

1999

**THE LEGISLATIVE ASSEMBLY
OF THE
AUSTRALIAN CAPITAL TERRITORY**

LIQUOR (AMENDMENT) BILL 1999

EXPLANATORY MEMORANDUM

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Outline

This is an amending Bill. It amends the Liquor Act 1975, referred to in the Bill as the Principal Act. The Principal Act provides for the licensing and enforcement of a scheme of regulation for the sale and consumption of liquor and related matters.

The Bill amends the Principal Act by amending the matters that can be dealt with in the Licensing Standards Manual in line with the recommendations of the Report of the Standing Committee on Legal Affairs on Voluntary Codes of Practice for Liquor Licensees.

The Bill also strengthens provisions relating to underage drinking, repeals the Business Franchise (Liquor) Act 1993, introduces an annual licence renewal fee and re-organises the Liquor Licensing Board's disciplinary powers.

Formal Clauses

Clauses 1, 2 and 3 are formal clauses. They refer to the short title of the Bill, commencement and definition of the Principal Act. Clause 2 states that the Act will commence on the day on which it is notified in the Gazette.

Clause 4 - Interpretation

This clause amends the Principal Act by repealing from the interpretation section of the Act a number of definitions that were consequential to the operation of the Business Franchise (Liquor) Act 1993 and related to the exemption that existed for the Canberra Theatre Trust prior to a licence being issued for the Canberra Theatre Centre.

The clause also inserts definitions for 'approved form', 'fittings', 'Licensing Standards Manual' and 'State'.

The definition of 'approved form' is required as part of the inclusion of approved forms in the Act to replace prescribed forms which are removed from the Liquor Regulations.

The definition of 'fittings' is required to include furnishings.

The definition of 'Licensing Standards Manual' replaces the definition of 'Manual'.

The definition of 'State' is required to include another Territory as a State.

Clause 5 - Application

This clause amends section 5 of the Principal Act by omitting subsections (5) and (6), and the definition of "by-law" in subsection (8). This removes the exemption from holding a licence for the Canberra Theatre Trust.

Clause 6 - Return or forfeiture

This clause amends subsection (5) of section 17AB of the Principal Act by substituting the Registrar of Liquor Licences for the Minister as the person who determines how liquor that is forfeited to the Territory is disposed of after a successful prosecution.

Clause 7 - Substitution

This clause repeals sections 18, 19 and 20 of the Principal Act and substitutes new sections 18 and 19.

New section 18 makes the Liquor Licensing Board responsible for the preparation and maintenance of the Licensing Standards Manual; requires the Minister to approve in writing the general standards that are set out by the Board in the Manual that licensees are required to comply with; and includes the general standards that may be dealt with in the Manual.

Subsections 18(3) and 18(4) provide the standards that can be dealt with in the Manual. Subsection 18(3) provides that the general standards shall deal with the construction, fittings and conduct of licensed premises. Subsection 18(4) specifically sets out the standards which may be dealt with. The standards to be dealt with are based on the recommendations in the Report of the Standing Committee on Legal Affairs inquiry into Voluntary Codes of Practice for Liquor Licensees.

New section 19 enables the Liquor Licensing Board to amend the Manual with the written approval of the Minister and requires the Board to specify when amendments commence operation.

Clause 8 - Occupancy loadings - indoor public areas

This clause omits subsection (2) of section 24B and substitutes new subsections (2) and (2A).

New subsection (2) provides that the Registrar shall decide an occupancy loading for an indoor public area on receiving the Fire Commissioner's recommendation.

New subsection (2A) provides that in deciding an indoor occupancy loading the Registrar shall have regard to the Fire Commissioner's recommendation and other relevant matters including the fittings in the licensed premises (this includes furniture), and the available toilet facilities.

The definition of 'occupancy loading' is unchanged therefore the amendments will not result in occupancy loadings being determined that are in excess of those that can currently be determined.

Clause 9 - Application for licence

This clause amends section 30 of the Principal Act by substituting a new subsection (1).

New subsection (1) requires applications for licences to be on the appropriate approved form and accompanied by the documentation specified on the form. This is a tidying up provision consequential to the introduction of approved forms.

Clause 10 - Issue of licence - relevant consideration

This clause amends section 33A of the Principal Act by omitting subsection (2A).

Subsection (2A) deals with the issuing of licences where amounts are outstanding under the Business Franchise (Liquor) Act 1993. The Business Franchise (Liquor) Act 1993 is repealed by this Act and therefore subsection (2A) is no longer relevant.

Clause 11 - Substitution

This clause amends the Principal Act by substituting a new section 36.

New section 36 provides for the issue of licences without reference to the payment of fees determined under the Business Franchise (Liquor) Act which is repealed by this Act and requires the licence that is issued pursuant to the section being in the approved form rather than the prescribed form.

Clause 12 - Substitution

This clause amends the Principal Act by substituting a new section 38.

New section 38 requires applications for renewal of a licence to be on the approved form and the payment of the determined fee for the renewal of the licence. The determined fee replaces the quarterly renewal fee levied under the Business Franchise (Liquor) Act 1993 which is repealed by this Act.

Clause 13 - Substitution

This clause amends the Principal Act by repealing section 40B and substituting new section 40 and new Division 3A

New section 40 provides that if a licence is not renewed it remains in force for a period of one month but the licence is suspended. This enables a licensee to renew a licence without having to apply for a new licence if the licensee failed to renew the licence as required in the first instance. However, during the month the licence is suspended and therefore the licensee cannot sell liquor and therefore receive the benefits of holding a licence. If the licence is not renewed in that month the licence expires. This process is similar to the scheme that applied in the Business Franchise (Liquor) Act 1993.

New Division 3A inserts section 40A which creates offences for failure by licensees to keep records of the liquor held for sale under the licence. Licensees are required to keep the records in the approved form. The records are required to be kept for at least 6 years and be kept at the licensed premises or at a place approved by the Registrar.

Clause 14 - Transfer

This clause amends section 41 of the Principal Act by omitting subsections (1), (1D) and (3) and substituting new subsections (1), (1D), (3) and (4).

New subsection (1) requires an application for the transfer of a licence to be on the approved form rather than the prescribed form and that it must be accompanied by the documentation specified on the form.

New subsection (1D) provides that a licence can only be transferred if the determined fee is paid.

New subsection (3) provides where a transfer of a licence is authorised the licensee is required to give the Registrar the licence and records of liquor transactions maintained in accordance with section 40.

New subsection (4) requires the Registrar to endorse the transfer on the licence and provide the licence and the records of liquor transactions to the new licensee.

Clause 15 - Transfer - relevant considerations

This clause amends section 42 of the Principal Act by omitting subsection (2A).

Subsection (2A) related to the transfer of licences subject to the Business Franchise (Liquor) Act 1993 which is repealed by this Act. Therefore the subsection is omitted.

Clause 16 - Substitution

This clause amends the Principal Act by repealing sections 42B and 42C and substituting new section 42B.

New section 42B provides for the surrender of licences. The provisions are the same as provided by the repealed sections other than an application is to be in the approved form and reference to the Business Franchise (Liquor) Act 1993, which is repealed by this Act, is removed.

Clause 17 - Repeal

This clause amends the Principal Act by repealing Division 6 of Part 4. The Division deals with the payment of fees (section 42E) and the return of licences (section 42F) on licence termination.

The payment of fees relate to fees outstanding under the Liquor Tax Act 1991. This Act was repealed by the Business Franchise (Liquor) Act 1993 and reference to it is no longer relevant.

The return of a licence where a licence is suspended or cancelled has been moved to Part X in new section 68C. This is a tidying up provision.

Clause 18 - Insertion

This clause amends the Principal Act by inserting new Division 2A after Division 2 of Part 5.

The new Division places the provisions relating to the Liquor Licensing Board's power to reprimand a licensee before the power to issue directions. The power to reprimand was previously co-located with the powers of suspension. The order of the powers of reprimand, direction, suspension and cancellation now better reflects the relative consequences of the disciplinary powers of the Board.

New section 45A provides the grounds for the issue of a reprimand. The grounds are the same as those that apply to the issuing of directions.

New section 45B sets out the procedures to be followed by the Registrar in referring a matter to the Board for possible reprimand.

New section 45C sets out the action required to be taken by the Board in considering a matter referred by the Registrar under section 45B.

Clause 19 - Grounds for issue of directions

This clause amends section 46C of the Principal Act by omitting paragraph (d) and substituting new paragraphs (d) and (da).

The new paragraphs provide grounds for the issue of directions if the licensed premises or the conduct of the licensed premises do not comply with the Licensing Standards Manual.

Clause 20 - Action on referral for directions

This clause amends section 46B of the Principal Act.

The amendments are consequential to the amendments in clause 18 to place the powers to reprimand a licensee before the powers to issue directions. This is a tidying up provision.

Clause 21 - Types of directions

This clause amends the Principal Act by adding new paragraph 46C(2)(c).

The new paragraph enables the Liquor Licensing Board to issue a direction requiring a licensee to do, or not do, something to comply with the Licensing Standards Manual.

Clause 22 - Substitution

This clause amends the Principal Act by substituting section 49.

The amendments to section 49 are consequential to the amendments in clause 18 to place the powers to reprimand a licensee before the powers to issue directions. This is a tidying up provision.

Clause 23 - Grounds for cancellation

This clause amends section 53 of the Principal Act by substituting paragraph (2)(e).

New paragraph (2)(e) expands the grounds for cancellation of a licence to include whether the licensed premises and the conduct of the licensed premises complies with the Manual.

Clause 24 - Substitution

This clause amends the Principal Act by substituting section 55.

The amendments to section 55 are consequential to the amendments in clause 18 to place the powers to reprimand a licensee before the powers to issue directions. This is a tidying up provision.

Clause 25 - Application for alteration

This clause amends section 56 of the Principal Act by substituting subsections (1) and (2).

New subsection (1) requires that an application to alter the licensed premises be in the approved form.

New subsection (2) requires an application be accompanied by two copies of plans for the alteration and a memorandum in accordance with subsection 33(6) of the Building Act 1972 if required under that Act.

These are tidying up provisions.

Clause 26 - Offences

This clause amends section 58 of the Principal Act by substituting subsection (3).

New subsection (3) provides an offence for a licensee to fail to advise the Registrar of any alteration of fittings prescribed under the regulations. The new subsection reflects the change to the use of the term 'fittings' as opposed to 'fitment'. It also provides that 'fittings' be prescribed for this subsection. This is a tidying up provision.

Clause 27 - Substitution

This clause amends the Principal Act by substituting section 62.

New section 62 requires an application for a liquor permit to be in the approved form rather than the prescribed form, and to be accompanied by the determined fee. This is a tidying up provision.

Clause 28 - Substitution

This clause amends the Principal Act by substituting section 65A.

New section 65A requires a permit to be issued in the approved form, and to specify conditions subject to which it is issued. This tidies up the provision to accord with the fact that permits are issued by the "relevant decision maker", which includes the Liquor Licensing Board, the Registrar and the Deputy Registrar.

Clause 29 - Insertion

This clause amends the Principal Act by inserting a new divisional heading "Division 1 - General" before section 66E.

This divides Part X of the Principal Act into divisions and provides that the first division deals with general offences.

Clause 30 - Insertion

This clause amends the Principal Act by inserting new section 68C.

New section 68C requires a licensee to give the licence to the Registrar within 3 days of being notified in writing to do so where a licence is suspended or cancelled under Part 5. This requirement was previously provided in section 42F which was repealed by clause 17. This is a tidying up provision.

Clause 31 - Repeal

This clause amends the Principal Act by repealing sections 80, 81, 82, 83 and 83A.

The relevant provisions, amended where necessary, have been relocated to new Division 2 - Underage drinking in Part X.

Clause 32 - Insertion

This clause amends the Principal Act by inserting a new division, "Division 2 - Underage drinking", in Part X after section 93C.

The new division inserts new sections 93D, 93E, 93F, 93G, 93H, 93I, 93J and 93K which relate to underage drinking offences and underage persons on licensed premises.

New section 93D sets out the definitions that are relevant to the offences contained in the Division. They are 'document of identification', 'driver licence', 'liquor', 'proof of age card' and 'responsible adult'.

The definition of responsible adult replaces the previous definition further tightening the classes of person in whose care a minor can enter or remain in a bar-room of licensed premises. Under the definition they must be an adult and fall into one of the classes of person set out in paragraph (b) of the definition, and otherwise be expected to exercise supervision over the minor.

New section 93E contains the offence of sale or supply of liquor to a minor (previously section 80), with appropriate amendments to reflect the inclusion of the definitions contained in proposed section 93D.

New subsection 93E(2) provides the defence for the sale or supply of liquor to a minor. In paragraph 93E(2)(b) the word 'when' has replaced the words 'at the time'. The defence for the offence remains the same with the defendant having to prove that they had been shown a document of identification at the time the liquor was sold or supplied.

New section 93F provides a licensee commits an offence if a minor consumes liquor on licensed premises. It also provides a licensee commits an offence if a minor possesses liquor while on licensed premises, except in the course of employment or an approved training program. The penalties and the defences are the same as those that apply to the sale or supply of liquor to a minor.

New section 93G contains the current offence for the buying, possession and consumption of liquor by persons under 18 years old (previously section 81).

New section 93H contains the current offence of sending a minor to buy or collect liquor from licensed premises or a permit holder (previously section 82).

New section 93I contains the current offence of the entry to a bar-room by a minor (previously section 83). New subsections 93I(2) and 93I(3) provide that the offence does not apply to a minor attending a function for minors conducted by the licensee or to a minor in the course of employment or approved training.

New section 93J provides a new offence for a licensee if a minor is in a bar-room on licensed premises except in the care of a 'responsible adult'. The new section does not apply to minors who enter a bar-room on licensed premises in the course of their employment or while on an approved training program. New subsection 93J(3) provides a defence if the licensee proves that the minor was at least 16 years old and had shown one of the approved forms of identification (this defence is the same as for the sale of liquor to a minor). New subsection 93J(4) provides a defence if the licensee can prove that the minor was attending a function for minors conducted by the licensee in accordance with the Licensing Standards Manual.

New section 93K contains the offences of the use of false identification to obtain entry to a bar-room on licensed premises, to buy liquor or to obtain a proof of age card (previously section 83A).

In addition new section 93K deals with the seizing of false documents by licensees.

New subsection 93K(2) enables a licensee or permit holder to seize false documents of identification. New subsection 93K(6) defines the documents that can be seized.

New subsection 93K(3) provides an offence where a licensee fails to forward seized documents to the Registrar within 72 hours.

New subsection 93K(4) provides an offence where a licensee fails to maintain records of seized documents. New subsection 93K(5) provides an offence if the records are not kept by the licensee for at least 2 years.

Clause 33 - Witnesses

This clause amends section 102 of the Principal Act by substituting subsection (4).

This is a tidying up provision. In new subsection (4) 'senior member' is replaced by 'chairperson of the board' and the costs paid to witnesses are amended to be in accordance with the scale and conditions applicable to the Supreme Court.

Clause 34 - Commissioner to be notified

This clause amends section 104AB of the Principal Act by clarifying the definition of the term 'Commissioner' in that section to mean the ACT Revenue Commissioner.

Clause 35 - Insertion

This clause amends the Principal Act by inserting new section 105B.

New section 105B enables the Registrar to approve forms for the Act.

Clause 36 - Insertion

This clause amends the Principal Act by inserting new Part 15 - Transitional Provisions after section 106.

New Part 15 contains new section 107.

New subsection 107(1) defines 'commencement day' as the day section 107 commences.

New subsection 107(2) provides that applications made in the prescribed form before the commencement day, but on which a final decision has not been made, have been made in the approved form.

New subsection 107(3) provides that licences, renewals of licences, transfers and permits in force in the prescribed form before the commencement day shall, on or after the commencement day, be taken to be in the approved form.

New subsection 107(4) provides that section 107 expires 2 years after the commencement day.

Clause 37 - Repeal

This clause repeals the Business Franchise (Liquor) Act 1993.

The substantive provisions of the Business Franchise (Liquor) Act 1993 were lost with the High Court's decision in 1997 on tobacco franchise fees. The fees collected for the renewal of licences under that scheme have been included as part of the renewal of licences under the Principal Act and the Business Franchise (Liquor) Act 1993 is no longer necessary.

Clause 38 - Further amendments

This clause amends the Principal Act as set out in the schedule.

The schedule makes a number of amendments to the Principal Act that tidy up the Act. The amendments include consequential amendments relevant to amendments in clauses 1 to 37 and general tidying up provisions.

Clause 39 - Renumbering

This clause states that the provisions of the Act will be renumbered when it is next republished.