

1990

THE LEGISLATIVE ASSEMBLY OF THE  
AUSTRALIAN CAPITAL TERRITORY

LIQUOR (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

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## LIQUOR (AMENDMENT) BILL 1990

In June 1985, the former ACT House of Assembly agreed to the appointment of a Select Committee to inquire into and report on the ACT liquor industry. The Committee was specifically requested to examine the adequacy of the Liquor Act 1975 in relation to the needs of the liquor industry and the general community.

A substantial number of the Committee's recommendations were adopted. The remainder of the recommendations, plus a number of new initiatives, have been incorporated into the proposed Liquor (Amendment) Bill 1990 (the Bill). The Bill also revises the Liquor Act in a major way by removing gender specific references, by removing unnecessary verbiage and generally amending various provisions in accordance with current drafting practice.

In more specific terms, the Bill proposes to expand the conditions which must be satisfied before a liquor licence may be issued. These include that an applicant must be 18 years of age and a fit and proper person to hold a licence.

The Bill also provides for greater power to issue directions, suspend or cancel a liquor licence.

The licensing authority may issue directions where a licensee has contravened a provision of the Act or has permitted the licensed premises to be used so as to cause disturbance or inconvenience

to patrons or neighbours. The sanction of licence suspension is available where a licensee has contravened a direction and it would be in the public interest to suspend the licence. Licence cancellation is the ultimate sanction available where the licensee is no longer a fit and proper person to hold the licence or the premises are not fit and proper premises for the purposes of the licence.

The Bill also revises provisions in relation to the alteration of licensed premises, the closure of licensed premises in certain circumstances and a number of other procedural and administrative aspects of the liquor licensing process.

The majority of the provisions are re-stated in a clearer style so that when juxtaposed with the new provisions, they will not look out of place.

The financial implications involved in the proposed Bill are not significant and involve forsaken revenue of approximately \$30,000 per annum through the non-collection of liquor licence fees on liquor purchased for duty free sale. This change brings the ACT into line with the rest of Australia.

Details of the Liquor (Amendment) Bill 1990 are set out in the form of clause notes in the Attachment.

## ATTACHMENT

## LIQUOR (AMENDMENT) BILL 1990

Clause 1 cites the Bill, when enacted, as the Liquor (Amendment) Act 1990.

Clause 2 provides that section 1, section 2 and the remaining provisions of the Bill commence on a date fixed by the Minister by notice in the gazette. This clause also provides that if a provision other than section 1 or 2 is not commenced within 6 months after the notification of the Act in the Gazette then the provision will commence on the first day after the 6 month period.

Clause 3 provides that a reference in the Bill to the "Principal Act" means the Liquor Act 1975.

Clause 4 deals with interpretation for the purposes of the Principal Act.

Clause 5 amends section 5 of the Principal Act by exempting the application of provisions relating to the sale of liquor in the Act to the duty-free sale of liquor. Clause 5 also omits from paragraph (1)(c) the reference to "Australian Services Canteens Organisation" and substitutes "Army and Air Force Canteen Service". This is to reflect the name change for this Organisation. The clause also changes all references in section 5 of the Principal Act to the "Canberra College of Advanced

Education" to the "University of Canberra", also reflecting a name change for this organisation. Clause 5 also omits the definitions of "exempt college building" and "statute" as these are no longer relevant and introduces an updated definition of "exempt university building" to reflect the new situation. It also adds at the feet of subsections (3) and (6) a penalty of \$1,000.

Clause 6 amends section 17 of the Act by removing gender specific references from subsections (7) and (9) and by omitting from subsection (10) the reference to "member of the police force of the Territory as if the member" and substituting "police officer as if the officer".

Clause 7 inserts after section 17 new section 17AA. Subsection (1) is a revised version of section 90, dealing with the production of licences and permits to an inspector or a police officer and limits the requirement for production of such a licence or permit to the case where an inspector or police officer is entitled to be on the premises. Subsection (2) provides for a penalty of \$1,000 where a licensee or permit holder fails to comply with a demand under subsection (1).

Clause 8 amends section 17B of the Principal Act by inserting new subsection (2A). This subsection is a revised version of that found in section 84 and provides that a person shall not, without reasonable excuse, contravene a requirement made of him or her under paragraph (1)(c) or (2)(c). A penalty of \$500 is provided for.

Clause 9 amends section 17C of the Principal Act by omitting from subsection (3) the reference to "section 84" and substituting "subsection 17B(2A)".

Clause 10 repeals section 25 of the Principal Act and substitutes a more clearly drafted section which also provides for a new "special" class of licence.

Clause 11 amends section 26 of the Principal Act, which deals with On Licences, by omitting and/or substituting various words and phrases to make section 26 more readable. A clearer style of drafting has been used to achieve this.

Clause 12 amends section 27 of the Principal Act which deals with General Licences in the same manner and for the same purpose as the amendments to section 26.

Clause 13 amends section 28 of the Principal Act, which deals with Off Licences in the same way as clauses 11 and 12.

Clause 14 amends section 29 of the Principal Act, which deals with Club Licences, by omitting the words "Subject to this Act" and substituting the word "A". This amendment has the same purpose as clauses 11-13.

Clause 15 inserts a new section 29A in Division I of Part IV. This section provides that the conditions which are to apply to a Special Licence shall be specified on the licence.

Clause 16 repeals section 31 of the Principal Act.

Clause 17 repeals section 33 of the Principal Act and substitutes a number of new sections.

The new section 33 provides that the licensing authority may issue an applicant a licence of a category other than that applied for where the Authority considers, on reasonable grounds, that a different class of licence should be issued.

Subsection (1) of the new section 33A lists the grounds on which the authority may refuse to issue a licence. These grounds are that - the applicant is not a fit and proper person to hold the licence; the premises in respect of which the licence is sought are not fit and proper premises for the purpose of the licence; and the conditions of the Crown Lease over those premises are not appropriate conditions for the purpose of the licence.

Subsection (2) lists the matters to be taken into consideration by the Authority in deciding whether to authorise the issue of a licence. These include - the applicant's age; understanding of his or her obligations under the Liquor Act 1975; convictions (if any) for a defined offence; previous compliance with the Liquor Act or directions issued by the Authority; the provisions of the Licensing Standards Manual as they relate to the premises; whether the applicant is an undischarged bankrupt; and, where the applicant is a body corporate, whether the body is in liquidation or whether, in considering the above criteria, any defined

influential person in relation to the body would not be a fit and proper person to hold the licence.

New subsection (3) provides that where the Authority has reasonable grounds for believing that a licence is to be held for the purposes of a partnership, a reference in subsections (1) or (2) to the applicant is to be read as including a reference to each of the partners who the Authority has reasonable grounds for believing intends to be concerned in or to take part in the management of the partnership's business, whether or not the partner's name appears on the application. This will ensure that where a licence is granted to an applicant who is a partner, the licence will be held on behalf of the partnership; all partners are therefore to be responsible under the licence notwithstanding that their names do not appear on the licence.

Clause 18 inserts a new section 34A concerning Special Licences. Subsection (1) provides that where the Authority authorises the issue of a Special Licence, the licence shall be issued subject to such conditions as the Authority considers to be in the public interest. Subsection (2) provides that the Special Licence shall specify the conditions subject to which it is issued.

Clause 19 amends section 36 of the Principal Act by omitting and substituting subsections (1) and (3). The new subsection (1) provides that where the Authority has authorised the issue of a licence, the Registrar is required to issue the licence on payment of the amount (if any) by which the determined fee for the issue of a licence of a class applied for exceeds the



determined fee for the issue of a licence of the class of the licence to be surrendered. That amount is payable in the case where an applicant has applied for a conditional surrender.

In any other case, the determined fee only is required to be paid.

Subsection (3) provides that the Registrar shall endorse on a licence any details relating to the applicant which are provided under Divisions 7 or 8 concerning licences held by partnerships or corporations respectively.

Clause 20 amends section 38 of the Principal Act by omitting and substituting subsection (1). New subsection (1) requires the Registrar to renew a licence where he or she receives an application in the prescribed form.

Clause 21 repeals sections 39 and 40 and Division 4 of the Principal Act and substitutes new sections and Divisions.

New section 39 provides that where the Registrar renews a licence it continues in force, subject to the Act, for a period of 12 months.

New section 40 deals with the first instalment of the licence renewal fee. Subsection (1) provides that half of the determined fee is due on the last day for which the licence is valid. Subsection (2) provides that where a licence is renewed and the first instalment of the determined fee is not paid by the due

date an additional amount of 10% of the determined fee is due and payable by the licensee to the Territory within 30 days of the due date. Subsection (3) provides that where subsection (2) applies in relation to a licence the licence ceases to be in force if the first instalment of the determined fee and 10% penalty are not paid within the thirty day period.

New section 40A deals with the balance of the licence renewal fee. Subsection (1) provides that the balance (the other half) of the renewal fee is due and payable to the Territory by the licensee on 1 June next following that renewal. Subsection (2) provides that where a licence is renewed and the balance of the determined fee is not paid by 1 June next following that renewal an additional amount of 10% of the determined fee is due and payable by the licensee to the Territory on or before 30 June next following that renewal. Subsection (3) provides that where subsection (2) applies in relation to a licence, the licence ceases to be in force if the balance of the renewal fee and 10% penalty are not paid on or before 30 June next following that renewal.

New section 40B provides for the effect of a failure to pay a renewal fee. Where a licence ceases to be in force, the Registrar shall not issue or transfer a licence to a former licensee or renew another licence held by that person unless the amount payable under either section 40 or 40A has been paid, or the person has made arrangements to the satisfaction of the Authority for the payment, by instalments or otherwise, of the whole amount.

New Division 4 deals with the transfer of licences. Subsection (1) of section 41 provides that the Authority may authorise the transfer of a licence upon application in the prescribed form. Subsection (2) provides that the transfer of a licence takes effect from the date the Authority approves the transfer, or from such later date as is fixed by the Authority. Subsection (3) provides that where the Authority approves the transfer of a licence and the licensee lodges with the Registrar the licence and records kept under section 76A (concerning liquor transactions) the Registrar shall amend the licence accordingly, endorse it on a memorandum in the prescribed form and give it and the records to the new licensee as soon as practicable after the date of effect of the transfer.

New section 42 deals with the considerations to be taken into account by the Authority in deciding whether to authorise the transfer of a licence. Subsection (1) provides that the Authority shall not authorise the transfer of a licence if it is satisfied on reasonable grounds that the proposed transferee is not a fit and proper person to hold a licence; or, if the licensee, or a defined influential person in relation to the body corporate where the licence is held by such a body, has been charged with a defined offence where proceedings are not completed and the licensee and proposed transferee hold a common interest in the licence. This interest may be as an individual, a member of a partnership, or as a defined influential person in relation to a body corporate which holds the licence or is the proposed transferee.

Subsection (2) lists the relevant considerations to be used by the Authority in deciding whether to authorise the transfer of a licence. These considerations are consistent with those applied in relation to the issue of a licence at clause 17 with the exception of the application of the provisions in the Licensing Standards Manual as they apply to the licensed premises. It can be assumed that the licensed premises complied with the Manual prior to the transfer so this element is not necessary to be considered by the Authority. The considerations include the applicant's - age; understanding of the obligations of a licensee under the Liquor Act 1975; convictions (if any) for a defined offence; previous compliance with the Liquor Act or directions issued by the Authority; whether the applicant is an undischarged bankrupt; and, if the proposed transferee is a body corporate, whether, in consideration of the above criteria, any defined influential person would not be a fit and proper person to hold a licence.

Subsection (3) provides that where a licence is held for the purposes of a partnership, a reference in this section to the licensee is to be read as including a reference to each of the partners who has an interest in the licence regardless of whether the partner's name appears on the licence or whether the notice of partnership requirements under section 43B have been complied with.

Subsection (4) provides that where the Authority has reasonable grounds for believing that a licence is to be held for the

purposes of a partnership, a reference in this section to the proposed transferee is to be read as including a reference to each of the partners who the Authority has reasonable grounds for believing intends to be concerned in or to take part in the management of the partnership's business, whether or not the partner's name appears on the application. This will ensure that where a licence is granted to an applicant who is a partner, the licence will be held on behalf of the partnership; all partners are therefore to be responsible under the licence notwithstanding that their names do not appear on the licence.

New Division 5 deals with the surrender of licences. Section 42A deals with interpretation for the purposes of this Division and defines "conditional surrender" in relation to a licence as the surrender of the licence on the condition that a licence of a different class is issued.

Subsection (1) of section 42B provides that a licensee may apply to the Authority for the surrender, or conditional surrender, of the licence. Subsection (2) requires that an application be in writing and accompanied by - any portion of the determined fee for the most recent renewal payable under subsection 40(1) or 40A(1); any additional amount which is payable under subsection 40(2) or 40A(2); and the determined fee for the surrender of the licence.

Section 42(c) deals with the cancellation of a licence upon application to surrender. Subsection (1) provides that upon application in accordance with section 42B the Authority shall

cancel the licence by written notice to the applicant if - no amount remains payable under the Liquor Act by the applicant; the Authority is satisfied, where necessary, that appropriate arrangements have been made for the disposal of any liquor held by the applicant in pursuance of the licence; and, in the case of a conditional surrender, the Authority has authorised the issue of a licence of a different class. Subsection (2) provides that the cancellation of a licence under this section takes effect - for a conditional surrender, on the date the licence of a different class is issued; and, in any other case, 14 days after the date of the application.

New Division 6 deals with licence termination. Section 42D provides for the payment of the determined fee by the licensee to the Territory where a licence ceases to be in force otherwise than by virtue of the cancellation of a licence under section 42C or the suspension of a licence. It also provides that where a cancellation is set aside after payment of the amount, the Territory is required to refund that amount.

Subsection 42E(1) provides that where a person fails to pay in full the amount due under section 42D, the Registrar shall not issue or transfer a licence to that person or renew another licence held by the person except with the approval of the Authority.

Subsection (2) provides that the Authority should not grant its leave under subsection (1) unless it is satisfied that the person from whom the amount is due has made satisfactory arrangements

for the payment, by instalment or otherwise, of the whole amount. Subsection (3) provides that where an amount due under section 42D by 2 or more persons is not paid in full, the Registrar shall not issue or transfer a licence to any of those persons, or renew another licence held by any of those persons, except with the approval of the Authority. Subsection (4) provides that the Authority shall not grant approval under subsection (3) unless the person seeking leave has made arrangements to the satisfaction of the Authority for the payment, whether by instalments or otherwise, of the whole amount or, if the Authority is of the opinion that it would be unfair on reasonable grounds to require payment of the whole amount, payment in accordance with the following formula:

$$\frac{A}{N}$$

where "A" is the amount due under section 42D and "N" is the number of persons by whom the amount is due. This has the effect of spreading the amount among all those with an interest in the licence.

Section 42F provides that where a licence ceases to be in force, whether by expiration of time, suspension or cancellation, the former licensee shall not, without reasonable excuse, fail to return the licence to the Registrar on the next day following the date of suspension, cancellation or expiration on which the Registrar's office is open to the public. A penalty of \$2,000 is provided for.

Subsection 43(1) provides that where a licence ceases to be in force otherwise than by virtue of its suspension the former licensee shall not, without reasonable excuse, within 14 days of that cessation, fail to give to the Registrar a certificate or certificates in the prescribed form relating to liquor transactions undertaken in pursuance of the licence during the defined period. A penalty of \$2,000 is provided for. Subsection (2) defines "defined period" to be -

(a) in relation to a licence which ceases to be in force after 1 July 1991 - the period commencing on the 1 July previous to that cessation and ending on the expiration of the date of that cessation; or

(b) in relation to a licence which ceases to be in force on or before 30 June 1991, the period -

(1) commencing on the date the licence was last renewed or, if the licence has not been renewed, on the date the licence was issued; and

(ii) ending on the expiration of the date of that cessation.

Clause 22 amends the heading to Division 5 of Part IV by omitting "5" and substituting "7".



Clause 23 amends section 43B of the Principal Act by deleting the reference to "(4)" in subsection (4) to correct a drafting error and provides in subsection (6) that it is a defence to prosecution under subsections (1), (2), (3) or (4) if it is established that the defendant had a reasonable excuse for failing to give the Registrar the relevant particulars or for failing to lodge the relevant licence with the Registrar. The penalty has been increased to \$2,000.

Clause 24 repeals section 43D of the Principal Act.

Clause 25 provides that Division 8, dealing with licences held by corporations, is inserted after section 43E of the Principal Act in Part IV.

New section 43F deals with information about influential persons. Subsection (1) requires a body corporate which applies for a licence to attach to the application written particulars of the name, residential address and relationship to the body of each defined influential person in relation to the body. Subsection (2) requires a body corporate which holds a licence issued before the date of commencement of section 25 of the Liquor (Amendment) Act 1990 to lodge with the Registrar, within 1 month of that commencement, written notice of the name, residential address and relationship to the body of each defined influential person in relation to the body and to lodge the licence. Subsection (3) requires the Registrar to endorse a licence lodged under subsection (2) with the information contained in the notice and to return the licence to the licensee. Subsection (4) provides

for a penalty of \$10,000 where a body corporate, without reasonable excuse, is convicted for a contravention of subsection (1) or (2).

New section 43G deals with changes in influential personnel. Subsections (1), (2) and (3) require a body corporate which holds or has applied for a licence to notify the Registrar in writing and lodge the licence within 28 days of any changes in influential personnel, whether they be new persons, changed relationships or a person ceasing to be an influential person. Subsection (4) requires the Registrar to amend any licence lodged under this section accordingly and return it to the licensee. Subsection (5) provides that where a licence is applied for or held for the purposes of a partnership and a body corporate is one of the partners this section applies to that body as if it were the sole applicant for the licence or sole licensee, whether or not the body's name appears on the application or the licence. Subsection (6) provides for a penalty of \$10,000 for a body corporate which, without reasonable excuse, is convicted for a contravention of subsection (1), (2) or (3).

Clause 26 inserts before Division 1 of Part V of the Principal Act Division 1 - Preliminary. Section 43H provides that where a licence is held for the purposes of a partnership a reference in this Part to a licensee is to be read, unless the contrary intention appears, as including a reference to each of the partners who has an interest in the partnership's business in relation to the licence regardless of whether the partner's name appears on the licence or whether subsection 43B(1), (2), (3) or

(4), as the case requires, has been complied with in relation to the licence.

Clause 27 omits the heading to Division 1 of Part V of the Principal Act and substitutes "Division 2 - Complaints".

Clause 28 amends section 45 of the Principal Act by omitting paragraphs (3)(a) and (b) and substituting new paragraphs which require the Authority to issue directions to the licensee if subsection 46(1) applies and to direct the Registrar to apply for the cancellation of the licence if subsection 54(2) applies.

Clause 29 omits the heading to Division 2 of Part V of the Principal Act and substitutes "Division 3 - Directions".

Clause 30 amends subsection 46(1) of the Principal Act by requiring the Authority to be satisfied, on reasonable grounds, that a licensee has breached a condition where the Authority has the power to issue directions to a licensee before issuing such directions. Paragraph (1)(a) is amended to provide that the Authority may issue directions where a licensee has contravened any provision of the Liquor Act. Clause 30 also removes gender specific references from paragraphs (1)(b) and (1)(e) and amends paragraphs (1)(c) and (d) to provide that directions may be issued where a licensee has permitted the licensed premises to be used so as to cause disturbance or inconvenience to persons occupying premises in the neighbourhood and where the licensed premises do not substantially comply with the Licensing Standards Manual. Subsections 46(3), (4), (5) and (8) are omitted and

subsection 46(7) is amended to provide a defence for contravening subsection 69(1) (concerning the provision of food) where the Authority is satisfied that the licensee took reasonable measures to avoid the contravention.

Clause 31 repeals Divisions 3 and 4 of Part V of the Principal Act and substitutes Divisions 4 and 5 concerning suspension and cancellation and Parts VI, VII and VIII concerning alteration of licensed premises, closure of licensed premises, and selling liquor on unlicensed premises respectively.

New section 47 in Division 4 provides that the Authority shall suspend a licence if it is satisfied on reasonable grounds that the licensee has contravened a direction and it would be in the public interest to suspend the licence.

New section 48 deals with the application for suspension by the Registrar. Subsection (1) provides that where the Registrar believes on reasonable grounds that a licensee has contravened a direction he or she shall apply to the Authority for the suspension of the licence. Subsection (2) provides that where the Authority believes on reasonable grounds that a licensee has contravened a direction it shall direct the Registrar to apply for the suspension of the licence, and the Registrar shall comply. Subsection (3) provides that the Registrar shall not apply for the suspension of a licence for contravening a direction where he or she applies for the cancellation of the licence on grounds including that contravention. Subsection (4) provides that an application by the Registrar shall set out the

grounds of the application and the facts relied upon to constitute those grounds.

New section 49 provides that on application in accordance with section 48 the Authority shall either - dismiss the application if it is satisfied on reasonable grounds that the facts set out in the application would not, if proven, establish that the licensee has contravened a direction; or, in any other case, conduct a hearing in relation to the application. After conducting a hearing the Authority shall, in writing, either suspend the licence for a specified period or dismiss the application.

New section 50 provides that the Authority shall, in writing, revoke a licence suspension if the licensee complies with the earlier direction before the period of suspension has expired.

New section 51 provides that the Authority may, before the expiration of a period of suspension, by notice in writing, extend the suspension for a further specified period.

New section 52 provides that the suspension of a licence has effect until the suspension is revoked or set aside, or until the end of the period specified under either paragraph 49(2)(a) or section 51.

New section 53 in Division 5 deals with the grounds for cancellation. Subsection (1) states the grounds for the cancellation of a licence as - the licensee not being a fit and

proper person to hold a licence; and the licensed premises not being fit and proper premises for the purposes of the licence. Subsection (2) lists the matters to be considered in determining whether a ground for cancellation exists as including:

- . if the licence has previously been suspended for the contravention of a direction - whether, after the expiration of the period of suspension the licensee has again contravened that direction, or has contravened a direction to the same or similar effect;
- . whether the licensee has been convicted of a defined offence;
- . whether the licensee is bankrupt;
- . if the licensee is a body corporate -
  - (i) whether the body goes into liquidation; or
  - (ii) whether, in consideration of the matters referred to in the paragraphs above or otherwise, any defined influential person in relation to the body would not be a fit and proper person to hold a licence; and
- . non-compliance with the provisions of the Manual as they relate to the licensed premises.

New section 54 provides that where the Registrar or the Authority believes on reasonable grounds that there is a ground for the cancellation of a licence the Registrar shall apply to the Authority for the cancellation of the licence. The Authority has the power to direct the Registrar to make such an application and, if directed, the Registrar must comply. An application for the cancellation of a licence shall set out the grounds of the application and the facts relied upon to constitute those grounds.

New section 55 provides that on application in accordance with section 54 the Authority shall either - dismiss the application if it is satisfied on reasonable grounds that the facts in the application would not, if proven, establish any ground for the cancellation of the licence; or, in any other case, conduct a hearing in relation to the application. After conducting a hearing the Authority shall, in writing, cancel the licence if it is satisfied on reasonable grounds that a ground for the cancellation of the licence exists; or, in any other case, dismiss the application.

New section 56 in Part VI provides for the application for alteration of licensed premises. Subsection (1) provides that a licensee may apply to the Authority for the alteration.

Subsection (2) states the requirements for the application. It shall be in the prescribed form signed by the licensee, accompanied by a copy of the plans and specifications for the alteration and attach a memorandum in accordance with subsection

33(6) of the Building Act 1972. It must also be lodged with the Registrar.

Subsection (3) requires the holder of a General Licence or an On Licence to specify in the plans and specifications accompanying the application each room proposed to be used as a bar-room if the alterations are made.

Subsection (4) requires the Registrar to submit to the Authority the application, plans and specifications together with a report stating the following matters -

- . whether in the Registrar's opinion the licensed premises would, if the proposed alteration were made, substantially comply with the Manual; and
- . if the Registrar's opinion is that if the proposed alterations were made the licensed premises would not substantially comply with the Manual - the grounds on which the opinion is based.

New section 57 relates to the consideration by the Authority of applications. Subsection (1) provides that the Authority shall, on application under section 56, take into account the Registrar's report and either approve the alteration of the licensed premises or conduct a hearing in relation to the application.



Subsection (2) provides that after conducting a hearing the Authority is required either to approve the alteration or refuse to approve it.

Subsection (3) provides that the Authority shall approve the alteration unless it is satisfied on reasonable ground that if the alteration were made it would not substantially comply with the Manual.

New section 58 relates to offences in relation to the alteration of licensed premises. Subsection (1) provides that a licensee shall not, except with the approval of the Authority, alter the licensed premises.

Subsection (2) provides that where the Authority approves an alteration of licensed premises, the licensee shall not conduct any business in relation to the licence on the licensed premises until the Authority declares that the alteration is complete, except in accordance with arrangements approved by the Authority.

Subsection (3) provides that a licensee shall advise the Registrar of any alteration to any fitment in the licensed premises. A penalty of \$2,000 is provided for.

New section 59 in Part VII relates to an application for the closure of licensed premises. Subsection (1) provides that the holder of a General Licence, an On Licence or a Special Licence may apply to the Authority for the closure of the licensed premises. The application shall specify that the closure is to

be in respect of any 1 or more days or from time to time at specified intervals.

Subsection (2) outlines the requirements of an application. It is to be in writing signed by the licensee, and lodged with the Registrar not less than 21 days before the first day in respect of which approval is sought or before a later date (before that first day) as the Authority allows.

Subsection (3) requires the Registrar to submit the application to the Authority with a report by him or her stating whether in his or her opinion the closure is reasonable having regard to the reasonable requirements of the public and if the Registrar's opinion is that the application should not be approved, the grounds on which the opinion is based.

Proposed section 60 relates to the duties of the Authority in considering an application for closure of the premises.

Subsection (1) requires the Authority, after taking into account the Registrar's report, to either approve the closure or conduct a hearing in relation to the application.

Subsection (2) provides that after conducting a hearing the Authority is required to either approve or refuse to approve the closure.

Subsection (3) provides that the Authority shall not approve the closure of the licensed premises unless it is satisfied that the proposed closure is reasonable, having regard to the reasonable requirements of the public.

New section 60A relates to offences in respect of the closure of licensed premises. Subsection (1) requires the licensee to display in the premises a notice setting out the particulars of the day or days on which, and the times at which, the premises will be closed. He or she is required to place such a notice for not less than 7 days before the first day on which the closure of the premises has been approved. A penalty of \$500 is provided for where this condition is breached without reasonable excuse.

Subsection (2) prohibits a licensee from opening any part of the licensed premises for the sale of liquor on a day in respect of which an approval under section 60 has been granted. A penalty of \$1,000 is provided for.

New Part VIII provides for the selling of liquor at unlicensed premises. Section 58 deals with interpretation for the purposes of this Part.

Section 59 deals with the notification by a licensee of the intention to sell liquor at unlicensed premises. Subsection (1) provides that the licensee shall notify the Registrar the period during which, and the premises at which, the licensee intends to sell liquor. Subsection (2) provides that any further sales of liquor at unlicensed premises are not to commence less than 24 hours after the expiration of the period for which any previous approval was granted and should not exceed 6 days. Subsection (3) requires notification no later than 7 days before the commencement of the period.

Clause 32 amends Part IV of the Principal Act by omitting "IV" and substituting "IX", and adding Division 1 - Issue of Permits.

Clause 33 amends section 64 of the Principal Act by omitting the reference to "senior member" from subsection (2) and replacing it with "Authority". It also amends section 64 by omitting subsections (3), (5) and (6).

Clause 34 amends section 65 of the Principal Act by omitting all the words from and including "subject" to and including "unless" and substituting "After conducting a hearing in relation to an application for a permit the Authority shall direct the Registrar to issue the permit unless the Authority is satisfied on reasonable grounds that". It also amends paragraph (1)(b) by omitting "residing" and substituting "occupying premises", and by omitting "or" (last occurring). At the end of subsection (1) the following paragraphs are added:

- . the applicant has been convicted of a defined offence and it would be contrary to the public interest for the application to be granted;
- . if the applicant is a body corporate - paragraph (d) applies to a defined influential person in relation to the body, and it would be contrary to the public interest for the application to be granted; and
- . it would otherwise be contrary to the public interest for the permit to be granted.

Clause 34 also adds new subsection (5), which provides that where the Authority has reasonable grounds for believing that an applicant intends to hold the permit for the purposes of a partnership, a reference in subsection (1) to the applicant is to be read as including a reference to each of the partners the Authority 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 which the permit is applied for, whether or not the partner's name appears on the application.

Clause 35 repeals section 65C of the Principal Act.

Clause 36 repeals sections 65E and 66 of the Principal Act and substitutes new sections 65E and 65F, and new Division 2 concerning the cancellation of permits. New section 65E provides for the return of the permit fee in certain circumstances. Where, for any reason other than the cancellation of the permit, a permit holder does not conduct any entertainment in respect of which the permit was issued and the permit holder gives the permit to the Registrar together with a signed statement that the liquor purchased for sale pursuant to the permit was returned to the people from whom it was purchased or no liquor was purchased for sale, the Territory is required to pay to the permit holder an amount equal to the amount by which the fee paid for the issue of the permit exceeded the minimum fee determined for the purposes of section 62.

New section 65F provides that a permit holder who, without reasonable excuse, fails to return the permit to the Registrar within 7 days of the expiration of the period during which the sale of liquor is authorised by the permit or within 7 days of the cancellation of the permit is subject to a penalty of \$1,000.

New section 66 in Division 2 provides that where a permit is held in the name or names of one or more of a number of partners, a reference to a permit holder is to be read as including a reference to any of the partners who is concerned in or who takes part in the management of the partnership's business, whether or not the partner's name appears on the permit.

New section 66A deals with the grounds for cancellation of a permit. Subsection (1) provides that the Authority shall cancel a permit if it would be in the public interest to do so.

Subsection (2) provides that for the purposes of this Division, the matters to be considered in determining whether it would be in the public interest to cancel a permit include the following:

- . whether the permit holder has permitted the premises or place in relation to which the permit is issued to be used so as to cause disturbance or inconvenience to persons occupying premises in the neighbourhood;
- . whether the permit holder has contravened a provision of this Act;

- . whether the permit holder has been convicted of a defined offence; and
- . if the permit holder is a body corporate - whether these criteria apply to a defined influential person in relation to the body.

New section 66B deals with complaints about the manner in which premises specified in a permit are being used.

Subsection (1) provides that where a person makes such a complaint, the Registrar is required to investigate it and prepare a written report of the results of that investigation.

Subsection (2) requires a complaint to be in writing, signed by the complainant and lodged with the Registrar.

New section 66C relates to the application for cancellation.

Subsection (1) requires the Registrar to apply to the Authority for the cancellation of a permit where he or she is satisfied that a complaint made under section 66B is not frivolous or unreasonable and has reasonable grounds for believing that it would be in the public interest to apply for cancellation.

Subsection (2) provides that the Authority shall direct the Registrar to apply for the cancellation of a permit where it has reasonable grounds for believing that a ground for permit cancellation under section 66A exists.

Subsection (3) provides for the requirements of an application. The Registrar must state the ground or grounds upon which the application is made, state the facts relied on to constitute the ground or grounds and be accompanied by any relevant report under section 66B.

New section 66D sets out the duties of the Authority after receiving an application by the Registrar under section 66C.

These are contained in subsection (1) -

- . if the Authority believes on reasonable grounds that the facts set out in the application and the Registrar's report would not, if proved, establish a ground referred to in section 66A, it must, by order in writing, dismiss the application; or
- . in any other case, it must conduct a hearing in relation to the application.

Subsection (2) provides that the Authority shall, by order in writing, after conducting a hearing, cancel the permit if satisfied on reasonable grounds that it would be in the public interest to do so or, in any other case, dismiss the application.

Clause 37 omits and substitutes the heading to Part VII of the Principal Act. The new heading is entitled "Part X - Offences".

Clause 37 also inserts new section 66E, which deals with interpretation for the purposes of Part X. A "Non-trading day" means a public holiday, a Sunday or a day in respect of which an



approval under Part VII (concerning closure of licensed premises) has been granted.

Clause 38 amends section 67 of the Principal Act which deals with the minimum bar trading hours in relation to a General Licence. It omits subsection (1) and otherwise tries to improve the section by incorporating current drafting practice. It also adds a penalty of \$2,000 in respect of an offence against this section.

Clause 39 amends section 68 of the Principal Act in the same way as clause 38. Section 68, however, deals with the minimum bar trading hours in respect of an On Licence. A penalty of \$2,000 is also provided for.

Clause 40 repeals sections 68A and 68B of the Principal Act and substitutes a number of new sections. New sections 68A and 68B provide that the holder of a Special Licence and a permit respectively, shall not, without reasonable excuse, contravene a condition specified in the licence or permit. A penalty of \$2,000 is provided for in each case.

Clause 41 amends section 69 of the Principal Act by adding a penalty of \$1,000 at the foot of subsection (1).

Clause 42 amends section 70 by including a penalty of \$500 at the feet of subsections (1) and (3).

Clauses 43 and 44 amend sections 71 and 72 of the Principal Act respectively by omitting the words "The holder of a licence" and substituting "A licensee" in each section. A penalty of \$500 is provided for in each case.

Clause 45 repeals sections 73 and 74 of the Principal Act and substitutes a new section 73 which provides that the holder of a General Licence or an On Licence shall not, without reasonable excuse, fail to display at each public entrance to each bar-room a notice stating the hours during which the bar-room will be open for the sale of liquor.

Clause 46 amends section 75 of the Principal Act by omitting the words "The holder of a licence shall not" and substituting "A licensee shall not, without reasonable excuse". A penalty of \$1,000 is also provided for in respect of a breach of this section.

Clause 47 repeals Part VIII of the Principal Act.

Clause 48 omits the heading to Part IX.

Clause 49 repeals section 77 of the Principal Act and substitutes a number of new sections. New section 76 requires a licensee to notify the Authority in writing within 28 days of ceasing to control the licensed premises, unless the Authority approves the transfer or surrender of the licence before the end of that period. A penalty of \$2,000 is provided for.

New section 76A deals with the keeping of records of liquor transactions. Subsection (1) provides that the licensee shall keep a record of every purchase of liquor for sale in pursuance of the licence showing -

- . the date of the purchase;
- . the name and address of the persons from whom the liquor was purchased;
- . the quantity of liquor purchased; and
- . the price, including duties, paid for the liquor.

Subsection (2) requires the holder of an Off Licence to keep a record of every sale of liquor made in pursuance of a licence to a licensee, a permit holder, a University, the Canberra Theatre Trust or an exempt person showing -

- . the date of the sale;
- . the name and address of the person to whom the liquor was sold;
- . the quantity of liquor sold;
- . the price, including duties, paid by the holder of the Off Licence for the liquor; and
- . the price, including duties, paid to the holder of the Off Licence for the Liquor.

Subsection (3) provides that the holder of an Off Licence who sells liquor by wholesale is required to keep a record of every retail sale of liquor made in pursuance of the licence which shows -

- . the date of the sale;
- . the name and address of the persons to whom the liquor was sold;
- . the quantity of liquor sold;
- . the price, including duties, paid to the holder of the Off Licence; and
- . the sales docket number.

Subsection (4) provides that the licensee is required to keep a record of the sales under section 76A for a period of not less than 2 years after the date of the transaction. Subsection (5) provides a penalty of \$2,000 for contravening, without a reasonable excuse, either subsection (1), (2), (3) or (4).

New section 76B provides that a licensee shall, on or before 1 August each year, submit to the Registrar a certificate, or for an off licensee - certificates, in accordance with the prescribed form or forms in relation to liquor transactions undertaken in pursuance of the licence during the previous financial year. A penalty of \$2,000 is provided for.

New section 76C prohibits the sale of petrol at licensed premises except at Block 72 of the district of Paddy's River. A penalty of \$2,000 is provided for.

New section 77 provides that a person shall not sell or expose for sale any liquor except in accordance with a licence or a permit or at a private entertainment conducted by the person if

not more than 30 persons are present. A penalty of \$5,000 is provided for.

Clause 50 amends section 78 of the Principal Act by adding a penalty of \$10,000. This section deals with the sale of liquor by licensed clubs.

Clause 51 amends section 78A by adding a penalty of \$5,000. This section relates to advertising by licensed clubs.

Clause 52 repeals and substitutes section 79 of the Principal Act. It provides that a licensee or permit holder shall not sell or supply liquor to a person who the licensee or permit holder has reasonable grounds for believing is intoxicated or suffering from the effects of mental illness. A penalty of \$2,000 is provided for.

Clause 53 amends section 80 of the Principal Act by including in subsection (1) "supply of" after "sale or" and by adding a penalty of \$2,000. It also amends subsection (2) by omitting all words after "defendant" (first occurring) and substituting:

"proves that -

- . the person to whom the liquor was sold or supplied was not less than 16 years of age;
- . the defendant took reasonable measures to determine the age of that person; and
- . the defendant had reasonable grounds for believing that the person was not less than 18 years of age."

This is designed to ensure that persons selling or supplying liquor actually take positive measures to determine the age of a customer where they may suspect that the person is under 18 years of age. Clause 53 also amends subsection (3) by incorporating non-gender specific references and extending the provision to a person who supplies, rather than simply sells, liquor to a minor.

Clause 54 amends section 81 of the Principal Act by omitting and substituting paragraph (1)(b) and adding a new section (1A).

These provisions will ensure that where an underage person handles liquor in the course of his or her employment or training, he or she will not be guilty of an offence. However, where an underage person consumes or possesses liquor on premises where the sale of liquor is authorised or in a public place, a penalty of \$500 is provided for.

Clause 55 amends section 82 of the Principal Act by adding a penalty of \$1,000 for a breach of this section without a reasonable excuse.

Clause 56 amends section 83 of the Principal Act which prevents a person under 18 years of age from entering a bar room in certain circumstances. The amendment makes it clear that such a person shall not enter or remain in such premises except in the care of a responsible adult. A penalty of \$500 is provided for.

Clause 57 repeals sections 84 and 84A of the Principal Act. The substance of these sections have been relocated into new sections of the Bill.

Clause 58 amends section 85 of the Principal Act by providing a penalty of \$2,000 for obstructing an inspector in the exercise of his or her powers under the Liquor Act.

Clause 59 amends section 86 of the Principal Act by adding a penalty of \$2,000 for an offence of selling adulterated liquor.

Clause 60 amends section 87 of the Principal Act to remove unnecessary verbiage, add a penalty of \$1,000 for a contravention of subsection (1), and remove gender specific references in subsection (3).

Clause 61 amends section 88 of the Principal Act by removing unnecessary wording and by omitting subsection (2).

Clause 62 repeals sections 89, 90, 91 and 92 and substitutes a number of new sections. New section 89 provides that a licensee shall not permit a person to remain on the licensed premises if the licensee believes on reasonable grounds that the person is there for an unlawful purpose. A penalty of \$2,000 is provided for.

New section 90 provides for a penalty of \$1,000 for a contravention of the requirement to keep the licence on the licensed premises.

New section 91 provides in subsection (1) that a person shall not consume liquor on the premises to which an Off Licence relates

except in accordance with subsection (3). A penalty of \$1,000 is provided for.

Subsection (2) provides that the holder of an Off Licence shall not permit a person to consume liquor on the licensed premises except in accordance with subsection (3). A penalty of \$2,000 is provided for.

Subsection (3) provides that a person may consume liquor on premises to which an Off Licence relates where the person is the licensee, an employee of the licensee or a member of the licensee's family, or where the liquor was supplied for consumption as a sample available for sale and no charge was made for it. A sample must also be consumed in a part of the licensed premises specified in the licence as a sampling area.

Clause 63 amends section 93 of the Principal Act by inserting the words "or her" after "him" in subsection (2) and by adding a penalty of \$1,000 for a contravention of this section.

Clause 68 repeals section 93A and Parts X and XI of the Principal Act and substitutes Parts XI, XII and XIII concerning evidence, hearings and supreme court appeals respectively.

New section 94 in Part XI provides that in proceedings for an offence against the Act, a beverage in a sealed container that purports to contain liquor is to be taken to be liquor within the meaning of the relevant offence provision unless the contrary is established. This provision has been taken from the former section 84A.



New section 95 provides for the evidentiary weight of a certificate signed by the Registrar. Where it is stated in a certificate that on a day or days the person specified in that certificate was or was not the holder of a licence of the kind specified in respect of the premises specified or, on a day or days specified in the certificate, a person was or was not the holder of a permit in relation to premises specified in the certificate, it is evidence of those matters. This section has been relocated from the former section 103A.

New section 96 in Part XII provides interpretation in relation to this Part. "Application" means an application for a licence, the cancellation or suspension of a licence, an alteration of licensed premises under Part VI, an approval under Part VII, a permit or the cancellation of a permit.

New section 97 deals with a notice of a hearing. Subsection (1) provides that where the Authority fixes a time, date and place for the hearing of an application, the Registrar shall, not less than 7 days before that date, serve on a licensee or permit holder (in the case of an application for the cancellation of a licence or permit) or the applicant (in any other case), a notice of that date, time and place.

Subsection (2) requires the notice under subsection (1) to be accompanied by a copy of the Registrar's report in relation to an application under Parts VI or VII.

Subsection (3) provides that in relation to an application for the cancellation of a permit or licence, a notice under subsection (1) shall be accompanied by a copy of the application for cancellation and the Registrar's report about any relevant complaints made in relation to the application for cancellation of a permit.

Section 98 relates to procedure. Subsection (1) provides that at a hearing, the procedure shall be set at the discretion of the Authority.

Subsection (2) provides that at a hearing the Authority shall give the applicant, the licensee or the permit holder, as the case may be, an opportunity to be heard.

Subsection (3) provides that at a hearing, the Authority is not bound by the rules of evidence, but may inform itself in such manner as it thinks fit.

Subsection (4) provides that at a hearing the Authority may take evidence on oath or affirmation administered by a member of the Authority.

Subsection (5) provides that the Authority may adjourn a hearing from time to time and from place to place.

New section 99 prohibits the publication of names and evidence in certain circumstances. Where the Authority believes on reasonable grounds that the publication of evidence given, or

intended to be given, or of the name of any person involved in the hearing or involved in a matter raised during the hearing is likely to cause undue hardship to any person, the Authority may, at any time during or after the hearing, make an order forbidding the publication of the evidence, either absolutely or subject to such conditions as the Authority specifies or for such a period as the Authority specifies. It may also forbid the publication of the name of a person.

Subsection (2) provides that a person shall not contravene an order under subsection (1). A penalty of \$1,000 is provided for.

Subsection (3) provides that where the publication of a reference or allusion to a person would be likely to disclose the identity of that person, that publication will be taken to be a publication of the name of the person.

New section 100 deals with private hearings. Subsection (1) provides that a hearing shall be in public unless the Authority directs that it be in private.

Subsection (2) provides that a direction under subsection (1) shall only be made if the Authority is satisfied on reasonable grounds that the conduct of the hearing in public would be likely to cause undue hardship to, or unduly prejudice, any person.

Subsection (3) provides that where the Authority makes a direction under subsection (1) a person shall not enter or remain in the room in which a hearing is being conducted except with the

permission of the Authority. A penalty of \$1,000 is provided for in respect of this subsection.

New section 101 relates to legal representation. Each applicant, including the Registrar, and each licensee or permit holder (in the case of the cancellation of a licence or permit) is entitled to be represented at a hearing of the application by a barrister or solicitor.

New section 102 deals with witnesses. Under subsection (1) the senior member may, by writing, summon a person to attend a hearing at a time and place specified in the summons to give evidence and to produce books and documents in that person's custody or control that are relevant to any matter at issue in the hearing and that are specified in the summons.

Subsection 2 provides for a penalty of \$1,000 where a person without reasonable excuse fails to comply with the summons issued under subsection (1).

Subsection (3) provides that a person appearing at a hearing shall not refuse both to swear an oath and to make an affirmation. A penalty of \$1,000 is provided for.

Subsection (4) provides that a person who attends a hearing for the purposes of giving evidence is entitled to fees and travelling expenses in accordance with the Second Schedule to the Public Works Committee Regulations in force under the Public Works Committee Act 1969 of the Commonwealth, as the senior member directs.

Subsection (5) provides that fees and allowances payable to a person in accordance with subsection (1) are payable by the Territory where the person is requested by the senior member, a member of the Authority or the Registrar to attend or by the person who requested the attendance of a person to a hearing in any other case.

New section 103 provides at subsection (1) that a witness at a hearing shall not knowingly give false evidence about any matter material to the hearing. A penalty of \$1,000 or 6 months imprisonment is provided for. Subsection (2) provides that a witness shall not refuse to give evidence about any matter material to the hearing. A penalty of \$1,000 or 6 months imprisonment is provided for. Subsection (3) provides that a statement made by a witness at a hearing is not, except in proceedings for an offence against section 103 of this Act, or against section 35 or 36 of the Crimes Act 1914 of the Commonwealth, admissible as evidence against that person in criminal proceedings.

Section 104A provides, at subsection (1), that an appeal under this Part is in the nature of a re-hearing. Subsection (2) provides that the Registrar shall be the respondent on an appeal. Subsection (3) provides that the Supreme Court may either affirm, set aside, or vary the Authority's decision, or make such other order as justice requires.

Subsection (4) requires the Supreme Court to set out the reasons for its decision where it decides to set aside or vary a decision.

Clause 65 rennumbers Part XII of the Principal Act as Part XIV.

Clause 66 repeals sections 100, 101, 101A, 102, 102A, 103, 103A, 104 and 105 of the Principal Act and substitutes a number of new sections.

Section 104B relates to the conduct of directors, servants and agents. Subsection (1) provides that where it is necessary to establish the state of mind of a person or body in relation to particular conduct, it is sufficient to show that a director, servant or agent had that state of mind and the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

Subsection (2) provides that a reference to the State of mind of a person or body includes a reference to knowledge, intention, opinion, belief or purpose and the reasons for the intention, opinion, belief or purpose.

Subsection (3) provides that any conduct engaged in on behalf of a person or body by a director, servant or agent of the person or body within the scope of his or her actual or apparent authority is to be taken to have been engaged in also by the person or body, unless the person or body establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

Subsection (4) provides that a reference in section 104B to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Section 104C provides that where a body corporate is convicted of an offence against the Liquor Act, the penalty that the Court may impose is a fine not exceeding 5 times the maximum that the Court could impose as a pecuniary penalty for that offence. This section does not apply in relation to an offence against subsections 43F(4) or 43G(6) or sections 78 or 78A.

Section 105 provides that proceedings in respect of an offence against the Liquor Act shall not be instituted except -

in the case of an offence against subsection 17B(2A) or sections 79, 80, 81, 82 or 83 - by the Registrar or a police officer; and in any other case - by the Registrar.

Clause 67 amends section 105A of the Principal Act to exclude all exempt wholesale liquor sales by an Off Licence holder from the calculation of the determined fee.

Clause 68 repeals Part XIII of the Principal Act.

Clause 69 saves the provision in the Principal Act relating to renewal fees. Where a licensee was liable to pay an amount under subsection 94A(2) of the Principal Act immediately before the commencement of this Act, section 94A of the Principal Act

continues to apply to that licensee notwithstanding the repeal of that section by this Act.

Clause 70 deals with transitional arrangements. Subsection (1) provides that where an application for the issue, renewal, transfer or cancellation of a licence; the alteration or closure of licensed premises; or the issue or cancellation of a permit is pending at the date of commencement of this Act that application is to be taken to have been made under or for the purposes of the corresponding provision of the Principal Act as amended by this Act. Any decision in respect of such an application is to be taken under the Principal Act as amended by this Act.

Subsection (2) provides that in its application to a decision in relation to an application under subsection (1), the principal Act as amended by this Act applies in relation to circumstances arising before or after the commencement of this Act.

Subsection (3) provides that where, immediately before the commencement of this Act, the Registrar had applied to the Authority for an order for directions to be given to a licensee, section 46 of the Principal Act as amended by this Act applies to a decision of the Authority in relation to that application.

Subsections (4) and (5) provide respectively that section 46 and Division 4 of Part V of the Principal Act as amended by this Act apply in relation to circumstances arising before or after the commencement of this Act.



Subsection (6) provides that where, immediately before the commencement of this Act, a hearing under the Principal Act had not been concluded, for the purposes of the Principal Act as amended by this Act the hearing is to be hearing under Part XII of the Principal Act as so amended.