

1990

THE LEGISLATIVE ASSEMBLY OF THE  
AUSTRALIAN CAPITAL TERRITORY

LIQUOR (AMENDMENT) BILL (NO. 2) 1990

EXPLANATORY MEMORANDUM

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## LIQUOR (AMENDMENT) BILL (NO. 2) 1990

This Bill is part of a package of Bills giving effect to the Government's decision to abolish the Australian Capital Territory Gaming and Liquor Authority (the Authority), establishing the TAB as an independent company and returning liquor and gaming machine regulatory functions to the mainstream of Government. The principle features of the Bill are as follows:

- . creation of the offices of Registrar and Deputy Registrar of Liquor Licenses, to head the administrative unit responsible for performing administrative functions under the Liquor Act 1975
- . establishment of the Liquor Licensing Board, to consider complex liquor matters and to provide administrative and policy advice to the Minister as required
- . the transfer to the Commissioner for Revenue of revenue aspects of liquor administration
- . the establishment of procedures under which the Registrar will refer complex matters to the Board and for giving the Board a flexible inquiry procedure
- . transfer of the existing review jurisdiction of the Supreme Court to the Administrative Appeals Tribunal (AAT).

The transfer of liquor administration to the Department of Justice and Community Services will realise savings of \$110,000 in a full year.

Details of the Bill are set out in the clause notes in the Attachments.

**ATTACHMENT**

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Clause 1 cites the name that the Bill will have when enacted.

Clause 2 provides for commencement of the Bill once enacted. The principal provisions will commence on 1 January 1991.

Clause 3 defines the "Principal Act" as the Liquor Act 1975.

Clause 4 deals with interpretation.

Clause 5 inserts a new Division 1 into Part II dealing with the Liquor Licensing Board.

New Section 12A in clause 5 provides for the establishment of the Board.

New section 12B in clause 5 delineates the functions of the Board which are to enquire into and decide matters referred to it, to advise the Minister as required on matters of policy and administration and to perform other functions conferred on it by legislation.

New section 12C in clause 5 deals with the membership of the Board. The Board will consist of a Chairperson, the Registrar and one other person.

New section 12D inserted by clause 5 provides for the appointment of members other than the Registrar. The Chairperson must be a legal practitioner with at least 5 year's standing and both members other than the Registrar hold office for such period not exceeding 5 years as is specified in the instrument of appointment. Appointments are not to be invalidated because of irregularities.

New section 12E inserted by clause 5 provides for acting appointments to positions on the Board other than that held by the Registrar. An acting appointment may be "standing" - i.e., the person appointed may act from time to time without a fresh appointment being made on each occasion. A person appointed to act as Chairperson must meet the substantive qualifications for that position. An acting appointment is not invalid because of any irregularity. Finally, a person acting may continue to act for the purpose of deciding part-heard or reserved decisions.

New section 12F inserted by clause 5 deals with the remuneration of and allowances paid to members of the Board other than the Registrar. These matters are determined by the Minister by disallowable instrument, unless there is a subsisting and applicable determination of the Commonwealth Remuneration Tribunal.

New section 12G inserted by clause 5 provides for the Minister to grant leave of absence to Board members.

New section 12H inserted by clause 5 provides for members other than the Registrar to resign by written notice delivered to the Minister.

New section 12J inserted by clause 5 deals with disclosure of interest by members. If a member has an interest in a matter before the Board, he or she must disclose that interest. The disclosure must be recorded and, except with the consent of all parties, the Board member must not participate further in the deliberation of that matter.

New section 12K inserted by clause 5 allows the Minister to terminate the appointment of a Board member other than the Registrar on grounds of misbehaviour or physical or mental incapacity. In addition, the Minister must terminate the appointment of a member who becomes bankrupt, is absent without leave for two meetings, fails to disclose an interest in a matter before the Board or is convicted of a serious offence.

New section 12L inserted by clause 5 provides for the Chairpers of the Board to convene Board meetings. Normally seven days written notice is required, but urgent meetings may be convened by agreement between the Board members.

New section 12M inserted by clause 5 deals with procedure at Board meetings. The Chairman presides. The presence of all three members is required to constitute a quorum, but the remaining two members may continue to deal with a matter if the third member ceases to be available after deliberations have

commenced. If the Chairperson is the member unavailable, the Registrar presides. Matters are determined by a majority of votes of members present and voting and the member presiding has both a deliberative and a casting vote. The member presiding determines procedure and the Board must keep a written record of its proceedings.

Clause 6 repeals section 13 of the Principal Act.

Clause 7 inserts before section 15 of the Principal Act a new division heading relating to the Registrar, Deputy Registrar and inspectors.

Clause 8 repeals section 15 of the Principal Act and substitutes new sections 14 and 15.

New section 14 inserted by clause 8 provides for the Minister to appoint public servants as the Registrar and Deputy Registrar of Liquor Licenses.

New section 15 inserted by clause 8 provides for the Minister to appoint an acting Registrar. The person must be public servant and can be appointed to act from time to time. An appointment is not invalid because of an irregularity.

Clause 9 amends section 16 of the Principal Act to require that inspectors be public servants. It also makes a consequential amendment.

Clause 10 amends sub-section 17(11) of the Principal Act so that approved analysts are persons approved by the Registrar, not the Authority.

Clause 11 inserts a new sub-section 18(2) into the Principal Act to provide that the Registrar prepares the Licensing Standards Manual but that it has no effect until approved by the Minister. Clause 11 also makes amendments consequential on the Registrar replacing the Authority as the author of the Licensing Standing Manual.

Clause 12 repeals sections 30, 32 and 33 of the Principal Act and inserts new sections 30 and 33. New section 30 provides for licence applications to be made to the Registrar, who may direct the Deputy Registrar to investigate the application and prepare a report. The new section then requires the Registrar to consider the matter in accordance with the Act and to do one of three things. If satisfied that there is no substantial ground on which to refuse the licence application, the Registrar must agree to issue the licence. If the Registrar however is satisfied that there is no substantial ground on which to issue the licence, the Registrar must refuse to issue it. In any other case, the application must be referred to the Licensing Board. The object of this mechanism, which is used a number of times in the Act, is that the Registrar should decide cases that are straight-forward or routine but that complex matters should be referred to the Board. Finally, the new section requires the Board to consider matters referred to it in accordance with Part XII and to either issue or refuse to issue the licence.

New section 33 inserted by clause 12 provides that a licence must be issued for the class of licence applied for, unless the relevant decision-maker (i.e. the Registrar or Board, as the case requires) considers on reasonable grounds that a licence of a different class should be issued.

Clause 13 amends section 33A of the Principal Act, which deals with the considerations relevant to the issue of a licence. The effect of the amendment is to amalgamate sub-sections (1) and (2) of section 33A and to substitute the Registrar and Board, as appropriate, for the Authority as decision-makers.

Clause 14 amends section 34 of the Principal Act consequentially upon the Registrar and the Board, as the case requires, replacing the Authority as the decision-maker.

Clause 15 amends section 34A of the Principal Act consequentially upon the Registrar and the Board, as the case requires, replacing the Authority as the decision-maker.

Clause 16 amends section 35 of the Principal Act consequentially upon the Registrar and the Board, as the case requires, replacing the Authority as the decision-maker.

Clause 17 amends section 36 of the Principal Act on this same consequential basis.

Clause 18 amends section 37 of the Principal Act to substitute the Registrar as the decision-maker in relation to the duration of licences.

Clause 19 amends section 40B of the Principal Act, to provide that the Registrar or Board, as the case requires, shall not renew a licence held by a person when another licence held by that person has ceased to be in force because of the non-payment of fees, unless the person has made satisfactory arrangements with the Commissioner for ACT Revenue for the payment of the amounts relating to the other licence.

Clause 20 amends section 41 of the Principal Act to permit the Registrar to authorise the transfer of licences, but subject to the Registrar referring complex cases to the Board (see notes on clause 12 for further details of the referral mechanism). The Registrar may direct the Deputy Registrar to investigate and report in appropriate cases. The clause also makes amendments consequentially upon the change of decision-maker.

Clause 21 amends section 42 of the Principal Act consequentially upon the Registrar or Board, as the case requires, replacing the Authority as decision-maker.

Clause 22 amends section 42E of the Principal Act so that the Commissioner for ACT Revenue becomes the decision-maker in respect of a failure to pay termination fees.

Clause 23 amends section 44 of the Principal Act to require the

Registrar to direct the Deputy Registrar to investigate complaints.

Clause 24 repeals section 45 of the Principal Act and substitutes new section 45. The new section requires the Registrar to consider complaints along with the Deputy Registrar's report and requires the Deputy Registrar to refer the matter to the Board if there are reasonable grounds upon which the Board might either decide to cancel a licence or be authorised to issue directions. In any other case, (that is, in any case where there are no reasonable grounds for the taking of such action), the Registrar must inform the person complaining that no further action is warranted.

Clause 25 amends section 47 of the Principal Act to substitute the Board for the Authority as the decision-maker.

Clause 26 repeals section 48 and inserts a new section 48 that requires the Registrar to refer a matter to the Board where there are reasonable grounds upon which the Board might decide to suspend a licence. New section 48(2) prevents the Registrar however from referring the matter to the Board where the same grounds have led the Registrar to refer a matter to the Board for reasons that might support the cancellation of the licence.

Clause 27 amends section 49 of the Principal Act consequentially upon the change of both decision-maker and procedure in relation to suspension of licences.

Clause 28 repeals section 54 of the Principal Act and substitutes a new section 54. The new section requires the Registrar, where he or she is satisfied that there are reasonable grounds upon which the Board might decide to cancel a licence, to refer the matter to the Board.

Clause 29 amends section 55 of the Principal Act consequentially upon the change of decision-maker and procedure in relation to cancellation of licences.

Clause 30 amends section 56 of the Principal Act, first to provide that applications for permission to alter licensed premises must be made to the Registrar rather than to the Authority and secondly to allow the Registrar to direct the Deputy Registrar to report on the application.

Clause 31 repeals section 57 of the Principal Act and inserts new sections 57, 57A and 57B. New section 57 allows the Registrar to decide straight-forward applications to alter licenced premises but requires him or her to refer complex matters to the Board - the mechanism is essentially the same as that explained in relation to clause 12 above.

New section 57A inserted by clause 31 requires the Board consider matters referred to it in accordance with the requirements of the Act and to either approve or refuse to approve the alteration requested.

New section 57B inserted by clause 31 has the effect that where either the Registrar or the Board is considering an application to alter licensed premises, the relevant consideration is whether the licensed premises would, if altered as proposed, substantially comply with the Manual.

Clause 32 amends section 58 of the Principal Act (which deals with offences) consequentially upon the Registrar or the Board, as the case requires, replacing the Authority as the decision-maker.

Clause 33 amends section 59 of the Principal Act, first to substitute the Registrar for the Authority as the decision-maker in respect of an application for closure and secondly to permit the Registrar to seek a report from the Deputy Registrar.

Clause 34 repeals section 60 of the Principal Act and substitutes new sections 60, 60AA and 60AB. New section 60 sets out a new procedure in relation to applications for the closure of licensed premises. The Registrar must consider the application and any report from the Deputy Registrar and may decide the matter unless it is complex, in which case the Registrar must refer the matter to the Board. This mechanism is explained in more detail in the notes to clause 12.

New section 60AA, inserted by clause 34, requires the Board to consider matters referred to it in accordance with the Act and to either approve or refuse to approve the closure of the premises.

New section 60AB, inserted by clause 34, provides that the Registrar or Board in considering an application for closure must consider whether the licensed premises would, if closed, cease to meet the reasonable requirements of the public.

Clause 35 amends section 60A of the Principal Act consequentially upon the Registrar or the Board, as the case requires, replacing the Authority as decision-maker.

Clause 36 repeals sections 63 and 64 of the Principal Act and inserts new sections 63 and 64.

New section 63, inserted by clause 36, allows the Registrar to direct the Deputy Registrar to investigate and report on an application for the issue of a liquor permit. The new section also allows the Registrar to consider the application and any report from the Deputy Registrar and to decide all but complex cases, which must be referred to the Board. The mechanism requiring this referral is explained in more detail in the notes to clause 12.

New section 64 inserted by clause 36 requires the Board to consider permit applications referred to it in accordance with the Act and either to authorise the issue of the permit or to refuse to authorise its issue.

Clause 37 amends section 65 of the Principal Act consequentially upon the Registrar or Board, as the case requires, replacing the Authority as the decision-maker under that section.

Clause 38 amends section 66B of the Principal Act to provide that the Deputy Registrar, rather than the Registrar, should investigate complaints relating to liquor permits.

Clause 39 amends section 66C of the Principal Act to establish a new procedure for dealing with the cancellation of a permit. Under the new procedure, where the Registrar is satisfied that there are reasonable grounds upon which the Board might decide to cancel a permit, the Registrar must refer the matter to the Board for consideration in accordance with the Act. In any other case, the Registrar must inform the person making the complaint that no further action is warranted.

Clause 40 amends section 66D of the Principal Act consequentially upon the insertion of the new procedure in section 66C.

Clause 41 substitutes the Commissioner for ACT Revenue for the Registrar as the person to whom certificates in relation to liquor transactions during the previous financial year must be submitted.

Clause 42 substitutes a new heading to Part XII.

Clause 43 repeals section 96 of the Principal Act and inserts new sections 96 and 96A. New section 96 defines a "matter".

New section 96A inserted by clause 43 sets out the procedures to be followed by the Board when it enquires into matters. The

Board is to have regard to the issues arising, the need to ensure procedural fairness (i.e. natural justice) and the due administration of the Act. The Registrar is to provide the Board with all relevant documents and Board may direct the Deputy Registrar to make further investigations if these are required.

Clause 44 amends section 97 of the Principal Act to establish a procedure under which the Chairman of the Board fixes a time, date and place for a hearing and the Deputy Registrar serves a notice of hearing on the relevant persons. Where the matter relates to cancellation or suspension, the notice must be accompanied by a Statement of Facts and, if the matter relates to the cancellation of a permit, the Deputy Registrar's report (if any) about any relevant complaints.

Clause 45 amends section 98 of the Principal Act consequentially upon the Board replacing the Authority in respect of hearings.

Clause 46 repeals section 101 of the Principal Act and inserts a new section 101 allowing a person appearing before the Board, and the Board itself, to be represented by a legal practitioner who may cross-examine witnesses and put legal argument to it.

Clause 47 amends section 102 of the Principal Act, which deals with witnesses at hearings, consequentially upon the Board replacing the Authority in respect of hearings. Clause 47 also amends the penalties relating to offences by introducing imprisonment in addition to fines.

Clause 48 inserts new section 103A into the Principal Act. The new section protects Board members against legal action arising out of things done by the Board member in an official capacity, provided that the member acted in good faith. The new section also gives lawyers and witnesses appearing at a hearing conducted by the Board the same protection and immunity that those persons would have in proceedings in the Supreme Court.

Clause 49 repeals Part XIII and substitutes a new Part XIII. New section 104 provides for appeals to the Administrative Appeals Tribunal from decisions of the Registrar or the Board on the same grounds as section 104 currently provides for appeals to the Supreme Court, but with several minor additions.

New section 104A inserted by clause 49 requires the Registrar or Board, as the case requires, to give a notice of appeal rights to the relevant persons where the Registrar or Board takes an appealable decision. However, failure to give such notice does not affect the validity of the decision taken.

Clause 50 provides for the consequential amendments set out in the schedule to the Bill.

Clause 51 deals with transitional matters. All matters current under the Act on 1 January 1991 will be determined under the Act as amended by this Bill, except hearings that had been commenced before the Authority but not concluded. The Authority is continued in existence for the purpose of resolving those hearings.