



AUSTRALIAN CAPITAL TERRITORY

Liquor (Amendment) Act (No. 2) 1994

No. 111 of 1994

An Act to amend the *Liquor Act 1975*

[Notified in ACT Gazette S288: 16 December 1994]

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

Short title

1. This Act may be cited as the *Liquor (Amendment) Act (No. 2) 1994*.

Commencement

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

Principal Act

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

Interpretation

4. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:

“ ‘proof of age card’ means a card issued under subsection 104AA (1);”.

Substitution

5. Section 17A of the Principal Act is repealed and the following sections are substituted:

Seizure

“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 Act 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) Subject to subsection (3), an inspector or police officer may seize any liquor which he or she has reasonable grounds for suspecting to be connected with the commission of an offence against section 80, 81, 82 or 84, being liquor within the meaning of that section.

“(3) An inspector or police officer shall not seize liquor that he or she has reasonable grounds for suspecting to be connected with the commission of an offence against section 84 unless he or she has informed the person in possession of the liquor of the reason why the liquor is being seized.

“(4) 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.

“(5) 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.

Return or forfeiture

“17AB. (1) An inspector or police officer who seizes liquor in accordance with section 17A shall give a receipt for the liquor to the person from whom it was seized as soon as is practicable unless in all the circumstances it would be unreasonable to expect a receipt to be given.

“(2) 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.

“(3) 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.

“(4) 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.

“(5) If a person is convicted of an offence in relation to the seized liquor, or the liquor is not returned pursuant to subsection (4), the liquor is forfeited to the Territory and may be disposed of as the Minister directs.

“(6) 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.

“(7) This section does not apply in relation to liquor dealt with in accordance with section 17AC.

Summary disposal

“17AC. (1) Where an inspector or police officer has informed a person in accordance with subsection 17A (3) of the reason why liquor is being seized, the inspector or officer may dispose of the liquor as soon as is practicable unless the person indicates by any means whatever that he or she believes that the reason given by the inspector or officer is incorrect.

“(2) Where liquor is disposed of under subsection (1)—

- (a) the person from whom it was seized shall not be prosecuted for an offence in relation to the liquor; and
- (b) a caution shall not be issued to the person in relation to any act done in relation to the liquor.”.

Persons under 18—powers of inspectors and police officers

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

- (a) by inserting in paragraphs (1) (c) and (2) (c) “subject to subsection (2AA),” before “require”;
- (b) by inserting after subsection (2) the following subsection:

“(2AA) An inspector shall not make a requirement of a person under paragraph (1) (c) or (2) (c) unless immediately before making the request the inspector displays his or her identity card to the person.”;
- (c) by inserting after subsection (2A) the following subsection:

“(2B) Where, in response to a requirement made of him or her under paragraph (1) (c) or (2) (c), a young person produces to an inspector or police officer a form of identification (other than a passport) that the inspector or officer has reasonable grounds for suspecting does not belong to the young person or is forged, the inspector or officer may seize that form of identification.”;
- (d) by omitting from paragraph (3) (a) “and”;
- (e) by adding at the end of paragraph (3) (b) “and”;
- (f) by adding at the end of subsection (3) the following paragraph:

“(c) deliver to the police officer any form of identification seized under subsection (2B).”; and
- (g) by adding at the end the following subsections:

“(5) Where—

- (a) an inspector seizes a form of identification under subsection (2B) and does not apprehend the young person from whom the identification is seized;
- (b) a police officer seizes a form of identification under subsection (2B); or
- (c) a police officer has a form of identification delivered to him or her in accordance with paragraph (3) (c);

the inspector or police officer shall take such action as is necessary and reasonable to determine whether the form of identification belongs to the young person from whom it was seized or is forged.

“(6) If, after taking action under subsection (5), the inspector or officer is satisfied that the form of identification does belong to the young person from whom it was seized and is not forged, he or she shall return the form of identification to the young person as soon as is practicable.”.

Substitution

7. Section 26 of the Principal Act is repealed and the following section substituted:

General Licences

“26. A General Licence authorises the licensee to sell liquor on the licensed premises—

- (a) in relation to a sale for consumption on the premises—at any time; and
- (b) in relation to a sale for consumption away from the premises—at any time or, if times are prescribed, at those times.”.

Off Licences

8. Section 28 of the Principal Act is amended by inserting “or, if times are prescribed, at those times” after “at any time”.

Substitution

9. Section 29 of the Principal Act is repealed and the following section substituted:

Club Licences

“29. (1) A Club Licence authorises the club by which the licence is held to supply liquor on the licensed premises of the club to—

- (a) members of the club; and
 - (b) persons on those premises at the invitation of a member of the club who is present on those premises.
- “(2) The supply of liquor under subsection (1) may be—
- (a) in relation to the supply for consumption on the licensed premises—at any time; and
 - (b) in relation to the supply for consumption away from the premises—at any time or, if times are prescribed, at those times.”.

Special Licences

10. Section 29A of the Principal Act is amended by inserting in paragraph (a) “subject to any regulations made for the purpose of this paragraph—” before “between”.

Sale or supply of liquor to persons under 18

11. Section 80 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

“(2) It is a defence in proceedings for an offence against subsection (1) if the defendant proves that—

- (a) the person to whom the liquor was sold or supplied was not less than 16 years of age; and
- (b) at the time the liquor was sold or supplied, that person had displayed to the defendant identification of a kind referred to in subsection (2A).

“(2A) For the purposes of subsection (2), the identification is an item that—

- (a) contains information that indicates that the person displaying it is 18 years of age or more;
- (b) contains a photo that could reasonably be taken to be the person displaying it; and
- (c) is 1 of the following:
 - (i) a licence issued under the *Motor Traffic Act 1936*;
 - (ii) a proof of age card;
 - (iii) a document equivalent to a document referred to in subparagraph (i) or (ii) that has been issued in a State or another Territory;
 - (iv) a passport.”.

Entry to bar-rooms by persons under 18

12. Section 83 of the Principal Act is amended by adding at the end the following subsection:

“(2) In subsection (1)—

‘responsible adult’ means a person who is 18 years of age or more and who, by his or her behaviour, could reasonably be expected to exercise responsible supervision.”.

Insertion

13. After section 83 of the Principal Act the following section is inserted:

False identification

“83A. A person shall not use another person’s identification or a form of identification that is forged—

- (a) to obtain entry to or remain in a bar-room on licensed premises;
- (b) to purchase liquor; or
- (c) to obtain a proof of age card.

Penalty: \$1,000.”.

Consumption of liquor in certain public places

14. Section 84 of the Principal Act is amended—

(a) by inserting after subsection (1) the following subsections:

“(1A) A person shall not possess an open container of liquor in a prescribed public place with the intention of consuming the liquor in that place.

Penalty: \$200.

“(1B) For the purposes of subsection (1A), a container shall be taken to be open if a manufacturer’s seal is broken or the contents of the container are otherwise accessible.”;

- (b) by omitting from subsection (2) “Subsection (1) does not apply in relation to the consumption” and substituting “Subsections (1) and (1A) do not apply to the consumption or possession”;
- (c) by omitting from subsection (3) “subsection (1)” and substituting “this section”; and
- (d) by inserting in subsection (3) the following definition:

“ ‘liquor’ means a beverage that contains more than 0.5 per cent by volume of ethyl alcohol;”.

Exceeding occupancy loading

15. Section 93A of the Principal Act is amended by omitting “relevant occupancy loading” and substituting “occupancy loading determined under section 24B”.

Insertion

16. After section 95 of the Principal Act the following section is inserted in Part XI:

Occupancy loading

“95A. In any court proceedings, a certificate signed by the Registrar specifying in relation to a public area on a particular day the occupancy loading determined under section 24B that was applicable to that area on that day, is evidence of the matter so specified.”.

Insertion

17. After section 104A of the Principal Act the following section is inserted in Part XIV:

Proof of age cards

“104AA. (1) The Registrar may, on receiving an application in accordance with this section, issue the applicant with a card to assist in establishing his or her age.

“(2) An application for a proof of age card shall—

- (a) be in writing signed by the applicant;
- (b) be in the form approved by the Registrar;
- (c) contain any particulars required in the approved form; and
- (d) be accompanied by the determined fee.

“(3) In this section—

‘Registrar’ means the Registrar of Motor Vehicles under the *Motor Traffic Act 1936*.”.

Further amendments

18. The Principal Act is further amended as set out in the Schedule.

SCHEDULE

Section 18

FURTHER AMENDMENTS

Subsection 4 (1) (definition of “direction”)—

Omit the definition, substitute the following definition:

“ ‘direction’ means a direction given under subsection 46 (1);”.

Subsection 4 (3)—

Insert “or she” after “he”.

Paragraph 5 (1) (e)—

Insert “or her” after “his”.

Subsection 17 (1)—

Omit “authorized”, substitute “authorised”.

Paragraph 17 (6) (b)—

Omit “one”, substitute “1”.

Paragraph 18 (3) (b)—

Omit “connexion”, substitute “connection”.

Subsection 22 (1)—

Insert “or her” after “his”.

Section 25—

Omit “Authority”, substitute “relevant decision maker”.

Sections 27 and 28—

Omit “authorizes”, substitute “authorises”.

Section 43A—

Omit “one or more of a number of”, substitute “1 or more”.

Subsections 43B (1) and (3)—

Omit “one or more of a number of”, substitute “1 or more”.

Sections 43C and 43E—

Omit “one or more of a number of”, substitute “1 or more”.

Paragraph 43G (5) (b)—

Omit “one”, substitute “1”.

SCHEDULE—continued**Subsection 61 (1)**—

Omit “authorizes”, substitute “authorises”.

Subsection 61 (2)—

Omit “authorize”, substitute “authorise”.

Subsections 67 (3) and 68 (3)—

Omit “one”, substitute “1”.

Paragraph 81 (1A) (a)—

Omit “ACT Institute of Technical and Further Education”, substitute “Canberra Institute of Technology”.

NOTE

1. Reprinted as at 14 June 1993. See also Acts Nos. 51 and 60, 1994.

[Presentation speech made in Assembly on 1 December 1994]

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