

Queensland



LIQUOR AMENDMENT ACT 2003

Act No. 60 of 2003

Queensland



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Queensland



Liquor Amendment Act 2003

Act No. 60 of 2003

An Act to amend the *Liquor Act 1992*

[Assented to 13 October 2003]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Liquor Amendment Act 2003*.

2 Commencement

This Act, other than sections 3, 4(1), (2), (4) and (5), 5, 8 and 14 to 17, commences on 1 January 2004.

3 Act amended

This Act amends the *Liquor Act 1992*.

4 Amendment of s 4 (Definitions)

(1) Section 4, definitions “chief executive”, “licence” and “prescribed provision”—

omit.

(2) Section 4—

insert—

“**approval**”, for parts 5A and 5B, means an approval, under part 5A, as a trainer for the licensee’s course.

“**information notice**”, for a decision of the chief executive under part 5A, means a written notice stating the following—

- (a) the decision and the reasons for it;
- (b) that the person to whom the notice is given may apply to the chief executive for a review of the decision;
- (c) how the person may apply for a review.

“**licence**” includes a licence granted or provisionally granted, and a staged development approval issued, under this Act.

“**licensee’s course**” see section 142A(1).

“**original decision**”, for a review under part 5B, see section 142N(1).

“prescribed provision” means—

- (a) the *Community Services (Aborigines) Act 1984*, section 103; or
- (b) the *Community Services (Torres Strait) Act 1984*, section 101.¹

(3) Section 4, definition “controller”, ‘109AA’—

omit, insert—

‘109B’.

(4) Section 4, definition “disciplinary action”, paragraph (h)—

renumber as paragraph (i).

(5) Section 4, definition “disciplinary action”—

insert—

- ‘(h) requiring the licensee or nominee for the licence to undertake the licensee’s course within a stated period; or’.

(6) Section 4, definition “executive officer”, ‘107B’—

omit, insert—

‘107E’.

5 Amendment of s 21 (Jurisdiction and powers of Tribunal)

Section 21(1)—

insert—

- ‘(aa) a review decision under section 142P; or’.

6 Insertion of new ss 107AAA and 107AAB

After section 107—

insert—

‘107AAA Additional restriction on grant of licence

‘**(1)** This section applies to an application for a licence if—

1 *Community Services (Aborigines) Act 1984*, section 103 (Possession or consumption of alcohol in or on dry place) or *Community Services (Torres Strait) Act 1984*, section 101 (Possession or consumption of alcohol in or on dry place)

- (a) it is made by an individual; or
- (b) under section 109(1), an individual is nominated as nominee for the licence.

‘(2) The chief executive may grant the application only if the individual has, within 3 years before the day the application is granted—

- (a) successfully completed the licensee’s course; or
- (b) been the holder of, or nominee under this Act for, a licence of the type applied for.

‘(3) Despite subsection (2), the chief executive may grant the application if the chief executive—

- (a) is satisfied that—
 - (i) because of the locality in which the individual lived before the application was made, the individual could not, after becoming aware that the application would be made, undertake the licensee’s course before it was made; and
 - (ii) because of the locality in which the individual lives, the individual can not undertake the licensee’s course before the grant of the application; and
- (b) imposes a condition on the licence requiring the individual to successfully complete the licensee’s course within a stated period of not more than 1 year after the application is granted.

‘(4) Also, despite subsection (2), the chief executive may grant the application if the chief executive is satisfied the individual need not undertake the licensee’s course, having regard to the primary purpose, and the nature and extent, of the business conducted, or to be conducted, under the licence.

‘(5) In this section—

“**individual**” does not include an individual who is applying for the licence in the capacity of chief executive of a department.

‘107AAB Additional restriction on grant of permit

‘(1) This section applies to an application for a permit if the chief executive—

- (a) reasonably believes that, having regard to the nature of the activity to be conducted under the permit and to minimise harm

caused by alcohol abuse or misuse, the applicant or the applicant's nominee should undertake the licensee's course before the permit is granted; and

- (b) gives the applicant a written notice stating the applicant or the applicant's nominee must undertake the licensee's course before the permit is granted.

'(2) The chief executive may grant the application only if the applicant or the applicant's nominee successfully completes the licensee's course.

'(3) In this section—

“nature”, of the activity to be conducted under the permit, includes the duration, location or size of the activity.

“permit” does not include a restricted area permit.'

7 Insertion of new s 109AAA

After section 109—

insert—

'109AAA Restriction on acceptance of nominee for licence

'(1) The chief executive may accept an individual's nomination under section 109(9) only if the individual has, within 3 years before the day the nomination is made—

- (a) successfully completed the licensee's course; or
- (b) been the holder of, or a nominee under this Act for, a licence of the type for which the nomination is made.

'(2) Despite subsection (1), the chief executive may accept the nomination if the chief executive—

- (a) is satisfied that—
 - (i) because of the locality in which the individual lived before the nomination was made, the individual could not, after becoming aware that the nomination would be made, undertake the licensee's course before it was made; and
 - (ii) because of the locality in which the individual lives, the individual can not undertake the licensee's course before the nomination is accepted; and

- (b) imposes a condition on the licence requiring the individual to successfully complete the licensee's course within a stated period of not more than 1 year after the nomination is accepted.

'(3) Also, despite subsection (1), the chief executive may accept the nomination if the chief executive is satisfied the individual need not undertake the licensee's course, having regard to the primary purpose, and the nature and extent, of the business conducted, or to be conducted, under the licence.'

8 Amendment of s 111 (Variation of licence)

Section 111(2)—

insert—

- '(g) another matter for the purpose of ensuring compliance with this Act or minimising harm caused by alcohol abuse and misuse and associated violence.'

9 Omission of s 114 (Restriction on transfer of licence)

Section 114—

omit.

10 Amendment of s 123 (Chief executive may grant provisional licence)

Section 123(1)(a), 'section 107'—

omit, insert—

'sections 107 and 107A²'.

2 Sections 107 (Restrictions on grant of licence or permit) and 107A (Additional restriction on grant of licence)

11 Amendment of s 123A (Chief executive may grant authority to trade for staged development)

Section 123A(1)(a), 'section 107'—

omit, insert—

'sections 107 and 107A'.

12 Amendment of s 125 (Temporary authority)

(1) Section 125(5)—

renumber as section 125(6).

(2) Section 125—

insert—

'(5) The chief executive may impose conditions on the temporary authority—

- (a) to ensure appropriate compliance with this Act; or
- (b) to minimise harm caused by alcohol abuse and misuse and associated violence; or
- (c) to minimise alcohol-related disturbances, or public disorder, in a locality.'

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

(1) Section 131A—

insert—

'(2A) The chief executive may impose conditions on the authority under subsection (2)—

- (a) to ensure appropriate compliance with this Act; or
- (b) to minimise harm caused by alcohol abuse and misuse and associated violence; or
- (c) to minimise alcohol-related disturbances, or public disorder, in a locality.

'(2B) Without limiting subsection (2A), the chief executive may impose a condition requiring the applicant or the applicant's nominee to

successfully complete the licensee's course within 3 months after the authority is given'.

(2) Section 131A(3)(b), after 'licence'—

insert—

'or authority'.

14 Insertion of new pts 5A and 5B

After section 142—

insert—

'PART 5A—TRAINERS FOR LICENSEE'S COURSE

'Division 1—Appointment of public service officers as trainers

'142A Appointment of public service officer as trainer

(1) The chief executive may appoint a public service officer to be a trainer for a training course approved by the chief executive about a licensee's or a permittee's obligations under this Act (the "**licensee's course**").

(2) However, the chief executive may appoint the officer only if satisfied the officer has the necessary expertise or experience to conduct the course.

(3) Divisions 2 to 5 do not apply to an appointment under this section.

'Division 2—Obtaining approval as trainer

'142B Applying for approval as trainer

(1) A person may apply to the chief executive for approval as a trainer for the licensee's course.

(2) The person must be an individual.

(3) The application must be—

(a) in the approved form; and

(b) accompanied by—

- (i) any documents, identified in the approved form, the chief executive reasonably requires to decide the application; and
- (ii) the fee prescribed under a regulation.

‘(4) The applicant also must provide any other relevant information reasonably required by the chief executive to decide the application.

‘142C Deciding application

‘(1) The chief executive must consider the application and either grant or refuse to grant the application as soon as practicable after the last of the following events happens—

- (a) the chief executive receives the application;
- (b) the chief executive receives all necessary information to decide the application.

‘(2) The chief executive may grant the application only if satisfied the applicant has the necessary expertise or experience to conduct the licensee’s course.

‘(3) Without limiting subsection (2), in deciding the application the chief executive may have regard to each of the following—

- (a) the applicant’s knowledge of the Act;
- (b) the applicant’s experience in the liquor industry;
- (c) if the applicant is, or has been, a licensee, a permittee or a nominee for a licence—the applicant’s conduct in discharging the applicant’s duties under this Act as a licensee, a permittee or a nominee.

‘142D Grant of application

‘(1) If the chief executive decides to grant the application, the chief executive must as soon as practicable give the applicant written notice of the decision.

‘(2) The notice must state the term of the approval.

‘(3) An approval remains in force, unless sooner cancelled, for the period, of not more than 3 years, stated by the chief executive in the notice given under subsection (1).

‘142E Refusal of application

‘If the chief executive decides to refuse the application, the chief executive must as soon as practicable give the applicant an information notice for the decision.

‘Division 3—Renewal**‘142F Applying for renewal**

‘(1) A person may apply to the chief executive for renewal of the person’s approval.

‘(2) The application may only be made within 3 months before the last day of the period of the approval.

‘(3) The application must be—

(a) in the approved form; and

(b) accompanied by—

(i) any documents, identified in the approved form, the chief executive reasonably requires to decide the application; and

(ii) the fee prescribed under a regulation.

‘(4) The applicant also must provide any other relevant information reasonably required by the chief executive to decide the application.

‘142G Deciding application

‘(1) The chief executive must consider the application and either renew or refuse to renew the approval as soon as practicable after the last of the following events happens—

(a) the chief executive receives the application;

(b) the chief executive receives all necessary information to decide the application.

‘(2) The chief executive may renew the approval only if satisfied the applicant has the necessary expertise or experience to conduct the licensee’s course.

‘(3) Without limiting subsection (2), in deciding the application the chief executive may have regard to—

- (a) the same matters the chief executive may have regard to under section 142C(3); and
- (b) the applicant's previous conduct in discharging the applicant's duties as a trainer for the licensee's course.

'142H Renewal of approval

'(1) If the chief executive decides to renew the approval, the chief executive must as soon as practicable give the applicant written notice of the decision.

'(2) The notice must state the period of the renewed approval.

'142I Refusal to renew approval

'If the chief executive decides to refuse to renew the approval, the chief executive must as soon as practicable give the applicant an information notice for the decision.

'142J Approval continues pending decision about renewal

'(1) If a person applies for renewal of an approval under section 142F, the approval is taken to continue in force from the day it would, apart from this subsection, have ended until the day on which any of the following first happens—

- (a) the chief executive renews the approval;
- (b) if the chief executive decides to refuse to renew the approval, the chief executive gives the person an information notice for the decision;
- (c) the person withdraws the application for renewal;
- (d) the application lapses under section 142K.

'(2) If the chief executive renews the approval, the approval is taken to have been renewed from the day it would, apart from subsection (1), have ended.

'(3) This section does not apply if the approval is cancelled.

‘Division 4—Lapsing of applications**‘142K Lapsing of application**

‘(1) This section applies if an application for an approval, or renewal of an approval, is made under this part.

‘(2) The chief executive may make a requirement under section 142B(4) or 142F(4) for information to decide the application by giving the applicant a written notice stating—

- (a) the required information; and
- (b) the time by which the information must be given to the chief executive; and
- (c) that, if the information is not given to the chief executive by the stated time, the application will lapse.

‘(3) The stated time must be reasonable and, in any case, at least 21 days after the requirement is made.

‘(4) The chief executive may give the applicant a further notice extending or further extending the time if the chief executive is satisfied it would be reasonable in all the circumstances to give the extension.

‘(5) A notice may be given under subsection (4) even if the time to which it relates has lapsed.

‘(6) If the applicant does not comply with the requirement within the stated time, or any extension, the application lapses.

‘Division 5—Cancellation of approvals**‘142L Grounds for cancellation**

‘The chief executive may cancel a person’s approval if the chief executive believes on reasonable grounds—

- (a) the approval was granted in error or because of a materially false or fraudulent document, statement or representation; or
- (b) the person—
 - (i) is not conducting the licensee’s course in an appropriate way; or

- (ii) no longer has the necessary expertise to conduct the licensee's course.

'142M Procedure for cancellation

'(1) If the chief executive proposes to cancel a person's approval, the chief executive must give the person a written notice stating the following—

- (a) the chief executive proposes to cancel the approval;
- (b) the grounds for the proposed cancellation;
- (c) the facts and circumstances that are the basis for the grounds;
- (d) that the person may make, within a stated period, written representations to show why the approval should not be cancelled.

'(2) The stated period must end at least 21 days after the person is given the notice.

'(3) If, after considering all written representations made within the stated period, the chief executive still believes a ground exists to cancel the approval, the chief executive may cancel the approval.

'(4) The chief executive must, as soon as practicable after making a decision under subsection (3), give the person an information notice for the decision.

'(5) The decision takes effect on—

- (a) the day the notice is given; or
- (b) if a later day is stated in the notice—the stated day.

'PART 5B—REVIEW OF DECISIONS

'142N Application for review

'(1) Each of the following persons may apply to the chief executive for a review of the decision (the "**original decision**") stated for the person—

- (a) a person whose application for an approval is refused under section 142C;

(b) a person whose application for renewal of an approval is refused under section 142G;

(c) a person whose approval is cancelled under section 142M(3).

‘(2) The application must be made within 28 days after the information notice for the original decision is given to the person.

‘(3) The application must be in the approved form and supported by enough information to enable the chief executive to decide the application.

‘142O No stay of operation of decision

‘An application under section 142N for review of an original decision does not stay the decision.

‘142P Review decision

‘(1) This section applies to an application under section 142N for review of an original decision.

‘(2) Unless the chief executive made the original decision personally, the chief executive must ensure the application is not dealt with by—

(a) the person who made the original decision; or

(b) a person in a less senior office than the person who made the original decision.

‘(3) As soon as practicable after receiving the application, the chief executive must review the original decision and make a decision (the “**review decision**”)—

(a) confirming the original decision; or

(b) substituting another decision for the original decision.

‘(4) The chief executive must make the review decision on the material that led to the original decision and any other material the chief executive considers relevant.

‘(5) Immediately after making the review decision, the chief executive must give the person written notice of the review decision.

‘(6) The notice must state—

(a) the reasons for the review decision; and

- (b) that the person may, within 28 days after receiving the notice, apply to the tribunal for a review of the decision.’.

15 Amendment of s 149 (Licensee to exercise control over premises)

Section 149—

insert—

‘(2) Subsection (1)(b) applies subject to section 153(4).³’.

16 Amendment of s 153 (Letting or subletting of licensed premises)

Section 153—

insert—

‘(4) If the holder of a special facility licence does anything mentioned in subsection (3)(a) to (c) with the chief executive’s approval, section 149(1)(b) does not apply to the holder in relation to the part of the licensed premises for which the thing is done.’.

17 Amendment of s 226 (Contravention of conditions of licences etc.)

(1) Section 226, first paragraph (b)—

renumber as paragraph (d).

(2) Section 226, after first paragraph (a)—

insert—

‘(b) a temporary authority granted under section 125(1)(b); or

(c) an authority given under section 131A(2); or’.

(3) Section 226, penalty, paragraph (a), after ‘permit’—

insert—

‘, temporary authority, authority’.

3 Section 153 (Letting or subletting of licensed premises)

18 Insertion of new pt 12, div 5

After section 266—

insert—

‘Division 5—Transitional provision for Liquor Amendment Act 2003

‘267 Dealing with particular application or nomination

‘(1) This section applies to an application for a licence or permit, and a nomination made under section 109(9), if the application or nomination is made, but not decided or accepted, before the commencement.

‘(2) Despite sections 107A, 107B and 109A,⁴ the application must be decided, and the nomination dealt with, under this Act as in force immediately before the commencement.

‘(3) In this section—

“commencement” means the commencement of this section.’.

⁴ Sections 107A (Additional restriction on grant of licence), 107B (Additional restriction on grant of permit) and 109A (Restriction on acceptance of nominee for licence)

SCHEDULE

MINOR AMENDMENTS

section 3

1 Sections 107AAA to 107C—

renumber as sections 107A to 107F.

2 Section 109(1)(c), ‘vessel’—

omit, insert—

‘boat’.

3 Sections 109AAA to 109A—

renumber as sections 109A to 109C.

4 Section 111(4), ‘109A’—

omit, insert—

‘109C’.

5 Section 149, from paragraph (c)—

omit, insert—

‘(c) must not, other than with the chief executive’s prior approval, 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;

SCHEDULE (continued)

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

Maximum penalty—100 penalty units.’.

6 Section 173G(2), after ‘subsection (1),’—

insert—

‘a’.