

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

LIQUOR (AMENDMENT) ORDINANCE (NO. 2) 1987
No. 12 of 1987

The Liquor Ordinance 1975 (the "Principal Ordinance") regulates all aspects of liquor licensing in the ACT and provides for some control over drinking by persons under the age of 18. Recent public debate and expressions of concern have highlighted the inadequacy of the Principal Ordinance to deal with the social problem of underage drinking. The Liquor (Amendment) Ordinance (No.2) 1987 (the "Ordinance") strengthens the provisions relating to underage drinking in a way which reflects community needs and attitudes while also attempting to discourage and prevent drinking by young persons.

This is achieved by issuing a caution to a young person on the first occasion that he or she is believed on reasonable grounds to have engaged in underage drinking in a public place or on licensed premises. Any liquor found in the possession of a young person is subject to seizure, which is intended to deprive the young person from further immediate access to liquor and to minimise the possibility of the young person endangering him or herself, or another person, or property.

The Ordinance also overcomes the previous difficulties of establishing that a beverage is in fact liquor, and that a sealed container purporting to contain liquor does in fact contain liquor. New offences of possession of liquor by a young person are created, as is an offence for a person to supply liquor to a young person.

The Ordinance also introduces provisions relating to liquor licences held by a member or members of a partnership. The Principal Ordinance was silent on the matter of partnerships, and a recent Supreme Court case had shown that members of partnerships could avoid the cancellation provisions of the Principal Ordinance by various means. The Ordinance overcomes these problems by specifically providing for the rights and duties of members of partnerships.

The effect of each provision of the Ordinance is outlined in the attachment.

ISSUED BY AUTHORITY OF THE
MINISTER OF STATE FOR THE ARTS,
SPORT, THE ENVIRONMENT, TOURISM
AND TERRITORIES

LIQUOR (AMENDMENT) ORDINANCE (NO.2) 1987

Section 1 cites the title of the Ordinance as the Liquor (Amendment) Ordinance (No.2) 1987.

Subsection 2(1) provides for the commencement of section 6 of the Ordinance as being the date fixed by the Minister by notice in the Gazette.

Subsection 2(2) provides that the commencement of all other provisions of the Ordinance is on the day the Ordinance is notified in the Gazette.

Section 3 defines "Principal Ordinance" to mean the Liquor Ordinance 1975.

Section 4 deals with interpretation.

Section 5 amends section 5 of the Principal Ordinance by omitting paragraph (1)(da) which referred to the House of Assembly.

Section 6 amends section 16 of the Principal Ordinance by adding a new subsection 16(3) which deems an inspector to be a police officer for the purposes of section 33 of the Children's Services Ordinance 1986. Under that section a police officer must obtain the consent in writing of an authorised officer to institute a prosecution against a child; section 6 of the Ordinance will ensure that an inspector obtains the consent of an authorised officer.

Section 7 inserts new section 16A into the Principal Ordinance as follows:

- Subsection 16A(1) provides for the issue by the Minister to an inspector of an identity card bearing a photograph of the inspector.
- Subsection 16A(2) imposes an obligation on an inspector to return his or her identity card on ceasing to be an inspector.
- Subsection 16A(3) makes it an offence for a person who ceases to be an inspector not to return his or her identity card and a penalty of \$100 is provided.

Section 8 amends section 17 of the Principal Ordinance as a consequence of introducing identity cards by replacing a reference to a certificate with a reference to an identity card.

Section 9 inserts new sections 17A, 17B, 17C and 17D into the Principal Ordinance as follows:

- . New subsection 17A(1) enables a police officer or inspector to seize as much of any liquor as is necessary for evidentiary purposes where he or she suspects on reasonable grounds that the liquor is connected with the commission of an offence.
- . New subsection 17A(2) allows a police officer or inspector to seize all liquor suspected on reasonable grounds to be connected with the commission of an offence against the underage drinking provisions. This will prevent a young person from having further access to liquor.
- . New subsection 17A(3) provides for a receipt to be given to a person from whom liquor is seized.
- . New subsection 17A(4) allows a person from whom liquor is seized, or the parent or guardian of such a person if the person is under 18, to obtain a sample of the seized liquor; a time limit of 14 days is provided for because of the possibility of the alcohol content of the liquor evaporating.
- . New subsection 17A(5) specifies the procedure to be followed by a police officer or inspector when giving a sample of liquor: there must be a sufficient quantity for analysis purposes; the container must be sealed and have affixed to it a label which must be signed by the inspector or officer and contain particulars of the place where, and the date and time on which, the liquor was seized.
- . New subsection 17A(6) provides that if, on request, an inspector does not produce his or her identity card then he or she is not empowered to seize liquor.
- . New subsection 17A(7) provides for the return of seized liquor if a prosecution is not instituted within 60 days of its seizure: where the liquor was seized from a person under 18, the liquor is to be returned to the parent or guardian of the person on the request of the parent or guardian; in any other case the liquor is to be returned to the person from whom the liquor was seized.
- . New subsection 17A(8) provides that seized liquor will be forfeited to the Commonwealth where a person is convicted of an offence in relation to the seized liquor or the liquor is not or cannot be returned.
- . New subsection 17A(9) provides that for the purposes of section 17A, a beverage will be taken to be liquor if:
 - . it is in a container that purports to contain liquor;
 - . there are reasonable grounds for believing it has been taken from a container that purports to contain liquor;
 - or

- New subsection 17C(3) provides that where a young person is charged with an offence constituted by the thing done by the young person as referred to in paragraph 17B(1)(a), and a caution has not been issued to the young person in the preceding 12 months, then any particulars of the young person's name, age or address given by the young person to an inspector or police officer, no matter how those details were given, will not be able to be used in evidence against the young person except in proceedings for an offence of refusing to give, or giving a false, name, address or age.
- New subsection 17C(4) allows the details of a young person's name, age and address given by the young person, no matter how those details were given, to be used in evidence against the young person only where a caution has been issued to the apprehended young person within the preceding 12 months and the relevant police officer is satisfied that the young person is not 18 years or older.
- New subsection 17C(5) ensures that a young person is charged or cautioned, as the case may be, within a reasonable time after the young person is delivered or taken to a police station.
- New subsection 17C(6) specifies that as soon as practicable after a young person is charged, issued with a caution, or delivered or taken to a police station, the police officer must either release the young person, arrange for the young person to be taken home, or arrange for the young person's parent or guardian to take charge of the young person.
- New subsection 17C(7) deals with the form a caution must take, as follows:

 - it must be in writing;
 - it must specify the date on which it is issued;
 - it must specify the thing done by the young person that would ordinarily constitute an offence against the underage drinking provisions;
 - it must warn the young person that if he or she does anything constituting an underage drinking offence within the next 12 months that he or she may be charged with the offence and that the details of the young person's name, address and age may be used in evidence against the young person; and
 - it must be signed by the police officer who issued it.
- New subsection 17C(8) specifies that the original of a caution is to be kept in police records, and a copy is to be given to the young person or to a parent or guardian of the young person, and a copy is to be given to the Registrar of Liquor Licences.

- New subsection 17D(1) allows the Commissioner of Police to revoke a caution if he or she is satisfied that it was not issued in accordance with section 17C or that the young person was not apprehended in accordance with subsection 17B(1) or (2) (for example if the Commissioner is satisfied that the young person had not done anything that would constitute an offence). As the Commissioner's decision to revoke or not to revoke will be made under an enactment, the provisions of the Administrative Decisions (Judicial Review) Act 1977 are attracted.
- New subsection 17D(2) specifies that when a caution is revoked it is to be removed from police records and destroyed and reasonable steps are to be taken to notify the person concerned of the revocation, and the Registrar of Liquor Licences is to be notified of the revocation.

Section 10 amends section 36 of the Principal Ordinance by adding a new subsection (3) which specifies that the particulars of the members of a partnership given under proposed subsection 43B(1) or (3) are to be endorsed on the licence by the Registrar.

Section 11 inserts a new Division 5 into Part IV of the Principal Ordinance which deals with liquor licences held by partnerships. New sections 43A, 43B, 43C, 43D and 43E are inserted as follows:

- New section 43A applies new sections 43C, 43D and 43E to a licensee and each partner of the licensee whether or not the partner's name appears on the licence and whether or not the Registrar has been notified of all members of the partnership, if the licence is held for the purposes of the partnership.
- New subsection 43B(1) imposes an obligation on a partner who applies for a licence for the purposes of the partnership to supply particulars of the name and address of each partner and the business name under which the partnership is or will be carrying on business.
- New subsection 43B(2) specifies that where a partnership is entered into by a licensee after the licence is issued, and the licence is to be held for the purposes of the partnership, then the licensee must supply to the Registrar, within 1 month of entering the partnership, details of the name and address of each partner and the business name under which the partnership is to carry on business, and the licence is to be lodged with the Registrar.
- New subsection 43B(3) makes provision for all licences held by a member of a partnership for the purposes of the partnership at the time of commencement of the Ordinance: in such a case, the licensee has an obligation to supply to the Registrar, within 1 month of commencement, particulars of the name and address of each partner and the business name under which the partnership is carrying on business, and the licence is to be lodged with the Registrar.

- New subsection 43B(4) provides for the licensee or applicant for a licence to give to the Registrar, within 1 month of the change in any particulars of a partnership, the particulars of such a change, and to lodge the licence with the Registrar, if a licence has already been issued.
- New subsection 43B(5) specifies that the Registrar is to endorse the relevant particulars on a licence that has been lodged under subsection 43B(2), (3) or (4) and he or she is to send the licence to the licensee as soon as practicable.
- New subsection 43B(6) makes it an offence for a licensee or applicant to contravene subsection (1), (2), (3) or (4) and a penalty is provided of \$1,000 for a body corporate and \$400 for a natural person.
- New section 43C provides that each partner of a partnership has, in relation to the licence, the same rights and duties as a licensee.
- New subsection 43D(1) provides for the cancellation provision to apply to licensees who hold the licence for the purpose of a partnership. Paragraph 51(c) of the Principal Ordinance empowers the ACT Gaming and Liquor Authority to cancel a licence where the licensee has been convicted of 2 or more offences against the Ordinance. Previously this provision could be, and had been, avoided by members of a partnership by transferring a licence between members after the partner named on the licence had one conviction. New subsection 43D(1) specifies that cancellation may be applied to a licensee who holds the licence for the purposes of a partnership where one of the members of the partnership is convicted of an offence, whether before or after the commencement of the Ordinance, and subsequent to that commencement, any of the partners is convicted of an offence (whether or not it is the same person). The licensee is then taken to have been convicted of two offences, whether or not at the time of the second conviction the person convicted of the first offence was still a partner, and whether or not the person convicted of the second offence was a partner at the time of the first offence.
- New subsection 43D(2) defines "offence against this Ordinance" to have the same meaning as in Division 3 of Part V of the Principal Ordinance.
- New section 43E prohibits the transfer of a licence held for the purposes of a partnership that is suspended or cancelled to any other member of the partnership.

Section 12 amends section 46 of the Principal Ordinance by adding a new subsection (8) which ensures that for the purposes of the suspension provision in section 46 of the Principal Ordinance "licensee" includes any partner of the licensee where the licence is held for the purposes of the partnership.

Section 13 amends section 48 of the Principal Ordinance by adding a new subsection (2) to specify that for the purposes of section 48, the "holder of a licence" includes any partner who takes part in the management of the business, whether or not the partner is named on the licence, if the licence is held for the purposes of the partnership.

Section 14 amends section 51 of the Principal Ordinance by adding a new subsection (6) to specify that for the purposes of section 51, a reference to the "licensee" is to be read as including a reference to any partner who takes part in the management of the business, whether or not the partner is named on the licence, if the licence is held for the purposes of the partnership.

Section 15 amends section 80 of the Principal Ordinance by:

- omitting subsection (1) and substituting a new subsection (1) which makes it an offence for a person to sell or supply liquor to a person under 18 in any place where the sale of liquor is authorised or in a public place; and
- adding a new subsection (4) which, for the purposes of section 80 of the Principal Ordinance, lowers the percentage of ethyl alcohol from 1.15 to 0.5 in the definition of "liquor". This has the effect of prohibiting a person supplying or selling "light" beer, for example, to a young person.

Section 16 amends section 81 of the Principal Ordinance by:

- omitting paragraphs (a) and (b) and substituting new paragraphs (a) and (b) which prohibits a person under the age of 18 purchasing liquor or to possess or consume liquor on premises where the sale of liquor is authorised or in a public place; and
- adding a new subsection (2) which, for the purposes of section 81 of the Principal Ordinance, lowers the percentage of ethyl alcohol in liquor from 1.15 to 0.5 in the definition of "liquor".

Section 17 amends section 82 of the Principal Ordinance by adding a new subsection (2) which, for the purposes of section 82, lowers the percentage of ethyl alcohol in liquor from 1.15 to 0.5 in the definition of "liquor".

Section 18 repeals sections 84 and 85 of the Principal Ordinance and substitute new sections 84, 84A and 85 as follows:

- New section 84 makes it an offence for a person to fail or refuse to give, or to give a false, name, address or age when required to do so under paragraph 17B(1)(c) or (2)(c).
- New subsection 84A(1) specifies that a beverage purporting to be liquor which is in a sealed container will be taken to be liquor unless the contrary is established. This includes, for example, an unopened bottle of wine or can of beer, and

will overcome the previous difficulty of establishing that a bottle of wine contained liquor, notwithstanding its label stating that it does contain liquor.

- New subsection 84A(2) provides the same as for subsection 84A(1) in relation to liquor as defined in sections 80, 81 and 82. This provision includes liquor with a lower percentage of ethyl alcohol; for example, light beer, which is so defined for the sections dealing with underage drinking.
- New section 85 makes it an offence to obstruct or hinder, without reasonable excuse, an inspector in the exercise of his or her powers under the Ordinance.

Section 19 inserts a new section 93 into the Principal Ordinance to deal with offences committed by a body corporate and others as follows:

- New subsection 93A(1) provides that the state of mind of a director, servant or agent of a body corporate can be shown in order to establish the state of mind of the body corporate, as long as the relevant conduct was engaged in within the scope of the actual or apparent authority of the director, servant or agent.
- New subsection 93A(2) deems any conduct engaged in on behalf of a body corporate to have been engaged in by the body corporate where the conduct is of a director, servant or agent of the body corporate and is within the scope of the person's actual or apparent authority, or it is done at the direction, consent or agreement of a director, servant or agent of the body corporate.
- New subsection 93A(3) provides that it is sufficient, in order to establish the state of mind of a person, to show the state of mind of a servant or agent of the person, as long as the relevant conduct engaged in was within the scope of the actual or apparent authority of the servant or agent.
- New subsection 93A(4) deems any conduct engaged in on behalf of a person other than a body corporate to have been engaged in by the person where the conduct is of a servant or agent of the person and is within the scope of the servant's or agent's actual or apparent authority, or it is done at the direction, consent or agreement of a servant or agent.
- New subsection 93A(5) includes in a reference to the state of mind of a person the knowledge, intention, opinion, belief or purpose of the person.
- New subsection 93A(6) clarifies that a reference to a director includes a member of a body corporate established under law for a public purpose.