

Queensland



# LIQUOR ACT 1992

**Reprinted as in force on 12 July 1996  
(includes amendments up to Act No. 57 of 1995)**

**Reprint No. 5A**

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This Act is reprinted as at 12 July 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



**LIQUOR ACT 1992**

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# LIQUOR ACT 1992

[as amended by all amendments that commenced on or before 12 July 1996]

## An Act to regulate the sale and supply of liquor

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Liquor Act 1992*.

#### Commencement

2. This Act commences on a day to be fixed by proclamation.

#### Objects of Act

3. The objects of this Act are—
  - (a) to facilitate and regulate the optimum development of the tourist, liquor and hospitality industries of the State having regard to the welfare, needs and interests of the community and the economic implications of change; and
  - (b) to provide for a Liquor Appeals Tribunal with jurisdiction to hear and decide appeals authorised by this Act; and
  - (c) to provide for a flexible, practical system for regulation of the liquor industry of the State with minimal formality, technicality or intervention consistent with the proper and efficient administration of this Act; and
  - (d) to regulate the liquor industry in a way compatible with—
    - (i) minimising harm arising from misuse of liquor; and

- (ii) the aims of the National Health Policy on Alcohol; and
- (e) to provide revenue for the State to enable the attainment of the objects of this Act and for other purposes of government.

## **Definitions**

**4.** In this Act—

**“accounting records”** includes—

- (a) books of account; and
- (b) such working papers and other documents as are necessary to explain the methods and calculations by which an account is made up.

**“assessment period”** means the period by reference to which a fee payable in respect of a licence for a licence period is to be assessed.

**“boat”** means a boat, ship or other vessel of any size or kind, and includes a hovercraft.

**“cabaret”** means—

- (a) the conduct of business for the primary purpose of providing on the premises entertainment by persons present on the premises whose function it is to present the entertainment; or
- (b) the premises on which such entertainment is provided.

**“chairperson”** means the chairperson of the Tribunal.

**“chief executive”** means the chief executive of the department.

**“club”** means an association of persons who meet periodically—

- (a) with an interest in promoting some object; or
- (b) for social purposes.

**“community area”** of a Council means the area of the State in which the Council may exercise its jurisdiction.

**“Council”** means—

- (a) an Aboriginal Council under the *Community Services (Aborigines) Act 1984*; and

- (b) an Island Council under the *Community Services (Torres Strait) Act 1984*; and
- (c) the Council of the Shire of Aurukun; and
- (d) the Council of the Shire of Mornington.

**“deputy chairperson”** means a deputy chairperson of the Tribunal.

**“exempt minor”** see section 155.

**“function”** see section 4A.

**“investigator”** means—

- (a) a person authorised under section 174(1); or
- (b) in this Act apart from Part 7—any of the following—
  - (i) a commissioned police officer;
  - (ii) a police officer acting as a commissioned police officer;
  - (iii) a police officer designated by a police officer mentioned in subparagraph (i) or (ii) to act as an investigator under this Act; or
- (c) in Part 7—any police officer.

**“licence”** includes a licence granted, or provisionally granted, under this Act.

**“licence period”** means the period for which a fee is payable in respect of a licence or permit.

**“licensed premises”** means premises to which a licence relates, and includes premises approved under section 125 for sale of liquor.

**“licensee”** means the holder of a licence, and includes a person prescribed to be subject to this Act as if the person were a licensee.

**“liquor”** see section 4B.

**“meal”** means food that—

- (a) is eaten by a person sitting at a table, or fixed structure used as a table, with cutlery provided for the purpose of eating the food; and
- (b) is of sufficient substance as to be ordinarily accepted as a meal.

**“member of a reciprocal club”**, in relation to a club with a club licence or restricted club permit, means a member of another club whose members have privileges at the club with the club licence or restricted club permit because of arrangements between the clubs.

**“mortgagee”** includes a lienee.

**“non-proprietary club”** means an association of persons under whose constitution—

- (a) the income, profits and assets of the association are to be applied only in promotion of its objects; and
- (b) the payment of dividends to, or the distribution of income, profits or assets of the association among, its members is prohibited.

**“permit”** means a permit granted under this Act.

**“permittee”** means the holder of a permit, and includes a person prescribed to be subject to this Act as if the person were a permittee.

**“place”** includes vacant land or premises.

**“premises”** includes—

- (a) land; and
- (b) a building or structure on or in land; and
- (c) a vehicle, boat, aircraft, train or other means of transport.

**“secretary”** of a club means the principal executive officer of the club, by whatever name called, whether or not the person is a member of the club.

**“sell”** includes—

- (a) barter or exchange; and
- (b) offer, agree or attempt to sell; and
- (c) expose, send, forward or deliver for sale; and
- (d) cause or permit to be sold or offered for sale; and
- (e) supply or offer, agree or attempt to supply—
  - (i) in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit; or

- (ii) gratuitously, but to gain or keep custom or other commercial advantage.

**“Tribunal”** means the Liquor Appeals Tribunal.

**“unduly intoxicated”** means a state of being in which a person’s mental and physical faculties are impaired because of consumption of liquor so as to diminish the person’s ability to think and act in a way in which an ordinary prudent person in full possession of his or her faculties, and using reasonable care, would act under like circumstances.

**“unlicensed person”** means a person who is not the holder of a licence under this Act or a licence or permit under a law of a State or Territory that corresponds to this Act.

**“unlicensed premises”** means premises to which a licence or permit does not relate.

**“wine”** has the meaning given by the *Wine Industry Act 1994*.

### **Meaning of “function”**

**4A.(1) “Function”** is an event or occasion to which persons are invited by, or for, the organiser of the event or occasion.

(2) However, “function” does not include an event or occasion organised—

- (a) by the owner or licensee of the licensed premises where the event or occasion is held if the event or occasion is for the owner’s or licensee’s own benefit; or
- (b) by someone else if the owner or licensee of the premises where the event or occasion is held is entitled to receive a benefit other than a charge for using the premises and providing catering facilities.

### **Meaning of “liquor”**

**4B.(1) “Liquor”** is a spiritous or fermented fluid of an intoxicating nature intended for human consumption.

(2) “Liquor” also includes any other substance intended for human consumption in which the level of ethyl alcohol (ethanol) is more than

5mL/L (0.5%) at 20°C.

(3) However, “liquor” does not include a fluid, that would otherwise be liquor, if it is used merely as a preservative or medium in which fruit is offered for sale to the public in sealed containers and with the contents visible.

### **Who is a responsible adult for a minor**

5. Each of the following persons is a responsible adult for a minor—

- (a) a parent, step-parent or guardian of the minor;
- (b) an adult who, while the minor is on licensed premises or in public places, has parental rights and responsibilities for the minor.

### **Acceptable evidence of age**

6. For the purposes of this Act, acceptable evidence of the age of a person is a document—

- (a) that is—
  - (i) a proof of age card issued to the person—
    - (A) by a department prescribed by regulation or an entity of another State or a Territory performing functions similar to the functions of the department; or
    - (B) by an entity approved in writing by the chief executive; or
  - (ii) a motor vehicle driver’s or rider’s licence or permit issued to the person under a law of the State or a law of another State or a Territory; or
  - (iii) an Australian or foreign passport issued to the person; and
- (b) that bears a photograph of the person; and
- (c) that indicates by reference to the person’s date of birth or otherwise that the person has attained a particular age.

**Presumed quantity of liquor**

7. For the purposes of this Act—

- (a) 12 containers each containing at least 740 mL of liquor, or 24 containers each containing at least 370 mL of liquor, are to be taken to contain a total quantity of 9 L of liquor;
- (b) 6 containers each containing at least 740 mL of liquor, or 12 containers each containing at least 370 mL of liquor, are to be taken to contain a total quantity of 4.5 L of liquor.

**Venue of sale of liquor**

8. For the purposes of this Act, a sale of liquor happens on premises in which is situated the store of liquor from which liquor is appropriated to the contract of sale.

**Ordinary trading hours**

9.(1) The authority conferred by a licence to sell liquor on licensed premises during ordinary trading hours—

- (a) extends only to selling liquor during hours that are, under this section, the ordinary trading hours of the premises; and
- (b) if a provision of this section specifies conditions for selling liquor at specified times on specified licensed premises—extends only to selling liquor on the premises, at those times, in accordance with those conditions.

(2) If an order of the chief executive that is directed to reducing the trading hours of specified licensed premises specifies days on which, or times at which, liquor may be sold on the premises, the ordinary trading hours of those licensed premises are the trading hours specified in the order.

(3) On Anzac Day, ordinary trading hours—

- (a) of all licensed premises—do not include any period before 1 p.m. on Anzac Day except—
  - (i) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is

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prepared, served and intended to be eaten on the premises; or

(ii) as specified in paragraph (b);

(b) of premises that are a cabaret—subject to subsection (2), include the period from 12 midnight<sup>1</sup> on the day immediately before Anzac Day until 3 a.m. on Anzac Day.

(4) Subject to subsections (2), (3) and (7), the ordinary trading hours of licensed premises to which a producer/wholesaler licence relates are the trading hours of the premises under the *Trading (Allowable Hours) Act 1990*.

(5) Subject to subsection (2), on Good Friday and Christmas Day ordinary trading hours of all licensed premises, other than a cabaret or premises to which a producer/wholesaler licence relates are—

(a) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises—between 10 a.m. and 12 midnight, or the period between 7 a.m. and 12 midnight that the chief executive approves in a particular case; or

(b) for other sale of liquor—nil.

(6) Subject to subsection (2), on Good Friday and Christmas Day ordinary trading hours of premises that are a cabaret are—

(a) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises—between 10 a.m. and 12 midnight, or the period between 7 a.m. and 12 midnight that the chief executive approves in a particular case; or

(b) for other sale of liquor—from 12 midnight on the day immediately before Good Friday or Christmas Day until 3 a.m.

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<sup>1</sup> “Midnight” is defined by the *Acts Interpretation Act 1954* as follows—  
“**midnight**” in relation to a particular day, means the point of time at which the day ends.

on Good Friday or Christmas Day.

(7) If the licensee of licensed premises to which a producer/wholesaler licence relates is a producer of liquor, then, on any day on which the premises may, under subsection (4), be lawfully open for trading, and subject to subsections (2) and (3), ordinary trading hours of the premises are—

- (a) for sale of liquor, produced or made on the premises, to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises; or
- (b) for sale of liquor produced or made on the premises to a visitor to the premises as a souvenir of the visit;

such period between 7 a.m. and 12 midnight as the chief executive approves in a particular case.

(8) Subject to subsections (2) and (3), ordinary trading hours of a boat, vehicle or aircraft used for the primary purpose of carrying passengers commercially, and to which an on-premises licence relates, are—

- (a) between start and end of a journey for that primary purpose; and
- (b) within 1 hour before the scheduled time of departure and 30 minutes after end of the journey.

(9) Subject to subsections (2) and (3), ordinary trading hours of licensed premises used for the primary purpose of presenting sporting, cultural, theatrical or cinematographic events and to which an on-premises licence relates—

- (a) are—
  - (i) within 1 hour before the scheduled time of start of such a presentation on the premises; and
  - (ii) during every scheduled intermission in the presentation; and
  - (iii) within 1 hour after end of the presentation; and
- (b) do not include any time before 10 a.m. except—
  - (i) with the chief executive's prior approval, a time after 7 a.m.; and

(ii) a time within 1 hour after end of the presentation.

(10) Subject to subsections (2) and (3), on any day other than Good Friday or Christmas Day, ordinary trading hours of licensed premises that are a cabaret are—

- (a) for sale of liquor to a person to consume on the premises in association with the consumer eating a meal in a part of the premises ordinarily set aside for dining if the meal is prepared, served and intended to be eaten on the premises—between 10 a.m. and 5 p.m. or the period between 7 a.m. and 5 p.m. that the chief executive approves in a particular case; and
- (b) for other sale of liquor—between 5 p.m. on the day and 3 a.m. on the next day.

(11) Subject to subsections (2) and (3), on any day other than Good Friday or Christmas Day, ordinary trading hours of licensed premises other than—

- (a) premises to which a producer/wholesaler licence relates; or
- (b) a boat, vehicle or aircraft to which an on-premises licence relates; or
- (c) premises that are a cabaret;

are between 10 a.m. and 12 midnight or such period between 7 a.m. and 12 midnight as the chief executive approves in a particular case.

(12) In respect of licensed premises to which a general licence relates, the chief executive may approve, as ordinary trading hours, different hours for different parts of the licensed premises.

(13) The ordinary trading hours of licensed premises for New Year's Eve day are the ordinary trading hours for the premises for the day and, if the ordinary trading hours would end before 2 a.m. on New Year's Day, the ordinary trading hours are extended until 2 a.m.

### **When supply of liquor is in association with eating a meal**

**10.** For the purpose of this Act, a sale or supply of liquor may be taken as being in association with the consumer eating a meal if the liquor is supplied on premises—

- (a) to a consumer who has indicated a genuine intention of eating a meal on the premises, within 1 hour before the consumer orders the meal; or
- (b) while the consumer is eating the meal; or
- (c) within 1 hour after the consumer has finished eating the meal;

and at no other times.

### **Public place**

**11.(1)** For the purposes of this Act, a public place includes—

- (a) any premises to which the public has access as of right, or with the express or tacit consent, or permission, of the owner or occupier of the premises at the time material to the application of this Act in respect of the premises; and
- (b) any doorway, entrance or vestibule that gives access to premises from a public place under paragraph (a).

**(2)** Premises may be a public place under subsection (1) even if, at the material time—

- (a) access to the premises depends on payment of a price for admittance or fulfilment of some other condition; or
- (b) no person is on, or seeking access to or from, the premises.

### **Exemptions**

**12.(1)** A provision of this Act that prohibits—

- (a) taking liquor into premises to which a licence or permit relates; or
- (b) removing liquor from premises to which a licence or permit relates; or
- (c) carrying liquor for sale;

whether absolutely or at a particular time, does not apply to a carrier, delivery person or other person engaged in delivering liquor to, or collecting liquor from, any such premises or carrying liquor in the ordinary course of lawful business.

(2) This Act does not apply to the sale or supply of liquor in such cases as are prescribed by regulation.

### **Act binds the Crown**

13. This Act binds the Crown.

## **PART 2—LIQUOR APPEALS TRIBUNAL**

### *Division 1—The Tribunal*

#### **The Tribunal and its members**

14.(1) There is a tribunal called the Liquor Appeals Tribunal.

(2) The Governor in Council may, by Gazette notice, appoint members of the Tribunal.

(3) One member of the Tribunal is to be appointed as chairperson of the Tribunal, and another is, or others are, to be appointed as deputy chairperson of the Tribunal.

#### **Qualification for appointment**

15. At least 1 member must be a person who—

- (a) has held office as a Judge of the Supreme Court or as a Judge of District Courts and who no longer holds such office; or
- (b) has engaged in legal practice for at least 5 years.

#### **Appointment on part-time basis**

16. A member of the Tribunal is to be appointed on a part-time basis.

**Term of appointment**

**17.(1)** Appointment as a member of the Tribunal is for a specified period not longer than 3 years.

**(2)** A member of the Tribunal is eligible for reappointment.

**Resignation and removal from office**

**18.(1)** A member of the Tribunal may resign by signed notice given to the Minister.

**(2)** The Governor in Council may revoke the appointment of a member of the Tribunal by notice signed by the Minister and given to the member.

**(3)** The Governor in Council must revoke the appointment of a member of the Tribunal if the member is convicted—

- (a)** in the State, of an indictable offence; or
- (b)** elsewhere, of an offence consisting of an act or omission that, had it happened in the State, would be an indictable offence;

that reflects on the member's fitness to continue as a member.

**(4)** A resignation or revocation of an appointment may be expressed to take effect on a specified future date, in which case, it takes effect on that date, but if it is not so expressed it takes effect immediately.

**(5)** On a resignation or revocation of an appointment taking effect the member concerned ceases to hold office as a member of the Tribunal.

**(6)** If the chairperson or deputy chairperson of the Tribunal ceases to hold office as a member, the Governor in Council may appoint any person, whether or not a member of the Tribunal, to the office if the person is qualified for appointment.

**Leave of absence**

**19.** The Minister may grant leave of absence to a member of the Tribunal on conditions determined by the Minister.

**Remuneration**

**20.** A member of the Tribunal is entitled to such remuneration by way of allowances as the Governor in Council determines.

***Division 2—Jurisdiction, powers and procedures of Tribunal*****Jurisdiction and powers of Tribunal**

**21.(1)** The Tribunal has jurisdiction to hear and determine appeals made to it against decisions of the chief executive in relation to—

- (a) the grant or refusal of a licence or permit or the renewal of an extended hours permit; or
- (b) the specification of conditions in a licence or permit; or
- (c) the cancellation or suspension or surrender of a licence or permit; or
- (d) the grant or refusal of an authorisation under this Act; or
- (e) an order directed to a licensee or permittee or a person holding an authorisation under this Act; or
- (f) assessment, reassessment or imposition of a fee payable in respect of a licence; or
- (g) allotment or apportionment of liability for payment, or entitlement to refund, of a fee in respect of a licence or permit;

and to hear and determine other appeals that may be made to it under this Act or another Act.

**(2)** In exercise of its jurisdiction, the Tribunal—

- (a) has—
  - (i) the powers and discretions of the chief executive in respect of the matter under appeal; and
  - (ii) the powers otherwise conferred on it by this Act; and
- (b) has the duties imposed by this Act on the chief executive in respect of the matter under appeal; and

- (c) is subject to the limitations imposed by this Act on the chief executive in respect of the matter under appeal.

### **Constitution of Tribunal**

**22.** For the purpose of exercising its jurisdiction, the Tribunal is properly constituted by 3 of its members of whom 1 must be qualified as mentioned in section 15.

### **Way of exercising jurisdiction**

**23.** The Tribunal's jurisdiction is exercised in a proceeding by the unanimous or majority decision of its members constituting the Tribunal in the proceeding.

### **Supervision of Tribunal's exercise of jurisdiction**

**24.(1)** A participant in a proceeding before the Tribunal, who is dissatisfied with the Tribunal's decision in the proceeding, may appeal to the Supreme Court against the decision on a ground of error of law.

**(2)** The appeal must be made within 28 days of the date of the Tribunal's decision.

**(3)** If a question of law arises in a proceeding before the Tribunal, the Tribunal may state a case for the Supreme Court's opinion—

- (a) on its own initiative; or
- (b) on application made to the Tribunal by a participant in the proceeding.

**(4)** If the Supreme Court finds the Tribunal's decision is affected by error of law, it may set aside the Tribunal's decision and remit the matter to the Tribunal for decision in accordance with law.

### **Procedures of Tribunal**

**25.** In exercise of its jurisdiction the Tribunal—

- (a) must observe natural justice; and

- (b) must proceed expeditiously with as little formality and technicality as is consistent with a fair and proper consideration of the matter before it; and
- (c) is not bound by rules or practice as to evidence and may inform itself on any matter as it considers appropriate; and
- (d) subject to this Act, may regulate its procedures as it considers appropriate.

### **Powers of Tribunal in proceedings**

**26.(1)** In a proceeding, the Tribunal may—

- (a) proceed in the absence of a person who has been given reasonable notice of the proceeding; and
- (b) receive evidence on oath or a statutory declaration; and
- (c) adjourn the proceeding; and
- (d) permit amendment of any document; and
- (e) disregard a defect, error, omission or insufficiency in—
  - (i) a document; or
  - (ii) giving, advertising or displaying a document.

**(2)** Any of the members constituting the Tribunal in a proceeding, and any person authorised by any of the members to do so, may administer an oath to a person appearing as a witness in the proceeding.

### **Summons to witnesses**

**27.(1)** The registrar of the Tribunal may, on direction by the Tribunal as constituted in a proceeding or on application by a party to a proceeding, by written notice given to a person require the person to attend at a proceeding before the Tribunal at a time and place specified in the notice for the purpose of giving evidence or producing a document specified in the notice.

**(2)** A person to whom a notice under subsection (1) is given must not, without reasonable excuse, fail to attend—

- (a) as required by the notice; and

- (b) continue to attend as required by the Tribunal until excused from further attendance.

Maximum penalty—35 penalty units.

### **Duty of witness in proceedings**

**28.(1)** A person who appears, voluntarily or in response to a notice under section 27(1), as a witness before the Tribunal must not—

- (a) fail to take an oath or make an affirmation when required to do so for the purpose of the proceeding; or
- (b) fail, without reasonable excuse, to answer a question when required by the Tribunal to do so; or
- (c) fail, without reasonable excuse, to produce a document that the person is required by a notice under section 27(1) to produce.

Maximum penalty—35 penalty units.

**(2)** For the purposes of this Act—

- (a) it is a reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person; and
- (b) it is a reasonable excuse for a person to fail to produce a document if producing the document might tend to incriminate the person.

### **Contempt of Tribunal**

**29.** A person must not—

- (a) insult any of the members constituting the Tribunal in a proceeding; or
- (b) deliberately interrupt a proceeding before the Tribunal; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the Tribunal is conducting a proceeding; or
- (d) do anything that would constitute a contempt of court if the

Tribunal were a court of record.

Maximum penalty—50 penalty units.

### *Division 3—Appeals to Tribunal*

#### **Definition**

**29A.** In this Division—

“**submission**” does not include a submission made under section 118A (Submissions on public need).

#### **Persons entitled to appeal**

**30.** An appeal against the chief executive’s decision may be made only by a person who—

- (a) made an application, submission or objection in the proceeding in which the decision was made; and
- (b) is aggrieved by the decision.

#### **Start of appeal**

**31.(1)** A person who wishes to appeal against the chief executive’s decision must start the appeal in accordance with this section.

**(2)** An appeal is started by—

- (a) filing a notice of appeal with the registrar of the Tribunal within 28 days after the day on which the person received notice of the decision; and
- (b) giving a copy of the notice to the chief executive within 7 days after the notice is filed with the registrar.

**(3)** If the chief executive fails to notify an applicant of the grant or refusal of an application within 30 days after the end of the time within which all steps required or permitted by this Act to be taken in respect of the application must be taken, then, for the purposes of an appeal, the chief

executive is taken to have given to the applicant notice of a decision to refuse the application at the end of the period of 30 days.

### **Notice of appeal**

**32.** A notice of appeal must—

- (a) be in a form approved by the registrar; and
- (b) specify fully the grounds of appeal.

### **Notification to interested persons**

**33.(1)** As soon as practicable after receiving a notice of appeal, the chief executive must give to the registrar of the Tribunal written notice of the names and addresses (as last known to the chief executive) of all persons who made an application, submission or objection in the proceeding relevant to the appeal.

**(2)** The registrar of the Tribunal must give to each person whose name and address have been notified to the registrar under subsection (1), other than the appellant, written notice that an appeal has been started.

### **Arranging the hearing of appeal**

**34.(1)** An appeal to the Tribunal is by a rehearing of the matter unaffected by the decision appealed against.

**(2)** Within 28 days after a notice of appeal is filed with the registrar of the Tribunal, the appeal must be set down for hearing.

**(3)** At least 3 days before the hearing of the appeal is to start, the registrar must give written notice of the time and place of the hearing to the following persons—

- (a) the appellant;
- (b) the chief executive;
- (c) as far as is practicable—each person whose name and address have been given to the registrar under section 33 (Notification to interested persons).

**(4)** At the hearing of the appeal, each person mentioned in

subsection (3)(a) to (c) is entitled—

- (a) for an individual—to be heard personally; or
- (b) for a corporation—to be represented by an officer of the corporation; or
- (c) in any case—with the Tribunal's leave, to be represented by a lawyer.

(5) In deciding whether to grant leave under subsection (4)(c), the Tribunal must consider—

- (a) whether complex questions of law may arise; or
- (b) whether a party to the appeal may be disadvantaged by the decision.

(6) An appeal that has been properly started cannot be withdrawn or abandoned without the Tribunal's leave.

### **Stay of operation of decisions etc.**

**35.(1)** On application of an appellant filed with the registrar of the Tribunal, an order may be made that a decision subject to the appeal—

- (a) be stayed; or
- (b) be given effect only to a specified extent.

**(2)** An order under subsection (1) may be made—

- (a) if application for the order is made before the hearing of the appeal starts—by the member of the Tribunal who is to preside at the hearing; or
- (b) if application for the order is made after the hearing of the appeal starts—by the Tribunal constituted for the appeal.

**(3)** An order under subsection (1) may impose conditions on which it is to be effective.

**(4)** An order that imposes conditions has effect only while all the conditions are complied with.

**(5)** Subject to subsection (4), an order under subsection (1) has effect until—

- (a) the appeal is determined or properly withdrawn; or
- (b) the Tribunal otherwise orders on the chief executive's application.

(6) Unless an order under subsection (1)(a) has effect, a decision subject to appeal to the Tribunal remains in force and is to be given effect by all persons concerned.

### **Powers of Tribunal on appeal**

**36.(1)** In deciding an appeal, the Tribunal may—

- (a) confirm the chief executive's decision; or
- (b) set aside the chief executive's decision, in whole or part, and—
  - (i) substitute its decision; or
  - (ii) return the matter, in whole or part, to the chief executive with the directions it considers appropriate.

(2) The Tribunal may decide an appeal to remedy an injustice or adverse effect the Tribunal considers was caused to the appellant by the chief executive's decision even though someone failed to take, or properly to take, an action required by this Act.

(3) The Tribunal may make orders it considers appropriate to give effect to its decision.

### **Compliance with orders**

**37.** Every order made—

- (a) by the Tribunal, in exercise of its jurisdiction or of a power had by the Tribunal for the purpose of exercising its jurisdiction; or
- (b) by a member of the Tribunal, under section 35(2)(a);

must be complied with by the appellant, the chief executive and all other persons affected by the order.

Maximum penalty—350 penalty units.

**Costs on appeal**

**38.(1)** Subject to subsection (2), each of the persons entitled to be heard on an appeal must bear the person's own costs.

**(2)** On application made to it, the Tribunal may make such order as to costs (including expenses of witnesses attending for the purpose of giving evidence before it) as it considers just if—

- (a) it considers the appeal to be frivolous or vexatious; or
- (b) a person concerned in the appeal has not given reasonable prior notice of intention to seek an adjournment of a hearing; or
- (c) a person concerned in the appeal has incurred costs because another person concerned in the appeal has defaulted in complying with procedural requirements; or
- (d) the chief executive has not attempted to support the decision, or failure to make a decision, subject to the appeal.

**(3)** A document purporting to be certified by the registrar of the Tribunal to be a true copy of an order for costs may be filed in the registry of the District Court, and enforced as an order of that court.

**(4)** If the Tribunal makes an order for costs but the order does not specify the amount of the costs, the amount is to be ascertained in accordance with the table for taxation of costs in the District Court, as determined, if necessary, by the taxing officer of the Supreme Court at Brisbane.

**Summary decision on appeal**

**39.** If all parties to an appeal consent, the Tribunal may proceed to decide an appeal on such evidence as it has before it without holding a hearing.

**Striking out appeal**

**40.** If an appellant—

- (a) fails to appear, in person or by an agent, at the time and place appointed for the start of hearing an appeal, or any adjournment, of which the appellant has been given reasonable notice; and

- (b) has not informed the Tribunal of a reasonable excuse for the failure;

the Tribunal may strike out the appeal without proceeding to a determination.

### **Tribunal's decision to be written and include reasons**

- 41.(1)** The Tribunal must make its decision on an appeal in writing.
- (2)** The decision must include the Tribunal's reasons for the decision.
- (3)** A copy of the decision must be given to each party to the appeal.

## **PART 3—ADMINISTRATION**

### **Power of delegation**

**42.(1)** The chief executive may delegate the chief executive's powers under this Act to an officer of a unit of the public sector or a police officer.

**(2)** An officer to whom a power has been delegated under subsection (1) may delegate the power to an officer of the department or a police officer.

### **Register of licences and permits**

**43.(1)** The chief executive must keep a Register of Licences and Permits.

**(2)** The Register of Licences and Permits is to contain such particulars as the chief executive considers necessary or desirable for the effective administration of this Act.

### **Register open to inspection**

**44.** The Register of Licences and Permits must be available in the department at Brisbane for inspection—

- (a) by an investigator or a police officer while performing duty for the purposes of this Act, free of charge; and
- (b) by any other person, on payment of the fee prescribed.

### **Owner, lessee, mortgagee and secured creditors to give particulars to chief executive**

**44A.(1)** This section applies to—

- (a) an owner, lessee and mortgagee of licensed premises; and
- (b) a secured creditor of the licensee whose interest is likely to be affected by cancellation of the licence for the premises.

**(2)** The persons mentioned in subsection (1) must give the chief executive particulars sufficient to identify their interest in the licence within 28 days of—

- (a) acquiring the interest; or
- (b) if the person holds the interest at the time the licence is granted—the granting of the licence.

**(3)** A person who has given particulars under subsection (2) of the person's interest in a licence must give the chief executive notice that the person no longer holds the interest within 28 days of ceasing to hold the interest.

Maximum penalty for subsection (3)—1 penalty unit.

### **Court officials to furnish particulars for Register**

**45.** The court official who has custody of records of convictions recorded, and penalties ordered, by a court must give to the chief executive particulars of—

- (a) all convictions by the court of licensees, permittees and nominees; and
- (b) all penalties ordered by the court on the convictions.

**Orders for licensed premises etc.**

**46.(1)** The chief executive may issue an order to a licensee, permittee, nominee, owner or other person shown in the Register of Licences and Permits as a person who has an interest in licensed premises, or premises to which a restricted club permit relates, about—

- (a) altering the premises to make the premises suitable for the conduct of business under authority of the licence or permit; or
- (b) increasing or decreasing the area of the premises; or
- (c) complying with laws about noise coming from the premises; or
- (d) complying with laws about fire safety for the premises and hygienic practices in the conduct of business under authority of the licence or permit; or
- (e) complying with this Act.

**(2)** An order under subsection (1) may—

- (a) specify a time within which it is to be complied with; and
- (b) indicate specific steps to be taken with a view to complying with it.

**(3)** A person must not contravene an order under subsection (1).

Maximum penalty—25 penalty units.

**Assistance to public authorities**

**47.** The chief executive may disclose to—

- (a) any authority charged with administering a law of another State or a Territory relating to licensing for the sale or supply of liquor; or
- (b) any authority that seeks the information for the purpose of performing functions of a public nature imposed on the authority by law;

information gathered in the course of administering this Act with respect to—

- (c) the administration of this Act; or

- (d) the affairs of any person affected by the administration of this Act.

### **Preservation of confidentiality**

**48.(1)** Subject to subsection (2), a person who is engaged, or has been engaged, in giving effect to this Act must not make a record of, or directly or indirectly disclose, information about the affairs of another person gathered in the course of administration of this Act.

Maximum penalty—35 penalty units.

- (2) Subsection (1) does not apply to—
- (a) disclosing information in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
  - (b) doing anything for the purposes of this Act.

### **Protection from liability**

**49.(1)** A person engaged in giving effect to this Act does not incur civil liability for an act done or omitted to be done honestly and without negligence under, or for the purposes of, this Act.

(2) A liability that would, but for this section, attach to a person attaches instead to the State.

## **PART 4—LICENCES AND PERMITS**

### *Division 1—Licences*

#### **Available licences**

- 58.(1)** The following licences may be granted and held under this Act—
- (a) general licence;

- (b) residential licence;
- (c) on-premises licence;
- (d) producer/wholesaler licence;
- (e) club licence;
- (f) special facility licence;
- (g) limited licence.

(2) Only 1 licence may be granted or held for any premises or any part of premises.

### *Division 2—General licence*

#### **Authority of general licence**

**59.(1)** A general licence authorises the licensee—

- (a) to sell liquor on the licensed premises, for consumption on or off the premises, during ordinary trading hours or ordinary trading hours extended by an extended hours permit; and
- (b) to sell liquor on the licensed premises, for consumption on or off the premises, at any time to a resident on the premises; and
- (c) to sell liquor on the licensed premises, for consumption on the premises, at any time to a guest of a resident on the premises while the guest is in the resident's company; and
- (d) to sell liquor on premises approved by the chief executive for sale of liquor under authority of the general licence, for consumption—
  - (i) off the premises; or
  - (ii) on the premises in the amount and in the circumstances prescribed by regulation.

(2) If the chief executive specifies in the licence, the authority of a general licence extends to the sale of liquor off the licensed premises, for consumption off the premises, while the licensee is catering for a function if—

- (a) the sale is ancillary to the function at the place where the liquor is consumed; and
- (b) the liquor is sold for consumption by persons genuinely attending the function.

(3) The authority under subsection (1) or (2) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

(4) Premises approved by the chief executive for sale of liquor under the authority of a general licence are taken to be part of the licensed premises to which the licence relates.

### **Restriction on grant of general licence**

**60.** The chief executive may grant a general licence only if the chief executive is satisfied that—

- (a) the primary purpose of the business to be conducted on the premises to which the licence would relate is—
  - (i) the sale of liquor for consumption on the premises, or on and off the premises; and
  - (ii) the provision of entertainment on the premises; and
- (b) the business to be conducted on the premises includes the provision of meals and accommodation to the extent required by the chief executive.

### **Consumption of liquor on premises by residents and guests**

**61.** Liquor supplied under authority of a general licence to a resident on the licensed premises, or to a guest of a resident in the resident's company, for consumption on the premises at any time other than ordinary trading hours, or those hours extended by an extended hours permit, must be consumed—

- (a) in a residential unit on the premises; or
- (b) in a part of the premises approved for the time being by the chief executive for the purpose.

***Division 3—Residential licence*****Authority of residential licence**

**62.(1)** A residential licence authorises the licensee to sell liquor on the licensed premises—

- (a) at any time—
  - (i) to a resident on the licensed premises, or a guest of a resident in the resident’s company, for consumption on the premises; or
  - (ii) to a resident on the licensed premises in a quantity of not more than 9 L on any day, for consumption off the premises; and
- (b) during ordinary trading hours or those hours extended by an extended hours permit, to any person as if the licence were an on-premises licence relating to a place conducted for the primary purpose of eating meals prepared and served to be eaten on the premises; and
- (c) if the chief executive so specifies in the licence—during ordinary trading hours to an owner or operator of a boat making use of facilities of a marina adjacent to the licensed premises, for consumption on or off the premises as specified in the licence; and
- (d) if the chief executive so specifies in the licence—during ordinary trading hours, or those hours extended by an extended hours permit, for consumption off the premises.

**(2)** If the chief executive specifies in the licence, the authority of a residential licence extends to the sale of liquor on premises, other than the licensed premises, for consumption on the other premises.

**(3)** The authority under subsection (1) or (2) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

**Restriction on grant of residential licence**

**63.** The chief executive may grant a residential licence for premises only

if the chief executive is satisfied that—

- (a) the primary purpose of the business to be conducted on the premises is the provision of residential accommodation; and
- (b) the premises contain, or will contain, residential units of an area and furnished with facilities approved by the chief executive; and
- (c) 1 of the following requirements is met—
  - (i) the premises contain at least 16 residential units;
  - (ii) the premises contain a number of residential units (fewer than 16) approved by the chief executive, and a part of the premises set apart and available for public use for dining;
  - (iii) the premises contain fewer than 16 residential units without the further qualification mentioned in subparagraph (ii).

### **Consumption of liquor on premises by residents and guests**

**64.(1)** Liquor supplied under authority of a residential licence to a resident on the licensed premises (other than premises that meet the requirement mentioned in section 63(c)(iii)) or to a guest of a resident in the resident's company, for consumption on the premises at any time other than ordinary trading hours, or ordinary trading hours extended by an extended hours permit, must be consumed—

- (a) in a residential unit on the premises; or
- (b) in a part of the premises approved for the time being by the chief executive for the purpose.

**(2)** Liquor supplied under authority of a residential licence to a resident on licensed premises that meet the requirement mentioned in section 63(c)(iii), or to a guest of a resident in the resident's company for consumption on the premises—

- (a) if the liquor is supplied to a person in a residential unit—must be supplied only by personal room service at the resident's request; and
- (b) must be consumed in a residential unit, or a private dining room, on the premises.

**Consumption of liquor with meals or when meals are being served**

**65.(1)** Liquor supplied under authority of a residential licence to a person as if the licence were an on-premises licence relating to a place conducted for the primary purpose of eating meals prepared and served to be eaten on the premises—

- (a) must be supplied in association with the consumer eating a meal on the licensed premises or in accordance with a condition specified in the licence; and
- (b) must be consumed in a part of the licensed premises in which such an on-premises licence would authorise liquor to be consumed.

**(2)** If the chief executive specifies in the licence, the authority of a residential licence extends to the supply of liquor to persons on the premises other than in association with the persons eating meals.

**(3)** The number of persons who may at any time be supplied with liquor under subsection (2) must not be more than 20% of the number of persons who can be seated to eat a meal in the part of the licensed premises ordinarily set aside for dining.

**Extension of authority to supply liquor for consumption on premises**

**66.** The chief executive may specify in a residential licence that the licensee may, subject to such conditions as the chief executive specifies in the licence, sell and supply liquor to or for persons genuinely attending a function held in the licensed premises.

**Restriction on sale of liquor for consumption off premises**

**67.(1)** The chief executive may specify that liquor may be sold under authority of a residential licence for consumption off the licensed premises only if the chief executive is satisfied that sale of the liquor will be made only in the course of the licensee providing catering facilities for functions.

**(2)** The authority conferred under section 62 by a residential licence to sell liquor for consumption off the licensed premises is restricted to sale of liquor as ancillary to a function that happens at a place at which the liquor is consumed, for consumption by persons genuinely attending the function.

(3) The chief executive must not specify that liquor may be sold under authority of a residential licence for consumption off the licensed premises if the premises meet the requirement mentioned in section 63(c)(iii).

### *Division 4—On-premises licence*

#### *Subdivision 1—General*

#### **Authority of on-premises licence**

**68.(1)** An on-premises licence authorises the licensee to sell liquor in association with an activity conducted on the licensed premises, or on premises of which the licensed premises form part, which activity is the primary purpose to be served by conduct of business under authority of the licence—

- (a) for consumption on the licensed premises; and
- (b) if the chief executive so specifies in the licence—for consumption off the licensed premises;

during ordinary trading hours or those hours extended by an extended hours permit.

(2) If the chief executive specifies in the licence, the authority of an on-premises licence extends to the sale of liquor on premises other than the licensed premises for consumption on the other premises.

(3) The authority under subsection (1) or (2) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

#### **Restriction on grant of on-premises licence**

**69.(1)** The chief executive may grant an on-premises licence in respect of premises only if the chief executive is satisfied that the primary purpose of the premises is their use for—

- (a) functions; or
- (b) cabaret; or
- (c) eating meals prepared and served to be eaten on the premises; or

- (d) carrying passengers commercially; or
- (e) sporting, cultural, theatrical or cinematographic presentations; or
- (f) an area developed as a tourist attraction by provision of entertainment or visual instruction to tourists on the premises; or
- (g) training or educational programs relating to preparation and service of food and beverage; or
- (h) any other activity or purpose approved by the chief executive.

(2) The chief executive must not grant an on-premises licence if the chief executive considers that the sale of liquor proposed to be carried on under authority of the licence would more appropriately be carried on under authority of a licence of another kind.

### **Restriction on sale of liquor for consumption off-premises**

**70.(1)** The chief executive may determine that liquor may be sold under authority of an on-premises licence for consumption off the licensed premises only if the chief executive is satisfied that sale of the liquor will be made only in the course of the licensee providing catering facilities for functions.

(2) The authority conferred by an on-premises licence to sell liquor for consumption off the licensed premises is restricted to sale of liquor as ancillary to a function that happens at a place at which the liquor is consumed, for consumption by persons genuinely attending the function.

### *Subdivision 2—Premises used for functions*

### **Restriction on sale and supply of liquor at functions**

**71.** Liquor sold or supplied as ancillary to a function must be sold or supplied only to persons genuinely attending the function for consumption by those persons at the function.

***Subdivision 3—Premises used for cabaret*****Seating accommodation in cabarets**

**72.** Premises used for cabaret must have accommodation for at least 100 persons seated at tables or otherwise as the chief executive approves.

**Restriction on sale and supply of liquor at cabarets**

**72A.(1)** If the chief executive specifies in the licence, the authority of an on-premises licence to sell liquor for consumption on licensed premises used for the primary purpose of a cabaret extends to the sale and supply during ordinary trading hours<sup>2</sup>, or ordinary trading hours extended by an extended hours permit—

- (a) to or for persons genuinely attending a function on the premises;  
or
- (b) to persons on the premises other than in association with the persons eating meals.

**(2)** The number of persons who may at any time be supplied with liquor under subsection (1)(b) must not be more than 20% of the number of persons who can be seated to eat a meal in the part of the licensed premises ordinarily set aside for dining.

***Subdivision 4—Premises used for eating meals prepared and served to be eaten on the premises*****Restriction on sale of liquor under on-premises licence**

**73.(1)** The authority of an on-premises licence to sell liquor for consumption on licensed premises used for the primary purpose of eating meals prepared and served to be eaten on the premises—

- (a) is restricted to sale in association with the consumer eating a meal on the premises; and

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<sup>2</sup> Section 9(10) sets out the ordinary trading hours of licensed premises that are a cabaret.

- (b) if the chief executive specifies in the licence—may extend to sale and supply—
  - (i) to or for persons genuinely attending a function on the premises; or
  - (ii) to persons on the premises other than in association with the persons eating meals.

(2) The number of persons who may at any time be supplied with liquor under subsection (1)(b)(ii) must not be more than 20% of the number of persons who can be seated to eat a meal in the part of the licensed premises ordinarily set aside for dining.

### **Display of menu, liquor list and authority to sell liquor**

**74.** There must be displayed in a conspicuous place on premises used for the primary purpose of consumption of meals prepared and served to be eaten on the premises and to which an on-premises licence relates—

- (a) details of the menu and of the liquor list available to consumers on the premises; and
- (b) notice of the extent of the authority of the licensee to sell liquor for consumption on the premises;

so as to be clearly visible from outside the premises.

Maximum penalty—25 penalty units

### ***Subdivision 5—Premises used for carrying passengers commercially***

### **Restriction on sale of liquor**

**75.** The authority of an on-premises licence that relates to a boat, vehicle or aircraft used for the primary purpose of carrying passengers commercially is restricted to sale of liquor to passengers who are about to make, are making, or have just completed a journey on the boat, vehicle or aircraft.

***Subdivision 6—Premises used for presentations*****Location of liquor outlets specified in licence**

**76.(1)** There must be specified in an on-premises licence that relates to premises used for the primary purpose of sporting, cultural, theatrical or cinematographic presentations each part of the premises in which liquor may be sold and consumed.

**(2)** A part of the premises that is readily accessible to persons who are not attending a presentation on the premises must not be specified under subsection (1).

**Number of liquor outlets**

**77.(1)** The chief executive must decide the number of liquor outlets that should be in premises mentioned in section 76 to which an on-premises licence relates.

**(2)** The chief executive must—

- (a)** define in the licence each part of the premises that is to be a liquor outlet; and
- (b)** specify in the licence how each such liquor outlet must be marked out.

**(3)** Each liquor outlet defined in the licence, and marked out as specified in the licence, is the licensed premises in respect of the area to which the licence relates.

***Subdivision 7—Premises used for tourist attraction*****Restriction on sale of liquor**

**78.** The authority of an on-premises licence that relates to premises developed as a tourist attraction by provision of entertainment or visual instruction to tourists is restricted to sale of liquor, at a liquor outlet specified in the licence, for consumption within that liquor outlet.

***Subdivision 8—Railway refreshment rooms*****Restriction on grant of licence for railway refreshment room**

**79.** The chief executive may grant or transfer an on-premises licence relating to a railway refreshment room only to a person who is nominated for the purpose by the Chief Executive, Queensland Rail.

**Identification of licensed railway refreshment room**

**80.** An on-premises licence that relates to a railway refreshment room must define the premises to which it relates with particularity sufficient to identify the licensed premises.

**Authority of licence for railway refreshment room**

**81.(1)** An on-premises licence that relates to a railway refreshment room authorises the licensee to sell liquor on the licensed premises, for consumption on the premises—

- (a) during ordinary trading hours, as if the licence were a general licence; and
- (b) as prescribed by subsection (2).

**(2)** The authority of an on-premises licence that relates to a railway refreshment room extends to authorise sale of liquor on the licensed premises, for consumption on the premises, on any day (including a day on which sale of liquor is prohibited) to a person (other than one to whom supply of liquor on licensed premises is prohibited) who produces a document that entitles the person to start, continue or end on that day at the railway station where the licensed premises are situated a journey by railway of at least 40 km—

- (a) during the period of 30 minutes before the anticipated time of departure of the train on start or continuation of the journey; or
- (b) during the period of 30 minutes following the time of arrival of the train at the end of the journey.

***Division 5—Producer/wholesaler licence*****Authority of producer/wholesaler licence**

**82.(1)** A producer/wholesaler licence authorises the licensee—

- (a) if the licensee is a producer of liquor—to sell on the licensed premises liquor produced or made on the licensed premises, for consumption on or off the licensed premises, during ordinary trading hours or those hours extended by an extended hours permit; or
- (b) if the licensee is a wholesale supplier of liquor—to sell liquor on the licensed premises, for consumption off the licensed premises, during ordinary trading hours.

**(2)** The authority under subsection (1) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

**Restriction on grant of producer/wholesaler licence**

**83.** The chief executive may grant a producer/wholesaler licence only if the chief executive is satisfied that the primary purpose of the business to be conducted under authority of the licence is—

- (a) producing liquor for supply wholesale to licensees; or
- (b) supplying liquor wholesale to licensees; or
- (c) supplying liquor wholesale to a person engaged in an activity to which this Act is prescribed by regulation not to apply.

**Restriction on sale of liquor under producer/wholesaler licence**

**84.(1)** Subject to subsection (2), the holder of a producer/wholesaler licence must not sell liquor to a person other than—

- (a) a licensee or permittee; or
- (b) a person engaged in an activity to which this Act is prescribed not to apply, if the sale is for the purpose of that activity; or
- (c) a person engaged in an activity mentioned in section 206(a) (Factors affecting assessment of fees) if the sale is for the activity;

or

- (d) a person authorised by a law of another State or a Territory or foreign country to sell liquor, or the person's agent; or
- (e) a person exempt from the application of a law of another State or a Territory relating to the sale of liquor, or the person's agent, if the sale is made in circumstances in which the person is so exempt.

(2) The holder of a producer/wholesaler licence who is a producer of liquor may sell liquor to—

- (a) a consumer on the licensed premises in association with the consumer eating, in a part of the premises ordinarily set apart for dining, a meal prepared and served to be eaten on the premises, for consumption on the premises; or
- (b) a visitor to the licensed premises, if the sale is of a souvenir of the visit.

(3) The holder of a producer/wholesaler licence does not contravene this section by selling liquor during any period—

- (a) to the holder's staff; or
- (b) for sampling, promotions or similar purposes;

if such sales do not exceed 2.5% by value of the holder's total sales of liquor during the period.

(4) This section does not apply to the holder of a producer/wholesaler licence who holds a brewery licence within the meaning of section 77A of the *Excise Act 1901* (Cwlth).

### *Division 6—Club licence*

#### **Authority of club licence**

**85.(1)** A club licence authorises the licensee to sell liquor on the licensed premises—

- (a) during ordinary trading hours, or those hours extended by an extended hours permit held by the licensee in respect of the

premises, to—

- (i) a member of the club, for consumption on or off the premises, or a guest of a member in the member's company, for consumption on the premises; or
  - (ii) a member of a reciprocal club whose members' reciprocal rights are secured by formal reciprocal arrangements for consumption on or off the premises, or a guest of a member of such a reciprocal club in the member's company for consumption on the premises; or
  - (iii) an applicant for membership of the club for a period of 30 days after receipt by the secretary of the club of the applicant's application for membership for consumption on the premises; or
  - (iv) a visitor to the club whose ordinary place of residence is in another State or a Territory or in a foreign country for consumption on the premises; or
  - (v) a visitor to the club whose ordinary place of residence is in the State at least 40 km from the club's premises for consumption on the premises; or
  - (vi) a person attending a function or club activity (other than the purpose of the club) on the premises for consumption on the premises; and
- (b) at any time to a resident on the premises, or a guest of a resident in the resident's company, for consumption on the premises;

**(2)** The authority under subsection (1) is subject to this Act and the conditions specified in a particular licence or extended hours permit.

**(3)** A visitor to the premises of a club who—

- (a) with permission of an authorised agent of the management committee of the club; and
- (b) after payment of the fee (if any) ordinarily charged for the purpose;

plays a sport or game that is part of the club's business, or that is played under the auspices of the club, is taken, for the purposes of subsection (1), to be a member of the club for the day on which the visitor so plays.

(4) If it is a team that plays a sport or game mentioned in subsection (3) as visitors to the premises of a club, every genuine official of the team is taken to be a visitor who has played the sport or game although the official has not taken part in the sport or game.

(5) In this section—

“**game**” does not include a game within the meaning of the *Gaming Machine Act 1991*.

### **Restrictions on grant of club licence**

**86.(1)** The chief executive may grant a club licence only if the chief executive is satisfied that—

- (a) the primary purpose of the premises to which the licence would relate is the business of a club; and
- (b) the club in question is a non-proprietary club.

(2) The chief executive may not grant a club licence if—

- (a) the premises to which the club licence would relate are a part of larger premises, wholly or partly (the “**larger premises**”); and
- (b) another type of licence was formerly held in relation to the larger premises; and
- (c) another type of licence is still held in relation to the remainder of the larger premises, wholly or partly.

*Example—*

If club A applies for a club licence in relation to a part of premises that has been excised from B’s general licence or C’s on-premises cabaret licence, club A’s application must be refused.

### **Restriction on sale of liquor for consumption off premises**

**87.** The holder of a club licence must not sell more than 18 L of liquor on a day to a member of the club or a reciprocal club for consumption off the club’s premises.

**Requirements of club and secretary**

**88.(1)** A club licence is subject to the following conditions—

- (a) the rules of the club must comply with the Schedule, except as otherwise authorised in writing by the chief executive;
- (b) if an amendment of the rules of the club is adopted by the club—
  - (i) the club's secretary must, within 14 days after the adoption of the amendment, give to the chief executive a certified copy of the proposed amendment; and
  - (ii) the amendment takes effect at the end of 28 days after receipt by the chief executive of the certified copy, unless, within that period, the chief executive disallows the amendment by written notice given to the club's secretary;
- (c) the club's secretary must keep on the club premises a register of—
  - (i) the name and address of each member of the club; and
  - (ii) particulars of payment of the membership subscription last paid by the member;
- (d) the club's secretary must keep on the club premises a register of—
  - (i) the name of each guest of a member or visitor to the club premises; and
  - (ii) the current place of residence of each guest or visitor or, if the guest or visitor is a member of a reciprocal club, the name of the reciprocal club;
- (e) the club's secretary must keep the register mentioned in paragraph (c) or (d) open for inspection at any time by an investigator.

**(2)** The regulations may prescribe amendments to which subsection (1)(b)(i) does not apply.

**(3)** An amendment to which subsection (1)(b)(i) does not apply takes effect as soon as it is adopted by the club.

**(4)** Subsection (1)(d) does not apply to a person who is—

- (a) a minor; or
- (b) a visitor mentioned in section 85(3) or (4) (Authority of club licence).

(5) A person must not make an entry in a register, or give information to someone else to enter in a register, mentioned in subsection (1)(c) or (d) that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty for subsection (5)—35 penalty units.

(6) It is enough for a complaint against a person for an offence against subsection (5) to state that the information entered was false, misleading or incomplete to the person's knowledge.

### *Division 8—Special facility licence*

#### **Authority of special facility licence**

**93.(1)** A special facility licence authorises the licensee to sell liquor on the licensed premises, for consumption on or off the premises, during the times specified in the licence<sup>3</sup>.

(2) The authority under subsection (1) is subject to this Act and the conditions that the chief executive has specified in the particular licence.

#### **Restriction on grant of special facility licence**

**94.(1)** The chief executive may grant a special facility licence only if the sale of liquor under authority of the licence will be in association with an activity, facility or presentation that—

- (a) provides enlightenment, entertainment or services to the public; or
- (b) forms part of the tourist development of the State.

(2) The chief executive must not grant a special facility licence if the chief executive considers that the supply of liquor proposed to be provided under

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<sup>3</sup> Because of the nature of a special facility licence, there are no ordinary trading hours.

authority of the licence would more appropriately be carried on under authority of a licence of another kind.

### *Division 9—Limited licence*

#### **Authority of limited licence**

**95.(1)** A limited licence authorises the licensee, during the times specified in the licence<sup>4</sup>—

- (a) to sell liquor on the licensed premises, for consumption on the premises; or
- (b) to sell liquor on the licensed premises, for consumption off the premises, if the amount of each sale is not more than—
  - (i) if the chief executive specified an amount in the licence—the amount specified by the chief executive; or
  - (ii) in any other case—2L; or
- (c) if the chief executive specified in the particular licence—to sell liquor on premises other than the licensed premises for consumption on the premises on which the liquor is sold.

**(2)** The authority under subsection (1) is subject to this Act and the conditions that the chief executive has specified in the particular licence.

#### **Restriction on grant of limited licence**

**96.** The chief executive must not grant a limited licence if the chief executive considers that the supply of liquor proposed to be provided under authority of the licence would more appropriately be provided under authority of a licence of another kind.

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<sup>4</sup> Because of the nature of a limited licence, there are no ordinary trading hours.

***Division 10—Permits*****Available permits**

**97.** The following permits may be granted and held under this Act—

- (a) a general purpose permit;
- (b) an extended hours permit;
- (c) a restricted club permit.

***Division 11—General purpose permit*****Authority of general purpose permit**

**98.(1)** A general purpose permit authorises the permittee to sell liquor—

- (a) at the event or occasion; and
- (b) at the times on the day or days; and
- (c) subject to the conditions;

specified in the permit and subject to this Act.

**(2)** Authority of a general purpose permit extends to sale of liquor—

- (a) for consumption at the event or occasion specified in the permit; and
- (b) for removal from the venue of the event or occasion, and subsequent consumption, if specified in the permit.

**Restriction on grant of general purpose permit**

**99.** The chief executive must not grant a general purpose permit—

- (a) in respect of licensed premises; or
- (b) if the chief executive considers that the supply of liquor proposed to be provided under authority of the permit would more appropriately be provided under authority of a licence or restricted club permit.

**Identification of premises**

**100.(1)** The chief executive must—

- (a) define an area adjacent to each liquor outlet of premises to which a general purpose permit relates; and
- (b) specify the means by which the area must be marked out.

**(2)** An area so defined is part of the premises to which the general purpose permit relates.

**Restriction on consumption or possession of liquor**

**101.(1)** During continuance of a general purpose permit a person must not—

- (a) consume liquor; or
- (b) have liquor in possession for consumption;

at the venue of the event or occasion specified in the permit elsewhere than in an area that is part of the premises to which the permit relates.

**(2)** Subsection (1) does not apply to consumption, or having in possession, of liquor supplied by the person or association of persons controlling the event or occasion in a part of the venue of the event or occasion set apart for use by that person or association and guests.

***Division 12—Extended hours permit*****Authority of extended hours permit**

**102.** An extended hours permit authorises the licensee who is the holder of the permit to sell liquor under authority of the licence that relates to the licensed premises for which the permit is granted subject to this Act at the times, and subject to the conditions, specified in the permit.

**Restriction on grant of extended hours permit**

**103.** The chief executive must not grant an extended hours permit that

would purport to authorise the sale of liquor at any time on Good Friday, Christmas Day or Anzac Day otherwise than as prescribed by section 9.

### *Division 13—Restricted club permit*

#### **Authority of restricted club permit**

**103A.(1)** A restricted club permit authorises the permittee to sell and supply liquor on the premises to which the permit relates to the following persons, for consumption on the premises—

- (a) a member of the club;
- (b) a guest of a member of the club in the member's company;
- (c) a member of a reciprocal club;
- (d) a guest of a member of a reciprocal club in the member's company.

**(2)** The authority under subsection (1) is subject to this Act and the conditions specified in the permit.

#### **Restriction on grant of restricted club permit and other related matters**

**103B.(1)** The chief executive may grant a restricted club permit only if the chief executive is satisfied that the club is a non-proprietary club.

**(2)** The chief executive must include the following matters in a restricted club permit—

- (a) the times, totalling not more than 21 hours a week, for the sale of liquor under the permit;
- (b) the area to which the permit relates.

**(3)** On application by the holder of a restricted club permit, the chief executive may extend the times specified in the permit for sale and consumption of liquor for special occasions celebrated by the club.

**(4)** The chief executive may extend the hours under subsection (3) by not more than 10 hours a month.

**Duration of permit**

**103C.** The chief executive may grant a restricted club permit for a period of at least 3 months but no longer than 1 year.

**Requirements of club and secretary**

**103D.(1)** A restricted club permit is subject to the following conditions—

- (a) the rules of the club must comply with the Schedule, unless the chief executive has given written permission to the club to vary the rules;
- (b) if an amendment of the rules of the club is adopted by the club—
  - (i) within 14 days after adoption of the amendment, the club's secretary must give the chief executive a certified copy of the amendment; and
  - (ii) the amendment takes effect at the end of 28 days after the chief executive receives the certified copy unless the chief executive has disallowed the amendment by written notice given to the club's secretary;
- (c) the club's secretary must keep on the club premises a register of—
  - (i) the name and address of each club member; and
  - (ii) particulars of the most recent membership subscription paid by the member;
- (d) the club's secretary must keep on the club premises a register of—
  - (i) the name and current address of each guest of a member; and
  - (ii) the name of each member of a reciprocal club, on the premises, and the name of the reciprocal club; and
  - (iii) the name and current address of each guest of a member of a reciprocal club mentioned in subparagraph (ii);
- (e) the club's secretary must keep the registers mentioned in

paragraphs (c) and (d) open for inspection by an investigator at any time when the club is open.

(2) The regulations may prescribe amendments to which subsection (1)(b)(i) does not apply.

(3) An amendment to which subsection (1)(b)(i) does not apply takes effect as soon as it is adopted by the club.

(4) A person must not make an entry in a register, or give information to someone else to enter in a register, mentioned in subsection (1)(c) or (d), that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty for subsection (4)—35 penalty units.

(5) It is enough for a complaint against a person for an offence against subsection (4) to state that the information entered was false, misleading or incomplete to the person's knowledge.

#### ***Division 14—Additional authority of licence and permit***

### **Additional time for consumption or removal of liquor**

**104.** A licence or permit that authorises—

- (a) the sale of liquor, during any period, for consumption on licensed premises; or
- (b) the sale of liquor, during any period, for consumption off licensed premises;

also authorises—

- (c) consumption on the premises of liquor supplied on a sale mentioned in paragraph (a); and
- (d) removal from the premises of liquor supplied on a sale mentioned in paragraph (b);

within 30 minutes after the end of the period during which the sale is made.

## **PART 5—GRANT, VARIATION AND TRANSFER OF LICENCES AND PERMITS**

### *Division 1—Applications*

#### **Requirements for applications**

**105.** An application for any purpose of this Part must—

- (a) be made to the chief executive; and
- (b) be in a form approved by the chief executive; and
- (c) specify, or be accompanied by, the particulars prescribed by regulation; and
- (d) be accompanied by the fee prescribed by regulation for an application of the relevant kind.

#### **Who may apply for licence or permit**

**106.** An adult individual, or a body corporate, may make application for a licence or a general purpose permit.

#### **Restrictions on grant of licence or permit**

**107.(1)** The chief executive may grant an application for a licence or permit only if the chief executive is satisfied that the applicant is a fit and proper person to hold the licence or permit applied for having regard to—

- (a) whether the applicant demonstrates knowledge and understanding of the obligations of a licensee or permittee of the relevant kind under this Act; and
- (b) whether the applicant is a person of good repute who does not have a history of behaviour that would render the applicant unsuitable to hold the licence or permit applied for; and
- (c) whether the applicant demonstrates a responsible attitude to the management and discharge of the applicant's financial obligations.

(2) If the applicant is a body corporate, or the chief executive knows, or suspects on reasonable grounds, that the applicant would hold any licence or permit granted on behalf of a partnership, the chief executive must discharge the responsibility under subsection (1) by applying the subsection to—

- (a) each person in a position of authority or influence in relation to the body corporate; or
- (b) each person who is a member of the partnership of whom the chief executive has knowledge;

as if each such person were the applicant.

(3) If the applicant has nominated a nominee in respect of the licence or permit sought, the chief executive must discharge the responsibility under subsection (1) by applying the subsection to the nominee as if the nominee were the applicant.

(4) Subject to section 123, the chief executive may grant an application only if the premises to which it relates are, in the chief executive's opinion, suitable for conduct of business under authority of the licence or permit applied for.

(5) The chief executive may obtain—

- (a) a report from the Commissioner of the Police Service in relation to the criminal history of—
  - (i) an applicant for a licence or permit; and
  - (ii) each person to whom subsection (1) applies as if the person were the applicant; and
- (b) if the applicant or person holds or previously held in another State or a Territory a relevant licence, permit, authority, interest or position—a report from the appropriate authority in the State or Territory.

(6) A report under subsection (5)(a) must include reference to or disclosure of convictions mentioned in section 6 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**More than 1 licence may be held**

**108.** A person may apply for, and hold, more than 1 licence, whether of the same kind or of different kinds, if in respect of each licence for which a nominee is nominated the nominee is other than the holder of the licence and any other nominee.

**Nominees**

**109.(1)** An applicant for a licence or permit must, in any of the following cases—

- (a) if the applicant is a body corporate;
- (b) if the applicant for a licence is already the holder of a licence;
- (c) if the application is for a club licence;
- (d) if the application is for an on-premises licence that, if granted, would relate to a vessel;

and may, in any other case, nominate an individual to be nominee in respect of the licence or permit sought by the applicant.

**(2)** An applicant for an on-premises licence that, if granted, would relate to a boat may nominate any number of persons, who will be in charge of the navigation of the boat, to be nominees in respect of the licence.

**(3)** If a licence or permit is granted on the application, an individual so nominated is taken to be, for the purposes of this Act, the nominee in respect of the licence or permit.

**(4)** If a nominee is nominated for the purposes of an application made on behalf of an unincorporated association—

- (a) a licence granted on the application must be granted and issued to the nominee, to be held for the benefit of the unincorporated association; and
- (b) the licence held by the nominee for the unincorporated association must be transferred to the association if it becomes incorporated.

**(5)** A transfer of licence under subsection (4)(b)—

- (a) must be made within 3 months after the association's incorporation; and

- (b) does not affect the status of the nominee as nominee of the association.

**(6)** In the conduct of business on premises to which a licence or permit relates a nominee in respect of the licence or permit that relates to the premises—

- (a) is responsible for ensuring that liquor is supplied or had in possession on the premises only in accordance with the authority conferred by the licence or permit; and
- (b) is subject to the obligations imposed by this Act on the licensee or permittee; and
- (c) is liable as a licensee or permittee for an offence against this Act or for any failure to perform any of such obligations.

**(7)** A nominee's liability to be punished for a contravention of this Act does not affect the liability of the licensee or permittee to be punished for the contravention.

**(8)** A person ceases to be a nominee in respect of a licence or permit if the person ceases to hold the position in which the person is charged with responsibility for the supply of liquor in the conduct of the business for which the licence or permit was obtained.

**(9)** If—

- (a) subsection (1) requires an applicant to nominate a person to be nominee in respect of a licence; and
- (b) at any time after the licence is granted, the person so nominated (being an only nominee) ceases to be nominee in respect of the licence;

the licensee must nominate another individual to be nominee in respect of the licence and, on acceptance by the chief executive of the nominated person as such nominee, the nominated person becomes the nominee in respect of the licence.

**(10)** At any time during continuance of an on-premises licence that relates to a boat, the licensee may make application to the chief executive for acceptance of the licensee's nomination of persons who are, or will be, in charge of the navigation of the boat, as nominees in respect of the licence, in addition to or in substitution for existing nominees.

(11) If the chief executive accepts a nomination made under subsection (10), the persons nominated become nominees in respect of the licence.

### **Application for grant of extended hours permit**

**109A.** An applicant for a licence, or a licensee, may apply for an extended hours permit for the premises that are, or are to be, the licensed premises.

### **Application for grant of extended hours permit not on regular basis**

**110.(1)** This section applies to an application for an extended hours permit that would not extend the trading hours of licensed premises on a regular basis.

(2) An applicant for an extended hours permit must, at or about the time the application is given to the chief executive, also give a copy of the application to the Assistant Commissioner in charge of the Police Service in the locality in which the relevant premises are situated.

(3) The Assistant Commissioner may comment or object to the chief executive about the application within 14 days of receiving the copy of the application.

(4) In considering an application under this section, the chief executive must have regard to—

- (a) any matter raised by the local government in whose area the premises to which the application relates are situated; and
- (b) any objection or comment made to the chief executive by a police officer under subsection (3); and
- (c) the impact on the amenity of the community.

(5) If an application is for extension of hours beyond 2 a.m., the chief executive must also have regard to the following matters—

- (a) the previous conduct of the applicant in discharging any duties under this Act previously placed on the applicant, especially for the premises for which the extension is sought;
- (b) the applicant's ability to control noise and behaviour of the

number of persons that could reasonably be expected to be on and in the vicinity of the premises if the extension were granted;

- (c) the suitability of the premises and its facilities for the purpose for which the extension is sought.

### **Variation of licence**

**111.(1)** A licensee may make application to vary a licence by—

- (a) altering the times when business may be conducted under authority of the licence; or
- (b) amending or revoking a condition of the licence.

**(2)** The chief executive may, on the chief executive's own initiative, seek to vary a licence—

- (a) in a way specified in subsection (1); or
- (b) by adding a condition to the licence.

**(3)** This section does not apply to an application for the chief executive's approval to conduct business between 7 a.m. and 10 a.m.

**(4)** An application mentioned in subsection (3) may only be made by application for an extended hours permit under section 109A (Application for grant of extended hours permit).

### **Procedure for variation by chief executive**

**112.** If the chief executive seeks to vary a licence—

- (a) the chief executive must cause written notice to be given to the licensee; and
- (b) the licensee may, within 14 days after receiving the notice, give to the chief executive written notice of objection to the proposed variation.

### **Application for transfer of licence**

**113.(1)** On application made by—

- (a) the licensee and the proposed transferee; or

- (b) the owner, lessee or mortgagee of the licensed premises if—
  - (i) the licensee has been lawfully evicted from, or has abandoned, the licensed premises; or
  - (ii) the lease, sublease, tenancy or right to occupy the licensed premises of the licensee has been lawfully terminated; or
  - (iii) the licensee has ceased to conduct business in the licensed premises and has not agreed to the application;

the chief executive may transfer a licence (together with any extended hours permit held in association with the licence) to a person who could be granted the licence.

(2) The authority of the chief executive under subsection (1) is subject to section 53 of the *Gaming Machine Act 1991*.

- (3) On transfer of a licence, the transferee becomes the licensee and—
  - (a) has the authority conferred by the licence on the holder; and
  - (b) is subject to the obligations imposed by this Act or the conditions of the licence on the holder; and
  - (c) is subject to the obligations imposed on the transferor or any previous holder of the licence by order of the chief executive, or requisition of an investigator, that has not been complied with.

### **Restriction on transfer of licence**

**114.** The chief executive may transfer a licence only if all fees relating to the licence, and payable under this Act, have been paid in full.

### **Chief executive's responsibility on application for transfer or franchising of a licence**

- 115.(1)** On application made for the chief executive's approval that—
- (a) a licence or permit be transferred; or
  - (b) licensed premises, or any part, be let or sublet; or
  - (c) the right to sell liquor be let or sublet; or
  - (d) a franchise, or management rights of a similar nature, be granted

for licensed premises, or a part of licensed premises;

sections 107 to 109 apply as if the proposed transferee, lessee, sublessee, franchisee or proposed holder of management rights were an applicant for a licence, and the chief executive must not approve the application unless the requirements of the sections are satisfied.

(2) If a nominee is nominated under this section because of section 109(9) (Nominees), the chief executive must discharge the responsibility under section 107(1) (Restrictions on grant of licence or permit) to the nominee as if the nominee were the proposed transferee, lessee, sublessee, franchisee or proposed holder of management rights.

### **Public need relevant to applications**

**116.(1)** This section applies to an application for—

- (a) a licence other than a club licence; or
- (b) an approval under section 59(1)(d) (Authority of general licence); or
- (c) an extended hours permit that would extend trading hours on a regular basis.

(2) The applicant must satisfy the chief executive that the licence, approval or permit applied for is necessary to provide for the reasonable requirements of the public for liquor and related services in the locality to which the application relates.

(3) For the purpose of satisfying the chief executive about the reasonable requirements of the public as mentioned in subsection (2), an applicant must give information to the chief executive about the following—

- (a) the number and condition of licensed premises already existing in the locality;
- (b) the distribution of licensed premises already existing throughout the locality;
- (c) the extent and quality of services provided, or to be provided, by licensed premises already existing in the locality;
- (d) whether the services proposed to be provided could be adequately provided by licensed premises already existing in the locality by

way of orders of the chief executive or requisitions of investigators;

- (e) any other relevant information that the chief executive asks the applicant to provide.

(4) In deciding the reasonable requirements of the public for liquor and related services in a locality, the chief executive must take into account information about the matters mentioned in subsection (3) and must have regard to—

- (a) the population and demographic trends in the locality; and
- (b) the number and kinds of persons residing in, resorting to or passing through the locality, or likely in the foreseeable future to do so, and their respective requirements or expectations; and
- (c) the extent to which any requirement or expectation—
  - (i) varies during different periods or at different times; and
  - (ii) is lawfully met by other premises, licensed or unlicensed; and
- (d) the likely health and social impact that granting the application would have on the population of the locality.

(5) A reference in this section to licensed premises already existing includes a reference to premises for which a licence or permit to which this section applies is in force.

### **Advice about application etc.**

**117.(1)** As soon as practicable after the chief executive receives an application to which section 116 (Public need relevant to applications) applies or an application for a club licence, the chief executive must tell the following about the application—

- (a) the local government for the relevant locality; and
- (b) if the application is for an extended hours permit—the Assistant Commissioner in charge of the Police Service for the locality.

(2) The local government or Assistant Commissioner may—

- (a) comment on the reasonable requirements of the public in the

locality; or

- (b) object to the grant of the application on the grounds that the amenity, quiet or good order of the locality would be lessened.

**(3)** The comment or objection must be given to the chief executive—

- (a) if the application was required to be advertised<sup>5</sup>—on or before the last day for filing objections to the application; and
- (b) in any other case—within 14 days of receiving advice about the application.

### **Advertisement of applications**

**118.(1)** An application for the following must be advertised under this section—

- (a) a licence or variation of a licence;
- (b) an approval under section 59(1)(d) (Authority of general licence);
- (c) an extended hours permit, or variation of an extended hours permit, that would extend trading hours on a regular basis;
- (d) another application that the chief executive requires, by written notice to the applicant, to be advertised.

**(2)** If an application must be advertised, the applicant must—

- (a) in a form, and on days, approved by the chief executive generally or in a particular case, publish notice of the application, at the applicant's expense—
  - (i) once in the Gazette; and
  - (ii) twice in a newspaper circulating in the locality; and
- (b) display a copy of the notice on the premises to which the application relates on a sign the dimensions of which (including dimensions of the print) are approved by the chief executive, generally or in a particular case; and
- (c) ensure the copy is displayed conspicuously for 28 days

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<sup>5</sup> See section 118 (Advertisement of applications).

immediately before the last day for making submissions about the reasonable requirements of the public in the locality or filing objections to the application.

(3) The chief executive may waive or vary the publication and display requirements for an application if the chief executive is satisfied that publication and display under subsection (2) is not necessary because of—

- (a) the remote location of the premises; or
- (b) other special circumstances.

(4) Subject to subsection (5), the applicant must give to the chief executive evidence of satisfying the publication and display requirements under subsection (2) or (3).

(5) The chief executive may approve publication and display that—

- (a) substantially complies with subsection (2); or
- (b) has already taken place for another purpose and substantially complies with subsection (2).

(6) The chief executive must make available for inspection, in the office of the department at Brisbane, a list of all applications currently before the chief executive that are required under subsection (1) to be advertised.

(7) The list must include—

- (a) the nature of each application; and
- (b) the location of premises to which each application relates.

### **Submissions on public need**

**118A.(1)** If a notice about an application to which section 116 (Public need relevant to applications) applies is published as required by section 118 (Advertisement of applications), a member of the public may make a written submission to the chief executive about—

- (a) the reasonable requirements of the public in the locality to which the application relates; and
- (b) the matters to which the chief executive must have regard under section 116.

(2) A submission must be in writing and given to the chief executive on

or before the last day for making submissions stated in the notice.

(3) In this section—

**“member of the public”** has the meaning given by section 119 (Objection to grant of applications).

### **Objection to grant of applications**

**119.(1)** If notice of an application is published as required by section 118, any member of the public may object to the grant of the application, by writing filed with the chief executive on or before the last day for filing of objections as specified in the notice.

(2) An objection may be made individually or by petition.

(3) The grounds on which an objection may be made are that—

- (a) if the application were granted—undue offence, annoyance, disturbance or inconvenience to persons who reside or work or do business in the locality concerned, or to persons in or travelling to or from an existing or proposed place of public worship, hospital or school is likely to happen; or
- (b) if the application were granted—the amenity, quiet or good order of the locality concerned would be lessened in some way.

(4) In subsection (1)—

**“member of the public”** means any adult individual or body of persons that in the chief executive’s opinion—

- (a) has a proper interest in the locality concerned; and
- (b) is likely to be affected by the grant of the application.

### **Requirements of objection by petition**

**120.(1)** An objection purporting to be by petition to the grant of an application is ineffective, and may be disregarded, unless—

- (a) each sheet of the petition has an identical heading clearly stating the subject matter of the petition and positioned to be clearly legible to every person whose signature on the petition is sought; and

- (b) each signatory to the petition adds particulars of his or her connection with the locality to which the application relates; and
- (c) each sheet of the petition states the name of the petition's sponsor with whom all contact between the chief executive and the signatories to the petition is to take place.

(2) A notice given by the chief executive, or the registrar of the Tribunal, to the sponsor of the petition is taken to be given to all signatories to the petition.

### **Conference of concerned persons and decision by chief executive**

**121.(1)** This section applies if the chief executive—

- (a) is given an application or a notice of objection under this Act and is required to decide an issue; and
- (b) considers it desirable that a conference of all persons concerned be held.

(2) The chief executive may take part in the conference.

(3) If a notice of objection is given under section 112 (Procedure for variation by chief executive) or 119 (Objection to grant of applications) for an application, a conference under subsection (1) must be held.

(4) If—

- (a) a conference is held; and
- (b) because of the conference, agreement is reached between the conferring persons about the terms of the chief executive's decision that are acceptable to the persons; and
- (c) the agreed terms are put in writing and signed by the conferring persons; and
- (d) the chief executive is satisfied a decision in the agreed terms is lawful;

the chief executive may make a decision consistent with the terms.

(5) In deciding whether to—

- (a) if a conference was held—make a decision consistent with the agreed terms under subsection (4); or

- (b) if a conference was not held—grant an application;  
the chief executive must have regard to—
- (c) if the application is an application to which section 116 (Public need relevant to applications) applies—
    - (i) whether the applicant has satisfied the chief executive under section 116(2); and
    - (ii) the matters mentioned in section 116(4); and
  - (d) objections made to the grant of the application; and
  - (e) comments from the local government for the area to which the application relates; and
  - (f) for an extended hours permit—comments from the Assistant Commissioner in charge of the Police Service in the locality to which the application relates; and
  - (g) the impact on the amenity of the community concerned; and
  - (h) for an extended hours permit for extension of hours beyond 2 a.m.—
    - (i) the previous conduct of the applicant in discharging any duties under this Act previously placed on the applicant, especially for the premises for which the extension is sought; and
    - (ii) the applicant's ability to control the noise and behaviour of the number of persons that could reasonably be expected to be on and in the vicinity of the premises if the extension were granted; and
    - (iii) the suitability of the premises and its facilities for the purpose for which the extension is sought.

(6) If the chief executive grants an extended hours permit for extension of hours beyond 3 a.m., the permit remains in force for a maximum period of 6 months and may be renewed only on application to the chief executive.

(7) Evidence of anything said or done during a conference is inadmissible in a proceeding before the Tribunal unless the parties to the proceeding otherwise agree.

**Renewal of permits for extension of hours beyond 3 a.m.**

**121A.(1)** As soon as practicable after the chief executive receives an application for renewal under section 121(6) (Conference of concerned persons and decision by chief executive) of a permit for extension of hours beyond 3 a.m., the chief executive must tell the following about the application—

- (a) the local government for the area to which the application relates; and
- (b) the Assistant Commissioner in charge of the Police Service for the locality to which the application relates.

**(2)** The local government or Assistant Commissioner may comment on, or object to, the application by giving written comments or objections to the chief executive within 14 days of receiving the chief executive's advice about the application.

**(3)** In considering the application, the chief executive must have regard to—

- (a) comments and objections received under subsection (2); and
- (b) the matters mentioned in section 121(5)(h) (Conference of concerned persons and decision by chief executive); and
- (c) the impact on the amenity of the community concerned.

**Procedure on receipt of objections**

**122.(1)** The chief executive must give to the applicant written notice of all objections properly made to the grant of an application advertised under section 118.

**(2)** The notice of objections—

- (a) must either specify the ground of the objection or consist of a copy of the objection; and
- (b) must be given to the applicant within 7 days after the last day for lodging objections as specified in the relevant notice under section 118(3).

**(3)** A conference that is to be held under section 121 because of

objections received must be held as soon as practicable after the chief executive has given notice of the objections to the applicant.

### **Provisional grant of licence**

**123.(1)** If, when the chief executive decides to grant an application for a licence, construction or alteration of the premises to which the application relates has not been completed, the chief executive may provisionally grant the application subject to the condition that if—

- (a) within a period specified by the chief executive; or
- (b) within an extension of the period approved by the chief executive;

the licensed premises—

- (c) are not completed as approved under the law relating to carrying out of building work; or
- (d) are not approved or certified as required by law for use as licensed premises and, if the case requires it, for conduct in the premises of a business for which the licence was sought;

the chief executive may cancel the licence.

**(2)** The chief executive may extend or further extend a period specified for the purposes of subsection (1) on application made by the licensee.

### **Summary cancellation under s 123**

**124.** A cancellation of a licence under section 123 is to be effected under the authority of that section without other procedures.

### **Temporary licence**

**125.(1)** If licensed premises are wholly or partially destroyed, or are damaged to such an extent that they are unsuitable for conduct of business under authority of the licence—

- (a) the licensee must discontinue business under authority of the licence until a temporary authority is granted under paragraph (b); and
- (b) the chief executive may, on application made by the licensee,

grant to the licensee a temporary authority to conduct business under authority of the licence.

(2) A temporary authority may be granted in respect of—

- (a) any part or parts of the licensed premises; or
- (b) any neighbouring premises;

for the period the chief executive considers reasonable, although such part or parts, or neighbouring premises, do not satisfy the requirements of this Act or of the chief executive.

(3) While a temporary authority is in force, the part or parts of licensed premises, or neighbouring premises, to which it relates are, for the purposes of this Act, the licensed premises to which the existing licence relates.

### **Variation or transfer to be endorsed on licence or permit**

**126.(1)** If a licence or extended hours permit is varied, the chief executive must cause an appropriate endorsement to be made on the licence or permit.

(2) If a licence is transferred, the chief executive must cause an appropriate endorsement to be made on the licence.

(3) The chief executive may, by written notice, require a licensee to produce the licence or permit for endorsement under subsection (1) or (2).

### **Duplicate licence or permit**

**127.(1)** On application made by a licensee or permittee, the chief executive may issue to the applicant a duplicate of the licence or permit, or of any part, with the word ‘duplicate’ marked on it.

(2) A duplicate—

- (a) must be a true record of the original licence or permit, or part, of which it purports to be a duplicate; and
- (b) must bear all endorsements made on the original licence or permit, or part, that remain effective at the time of issue of the duplicate; and
- (c) must be certified by the chief executive as complying with paragraphs (a) and (b).

- (3) A duplicate that complies with subsection (2)—
- (a) is valid for all purposes as the original licence or permit; and
  - (b) is admissible in evidence and for all purposes to the same extent as the original licence or permit.

### **Liability of licensees in certain cases**

**128.** If a licence is held—

- (a) by a body corporate, and at any time there is no nominee in respect of the licence—each of the directors of the body corporate is subject to the same liabilities under this Act as a licensee; or
- (b) by or for the benefit of a club, and at any time there is no nominee in respect of the licence—each of the members of the club's management committee is subject to the same liabilities under this Act as a licensee.

### *Division 2—Persons managing affairs of licensees*

### **Applications to continue trading in certain circumstances**

**129.(1)** The following persons may apply to the chief executive to conduct the business of a licensee on licensed premises—

- (a) if a licensee is dead—a person entitled to be appointed as the legal personal representative of the deceased licensee;
- (b) if the licensee is bankrupt or has taken advantage of the laws of bankruptcy—a person in possession of the licensed premises who is entitled to administer the affairs of the licensee;
- (c) if the licensee is a corporation—a person in possession of the licensed premises who has been appointed to manage or wind up the affairs of the licensee;
- (d) a guardian of a licensee or an administrator or manager of the estate of a licensee.

(2) If any of the following circumstances happen in relation to a licence or licensed premises, the owner or mortgagee of the licensed premises, or

the owner of a financial interest in the trading of the licensed premises, may also apply to the chief executive to conduct the business of the licensee on the licensed premises—

- (a) a licensee ceasing to conduct business on the premises under authority of the licence;
- (b) the lessee or sublessee of the right to sell liquor ceasing to conduct business on the premises under authority of the licence;
- (c) a licensee who holds the licence as a member of a partnership ceasing to be a member of the partnership;
- (d) the chief executive has ordered cancellation of the licence but the order has not taken effect.

(3) If the application is made in circumstances mentioned in subsection (2)(d), the order for cancellation is stayed until the application is disposed of by the chief executive.

### **Where approval under s 129 not obtained**

**130.** If application under section 129—

- (a) is not made within 7 days after a person becomes entitled to make such an application; or
- (b) is not granted by the chief executive;

the licensed premises to which an application (if made) would have related, or to which the application made relates, are taken to be unlicensed premises until an application under section 129 is granted by the chief executive.

### **Nominees when application to continue trading in certain circumstances**

**131.** An applicant under section 129 (Applications to continue trading in certain circumstances)—

- (a) must nominate a nominee in circumstances where, if the application were an application for a licence, the applicant would be required under this Act to nominate a nominee; and
- (b) may nominate a nominee in any other circumstances.

**Decision by chief executive on application to continue trading in certain circumstances**

**131A.(1)** This section applies if an application is made under section 129 (Applications to continue trading in certain circumstances).

(2) If an applicant or the applicant's nominee is the occupier or is entitled to possession of the licensed premises, the chief executive may authorise the applicant or the applicant's nominee to conduct business on licensed premises under authority of the licence on an interim basis.

(3) The authority under subsection (2) continues until the earliest of the following happens—

- (a) the application on which it is made is disposed of by the chief executive;
- (b) the authority is revoked by the chief executive because the applicant or the nominee contravenes this Act or a condition of the licence;
- (c) the authority expires.

(4) While the authority under subsection (2) continues, the applicant, and the applicant's nominee (if any), are each subject to liabilities under this Act as if each were the licensee of the licensed premises.

(5) If the chief executive is satisfied that the applicant, and, if the applicant has nominated a nominee, the nominee, is a fit and proper person to conduct the business under the authority of the licence, the chief executive may—

- (a) authorise the applicant and the nominee to conduct the business until the licence is transferred, cancelled, surrendered or suspended; and
- (b) if the application is made because of an order for cancellation of a licence—the order is set aside.

(6) If the chief executive is not satisfied about the matters mentioned in subsection (5), the chief executive must reject the application and may make an order under section 132 (Discharge of licensee or permittee from obligations).

(7) On the chief executive's rejection of the application—

- (a) if an authority under subsection (2) is still in force—the authority is revoked; and
- (b) if the application was made because of an order for cancellation of a licence—the chief executive's order for cancellation of the licence takes effect.

### **Section 129 applicants may apply under s 113**

**131B.** A person who may apply under section 129 (Applications to continue trading in certain circumstances), may apply under section 113 (Application for transfer of licence) for the transfer of the licence even though the person is not a person mentioned in section 113.

### **Discharge of licensee or permittee from obligations**

**132.** If—

- (a) a licensee who is not the sole owner of licensed premises, has ceased to conduct business on the premises under authority of the licence; or
- (b) a licensee who holds the licence as a member of a partnership has ceased to be a member of the partnership; or
- (c) a nominee in respect of premises to which a licence relates has ceased to conduct business on the premises under authority of the licence;

the chief executive may, by order—

- (d) discharge the licensee or nominee prospectively from obligations under this Act in respect of the licensed premises; and
- (e) suspend the licence until—
  - (i) the licence has been properly transferred; or
  - (ii) a person has been authorised by the chief executive under section 131A to conduct business under authority of the licence; or

- (iii) a new nominee in respect of the licensed premises has been accepted by the chief executive;
- as the case may require.

### *Division 3—Surrender and cancellation of licence or permit*

#### **Request to surrender**

**133.(1)** A licensee may request the chief executive to accept a surrender of the licence.

**(2)** A permittee may, by writing given to the chief executive, surrender the permit at any time.

**(3)** A request under subsection (1)—

- (a) must be in writing made by—
  - (i) if the licensee is sole owner of the licensed premises—the licensee; or
  - (ii) in any other case—the licensee and the owner of the licensed premises; and
- (b) must be accompanied or supported by the consents of all mortgagees or lessees of the licensed premises or any part of the licensed premises and by such information as the chief executive requires, generally or in a particular case; and
- (c) in the case of surrender of a club licence—must be accompanied by a copy of a minute (certified as correct by the licensee) that evidences adoption by the club of a resolution for surrender of the licence.

**(4)** The chief executive must cause written notice of a request made by a licensee under subsection (1) to be given to each secured creditor of the licensee—

- (a) whose interest as creditor is registered with the chief executive; and
- (b) whose interest as creditor is likely to be affected by surrender of the licence; and

- (c) whose written consent to surrender of the licence does not accompany the request.

(5) A person given notice under subsection (4) who wishes to oppose the surrender requested is entitled to furnish, within 14 days after receiving the notice, a submission to the chief executive specifying the grounds of opposition.

(6) If a surrender is accepted, the licence continues in force until a day fixed by the chief executive for its termination, by written notice given to the licensee.

(7) Surrender of a licence or permit does not affect any liability incurred by the licensee or permittee before the surrender takes effect.

### **Cancellation, suspension or variation of permits**

**134.** The chief executive may, on the chief executive's own initiative, cancel, suspend or vary a general purpose, restricted club or extended hours permit if the chief executive is satisfied that—

- (a) the permittee has contravened—
  - (i) this Act; or
  - (ii) a condition specified in the permit; or
  - (iii) an order of the chief executive or a requisition of an investigator; or
- (b) the use of the premises in respect of which the permit is held at the times authorised by the permit, or the behaviour of persons entering or leaving the premises at or about those times—
  - (i) is causing undue annoyance or disturbance to persons living, working or doing business in the neighbourhood of the premises; or
  - (ii) is causing disorderly conduct in, or in the neighbourhood of, the premises.

### **Summary cancellation, suspension or variation**

**135.** Cancellation, suspension or variation of a permit under section 134

(Cancellation, suspension or variation of permits) takes effect when written notice of the cancellation, suspension or variation is given to the permittee.

### **Cancellation of licences**

**136.(1)** The chief executive may cancel a licence if satisfied that—

- (a) the licensee has failed to comply with—
  - (i) this Act; or
  - (ii) a condition specified in the licence; or
  - (iii) an order of the chief executive or a requisition of an investigator; or
- (b) the licensee is convicted of—
  - (i) an offence against this Act; or
  - (ii) an offence under the *Health Act 1937* or the *Food Act 1981* in respect of the licensed premises or liquor; or
  - (iii) an offence that the chief executive considers indicates the licensee's unsuitability to hold the licence;or has, at a material time, employed or engaged in the business conducted under authority of the licence a person convicted of any such offence committed in the course of the business; or
- (c) the licensee has obtained the licence by fraud or false representation; or
- (d) the licensee, or the nominee (if any) in respect of the licensed premises, is not a fit and proper person to conduct business under authority of the licence; or
- (e) the licensee has ceased to conduct business on the licensed premises; or
- (f) the licensee holds the licence for the benefit (wholly or partially) of a person to whom the chief executive would not grant the licence if application were to be made by the person; or
- (g) the use of the licensed premises, or the behaviour of persons entering or leaving the premises—

- (i) is causing undue annoyance or disturbance—
  - (A) to persons living, working or doing business in the neighbourhood of the premises; or
  - (B) to persons conducting or attending religious services in the neighbourhood of the premises; or
- (ii) is causing disorderly conduct in, or in the neighbourhood of, the premises.

(2) With a view to determining whether a licence is liable to cancellation under subsection (1), the chief executive must issue a notice calling on the licensee to show cause why the licence should not be cancelled.

(3) A notice to show cause—

- (a) must specify a day, time and place when and where cause may be shown; and
- (b) must be given to—
  - (i) the licensee to whom it is directed; and
  - (ii) each person who has given the chief executive particulars of his or her interest in the licence under section 44A (Owner, lessee, mortgagee and secured creditors to give particulars to chief executive) and is likely to be affected by cancellation of the licence.

(4) Each person to whom a notice to show cause is given is entitled to be heard on the matter of cancellation of the licence.

(5) If at the time and place specified in the notice to show cause, or to which the matter is adjourned, sufficient cause is not shown to the satisfaction of the chief executive, the licence may be cancelled by order of the chief executive.

(6) An order cancelling a licence takes effect at the end of 14 days after the day on which it is made.

(7) The chief executive must cause written notice of the result of the proceeding to show cause to be given to all persons to whom the notice to show cause was given.

(8) If an order for cancellation of a licence is made, the licensee must

deliver to the chief executive such documents and information as the chief executive requires.

### **Other possible disciplinary orders**

**137.(1)** In a proceeding to show cause why a licence should not be cancelled, the chief executive may, by order—

- (a) suspend the licence for a specified period or until further ordered by the chief executive; or
- (b) require licensed premises to be closed for a specified period; or
- (c) vary the licence by—
  - (i) specifying in the licence a condition to which it is to be subject; or
  - (ii) otherwise limiting the authority conferred by the licence; or
- (d) reduce the times at which the licensee may conduct business under authority of the licence; or
- (e) disqualify the licensee from holding any licence for a specified period or until further ordered by the chief executive; or
- (f) require the licensee to pay to the department an amount of not more than \$10 000; or
- (g) reprimand the licensee.

**(2)** An order under subsection (1) may be made instead of, or in addition to, an order for cancellation of the relevant licence.

**(3)** Suspension of a licence by order under subsection (1) takes effect when written notice of the suspension is given to the licensee.

**(4)** If an amount ordered to be paid by a licensee is not paid as required by the order within 28 days after the day on which the order is made, the amount unpaid is a debt due and payable to the State.

### **Effect of suspension**

**138.** A licence or permit that is suspended ceases to be in force for the period of suspension.

**Compensation not payable**

**139.** Compensation is not payable to any person in respect of—

- (a) acceptance by the chief executive of a surrender of a licence; or
- (b) cancellation or suspension by the chief executive of a licence or permit.

***Division 4—Closure of premises*****Closure of unsafe or unhealthy premises**

**140.(1)** If, in respect of licensed premises, the chief executive considers the safety or health of members of the public to be endangered or prejudiced because of—

- (a) absence or inadequacy of fire prevention equipment on the premises; or
- (b) inadequacy of entrances to or exits from the premises; or
- (c) any condition of, or thing on, the premises that constitutes a health hazard; or
- (d) any other reason relating to safety or health that the chief executive considers sufficient;

the chief executive must give to the licensee, and the owner of the premises, an order to close the premises, and to keep them closed, until all orders in respect of the premises relating to—

- (e) public safety from risk of fire; or
- (f) matters of health;

have been complied with to the chief executive's satisfaction.

**(2)** If, in the chief executive's opinion, circumstances justify action under subsection (1), an order for closure may issue without prior notice to the licensee or owner of the licensed premises.

**(3)** A person must not contravene an order under subsection (1).

Maximum penalty for subsection (3)—25 penalty units.

**Order to close premises for unlawful trading**

**141.(1)** If business is conducted on licensed premises—

- (a) by or on behalf of a person who is not—
  - (i) a licensee in respect of the premises; or
  - (ii) a person authorised by the chief executive under section 131A; or
- (b) by a person who is not the nominee, approved by the chief executive, of the person on whose behalf business is conducted on the premises;

the chief executive may give to the person conducting business on the premises an order to cease trading in liquor on the premises and to close the premises.

**(2)** A person must not contravene an order under subsection (1).

Maximum penalty—25 penalty units.

**Closure of premises in face of riot or tumult**

**142.(1)** On application made by an investigator, a Magistrate, or, if a Magistrate is not available, 2 justices, may order that all or any of the licensed premises in a locality in which a riot or tumult is happening, or is reasonably expected to happen, be closed during a period specified in the order.

**(2)** A person must not knowingly contravene an order under subsection (1).

Maximum penalty—25 penalty units.

## **PART 6—OBLIGATORY PROVISIONS AND OFFENCES**

### *Division 1—Provisions binding licensees and permittees only*

#### **Particulars to be displayed on premises**

**143.(1)** A licensee must at all times display, on a conspicuous place on the exterior of the licensed premises, in legible character at least 50 mm in height—

- (a) the name of the licensee and any nominee in respect of the premises; and
- (b) the name of the licensed premises; and
- (c) the nature of the business conducted on the licensed premises; and
- (d) the hours during which liquor may be sold on the premises to persons other than residents or their guests;

so that those particulars may be clearly read at all times.

Maximum penalty—25 penalty units.

**(2)** A person who contravenes subsection (1) commits a continuing offence against this Act, that may be charged in 1 complaint, from time to time, in respect of any period, and is liable to a penalty of a fine of not more than 2 penalty units for each day during which the contravention continues.

#### **Change of name requires approval**

**144.** A licensee must not change the name of the licensed premises without the chief executive's prior approval.

Maximum penalty—25 penalty units.

#### **Keeping licence or permit at licensed premises**

**145.** A licensee or permittee must keep the licence or permit at the premises to which the licence or permit relates, unless the licensee or

permittee has a reasonable excuse for not doing so.

Maximum penalty—25 penalty units.

### **Production of licence or permit on request**

**145A.(1)** An investigator may ask the person who appears to the investigator to be in control of premises to which a licence or permit relates to produce for inspection the licence or permit for the premises.

**(2)** The person must produce the licence or permit immediately for inspection by the investigator unless the person has a reasonable excuse for not producing it.

Maximum penalty—25 penalty units.

**(3)** A person does not commit an offence against subsection (2) if at the time the investigator asked the person to produce the licence or permit under subsection (1), the person was not, in fact, in control of the premises.

### **Prohibition on sale to a minor**

**145B.** A person must not sell liquor to a minor.

Maximum penalty—

- (a) if the person is a licensee, permittee, nominee or manager of licensed premises—250 penalty units;
- (b) in any other case—40 penalty units.

### **Sale or supply contrary to licence or permit**

**146.** The licensee or permittee must not sell or supply liquor—

- (a) at a time other than a time at which the liquor may be sold under authority of the licence or permit; or
- (b) in a way, or for a purpose, other than that in or for which liquor may be sold under authority of the licence or permit.

Maximum penalty—100 penalty units.

**Consumption or removal contrary to licence or permit**

**147.(1)** In this section—

“**persons**” does not include residents on the relevant licensed premises or their guests.

**(2)** A licensee or permittee must not permit or allow liquor—

- (a) to be consumed on the licensed premises at any time other than a time when liquor may be sold to, or consumed by, persons on the licensed premises under authority of the licence or permit; or
- (b) to be removed from the licensed premises at any time other than a time when liquor may be removed by persons from the licensed premises under this Act.

Maximum penalty—100 penalty units.

**Gratuitous supply of liquor**

**148.** A licensee or permittee does not contravene—

- (a) section 146 by gratuitously supplying liquor at any time; or
- (b) section 147 by permitting or allowing consumption at any time of liquor gratuitously supplied;

if the supply is made or the consumption happens—

- (c) in the course of social contact with the person supplied; and
- (d) in a part of the licensed premises not ordinarily used for the purposes of the business conducted on the premises or, with the chief executive’s prior approval, in any part of the licensed premises.

**Licensee to exercise control over premises**

**149.** A licensee—

- (a) must not be absent from the management and supervision of business conducted under authority of the licence for a continuous period longer than 28 days without the chief executive’s prior approval; and

- (b) must not permit the licensed premises to be in the keeping of a person who is not—
  - (i) a licensee of the premises; or
  - (ii) an employee of the licensee; and
- (c) except with the chief executive's prior approval, must not knowingly permit to be employed on the licensee's behalf on the licensed premises a person who, because of misconduct or bad character—
  - (i) has had a licence, permit or other authority relating to the sale or supply of liquor cancelled; or
  - (ii) has been refused a licence, permit or other authority relating to the sale or supply of liquor;

under this Act or a corresponding previous enactment or under a corresponding law of another State or a Territory.

Maximum penalty—100 penalty units.

### **Notification of change in controlling interest in licensee**

**150.** A licensee that is a body corporate must give to the chief executive written notice of every change in the beneficial ownership of the controlling interest in the body corporate, within 14 days after the change.

Maximum penalty—100 penalty units.

### **Unlawful betting or gaming**

**151.** A licensee or permittee must not—

- (a) bring or keep, or permit to be brought or kept, on the licensed premises any machine, apparatus or device capable of being used for betting or gaming other than—
  - (i) one required for operation of a totalisator by or on behalf of the Totalisator Administration Board under the *Racing and Betting Act 1980*; or
  - (ii) a gaming machine within the meaning of the *Gaming Machine Act 1991* under the authority of a gaming machine

licence under that Act; or

- (iii) for conducting an art union authorised to be conducted under the *Art Unions and Public Amusements Act 1992*; or
- (b) conduct, or permit or allow to be conducted, on the premises to which the licence or permit relates an art union or lottery that is not authorised by law; or
- (c) permit or suffer to be played on the premises to which the licence or permit relates, or in their appurtenances, a sport or game declared by law to be unlawful.

Maximum penalty—250 penalty units.

### **Prohibition on other use of premises**

**152.(1)** A licensee must not, without the chief executive's prior approval—

- (a) conduct or permit to be conducted, or advertise or represent himself or herself as conducting, on the licensed premises, a business other than—
  - (i) that authorised by the licence; or
  - (ii) a business on behalf of the Totalisator Administration Board under the *Racing and Betting Act 1980*; or
  - (iii) a business under the authority of a gaming machine licence under the *Gaming Machine Act 1991*; or
- (b) supply or permit to be supplied, on the licensed premises, a service to the public other than that authorised by the licence.

**(2)** The holder of a general licence must not use or publish, or permit to be used or published, a document containing the name of the licensed premises for or in connection with a business or service to the public other than a business or service that may be conducted or supplied on the licensed premises consistently with subsection (1).

Maximum penalty—25 penalty units.

**Letting or subletting of licensed premises**

**153.(1)** A licensee must not, without the chief executive's approval—

- (a) let or sublet all of the licensed premises; or
- (b) enter into a franchise or management agreement for all of the licensed premises.

Maximum penalty—40 penalty units.

**(2)** A licensee must not—

- (a) let or sublet part of the licensed premises; or
- (b) enter into a franchise or management agreement for part of the licensed premises.

Maximum penalty—40 penalty units.

**(3)** Subsections (1) and (2) do not apply to the holder of a special facility licence who, with the chief executive's approval—

- (a) lets or sublets part of the licensed premises; or
- (b) lets or sublets the right to sell liquor; or
- (c) enters into a franchise or management agreement for part of the licensed premises.

**Alteration and maintenance of licensed premises**

**154.(1)** The owner and licensee of licensed premises must give notice to the chief executive before altering or rebuilding the licensed premises.

Maximum penalty—25 penalty units.

**(2)** The owner or licensee of licensed premises must not, without the chief executive's approval, attempt to change the area of the licensed premises by—

- (a) using an area that is not included in the licence as licensed premises, as if the area were part of the licensed premises; or
- (b) not using an area that is included in the licence as licensed premises, as if the area were not part of the licensed premises.

Maximum penalty—25 penalty units.

(3) The licensee of licensed premises must keep the premises clean and in good repair.

Maximum penalty—25 penalty units.

### **Minors on premises**

**155.(1)** This section applies to all minors other than an exempt minor.

(2) A licensee, permittee or person in control of the premises to which the licence or permit relates must ensure that a minor is not on the premises.

(3) If a minor is on the premises, the licensee, permittee and other person in control of the premises each commits an offence.

Maximum penalty—100 penalty units.

(4) In this section—

**“exempt minor”** means a minor on premises to which a licence or permit relates if—

- (a) the minor is a resident on the premises; or
- (b) the minor is on the premises to—
  - (i) perform duties as an employee of the owner, or occupier, of the premises or a part of the premises; or
  - (ii) perform duties in the conduct of a lawful business; or
  - (iii) perform duties while receiving training for employment or work experience; or
- (c) the minor is attending a function being held on the premises; or
- (d) the premises are premises to which a club licence or restricted club permit relates and the minor’s presence does not contravene the club’s rules or a condition of the licence or permit; or
- (e) the minor is on the premises for a purpose, and in circumstances, approved by the chief executive; or
- (f) the minor—
  - (i) is eating a meal on the premises; or
  - (ii) is accompanied by a responsible adult who is responsibly

supervising the minor.

(5) However, a minor is not an exempt minor merely because the minor is eating a meal on the premises or accompanied by a responsible adult if—

- (a) the minor is on premises after 5 p.m.; and
- (b) the premises are premises mentioned in section 72 (Seating accommodation in cabarets) to which an on-premises licence relates; and
- (c) the premises are being used for cabaret.

### *Division 2—Provisions binding all persons*

#### **Liquor prohibited to certain persons**

**156.(1)** A person must not, on premises to which a licence or permit relates—

- (a) supply liquor to; or
- (b) permit or allow liquor to be supplied to; or
- (c) allow liquor to be consumed by;

a person who—

- (d) is a minor; or
- (e) is unduly intoxicated or disorderly.

(2) A person must not, on a street or place adjacent to premises to which a licence or permit relates, or in a public place supply liquor, or cause or permit liquor to be supplied, to a minor.

(3) A person must not send, or cause or permit to be sent, to premises to which a licence or permit relates a minor with a view to the minor or another person being supplied with liquor.

Maximum penalty for subsections (1) to (3)—

- (a) if the person is the licensee, permittee, nominee or manager of the premises—250 penalty units;
- (b) in any other case—40 penalty units.

(4) Subsection (2) does not apply to the supply of liquor to a minor in a public place, designated under section 173C (Local government may designate public places where liquor may be consumed), if the minor is accompanied by a responsible adult who is responsibly supervising the minor.

### **Prohibitions affecting minors**

**157.(1)** A minor who is not an exempt minor must not be on premises to which a licence or permit relates.

Maximum penalty—25 penalty units.

(2) A minor must not, on premises to which a licence or permit relates or in a public place—

- (a) consume liquor; or
- (b) be in possession of liquor.

Maximum penalty—25 penalty units.

(3) Subsection (2) does not apply to a minor in a public place, designated under section 173C (Local government may designate public places where liquor may be consumed), if the minor is accompanied by a responsible adult who is responsibly supervising the minor.

(4) Subsection (2)(b) does not apply to a minor who is on the premises for a purpose mentioned in section 155(4)(b) (Minors on premises) if the minor is in possession of liquor in the course of performing the duties mentioned in the paragraph.

### **False representation of age**

**158.(1)** A person must not falsely represent himself or herself to have attained 18 years for a wrongful purpose.

Maximum penalty—25 penalty units.

(2) A person must not—

- (a) make a false document that could reasonably be taken to be genuine acceptable evidence of age for the purposes of this Act; or

- (b) give such a false document to another person;

knowing the document to be false and with intent that the document be used as acceptable evidence of age for the purposes of this Act.

Maximum penalty—

- (a) in the case of a minor—25 penalty units; and
- (b) in the case of an adult—40 penalty units.

(3) A person must not falsely represent to an entity that the person has reached 18 years to obtain a proof of age card mentioned in section 6(a)(i) (Acceptable evidence of age) knowing the representation to be false.

Maximum penalty—25 penalty units.

- (4) In subsection (1)—

“**wrongful purpose**” of a minor means—

- (a) intending to be supplied with liquor; or
- (b) entering into premises to which a licence or permit relates.

### **Wrongful dealing with genuine evidence of age**

**159.(1)** A person must not knowingly give a document that is evidence of age of the person mentioned in the document (the “**specified person**”) to someone else, if the person giving the document knows or has reasonable grounds to suspect that the document may be used—

- (a) as evidence of age, under this Act, of someone other than the specified person; or
- (b) to obtain a proof of age card mentioned in section 6(a)(i) (Acceptable evidence of age) for someone other than the specified person.

Maximum penalty—40 penalty units.

(2) A person must not wilfully or negligently deface or interfere with a document that is acceptable evidence of age for the purposes of this Act of the person or another person.

Maximum penalty—40 penalty units.

**Seizure of document wrongly used as evidence of age**

**160.(1)** If a contravention of section 158 consists in production of—

- (a) a genuine document that is acceptable evidence of age for the purposes of this Act of the person specified in the document; or
- (b) a false document that could reasonably be taken to be genuine acceptable evidence of age for the purposes of this Act;

the person to whom the document is produced must seize and confiscate the document and give it to an investigator.

Maximum penalty—25 penalty units.

**(2)** A person does not commit an offence by contravening subsection (1) if the person is not aware of the falsity of the representation as to age made by producing the document.

**Consumption or removal of liquor outside trading hours**

**161.** A person must not—

- (a) consume liquor on premises to which a licence or permit relates; or
- (b) remove liquor from premises to which a licence or permit relates; or
- (c) receive liquor from anyone on premises to which a licence or permit relates;

at any time other than a time when liquor may be sold to, or consumed by, the person on the premises, or be removed from the premises by the person, under authority of the licence or permit.

Maximum penalty—25 penalty units.

**Taking liquor onto or away from premises subject to on-premises licence**

**162.(1)** A person must not take liquor onto premises to which an on-premises licence relates for consumption on the premises, unless the premises are premises mentioned in section 73 (Restriction on sale of liquor under on-premises licence).

Maximum penalty—25 penalty units.

(2) A person must not take liquor from premises to which an on-premises licence relates, unless the premises are premises mentioned in section 73 and—

- (a) the liquor was supplied to the person on the premises in a bottle or other container and the bottle or other container has been opened on the premises; or
- (b) the person brought the liquor onto the premises.

Maximum penalty—25 penalty units.

### **False representation of intention to dine**

**163.** A person must not falsely represent that the person intends to eat a meal, or has recently eaten a meal, on licensed premises with a view to being supplied with liquor at any time when liquor could not lawfully be sold to that person under authority of the licence relating to the premises except in association with the person eating a meal on the premises.

Maximum penalty—25 penalty units.

### **Conduct causing public nuisance**

**164.(1)** A person must not—

- (a) be drunk or disorderly; or
- (b) create a disturbance;

in premises to which a licence or permit relates.

Maximum penalty—25 penalty units.

(2) A person must not be drunk in a public place.

Maximum penalty—1 penalty unit.

(4) A police officer may arrest a person contravening subsection (1) or (2) if the police officer believes on reasonable grounds that, because of the consumption of liquor, the person is, or likely to be, a danger to—

- (a) himself or herself; or
- (b) others.

(5) Subsection (4) does not limit the circumstances in which a person may be arrested for a contravention of subsection (1) or (2).

### **Obstruction to eviction from premises**

**165.** If a licensee or permittee, or an employee or agent of a licensee or permittee, is seeking to evict a person from the premises to which the licence or permit relates whether—

- (a) in exercise of a power, or performance of a duty, under this Act; or
- (b) in exercise of a licensee's or permittee's right to refuse to sell or supply liquor to any person;

the person whose eviction is sought must not—

- (c) refuse to leave the premises when required by the licensee, permittee or agent to do so; or
- (d) resist the licensee, permittee or agent.

Maximum penalty—25 penalty units.

### **Obstruction generally**

**166.** A person must not obstruct or hinder, or attempt to obstruct or hinder a licensee or permittee, or an employee or agent of a licensee or permittee, in the exercise of a power or performance of a duty under this Act.

Maximum penalty—100 penalty units.

### **Ascertainment of age**

**167.(1)** For the purposes of this Act, an authorised person may require another person whom the authorised person suspects on reasonable grounds to be a minor and to be contravening a provision of this Act—

- (a) to state all relevant particulars concerning the other person's age; and
- (b) to produce evidence of the other person's age.

(2) A refusal by a person to state particulars, or to produce evidence, as to age is justification for the authorised person to require the suspected minor to leave the premises.

(3) If the suspected minor fails immediately to leave the premises, the authorised person may, using such force and assistance as is necessary and reasonable, remove the person from the premises.

(4) In this section—

“**authorised person**” includes—

- (a) a licensee or permittee; and
- (b) an employee or agent of a licensee or permittee; and
- (c) an investigator; and
- (d) a police officer.

### **Interference with licence or permit**

**168.** A person must not—

- (a) wilfully or negligently deface a licence or permit; or
- (b) alter a particular shown in a licence or permit, without the chief executive’s prior approval.

Maximum penalty—100 penalty units.

### ***Division 3—Provisions concerning sale of liquor by unlicensed persons or on unlicensed premises***

#### **Authority required for sale**

**169.** A person must not—

- (a) sell liquor unless—
  - (i) in the case of wine—the sale is made under the authority of a licence or permit under this Act or the *Wine Industry Act 1994*; or
  - (ii) in the case of other liquor—the sale is made under authority

of a licence or permit; or

- (b) sell liquor in a quantity that is not authorised by the relevant licence or permit.

Maximum penalty—250 penalty units.

### **Sale of liquor on premises to which licence or permit relates**

**170.** A licensee or permittee must not sell or supply liquor on or from premises other than the premises to which the licence or permit relates.

Maximum penalty—100 penalty units.

### **Carrying or exposing liquor for sale**

**171.(1)** A person must not—

- (a) carry liquor for sale; or
- (b) expose liquor for sale;

in any premises without the authority of a licence or permit relating to the premises.

**(2)** In a proceeding for a contravention of subsection (1), the burden of proving that liquor was not carried or exposed for sale is on the person alleged to have so carried or exposed it unless—

- (a) the package or container in which the liquor is contained is labelled in writing on the outside with the name and address of—
  - (i) the vendor; and
  - (ii) the purchaser; and
  - (iii) the person (if other than the purchaser) to whom the liquor is to be delivered; or
- (b) the particulars prescribed by paragraph (a) and the description and quantity of the liquor are set out in a document in the possession of the person alleged to have so carried or exposed it, and the document is produced to an investigator or police officer on demand.

Maximum penalty—250 penalty units.

**Offer to purchase liquor made elsewhere than at licensed premises**

**172.(1)** A licensee must not take or receive, or cause or permit an agent or employee to take or receive, an order for liquor elsewhere than at the licensed premises.

Maximum penalty—100 penalty units.

**(2)** Subsection (1) does not apply to the holder of a producer/wholesaler licence for orders taken to supply liquor by wholesale to a person mentioned in section 84(1) (Restriction on sale of liquor under producer/wholesaler licence).

**(3)** A person other than a licensee must not invite an offer to purchase liquor by way of an order taken or received elsewhere than at the licensed premises on or from which the liquor could be sold under authority of a licence in response to the order.

Maximum penalty—100 penalty units.

**Occupier and owner of unlicensed premises liable for sale of liquor etc.**

**173.(1)** Every occupier and every owner of unlicensed premises who permits or knowingly allows the sale of liquor on the premises in contravention of a provision of this Division is taken to have sold the liquor and is liable to be punished as if the person had actually sold the liquor.

**(2)** An owner of unlicensed premises on which liquor is sold is taken to have knowingly suffered the sale of liquor on the premises if—

- (a) on 3 occasions during the year before the sale a person has been convicted of selling liquor on the premises; and
- (b) the owner was owner of the premises when the offences to which the convictions relate were committed; and
- (c) a copy of a certificate of each such conviction was given to the owner by personal service or by pre-paid certified mail addressed to the owner—
  - (i) at the owner's place of residence last known to the complainant in the case in which the conviction was recorded; or

- (ii) at the owner's place of residence shown in the records of the official responsible for keeping registers in relation to dealings in land.

(3) Two convictions of the occupier of unlicensed premises for selling liquor on the premises constitute sufficient ground on which the owner of the premises may terminate the tenancy of the occupier by serving on the occupier a notice to quit the premises.

(4) If the occupier cannot be found, a notice to quit required to terminate the tenancy may, without limiting the way by which to effect service, be served on the occupier by fixing a copy of the notice to a place on the premises where it can easily be read.

(5) An owner may exercise power under subsection (3) although the owner is not the landlord in respect of the occupier's tenancy.

(6) Termination of a tenancy under subsection (3) takes effect at the end of 7 days after the day on which notice to quit is served on the occupier.

(7) An owner who has terminated a tenancy under subsection (3)—

- (a) is entitled, in legal proceedings by the owner against the occupier, to an order that the occupier quit the premises and deliver up possession to the landlord; and
- (b) is entitled, under authority of such an order, to have the occupier evicted.

#### *Division 4—Provisions concerning consumption of liquor in certain public places*

### **Definitions**

**173A.** In this Division—

**“designated public place”** means a public place designated under section 173C.

**“road”** means—

- (a) a road within the meaning of the *Local Government Act 1993*; or

- (b) a State-controlled road under the *Transport Infrastructure Act 1994*.

### **Consumption of liquor in certain public places prohibited**

**173B.(1)** A person must not consume liquor in—

- (a) a public place that is—
- (i) a road; or
  - (ii) land owned by, or under the control of, a local government (other than a Conservation Park or Resources Reserve under the *Nature Conservation Act 1992*); or
- (b) a doorway, entrance or vestibule that gives access to premises from a public place mentioned in paragraph (a).

Maximum penalty—1 penalty unit.

**(2)** A person does not commit an offence against subsection (1) in relation to a place—

- (a) if the consumption of liquor in the place is authorised or permitted under a licence or permit; or
- (b) if the place is, at the relevant time, a designated public place; or
- (c) if—
- (i) the place was, but at the relevant time is no longer, a designated public place; and
  - (ii) the local government concerned has not complied with section 173E in relation to the place.

### **Local government may designate public places where liquor may be consumed**

**173C.(1)** A local government may designate a public place mentioned in section 173B(1)(a) that is in its area as a public place where liquor may be consumed.

**(2)** The local government may specify the period or times during which the designation is to have effect.

(3) If the local government specifies a period or times under subsection (2), the public place is a designated public place only during that period or those times.

### **Local government must advertise designation and place signs**

**173D.(1)** A local government that designates a public place under section 173C must advertise, or cause someone else to advertise, the designation in a newspaper that circulates in its area.

(2) The advertisement must—

- (a) include a description of the public place; and
- (b) specify the period or times (if any) during which the public place is a designated public place.

(3) The local government must also erect, or cause someone else to erect, signs that—

- (a) sufficiently identify the public place as a designated public place; and
- (b) specify the period or times (if any) during which the public place is a designated public place.

(4) The local government does not have to comply with subsection (1) if it has specified under section 173C(2) that the designation in relation to the public place has effect for a period not longer than 1 day.

(5) A local government does not have to comply with subsections (1) to (3) if the designation is for a public place adjacent to premises used for the primary purpose of eating meals prepared, served and intended to be eaten on the premises.

(6) However, written local government approval for the use of the public place mentioned in subsection (5) must be conspicuously displayed in the place.

(7) Subsection (1) does not apply to a Council.

**Local government must advertise repeal or amendment of designation and remove or alter signs**

**173E.(1)** If a local government repeals or amends a designation under section 173C, the local government must advertise, or cause someone else to advertise, the repeal or amendment in a newspaper that circulates in its area.

**(2)** The advertisement must—

- (a) in the case of the repeal of a designation of a public place—include a description of the public place; and
- (b) in the case of an amendment that varies the boundaries of a designated public place—include a description of the public place as varied; and
- (c) in the case of an amendment that varies the period or times during which a designation of a public place has effect—specify the varied period or times.

**(3)** The local government must also ensure—

- (a) in the case of the repeal of a designation of a public place—that all signs identifying the public place as a designated public place are removed; and
- (b) in the case of an amendment that varies the boundaries of a designated public place—that signs sufficiently identify the public place, as varied, as a designated public place; and
- (c) in the case of an amendment that varies the period or times during which a designation of a public place has effect—that signs identifying the public place specify the varied period or times.

**PART 7—INVESTIGATORS AND THEIR POWERS****Investigators**

**174.(1)** The chief executive may authorise a person, or a class of persons, to exercise—

- (a) all the powers conferred by this Act on an investigator; or
- (b) any powers conferred by this Act on an investigator.

(2) The chief executive must issue an identity card to a person authorised under subsection (1) (the “**investigator**”).

(3) The identity card must—

- (a) contain a recent photograph of the investigator; and
- (b) be in a form approved by the chief executive.

(4) If the investigator ceases to be authorised under subsection (1), the investigator must, as soon as practicable, return his or her identity card to the chief executive.

Maximum penalty—25 penalty units.

(5) The investigator is not entitled to exercise powers under this Act in relation to another person unless the investigator first produces the investigator’s identity card for inspection by the person.

### **Power to stop and search vehicles etc.**

**175.(1)** This section applies if an investigator suspects on reasonable grounds that—

- (a) a vehicle, boat or aircraft is being, or has been, used in the commission of an offence against this Act; or
- (b) a vehicle, boat or aircraft, or anything on or in, a vehicle, boat or aircraft may afford evidence of the commission of an offence against this Act.

(2) The investigator may, with such assistance and by such force as is necessary and reasonable—

- (a) enter or board the vehicle, boat or aircraft; and
- (b) exercise the powers set out in section 178.

(3) If—

- (a) the vehicle or boat is moving or about to move; or
- (b) the aircraft is moving, or about to move, on the ground;

the investigator may signal the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft, to stop or not to move the vehicle, boat or aircraft.

(4) A person must not, without reasonable excuse, disobey a signal under subsection (3).

Maximum penalty—165 penalty units, imprisonment for 1 year or both.

(5) It is a reasonable excuse for the person to fail to stop or to move the vehicle, boat or aircraft if—

- (a) to immediately obey the signal would have endangered the person or another person; and
- (b) the person obeys the signal as soon as it is reasonably practicable to stop or move the vehicle, boat or aircraft.

(6) The investigator may require the driver or the person in command or control, or who appears to be in command or control, of the vehicle, boat or aircraft—

- (a) to provide such reasonable assistance as the investigator requires to enable the vehicle, boat or aircraft to be entered or boarded under subsection (2); or
- (b) to bring the vehicle, boat or aircraft to a specified place and remain in control of the vehicle, boat or aircraft at the place until the officer permits the person to leave.

(7) A person must not, without reasonable excuse, contravene a requirement under subsection (6).

Maximum penalty—165 penalty units or imprisonment for 1 year.

(8) If, while searching the vehicle, boat or aircraft, the investigator finds a thing that the investigator believes, on reasonable grounds, will afford evidence of the commission of an offence against this Act, section 177(2)(a), (b) and (c) apply to the thing.

(9) If, after searching the vehicle, boat or aircraft, the investigator believes on reasonable grounds that the vehicle, boat or aircraft will afford evidence of the commission of an offence against this Act, sections 177(2)(a) and (b) apply to the vehicle, boat or aircraft.

**Entry and search—monitoring compliance**

**176.(1)** Subject to subsection (2), an investigator may, for the purpose of finding out whether this Act is being complied with—

- (a) enter any place at any reasonable time of the day or night; and
- (b) exercise the powers set out in section 178.

**(2)** The investigator must not enter a place, or exercise a power under subsection (1), unless—

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 179 authorises the entry or exercise of the power; or
- (c) the place is a public place and the entry is made when members of the public attend or the premises are open for admission by the public; or
- (d) the place is premises, or the part of premises, that are licensed premises and—
  - (i) the entry is made when the premises are open for the conduct of business or otherwise open for entry; or
  - (ii) the investigator suspects on reasonable grounds that an offence is being committed against this Act in or on the place.

**(3)** In this section—

“**place**” does not include a vehicle, boat or aircraft.

**Entry and search—evidence of offences**

**177.(1)** Subject to subsection (3), if an investigator has reasonable grounds for suspecting that there is in a place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act, the investigator may—

- (a) enter the place; and
- (b) exercise the powers set out in section 178.

(2) If the investigator enters the place and finds the evidence, the following provisions have effect—

- (a) the investigator may seize the evidence;
- (b) the investigator may keep the evidence for 6 months or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and any appeal in relation to the proceeding;
- (c) if the evidence is a document—while the investigator has possession of the document, the officer may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the investigator's possession.

(3) An investigator must not enter the place or exercise a power under subsection (1) unless—

- (a) the occupier of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 180 that was issued in relation to the evidence authorises the entry or exercise of the power.

(4) If, while searching the place under subsection (1) under a warrant under section 180, an investigator—

- (a) finds a thing that the investigator believes, on reasonable grounds, to be—
  - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
  - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
  - (i) its concealment, loss or destruction; or
  - (ii) its use in committing, continuing or repeating the offence

mentioned in subsection (1) or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

(5) In this section—

“**place**” does not include a vehicle, boat or aircraft.

### **General powers of investigator in relation to places**

**178.(1)** An investigator who enters or boards a place under this Part may exercise any of the following powers—

- (a) search any part of the place;
- (b) inspect, examine, photograph or film anything in or on the place;
- (c) take extracts from, and make copies of, any documents in or on the place;
- (d) take into or onto the place such persons, equipment and materials as the investigator reasonably requires for the purpose of exercising any powers in relation to the place;
- (e) require the occupier or any person in or on the place to give to the investigator reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (d);
- (f) the powers mentioned in the following sections—
  - (i) section 182 (Requirement to give name, address and age);
  - (ii) section 183 (Power to require answers to questions);
  - (iii) section 184 (Other powers of investigators).

(2) A person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1)(e).

Maximum penalty—50 penalty units.

(3) It is a reasonable excuse for a person to fail to answer a question or produce a document (other than a document required to be kept by the person under this Act) if answering the question, or producing the document, might tend to incriminate the person.

(4) An investigator who seizes or damages anything under this Part

must, as soon as it is reasonably practicable after seizing or damaging the thing, give written notice of particulars of the thing or damage.

(5) The notice must be given to—

- (a) if anything is seized—the person from whom the thing was seized; or
- (b) if damage is caused to anything—the person who appears to the investigator to be the owner.

(6) On the hearing of a proceeding for an offence against this Act or in a proceeding brought for the recovery of compensation under this section, a court may order the payment of compensation to a person for any loss resulting from the unreasonable exercise of powers under this Part.

(7) This section does not limit any power that an investigator has apart from this section.

### **Monitoring warrants**

**179.(1)** An investigator may apply to a Magistrate for a warrant under this section in relation to—

- (a) a particular place that is licensed premises; or
- (b) another particular place (other than premises, or the part of premises, used exclusively for residential purposes).

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that it is reasonably necessary that the investigator should have access to the place for the purpose of finding out whether this Act is being complied with.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the investigator or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the investigator, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the place; and

- (ii) to exercise the powers set out in section 178; and
- (b) state whether the entry is authorised to be made at any reasonable time of the day or night or only during specified reasonable hours of the day or night; and
- (c) specify the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

### **Offence related warrants**

**180.(1)** An investigator may apply to a Magistrate for a warrant under this section in relation to a particular place.

**(2)** Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 7 days, in or on the place a particular thing (“**the evidence**”) that may afford evidence of the commission of an offence against this Act.

**(3)** If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the investigator or another person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

**(4)** The warrant must—

- (a) authorise the investigator, with such assistance and by such force as is necessary and reasonable—
  - (i) to enter the place; and
  - (ii) to exercise the powers set out in section 178(1)(a) to (e); and
  - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or only during specified hours of the day or night; and
- (c) specify the day (not more than 14 days after the issue of the

- warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

**Warrants may be granted by telephone, facsimile, radio etc.**

**181.(1)** If an investigator considers it necessary to do so because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the investigator's remote location;

the investigator may, under this section, apply by telephone, facsimile, radio or another form of communication for a warrant under section 179 or 180.

(2) Before applying for the warrant, the investigator must prepare an information of the kind mentioned in section 179(2) or 180(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, an investigator may apply for the warrant before the information has been sworn.

(4) If the Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 179 or 180, complete and sign the warrant that the Magistrate would issue under the section if the application had been made under the section.

(5) If the Magistrate completes and signs the warrant, the Magistrate must immediately send a copy of the warrant to the investigator by facsimile or, if it is not reasonably practicable to do so—

- (a) the Magistrate must—
- (i) tell the investigator what the terms of the warrant are; and
- (ii) tell the investigator the day and time when the warrant was signed; and

- (iii) record on the warrant the reasons for granting the warrant; and
- (b) the investigator must—
  - (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
  - (ii) write on the form of warrant the name of the Magistrate and the day and time when the Magistrate signed the warrant.
- (6)** The investigator must also—
  - (a) not later than the day after the day of expiry or execution of the warrant (whichever is the earlier); or
  - (b) if it is not practicable to comply with paragraph (a)—as soon as practicable after the day mentioned in the paragraph;send to the Magistrate—
  - (c) the information mentioned in subsection (2), which must have been properly sworn; and
  - (d) if a form of warrant was completed by the investigator under subsection (5)(b)—the completed form of warrant.
- (7)** When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—
  - (a) attach them to the warrant that the Magistrate completed and signed; and
  - (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 179 or 180.
- (8)** A facsimile copy of a warrant, or a form of warrant properly completed by the investigator under subsection (5)(b), is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.
- (9)** If—
  - (a) it is material for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and

- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

### **Requirement to give name, address and age**

**182.(1)** An investigator who—

- (a) finds a person committing, or finds a person that the investigator suspects on reasonable grounds of having committed, an offence against this Act; or
- (b) believes on reasonable grounds that the name and address, or age, of a person is required for the purpose of the administration or enforcement of this Act;

may require the person to state the person's name and address or age and, if the investigator believes on reasonable grounds that the name, address or age given is false, may require evidence of its correctness.

**(2)** A person who is required under subsection (1) to state the person's name, address or age must not—

- (a) fail to comply with the requirement; or
- (b) state a false name, address or age.

Maximum penalty—25 penalty units.

**(3)** A person who is required under subsection (1) to give evidence of the correctness of a name, address or age must not—

- (a) without reasonable excuse, fail to give the evidence; or
- (b) give false evidence.

Maximum penalty—25 penalty units.

**(4)** If—

- (a) an investigator makes a requirement under subsection (1) on suspicion of a person having committed an offence; and
- (b) the person is not proved to have committed the offence;

the person does not commit an offence against this section.

**Power to require answers to questions**

**183.(1)** If an investigator believes on reasonable grounds that a person may be able to provide information relevant to the administration or enforcement of this Act, the officer may require the person to answer a question relevant to the administration or enforcement of this Act.

(2) A person who is required under subsection (1) to answer a question must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty—100 penalty units.

(3) It is reasonable excuse for a person to fail to answer a question if answering the question might tend to incriminate the person.

**Other powers of investigators**

**184.(1)** Subject to subsection (2), an investigator may, for the purposes of this Act, exercise any of the following powers—

- (a) require a person to produce to the investigator—
  - (i) any licence, permit or other authority held by the person under this Act; or
  - (ii) any document required to be kept by the person under this Act;
- (b) inspect, take extracts from, make copies of or keep a document produced to the investigator under paragraph (a);
- (c) if an investigator finds a person on premises to which a licence or permit relates at any time other than a time when liquor may be—
  - (i) sold to, or consumed by, the person on the premises; or
  - (ii) removed from the premises by the person;require the person to leave the premises and, if the person does not immediately leave, remove the person from the premises using such force as is necessary and reasonable;
- (d) if an investigator finds a minor to whom section 155(1) applies on premises to which a licence or permit relates—require the minor to leave the premises and, if the minor does not immediately leave, remove the minor from the premises using

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such force as is necessary and reasonable;

- (e) if an investigator is a police officer—arrest a person who—
  - (i) is found by the investigator committing an offence against this Act; or
  - (ii) the investigator suspects on reasonable grounds of having committed an offence against this Act;

if the investigator believes on reasonable grounds that proceedings by way of complaint and summons against the person would be ineffective;

- (f) seize—
  - (i) liquor that has been, or is reasonably suspected to have been, sold, drawn or poured for sale, or supplied, in contravention of this Act; and
  - (ii) liquor that is being consumed, or is had in possession, in contravention of this Act;

together with all bottles or other containers in which the liquor is contained;

- (g) if the investigator suspects on reasonable grounds that liquor is being carried for sale otherwise than under authority of a licence or permit—seize any of the following—
  - (i) liquor that is suspected to be so carried;
  - (ii) all bottles or other containers in which the liquor is contained;
  - (iii) all utensils suitable for measuring or drinking the liquor;
  - (iv) any vehicle, boat, aircraft, animal or thing by way of which the liquor is suspected to be carried;

- (h) such other powers as are prescribed.

**(2)** An investigator may keep a document under subsection (1)(b) only for the purpose of taking copies of the document and must, as soon as practicable after taking the copies, return the document to the person who produced it.

**(3)** Liquor seized under subsection (1) may be taken away to a place of

safekeeping.

(4) In this section—

“**liquor**” includes anything suspected on reasonable grounds to be liquor.

### **Obstruction of investigators**

**185.(1)** A person must not obstruct an investigator in the exercise of a power under this Act.

(2) A person is taken to obstruct an investigator in the exercise of a power under this Act if the person—

- (a) assaults, abuses, hinders, resists or intimidates the investigator or a person assisting the investigator in the exercise of the investigator’s powers under this Act; or
- (b) deliberately prevents or attempts to prevent (whether directly or indirectly) a person from—
  - (i) being questioned by an investigator; or
  - (ii) giving, under this Act, any information or document to an investigator; or
- (c) in any other way obstructs, or attempts to obstruct, an investigator in the exercise of the investigator’s powers under this Act.

Maximum penalty—200 penalty units or imprisonment for 1 year.

### **Seizure of material associated with representation of age**

**186.** If an investigator reasonably believes or suspects that a person—

- (a) has made, or caused to be made, a false document in contravention of section 158(2)(a); or
- (b) is in possession of a document given to the person in contravention of section 158(2)(b) or 159(1); or
- (c) is in possession of a document defaced or interfered with in contravention of section 159(2);

the investigator may seize and confiscate—

- (d) in the case specified in paragraph (a)—

- (i) all documents made in contravention of section 158(2)(a) in the person's possession; and
  - (ii) all equipment and materials in the person's possession reasonably suspected by the investigator to have been used, or to be intended for use, in contravening section 158(2)(a); and
- (e) in the case specified in paragraph (b) or (c)—the document in respect of which section 158(2)(b) or 159(1) or (2) appears to have been contravened.

### **Abatement of nuisance or dangerous activity**

**187.(1)** This section applies if an investigator believes on reasonable grounds that—

- (a) noise coming from licensed premises or a utility area for licensed premises is—
  - (i) a nuisance to persons resident on the licensed premises or occupying other premises near the licensed premises; or
  - (ii) in contravention of an order under section 46 (Orders for licensed premises etc.); or
- (b) because of activity in or near the licensed premises, there is a danger to persons or property that is likely to be aggravated by the continued supply of liquor in the locality.

**(2)** The investigator may give written notice to the licensee, permittee, or person who appears to be in charge of the premises, requiring that—

- (a) the noise stop or be reduced to, and kept at, a level that is no longer a nuisance; or
- (b) the premises be closed immediately.

**(3)** If the notice is contravened, the investigator may take all steps necessary and reasonable to ensure compliance, or continued compliance, with the notice.

**(4)** A person who contravenes a requisition under subsection (2) commits an offence.

Maximum penalty—25 penalty units.

(5) In this section—

“**licensed premises**” includes premises to which a restricted club permit relates.

“**utility area**”, for licensed premises, includes an area containing plant or equipment that is not part of the licensed premises, but is used for the benefit of the licensed premises.

*Example—*

An area containing an airconditioning plant for licensed premises may be a utility area.

## **PART 8—PROVISIONS AFFECTING COMMUNITIES OF ABORIGINES OR ISLANDERS**

### **Applications by Councils**

**188.(1)** A Council may make application to the chief executive for a licence or permit that, if granted, would relate to premises in the community area of the Council.

(2) An applicant Council must nominate a person to be nominee in respect of the premises to which the licence or permit would relate.

### **Reference to Councils of certain applications for licence or permit**

**189.(1)** If a person other than a Council makes application for a licence or permit that, if granted, would relate to premises in a community area of a Council, the chief executive must first refer the application to the Council for its consideration.

(2) When considering an application referred to a Council under subsection (1), the chief executive must have regard to the views of the Council expressed in relation to the application.

**Way of making and dealing with applications**

**190.(1)** The provisions of Part 5 relating to the making of applications, and the steps to be taken in respect of applications, do not apply to applications for or concerning licences or permits in respect of premises in a community area of a Council.

(2) Applications for or concerning licences or permits in respect of premises in a community area of a Council must be made, and the steps to be taken in respect of such applications are, as prescribed by regulation.

**Inconsistency between licences or permits and local community law**

**191.(1)** A term or condition specified in a licence or permit granted in respect of premises in a community area of a Council does not have effect to the extent that it is inconsistent with a provision of—

- (a) the *Local Government (Aboriginal Lands) Act 1978*; or
- (b) the *Community Services (Aborigines) Act 1984*; or
- (c) the *Community Services (Torres Strait) Act 1984*; or
- (d) a by-law made by a Council under any of those Acts.

(2) If a Council declares its community area or a part of its community area as a dry area, a licence or permit in respect of premises in the area or part so declared is suspended while the declaration subsists.

**Duration and effect of prohibition order**

**193.** A prohibition order under section 192—

- (a) has effect for a period of 1 year starting on the day on which it is made, or for a shorter period specified in the order, unless it is sooner rescinded on appeal under section 192;
- (b) prohibits—
  - (i) the person to whom it relates from consuming, or having in possession or control, liquor in the community area of the Council that made the order; and
  - (ii) all persons from supplying liquor to the person to whom it relates so as to put the person in contravention of the order.

**Publication of prohibition order**

**194.** The Council that makes a prohibition order must cause a copy of the order—

- (a) to be given to the person to whom it relates; and
- (b) to be exhibited on a conspicuous place in its community area and to remain so exhibited for as long as the order has effect.

**Appeal against prohibition order**

**195.(1)** A person to whom a prohibition order relates may appeal against its making to a Magistrates Court.

**(2)** The Court may—

- (a) require the appellant and the Council that made the order to give to the Court such information as the Court considers necessary for a proper decision on the appeal; and
- (b) confirm the order, rescind the order, or vary the order, as it considers just.

**(3)** An appeal must be made in writing within 21 days after the prohibition order is given to the person to whom the order relates.

**(4)** The making of an appeal does not affect the operation of the order to which it relates.

**(5)** On deciding an appeal—

- (a) the Court must cause notification of its decision to be given to the appellant and to the Council that made the order; and
- (b) the Court's decision does not prevent the making of another prohibition order in relation to the appellant at a subsequent time.

**Offences relating to prohibition order**

**196.(1)** A person to whom a prohibition order relates must not—

- (a) consume liquor; or
- (b) have liquor in possession or control;

in the community area of the Council that made the order.

(2) A person must not supply liquor to another knowing that other to be a person to whom a prohibition order relates so as to put that other in contravention of the order.

Maximum penalty—25 penalty units.

### **Continuance of authority to sell liquor**

**197.(1)** A Council that, at the commencement of this section, is authorised—

- (a) to establish and maintain in its community area premises for the sale of liquor; and
- (b) to conduct in its community area the business of selling and supplying liquor;

continues to be so authorised after the commencement of this section until a licence or permit is granted in respect of premises in the community area.

(2) The authority continued by subsection (1) is subject to such conditions as affect the authorisation at the commencement of this section or as varied for the time being by the chief executive.

### **Cancellation or suspension of liquor facility on complaint of Council**

**198.(1)** If, on complaint of a Council, the chief executive is satisfied that—

- (a) the sale of liquor on or from premises in the community area of the Council under authority of a licence or an authorisation mentioned in section 197 is the direct or indirect cause of regularly occurring disorder or breaches of the peace in the community area; or
- (b) liquor is regularly taken away from such premises contrary to the conditions of a licence or an authorisation mentioned in section 197; or
- (c) the sale of liquor on or from such premises under authority of a licence or permit or an authorisation mentioned in section 197 is proving—
  - (i) a detriment to the health or wellbeing of—

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- (A) the members generally of the community; or
- (B) persons resident in the community area; or
- (ii) a source of danger to—
  - (A) life or safety of members generally of the community; or
  - (B) persons resident in the community area; or
  - (C) property generally in the community area;

the chief executive may, without other procedures—

- (d) immediately cancel or suspend the licence or authorisation; or
- (e) immediately exercise in respect of the matter such other disciplinary powers as are conferred on the chief executive by this Act.

**(2)** If a licence or authorisation is cancelled or suspended under subsection (1), the chief executive may—

- (a) take all steps necessary and reasonable to ensure—
  - (i) termination of the conduct of business under authority of the licence or authorisation; or
  - (ii) closure of the premises on or from which the business was conducted; and
- (b) to that end may give such orders to such persons as the chief executive considers necessary and reasonable.

**(3)** A person to whom an order is given under subsection (2) must not, without reasonable excuse, fail to comply with the order in all respects.

Maximum penalty for subsection (3)—25 penalty units.

## **PART 9—FINANCIAL PROVISIONS**

### *Division 1—Assessment and payment of fees*

#### **Elements of gross amount paid or payable for liquor**

**199.(1)** In this Part—

**“gross amount paid or payable for liquor”** means—

- (a) the price, worked out under subsection (2), for liquor paid or payable by or to a person who is required by this Act to pay a licence fee assessed by reference to the gross amount; or
- (b) if the chief executive suspects on reasonable grounds that a greater amount should have been disclosed than the amount that was disclosed as the gross amount by a person required to pay a licence fee—an amount decided by the chief executive having regard to all relevant circumstances.

**(2)** In working out the gross amount paid or payable for liquor, regard must be had to—

- (a) the amount attributable to the liquor purchased, or otherwise obtained, or supplied; and
- (b) the amount attributable to bottles or other containers and items of packaging in which the liquor is delivered to or from the person required to pay the licence fee; and
- (c) the amount attributable to expenses for any of the following incurred in relation to the liquor at any stage of its movement to or from the person required by this Act to pay the licence fee—
  - (i) importation, handling and storage;
  - (ii) delivery other than for freight charges;
  - (iii) packaging, labelling and advertising;
  - (iv) credit charges and penalties;
  - (v) imposts under law, other than a licence fee payable under this Act recovered by a supplier of liquor from the purchaser of the liquor.

**Licence and assessment periods**

**200.(1)** The licence period for a licence is a financial year.

**(2)** The assessment period for a licence is the financial year before the licence period.

*Example—*

The fee to be paid for the licence period from 1 July 1994 until 30 June 1995 is worked out on the assessment period from 1 July 1993 until 30 June 1994.

**Duration of licence**

**201.(1)** Although each licence has a licence period, a licence continues in force until—

- (a) its surrender is accepted by the chief executive; or
- (b) its cancellation takes effect.

**(2)** A licence does not have effect during a period for which it is suspended.

**Fees payable for licences and permits**

**202.(1)** Fees payable in respect of a licence are as assessed by the chief executive under this Part.

**(2)** Fees payable in respect of a permit are as prescribed by regulation.

**Assessment of fees**

**203.(1)** Subject to this subsection, the fee payable in respect of a licence for each licence period of the licence is—

- (a) for a licence other than—
  - (i) a producer/wholesaler licence; or
  - (ii) a limited licence relating to premises used for the conduct of a business by a person who holds a licence under the *Wine Industry Act 1994*;

an amount that is 10% of the gross amount paid or payable for liquor purchased or otherwise obtained for the business

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conducted on the licensed premises during the assessment period;  
and

- (b) for a producer/wholesaler licence—\$600 and, in addition—
- (i) an amount that is 10% of the gross amount paid or payable to the licensee for liquor sold or supplied under authority of the licence to persons exempted by regulation from application of this Act or to holders of restricted club permits or general purpose permits during the assessment period; and
  - (ii) an amount that is 14% of the gross amount paid or payable to the licensee for liquor sold or supplied under authority of the licence to unlicensed persons (other than exempted persons specified in paragraph (i)) during the assessment period; and
- (c) for a limited licence relating to premises used for conduct of a business of selling wines by a person who holds a licence under the *Wine Industry Act 1994*—\$60 and, in addition—
- (i) an amount that is 10% of the gross amount paid or payable to the licensee for all Australian wines (other than wines made in Queensland); and
  - (ii) an amount that is 2% of the gross amount paid or payable to the licensee for all wines, other than the licensee's wine, made in Queensland;

being wines sold or supplied under authority of the licence to unlicensed persons during the assessment period.

(2) If premises are used for only part of a licence period, the fee payable on any of the following is to be assessed under subsection (1) and, subject to subsection (4), using an estimate made by the chief executive of what the relevant gross amount would have been if the licensee had been able to trade on the licensed premises during the entire assessment period, proportionately reduced for the period that has expired since the start of the licence period—

- (a) grant of a licence; or
- (b) provisional grant of a licence under section 123 (Provisional grant of licence); or

(c) resumption of trading under a licence removed from another place.

(3) If, in any licence period—

- (a) a return is not lodged under section 205 in respect of a licence; or
- (b) a return lodged in respect of a licence is incomplete or insufficient to enable the relevant gross amount paid or payable for liquor to be determined; or
- (c) a return covering the whole of the assessment period cannot be lodged in respect of a licence;

the chief executive, subject to subsection (4), is to assess the fee payable in respect of the licence in such amount as the chief executive considers reasonable, by reference to the whole of the assessment period.

(4) If—

- (a) a fee assessed under subsection (1) in respect of a licence is less than a minimum fee prescribed by regulation in relation to licences of that class of licence; or
- (b) a licensee, authorised by the licence to sell liquor during the whole of the assessment period immediately before a licence period for which a fee is to be assessed in respect of the licence, has not traded during the assessment period;

the fee payable in respect of the licence for the licence period in question is the minimum fee prescribed by regulation in relation to licences of the class of licence.

(5) A fee assessed under this section is to be calculated to the nearest whole dollar (rounding 50c upwards).

(6) In this section—

**“licensee’s wine”** has the meaning given in the *Wine Industry Act 1994*.

### **Additional fee for bars in certain premises**

**204.** The holder of—

- (a) a residential licence; or
- (b) an on-premises licence relating to premises used for the primary

purpose of eating meals prepared and served to be eaten on the premises;

- (c) an on-premises licence for premises used for cabaret;

who has the chief executive's approval to sell liquor under authority of the licence otherwise than in association with the consumer eating a meal must pay, in addition to all other fees payable by the holder, a fee for each licence period of the licence in an amount prescribed by regulation.

### **Filing of returns**

**205.(1)** For the purpose of assessing fees in respect of a licence for a licence period, returns must be filed with the chief executive under this section.

**(2)** In each licence period the holder of a licence other than—

- (a) a producer/wholesaler licence; or  
(b) a limited licence relating to premises used for the conduct of a business selling wines by a person who holds a licence under the *Wine Industry Act 1994*;

must, within 21 days after the end of the assessment period, file with the chief executive a return in respect of all liquor purchased or otherwise obtained for the licensed premises during the assessment period.

Maximum penalty—25 penalty units.

**(3)** In each licence period the holder of—

- (a) a producer/wholesaler licence; or  
(b) a limited licence relating to premises used for the conduct of a business selling wine by a person who holds a licence under the *Wine Industry Act 1994*;

must, within 21 days after the end of each assessment period, file with the chief executive a return in respect of all liquor sold or supplied under authority of the licence or certificate during the assessment period.

Maximum penalty—25 penalty units.

**(4)** A return under subsection (2) must contain the particulars, and be accompanied by the material, prescribed by regulation.

(5) If the chief executive is not satisfied a return filed under subsection (2) is accurate, the chief executive may, by written notice given to the holder of the licence or certificate, require the holder to file with the chief executive a further return of the same type, certified to be accurate by the person responsible for auditing the accounting records of the business to which the licence or certificate relates.

(6) A person given a notice under subsection (5) must comply with the notice within the period stated in the notice.

Maximum penalty—25 penalty units.

### **Factors affecting assessment of fees**

**206.(1)** In assessing a fee payable in respect of a licence under section 203, an amount paid or payable for liquor of any of the following descriptions is to be disregarded—

- (a) liquor that is sold—
  - (i) for export, and is exported, from Australia for consumption outside Australia; or
  - (ii) to duty free shops; or
  - (iii) for consumption on ships or aircraft on international journeys; or
  - (iv) to a foreign embassy or consulate or to Government House; or
  - (v) to religious organisations for sacramental purposes;
- (b) liquor purchased or otherwise obtained from the holder of a general licence for premises to which a licence or permit relates;
- (c) liquor purchased or otherwise obtained from a transferor of a licence by a transferee of the licence in the course of transfer of the business conducted under authority of the licence;
- (d) liquor of any other description prescribed by regulation.

(2) In assessing the fee payable for a licence under section 203 (Assessment of fees), the chief executive may also allow for theft, loss or damage of liquor.

**Notification of assessment**

**207.(1)** As soon as practicable after a fee payable in respect of a licence has been assessed, notification of the assessment must be given to the licensee.

**(2)** A notification of assessment must specify the due date for payment of the amount of the assessment.

**Payment of fees**

**208.(1)** The fee in respect of a permit is due and payable to the department on the day application for the permit is made.

**(2)** A fee payable in relation to a licence is payable to the department on the day stated as the date for payment in the notice of assessment of the fee given to the licensee.

**Suspension and cancellation for failure to pay fee**

**209.(1)** If a fee in respect of a licence or permit is not paid when it is due and payable, the licence or permit is immediately suspended and, subject to subsection (2) and section 210, is cancelled at the end of 14 days.

**(2)** If, within the 14 days, the fee is paid to the department in cash or by bank cheque or electronic funds transfer, the suspension is lifted and the cancellation does not take effect.

**Appeal concerning failure to pay fee**

**210.(1)** A person aggrieved by the suspension and impending cancellation of a licence or permit because of a failure to pay a fee may appeal to the Tribunal on the ground that the failure was due to—

- (a) the business conducted under authority of the licence or permit having been adversely affected by a natural disaster; or
- (b) the licensee ceasing to conduct business on the premises under authority of the licence; or
- (c) the owner, lessee or mortgagee of the premises to which the licence relates starting a proceeding for possession of the

premises; or

(d) a personal hardship for the licensee.

(2) Financial hardship is not a personal hardship for the purposes of subsection (1).

(3) An appeal is started by—

(a) filing a notice of appeal with the registrar of the Tribunal within 14 days after the day on which the licence or permit is suspended; and

(b) giving a copy of the notice to the chief executive within 7 days after the notice is filed with the registrar.

(4) If a notice of appeal has been filed with the registrar, the licence or permit will not be cancelled at the end of 14 days mentioned in section 209, but continues suspended until it is restored or cancelled as provided by section 211.

(5) In this section—

“**person aggrieved**” includes any of the persons who gave the chief executive particulars of their interest under section 44A (Owner, lessee, mortgagee and secured creditors to give particulars to chief executive).

### **Powers of Tribunal on appeal**

**211.(1)** The Tribunal must decide an appeal under section 210(1) (Appeal concerning failure to pay fee) within 30 days after notice of appeal is filed with the registrar.

(2) If it appears to the Tribunal that an appellant is not prosecuting an appeal diligently, it may strike out the appeal.

(3) In deciding an appeal, the Tribunal may—

(a) allow the appeal on condition that the fee is paid to the department within a period stated by the Tribunal (the “**time allowed**”); or

(b) dismiss the appeal.

(4) The time allowed must be at least 7 days, and not more than 28 days, after the day on which the appeal is allowed.

(5) If an appeal is allowed and the fee is paid to the department within the time allowed, the suspension of the licence or permit ceases on payment of the fee.

(6) The licence or permit is immediately cancelled if an appeal is—

- (a) dismissed or struck out; or
- (b) allowed but the fee payable is not paid within the time allowed.

(7) If a licence or permit is cancelled under subsection (6), the part of the fee assessed or payable for the entire licence period in which it was suspended that is proportionate to the part of the licence period that had ended before the suspension happened is a debt payable to the State.

### **Reassessment of fee**

**212.(1)** This section applies if—

- (a) the licence fee has been paid; or
- (b) the licence fee has been assessed and no fee is payable; or
- (c) the licence has been cancelled.

(2) The chief executive may on the chief executive's own initiative, and must on application made by the licensee, review an assessment for the fee payable in relation to the licence if—

- (a) an error or miscalculation in the assessment is suspected; or
- (b) the assessment was based on incorrect or incomplete information; or
- (c) for an assessment under section 203(2) (Assessment of fees)—the assessment was based on an incorrect assumption about the nature, scale or duration of the business to be conducted under authority of the licence.

(3) A review may be made under subsection (2) only within 5 years after the date of the assessment.

(4) If on review under subsection (2) an assessment is changed, an adjustment is to be made and—

- (a) any amount overpaid must be—

- (i) refunded to, or as directed by, the licensee; or
- (ii) credited against future fees that may become payable by the licensee in relation to the licence;

as the chief executive, by written notice given to the licensee, elects; and

- (b) any amount underpaid must, subject to section 213 (Liability for reassessed fee in certain cases), be paid to the department by the licensee within 14 days after the licensee is given notice of the reassessment.

(5) Despite subsection (4)(a), if the chief executive is satisfied the amount overpaid was paid by a person for the licensee, the chief executive may refund the amount to, or as directed by, the person.

(6) If a reassessment is made of the fee payable for a licence period in which 2 or more persons held the licence, the chief executive may apportion an entitlement to refund, or a liability to pay, among the persons as the chief executive considers just, and the persons are entitled to refund, or are liable to make payment, as apportioned.

(7) If a licence is surrendered or cancelled, any amount credited under subsection (4)(a) in relation to the licence must be refunded to, or as directed by, the former licensee.

(8) The chief executive may impose on the licensee a supplementary fee in relation to the licence if—

- (a) a fee as reassessed is more than the fee as previously assessed; and
- (b) the chief executive is satisfied that the fee was previously assessed on the basis of information disclosed by the licensee that was known, or ought to have been known, by the licensee to be incorrect.

(9) The supplementary fee must be—

- (a) at least the amount by which the fee as reassessed is more than the fee previously assessed; and
- (b) not more than 3 times the amount.

(10) The licensee must pay the supplementary fee to the department

within 14 days after the licensee is given notice of the imposition of the supplementary fee.

(11) Sections 210 to 212 apply to payment of a fee as reassessed or a supplementary fee imposed.

### **Liability for reassessed fee in certain cases**

**213.(1)** If, at the time notification of the reassessment is to be given to a person—

- (a) the premises to which the licence related are no longer licensed premises; or
- (b) the licensee at that time is not the licensee at the time of payment of the fee previously assessed;

responsibility for payment to the department of the difference between the amount of fee paid and the fee as reassessed may be allotted or apportioned as the chief executive considers just to, between or among—

- (c) the licensee at the time the fee was previously assessed; and
- (d) the persons who, at the time of payment of the fee previously assessed, were directly or indirectly interested in the business, or the profits of the business, conducted under authority of the licence; and
- (e) the person (if any) who gave incorrect information, or failed to give information, because of which the fee has been reassessed;

or any of them.

(2) A person to whom responsibility is allotted or apportioned under subsection (1) is liable to pay to the department the amount so allotted or apportioned.

### **Discontinuance fee**

**214.(1)** If—

- (a) a licensee surrenders the licence; or
- (b) a licence is cancelled;

the chief executive may, on such surrender or cancellation, assess a discontinuance fee.

(2) A discontinuance fee is the amount of fee that, in the chief executive's opinion, would have been payable in respect of the licence had it continued in force for the next licence period of the licence, less the fee last paid in respect of the licence.

### **Refund of fee**

**215.** If the chief executive—

- (a) accepts a surrender of a licence or permit; or
- (b) cancels a licence or permit;

in respect of which a fee, other than a discontinuance fee, has been paid for any period subsequent to the date of surrender or cancellation, a refund must be made to, or as directed by, the former licensee or permittee of the portion of the fee that is proportionate to the unexpired period for which the fee has been paid.

### **Refund of fees—general**

**215A.(1)** The chief executive may refund a fee paid by a person only if the chief executive is satisfied—

- (a) that the person has not received, and will not receive, an amount from someone else for any part of the fee; or
- (b) if the person has received an amount from someone else for any part of the fee—the person will reimburse, or will take reasonable steps to reimburse, the other person for the amount received.

(2) If subsection (1)(b) applies to the person—

- (a) the person must—
  - (i) within 90 days after receiving the refund (the “**relevant period**”), reimburse the other person for the amount received from the other person (the “**received amount**”); and
  - (ii) within 7 days after the relevant period, give the chief

executive written notice that the other person has been reimbursed for the received amount; and

- (b) if the other person is not reimbursed for the received amount within the relevant period—the person must, within 7 days after the relevant period—
- (i) give the chief executive written notice that the other person was not reimbursed for the received amount; and
  - (ii) pay the chief executive the received amount plus interest at the rate of 20% a year calculated from the day the refund was made.

Maximum penalty—50 penalty units.

(3) If the person does not pay the received amount under subsection (2)(b)(ii), the person must also pay the chief executive interest at the rate of 20% a year calculated from the end of the 7 days mentioned in subsection (2)(b) to the day the received amount is paid.

(4) An amount payable under subsection (2)(b)(ii) or (3) is a debt payable by the person to the State.

(5) In this section—

“**fee**” means a fee under, or purportedly under, this Act, and includes a supplementary fee.

“**part**” of a fee or other amount includes the whole of the fee or amount.

“**pay**” a fee means pay the fee voluntarily or under compulsion (whether or not the fee is paid under a mistake of law or fact), and includes recover the fee by legal proceeding.

“**receive**” an amount for a part of a fee includes obtain a part of the amount through the price charged for goods either in anticipation of a fee to be paid or after the fee is paid.

“**refund**” an amount to a person includes—

- (a) refund the amount at the person’s direction; and
- (b) credit the amount against future fees that may become payable.

### **Unpaid fees a debt to State**

**216.** An amount due and payable to the department as a fee payable in respect of a licence or permit is a debt due and payable to the State by the licensee, permittee or other person liable for payment.

### **Records to be kept by licensee**

**217.(1)** A licensee must make and maintain a true and up-to-date record of all transactions (the “**transactions record**”) made by or on behalf of the licensee that involve—

- (a) the purchase or other acquisition of liquor by or for the licensee;  
or
- (b) the sale or supply of liquor by or on behalf of the licensee.

Maximum penalty—350 penalty units.

**(2)** The transactions record—

- (a) must be in a language and form acceptable to the chief executive;  
and
- (b) must contain—
  - (i) the particulars prescribed by regulation; or
  - (ii) such of the prescribed particulars as are decided by the chief executive in relation to licences of a specified description;  
and
- (c) must be kept, on the licensed premises to which it relates or in some other place approved by the chief executive for 6 years after the day on which the record is made, by the licensee by whom it is made or, if the licence has since been transferred, by the licensee to whom it is last transferred.

**(3)** A licensee must establish accounting records of a business conducted under authority of the licence that correctly record and explain the transactions and financial position of the business.

Maximum penalty—350 penalty units.

**(4)** The following persons must keep accounting records on the licensed premises to which they relate, or in some other place approved by the chief

executive, for 6 years after the day on which the record is made—

- (a) the licensee by or for whom the records are made;
- (b) if the licence has since been transferred—the licensee to whom it was last transferred.

(5) A licensee commits an offence if—

- (a) the licensee's transactions record is not kept as required by subsection (2); or
- (b) the licensee's accounting records are not kept as required by subsection (4).

Maximum penalty—350 penalty units.

(6) On a transfer of a business conducted under authority of a licence, the transferor must surrender to the transferee every record made and kept under this section relating to the business.

Maximum penalty—25 penalty units.

(7) The licensee who for the time being has possession or control of the record made and kept under this section must make it available for examination by an investigator on demand.

Maximum penalty—25 penalty units.

### **Powers of examination by investigator**

**218.(1)** This section applies to—

- (a) a licensee or a former licensee; and
- (b) if a licensee is, or former licensee was, a corporation—the directors and shareholders, and former directors and shareholders, of the corporation.

(2) An investigator may, on reasonable notice, require a person to whom this section applies—

- (a) to produce to the investigator, at a reasonable place stated in the notice, the following records of which the person has control—
  - (i) a record made and kept under section 217 (Records to be kept by licensee); or

- (ii) an accounting record or other record about the business conducted under authority of the licence; and
- (b) to permit the investigator to examine the record and—
  - (i) to make copies of, or take extracts from, the record; or
  - (ii) if the investigator considers, on reasonable grounds, that it is necessary to remove the record to examine or copy it—to remove the record from the person's control.

(3) A person must comply with a requirement under subsection (2) unless the person has a reasonable excuse.

Maximum penalty—25 penalty units.

(4) While an investigator has custody or control of a record removed under subsection (2)—

- (a) section 217(2)(c) is taken to be complied with; and
- (b) the investigator must permit, at all reasonable times—
  - (i) inspection of the record; and
  - (ii) the making of additions to the record;

by a person who, if the record had not been removed, would be entitled to inspect the record or make the additions.

(5) The investigator who has removed a record under subsection (2) must, as soon as is practicable after the removal—

- (a) examine, and if the investigator considers it necessary, copy the record; and
- (b) return it to the person from whom it was removed.

### *Division 2—Assessment and payment of premiums*

#### **Payment of premium for general licence and special facility licence**

**219.(1)** The chief executive may grant a general licence or special facility licence only if the applicant has paid a premium to the department.

(2) The amount of the premium is to be fixed by the chief executive under section 220 (Basis of calculation of premium).

**Basis of calculation of premium**

**220.** In fixing the amount of a premium, the chief executive must have regard to—

- (a) the extent and nature of the locality to be served by the proposed licensed premises; and
- (b) the premiums fixed for premises of a similar size and type in the locality; and
- (c) the premiums fixed for premises in a locality of a similar size and with similar industries and potential market; and
- (d) the nature of the business proposed to be conducted on the proposed licensed premises; and
- (e) the size of the proposed licensed premises; and
- (f) the number and size of liquor outlets on the proposed licensed premises; and
- (g) any other matter the chief executive considers relevant.

**PART 10—MISCELLANEOUS PROVISIONS****Contravention of conditions of licences etc.**

**226.** A person who contravenes a condition specified in—

- (a) a licence or permit; or
- (b) an authorisation to sell and supply liquor mentioned in Part 8;

commits an offence against this Act.

Maximum penalty—25 penalty units.

**Payment of penalties to Consolidated Fund**

**227.** Amounts recovered by way of penalty for an offence must be paid to the Consolidated Fund.

**Suspension of licence for offences concerning minors**

**228.** If, within a period of 2 years, 2 convictions are recorded against the holder of a licence for offences consisting of contraventions of—

- (a) section 155(1); or
- (b) section 156(1) or (2);

(whether for the same or different offences) the licence that relates to the premises on or from which the latest of the offences was committed, if it is still held by, or under the control of, the licence holder, is suspended—

- (c) for a period of 2 months; or
- (d) until the chief executive otherwise orders;

whichever period is less.

**Liability for certain offences against Act**

**229.(1)** Despite section 7 or 23 of the Criminal Code, if an offence against section 155, 156, 157 or 161 is committed by a person as agent or employee, the principal or employer is presumed to have participated in the offence, may be charged with actually committing the offence and, subject to subsection (2), may be punished for the offence.

**(2)** It is a defence to a charge made against a person under subsection (1) that—

- (a) the offence happened without the defendant's knowledge or authority; and
- (b) the defendant had exercised due diligence to avoid the commission of the offence.

**Defence to charge if age material**

**230.(1)** If the age of a person is material to a charge of an offence against this Act, it is a defence to prove that, at the time of the offence, the defendant (if the defendant is the actual offender) or an agent or employee (if the defendant is charged merely because of being principal or employer of the actual offender)—

- (a) honestly and reasonably believed that the person whose age is

material to the offence had attained 18 years; or

- (b) had sighted acceptable evidence of age of the person whose age is material to the offence that indicated the person had attained 18 years;

and the operation of section 24 of the Criminal Code is excluded.

(2) Evidence that the defendant (if the defendant is the actual offender) or an agent or employee (if the defendant is charged merely because of being principal or employer of the actual offender) did not request the person whose age is material to the offence to produce acceptable evidence of age is evidence that any belief that the person had attained 18 was not reasonable.

### **False or misleading statements**

**231.(1)** A person must not—

- (a) state anything for this Act that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made for this Act anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—100 penalty units or imprisonment for 6 months.

(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

### **False, misleading or incomplete documents**

**231A.(1)** A person must not give a document for this Act containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—100 penalty units or imprisonment for 6 months.

*Example—*

A minor knowingly using a forged driver's licence or a licence belonging to someone else.

- (2) Subsection (1) does not apply to a person who, when giving the

document—

- (a) informs the person to whom the document is given, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person giving the document has, or can reasonably obtain, the correct information—gives the correct information.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false, misleading or incomplete to the person's knowledge.

### **Impersonation of investigator**

**231B.** A person must not pretend to be an investigator.

Maximum penalty—200 penalty units.

### **Forfeiture and disposal of seized property**

**232.(1)** If—

- (a) property has been seized under any provision of this Act; and
- (b) a person is convicted of an offence against this Act consisting in an action done or omission made with which the seized property was associated;

the court by which the person is convicted may, on its own initiative or on application made to it by the complainant, order that all or any of the property be forfeited to the State.

(2) On the making of the order, the property—

- (a) is forfeited to the State; and
- (b) is to be sold in a way calculated to yield the best return to the State or, if that is impracticable, is to be otherwise disposed of as the person having custody of the property considers appropriate.

(3) Proceeds of sale of the property are to be paid—

- (a) firstly, in meeting expenses of the sale; and
- (b) secondly, to the Consolidated Fund.

(4) A provision of this Act that requires anything seized to be returned to

the person from whom it was seized ceases to apply in relation to the property.

### **Evidentiary provisions**

**233.** In proceedings under this Act—

- (a) a copy of, or extract from, an entry in the Register of Licences and Permits kept under this Act, bearing a certificate purporting to be that of the chief executive that it is a true copy of, or extract from, the register is admissible as evidence of the entry in the register; and
- (b) a copy of—
  - (i) a licence or permit; or
  - (ii) an endorsement on a licence;bearing a certificate purporting to be that of the chief executive that it is a true copy of the licence or permit or the endorsement is admissible as evidence of the original licence or original endorsement; and
- (c) a copy of a notice of assessment of fees payable in respect of a licence or permit bearing a certificate purporting to be that of the chief executive that it is a true copy of the original notice of assessment is admissible as evidence of the original notice of assessment; and
- (d) an averment or allegation in a complaint of an offence against this Act that—
  - (i) a person specified has not, or had not at a material time, attained 18 years; or
  - (ii) a machine, apparatus or device is capable of being used for betting or gaming; or
  - (iii) a specified art union or lottery was not authorised by law at a material time;is sufficient proof of the truth of the averment or allegation until the contrary is proved; and
- (e) if a statement of the results of the analysis of a fluid includes a

certificate purporting to be the certificate of an analyst that the statement is a true statement of the results of the analysis—the statement that the fluid is liquor is evidence of the results of the analysis; and

- (f) if in a statement in a complaint for an offence against this Act it is claimed that the offence happened on licensed premises and a fluid was liquor—the statement is evidence that the fluid was liquor; and
- (g) if in a statement in a complaint for an offence against this Act it is claimed that the offence happened off licensed premises and a fluid was packed in a container of a type that usually holds liquor—the statement is evidence that the fluid was liquor.

(2) In this section—

“**analyst**” has the meaning given by section 5 of the *Health Act 1937*.

### **Service of documents**

**234.(1)** Without limiting the ways by which a document may be served, a document to be given for the purposes of this Act to a licensee, permittee or nominee may be given—

- (a) by leaving it with a person who appears to be in charge of the premises to which the licence or permit relates; or
- (b) by affixing it to some conspicuous place on the premises to which the licence or permit relates.

(2) Service of a document given under subsection (1) or transmitted by telex, facsimile or electronic means is taken to have been effected at the time when it is so given or transmitted unless the contrary is proved.

### **Regulations**

**235.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may be made with respect to—

- (a) requirements in respect of an application made to the chief executive; and

- (b) obligations of holders of licences or permits; and
  - (c) payment of fees under this Act and the way and purpose of their payment; and
  - (d) particulars to be given for the purposes of this Act; and
  - (e) the consumption or possession of liquor in a public place; and
  - (f) the circumstances in which the chief executive may grant a general purpose permit; and
  - (g) the circumstances in which the chief executive may approve premises mentioned in section 59 (Authority of general licence) and the conditions the chief executive may impose on the approval; and
  - (h) the monitoring by local governments of the use of sections 173A to 173E; and
  - (i) encouraging responsible practices in the service, supply and promotion of liquor.
- (3) A regulation may be made—
- (a) creating offences against the regulation; and
  - (b) fixing a maximum penalty of a fine of 10 penalty units for an offence against the regulation.

## **PART 11—TRANSITIONAL PROVISIONS**

### *Division 1—General*

#### **Object of Part**

**236.** The object of this Part is to provide for transition from the repealed Act to the current Act.

**Interpretation**

**237.** In this Part—

“**Commission**” means the Licensing Commission constituted under the repealed Act.

“**Court**” means the Licensing Court constituted under the repealed Act.

“**current Act**” means this Act (other than this Part).

“**licence**” includes a licence within the meaning of the repealed Act.

“**licensed premises**” includes licensed premises within the meaning of the repealed Act.

“**licensee**” includes a licensee within the meaning of the repealed Act.

“**permit**” includes a permit granted under the repealed Act.

“**proclaimed day**” means the day of commencement of this Part.

“**repealed Act**” means the *Liquor Act 1912*.

***Division 2—Transitional provisions*****Completion of proceedings in the Court**

**238.(1)** Subject to subsections (2) and (3), a proceeding that—

- (a) has been started in the Court; and
- (b) has not been completed;

before the proclaimed day may be completed by the Court as if this Act had not been enacted, and for this purpose the Court’s jurisdiction conferred by the repealed Act is preserved.

(2) A proceeding to which subsection (1) applies may, with the applicant’s consent, be finished by the chief executive as if the chief executive were the Court.

(3) Subsection (1) does not apply to a proceeding whose completion requires only that the Court approve of compliance with conditions ordered by the Court to be fulfilled before a licence or permit is to be issued to a particular applicant.

(4) If, in a proceeding to which subsection (1) applies, a decision or an order is to be made for issue of a licence or permit, the decision or order must be for the issue of a licence under this Act that corresponds to a licence or permit applied for in the proceeding.

(5) A proceeding mentioned in subsection (3) may be continued before the chief executive, who may grant or withhold approval as if the chief executive were the Court.

(6) A proceeding continued before the chief executive is subject to Part 2, Division 3.

### **Disposal of applications for removal**

**238A.(1)** An application for removal of a licence under section 49A of the repealed Act, that had not been disposed of before the proclaimed day, may be continued and disposed of as if the chief executive were the Commission.

(2) To remove any doubt, it is declared that—

- (a) since the proclaimed day, the chief executive has had power to perform the functions performed by the Commission under the repealed Act; and
- (b) the Court's power under the repealed Act to order that a licence be removed has continued under this Part.

*Example of subsection (2)(a)—*

The chief executive has power to decide whether there is a public need in the locality to which it is proposed to remove a licence on application for removal of the licence under the repealed Act.

### **Termination of Court**

**239.** On completion of all proceedings to which section 238(1) or 238A applies, the Court ceases to exist.

### **Disposal of applications made to Commission**

**241.(1)** An application for a permit or for an approval under section 5(vi) of the repealed Act that has not been disposed of before the proclaimed day

may be continued before, and be disposed of by, the chief executive.

(2) A proceeding before the chief executive on an application mentioned in subsection (1) is subject to Part 2, Division 3.

(3) A decision that an application mentioned in subsection (1) be granted must be for the grant of—

- (a) a licence under the current Act that corresponds to the permit or approval applied for; or
- (b) if no licence so corresponds—a general purpose permit.

### **Table of corresponding licences**

**242.** A licence specified in the following table, column 1 is the licence under the current Act that corresponds to a licence or permit under the repealed Act specified in column 2 opposite the reference to the first licence—

#### **TABLE**

<b>Column 1</b>	<b>Column 2</b>
<b>Corresponding licence</b>	<b>Licence or permit under repealed Act</b>
general licence	licensed victualler's licence; tavern licence; canteen licence; spirit merchant's (retail) licence.
residential licence	limited hotel licence; resort licence.

on-premises licence	restaurant licence; cabaret licence; function room licence; bistro licence; cultural centre licence; tourist park licence; theatre licence; airport licence; packet licence; railway refreshment room licence; college or institutional approval under section 5(vi).
producer/wholesaler licence	spirit merchant's licence.
club licence	golf club licence; bowling club licence; registered club licence; ex-servicemen's club licence; principal sporting club licence; workers' club licence.
special facility licence	public facility licence; casino licence; historic inn licence.
limited licence	caterer's licence; canteen permit under section 5(iv) or (v); vigneron-vintner's licence.

### **Continuance of existing licences**

**243.(1)** A licence that has been issued under the repealed Act, and has not been surrendered or cancelled before the proclaimed day, continues in force and is taken to be a licence under the current Act that corresponds to it.

(2) Until a licence continued in force by subsection (1) is reviewed by the chief executive (on application of the licensee or on the chief executive's own initiative) it remains subject to the terms and conditions to which it is subject at the proclaimed day.

### **Variation of general licence (previously spirit merchant's (retail) licence)**

**243A.** If the holder of a general licence, that before the proclaimed day was held as a spirit merchant's (retail) licence, applies to the chief executive to vary the conditions of the licence, the chief executive may require the applicant to satisfy the requirements of sections 116 (Public need relevant to applications), 118 (Advertisement of applications) and 219 (Payment of premium for general licence and special facility licence) of the current Act as if the applicant were an applicant for a general licence.

### **Continuance of existing permits**

**244.(1)** A permit that has been issued under the repealed Act and has not expired, or been surrendered or cancelled, before the proclaimed day—

- (a) if it is a permit under section 75 of the repealed Act or of limited duration—continues in force until it expires or is earlier surrendered or cancelled; and
- (b) if it is another permit—continues in force for 6 months after the proclaimed day or until it is earlier surrendered or cancelled.

(2) A term or condition of a permit under section 75 of the repealed Act that requires a place to be used for a particular purpose ceases to have effect.

(3) A permit continued in force under subsection (1)(a) remains in force only until the review of the licence under section 247 (Review of licences).

(4) An extended hours permit that extends hours beyond 3 a.m., or an extension of hours for a licence beyond 3 a.m., in force on the day the *Liquor Amendment Act (No. 2) 1994* commenced, expires on 31 March 1995.

(5) Subsection (4) does not apply to a special facility licence or a limited licence.

**Continuance of business of spirit merchant**

**246.** Despite the provisions of the current Act, it is lawful for a person who at the proclaimed day holds a producer/wholesaler licence that before the proclaimed day was held as a spirit merchant's licence to sell liquor under authority of the licence as conferred immediately before the proclaimed day, subject to—

- (a) the terms and conditions specified in the licence; and
- (b) the relevant provisions of the repealed Act, which for this purpose are to be taken as continuing in force;

until—

- (c) transfer of the licence; or
- (d) if the holder of the licence is a body corporate—a change in the beneficial ownership of the controlling interest in the holder.

**Review of licences**

**247.(1)** The chief executive must review every licence that is in force at the proclaimed day with a view to ensuring that—

- (a) the terms and conditions to which the licence is subject are not inconsistent with the current Act; and
- (b) the licence is endorsed with all terms and conditions considered by the chief executive as appropriate to be determined and specified in the licence consequent on the enactment of this Part.

**(2)** If the chief executive considers that the conditions of a resort licence issued under the repealed Act, and taken to be a residential licence under section 243 (Continuance of existing licences), are more appropriate to a general licence or special facility licence under the current Act, the licence is taken to be the licence under the current Act to which the chief executive considers its conditions are more appropriate.

**(3)** Subsection (1)(a) does not apply to a term or condition varying or extending hours under section 17A of the *Liquor Regulation 1955*.

**(4)** For the purpose of reviewing a licence under subsection (1), the chief executive may direct the licensee to produce the licence to the chief executive within a specified reasonable period.

(5) A person must not, without reasonable excuse, contravene a direction under subsection (4).

Maximum penalty for subsection (5)—25 penalty units.

### **Enforcement of orders etc. under repealed Act**

**248.(1)** Every—

- (a) order of the Court; or
- (b) direction or requisition;

made or issued under the repealed Act, and not complied with before the proclaimed day, continues in force until it is complied with, and is taken to be an order of the chief executive, or a requisition of an investigator, made or issued under the current Act.

(2) A person must not, without reasonable excuse, contravene an order, direction or requisition mentioned in subsection (1).

Maximum penalty—25 penalty units.

### **Recovery of outstanding amounts**

**249.** All amounts due and payable under or for the purposes of the repealed Act at or after the proclaimed day are debts due and payable to the State.

### **Apportionment of licence fees under s 18B of repealed Act**

**249A.(1)** Despite the repeal of the repealed Act and subject to subsections (3) and (5), section 18B of the repealed Act continues to apply to every case to which it applied under the repealed Act immediately before the proclaimed day as if the section had not been repealed.

(2) In applying section 18B of the repealed Act under this section—

- (a) a reference to a licensed victualler under the repealed Act—
  - (i) is a reference to the holder of a licence under this Act that corresponds under section 242 to a licensed victualler's licence, or a licence that was taken to be a licensed victualler's licence, under the repealed Act; and

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- (ii) includes a reference to the holder of any licence under the repealed Act to which section 18B applied, or was taken to have applied, immediately before the proclaimed day; and
  - (b) a reference to licensed premises under the repealed Act is a reference to licensed premises under this Act; and
  - (c) a reference to a licensed victualler's licence under the repealed Act—
    - (i) is a reference to a licence under this Act that corresponds under section 242 to a licensed victualler's licence, or a licence that was taken to be a licensed victualler's licence, under the repealed Act; and
    - (ii) includes a reference to any licence under the repealed Act to which section 18B applied, or was taken to have applied, immediately before the proclaimed day; and
  - (d) a reference to a fee payable under the repealed Act is a reference to a fee payable in respect of a licence under this Act; and
  - (e) all other necessary changes are taken to be made.
- (3)** The rights that a person has because of subsection (1)—
- (a) cease when the term (including a further term arising under the exercise of an option of renewal) of the person's lease, agreement for lease or other tenancy agreement relating to the licensed premises, and in force immediately before the proclaimed day, expires or is lawfully terminated, whichever happens first; and
  - (b) if the licence concerned is transferred under section 113—are, subject to paragraph (a), exercisable by the transferee.
- (4)** Subsection (3)(a) does not affect the enforcement of any right that a person has under this section if the right accrued before the expiry or termination.
- (5)** Subsection (1) does not apply to persons (and their transferees) who, between 1 July 1992 and the day of the introduction into the Legislative Assembly of the Bill for this Act—
- (a) entered into an agreement; or
  - (b) varied a lease, agreement for lease or tenancy agreement;

relating to licensed premises to which subsection (1) would otherwise apply in a way that has the effect of providing for the adjustment between them of financial obligations that arise out of or relate to the apportionment of licence fees relating to licensed premises under section 18B of the repealed Act or licence fees payable in relation to the premises under this Act.

### **Compensation for certain surrendered general licences**

**250.** This Act, as in force immediately before the commencement of the *Liquor Amendment Act (No. 2) 1993*, continues to apply to a request to the chief executive to accept the surrender of a general licence if, before the commencement—

- (a) the request was received; and
- (b) section 250 as then in force applied to the request; and
- (c) matters under the Act about the request were not finalised.

### **References to Liquor Act 1912**

**251.** In an Act or document, a reference to the *Liquor Act 1912* is taken to be a reference to this Act.

## **PART 12—TRANSITIONAL PROVISIONS FOR RESTRICTED CLUB LICENCES**

### **Object of Part**

**252.** The object of this Part is to provide a transition from restricted club licences to restricted club permits.

### **Continuance of existing licences**

**253.(1)** A restricted club licence granted under repealed section 90, that has not expired or been surrendered or cancelled before the commencement, continues in force until it expires or is earlier surrendered or cancelled.

(2) The chief executive may, in writing, require the holder of a restricted club licence that has expired or been surrendered or cancelled to produce the licence to the chief executive.

## **SCHEDULE**

### **RULES OF CLUBS**

sections 88 and 92 of this Act

Rules of a club—

- (a) must provide that a person cannot be admitted as a member unless the person makes written application for membership and the application is approved at a meeting of the club's management committee; and
- (b) must provide that the members of the club entitled to vote at any meeting of the club do not include temporary or honorary members or minors; and
- (c) must provide that the club's management committee must be elected by the voting members of the club at a general meeting of the club for a period of at least 1 year; and
- (d) must provide that the management committee of the club must present to each annual general meeting of the club—
  - (i) a written report of the club's operation throughout the year; and
  - (ii) an audited statement of the club's financial position; and
- (e) must preclude the payment to an officer or employee of the club of an amount by way of commission or allowance calculated by reference to the quantity of liquor sold or supplied by the club or the receipts of the club for such liquor; and
- (f) must be consistent with the club being a non-proprietary club.

## **ENDNOTES**

### **1 Index to Endnotes**

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### **2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 12 July 1996. Future amendments of the Liquor Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 October 1992
2	to Act No. 50 of 1992	1 December 1992
3	to Act No. 10 of 1993	8 June 1993
4	to Act No. 62 of 1993	17 December 1993
5	to Act No. 80 of 1994	24 January 1995

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	3
Changed names and titles	5

## **6 List of legislation**

### **Liquor Act 1992 No. 21**

date of assent 22 May 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1992 (1992 SL No. 136)

as amended by—

### **Liquor Amendment Act 1992 No. 50**

date of assent 30 November 1992

ss 3 and 5 commenced 1 July 1992 (see s 2)

remaining provisions commenced on date of assent

### **Liquor Amendment Act 1993 No. 10**

date of assent 20 May 1993

commenced on date of assent

### **Liquor Amendment Act (No. 2) 1993 No. 57**

date of assent 20 November 1993

commenced on date of assent

### **Licensing Fees Legislation (Liquor and Tobacco Products) Amendment Act 1993 No. 62 pt 2**

date of assent 23 November 1993

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 1994 No. 15 s 3 sch 2**

date of assent 10 May 1994

commenced on date of assent

### **Nature Conservation Act 1992 No. 20 s 159 sch 2 (as amd 1994 No. 42 s 2 sch (as from 14 September 1994))**

date of assent 22 May 1992

commenced 19 December 1994 (1994 SL No. 472)

### **Liquor Amendment Act 1994 No. 28**

date of assent 28 June 1994

commenced on date of assent

### **Liquor Amendment Act (No. 2) 1994 No. 59**

date of assent 4 November 1994

ss 1–2 commenced on date of assent

s 8(3), (4) and (7) commenced 1 December 1994 (see s 2(1))

ss 67(4), 81–2 commenced 1 July 1992 (see s 2(2))

remaining provisions commenced 2 December 1994 (1994 SL No. 409)

### **Wine Industry Act 1994 No. 80 s 67 sch 1**

date of assent 1 December 1994

commenced 31 March 1995 (1995 SL No. 70)

### **Statute Law (Minor Amendments) Act 1995 No. 50 ss 1, 3 sch**

date of assent 22 November 1995

commenced on date of assent

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

**7 List of annotations****Objects of Act**

s 3 amd 1994 No. 59 s 3 sch 2

**Definitions****prov hdg** sub 1994 No. 59 s 4(1)s 4 def “**exempt minor**” ins 1994 No. 59 s 4(3)def “**function**” sub 1994 No. 59 s 4(2)–(3)def “**investigator**” amd 1994 No. 59 s 4(4)def “**liquor**” sub 1994 No. 59 s 4(2)–(3)def “**member of a reciprocal club**” ins 1994 No. 59 s 4(3)def “**wine**” sub 1994 No. 80 s 67 sch 1**Meaning of “function”**

s 4A ins 1994 No. 59 s 5

**Meaning of “liquor”**

s 4B ins 1994 No. 59 s 5

**Who is a responsible adult for a minor**

s 5 sub 1994 No. 59 s 6

**Acceptable evidence of age**

s 6 amd 1994 No. 59 s 7

**Ordinary trading hours**

s 9 amd 1994 No. 59 s 8

**Jurisdiction and powers of Tribunal**

s 21 amd 1994 No. 59 s 3 sch 1; 1994 No. 80 s 67 sch 1

**Supervision of Tribunal’s exercise of jurisdiction**

s 24 sub 1994 No. 59 s 9

**Definition**

s 29A ins 1994 No. 59 s 10

**Arranging the hearing of appeal**

s 34 sub 1994 No. 59 s 11

amd 1995 No. 50 s 3 sch

**Stay of operation of decisions etc.**

s 35 hdg sub 1994 No. 59 s 3 sch 2

**Powers of Tribunal on appeal**

s 36 sub 1994 No. 59 s 12

**Summary decision on appeal**

**prov hdg** amd 1994 No. 59 s 3 sch 2  
**s 39** amd 1994 No. 59 s 3 sch 2

**Tribunal's decision to be written and include reasons**

**s 41** sub 1994 No. 59 s 13

**Division 1—Administrative procedures**

**div hdg** om 1994 No. 59 s 3 sch 2

**Power of delegation**

**s 42** amd 1994 No. 59 s 14

**Owner, lessee, mortgagee and secured creditors to give particulars to chief executive**

**s 44A** ins 1994 No. 59 s 15

**Orders for licensed premises etc.**

**prov hdg** sub 1994 No. 59 s 16(1)  
**s 46** amd 1994 No. 59 s 16(2)

**Division 2—Liquor Advisory Board**

**div (ss 50–57)** om 1994 No. 59 s 17

**Available licences**

**s 58** amd 1994 No. 59 s 18

**Authority of general licence**

**s 59** sub 1994 No. 59 s 19

**Authority of residential licence**

**s 62** amd 1994 No. 59 s 20

**Consumption of liquor on premises by residents and guests**

**s 64** amd 1994 No. 59 s 21

**Consumption of liquor with meals or when meals are being served**

**prov hdg** sub 1994 No. 59 s 22(1)  
**s 65** amd 1994 No. 59 s 22(2)

**Restriction on sale of liquor for consumption off premises**

**s 67** amd 1994 No. 59 s 3 sch 2

**Authority of on-premises licence**

**s 68** amd 1994 No. 59 s 23

**Restriction on sale and supply of liquor at cabarets**

**s 72A** ins 1994 No. 59 s 24

**Restriction on sale of liquor under on-premises licence**

**s 73** sub 1994 No. 59 s 25

**Number of liquor outlets**

**prov hdg** sub 1994 No. 59 s 3 sch 2  
**s 77** amd 1994 No. 59 s 3 sch 2

**Subdivision 7—Premises used for tourist attraction****sdiv hdg** pres sdiv 7 hdg ins 1994 No. 59 s 27**Subdivision 8—Railway refreshment rooms****sdiv hdg** prev sdiv 7 hdg renum 1994 No. 59 s 26**Authority of producer/wholesaler licence****s 82** amd 1994 No. 59 s 3 Sch 2**Restriction on grant of producer/wholesaler licence****s 83** amd 1994 No. 59 s 28**Restriction on sale of liquor under producer/wholesaler licence****s 84** amd 1994 No. 59 s 29**Authority of club licence****s 85** amd 1994 No. 59 s 3 sch 2**Restrictions on grant of club licence****s 86** amd 1993 No. 10 s 3**Requirements of club and secretary****s 88** amd 1994 No. 59 s 30**Division 7—Restricted club licence****Div hdg** (ss 89– 92)om 1994 No. 59 s 31**Authority of special facility licence****s 93** sub 1994 No. 59 s 32**Authority of limited licence****s 95** sub 1994 No. 59 s 33**Available permits****s 97** amd 1994 No. 59 s 3 sch 1**Restriction on grant of general purpose permit****s 99** amd 1994 No. 59 s 3 sch 1**Restriction on grant of extended hours permit****s 103** amd 1994 No. 59 s 34**Division 13—Restricted club permit****div hdg** pres div 13 hdg ins 1994 No. 59 s 36**Authority of restricted club permit****s 103A** ins 1994 No. 59 s 36**Restriction on grant of restricted club permit and other related matters****s 103B** ins 1994 No. 59 s 36**Duration of permit****s 103C** ins 1994 No. 59 s 36**Requirements of club and secretary****s 103D** ins 1994 No. 59 s 36

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**s 131B** ins 1994 No. 59 s 45

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**s 132** amd 1994 No. 59 s 46

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**s 133** amd 1994 No. 59 s 3 Sch 1

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s 173B ins 1992 No. 50 s 4; (as amd 1994 No. 42 s 2 sch)

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s 177 amd 1994 No. 59 s 3 sch 2

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s 209 amd 1994 No. 59 s 71

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s 219 sub 1994 No. 59 s 76

**Basis of calculation of premium**

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**Application of Trust Fund**

s 222      amd 1993 No. 57 s 5  
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s 231      sub 1994 No. 59 s 77

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**PART 11—TRANSITIONAL PROVISIONS**

pt hdg    amd R4 (see RA s 37)

**Object of Part**

s 236      sub 1993 No. 57 s 7

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s 238      amd 1994 No. 59 s 80

**Disposal of applications for removal**

s 238A    ins 1994 No. 59 s 81

**Termination of Court**

s 239      amd 1994 No. 59 s 82

**Termination of Commission**

s 240      om R1 (see RA s 38)

**Table of corresponding licences**

s 242      amd 1994 No. 59 s 83; 1995 No. 57 s 4 sch 2

**Variation of general licence (previously spirit merchant's (retail) licence)**

s 243A    ins 1994 No. 59 s 84

**Continuance of existing permits**

s 244      amd 1994 No. 59 s 85

**Continuance of business of brewers etc.**

s 245      om 1993 No. 57 s 8

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s 247 amd 1994 No. 59 s 86

**Apportionment of licence fees under s 18B of repealed Act**

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div hdg om 1993 No. 57 s 9

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**Division 4—Repeals**

div hdg om R1 (see RA s 37)

**References to Liquor Act 1912**

s 251 prev s 251 om R1 (see RA s 40)  
pres s 251 ins 1994 No. 15 s 3 sch 2

**PART 12—TRANSITIONAL PROVISIONS FOR RESTRICTED CLUB LICENCES**

pt hdg ins 1994 No. 59 s 87

**Object of Part**

s 252 prev s 252 renum as s 253 amd 1995 No. 57 s 4 sch 2  
pres s 252 (prev s 251) (2nd occurring) ins 1994 No. 59 s 87  
renum 1995 No. 57 s 4 sch 2

**Continuance of existing licences**

s 253 (prev s 252) ins 1994 No. 59 s 87  
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**Form 2 Version 1—Application for a Club Licence**

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**Form 3 Version 2—Application for Transfer of a Liquor Licence**

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**Form 4 Version 1—Application for Acceptance of New Nominee or Master**

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**Form 5 Version 2—Application Schedule**

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- Form 6 Version 2—Application for Registration of a Financial Interest**  
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- Form 7 Version 3—Application for General Purpose Permit**  
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- Form 8 Version 1—Application for Restricted Club Permit**  
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- Form 9 Version 1—Application for Extended Hours Permit (on a regular basis)**  
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- Form 10 Version 1—Application for Extended Hours Permit (not on a regular basis)**  
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- Form 11 Version 3—Application for Variation of Licence**  
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- Form 12 Version 1—Application for Approval under Section 59(1)(d) (Bottle shop)**  
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- Form 13 Version 1—Application for Alterations and Additions to Licensed Premises**  
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- Form 14 Version 1—Application for Temporary Licence**  
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- Form 18 Version 2—Application for Permission to be Absent from Licensed Premises**  
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