

Queensland



**LIQUOR (EVICTIONS,
UNLICENSED SALES AND
OTHER MATTERS)
AMENDMENT ACT 1999**

Act No. 54 of 1999

Queensland



LIQUOR (EVICTIONS, UNLICENSED SALES AND OTHER MATTERS) AMENDMENT ACT 1999

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MINOR AMENDMENTS

Queensland



**Liquor (Evictions, Unlicensed Sales and Other
Matters) Amendment Act 1999**

Act No. 54 of 1999

An Act to amend the *Liquor Act 1992*

[Assented to 18 November 1999]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Liquor (Evictions, Unlicensed Sales and Other Matters) Amendment Act 1999*.

Act amended

2. This Act amends the *Liquor Act 1992*.

Amendment of s 4 (Definitions)

3. Section 4—

insert—

‘**“disqualified person”** means a person disqualified under section 228A from holding a licence or permit.¹’.

Amendment of s 107 (Restrictions on grant of licence or permit)

4. Section 107(1), ‘is a fit and proper person’—

omit, insert—

‘is not a disqualified person and is a fit and proper person’.

Amendment of s 131A (Decision by chief executive on application to continue trading in certain circumstances)

5. Section 131A(5)—

omit, insert—

‘(5) If the chief executive is satisfied that the applicant and, if the

¹ Section 228A (Disqualification from holding licence or permit on conviction of certain offences)

applicant has nominated a nominee, the nominee are not disqualified persons and are fit and proper persons to conduct the business under the authority of the licence, the chief executive may authorise the applicant and nominee to conduct the business under the authority of the licence.

‘(5A) If the application was made because of an order for cancellation of the licence and the chief executive authorises the conduct of the business under subsection (5), the order for cancellation is set aside.’.

Amendment of s 134 (Cancellation, suspension or variation of permits)

6. Section 134—

insert—

‘(2) The chief executive must immediately cancel a permit if the chief executive is satisfied the permittee has become a disqualified person.’.

Amendment of s 136 (Cancellation of licences)

7.(1) Section 136(1)(d), ‘is not a fit and proper person’—

omit, insert—

‘is a disqualified person or is not a fit and proper person’.

(2) Section 136—

insert—

‘(5A) However, if the chief executive is satisfied the licensee or a nominee is a disqualified person, the chief executive must, by order, cancel the licence.’.

Replacement of s 146 (Sale or supply contrary to licence or permit)

8. Section 146—

omit, insert—

‘Supply contrary to licence or permit

‘146.(1) A licensee or permittee, or an employee or agent of a licensee or permittee, must not supply liquor—

- (a) at an unauthorised time; or
- (b) in an unauthorised quantity; or
- (c) in an unauthorised way; or
- (d) for an unauthorised purpose.

Maximum penalty—100 penalty units.

‘(2) In subsection (1)—

“supply” includes sell.

“unauthorised” means not authorised by the licence or permit.’.

Replacement of s 165 (Obstruction to eviction from premises)

9. Section 165—

omit, insert—

‘Removal of persons from premises

‘165.(1) An authorised person for premises to which a licence or permit relates may require a person to leave the premises if—

- (a) the person is unduly intoxicated; or
- (b) the person is disorderly; or
- (c) the person is creating a disturbance; or
- (d) the person is a minor, other than an exempt minor; or
- (e) the person has entered the premises despite being refused entry under section 165A; or
- (f) the person refuses to state particulars, or to produce evidence, as to age when required to do so under section 167.

‘(2) A person must immediately leave premises when required to do so under subsection (1).

Maximum penalty—25 penalty units.

‘(3) If a person fails to leave when required under subsection (1), the authorised person may use necessary and reasonable force to remove the person.

‘(4) A person must not resist an authorised person who is removing the person under subsection (3).

Maximum penalty—25 penalty units.

‘(5) In this section—

“**authorised person**”, for premises to which a licence or permit relates, means—

- (a) the licensee or permittee; or
- (b) an employee or agent of the licensee or permittee.

‘Refusing entry to premises

‘165A.(1) An authorised person for premises to which a licence or permit relates may refuse to allow a person to enter the premises if—

- (a) the person is unduly intoxicated; or
- (b) the person is disorderly; or
- (c) the person is a minor, other than an exempt minor; or
- (d) the authorised person suspects on reasonable grounds the person is a minor and the person fails to—
 - (i) produce acceptable evidence that the person is not a minor; or
 - (ii) show that, if admitted to the premises, the person will be an exempt minor.²

‘(2) A person must not enter, or attempt to enter, premises to which the person is refused entry under subsection (1).

Maximum penalty—25 penalty units.

² See sections 6 (Acceptable evidence of age) and 155 (Minors on premises).

‘(3) If a person attempts to enter premises despite being refused entry to the premises under subsection (1), an authorised person may use necessary and reasonable force to prevent the person from entering the premises.

‘(4) A person must not resist an authorised person who is preventing the person from entering premises under subsection (3).

Maximum penalty—25 penalty units.

‘(5) In this section—

“**authorised person**”, for premises to which a licence or permit relates, means—

- (a) the licensee or permittee; or
- (b) an employee or agent of the licensee or permittee.

‘Preservation of other rights to prevent entry to premises or remove persons from premises

‘**165B.** Sections 165 and 165A do not limit any rights a person has under another law to prevent entry to premises to anyone or remove anyone from premises.

Example—

A licensee decides on a dress standard for persons in the licensed premises. The licensee may exercise the licensee’s rights apart from this Act to stop anyone who does not comply with the standard from entering the premises.’.

Amendment of s 167 (Ascertainment of age)

10.(1) Section 167(2) and (3)—

omit.

(2) Section 167(4), definition “authorised person”, paragraphs (c) and (d)—

omit.

(3) Section 167(4)—

renumber as section 167(2).

Replacement of s 169 (Authority required for sale)

11. Section 169—

omit, insert—

‘Authority required for sale

‘169. A person must not sell liquor unless—

- (a) if the liquor is wine—the sale is made under the authority of a licence or permit under this Act or the *Wine Industry Act 1994*; or
- (b) otherwise—the sale is made under the authority of a licence or permit.

Maximum penalty—

- (a) for a first offence—500 penalty units; or
- (b) for a second offence—700 penalty units or 6 months imprisonment; or
- (c) for a third or later offence—1 000 penalty units or 18 months imprisonment.’.

Amendment of s 171 (Carrying or exposing liquor for sale)

12.(1) Section 171(1)—

insert—

‘Maximum penalty—

- (a) for a first offence—500 penalty units; or
- (b) for a second offence—700 penalty units or 6 months imprisonment; or
- (c) for a third or later offence—1 000 penalty units or 18 months imprisonment.’.

(2) Section 171, penalty at the end of the section—

omit.

Amendment of s 173 (Occupier and owner of unlicensed premises liable for sale of liquor etc.)

13.(1) Section 173(2), ‘suffered’—

omit, insert—

‘allowed’.

(2) Section 173(2)(b) and (c)—

renumber as section 173(2)(c) and (d).

(3) Section 173(2)(a)—

omit, insert—

‘(a) during the 2 years before the sale, liquor has been sold on the premises on at least 3 other occasions; and

(b) someone has been convicted of an offence against this division relating to the sale on each of the other occasions; and’.

(4) Section 173(3), ‘Two convictions’—

omit, insert—

‘A conviction’.

(5) Section 173(3), ‘constitute’—

omit, insert—

‘is’.

Amendment of s 177 (Entry and search—evidence of offences)

14.(1) Section 177(2)(b)—

omit.

(2) Section 177(2)(c)—

renumber as section 177(2)(b).

Amendment of s 178 (General powers of investigator in relation to places)

15.(1) Section 178(1)(f)—

omit, insert—

‘(f) the powers mentioned in sections 182 to 184.³’.

(2) Section 178(4) and (5)—

omit, insert—

‘**(4)** An investigator who damages anything when exercising or purporting to exercise a power under this part must, as soon as practicable after damaging the thing, give written notice of particulars of the damage to the person who appears to the investigator to be the owner.’.

(3) Section 178(6) and (7)—

renumber as section 178(5) and (6).

Insertion of new s 183A

16. After section 183—

insert—

‘Other powers of seizure

‘**183A.(1)** If an investigator knows, or suspects on reasonable grounds, that liquor is being sold, consumed, possessed or carried for sale in contravention of this Act, or has been sold in contravention of this Act, the investigator may seize any of the following—

- (a) the liquor;
- (b) bottles or other containers in which the liquor is contained;
- (c) if it is known or suspected that liquor is being or has been sold in

³ Sections 182 (Requirement to give name, address and age), 183 (Power to require answers to questions), 183A (Other powers of seizure) and 184 (Other powers of investigators)

contravention of section 169⁴—other property (including other liquor) that the investigator believes, on reasonable grounds, it is necessary to seize to prevent its use in continuing or repeating the contravention or suspected contravention;

- (d) if it is known or suspected that liquor is being carried for sale in contravention of section 171⁵—
- (i) utensils suitable for measuring or consuming the liquor;
 - (ii) a vehicle, boat, aircraft, animal or other thing being used to carry the liquor.

Examples of property that may be seized under paragraph (c)—

Refrigerators, glasses, glass washers, keg lines, measures, pourers, liquor display cabinets, shelving, signage, dry bars, bar stools, bar servery.

‘(2) In deciding for subsection (1)(c) whether it is necessary to seize property, the investigator must consider the following—

- (a) any previous occasions on which an investigator knows, or suspects on reasonable grounds, section 169 has been contravened—
 - (i) by the person from whom the property is being seized; or
 - (ii) in the premises from which the property is being seized;
- (b) any representations made to the investigator, by a person from whom the property is being seized, about the operational needs of a lawful business conducted by the person;
- (c) any other matter that may reasonably be taken to indicate whether or not a contravention of section 169 is likely to be continued or repeated if the property is not seized.

‘(3) In this section—

“**liquor**” includes anything suspected on reasonable grounds to be liquor.’.

⁴ Section 169 (Authority required for sale)

⁵ Section 171 (Carrying or exposing liquor for sale)

Amendment of s 184 (Other powers of investigators)

17.(1) Section 184(1)(d)—

omit, insert—

‘(d) the powers of an authorised person under sections 165, 165A and 167;⁶’.

(2) Section 184(1)(f) and (g)—

omit.

(3) Section 184(1)(h)—

renumber as section 184(1)(f).

(4) Section 184(3) and (4)—

omit.

Insertion of new pt 7, div 2

18. Part 7, after section 187—

insert—

‘Division 2—Provisions relating to seizure

‘Application

‘**187A.(1)** Sections 187B to 187G apply if an investigator who is not a police officer seizes property under this part.

‘**(2)** If an investigator who is a police officer seizes property under this part—

(a) sections 187B to 187G do not apply; and

(b) the *Police Powers and Responsibilities Act 1997* applies as if the property were seized as evidence under that Act.

⁶ Sections 165 (Removal of persons from premises), 165A (Refusing entry to premises) and 167 (Ascertainment of age)

‘Receipts for seized property

‘187B.(1) As soon as practicable after the investigator seizes the property, the investigator must give a receipt for it to the person from whom it was seized.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

‘(3) The receipt must describe generally each thing seized and its condition.

‘(4) This section does not apply to property if it is impracticable or would be unreasonable to give the receipt, given its nature, condition and value.

‘Return of seized property

‘187C.(1) This section applies to the seized property if it is not forfeited under section 187E or 187F.

‘(2) The investigator must return the property to the person from whom it was seized not later than the following times—

- (a) if a proceeding for an offence involving the property is started within 6 months after the seizure—at the end of the proceeding and any appeal from the proceeding;
- (b) otherwise—6 months after the seizure.

‘(3) Despite subsection (2), if the property was seized only as evidence, the investigator must immediately return the property if the investigator stops being satisfied its continued retention as evidence is necessary.

‘Access to seized property

‘187D.(1) Until the seized property is forfeited or returned, the investigator must allow its owner to inspect it and, if it is a document, to copy it.

‘(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

‘Forfeiture of unreturned property

‘187E.(1) The seized property is forfeited to the State if—

- (a) the investigator can not find the person from whom it was seized, after making reasonable inquiries; or
- (b) the investigator can not find the person from whom it was seized and it would be unreasonable to make inquiries to find the person; or
- (c) the investigator can not return it, after making reasonable efforts; or
- (d) it would be unreasonable to make efforts to return the property.

Examples for paragraph (d)—

1. The person from whom the property was seized has migrated to another country.
2. The seized property consists a small amount of liquor that does not have a high value.

‘(2) Regard must be had to the nature, condition and value of property in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

‘Forfeiture on conviction

‘187F.(1) On the conviction of a person for an offence against this Act involving the seized property, the court may order the forfeiture to the State of the property.

‘(2) The court may make the order whether or not the property has been returned to the person from whom it was seized.

‘(3) The court may make any order to enforce the forfeiture it considers appropriate.

‘(4) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

‘Dealing with forfeited property

‘**187G.(1)** On the forfeiture of property to the State, the property becomes the State’s property and may be dealt with by the chief executive as the chief executive considers appropriate.

‘**(2)** Without limiting subsection (1), the chief executive may destroy or dispose of the property.

‘**(3)** If the property is sold, the proceeds of sale are to be paid—

- (a) first, in meeting expenses of the sale; and
- (b) second, in meeting the expenses of the seizure and storage of the seized property; and
- (c) third, to the consolidated fund.’.

Insertion of new s 228A

19. After section 228—

insert—

‘Disqualification from holding licence or permit on conviction of certain offences

‘**228A.(1)** A person is disqualified from holding a licence or permit on the person’s second or later conviction of an unlicensed sales offence.

‘**(2)** The person remains disqualified for the following period—

- (a) if the conviction was the person’s second conviction of an unlicensed sales offence—5 years from the date of the conviction;
- (b) if the conviction was the person’s third or later conviction of an unlicensed sales offence—10 years from the date of the conviction.

‘**(3)** To remove doubt, it is declared that, in deciding for this section whether a conviction is a second, third or later conviction of an unlicensed sales offence, an expired conviction of an unlicensed sales offence must not be counted.

‘(4) In this section—

“**expired conviction**” means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and
- (b) that has not been revived under that Act.

“**unlicensed sales offence**” means an offence against section 169 or 171.⁷

Omission of s 232 (Forfeiture and disposal of seized property)

20. Section 232—

omit.

Insertion of new pt 12, div 2

21. After section 253—

insert—

‘Division 2—Transitional provisions for Liquor (Evictions, Unlicensed Sales and Other Matters) Amendment Act 1999

‘Meaning of “amending Act”

‘**254.** In this division—

“**amending Act**” means the *Liquor (Evictions, Unlicensed Sales and Other Matters) Amendment Act 1999*.

‘Transitional provision for amendment of s 169

‘**255.(1)** This section applies for deciding the penalty for an offence against section 169⁸ committed by a person after the commencement.

⁷ Section 169 (Authority required for sale) or 171 (Carrying or exposing liquor for sale)

⁸ Section 169 (Authority required for sale)

‘(2) Another offence against section 169 committed by the person before the commencement must not be counted in deciding whether the offence mentioned in subsection (1) is a first, second, third or later offence against section 169.

‘(3) In this section—

“**commencement**” means the commencement of section 11 of the amending Act.

‘**Transitional provision for amendment of s 171**

‘**256.(1)** This section applies for deciding the penalty for an offence against section 171(1)⁹ committed by a person after the commencement.

‘(2) Another offence against section 171(1) committed by the person before the commencement must not be counted in deciding whether the offence mentioned in subsection (1) is a first, second, third or later offence against section 171.

‘(3) In this section—

“**commencement**” means the commencement of section 12 of the amending Act.

‘**Transitional provision for amendment of s 173**

‘**257.(1)** This section applies to a sale of liquor on unlicensed premises after the commencement.

‘(2) In deciding under section 173(2)(a)¹⁰ whether, during the 2 years before the sale, liquor has been sold on the premises on at least 3 other occasions, an occasion before the commencement must not be counted.

‘(3) In this section—

“**commencement**” means the commencement of section 13 of the amending Act.

⁹ Section 171 (Carrying or exposing liquor for sale)

¹⁰ Section 173 (Occupier and owner of unlicensed premises liable for sale of liquor etc.)

‘Transitional provision for amendment of s 228A

‘258.(1) A person may be disqualified under section 228A¹¹ only on conviction of an unlicensed sales offence committed after the commencement.

‘(2) However, a conviction of an unlicensed sales offence committed before the commencement, whether the conviction happens before or after the commencement, must be counted in deciding whether the conviction mentioned in subsection (1) is a second, third or later conviction of an unlicensed sales offence.

‘(3) Subsection (2) applies subject to section 228A(3).

‘(4) In this section—

“commencement” means the commencement of section 19 of the amending Act.’.

¹¹ Section 228A (Disqualification from holding licence or permit on conviction of certain offences)

SCHEDULE

MINOR AMENDMENTS

section 2

1. Part 6, division 1, heading—

omit, insert—

‘Division 1—Provisions binding licensees, permittees and associated persons’.

2. Section 145B—

relocate to part 6, division 2 and *renumber* as section 155A.

3. Section 164(4), ‘likely’—

omit, insert—

‘is likely’.

4. Part 7, before section 174—

insert—

‘Division 1—Exercise of powers’.

5. Part 12, heading—

omit, insert—

‘PART 12—FURTHER TRANSITIONAL PROVISIONS

‘Division 1—Transitional provisions about restricted club licences for the Liquor Amendment Act (No. 2) 1994’.

6. Section 252, 'Part'—

omit, insert—

'division'.