following subsections:

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

(4) If a licensing authority allows an application to be varied pursuant to subsection (3), the authority must cause the other parties to the application to be given notice of the variation a reasonable time before the hearing of the application.

Certain applications to be advertised

18. Section 58 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsection:

(2) An application of any other class must, if the licensing authority so requires, be advertised.;

and

(b) by inserting in subsection (4) “or modify” after “dispense with”.

Insertion of s. 58a

19. The following section is inserted after section 58 of the principal Act:

Additional documentation

58a. The licensing authority may require an applicant to produce to it specified documents that are, in the opinion of the licensing authority, relevant to the application.

Requirements as to premises

20. Section 62 of the principal Act is amended—

(a) by striking out from paragraph (b) of subsection (1) “the grant of the licence is” and substituting “the operation of the licence would be”;

and

(b) by striking out from subsection (2) “the grant of”.

Certificate in respect of proposed premises

21. Section 64 of the principal Act is amended by striking out from subsection (3) “and” between subparagraphs (i) and (ii) of paragraph (b) and inserting after subparagraph (ii) the following word and subparagraph:

and

(iii) in the case of a late night permit or entertainment venue licence, that the premises to which the permit or licence relate are of an exceptionally high standard.

Certificate in respect of proposed premises

22. Section 68 of the principal Act is amended by striking out from subsection (3) “and” between subparagraphs (i) and (ii) and inserting after subparagraph (ii) the following word and subparagraph:

and

(iii) in the case of a late night permit or entertainment venue licence, that the premises to which the permit or licence relate are of an exceptionally high standard.

Applicant for transfer must be fit and proper person

23. Section 70 of the principal Act is amended by striking out subsection (2).

Surrender of licence

24. Section 74 of the principal Act is amended—

(a) by striking out from subsection (1) “, on receipt by the Commissioner of the notice, become void and of no effect” and substituting “cease to operate on acceptance by the Commissioner, by endorsement on the licence, of the surrender”;

and

(b) by striking out from subsection (2) “date of surrender” and substituting “date on which the licence ceases to operate”.

Alteration and redefinition of licensed premises

25. Section 75 of the principal Act is amended by striking out from subsection (1) “or” between paragraphs (a) and (b) and inserting after paragraph (b) the following paragraph:

(c) designate a part of the licensed premises as a dining or reception area.

Extension of trading area

26. Section 76 of the principal Act is amended—

(a) by striking out from subsection (1) “an area adjacent to the licensed premises for consumption in that area” and substituting “premises adjacent to the licensed premises for consumption in those adjacent premises”;

(b) by striking out from subsection (3) “area” and substituting “premises”;

and

(c) by striking out from paragraph (b) of subsection (4) “area” and “that area” and substituting, respectively, “premises” and “those premises”.

Consent of lessor or owner of premises required in relation to certain applications

27. Section 79 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) A lessor will be taken to have consented to an application for a licence or for the removal or transfer of a licence if, at the time of granting or assigning the lease of the premises to the applicant, the lessor was aware that the applicant proposed to sell or supply liquor on the premises.

Bankruptcy or winding up of licensee

28. Section 81 of the principal Act is amended by inserting in subsection (2) "or is under receivership or management" after "wound up".

Rights of intervention

29. Section 83 of the principal Act is amended—

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

(b) on the question of whether, if a particular application were granted, public disorder or disturbance would be likely to result;

and

(b) by striking out from subsection (2) "or" between paragraphs (a) and (b) and inserting after paragraph (b) the following paragraph:

(c) on the question of whether, if a particular application were granted, persons who reside, work or worship in the area would be likely to suffer undue offence, annoyance, disturbance, noise or inconvenience.

General right of objection

30. Section 85 of the principal Act is amended by striking out paragraph (f) of subsection (4) and substituting the following paragraph:

(f) that if the application were granted—

(i) undue offence, annoyance, disturbance or inconvenience to persons 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 in some other way be unduly lessened.

Insertion of s. 86a

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

Variation of objections

86a. (1) A licensing authority may allow a person who has made an objection to vary the objection at any time before the determination of the proceedings.

(2) If a licensing authority allows an objection to be varied pursuant to subsection (1), the authority must cause the parties to the proceedings to be given notice of the variation a reasonable time before the hearing of the proceedings.

Licence fee

32. Section 87 of the principal Act is amended—

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

(4) Where—

(a) a restricted club licence is converted into an unrestricted club licence;

or

(b) a “B.Y.O.” endorsement is removed from a restaurant licence,

a licence fee will be assessed and payable as if the conversion or removal were the grant of a new licence.;

(b) by inserting after subsection (5) the following subsection:

(5a) Notwithstanding any other provision of this Act—

(a) the licensing authority may include in a retail licence a condition setting out the basis on which a licence fee for that licence is to be assessed in respect of any liquor sold by the licensee that has been produced by the licensee;

and

(b) where such a condition is included, the fee will be assessed in accordance with that condition.;

(c) by striking out from subsection (6) “general facility”;

(d) by striking out from paragraph (f) of subsection (7) “delivered by the licensee to a purchaser outside Australia” and substituting “delivered to a purchaser outside Australia for consumption outside Australia”;

(e) by inserting after paragraph (c) of subsection (8) the following paragraph:

(ca) liquor sold to a person who holds a restricted club licence and no other licence.;

and

(f) by striking out from subsection (9) “shall be payable” and substituting “is payable in a single instalment”.

Licence fee where licence granted during the course of a licence period

33. Section 88 of the principal Act is amended by inserting after paragraph (b) of subsection (2) the following word and paragraph:

but

(c) if, in any case under paragraph (b), the licence fee is less than the prescribed amount, the fee is payable in a single instalment on the grant of the licence.

Payment of licence fee

34. Section 90 of the principal Act is amended by striking out from subsection (2) “a quarterly instalment, or any part of a quarterly instalment” and substituting “a licence fee or any part of a licence fee”.

Deferment of payment of licence fee

35. Section 91 of the principal Act is amended—

(a) by inserting in subsection (1) “for a specified period” after “defer”;

and

(b) by striking out subsection (2) and substituting the following subsection:

(2) Where payment of a licence fee or an instalment of a licence fee has been deferred, no fine is incurred by reason of failure to pay the fee or instalment within 14 days of the due date.

Estimate by Commissioner on grant of certain licences

36. Section 93 of the principal Act is amended—

(a) by inserting in subsection (1) “or a licence has not been in force during the whole of a relevant assessment period” after “Where a licence is granted”;

(b) by inserting in paragraphs (a), (b) and (c) of subsection (1) “the whole of” after “during” second occurring in each paragraph;

and

(c) by inserting in subsection (2) “and scale” after “nature”.

Review of Commissioner’s assessment

37. Section 96 of the principal Act is amended—

(a) by striking out from subsection (2) “and any amount overpaid shall be refunded and any amount underpaid may be recovered as arrears” and substituting the following word and paragraphs:

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.;

and

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

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

Order for payment of money

38. Section 100 of the principal Act is amended—

(a) by striking out paragraphs (c) and (d) of subsection (2) and substituting the following paragraphs:

(c) a person who was a director of the body corporate or former body corporate at the time at which the amount became payable under this Part;

(d) a body corporate that was a related body corporate at the time at which the amount became payable under this Part or a person who was a director of such a related body corporate at that time.;

and

(b) by inserting after subsection (2) the following subsections:

(3) For the purposes of enforcing an order under this section—

- (a) the Commissioner may issue a certificate as to the order and the amount outstanding under the order and cause the certificate to be registered in a court of competent jurisdiction;
- (b) such a certificate has effect, and may be enforced, as if it were a judgment of the court in which it is registered.

Supervision and management of licensee's business

39. Section 104 of the principal Act is amended—

(a) by striking out from subsection (2) “(except a limited licence)” and substituting the following word and paragraphs:

unless—

(a) that other licence is a limited licence;

or

(b) the licences are held by the one licensee in respect of separate parts of the same or adjacent premises.;

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

(2a) A person who contravenes subsection (2) is guilty of an offence.;

(c) by striking out from subsection (3) “14 days” and substituting “28 days”;

and

(d) by inserting after subsection (3) the following subsection:

(4) A person (other than the licensee) who supervises or manages the business conducted in pursuance of a licence for a period exceeding 28 days without the approval of the licensing authority is guilty of an offence.

Prohibition of profit sharing

40. Section 106 of the principal Act is amended—

(a) by striking out from subsection (1) “the licensee is guilty of an offence” and substituting “the licensee and the unlicensed person are each guilty of an offence”;

(b) by inserting after subsection (3) the following subsections:

(3a) The Court may, on the application of the holder of a wholesale licence, 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 liquor sold by the agent.

(3b) The Court must not approve an agreement or arrangement under subsection (3a) 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.;

(c) by inserting in paragraph (a) of subsection (4) “or (3a)” after “subsection (2)”;
and

(d) by striking out from subsection (4) “or” between paragraphs (a) and (b) and inserting after paragraph (b) the following paragraph:

(c) an agreement or arrangement providing for the disbursement of profits or proceeds to a person in a position of authority in a body corporate that holds the licence or to any other person approved by the licensing authority.

Record of lodgers

41. Section 109 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) A person who fails to keep a record as required by this section is guilty of an offence.

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

42. Section 111 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsection:

(3a) A licensee who permits a person to act in contravention of this section is guilty of an offence;

and

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

(5) No offence is committed under this section—

(a) by reason of the consumption of liquor on licensed premises—

(i) by a lodger;

(ii) by a person who is resident on the licensed premises and is—

(A) the licensee or a member of the licensee’s family;

(B) the manager of the licensed premises or a member of the manager’s family;

(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;

(iv) by an employee of the licensee;

(b) by reason of the taking of liquor from licensed premises—

(i) by a lodger;

(ii) by a person who is resident on the licensed premises and is—

(A) the licensee or a member of the licensee’s family;

(B) the manager of the licensed premises or a member of the manager’s family.

Entertainment on licensed premises

43. Section 113 of the principal Act is amended by inserting in subsection (1) “in respect of which a licence is not held under the Places of Public Entertainment Act, 1913” after “licensed premises” second occurring.

Complaint about noise, etc., emanating from licensed premises

44. Section 114 of the principal Act is amended by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

- (a) the Commissioner of Police;

Sale or supply of liquor to minors

45. Section 118 of the principal Act is amended—

- (a) by striking out from subsection (1) “\$10 000” and “\$2 000” and substituting respectively “Division 4 fine” and “Division 6 fine”;

and

- (b) by striking out from subsection (3) “\$10 000” and substituting “Division 4 fine”.

Minors not to enter or remain in certain licensed premises

46. Section 119a of the principal Act is amended by inserting after subsection (3) the following subsection:

- (3a) If a licensee is charged with an offence against subsection (3), it is a defence for the licensee to prove that he or she took reasonable steps to remove, or prevent entry of, the minor to whom the charge relates.

Offences relating to minors

47. Section 121 of the principal Act is amended by inserting after subsection (3) the following subsections:

- (4) A minor who participates in the game of chance known as “keno” while on licensed premises is guilty of an offence.

- (5) A licensee who permits a minor to participate in the game of chance known as “keno” while the child is on the licensed premises is guilty of an offence.

Evidence of age may be required

48. Section 122 of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsection:

- (1) Where—

- (a) an authorized person suspects on reasonable grounds that a person on prescribed premises may be under the age of 18 years;

or

- (b) a member of the police force suspects on reasonable grounds—

- (i) that a person in a public place has consumed or is in possession of liquor in that public place;

and

- (ii) that the person may be under the age of 18 years,

he or she may require the person to produce evidence, to his or her satisfaction, of the person's age.

Power to require minors to leave licensed premises

49. Section 123 of the principal Act is amended by inserting in subsection (4) after the definition of “authorized person” the following definition:

- “licensed premises” includes areas appurtenant to licensed premises.

Minors may not consume or possess liquor in public places

50. Section 123a of the principal Act is amended—

- (a) by striking out from subsection (2) “\$2 000” and substituting “Division 6 fine”;
- and
- (b) by striking out the definition of “public place” from subsection (4).

Grounds for disciplinary action

51. Section 124 of the principal Act is amended—

- (a) by striking out paragraph (d) from subsection (3) and substituting the following paragraphs:
 - (d) the licensee is not a fit and proper person to hold a licence under this Act;
 - (da) in the case of a licensee that is a body corporate—a person who occupies a position of authority in the body corporate is not a fit and proper person to occupy such a position;;
 - (b) by inserting after paragraph (e) of subsection (3) the following paragraphs:
 - (ea) the licensee has sold or supplied liquor otherwise than in accordance with the authorization conferred by the licence;
 - (eb) the licensee has contravened or failed to comply with a provision of this Act or an order made under this Act;
 - (ec) the licensee has altered licensed premises without approval of the licensing authority;
 - (c) by striking out from paragraph (f) of subsection (3) “or an offence against this Act”;
 - (d) by striking out from paragraph (b) of subsection (4) “subsection (3) (a), (b), (d), (e), (f), (g) or (h)” and substituting “subsection (3) (a), (b), (d), (da), (e), (ea), (eb), (f), (g) or (h)”;
- and
- (e) by inserting in paragraph (c) of subsection (4) “, (ec)” after “(e)”.

Disciplinary powers exercisable by the Court

52. Section 125 of the principal Act is amended by striking out “, a condition may be imposed under subsection (1) (b)” and substituting “and, without limiting the generality of subsection (1) (b), a condition may be imposed under that paragraph”.

Powers of authorized officers

53. Section 126 of the principal Act is amended by inserting after paragraph (c) of subsection (3) the following paragraph:

- (d) falsely represents that he or she is an authorized officer,.

Power to enter and search premises and confiscate liquor

54. Section 127 of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (1) “licensed” and substituting “any”;
- and
- (b) by striking out from subsection (2) “purchased or obtained” and substituting “sold or supplied, or to be in the possession of a person unlawfully or for an unlawful purpose”.

Unlawful sale or supply of liquor

55. Section 129 of the principal Act is amended by striking out “and liable to a penalty not exceeding \$10 000” and substituting at the foot of the subsection:

Penalty: Division 4 fine.

Control of consumption, etc., of liquor in public places

56. Section 132 of the principal Act is amended by striking out subsection (3).

Repeal of Division IIA of Part X

57. Division IIA of Part X of the principal Act is repealed.

Substitution of s. 133

58. Section 133 of the principal Act is repealed and the following section is substituted:

Penalties

133. 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 a director of a body corporate that holds a licence—a division 5 fine;

(b) in any other case—a division 7 fine.

Offences by bodies corporate

59. Section 135 of the principal Act is amended by striking out “convicted” and substituting “guilty”.

Evidentiary provision

60. Section 136 of the principal Act is amended—

(a) by inserting in subsection (1) “or in disciplinary proceedings against a licensee” after “proceedings for an offence against this Act”;

(b) by inserting in subsection (1) after paragraph (c) the following paragraphs:

(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 body corporate that holds a licence under this Act;

(h) that a person named in the complaint is, or was on a specified date, an inspector;

and

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

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

(4) In any 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 by virtue 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.

Summary offences

61. Section 137 of the principal Act is amended by striking out from subsection (2) “1 year” and substituting “two years”.

Regulations

62. Section 141 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (3) “fine not exceeding \$5 000” and substituting “division 5 fine”;

and

(b) by striking out from paragraph (b) of subsection (3) “fine not exceeding \$500” and substituting “division 8 fine.”

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

D. B. DUNSTAN, Governor