



AUSTRALIAN CAPITAL TERRITORY

Liquor (Amendment) Act (No. 2) 1990

No. 56 of 1990

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AUSTRALIAN CAPITAL TERRITORY

Liquor (Amendment) Act (No. 2) 1990

No. 56 of 1990

An Act to amend the *Liquor Act 1975*

[Notified in ACT Gazette S92: 21 December 1990]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Liquor (Amendment) Act (No. 2) 1990*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
(2) The remaining provisions commence on 1 January 1991.

Principal Act

3. In this Act, “Principal Act” means the *Liquor Act 1975*.¹

Interpretation**4.** Section 4 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definition of “hearing” and substituting the following definition:

“ ‘hearing’, in relation to the consideration of a matter by the Board under Part XII, means a meeting of the Board to hear oral argument or receive evidence in relation to that matter;”;

- (b) by omitting from subsection (1) the definitions of “Authority”, “senior member” and “the Authority Act”; and

- (c) by inserting in subsection (1) the following definitions:

“ ‘Board’ means the Liquor Licensing Board;

‘Commissioner’ means the Commissioner for Australian Capital Territory Revenue appointed under subsection 5 (1) of the *Taxation (Administration) Act 1987*;

‘member’ means a member of the Board;

‘relevant decision maker’ means, in relation to a decision made, or required to be made, pursuant to this Act, the Registrar or the Board, as the case requires;”.

Insertion

5. Before section 13 of the Principal Act the following Division is inserted in Part II:

“Division 1—Liquor Licensing Board

Establishment of Board

“12A. For the purposes of this Act the Liquor Licensing Board is established by this section.

Functions of Board

“12B. The functions of the Board are—

- (a) to consider and determine applications or other matters referred to it under this Act;
- (b) to conduct inquiries, including hearings, in relation to applications or other matters referred to it under this Act;

- (c) to advise the Minister, as required, on matters of policy and administration; and
- (d) to perform such other functions and duties as are conferred on it by or under this Act or another Act.

Membership of Board

“12C. The Board shall consist of—

- (a) a Chairperson appointed by the Minister;
- (b) the person for the time being holding the office of Registrar; and
- (c) 1 other person appointed by the Minister.

Appointment of members

“12D. (1) The Minister shall not appoint a person to be the Chairperson unless the person has been enrolled as a legal practitioner (however described) of the High Court or of the Supreme Court of a State or Territory for not less than 5 years.

“(2) A member other than the Registrar—

- (a) shall be appointed in writing; and
- (b) holds office for such period (not exceeding 5 years) as is specified in the instrument of appointment, but is eligible for re-appointment.

“(3) A member holds office on a part-time basis.

“(4) The appointment of a member is not invalidated, and shall not be called in question, by reason of a defect or irregularity in or in connection with the appointment of the member.

Acting appointments

“12E. (1) The Minister may appoint a person to act as the Chairperson of the Board—

- (a) during a vacancy in the office of the Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods when the Chairperson is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office.

“(2) A person shall not be appointed to act in the office of Chairperson unless the person is legally qualified in accordance with subsection 12D (1).

“(3) The Minister may appoint a person to act as a member, other than the Chairperson or the Registrar—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office.

“(4) Anything done by or in relation to a person purporting to act under subsection (1) or (3) is not invalid on the ground that—

- (a) the occasion for the person’s appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person’s appointment;
- (c) the person’s appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

“(5) Notwithstanding subsections (1) and (3), where—

- (a) a person is appointed to act in the office of a member; and
- (b) the holder of that office resumes duties;

the person referred to in paragraph (a) may, with the consent of the Minister, continue to act as a member for the purpose of enabling the Board to deal with any matters part heard or reserved for decision during a period when that person was so acting.

Remuneration and allowances

“12F. (1) An appointed member of the Board shall be paid such remuneration and allowances as are determined by the Minister by instrument in writing.

“(2) Subsection (1) does not apply—

- (a) in relation to remuneration if there is a subsisting determination relating to the remuneration to be paid to the member; or
- (b) in relation to an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

“(3) An instrument referred to in subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

“(4) In subsection (2)—

‘determination’ means a determination of the Remuneration Tribunal of the Commonwealth.

Leave of absence

“12G. The Minister may grant leave of absence to a member of the Board on such terms and conditions as the Minister considers appropriate.

Resignation

“12H. An appointed member of the Board may resign his or her office by written notice delivered to the Minister.

Disclosure of interest

“12J. (1) A member who has or acquires any interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Board.

“(2) A disclosure shall be noted in the record of the meeting and, except with the consent of all the parties to the matter before the Board, the member shall not—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

Termination of appointment

“12K. (1) The Minister may terminate the appointment of an appointed member of the Board for misbehaviour or physical or mental incapacity.

“(2) If an appointed member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of those creditors;
- (b) is absent, except on leave granted under section 12G, from 2 consecutive meetings of the Board;
- (c) fails, without reasonable excuse, to comply with an obligation imposed by section 12J; or

- (d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 1 year or longer;

the Minister shall, by written notice served on the member, terminate the appointment of the member.

Convening meetings

“12L. (1) The Chairperson of the Board shall convene such meetings of the Board as the Chairperson considers necessary for the efficient performance of its functions.

“(2) Where the Chairperson proposes to convene a meeting of the Board, the Chairperson shall, not later than 7 days before the date of the proposed meeting, give each member of the Board a notice in writing specifying—

- (a) the date, time and place of the meeting; and
- (b) the matters to be considered at the meeting.

“(3) Notwithstanding subsection (2), a meeting of the Board may be convened by prior consultation and agreement between the members.

Procedure at meetings

“12M. (1) The Chairperson shall preside at all meetings of the Board.

“(2) The presence of all members constitutes a quorum at a meeting except as provided in subsection (3).

“(3) If a member ceases to be available for a meeting of the Board in relation to a matter, the 2 remaining members may continue to deal with that matter subject to the agreement of all the parties to the matter before the Board.

“(4) If the Chairperson is unavailable in circumstances referred to in subsection (3) the Registrar shall preside at the meeting.

“(5) Matters arising for decision at a meeting of the Board shall be determined by a majority of votes of members present and voting.

“(6) The member presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

“(7) Subject to this Act, a member presiding at a meeting of the Board may determine the procedure to be followed at or in connection with the meeting.

“(8) The Board shall keep a record in writing of its proceedings.”.

Repeal

6. Section 13 of the Principal Act is repealed.

Insertion

7. Before section 15 of the Principal Act the following heading is inserted:

“Division 2—Registrar, Deputy Registrar and inspectors”.

Substitution

8. Section 15 of the Principal Act is repealed and the following sections are substituted:

Registrar and Deputy Registrar

“14. (1) The Minister shall appoint—

- (a) a Registrar of Liquor Licences; and
- (b) a Deputy Registrar of Liquor Licences.

“(2) A person is not eligible for appointment as Registrar or as Deputy Registrar unless the person is a public servant.

“(3) The Registrar shall perform such duties as are conferred on the Registrar under this Act or another Act.

“(4) The Deputy Registrar shall perform such duties as the Registrar directs.

“(5) If the person appointed as Registrar or Deputy Registrar ceases to be a public servant that person shall cease to hold office as Registrar or Deputy Registrar, as the case may be.

Acting appointments

“15. (1) The Minister may appoint a person to act as Registrar—

- (a) during a vacancy in the office of Registrar, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Registrar is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office;

but a person appointed to act during a vacancy shall not continue to so act for more than 12 months.

“(2) A person is not eligible for appointment under this section unless the person is a public servant.

“(3) Anything done by or in relation to a person purporting to act under an appointment made under this section is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.”.

Inspectors

9. Section 16 of the Principal Act is amended—

- (a) by omitting from subsection (1) “persons” and substituting “public servants”; and
- (b) by omitting from subsection (2) “the Authority or”.

Inspectors’ powers of entry

10. Section 17 of the Principal Act is amended by omitting from the definition of “approved analyst” in subsection (11) “Authority” and substituting “Registrar”.

Licensing Standards Manual

11. Section 18 of the Principal Act is amended—

- (a) by omitting “Authority” (wherever occurring) and substituting “Registrar”; and
- (b) by omitting subsection (2) and substituting the following subsection:

“(2) The Registrar shall set out in the Manual the general standards that, as approved in writing by the Minister, have effect as the standards to be met in relation to the construction of premises in respect of which licences are sought.”.

Substitution

12. Sections 30, 32 and 33 of the Principal Act are repealed and the following sections substituted:

Application for licence

“30. (1) An application for the issue of a licence may be made in writing and lodged with the Registrar.

“(2) For the purpose of making a decision in relation to an application, the Registrar may direct the Deputy Registrar to investigate the application and prepare a written report of the results of that investigation.

“(3) As soon as is reasonably practicable, the Registrar shall consider the application and the report (if any) of the Deputy Registrar and, subject to the requirements of this Act in relation to the application, shall, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to issue the licence applied for—agree to the issue of the licence;
- (b) if satisfied that, on the material being considered, there is no substantial ground on which to issue the licence applied for—refuse to issue the licence; and
- (c) in any other case—refer the application to the Board for consideration in accordance with Part XII.

“(4) An application referred to the Board by the Registrar shall be considered by the Board in accordance with Part XII and, subject to the requirements of this Act in relation to the application, the Board shall, in writing—

- (a) agree to the issue of the licence; or
- (b) refuse to issue the licence.

Class of licences

“33. Where a decision is made for the issue of a licence to an applicant, the licence shall be issued for the class applied for, unless the relevant decision maker considers, on reasonable grounds, that a licence of a different class should be issued.”.

Issue of licences—relevant considerations

13. Section 33A of the Principal Act is amended—

- (a) by omitting subsection (1);

- (b) by omitting from subsection (2) all the words from and including “The” to and including “following:” and substituting the following:

“For the purposes of making a decision in relation to an application for a licence, the relevant decision maker shall consider the following matters:

- (aa) whether the applicant is a fit and proper person to hold a licence;
 - (ab) whether the premises in respect of which the licence is sought are fit and proper premises for the purpose of the licence;
 - (ac) whether the conditions of the Crown lease over the premises are appropriate conditions for the purpose of the licence applied for;”;
- (c) by omitting from subsection (3) “Authority” (wherever occurring) and substituting “the relevant decision maker”.

Issue and transfer of club licences—conditions

14. Section 34 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Authority shall not authorise” and substituting “relevant decision maker shall not agree to”;
- (b) by omitting from subsection (2) “Authority shall not authorise” and substituting “relevant decision maker shall not agree to”;
- (c) by omitting from paragraph (2) (a) “Authority” and substituting “Minister”;
- (d) by omitting from subsection (3) “Authority shall not authorise” and substituting “relevant decision maker shall not agree to”;
- (e) by omitting from subsection (4) “Authority” and substituting “relevant decision maker”;
- (f) by omitting from subsection (4A) “Authority shall not authorise” and substituting “relevant decision maker shall not agree to”; and
- (g) by omitting from subsection (5) “Authority” and substituting “Registrar”.

Issue of special licences

15. Section 34A of the Principal Act is amended by omitting “Authority” (wherever occurring) and substituting “relevant decision maker”.

Licence not to be issued while premises incomplete

16. Section 35 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Authority authorises” and substituting “relevant decision maker agrees to”;
- (b) by omitting from subsection (2) “Authority authorised” and substituting “relevant decision maker agreed to”; and
- (c) by omitting from subsection (2) “Authority” (second occurring) and substituting “Registrar”.

Issue of licences

17. Section 36 of the Principal Act is amended by omitting from subsection (1) “Authority has authorised” and substituting “relevant decision maker has agreed to”.

Duration of licence

18. Section 37 of the Principal Act is amended—

- (a) by omitting from paragraph (2) (a) “by the Authority”;
- (b) by omitting from paragraph (2) (b) “Authority” and substituting “Registrar”; and
- (c) by omitting from subsection (3) “Authority” (wherever occurring) and substituting “Registrar”.

Effect of lapse of licence for failure to pay renewal fees

19. Section 40B of the Principal Act is amended—

- (a) by omitting “Authority” (first occurring) and substituting “relevant decision maker”; and
- (b) by omitting from paragraph (b) “Authority” and substituting “Commissioner”.

Transfer

20. Section 41 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Authority may authorise” and substituting “Registrar may, subject to this section, authorise”;
- (b) by inserting after subsection (1) the following subsections:

“(1A) For the purpose of making a decision in relation to an application, the Registrar may direct the Deputy Registrar to investigate the application and prepare a written report of the results of that investigation.

“(1B) As soon as is reasonably practicable, the Registrar shall consider the application and the report (if any) of the Deputy Registrar and, subject to the requirements of this Act in relation to the application, shall, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to authorise the transfer of the licence—authorise the transfer of the licence;
- (b) if satisfied that, on the material being considered, there is no substantial ground on which to authorise the transfer of the licence—refuse to authorise the transfer of the licence; and
- (c) in any other case—refer the application to the Board for consideration in accordance with Part XII.

“(1C) An application referred to the Board by the Registrar shall be considered by the Board in accordance with Part XII and, subject to the requirements of this Act in relation to the application, the Board shall, in writing—

- (a) authorise the transfer of the licence; or
- (b) refuse to authorise the transfer.

“(1D) A licence shall not be transferred unless the determined fee has been paid.”;

- (c) by omitting from subsection (2) “Authority” (wherever occurring) and substituting “relevant decision maker”; and
- (d) by omitting from subsection (3) “Authority” and substituting “relevant decision maker”.

Relevant considerations

21. Section 42 of the Principal Act is amended by omitting “Authority” (wherever occurring) and substituting “relevant decision maker”.

Failure to pay termination fees

22. Section 42E of the Principal Act is amended by omitting “Authority” (wherever occurring) and substituting “Commissioner”.

Manner of making complaint

23. Section 44 of the Principal Act is amended by omitting from subsection (3) all words from and including “shall make such” to and including “and shall” and substituting “shall direct the Deputy Registrar to make investigations of the subject matter of the complaint and”.

Substitution

24. Section 45 of the Principal Act is repealed and the following section substituted:

Consideration of complaints by Registrar

“45. (1) As soon as is reasonably practicable after a complaint has been made, the Registrar shall consider the complaint and the report from the Deputy Registrar and shall, in writing—

- (a) if satisfied that, on the material being considered, there are reasonable grounds upon which the Board might decide to cancel a licence under Division 5—refer the matter to the Board for consideration under Part XII;
- (b) if satisfied that, on the material being considered, there are reasonable grounds upon which the Board might be authorised to issue directions under Division 3—refer the matter to the Board for consideration under Part XII; and
- (c) in any other case—inform the person by whom the complaint was made that the complaint has been investigated but no further action is warranted.”.

Ground for suspension or reprimand

25. Section 47 of the Principal Act is amended by omitting “Authority” and substituting “Board”.

Substitution

26. Section 48 of the Principal Act is repealed and the following section substituted:

Referral to Board

“48. (1) Where, upon investigation, the Registrar is satisfied that, on the material being considered, there are reasonable grounds upon which the Board might decide to suspend a licence or issue a reprimand to the licensee, the Registrar shall, in writing, refer the matter to the Board for consideration under Part XII.

“(2) The Registrar shall not refer a matter to the Board under subsection (1) on a ground relating to a possible contravention of a direction by a licensee where the Registrar refers a matter for consideration by the Board under Division 5 on grounds including that contravention.”.

Suspension or reprimand

27. Section 49 of the Principal Act is amended—

- (a) by omitting from subsection (1) “application in accordance with section 48, the Authority” and substituting “referral of a matter in accordance with section 48, the Board”;
- (b) by omitting from paragraph (1) (a) “in the application” and substituting “in the documents provided to the Board by the Registrar”;
- (c) by omitting from paragraph (1) (a) “application” (second occurring) and substituting “matter”;
- (d) by omitting from paragraph (1) (b) “conduct a hearing in relation to the application” and substituting “consider the matter in accordance with Part XII”;
- (e) by omitting from subsection (2) “conducting a hearing, the Authority” and substituting “considering the matter, the Board”;
- and
- (f) by omitting from paragraph (2) (c) “application” and substituting “matter”.

Substitution

28. Section 54 of the Principal Act is repealed and the following section substituted:

Referral to Board

“54. (1) Where, upon investigation, the Registrar is satisfied that, on the material being considered, there are reasonable grounds upon which the Board might decide to cancel a licence, the Registrar shall, in writing, refer the matter to the Board for consideration under Part XII.”.

Cancellation

29. Section 55 of the Principal Act is amended—

- (a) by omitting from subsection (1) “application in accordance with section 54, the Authority” and substituting “referral of a matter in accordance with section 54, the Board”;

- (b) by omitting from paragraph (1) (a) “in the application” and substituting “in the documents provided to the Board by the Registrar”;
- (c) by omitting from paragraph (1) (a) “application” (second occurring) and substituting “matter”;
- (d) by omitting from paragraph (1) (b) “conduct a hearing in relation to the application” and substituting “consider the matter in accordance with Part XII”;
- (e) by omitting from subsection (2) “conducting a hearing, the Authority” and substituting “considering the matter, the Board”; and
- (f) by omitting from paragraph (2) (b) “application” and substituting “matter”.

Application for alteration

30. Section 56 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Authority” and substituting “Registrar”; and
- (b) by omitting subsection (4) and substituting the following subsection:

“(4) For the purpose of making a decision in relation to an application the Registrar may direct the Deputy Registrar to investigate the application and prepare a written report of the results of that investigation.”.

Substitution

31. Section 57 of the Principal Act is repealed and the following sections are substituted:

Decision by Registrar

“57. As soon as is reasonably practicable, the Registrar shall consider the application and the report (if any) of the Deputy Registrar and, subject to the requirements of this Act in relation to the application, the Registrar shall, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to approve the alteration—approve the alteration;

- (b) if satisfied that, on the material being considered, there is no substantial ground on which to approve the alteration—refuse to approve the alteration; and
- (c) in any other case—refer the application to the Board for consideration under Part XII.

Decision by Board

“57A. On referral of an application under section 57, the Board shall consider the matter in accordance with Part XII and, subject to the requirements of this Act in relation to the application, the Board shall, in writing—

- (a) approve the alteration; or
- (b) refuse to approve the alteration.

Relevant considerations

“57B. For the purposes of making a decision in relation to an application for alteration to the licensed premises, the relevant decision maker shall consider whether the licensed premises would, if the proposed alteration were made, substantially comply with the Manual.”.

Offences

32. Section 58 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Authority” and substituting “relevant decision maker under this Part”; and
- (b) by omitting from subsection (2) “Authority” (wherever occurring) and substituting “relevant decision maker under this Part”.

Application for closure

33. Section 59 of the Principal Act is amended—

- (a) by omitting from subsections (1) and (2) “Authority” and substituting “Registrar”; and
- (b) by omitting subsection (3) and substituting the following subsection:

“(3) For the purposes of making a decision in relation to an application, the Registrar may direct the Deputy Registrar to investigate the application and prepare a written report of the results of that investigation.”.

Substitution

34. Section 60 of the Principal Act is repealed and the following sections are substituted:

Decision of Registrar

“60. As soon as is reasonably practicable, the Registrar shall consider the application and report (if any) of the Deputy Registrar and, subject to the requirements of this Act in relation to the application, the Registrar shall, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to approve the closure—approve the closure;
- (b) if satisfied that, on the material being considered, there is no substantial ground on which to approve the closure—refuse to approve the closure; and
- (c) in any other case—refer the application to the Board for consideration under Part XII.

Decision of Board

“60AA. On referral of an application under section 60, the Board shall consider the matter in accordance with Part XII and, subject to the requirements of this Act in relation to the application, the Board shall, in writing—

- (a) approve the closure; or
- (b) refuse to approve the closure.

Relevant considerations

“60AB. For the purposes of making a decision in relation to an application for closure of licensed premises, the relevant decision maker shall consider whether the licensed premises would, if the proposed closure were made, cease to meet the reasonable requirements of the public.”.

Offences

35. Section 60A of the Principal Act is amended—

- (a) by omitting from subsection (1) “Authority” and substituting “relevant decision maker under this Part”;
- (b) by omitting from subsection (1) “under section 60”; and
- (c) by omitting from subsection (2) “under section 60” and substituting “under this Part”.

Substitution

36. Sections 63 and 64 of the Principal Act are repealed and the following sections substituted:

Consideration of application

“63. (1) For the purpose of considering an application for the issue of a permit, the Registrar may direct the Deputy Registrar to investigate the application and prepare a written report of the results of that investigation.

“(2) As soon as is reasonably practicable, the Registrar shall consider the application and the report (if any) from the Deputy Registrar and, subject to the requirements of this Act in relation to the application, shall, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to issue a permit requested by the applicant—issue the permit;
- (b) if satisfied that, on the material being considered, there is no substantial ground on which to issue a permit requested by the applicant—refuse to issue the permit; and
- (c) in any other case—refer the application to the Board for consideration under Part XII.

Consideration by Board

“64. An application for a permit referred to the Board by the Registrar shall be considered by the Board in accordance with Part XII and, subject to the requirements of this Act in relation to the application, the Board shall, in writing—

- (a) authorise the issue of the permit; or
- (b) refuse to authorise the issue of the permit.”.

Direction for issue of permit

37. Section 65 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words from and including “After” to and including “reasonable grounds that—” and substituting “In considering an application for a permit, the relevant decision maker shall refuse to make a decision to issue the permit sought by the applicant if satisfied on reasonable grounds that—”;
- (b) by omitting from subsection (2) “Authority” (first occurring) and substituting “relevant decision maker”;

- (c) by omitting from subsection (2) “Authority may direct the Registrar to issue to the applicant” and substituting “relevant decision maker may agree to the issue of”;
- (d) by omitting from subsection (2) “Authority” (last occurring) and substituting “relevant decision maker”;
- (e) by omitting from subsection (3) “Authority” (first occurring) and substituting “relevant decision maker”;
- (f) by omitting from subsection (3) “Authority may direct the Registrar to issue to the applicant” and substituting “the relevant decision maker may agree to the issue of”;
- (g) by omitting from subsection (3) “Authority” (last occurring) and substituting “relevant decision maker”;
- (h) by omitting from subsection (4) “Authority” (first occurring) and substituting “relevant decision maker”;
- (i) by omitting from subsection (4) “Authority, may if it thinks fit, direct the Registrar to issue to the applicant” and substituting “relevant decision maker may agree to the issue of”;
- (j) by omitting from subsection (4) “Authority” (last occurring) and substituting “relevant decision maker”; and
- (k) by omitting from subsection (5) “Authority” (wherever occurring) and substituting “relevant decision maker”.

Complaints

38. Section 66B of the Principal Act is amended by omitting from subsection (1) “shall” and substituting “shall direct the Deputy Registrar to—”.

Referral to Board

39. Section 66C of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:
 - “(a) is satisfied that, on the material being considered, there are reasonable grounds upon which the Board might decide to cancel a permit;”;
- (b) by omitting from subsection (1) “apply to the Authority for the cancellation of the relevant permit” and substituting “, in writing, refer the matter to the Board for consideration under Part XII”; and

- (c) by omitting subsections (2) and (3) and substituting the following subsection:

“(2) Where, after investigation of a complaint, the Registrar decides not to proceed under subsection 66C (1), the Registrar shall inform the person by whom the complaint has been made that the complaint has been investigated but no further action is warranted.”.

Cancellation

40. Section 66D of the Principal Act is amended—

- (a) by omitting from subsection (1) “On application by the Registrar under section 66C, the Authority shall—” and substituting “In considering a matter referred to it by the Registrar under section 66C, the Board shall—”;
- (b) by omitting from paragraph (1) (a) “Authority” and substituting “Board”;
- (c) by omitting from paragraph (1) (a) “in the application and any Registrar’s report” and substituting “in the documents provided to the Board by the Registrar”;
- (d) by omitting from paragraph (1) (a) “dismiss the application” and substituting “dismiss the matter”;
- (e) by omitting from paragraph (1) (b) “conduct a hearing in relation to the application” and substituting “consider the matter in accordance with Part XII”;
- (f) by omitting from subsection (2) “conducting a hearing, the Authority” and substituting “considering the matter, the Board”;
- and
- (g) by omitting from paragraph (2) (b) “application” and substituting “matter”.

Annual certificate of liquor transactions

41. Section 76B of the Principal Act is amended by omitting “Registrar” and substituting “Commissioner”.

Heading to Part XII

42. The heading to Part XII is omitted and the following heading substituted:

“PART XII—INQUIRIES BY THE BOARD”.

Substitution

43. Section 96 of the Principal Act is repealed and the following sections are substituted:

Interpretation

“96. In this Part—

‘matter’ means a matter referred to the Board for consideration under this Part, being a matter relating to—

- (a) an application for a licence;
- (b) a complaint;
- (c) the suspension of a licence or the issue of a reprimand to the licensee;
- (d) the cancellation of a licence;
- (e) an application for an alteration of licensed premises under Part VI;
- (f) an application for an approval under Part VII;
- (g) an application for a permit; or
- (h) the cancellation of a permit.

Consideration by Board

“96A. (1) For the purpose of making a decision in relation to a matter, the Board shall inquire into the matter and for that purpose may inform itself in such manner as it considers appropriate having regard to—

- (a) the issues arising for decision in the matter;
- (b) the need to ensure procedural fairness to persons likely to be affected by a decision of the Board in relation to the matter; and
- (c) the due administration of this Act.

“(2) For the purpose of inquiring into a matter, the Registrar shall provide the Board with—

- (a) copies of all documentary evidence lodged with, or obtained by, the Registrar in relation to the matter; and
- (b) copies of the written record of results of investigations (if any) conducted by the Deputy Registrar in relation to the matter.

“(3) If the Board is of the opinion that further investigation of the matter is desirable, the Board may direct the Deputy Registrar to make such further investigations as the Board specifies and report the results of the investigations to the Board.”.

Notice of hearing

44. Section 97 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“97. (1) Where the Board considers it appropriate to conduct a hearing in relation to a matter, the Chairperson of the Board shall fix a time, date and place for the hearing and the Deputy Registrar shall, not less than 7 days before that date, serve on—

- (a) in the case of a matter relating to the cancellation or suspension of a licence, the issue of a reprimand to a licensee or the cancellation of a permit—each relevant licensee or holder; and

- (b) in any other case—the applicant;
notice of that time, date and place.”;

- (b) by omitting from subsection (2) “Registrar’s report” and substituting “Deputy Registrar’s report (if any)”; and

- (c) by omitting subsection (3) and substituting the following subsection:

“(3) Where a matter relates to the cancellation or suspension of a licence, the issue of a reprimand to a licensee or cancellation of a permit, the notice under subsection (1) shall be accompanied by a copy of—

- (a) a statement of facts giving rise to the matter being referred to the Board; and

- (b) in the case of a matter relating to cancellation of a permit, the Deputy Registrar’s report (if any) about any relevant complaints.”.

Procedure

45. Section 98 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Authority” and substituting “Board”;

- (b) by omitting from subsection (2) “Authority” and substituting “Board”;

- (c) by omitting from subsection (2) “an application for the cancellation of a licence or permit” and substituting “a matter relating to the cancellation or suspension of a licence, the issue of a reprimand to a licensee or the cancellation of a permit”; and
- (d) by omitting from subsections (3), (4) and (5) “Authority” (wherever occurring) and substituting “Board”.

Substitution

46. Section 101 of the Principal Act is repealed and the following section substituted:

Legal representation

“101. At a hearing in relation to a matter—

- (a) a person appearing before the Board; or
- (b) the Board;

may be represented by a barrister and solicitor who may examine witnesses and address the Board—

- (c) if representing a person referred to in paragraph (a)—on behalf of that person; or
- (d) if representing the Board—on behalf of the Board.”.

Witnesses

47. Section 102 of the Principal Act is amended—

- (a) by omitting from subsection (1) “senior member” and substituting “Chairperson of the Board”;
- (b) by omitting the penalty at the foot of subsection (2) and substituting the following penalty:

“Penalty: \$1,000 or imprisonment for 6 months, or both.”;
- (c) by inserting in subsection (3) “, without reasonable excuse,” after “shall not”;
- (d) by omitting the penalty at the foot of subsection (3) and substituting the following penalty:

“Penalty: \$1,000 or imprisonment for 6 months, or both.”;

and
- (e) by omitting from paragraph (5) (a) “the senior member, a member of the Authority or the Registrar—” and substituting “a member of the Board—”.

Insertion

48. After section 103 of the Principal Act the following section is inserted:

Protection of members and witnesses

“103A. (1) An action or proceeding, civil or criminal, does not lie against a member for or in respect of an act or thing done in good faith by the member in his or her capacity as a member.

“(2) A barrister and solicitor appearing at a hearing conducted by the Board have the same protection and immunity as a barrister and solicitor have when appearing for a party in proceedings in the Supreme Court.

“(3) A witness summonsed to attend or appear at a hearing has the same protection as a witness in proceedings in the Supreme Court.”.

Substitution

49. Part XIII of the Principal Act is repealed and the following Part substituted:

“PART XIII—REVIEW OF DECISIONS**Review by Tribunal**

“104. An application may be made to the Australian Capital Territory Administrative Appeals Tribunal for review of a decision by the relevant decision maker—

- (a) refusing to agree to the issue or transfer of a licence;
- (b) issuing a licence under section 33 of a class different from that applied for;
- (c) issuing a special licence under section 34A subject to conditions in the public interest;
- (d) refusing to approve the cancellation of a licence under section 42C;
- (e) refusing to grant approval under subsection 42E (1) or (3);
- (f) giving directions to a licensee;
- (g) suspending a licence;
- (h) the issue of a reprimand to a licensee;
- (i) cancelling a licence under Division 5 of Part V;

- (j) refusing to approve (or to declare complete) the alteration of licensed premises;
- (k) refusing to approve the closure of licensed premises;
- (l) refusing to issue or to authorise the issue of a permit;
- (m) authorising the issue of a permit in terms different from those sought by the applicant; or
- (n) cancelling a permit.

Notification of decisions

“104A. (1) Within 28 days of the date of a decision of the kind referred to in section 104, the relevant decision maker shall cause notice of the decision to be given—

- (a) in the case of a decision referred to in paragraphs 104 (f), (g), (h), (i) and (n)—to each relevant licensee or permit holder, as the case requires; and
- (b) in the case of the other decisions referred to in section 104—to the applicant concerned.

“(2) A notice referred to in subsection (1) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

“(3) The validity of a decision referred to in section 104 shall not be taken to have been affected by a failure to comply with subsection (2).”.

Further amendments of Principal Act

50. The Principal Act is amended as set out in the Schedule.

Transitional

51. (1) Subject to this section, where, immediately before the commencement date, a decision had not been made in respect of an application under or for the purposes of the former Act for—

- (a) a licence;
- (b) the transfer of a licence;

- (c) the renewal of a licence;
- (d) the suspension of a licence or the issue of a reprimand to a licensee;
- (e) the cancellation of a licence;
- (f) the alteration of licensed premises;
- (g) the closure of licensed premises;
- (h) a permit; or
- (i) the cancellation of a permit;

after the commencement date—

- (j) in the case of an application referred to in paragraphs (a), (b), (c), (f), (g) and (h)—that application is to be taken to have been made under or for the purposes of the corresponding provision of the amended Act; and
- (k) in the case of an application referred to in paragraphs (d), (e) and (i)—that application is to be taken to have been referred, under the relevant provision of the amended Act, as a matter for the consideration of the Board in accordance with Part XII of the amended Act;

and that Act applies in relation to any decision in respect of that application or matter, as the case requires.

(2) Where, before the commencement date—

- (a) a hearing had been commenced before the Authority in relation to an application or other matter under the former Act; and
- (b) the hearing had not been concluded;

the hearing may be continued after the commencement date before the Authority as constituted at the commencement of the hearing and continued in existence after that date for that purpose and the former Act shall, by force of this section, continue to apply to and in relation to that hearing.

(3) Notwithstanding the repeal of Part XIII of the former Act, where—

- (a) an appeal lay to the Supreme Court in respect of a decision of the Authority in relation to a matter under or for the purposes of the former Act; and
- (b) immediately before the commencement date—
 - (i) no appeal had been lodged in respect of that decision; and

- (ii) the time for appeal had not expired;

on and after the commencement date an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for review of that decision as if it were a decision of the Board in respect of that matter, and the amended Act applies to and in relation to any decision by the Tribunal in respect of that matter.

(4) Notwithstanding the repeal of Part XIII, where, before the commencement date, appeal proceedings had been instituted in the Supreme Court in respect of a decision of the Authority under the former Act but those proceedings had not been completed before that date, those proceedings may be continued and determined as if the former Act had continued in force.

(5) In this section—

“amended Act” means the former Act as amended by this Act;

“Authority” means the Australian Capital Territory Gaming and Liquor Authority established under section 4 of the *Australian Capital Territory Gaming and Liquor Authority Act 1987*;

“Board” means the Liquor Licensing Board established under the amended Act;

“commencement date” means 1 January 1991;

“former Act” means the Principal Act as in force immediately before the commencement date.

SCHEDULE

Section 50

FURTHER AMENDMENTS OF PRINCIPAL ACT

1. The following provisions of the Principal Act are amended by omitting “Authority” (wherever occurring) and substituting “Registrar”:

Sections 19, 20, 42B, 42C, 69 and 76.

2. The following provisions of the Principal Act are amended by omitting “Authority” (wherever occurring) and substituting “Board”:

Sections 46, 50, 51, 65A, 66A, 99 and 100.

3. The following provisions of the Principal Act are amended by omitting “it” (wherever occurring) and substituting “he or she”:

Sections 19 and 20.

NOTE

1. Ordinance No. 19, 1975 as amended by Nos. 6, 61 and 63, 1976; Nos. 53 and 66, 1977; Nos. 35 and 46, 1978; Nos. 10, 24 and 34, 1979; Commonwealth Act No. 116, 1981; Nos. 59 and 87, 1982; No. 22, 1984; No. 41, 1986; Nos. 33 and 72, 1987; No. 27, 1988; Nos. 21 and 38, 1989; No. 50, 1990.

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