

1996

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

LIQUOR (AMENDMENT) BILL (NO 2) 1996

EXPLANATORY MEMORANDUM

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Outline

This is an amending Bill. It amends the Liquor Act 1975, referred to in the Bill as the Principal Act. The Liquor Act 1975 provides for the constitution of the Liquor Licensing Board, the regulation of the sale of liquor, the issue and cancellation of licences, the regulation of licensed premises, underage drinking and the public consumption of alcohol.

The Bill amends the Principal Act by introducing provisions to enhance the licensing and enforcement regimes within the Act including the identification of the responsible sale and consumption of alcohol as the main policy of the Act and the restructuring of the Liquor Licensing Board and the clarification of its powers.

Financial considerations

Additional costs associated with the administration of the expanded Board are estimated at \$8,000.

Formal clauses

Clause 1: Short title

This clause provides that the proposed Act may be cited as the Liquor (Amendment) Act (No. 2) 1996.

Clause 2: Commencement

Clause 2 states that sections 1, 2, 3 and 4 of the proposed Act will commence upon notification of the Act in the Gazette and that the remaining provisions commence on a date fixed by the Minister by notice in the Gazette. This clause also provides that if a provision referred to in subsection 2 is not commenced within 6 months after notification of the Act in the Gazette then the provision will commence on the first day after the 6 month period.

Clause 3: Principal Act

This clause defines the term "Principal Act" to mean the Liquor Act 1975.

Clause 4 Application

This clause provides that matters part heard by the Board before the commencement of section 8 of this Act are not affected by sections 6, 7, 8 and 9 of this Act

This clause also provides that the amended powers of the Board contained in sections 22 to 32 and the relevant appeal provisions in section 42 do not apply to the conduct of a licensee that occurred before the commencement date of the relevant provision

Clause 5: Insertion

This clause inserts after section 3 of the Principal Act new section 3A. Section 3A stipulates the object of the Act

Clause 6: Interpretation

This clause amends section 4 of the Principal Act by inserting a definition for an “appointed member” and an “approved training program”

Clause 7: Functions of the Board

This clause amends section 12B of the Principal Act to provide that the Board’s function is to promote and encourage responsibility in the sale and consumption of liquor by administering the licensing scheme established under the Principal Act

Clause 8: Membership of the Board

This clause amends section 12C of the Principal Act to provide for the appointment of 2 additional members of the Board and makes the Registrar a non-voting member of the Board

Clause 9: Procedure at meetings

This clause amends section 12M of the Principal Act by substituting new subsections (2) and (3) and amending subsections (4) and (5). New subsection (2) provides that 3 appointed members of the Board constitute a quorum. New subsection (3) provides that if during a meeting of the Board a quorum ceases to exist the meeting can continue to deal with the matter subject to the agreement of all parties to the matter. Subsection (4) is amended to provide that an appointed member can preside at a meeting of the Board if the Chairperson is unavailable. Subsection (5) is amended to provide that decisions determined by the Board shall be determined by a majority of votes of the appointed members.

Clause 10: Insertion

This clause amends the Principal Act by inserting after section 16A a new Division heading "Division 3 - Enforcement".

Clause 11: Persons under 18 - powers of inspectors and police officers

This clause amends section 17B of the Principal Act to clarify the powers of police and inspectors to enable them to act on reasonable suspicion that offences have been committed, or would constitute an offence, if the person in question proved to be under 18 years.

Clause 12: Public areas

This clause amends section 24A of the Principal Act by amending subsection (1) to allow the relevant decision maker to determine both indoor and outdoor public areas of licensed premises for the purpose of determining occupancy loadings and by amending subsection (2) to require the Registrar to only notify the Fire Commissioner of determinations of public areas in respect of indoor areas

Clause 13: Occupancy loadings - indoor public areas

This clause amends the Principal Act by amending subsections (1) and (2) to clarify the public areas as indoor public areas and by adding new subsections (3) to (8) after subsection (2). New subsections (3) to (8) provide powers for the Fire Commissioner to require licensees or applicants for licences to undertake, or pay for the cost of undertaking, Fire Engineering Studies.

Clause 14: Insertion

This clause amends the Principal Act by inserting after section 24B new section 24BA. New section 24BA provides for the Registrar to determine occupancy loadings for outdoor public areas having regard to the standard and availability of facilities for patrons including the location of the outdoor area, the location and number of toilets and the delineation of the area

Clause 15: Issue of licences - relevant considerations

This clause amends section 33A of the Principal Act by substituting paragraph (2)(f), by inserting after subsection (2) new subsection (2A), by amending subsection (3) and by adding new subsection (4)

The amending section brings the relevant considerations for the issue of a licence in respect of the payments of outstanding monies under the Liquor Tax Act or the Business Franchise (Liquor) Act in line with existing provisions for the cancellation of a licence in section 42 of the Principal Act. Namely, that all outstanding monies on any existing or previous licences must be paid or appropriate arrangements made with the Commissioner of Revenue.

Clause 16: Insertion

This clause amends the Principal Act by inserting after section 33A new section 33AA. New section 33AA enables the relevant decision maker, in circumstances where it is considered on reasonable grounds that an applicant does not sufficiently understand the obligations of a licensee under the Liquor Act, to issue a licence subject to conditions relating to the applicant undertaking specified approved training within a specified time.

Clause 17: Arrears in licence fees - renewal of other licences

This clause amends section 40B of the Principal Act to provide that the Registrar shall not renew a licence held by a person if that person is the holder of another licence that is suspended or cancelled as a result of the failure to pay the relevant fee under the Business Franchise (Liquor) Act as provided in section 40B.

Clause 18: Transfer - relevant considerations

This clause amends section 42 of the Principal Act by amending paragraph (1)(b) and subparagraph(1)(b)(i), by substituting a new paragraph (2)(f), by inserting after subsection (2) new subsection (2A) and by adding new subsections (5) and (6). The amendments to paragraph (1)(b) and subparagraph(1)(b)(i) remove the references to "defined influential persons" which are then addressed in a collective manner in new subsections (5) and (6). Similarly, the new paragraph (2)(f) is retaining the reference to whether the body is in liquidation, if the proposed transferee is a body corporate, and removes the reference to the fitness of the "defined influential person" which is dealt with in new paragraphs (5) and (6).

The new paragraph (2A) brings the relevant consideration for the transfer of a licence in respect of the payment of outstanding monies under the Liquor Tax Act or the Business Franchise (Liquor) Act in line with the existing provisions for the cancellation of a licence in section 42C of the Principal Act. Namely, that all outstanding monies on any existing or previous licence must be paid or appropriate arrangements made with the Commissioner for Revenue.

New paragraphs (5) and (6) ensure that in respect of applications considered under the section the relevant considerations referred to in the Section also apply to “defined influential persons” in relation to an applicant which is a corporate body

Clause 19: Insertion

This clause amends the Principal Act by inserting after section 42 new section 42AA. New section 42AA enables the relevant decision maker, in circumstances where it is considered on reasonable grounds that an applicant does not sufficiently understand the obligations of a licensee under the Liquor Act, to transfer a licence subject to conditions relating to the applicant undertaking specified approved training within a specified time.

Clause 20: Insertion

This clause amends the Principal Act by inserting after section 43B new section 43BA. New section 43BA enables the Registrar to require new partners to a licence to undertake specified approved training within a specified time where the Registrar considers on reasonable grounds that a new partner does not sufficiently understand the obligations of a licensee under the Act.

Clause 21: Insertion

This clause amends the Principal Act by inserting after section 43G new section 43GA. New section 43G enables the Registrar to require new defined influential persons in relation to a licensee to undertake specified approved training within a specified time where the Registrar considers on reasonable grounds that a new defined influential person does not sufficiently understand the obligations of a licensee under the Act.

Clause 22: Consideration of complaints by Registrar

This clause amends section 45 of the Principal Act by amending paragraph (1)(a) to clarify that in referring a matter to the Board on the ground that there are reasonable grounds upon which the Board might decide to cancel a licence, the Registrar does so under section 54

This clause also amends section 45 of the Principal Act by inserting after paragraph (1)(a) new paragraph (1)(aa) New paragraph (1)(aa) enables the Registrar to refer a complaint to the Board under section 48 if there are reasonable grounds upon which the Board might decide to suspend a licence or issue a reprimand to a licensee

This clause also amends section 45 of the Principal Act by amending paragraph (1)(b) to clarify that in referring a matter to the Board on the ground that there are reasonable grounds upon which the Board might be authorised to issue directions to a licensee, the Registrar does so under section 46A

Clause 23: Grounds for issue of directions

This clause amends section 46 of the Principal Act to provide that section 46 sets out the grounds for the issue of directions to a licensee

Clause 24: Insertion

This clause amends the Principal Act by inserting after section 46 new sections 46A, 46B and 46C. New section 46A enables the Registrar, whether following a complaint or otherwise, to refer a matter to the Board where the Registrar believes there are reasonable grounds upon which the Board might decide to issue directions to a licensee. New section 46B establishes that if the Board considers the material referred by the Registrar would, if proved, allow for the issue of directions the matter will be considered under Part XII. If it is so considered subsection (2) provides the actions available to the Board. New section 46C provides that without limiting the generality of type of directions that can be issued, the Board may issue under paragraphs 46B(2)(a), 49(2)(b) or 55(2)(ab) are directions to limit the trading hours of a licensed premises and directions to require the licensee to pay a monetary penalty. The new subsection 46C(2) also requires the Board to specify a period within which the licensee is to comply with the direction and subsection 46C(3) allows the Board to extend the period specified for compliance.

Clause 25: Substitution

This clause amends the Principal Act by substituting section 47. New section 47 provides that the grounds for suspension or reprimand are the licensee has contravened a provision of the Act, the licensee has contravened a direction or a training condition and it is in the public interest to do so; or it is more appropriate to suspend the licence or issue a reprimand than to cancel the licence having regard to a matter referred to in subsection 53(2).

Clause 26: Referral to Board for suspension or reprimand

This clause amends section 48 of the Principal Act to enable the Registrar, whether following a complaint or otherwise, to refer a matter to the Board where there are reasonable grounds upon which the Board might decide to suspend the licence or issue a reprimand to the licensee.

Clause 27. Action on referral for suspension or reprimand

This clause amends section 49 of the Principal Act by amending paragraph (1)(a), by substituting paragraphs (2)(a) and (2)(b) and adding subsections (3) and (4). Section 49 as amended sets out the action available to the Board on referral of a matter by the Registrar under section 48. Actions available to the Board on the basis of it being satisfied, on reasonable grounds, that a ground for suspension or direction is established, as the case requires, are to dismiss the matter; to suspend the licence or issue a reprimand; or to issue directions whether or not the Board also suspends the licence or issues a reprimand.

Clause 28: Repeal

This clause amends the Principal Act by repealing section 50 which dealt with the revocation of a suspension if the licensee complies with the direction the contravention of which resulted in the suspension

Clause 29: Period of suspension

This clause amends the Principal Act by amending subsection 51(1) and adding new subsection 51(2). Subsection 51(1) is amended to allow the Board to extend a period of suspension specified under either paragraph 49(2)(a) or paragraph 55(2)(aa). New paragraph 51(2) provides for a period of suspension of a licence to be specified by reference to the occurrence of a specified event

Clause 30: Duration

This clause amends section 52 of the Principal Act by omitting "revoke or" from paragraph (a) which was a reference to repealed section 50 and by inserting in subparagraph (b)(i), 55(2)(aa) which refers to the Boards amended power to suspend a licence

Clause 31: Referral to Board for cancellation

This clause amends section 54 of the Principal Act to enable the Registrar, whether following a complaint or otherwise, to refer a matter to the Board where there are reasonable grounds upon which the Board might decide to cancel a licence.

Clause 32: Action on referral for cancellation

This clause amends section 55 of the Principal Act by amending paragraphs (1)(a) and (2)(a), by inserting paragraphs (aa) and (ab) after (2)(a) and by adding at the end of the section subsections (2) and (3) Section 49 as amended sets out the action available to the Board on referral of a matter by the Registrar under section 54 Actions available to the Board on the basis of the Board

being satisfied, on reasonable grounds, that a ground for the cancellation, suspension, or the issuance of a reprimand or a direction exists are. to dismiss the matter; to cancel the licence; to suspend the licence or issue a reprimand; or to issue directions whether or not the Board also suspends the licence or issues a reprimand as the case requires.

Clause 33: Heading to Part VIII

This clause amends the Principal Act by omitting the heading to part VIII and substituting the heading "Part VIII - Temporary extension of OFF licence premises"

Clause 34: Authorisation - Off Licences

This clause amends section 60B of the Principal Act to provide that only holders of an Off licence can give notice to the Registrar to sell liquor on unlicensed premises

Clause 35: Sale or supply of liquor to intoxicated persons

This clause amends section 79 of the Principal Act 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 adding subsections (2) and (3) Subsection (2) provides that it is not an element of an offence against subsection 79(1) that the licensee or permit holder actually believed the person was intoxicated Subsection (3) provides what are reasonable grounds for believing a person is intoxicated

Clause 36: Exceeding occupancy loading

This clause amends section 93A of the Principal Act to include an offence of overcrowding an outdoor area determined under section 24BA

Clause 37: Substitution

This clause repeals section 94 of the Principal Act and substitutes a new section 94 New section 94 provides that in proceedings against licensees for an offence against the Act, that a beverage in a container, or dispensed or consumed from a container, which purports to contain liquor is to be taken as liquor for the purposes of the offence unless the licensee proves otherwise

Clause 38: Occupancy loading

This clause amends section 95A of the Principal Act to include a certificate issued in respect of an occupancy loading for outdoor areas determined under section 24BA

Clause 39: Heading to Part XII

This clause amends the heading of Part XII of the Principal Act to "Inquiries and Hearings by the Board".

Clause 40: Interpretation

This clause amends section 96 of the Principal Act by omitting paragraph (b) and substituting new paragraph (b) "the issue of directions to a licensee" and by omitting from paragraph (c) "the licensee" and substituting "a licensee"

Clause 41: Insertion

This clause amends the Principal Act by inserting after section 96A new section 96AA. New section 96AA provides that the Liquor Licensing Board shall determine all matters on the balance of probabilities

Clause 42: Review by Administrative Appeals Tribunal

This clause amends section 104 of the Principal Act to provide for the review by the Administrative Appeals Tribunal of decisions relating to outdoor public areas, training and disciplinary sanctions.

Clause 43: Notification of decisions

This clause amends section 104A of the Principal Act by substituting subsection (1). New subsection (1) more clearly states notices of decisions referred to in section 104 shall be given to the applicant, licensee or permit holder concerned.