

AUSTRALIAN CAPITAL TERRITORY

Liquor (Amendment) Ordinance (No. 2) 1987

No. 72 of 1987

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 21 December 1987.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

R. KELLY
Minister of State for Defence Science
and Personnel

An Ordinance to amend the *Liquor Ordinance 1975*

Short title

1. This Ordinance may be cited as the *Liquor (Amendment) Ordinance (No. 2) 1987*.¹

Commencement

2. (1) Section 6 shall come into operation on such date as is fixed by the Minister by notice in the *Gazette*.

(2) The remaining provisions of this Ordinance shall come into operation on the day on which this Ordinance is notified in the *Gazette*.

Principal Ordinance

3. In this Ordinance, “Principal Ordinance” means the *Liquor Ordinance 1975*.²

Interpretation

4. (1) Section 4 of the Principal Ordinance is amended—

- (a) by inserting before the definition of “Authority” in subsection (1) the following definition:

“ ‘authorised’ means authorised under this Ordinance;”;

- (b) by inserting after the definition of “Canberra Theatre Centre” in subsection (1) the following definition:

“ ‘caution’ means a caution issued pursuant to subsection 17C (1);”;

- (c) by omitting paragraph (k) from the definition of “exempt person” in subsection (1);

- (d) by omitting from subsection (1) the definition of “House of Assembly” and substituting the following definition:

“ ‘identity card’ means an identity card issued to an inspector under subsection 16A (1);”;

- (e) by inserting in subsection (1) after the definition of “public bar-room” the following definition:

“ ‘public place’ means any street, road, public park within the meaning of the *Public Parks Ordinance 1928*, reserve or other place which the public is entitled to use or which is open to, or used by, the public (whether or not on payment of money) and, without limiting the generality of the foregoing, includes—

- (a) any shop, and any place occupied in connection with, or for the purposes of, a shop;
- (b) any factory, and any place occupied in connection with, or for the purposes of, a factory;
- (c) any building or part of a building occupied by a club, and any place occupied in connection with, or for the purposes of, a club; and

(d) any place, being private property, which is commonly used by the public, whether as trespassers or otherwise;”; and

(f) by adding at the end the following subsection:

“(4) Where a licence is issued in the names of 2 or more persons, a reference in this Ordinance to a licensee shall be read as including a reference to each of those persons.”.

Application

5. Section 5 of the Principal Ordinance is amended by omitting paragraph (1) (da).

Inspectors

6. Section 16 of the Principal Ordinance is amended by adding at the end the following subsection:

“(3) For the purposes of section 33 of the *Children’s Services Ordinance 1986*, an inspector shall be deemed to be a police officer.”.

7. After section 16 of the Principal Ordinance the following section is inserted:

Identity cards

“16A. (1) The Minister shall cause to be issued to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

“(2) A person appointed to be an inspector shall, on ceasing to be an inspector, return his or her identity card to the Registrar.

“(3) A person shall not, without reasonable excuse, fail to comply with subsection (2).

Penalty: \$100.”.

Inspectors' powers of entry

8. Section 17 of the Principal Ordinance is amended by omitting from subsection (3) all the words after "licensee of the premises," and substituting "the inspector does not produce his or her identity card".

9. After section 17 of the Principal Ordinance the following sections are inserted:

Seizure and forfeiture of liquor

"17A. (1) An inspector or police officer may seize as much of any liquor that he or she has reasonable grounds for suspecting to be connected with the commission of an offence against this Ordinance as is, in the opinion of the inspector or officer, necessary for the purposes of adducing evidence of the commission of the offence at the hearing of a prosecution for the offence.

"(2) In addition to seizing liquor for evidentiary purposes, an inspector or police officer may seize any liquor (being liquor within the meaning of section 80, 81, or 82) which he or she has reasonable grounds for suspecting to be connected with the commission of an offence against section 80, 81 or 82.

"(3) The inspector or police officer shall give a receipt for the seized liquor to the person from whom the liquor was seized.

"(4) On the request, made within 14 days after the liquor is seized—

- (a) if the person is, or is reasonably believed to be, under 18 years of age—of the person or a parent or guardian of the person; or
- (b) in any other case—of the person from whom it was seized;

the inspector or police officer shall give a sample of the liquor to the person who made the request.

"(5) When giving a sample, the inspector or police officer shall—

- (a) put the sample (being a quantity of the liquor that is sufficient for the purposes of analysis) in a container; and
- (b) seal the container and affix to it a label bearing—
 - (i) the signature of the inspector or officer, as the case requires;
 - (ii) particulars of the place where the liquor was seized; and
 - (iii) particulars of the date on which and the time at which the liquor was seized.

“(6) An inspector is not authorised to seize liquor from a person if, on being requested by the person to produce his or her identity card, the inspector fails to do so.

“(7) If a prosecution for an offence in relation to the liquor is not instituted within the period of 60 days after its seizure—

- (a) if the inspector or officer who seized the liquor is satisfied that the person from whom it was seized is 18 years of age or more—reasonable steps shall be taken to return the liquor to the person within the period of 120 days after its seizure; or
- (b) if the person from whom the liquor was seized is, or is reasonably believed to be, under 18 years of age—on the request (made within that period of 120 days) of a parent or guardian of the person, the liquor shall be returned to the parent or guardian, within 14 days after the request was made, or within 14 days after the end of that period of 60 days, whichever is later.

“(8) If a person is convicted of an offence in relation to the seized liquor, or the liquor is not returned pursuant to subsection (7), the liquor is forfeited to the Commonwealth and may be disposed of as the Minister directs.

“(9) For the purposes of this section—

- (a) a beverage in a container that purports to contain liquor;
- (b) a beverage that there are reasonable grounds for believing has been taken from a container that purports to contain liquor; or
- (c) a beverage that is held out as being liquor and that is or has been sold or held for the purpose of sale in premises at which the sale of liquor is authorised;

shall be taken to be liquor unless the contrary is established.

Persons under 18—powers of inspectors etc.

“17B. (1) If—

- (a) a person (in this section referred to as the ‘young person’) has done or is doing anything that would constitute an offence under section 81 or 83 if the young person were under the age of 18 years; and
- (b) an inspector or police officer has reasonable grounds for suspecting that the young person is under that age;

the inspector or officer may—

- (c) require the young person to give his or her name, address and age to the inspector or officer; and
- (d) if—
 - (i) the young person refuses to give his or her name, address or age;
 - (ii) the inspector or officer has reasonable grounds for suspecting that the young person has not given his or her correct name, address or age; or
 - (iii) the inspector or officer is not satisfied that the young person is 18 years of age or more;

apprehend the young person using such force as is reasonable and necessary.

“(2) If—

- (a) a person has done or is doing anything in relation to another person (in this section referred to as the ‘young person’) that would constitute an offence under section 80 or 82 if the young person were under the age of 18 years; and
- (b) an inspector or police officer has reasonable grounds for suspecting that the young person is under that age;

the inspector or officer may—

- (c) require the young person to give his or her name, address and age to the inspector or officer; and
- (d) if—
 - (i) the young person refuses to give his or her name, address or age;
 - (ii) the inspector or officer has reasonable grounds for suspecting that the young person has not given his or her correct name, address or age; or
 - (iii) the inspector or officer is not satisfied that the young person is 18 years of age or more;

apprehend the young person using such force as is reasonable and necessary.

- “(3) Where an inspector apprehends a young person, the inspector shall—
- (a) deliver the young person to a police officer as soon as practicable; and
 - (b) deliver to the police officer any liquor seized under subsection 17A (2) from the young person or the person first mentioned in subsection (2) of this section.
- “(4) Where—
- (a) a police officer apprehends a young person; or
 - (b) an inspector delivers a young person to a police officer who is not at a police station;

the officer shall take the young person to a police station as soon as practicable.

Cautioning young persons

- “17C. (1) Where—
- (a) a young person has been apprehended under subsection 17B (1) or (2);
 - (b) it appears from the police records that a caution has not been issued to the young person within the last preceding 12 months; and
 - (c) the police officer who apprehended the young person, or to whom the young person was delivered, is not satisfied that the young person is 18 years of age or more;

the officer may issue a caution to the young person.

“(2) If a caution is issued to a young person the young person shall not be prosecuted for an offence constituted by the thing done by the young person as mentioned in paragraph 17B (1) (a).

- “(3) Where—
- (a) a young person has been apprehended under subsection 17B (1) or (2);
 - (b) it appears from the police records that a caution has not been issued to the young person within the last preceding 12 months; and
 - (c) the young person is prosecuted for an offence constituted by the thing done by the young person as mentioned in paragraph 17B (1) (a);

any particulars of the young person’s name, address or age given by the young person to an inspector or police officer in relation to that thing (whether or not the particulars were given in compliance with a requirement made of the young person under paragraph 17B (1) (c) or (2) (c)) shall not be used in evidence

against the young person except in proceedings for an offence against section 84.

“(4) If—

- (a) a young person has been apprehended under subsection 17B (1) or (2);
- (b) it appears from the police records that a caution has been issued to the young person within the last preceding 12 months; and
- (c) the police officer who apprehended the young person, or to whom the young person was delivered, is not satisfied that the young person is 18 years of age or more;

then—

- (d) subject to any other law in force in the Territory, the young person may be prosecuted for the offence constituted by the thing done by the young person as mentioned in paragraph 17B (1) (a); and
- (e) any particulars of the young person’s name, address or age given by the young person at any time (whether or not the particulars were given in compliance with a requirement made of the young person under paragraph 17B (1) (c) or (2) (c)) may be used in evidence against the young person in proceedings for that offence.

“(5) Where a caution is issued to a young person, or a young person is charged with an offence against this Ordinance, the caution shall be issued, or the young person shall be charged, within a reasonable time after the young person is delivered to a police officer at a police station or taken by a police officer to a police station.

“(6) As soon as practicable—

- (a) if a caution is issued to a young person, or a young person is charged with an offence against this Ordinance—after the caution is issued or the young person is charged; or
- (b) in any other case—after the young person is delivered to a police officer at a police station or taken by a police officer to a police station;

the police officer shall—

- (c) release the young person;
- (d) arrange for the young person to be escorted to the young person’s home; or

- (e) arrange for a parent or guardian of the young person to come to the police station to take charge of the young person.

“(7) A caution shall—

- (a) be in writing;
- (b) specify the date on which it is issued;
- (c) specify the thing done by the young person as mentioned in paragraph 17B (1) (a);
- (d) warn the young person that if the young person does anything that constitutes an offence under section 81 or 83 within 12 months after the date on which the caution is issued—
 - (i) the young person may be prosecuted for an offence under the relevant section; and
 - (ii) any particulars of the young person’s name, address or age given by the young person at any time (whether or not the particulars were given in compliance with a requirement made of the young person under paragraph 17B (1) (c) or (2) (c)) may be used in evidence against the young person in proceedings for that offence; and
- (e) be signed by the police officer who issued it.

“(8) A police officer who issues a caution shall—

- (a) cause the original caution to be kept in police records; and
- (b) give a copy of the caution—
 - (i) to the young person or a parent or guardian of the young person; and
 - (ii) to the Registrar.

Revocation of cautions

“17D. (1) If the Commissioner of Police is satisfied that a caution was not issued in accordance with section 17C or that the young person to whom the caution was issued was not apprehended in accordance with subsection 17B (1) or (2), the Commissioner may revoke the caution.

“(2) If the Commissioner revokes a caution, he or she shall—

- (a) cause the caution to be removed from police records and destroyed;
- (b) take reasonable steps to notify the person to whom the caution was issued of the revocation; and
- (c) notify the Registrar of the revocation.”.

Issue of licence

10. Section 36 of the Principal Ordinance is amended by adding at the end the following subsection:

“(3) Where—

- (a) particulars referred to in subsection 43B (1) are attached to an application for a licence, or the Registrar is given particulars pursuant to subsection 43B (4) before a licence is issued; and
- (b) the Board authorises the issue of the licence;

the Registrar shall endorse the particulars on the licence.”.

11. Part IV of the Principal Ordinance is amended by adding at the end the following Division:

“Division 5—Licences held by partnerships

Application

“43A. Where a licence is held by one or more of a number of partners for the purposes of the partnership, sections 43C, 43D and 43E apply in relation to the licensee and to each partner—

- (a) whether or not the partner’s name appears on the licence; and
- (b) whether or not subsection 43B (1), (2), (3) or (4), as the case requires, has been complied with in relation to the partner.

Notice of partnership

“43B. (1) Where one or more of a number of partners applies for a licence for the purposes of the partnership, the applicant or applicants shall attach to the application written particulars of—

- (a) the name and residential address of each partner; and
- (b) the business name (if any) under which the partners are or will be carrying on business at the premises in respect of which the application is made.

“(2) Where a licensee enters into partnership with another person or persons after the licence is issued, and the licence is to be held for the purposes of the partnership, the licensee shall, within 1 month after the partnership was formed—

- (a) give the Registrar written particulars of—
 - (i) the name and residential address of each partner; and
 - (ii) the business name (if any) under which the partners are or will be carrying on business at the premises to which the licence relates; and
- (b) if the licence has been issued—lodge the licence with the Registrar.

“(3) Where a licence issued before the commencement of the *Liquor (Amendment) Ordinance (No. 2) 1987* is held by one or more of a number of partners for the purposes of the partnership, the licensee shall, within 1 month after that commencement—

- (a) give the Registrar written particulars of—
 - (i) the name and residential address of each partner; and
 - (ii) the business name (if any) under which the partners are carrying on business at the premises to which the licence relates; and
- (b) lodge the licence with the Registrar.

“(4) If any change occurs in the particulars referred to in subsection (1) (whether before or after the licence is issued) or in the particulars referred to in subsection (2), (3) or (4), the applicant or the licensee, as the case requires—

- (a) shall give the Registrar particulars of the change within 1 month after its occurrence; and

(b) if the licence has been issued—lodge the licence with the Registrar.

“(5) Where a licence has been lodged with the Registrar pursuant to subsection (2), (3) or (4), the Registrar shall endorse on the licence the particulars most recently given to the Registrar and shall, as soon as practicable, send the licence to the licensee.

“(6) An applicant or licensee who contravenes subsection (1), (2), (3) or (4) is guilty of an offence punishable, on conviction—

- (a) in the case of a body corporate—by a fine not exceeding \$1,000; and
- (b) in any other case—by a fine not exceeding \$400.

Rights and liabilities of partners

“43C. Where a licence issued in the name or names of one or more of a number of partners is held for the purposes of the partnership, each partner has, in relation to the licence, all the rights and duties of the licensee.

Offences by partners

“43D. (1) For the purposes of paragraphs 48 (c) and 51 (c), where—

- (a) a licence issued in the name or names of one or more of a number of partners is held for the purposes of the partnership;
- (b) any of the partners is convicted (whether before or after the commencement of the *Liquor (Amendment) Ordinance (No. 2) 1987*) of an offence in relation to the licence in respect of an act or omission; and
- (c) any of the partners is convicted after that commencement of an offence (not being an offence in respect of the act or omission referred to in paragraph (b));

the licensee shall be taken to have been convicted of 2 offences against this Ordinance whether or not—

- (d) the partner referred to in paragraph (b) was a member of the partnership at the time the offence referred to in paragraph (c) was committed; or
- (e) the partner referred to in paragraph (c) was a member of the partnership at the time the offence referred to in paragraph (b) was committed.

“(2) In this section, ‘offence against this Ordinance’ has the same meaning as in Division 3 of Part V.

Suspension or cancellation of a partner’s licence

“43E. Where a licence held by one or more of a number of partners for the purposes of the partnership is suspended or cancelled as a result of an act or omission, the licence shall not be transferred, and a licence shall not be issued, to any person who was or is, at the time of the act or omission, or while the suspension or cancellation is in force, a member of the partnership.”.

Powers of Authority

12. Section 46 of the Principal Ordinance is amended by adding at the end the following subsection:

“(8) Where a licence issued in the name or names of one or more of a number of partners is held for the purposes of the partnership, a reference in subsection (1) to a licensee shall be read as including a reference to any of the partners who is concerned in, or takes part in, the management of the partnership’s business in relation to the licence—

- (a) whether or not the partner’s name appears on the licence; and
- (b) whether or not subsection 43B (1), (2), (3) or (4), as the case requires, has been complied with in relation to the partner.”.

Compulsory application

13. Section 48 of the Principal Ordinance is amended by adding at the end the following subsection:

“(2) Where a licence issued in the name or names of one or more of a number of partners is held for the purposes of the partnership, a reference in subsection (1) to the holder of a licence shall be read as including a reference to any of the partners who is concerned in, or takes part in, the management of the partnership’s business in relation to the licence—

- (a) whether or not the partner’s name appears on the licence; and
- (b) whether or not subsection 43B (1), (2), (3) or (4), as the case requires, has been complied with in relation to the partner.”.

Cancellation of licences

14. Section 51 of the Principal Ordinance is amended by adding at the end the following subsection:

“(6) Where a licence issued in the name or names of one or more of a number of partners is held for the purposes of the partnership, a reference in this section to a licensee shall be read as including a reference to any of the partners who is concerned in, or takes part in, the management of the partnership’s business in relation to the licence—

- (a) whether or not the partner’s name appears on the licence; and
- (b) whether or not subsection 43B (1), (2), (3) or (4), as the case requires, has been complied with in relation to the partner.”.

Sale of liquor to persons under 18

15. Section 80 of the Principal Ordinance is amended—

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

“(1) A person shall not sell or supply liquor to a person under the age of 18 years on premises where the sale or liquor is authorised or in a public place.”; and

- (b) by adding at the end the following subsection;

“(4) In this section, ‘liquor’ means a beverage that contains more than 0.5 per cent by volume of ethyl alcohol.”.

Purchase, possession or consumption by persons under 18

16. Section 81 of the Principal Ordinance is amended—

- (a) by omitting paragraphs (a) and (b) and substituting the following paragraphs:

“(a) purchase liquor; or

- (b) have liquor in his or her possession, or consume liquor, on premises where the sale of liquor is authorised or in a public place.”; and

- (b) by adding at the end the following subsection:

“(2) In subsection (1), ‘liquor’ means a beverage that contains more than 0.5 per cent by volume of ethyl alcohol.”.

Young person not to be sent to obtain liquor

17. Section 82 of the Principal Ordinance is amended by adding at the end the following subsection:

“(2) In subsection (1), ‘liquor’ means a beverage that contains more than 0.5 per cent by volume of ethyl alcohol.”.

18. Sections 84 and 85 of the Principal Ordinance are repealed and the following sections substituted:

Failure to give name, address or age

“84. A person who, on being required to give his or her name, address or age pursuant to paragraph 17B (1) (c) or (2) (c)—

- (a) refuses or fails to do so; or
- (b) gives a false name, address or age;

is guilty of an offence.

“84A. (1) In proceedings for an offence against this Ordinance (other than an offence against section 80, 81 or 82), a beverage in a sealed container that purports to contain liquor shall be taken to be liquor unless the contrary is established.

“(2) In proceedings for an offence against section 80, 81 or 82, a beverage in a sealed container that purports to contain liquor within the meaning of the respective section shall be taken to be liquor within that meaning unless the contrary is established.

Obstruction of inspector

“85. A person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of his or her powers under this Ordinance.”.

19. After section 93 of the Principal Ordinance the following section is inserted in Part IX:

Conduct by directors, servants or agents

“93A. (1) Where it is necessary, for the purposes of this Ordinance, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Ordinance, to have been engaged in by the body corporate.

“(3) Where it is necessary, for the purposes of this Ordinance, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

“(4) Conduct engaged in on behalf of a person other than a body corporate—

- (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Ordinance, to have been engaged in by the first-mentioned person.

“(5) A reference in this section to the state of mind of a person shall be read as including a reference to the knowledge, intention, opinion, belief or purpose of the person.

“(6) A reference in this section to a director of a body corporate shall be read as including a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Territory, of the Commonwealth, of a State or of another Territory.”.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 22 December 1987.
2. No. 19, 1975 as amended to date. For previous amendments *see* No. 33, 1987 and *see also* No. 33, 1987.