

1991

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

LIQUOR TAX BILL 1991

LIQUOR TAX (CONSEQUENTIAL PROVISIONS) BILL 1991

EXPLANATORY MEMORANDUM

Circulated by authority of the Chief Minister and Treasurer
Rosemary Follett, MLA

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OUTLINE OF LEGISLATION

Liquor licensing fees imposed in the Territory are currently administered under the Liquor Act 1975 (the Liquor Act). Under the Liquor Act, licence fees are assessed annually on purchases by licensees during each financial year. Fees are then paid in two instalments which are due up to 17 and 23 months respectively, after tax liability may be passed on to consumers. Due to the extensive nature of the arrears involved, the Territory is presently exposed to losses through bankruptcies and bad debts in the industry.

A new Act is to be made to specifically impose a tax on liquor purchases for resale and bring the administration of the new tax into line with other taxes and fees collected by the Commissioner for ACT Revenue (the Commissioner).

The combined effect of the Liquor Tax Bill and the Liquor Tax (Consequential Provisions) Bill will be to repeal the existing provisions of the Liquor Act in relation to licensing fees and replace them with new liquor tax provisions to provide for quarterly assessment and payment of liquor tax to reduce the Territory's exposure to revenue losses. However, distinction is made between licensees existing at the commencement of the two Bills and future licensees, so that no additional financial burden is placed on existing licensees in the change over to the new quarterly collection scheme.

Liquor Tax Bill 1991

The Bill proposes quarterly collection of liquor tax in advance of relevant alcohol purchases by new licensees and transferees of existing licences. These licensees will be required to pay tax in advance of each quarter based on an estimate of purchases in the forthcoming quarter.

On initial grant or transfer of a licence, the new licensee will be required to pay an amount based on estimated purchases during the first two quarterly periods of operations. The tax payable in advance of each subsequent quarterly period will be estimated on the basis of purchases in the last known quarter ie. that quarter commencing six months prior to the quarter for which the tax is paid in advance. For example, a licensee will be required to pay tax for the October to December quarter by 16 September, calculated by reference to purchases in the preceding April to June quarter.

The estimated tax paid in advance of each quarter will be adjusted in accordance with actual purchases in that quarter when the details are known; with the adjustment combined with the next tax payment. In the example in the preceding paragraph, the adjustment of tax paid on 17 March for the April to June quarter would be added to or offset against (as appropriate) the 16 September payment.

However, it is impossible to bring existing licensees into the advance payment scheme without imposing on them an obligation to discharge all arrears plus the current year's tax all in the one year - that is, they would be required to pay two years tax in one year.

To avoid this problem, existing licensees at the time of commencement of the Bill will be required to pay fees in advance of each quarterly period, based on purchases during the quarterly period commencing fifteen months before the period to which the fee is paid for the right to trade. There will be no adjustment of fees with actual purchases, and arrears amounting up to 14½ months will remain. On the cessation or transfer of a licence, a termination fee will be assessed to recover all outstanding debt ie. fees on purchases over the last five quarterly periods of operations which have not previously become payable to the Territory.

As a further guard against revenue losses due to bad debts, the Bill provides that all licence transfers will require the discharge of any outstanding licensing debt by the transferee of the licence, with transferees then brought into the tax in advance scheme for new licensees.

The provisions of the new liquor tax legislation will be read as one with the Taxation (Administration) Act 1987 to facilitate enforcement of the new taxing provisions.

Details of the Bill are included at Attachment A.

Liquor Tax (Consequential Provisions) Bill 1991

This Bill will complement the Liquor Tax Bill 1991 by repealing the liquor licensing fee collection provisions of the Liquor Act 1975 and incorporating the new liquor tax legislation with the Taxation (Administration) Act 1987 (the Administration Act).

The Administration Act will provide for the general administration of the liquor tax collection scheme imposed by the new liquor tax legislation, for example, lodgement, assessment, penalties, recovery, maintenance of records, offences, prosecution, objections and appeals.

Incorporation of the new liquor tax legislation under the Administration Act will bring the collection of liquor tax into line with the imposition of other ACT taxes and fees administered by the Commissioner, most of which are administered under the general umbrella provisions of the Administration Act.

This Bill will also provide transitional arrangements to bring existing licensees into the new scheme to apply to these licences.

Details of the Bill are included at Attachment B.

FINANCIAL IMPLICATIONS

The quarterly collection scheme contained in these Bills is revenue neutral, designed merely to reduce the Territory's exposure to bad debt and bankruptcy in the liquor industry.

Losses of almost \$1.5 million over the last five years due to bad debts in the industry demonstrate the potential for further losses under the existing legislation. The scheme contained in these Bills will largely limit the problem to existing licensees. However, the arrears of existing licensees will be marginally reduced by the new quarterly arrangements, and the Territory's exposure to bad debt be lessened through the requirement for smaller and more frequent payments by these existing licensees.

LIQUOR TAX BILL 1991

PART I - PRELIMINARY

Short title

Clause 1 - provides for the short title for this Act to be the Liquor Tax Act 1991 (the Act).

Commencement

Clause 2(1) - brings the Short Title and Commencement clauses into effect from the day of Gazettal of the Act.

Clause 2(2) - provides that Part IV of the Act, which deals with liquor tax to be paid by the Universities and the Canberra Theatre Trust, will commence on 1 July 1992. This start date will facilitate transition of these bodies into the new scheme.

Clause 2(3) - provides for all other provisions of the Act to come into effect from 1 January 1992.

Interpretation

Clause 3(1) - defines a number of terms used in the Act.

Clause 3(2) - gives other terms used in the Act the same meaning as that defined in the Liquor Act 1975 (the Liquor Act).

Incorporation of Taxation (Administration) Act 1987

Clause 4(1) - incorporates the Act with the Taxation (Administration) Act 1987 (the Administration Act) so that the two Acts are read as one.

Clause 4(2) - ensures that advance payments by licensees and amounts payable by persons licensed at the time of commencement date of the Act, are subject to the provisions of the Administration Act.

Clause 4(3) - provides that over-payments of tax under the Act, in particular estimates of tax applicable to forthcoming quarters, are not to be subject to interest.

Administration

Clause 5 - provides for the administration of the Act by the Commissioner for ACT Revenue (the Commissioner).

Parts II and III not to apply

Clause 6 - provides that persons holding licences at the commencement of the Act, along with Universities and the Canberra Theatre Trust, are not subject to the provisions of Part II and III of the Act, which deal with future licensees.

PART II - LIABILITY TO TAXATION

Liability

Clause 7 - imposes general liability for tax on liquor purchased for the purpose of sale or exposure for sale.

Amount payable

Clause 8(1) - requires exempt wholesale licensees (as determined by the Minister under section 28 of the Act) to pay a set amount each quarter in addition to tax on any taxable purchases in that quarter. The amount of tax on purchases payable by other licensees in respect of each quarter will be subject to a set amount or tax on taxable purchases, whichever is greater. Both these set amounts will be determined by the Minister.

Clause 8(2) - sets the formula to be used in assessing the tax payable.

Exemptions

Clause 9(1) - grants exemption from tax on liquor purchased for sale for a number of purposes, including medical and duty-free sale and sale in some Commonwealth facilities.

Clause 9(2) - ensures that liquor purchased by licensees for sale to the bodies exempted by clause 9(1) is not exempt from tax.

PART III - ADVANCE PAYMENTS

Generally

Clause 10(1) - requires licensees to lodge, by the due date, a return specifying details of liquor purchased during the base quarter and to pay the applicable tax. The due date is specified in clause 3 as being 14 days in advance of each quarter.

Clauses 10(2) and (3) - provide for any difference between the amount paid in advance of the base quarter and the tax on actual purchases during that quarter, to be added to or offset against - whichever is appropriate - the advance payment for the forthcoming quarter.

Clause 10(4) - defines the "base quarter" as the quarter beginning 3 months before the quarter in which the relevant due date occurs.

In other words, taxpayers will be required to pay an amount before each quarter calculated by reference to actual purchases in the quarter commencing 6 months prior to the coming quarterly period.

Grant or transfer of licence

Clauses 11(1) and (2) - requires licensees, on grant or transfer of a licence, to pay an amount of tax based on an estimate, by the Commissioner, of purchases during the quarter in which the relevant licence is granted or transferred and the following quarterly period.

Termination of licences

Clauses 12(1) and (2) - provide for tax paid in advance of the final period of operations before cessation of a license, to be adjusted in accordance with actual purchases during this period. This amount may be a further payment by or a refund to the licensee, depending on the circumstances, and will ensure the Territory receives all monies payable on liquor purchases up to the date of cessation of a licence.

Clause 12(3) - defines the "base quarter" and "final period" so that the payment referred to in clauses 12(1) and (2) will be calculated on the difference between tax paid in advance of and actual purchases during the quarter in which the licence is terminated and the preceding quarter.

Transfer of licences

Clause 13 - provides for transferees of licences to be liable for payments as if the licence had been terminated on the date of transfer.

PART IV - TRANSITIONAL PAYMENTS

Division 1 - Continuing Licensees

Interpretation

Clause 14 - sets the "base quarter" for continuing licensees (defined in clause 3 as persons holding licences as at the date of commencement of the Act) as the quarter beginning 12 months before the quarter in which the due date occurs.

Quarterly payments

Clause 15(1) - requires continuing licensees to lodge a return, specifying details of liquor purchases during the base quarter, along with the applicable amount by the due date (the same date as for new licensees). In relation to exempt wholesale licensees, the amount payable will be any relevant tax plus a determined amount. Other licensees will be liable for the relevant tax or a determined amount, whichever is greater.

Clause 15(2) - defines the formula to be used in assessing the tax payable under Clause 15(1).

This requirement is similar to that for new licensees, except that the amount is calculated by reference to a different base quarter and there will be no adjustment of fees in accordance with actual purchases in the quarter for which the amount is paid in advance.

Termination payments

Clause 16(1) - provides for all fees relevant to purchases by licensees during the final period of operations before cessation of a licence, to be paid to the Territory within 14 days of termination.

Clause 16(2) - defines the formula to be used in calculating liability on termination of a licence.

Clause 16(3) - allows for any such termination payment to be refunded to the relevant licensee if the termination is set aside after payment.

Clause 16(4) - defines final period so that the termination payment will be imposed on all purchases for which relevant fees have not previously become payable to the Territory.

Transfer payments

Clause 17 - provides for transferees of existing licences to be liable to payments as if the licence had been terminated on the date of transfer. In other words, transferees will be subject to a termination payment on all outstanding debt as imposed by clause 15. Transferees will no longer be classed as "continuing licensees" (as defined by clause 3) and will therefore be required to pay tax in advance as with new licensees.

Payments on election

Clause 18 - requires continuing licensees who elect under clause 26 of the Act to be brought into the scheme for new licensees, to pay such amounts as if they were the transferee of the licence (see clause 16).

Division 2 - Other persons

Application

Clause 19 - provides for this Division to apply to the Universities and the Canberra Theatre Trust. This continues the traditional arrangements operating under the Liquor Act 1975 for these bodies.

Payments by Universities etc.

Clause 20(1) - requires the organisations to which this division applies to lodge, by the due date, a return specifying details of taxable purchases in the base quarter and to pay the appropriate tax.

Clause 20(2) - sets the base quarter for Universities and the Canberra Theatre Trust as the quarter beginning 6 months prior to the quarter in which the due date occurs.

PART V - RECORDS OF PURCHASES

Division 1 - Generally

Requirement to keep records

Clause 21 - defines the details of liquor transactions which must be recorded and kept by licensees for a period of at least 6 years after the date of the relevant transaction.

Division 2 - Certificates of liquor transactions

Interpretation

Clause 22 - defines the "prescribed period" in relation to this division as the period between 1 July and 1 August.

Annual Lodgement

Clause 23(1) - requires licensees to lodge a certificate of liquor transactions containing details of relevant transactions during the preceding financial year, by 1 August each year.

Clause 23(2) - provides that if during the period 1 July to 1 August a licence has been transferred or is no longer in force a certificate, as referred to in Clause 23(1), is not required to be lodged for the financial year immediately preceeding that period.

Transfer or termination of licences

Clause 24(1) - requires licensees to lodge a certificate of liquor transactions on transfer or termination of a licence. The former licensee will be required to lodge details of relevant transactions during the final year of trading.

Clause 24(2) - defines the "final year" as the financial year in which the licence is terminated or, if the licence is terminated between 1 July and 1 August, details of transactions during the preceding and current financial years.

Universities etc.

Clause 25(1) and (2) - require Universities and the Canberra Theatre Trust to submit annual certificates of liquor transactions containing details of relevant transactions during the preceding financial year, by 1 August each year.

PART VI - MISCELLANEOUS

Election of continuing licences

Clauses 26(1) and (2) - enables continuing licensees to voluntarily come within the scheme for new licensees.

Clause 26(3) - ensures that these licensees are then subject to the provisions of Parts II and III of the Act which deal with new licensees.

Tax payable by unlicensed persons

Clause 27 - provides the date on which tax is payable for persons purchasing liquor for sale or exposure for sale without the appropriate licence.

Exempt wholesale licensees

Clause 28 - allows the Minister, by notice in the Gazette, to declare off licences to be exempt wholesale licences for the purposes of the Act. Such licences will be restricted to those licensees who predominantly, if not only, sell liquor to other licensees. Purchases of liquor for such sales are exempt from tax.

Suspension and cancellation

Clause 29(1) - suspends a licence where a licensee fails to pay, by the due date, any amount imposed under the Act or any penalty tax.

Clause 29(2) - cancels a licence where a licensee fails to pay, within 30 days after the due date, any amount imposed under the Act or any penalty tax.

Clause 29(3) - defines the "date for payment" for the purpose of this section, as the date required by the Act or Administration Act or a date specified by the Commissioner in deferring payment by virtue of section 26 of the Administration Act.

Regulations

Clause 30 - provides for the Executive to make regulations in accordance with the Act.

LIQUOR TAX (CONSEQUENTIAL PROVISIONS) BILL 1991

PART I - PRELIMINARY

Short title

Clause 1 - provides for the short title for this Act to be the Liquor Tax (Consequential Provisions) Act 1991 (the Consequential Act).

Commencement

Clause 2(1) - brings the Short title and commencement clauses into effect from the day of Gazettal of the Act.

Clause 2(2) - provides that subsection 4(2) and section 14 of the Consequential Act will commence from 1 July 1992.

Clause 2(3) - provides that the remaining provisions commence on the day referred to in subsection 2(3) of the Liquor Tax Act.

Interpretation

Clause 3(1) - defines a number of terms used in the Act.

Clause 3(2) - gives other terms used in the Act the same meaning as that defined in the Liquor Tax Act 1991 (the Liquor Tax Act).

PART II - CONSEQUENTIAL AMENDMENTS

Amendment of Liquor Act 1975

Clause 4(1) - amends the Liquor Act 1975 (the Liquor Act) in accordance with Part 1 of Schedule 1 to the Consequential Act.

The schedule amends sections 4, 40B, 41, 42B, 42E, 43A and 105A and repeals sections 40, 40A, 42D, 43, 76A and 76B of the Liquor Act in lieu of similar provisions to be included in the Liquor Tax Act and to provide for the transition of existing licensees into the scheme applicable to them.

Further, the Schedule amends section 30 of the Liquor Act to require applicants for liquor licences to provide the Registrar of Liquor Licences (the Registrar) with an estimate of purchases during the first two quarters of trading after issue of a licence. Section 104AB will be inserted into the Liquor Act to require the Registrar to notify the Commissioner of any changes in the status of a licence and the estimate of purchases where appropriate.

Changes to the Liquor Act by virtue of Part 1 of Schedule 1 to the Consequential Act come into effect from 1 January 1992.

Clause 4(2) - amends the Liquor Act in accordance with Part 2 of Schedule 1 to the Consequential Act.

Minor amendments to sections 5, 40B and 42C of the Liquor Act in accordance with this provision will not come into effect until 1 July 1992, thereby allowing transitional arrangements until this date for existing licensees.

Amendment of Taxation (Administration) Act 1987

Clause 5 - amends the Taxation (Administration) Act 1987 (the Administration Act) in accordance with Schedule 2 of the Consequential Act.

Schedule 2 amends the Administration Act to incorporate the Liquor Tax Act as a tax law in section 3. It also amends section 26 to ensure tax payable under the Liquor Tax Act is due on the dates prescribed by that Act. A further consequential amendment is made to section 97 of the Administration Act to allow the Commissioner to disclose information relating to liquor licensing to the Registrar or the Liquor Licensing Board.

PART III - TRANSITIONAL PROVISIONS

Division 1 - Continuation of former Act

Subsection 40 A(1)

Clause 6(1) - preserves the liability of licensees in relation to the second instalment of the 1990/91 licence fee assessment, which would ordinarily be due on 1 June 1992.

Clause 6(2) - requires licensees to pay half of the liability referred to in clause 6(1) by 17 March 1992 and half by 16 June 1992.

Section 42B

Clause 7 - requires that payment on surrender of a licence before 1 July 1992 includes outstanding liability by virtue of clause 6 of the Consequential Act, as well as any amounts payable under the Liquor Tax Act at the date of surrender:

Other Provisions

Clause 8 - preserves amounts payable under sections 42D and 42E of the former Liquor Act until 1 July 1992. This provision will have a similar effect to clause 7 when licences are terminated other than when surrendered and will provide for transition of existing licensees into the new scheme.

The clause also continues the allowances for exempt wholesale liquor sales provided by section 105A(2) until similar provisions of the Liquor Tax Act come into effect from 1 July 1992.

Division 2 - Deemed amendments of Liquor Act 1975

Section 40B

Clause 9 - prevents a licence being issued or transferred to a person during the period 1 January 1992 to 1 July 1992, if that person has not paid amounts under the Liquor Act, the Liquor Tax Act or the Consequential Act. This provision will be superceded by amendments to the Liquor Act from 1 July 1992.

Section 42C

Clause 10 - similar to clause 9, this clause permits cancellation of a licence on surrender between 1 January 1992 and 1 July 1992 if no amounts remain outstanding under the Liquor Act, Liquor Tax Act and the Consequential Act.

Division 3 - Transitional payments

Transfer payments

Clause 11 - provides that the transferee of a licence between 1 January 1992 and 1 July 1992 be liable to amounts as if the licence had been terminated at the date of transfer.

Payments on election

Clause 12 - requires a licence holder who elects to be brought under Parts II and III of the Liquor Act (ie. arrangements for new licensees) by virtue of section 26 of that Act, to pay amounts as if the licence had been transferred.

PART IV - MISCELLANEOUS

Application of Liquor Tax Act

Clause 13 - provides for the provisions of the Liquor Tax Act to apply to amounts payable under the Liquor Act and the Consequential Act as if they were tax imposed by section 7 of the Liquor Tax Act.

Certificates by Universities etc.

Clause 14 - allows Universities and the Canberra Theatre Trust to lodge a certificate of liquor transactions on 1 August 1992 in relation only to the period from 1 January 1992 to 30 June 1992, rather than the full preceding financial year as under the Liquor Act 1975 these bodies would have already paid for any liabilities incurred in the 1991 calendar year.