

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Liquor (Amendment) Bill (No. 2) 1996

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Liquor (Amendment) Bill (No. 2) 1996

A BILL FOR

An Act to amend the *Liquor Act 1975*

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

Short title

- 5 1. This Act may be cited as the *Liquor (Amendment) Act (No. 2) 1996*.

Commencement

2. (1) Sections 1, 2, 3 and 4 commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

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

Application

4. (1) Where, immediately before the date of commencement of section 8 of this Act, the Board had commenced, but not concluded, its consideration of a matter, the amendments to the Principal Act effected by sections 6, 7, 8 and 9 of this Act do not apply in relation to the Board's consideration of that matter.

(2) The amendments to the Principal Act effected by sections 25 to 35 (inclusive) and section 45 of this Act do not apply in relation to action taken by a relevant decision maker in respect of conduct of a licensee which occurred, or a matter in relation to a licensee which arose, before the date of commencement of the relevant section.

Insertion

5. After section 3 of the Principal Act the following section is inserted:

Object

"3A. The object of this Act is to promote and encourage responsibility in the sale and consumption of liquor through the establishment of a scheme of liquor licences and permits."

Interpretation

6. Section 4 of the Principal Act is amended—

(a) by omitting from subsection (1) the definitions of "direction" and "public area" and substituting respectively the following definitions:

" 'direction' means a direction issued under paragraph 46B (2) (a), 49 (2) (b) or 55 (2) (ab);

'public area', in relation to premises, is any area within those premises determined under subsection 24A (1) to be—

(a) an indoor public area; or

(b) an outdoor public area;"

(b) by omitting from subsection (1) the definition of "occupancy loading"; and

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

“ ‘appointed member’ means a member of the Board other than the Registrar;

‘approved training program’ means a training program conducted by a person or body approved for the purpose by the Registrar under section 4A;”.

5

Insertion

7. After section 4 of the Principal Act the following section is inserted:

Approval for training programs

10 “4A. The Registrar may, in writing, approve a person or body to conduct a training program for the purposes of this Act.”.

Functions of the Board

8. Section 12B of the Principal Act is amended—

- 15 (a) by omitting “The functions of the Board are—” and substituting “The Board shall promote and encourage responsibility in the sale and consumption of liquor by—”;
- (b) by omitting from paragraph (a) “to consider and determine” and substitute “considering and determining”;
- (c) by omitting from paragraph (b) “to conduct” and substituting “conducting”;
- 20 (d) by omitting from paragraph (c) “to advise” and substituting “advising”; and
- (e) by omitting from paragraph (d) “to perform” and substituting “performing”.

Membership of the Board

25 9. Section 12C of the Principal Act is amended—

- (a) by omitting paragraph (c) and substituting the following paragraph:
- “(c) 3 other members appointed by the Minister.”; and
- (b) by adding at the end the following subsection:
- 30 “(2) The Registrar holds office as a non-voting member of the Board.”.

Procedure at meetings

10. Section 12M of the Principal Act is amended—

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

“(2) A quorum is constituted by 3 appointed members, subject to subsection (3).

- 5 “(3) If, during a meeting, a quorum ceases to be constituted by an appointed member’s ceasing to be available in relation to a matter before the Board, the remaining members may continue to deal with that matter subject to the agreement of all the parties to the matter.”;

- 10 (b) by omitting from subsection (4) “the Registrar” and substituting “another appointed member elected by the appointed members present”; and

- (c) by inserting in subsection (5) “the appointed” after “votes of”.

Insertion

- 15 11. After section 16A of the Principal Act the following Division heading is inserted:

“Division 3—Enforcement”.

Powers of entry

- 20 12. Section 17 of the Principal Act is amended by inserting in paragraph (4) (e) “determined under section 24B or 24BA” after “loading”.

Persons under 18—powers of inspectors and police officers

13. Section 17B of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “an inspector or police officer has reasonable grounds for suspecting that” before “a person”;
- 25 (b) by omitting from paragraph (1) (a) all the words after “anything” and substituting the following word and subparagraphs:
- “that—
- (i) would constitute an offence under section 81 or 83 if the young person were under the age of 18 years; or
- 30 (ii) constitutes an offence under section 83A; and”;
- (c) by omitting from paragraph (1) (b) “an inspector or police officer” and substituting “the inspector or officer”;
- (d) by omitting from paragraph (1) (b) “that age” and substituting “the age of 18 years”;

- (e) by inserting in paragraph (2) (a) “an inspector or police officer has reasonable grounds for suspecting that” before “a person”; and
- (f) by omitting from paragraph (2) (b) “an inspector or police officer” and substituting “the inspector or officer”.

5 Public areas

14. Section 24A of the Principal Act is amended—

- (a) by omitting from subsection (1) “public areas” and substituting “indoor public areas and which are outdoor public areas”; and
- 10 (b) by inserting in subsection (2) “of an indoor public area” before “, the Registrar”.

Occupancy loadings—indoor public areas

15. Section 24B of the Principal Act is amended—

- (a) by inserting before subsection (1) the following subsection:

“(1A) In this section—

15 ‘occupancy loading’, in relation to an indoor public area, means the maximum number of persons that the area can accommodate without involving a contravention of Part D1.6 of the Building Code.”;

- 20 (b) by inserting in subsections (1) and (2) “indoor” before “public”; and
- (c) by adding at the end the following subsections:

25 “(3) For the purposes of subsection (1), the Fire Commissioner may, by written notice to the licensee or applicant for a licence in respect of whose premises an occupancy loading for an indoor public area is to be determined, require that person to provide the Commissioner with a Fire Engineering Study prepared in accordance with the notice within the period specified in the notice, or within such an extended period as is approved by the Commissioner in writing.

30 “(4) A notice under subsection (3) shall require the Fire Engineering Study to be prepared by a specified person, or by a person chosen from a specified list of persons.

35 “(5) If a person fails to comply with a notice under subsection (3), the Fire Commissioner may cause a Fire Engineering Study to be prepared for the purposes of subsection (1).

“(6) For the purposes of preparing a Fire Engineering Study under subsection (5), a person authorised by the Commissioner in

writing for the purpose may conduct such an investigation as he or she considers necessary and reasonable.

5 “(7) The licensee or the applicant for a licence whose premises are the subject of a Fire Engineering Study being prepared under subsection (5) shall cause to be given to a person carrying out an investigation under subsection (6) all reasonable assistance, and all reasonable information, requested by the person.

10 “(8) The amount of any expenses necessarily and reasonably incurred by or on behalf of the Territory in the course of the preparation of a Fire Engineering Study under subsection (5) is a debt due to the Territory by the licensee or the applicant for the licence whose premises are the subject of the Study.”.

Insertion

15 **16.** After section 24B of the Principal Act the following section is inserted:

Occupancy loadings—outdoor public areas

“24BA. (1) In this section—

20 ‘occupancy loading’, in relation to an outdoor public area, means the maximum number of persons that the area can accommodate, in the opinion of the Registrar, having regard to the matters referred to in this section.

25 “(2) Where a relevant decision maker has made a determination in relation to an outdoor public area under subsection 24A (1), the Registrar shall, by notice in writing, determine the occupancy loading for the area.

30 “(3) In making a determination under subsection (2), the Registrar shall have regard to the standard and availability of any facilities for patrons of the licensee using the outdoor public area (or proposed outdoor public area) which affect, or which would affect, the amenity of the area or the health or safety of the patrons or members of the public.

 “(4) Without limiting the generality of subsection (3), the matters the Registrar may have regard to in making a determination under subsection (2) include the following:

- (a) the location of the area;
- 35 (b) the standard and availability of furnishings for the use of patrons in the area;
- (c) the location, standard and number of toilets available (or to be made available) for the use of patrons using the area;

- (d) the appropriateness and adequacy of the barrier that delineates (or that is to delineate) the boundaries of the area.”.

Display of signs

- 5 **17.** Section 24C of the Principal Act is amended by omitting “under subsection 24B (2)” and substituting “of an occupancy loading under subsection 24B (2) or 24BA (2)”.

Issue of licences—relevant considerations

- 18.** Section 33A of the Principal Act is amended—

- 10 **(a)** by omitting paragraph (2) (f) and substituting the following paragraph:

 “(f) if the applicant is a body corporate—whether the body is in liquidation;”;

- (b)** by inserting after subsection (2) the following subsection:

15 “(2A) The relevant decision maker shall not agree to the issue of a licence to an applicant where another licence held by the applicant has been suspended or cancelled under section 29 of the Liquor Tax Act or section 15 of the Business Franchise (Liquor) Act, unless—

- 20 **(a)** all amounts referred to in the relevant section have been paid; or

(b) the applicant has made arrangements to the satisfaction of the Commissioner for the payment (whether by instalments or otherwise) of the unpaid amount or amounts.”;

- 25 **(c)** by omitting from subsection (3) “subsection (1) or (2)” and substituting “this section”; and

- (d)** by adding at the end the following subsection:

30 “(4) Where an applicant for a licence is a body corporate, a reference in this section to the applicant (including a reference by virtue of subsection (3) to a partner of an applicant) is to be read as including a reference to a defined influential person in relation to the body.”.

Insertion

- 35 **19.** After section 33A of the Principal Act the following section is inserted:

Issue of licences—training condition

5 “33AA. (1) If the relevant decision maker in relation to the issue of a licence considers on reasonable grounds that an applicant for a licence does not sufficiently understand the obligations of a licensee under this Act, the decision maker may issue the licence subject to the condition that the applicant undertake a specified approved training program in relation to those obligations within a reasonable specified time after the issue of the licence.

10 “(2) Where the relevant decision maker has reasonable grounds for believing that an applicant intends to hold the licence for the purposes of a partnership, a reference in this section to the applicant is to be read as including a reference to each of the partners who the relevant decision maker has reasonable grounds for believing intends to be concerned in, or to take part in, the management of the partnership’s business in relation to the licence, whether or not the partner’s name appears on the application.

15 “(3) Where an applicant for a licence is a body corporate, a reference in this section to the applicant (including a reference by virtue of subsection (2) to a partner of an applicant) is to be read as including a reference to a defined influential person in relation to the body.”.

20 **Arrears in licence fees—renewal of other licences**

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

- (a) by omitting “the relevant decision maker shall not authorise the transfer of a licence to the former licensee, and”;
- 25 (b) by omitting “that person” (first occurring) and substituting “the former licensee”;
- (c) by omitting from paragraph (b) “that person” and substituting “the former licensee”; and
- (d) by adding at the end the following subsections:

30 “(2) Where the Registrar has reasonable grounds for believing that a former licensee referred to in subsection (1) who applies for the renewal of another licence holds the licence which is sought to be renewed for the purposes of a partnership, a reference in this section to the former licensee is to be read as including a reference to each of the partners who the Registrar has reasonable grounds for believing is concerned in, or takes part in, the management of the partnership’s business in relation to the licence sought to be renewed, whether or not the partner’s name appears on that licence.

35 “(3) Where a former licensee referred to in subsection (1) is a body corporate, a reference in this section to the former licensee

(including a reference by virtue of subsection (2) to a partner of the former licensee) is to be read as including a reference to a defined influential person in relation to the body.”.

Transfer—relevant considerations

5 **21. Section 42 of the Principal Act is amended—**

- (a) by omitting from paragraph (1) (b) “or, if the licensee is a body corporate, the body or a defined influential person in relation to the body,”;
- 10 (b) by omitting from subparagraph (1) (b) (i) “, or a defined influential person in relation to a body corporate,”;
- (c) by omitting paragraph (2) (f) and substituting the following paragraph:
 - 15 “(f) if the proposed transferee is a body corporate—whether the body is in liquidation,”;
- 15 (d) by inserting after subsection (2) the following subsections:
 - 20 “(2A) The relevant decision maker shall not authorise the transfer of a licence where a licence formerly held by the proposed transferee has been suspended or cancelled under section 29 of the Liquor Tax Act or section 15 of the Business Franchise (Liquor) Act, unless—
 - (a) all amounts referred to in the relevant section have been paid; or
 - 25 (b) the proposed transferee has made arrangements to the satisfaction of the Commissioner for the payment (whether by instalments or otherwise) of the unpaid amount or amounts.”; and
- 25 (e) by adding at the end the following subsections:
 - 30 “(5) Where a licence is held by a body corporate, a reference in this section to the licensee (including a reference by virtue of subsection (3) to a partner of the licensee) is to be read as including a reference to a defined influential person in relation to the body.
 - 35 “(6) Where a licence is proposed to be transferred to a body corporate, a reference in this section to the proposed transferee (including a reference by virtue of subsection (4) to a partner of the proposed transferee) is to be read as including a reference to a defined influential person in relation to the body.”.

Insertion

22. After section 42 of the Principal Act the following section is inserted in Division 4 of Part IV:

Transfer of licences—training condition

5 “42AA. (1) If the relevant decision maker in relation to the transfer of a
licence considers on reasonable grounds that the proposed transferee does
not sufficiently understand the obligations of a licensee under this Act, the
decision maker may transfer the licence subject to the condition that the
10 proposed transferee undertake a specified approved training program in
relation to those obligations within a reasonable specified time after the
transfer of the licence.

“(2) Where the relevant decision maker has reasonable grounds for
believing that a proposed transferee intends to hold the licence for the
purposes of a partnership, a reference in subsection (1) to the proposed
15 transferee is to be read as including a reference to each of the partners who
the relevant decision maker has reasonable grounds for believing intends to
be concerned in, or to take part in, the management of the partnership’s
business in relation to the licence, whether or not the partner’s name appears
on the application for the transfer of the licence.

20 “(3) Where a proposed transferee is a body corporate, a reference in
this section to the proposed transferee (including a reference by virtue of
subsection (2) to a partner of the proposed transferee) is to be read as
including a reference to a defined influential person in relation to the body.”.

Insertion

25 23. After section 43B of the Principal Act the following section is
inserted:

Partnership changes—training

“43BA. (1) This section applies where—

- 30 (a) a licensee enters into partnership with another person or persons
after the licence is issued;
- (b) the licence is to be held for the purposes of the partnership; and
- (c) the Registrar considers on reasonable grounds that a new partner
does not sufficiently understand the obligations of a licensee under
this Act.

35 “(2) Where this section applies, the Registrar may, by written notice to
the new partner (a copy of which is given to the licensee), require the new
partner to undertake a specified approved training program in relation to the
obligations of a licensee under this Act within a reasonable specified time
after the issue of the notice.

“(3) Where this section applies in relation to a new partner that is a body corporate, a reference in this section to the new partner is to be read as including a reference to a defined influential person in relation to the new partner.”.

5 Insertion

24. After section 43G of the Principal Act the following section is inserted in Division 8 of Part IV:

Changes in influential personnel—training

“43GA. (1) This section applies where—

- 10 (a) a person becomes a defined influential person in relation to a licensee which is a body corporate; and
- (b) the Registrar considers on reasonable grounds that the person does not sufficiently understand the obligations of a licensee under this Act.

15 “(2) Where this section applies, the Registrar may, by written notice to the person who has become a defined influential person in relation to the body corporate (a copy of which is given to the body), require the person to undertake a specified approved training program in relation to the obligations of a licensee under this Act within a reasonable specified time

20 after the issue of the notice.

“(3) Where—

- (a) a licence is held for the purposes of a partnership; and
- (b) a body corporate is 1 of the partners;

25 this section applies to that body as if it were the sole licensee, whether or not the body’s name appears on the licence.”.

Consideration of complaints by Registrar

25. Section 45 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “under section 54” after “Board” (last occurring);
- 30 (b) by inserting after paragraph (1) (a) the following paragraph:
- “aa) if 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 a licensee, under Division 4—refer the matter to the Board
- 35 under section 48 for consideration under Part XII;”;

- (c) by inserting in paragraph (1) (b) “under section 46A” after “Board” (last occurring);
- (d) by omitting from paragraph (1) (b) “and” and substituting “or”; and
- 5 (e) by omitting from subsection (3) “given by the Board under section 46” and substituting “issued by the Board under section 46B”.

Grounds for issue of directions

26. Section 46 of the Principal Act is amended—

- (a) by omitting from subsection (1) “(1)”;
- 10 (b) by omitting from subsection (1) “Where the Board is satisfied on reasonable grounds that—” and substituting “For the purposes of this Part, the grounds for the issue of directions to a licensee are as follows:”;
- (c) by omitting from paragraph (1) (e) “or” (last occurring);
- 15 (d) by omitting from subsection (1) all the words after paragraph (f); and
- (e) by omitting subsections (2), (6) and (7).

Insertion

- 20 27. After section 46 of the Principal Act the following sections are inserted in Division 3 of Part V:

Referral to the Board for directions

- 25 “46A. Where, upon investigation (whether following a complaint under paragraph 45 (1) (b) or otherwise), the Registrar is satisfied that, on the material being considered, there are reasonable grounds upon which the Board might decide to issue directions to a licensee, the Registrar shall, in writing, refer the matter to the Board for consideration under Part XII.

Action on referral for directions

- “46B. (1) On referral of a matter in accordance with section 46A, the Board shall—
- 30 (a) if satisfied, on reasonable grounds, that the facts set out in the documents provided to the Board by the Registrar would not, if proved, establish a ground for the issue of directions to the licensee—dismiss the matter; or
 - (b) in any other case—consider the matter in accordance with Part XII.
- 35 “(2) After considering the matter, the Board shall, in writing—

- (a) issue directions to the licensee; or
- (b) dismiss the matter.

5 “(3) The Board shall not issue a direction to a licensee under subsection (2) unless the Board is satisfied, on reasonable grounds, that there is a ground for doing so under section 46.

“(4) The Board shall not issue a direction to a licensee under this Part by reason of the licensee’s contravention of subsection 69 (1) if the Board is satisfied that the licensee took reasonable measures to avoid the contravention.”.

10 **Types of directions**

“46C. (1) The Board may issue such types of directions under this Part as it thinks appropriate in any particular case.

“(2) Without limiting the generality of subsection (1), the directions the Board may issue under this Part include the following:

- 15 (a) a direction restricting the trading hours of the licensee;
- (b) a direction that the licensee pay a specified monetary penalty to the Territory not exceeding—
- (i) if the licensee is a natural person—\$1,000; or
 - (ii) if the licensee is a body corporate—\$5,000.

20 “(3) Directions issued under this Part shall specify a period within which the licensee is to comply with the directions.

“(4) The Board may extend the period for compliance specified in directions issued under this Part either before or after the expiration of the specified period.

25 “(5) A monetary penalty directed to be paid under this Part is a debt payable by the licensee to the Territory and due at the expiration of the period specified in the direction, or at the expiration of such extended period as is approved under subsection (4).”.

Substitution

30 **28.** Section 47 of the Principal Act is repealed and the following section substituted:

Grounds for suspension or reprimand

“47. For the purposes of this Part, the grounds for the suspension of a licence, or for the issue of a reprimand to a licensee, are as follows:

- 35 (a) the licensee has contravened a provision of this Act;

- (b) the licensee has contravened—
 - (i) a direction; or
 - (ii) a training condition or requirement imposed under section 33AA, 42AA, 43BA or 43GA;
 - 5 and it is in the public interest to suspend the licence or to issue a reprimand to the licensee;
 - (c) having regard to a matter referred to in subsection 53 (2), it is more appropriate to suspend the licence or issue a reprimand to the licensee (as the case requires) rather than cancel the licence.”.
- 10 **Referral to Board for suspension or reprimand**
29. Section 48 of the Principal Act is amended—
- (a) by omitting from subsection (1) “(1)”;
 - (b) by inserting in subsection (1) “(whether following a complaint under paragraph 45 (1) (aa) or otherwise)” after “investigation”;
 - 15 and
 - (c) by omitting subsection (2).
- Action on referral for suspension or reprimand**
30. Section 49 of the Principal Act is amended—
- (a) by omitting from paragraph (1) (a) “that the licensee has contravened a direction” and substituting “any ground for the suspension of the licence, the issue of a reprimand to the licensee, or the issue of directions to the licensee”;
 - (b) by omitting paragraphs (2) (a) and (b) and substituting the following paragraphs:
 - 25 “(a) suspend the licence for a specified period, or issue a reprimand to the licensee;
 - (b) issue directions to the licensee, whether or not the Board also suspends the licence or issues a reprimand to the licensee; or”; and
 - 30 (c) by adding at the end the following subsections:
 - “(3) The Board shall not suspend a licence, or issue a reprimand to the licensee, under paragraph (2) (a) unless the Board is satisfied, on reasonable grounds, that there is a ground for doing so under section 47.

“(4) The Board shall not issue a direction to a licensee under paragraph (2) (b) unless the Board is satisfied, on reasonable grounds, that there is a ground for doing so under section 46.”.

Repeal

- 5 **31.** Section 50 of the Principal Act is repealed.

Period of suspension

- 32.** Section 51 of the Principal Act is amended—

- (a) by inserting “or 55 (2) (aa)” after “49 (2) (a)”; and
- (b) by adding at the end the following subsection:

- 10 “(2) For the purposes of paragraph 49 (2) (a) or 55 (2) (aa), a period of suspension of a licence may be specified by reference to the occurrence of a specified event.”.

Duration

- 33.** Section 52 of the Principal Act is amended—

- 15 (a) by omitting from paragraph (a) “revoked or”; and
- (b) by inserting in subparagraph (b) (i) “or 55 (2) (aa)” after “49 (2) (a)”.

Referral to Board for cancellation

- 34.** Section 54 of the Principal Act is amended—

- 20 (a) by omitting from subsection (1) “(1)”; and
- (b) by inserting in subsection (1) “(whether following a complaint under paragraph 45 (1) (a) or otherwise)” after “investigation”.

Action on referral for cancellation

- 35.** Section 55 of the Principal Act is amended—

- 25 (a) by inserting in paragraph (1) (a) “, the suspension of the licence, the issue of a reprimand to the licensee or the issue of directions to the licensee” after “licence”;
- (b) by omitting from paragraph (2) (a) “or”;
- (c) by inserting after paragraph (2) (a) the following paragraphs:
- 30 “(aa) suspend the licensee for a specified period, or issue a reprimand to the licensee;

- (ab) issue directions to the licensee, whether or not the Board also suspends the licence or issues a reprimand to the licensee; or”; and

(d) by adding at the end the following subsections:

5 “(3) The Board shall not suspend a licence, or issue a reprimand to a licensee, under paragraph (1) (aa) unless the Board is satisfied, on reasonable grounds, that there is a ground for doing so under section 47.

10 “(4) The Board shall not issue a direction to a licensee under paragraph (1) (ab) unless the Board is satisfied, on reasonable grounds, that there is a ground for doing so under section 46.”.

Substitution

36. The heading to Part VIII of the Principal Act is omitted and the following heading substituted:

15 **“PART VIII—TEMPORARY EXTENSION OF
OFF LICENCE PREMISES”.**

Authorisation—Off Licences

37. Section 60B of the Principal Act is amended by omitting “a licensee” and substituting “the holder of an Off Licence”.

20 **Sale or supply of liquor to intoxicated persons**

38. Section 79 of the Principal Act is amended—

25 (a) by omitting “who the licensee or permit holder has reasonable grounds for believing is intoxicated” and substituting “where there are reasonable grounds for believing that the person is intoxicated”; and

(b) by adding at the end the following subsections:

 “(2) It is not an element of an offence against subsection (1) that the licensee or permit holder charged with the offence should actually have believed that the relevant person was intoxicated.

30 “(3) For the purposes of subsection (1), there are to be taken to be reasonable grounds for believing that a person is intoxicated where (irrespective of the actual belief of the licensee or permit holder) there are reasonable grounds for believing that the person’s speech, balance, co-ordination or behaviour is seriously affected
35 by the consumption of liquor.”.

Exceeding occupancy loading

39. Section 93A of the Principal Act is amended by inserting “or 24BA” after “24B”.

Substitution

- 5 40. Section 94 of the Principal Act is repealed and the following section substituted:

Liquor

“94. (1) This section applies in relation to a container which purports to contain, or apparently contains—

- 10 (a) liquor within the meaning of the relevant offence provision referred to in subsection (2); or
 (b) beer, wine, spirits or any other alcoholic beverage.

15 “(2) In proceedings for an offence against this Act, where a beverage is contained in, or dispensed or consumed from, a container in relation to which this section applies, that beverage is to be taken to be liquor within the meaning of the relevant offence provision unless the contrary is established by the defendant on the balance of probabilities.

20 “(3) Without limiting the generality of subsection (1), for the purposes of paragraph (1) (a), a container is to be taken to purport to contain liquor within the meaning of an offence provision if the container purports, whether by marking on the container or on its label, or otherwise, to contain a beverage having a percentage by volume of alcohol exceeding the percentage of ethyl alcohol referred to in the definition of ‘liquor’ which applies to that provision.

25 “(4) For the purposes of this section, a reference on a container or on its label to a percentage by volume of alcohol, in whatever form that reference may be, is to be taken to be a reference to the same percentage of ethyl alcohol by volume.

30 “(5) This section does not apply in relation to an offence against section 81, 82 or 84, subsection 91 (1) or section 93.”.

Occupancy loading

41. Section 95A of the Principal Act is amended by inserting “or 24BA” after “24B”.

Heading to Part XII

- 35 42. The heading to Part XII of the Principal Act is amended by inserting “AND HEARINGS” after “INQUIRIES”.

Interpretation

43. Section 96 of the Principal Act is amended—

(a) by omitting paragraph (b) of the definition of “matter” and substituting the following paragraph:

5 “(b) the issue of directions to a licensee;” and

(b) by omitting “the licensee” from paragraph (c) of the definition of “matter” and substituting “a licensee”.

Insertion

10 44. After section 96A of the Principal Act the following section is inserted:

Standard of proof

“96AA. The Board shall determine all matters which come before it, and the existence of facts relevant to all such matters, on the basis of proof on the balance of probabilities.”.

15 Review by Administrative Appeals Tribunal

45. Section 104 of the Principal Act is amended—

(a) by inserting before paragraph (aa) the following paragraph:

“(aaa) approving a person to conduct a training program under section 4A;”;

20 (b) by omitting from paragraph (aa) “a public area” and substituting “an indoor or an outdoor public area”;

(c) by inserting after paragraph (ab) the following paragraph:

“(ac) determining an occupancy loading under section 24BA;”;

(d) by inserting after paragraph (b) the following paragraphs:

25 “(ba) issuing a licence subject to a condition that the licensee undertake training, under subsection 33AA (1);

(bb) issuing a licence subject to a condition that the licensee undertake training of a particular type, under subsection 33AA (1);

30 (bc) issuing a licence subject to a condition that the licensee undertake training within a specified time, under subsection 33AA (1);”;

(e) by inserting after paragraph (c) the following paragraph:

- “(ca) refusing to renew a licence under subsection 38 (1) by reason of the application of section 40B;”;
- (f) by inserting after paragraph (d) the following paragraphs:
- 5 “(da) transferring a licence subject to a condition that the transferee undertake training, under subsection 42AA (1);
- (db) transferring a licence subject to a condition that the licensee undertake training of a particular type, under subsection 42AA (1);
- 10 (dc) transferring a licence subject to a condition that the licensee undertake training within a specified time, under subsection 42AA (1);”;
- (g) by inserting after paragraph (f) the following paragraphs:
- 15 “(fa) requiring a new partner of a licensee to undertake training, under subsection 43BA (2);
- (fb) requiring a new partner of a licensee to undertake training of a particular type, under subsection 43BA (2);
- (fc) requiring a new partner of a licensee to undertake training within a specified time, under subsection 43BA (2);
- 20 (fd) requiring a person who has become a defined influential person in relation to a body corporate which holds a licence to undertake training, under subsection 43GA (2);
- (fe) requiring a person who has become a defined influential person in relation to a body corporate which holds a licence to undertake training of a particular type, under subsection 43GA (2); and
- 25 (ff) requiring a person who has become a defined influential person in relation to a body corporate which holds a licence to undertake training within a specified time, under subsection 43GA (2);”;
- 30
- (h) by omitting from paragraph (g) “46 (1)” and substituting “46B (2) or paragraph 49 (2) (b) or 55 (2) (ab)”;
- (i) by omitting from paragraph (h) “section 47 or paragraph 49 (2) (a)” and substituting “paragraph 49 (2) (a) or 55 (2) (aa)”;
- 35 (j) by inserting after paragraph (h) the following paragraph:
- “(ha) suspending a licence for a specified period, under paragraph 49 (2) (a) or 55 (2) (aa)”;

- (k) by omitting from paragraph (i) "section 47 or paragraph 49 (2) (a)" and substituting "paragraph 49 (2) (a) or 55 (2) (aa)".

Notification of decisions

- 5 **46.** Section 104A of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

"(1) Where a decision referred to in section 104 has been made, the relevant decision maker shall cause notice of the decision to be given to the applicant, licensee or permit holder concerned."

NOTES

Principal Act

1 Reprinted as at 31 January 1996. See also Act No. 8, 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

Section headings

On the day on which section 1 of this Act commences, in addition to any alteration of section headings indicated in the text of this Act, the heading to section 96A of the Principal Act is omitted and the following heading substituted: "Inquiry by the Board"