

**Draft for comment**

South Australia

# **Liquor Licensing (Liquor Review) Amendment Bill 2016**

A BILL FOR

An Act to amend the *Liquor Licensing Act 1997*; and to make related amendments to various Acts.

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### The Parliament of South Australia enacts as follows:

#### Part 1—Preliminary

##### 1—Short title

This Act may be cited as the *Liquor Licensing (Liquor Review) Amendment Act 2016*.

##### 5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

##### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## Part 2—Amendment of *Liquor Licensing Act 1997*

### 4—Amendment of section 3—Objects

(1) Section 3(1)—delete subsection (1) and substitute:

(1) The object of this Act is to regulate and control the promotion, sale,  
supply and consumption of liquor—

- (a) to ensure that the sale and supply of liquor occurs in a manner that minimises the harm and potential for harm caused by the excessive or inappropriate consumption of liquor; and
- (b) to ensure that the sale, supply and consumption of liquor is undertaken safely and responsibly, consistent with the principle of responsible service and consumption of liquor; and
- (c) to ensure as far as practicable that the sale and supply of liquor is consistent with the expectations and aspirations of the public; and
- (d) to facilitate the responsible development of the licensed liquor industry and associated industries, including the live music industry, tourism and the hospitality industry, in a manner consistent with the other objects of this Act.

(1a) For the purposes of subsection (1)(a), harm caused by the excessive or inappropriate consumption of liquor includes—

- (a) the risk of harm to children, vulnerable people and communities; and
- (b) the adverse effects on a person's health; and
- (c) alcohol abuse or misuse; and
- (d) domestic violence or anti-social behaviour, including causing personal injury and property damage.

(2) Section 3(2)—delete "In" and substitute:

Subject to this Act, in

### 5—Amendment of section 4—Interpretation

(1) Section 4, definition of *approved crowd controller*—delete the definition

(2) Section 4, definition of *authorised person*, (d)—delete paragraph (d) and substitute:

(d) a person who holds a security agents licence that authorises the person to perform the function of controlling crowds in licensed premises under the *Security and Investigation Industry Act 1995*;

(3) Section 4—after the definition of *beneficiary* insert:

*body corporate* includes a company within the meaning of the *Corporations Act 2001* of the Commonwealth;

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Amendment of *Liquor Licensing Act 1997*—Part 2

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- (4) Section 4, definition of *close associate*—delete the definition and substitute:  
*close associate*, except where otherwise provided by this Act, has the meaning given by section 7;
- (5) Section 4—after the definition of *close associate* insert:  
5 *club event endorsement*—see section 36(8);  
*club transport endorsement*—see section 36(10);
- (6) Section 4, definition of *collective outlet*—delete "section 39(1c)" and substitute:  
section 39(4)
- (7) Section 4—after the definition of *Commissioner* insert:  
10 *community impact assessment*—see section 53B;
- (8) Section 4, definitions of *designated dining area* and *designated reception area*—delete the definitions and substitute:  
*designated application*—see section 53A;  
*designated licence* means—  
15 (a) a general liquor licence; or  
(b) an on premises licence, unless—  
(i) the premises to which the proposed licence relates is a public conveyance or a major sporting venue; or  
20 (ii) the licence is, or is proposed to be, subject to a condition that the business conducted at the licensed premises be such that at all times the primary service provided to the public at the premises is the provision of accommodation; or  
(c) a club licence, if the licence is, or is proposed to be, subject to a condition authorising the sale of liquor to persons (other than a resident) for consumption off the licensed premises; or  
25 (d) a packaged liquor sales licence, other than if the licence is, or is proposed to be, subject to a condition authorising the licensee to only sell liquor through direct sales transactions;
- (9) Section 4—after the definition of *direct sales transaction* insert:  
30 *domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975* whether declared as such under that Act or not;
- (10) Section 4, definition of *extended trading authorisation*—delete the definition
- (11) Section 4, definition of *licensed person* or *licensee*—delete "limited licence" and substitute:  
35 short term licence
- (12) Section 4, definition of *liquor merchant*—delete "limited licence" and substitute:  
short term licence
- (13) Section 4, definitions of *live entertainment* and *lodger*—delete the definitions

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(14) Section 4—after the definition of *meal* insert:

*minor* means a person under the age of 18 years;

(15) Section 4, definition of *party*, (a)—delete "or an objector"

(16) Section 4—after the definition of *party* insert:

*position of authority in a trust or corporate entity*—see section 6;

(17) Section 4, definition of *premises*—after paragraph (c) insert:

(ca) a motor vehicle (within the meaning of the *Road Traffic Act 1961*) or a vehicle of a kind prescribed by the regulations;

(18) Section 4, definition of *producer's event endorsement*—delete the definition and substitute:

*production and sales event endorsement*—see section 39(5);

(19) Section 4, definition of *production outlet*—delete "section 39(1a)" and substitute:  
section 39(2)

(20) Section 4, definition of *records*—delete the definition and substitute:

*record* means—

(a) a document; or

(b) a record of a kind declared by regulation to be a record to which this definition applies;

**Note—**

The *Acts Interpretation Act 1915* defines *document*—see section 4(1) of that Act.

(21) Section 4—after the definition of *related body corporate* insert:

*resident* on licensed premises—see section 5;

(22) Section 4, definition of *retail licence*—delete the definition

(23) Section 4, definition of *retail outlet*—delete "section 39(1a)" and substitute:  
section 39(2)

(24) Section 4—after the definition of *spirits* insert:

*spouse*—a person is the spouse of another if they are legally married;

(25) Section 4—after the definition of *wholesale* insert:

*wholesale outlet*—see section 39(2);

**6—Amendment of section 5—Resident on licensed premises**

(1) Section 5(1)—delete "lodger in" and substitute:  
resident on

(2) Section 5(1)(b)—delete "lodgers" and substitute:  
residents



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- (3) Section 5(2)—delete "a lodger" and substitute:  
to be regarded as a resident on licensed premises

### **7—Amendment of section 7—Close associate**

- (1) Section 7(2), definition of *domestic partner*—delete the definition  
5 (2) Section 7(2), definition of *spouse*—delete the definition

### **8—Amendment of section 11A—Commissioner's codes of practice**

Section 11A—after subsection (2) insert:

- (2a) The Commissioner may include provisions in a code of practice that  
10 declare whether a contravention of, or failure to comply with, a  
provision of the code is to be expiable for the purposes of section 45.

### **9—Substitution of section 17**

Section 17—delete the section and substitute:

#### **17—Division of responsibilities between Commissioner and the Court**

15 The powers and responsibilities of a licensing authority under this  
Act are divided between the Commissioner and the Court as follows:

- (a) the Court is to determine the following matters:
- (i) all matters referred to the Court under a provision  
20 of this Act for hearing and determination by the  
Court; and
  - (ii) all other matters that are, under some other  
provision of this Act, to be determined by the  
Court;
- (b) the Commissioner is to determine all matters that are not to  
25 be determined by the Court under paragraph (a).

### **10—Amendment of section 20—Representation**

- (1) Section 20(1)—delete "A party to proceedings before the Commissioner may appear  
in those proceedings" and substitute:

30 If the Commissioner holds a hearing in relation to proceedings before the  
Commissioner, a party to the proceedings may be represented at the hearing

- (2) Section 20(2)—delete "in proceedings" and substitute:  
at a hearing

### **11—Amendment of section 21—Power of Commissioner to refer questions to the Court**

35 Section 21(1)—delete "The" and substitute:

Without limiting anything in Part 4 Division 13, the

## **12—Substitution of section 22**

Section 22—delete the section and substitute:

### **22—Application for review of Commissioner's decision**

- 5 (1) Subject to subsection (3), the following persons may apply to the  
Court for a review of a decision of the Commissioner in relation to  
an application for or in relation to a licence under Part 4:
- (a) in the case of a decision of the Commissioner where the  
Commissioner held a hearing in respect of the  
application—a person involved in the hearing;
- 10 (b) in the case of a decision of the Commissioner relating to a  
designated application (other than a decision of a kind  
referred to in paragraph (a))—
- (i) the applicant; or
- (ii) if the Commissioner of Police intervened or made  
15 written submissions in relation to the  
application—the Commissioner of Police; or
- (iii) any other person who made written submissions  
relating to the application;
- (c) in any other case—
- 20 (i) the applicant; or
- (ii) the licensee (in a case where the licensee is not the  
applicant); or
- (iii) if the Commissioner of Police intervened or made  
25 written submissions in relation to the  
application—the Commissioner of Police.
- (2) Subject to subsection (3)—
- (a) a party to any other proceedings before the Commissioner  
under this Act who is dissatisfied with a decision made by  
30 the Commissioner in the proceedings may apply to the Court  
for a review of the Commissioner's decision; and
- (b) a licensee who is dissatisfied with a decision made by the  
Commissioner under section 43(1) in circumstances in  
which there were no proceedings before the Commissioner  
may apply to the Court for a review of the Commissioner's  
35 decision.
- (3) If the Commissioner's decision relates to a subject on which the  
Commissioner has an absolute discretion, the decision, insofar as it  
was made in the exercise of that discretion, is not reviewable by the  
Court.

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- (4) Despite subsection (3)—
- (a) an applicant for, or in relation to, a small venue or short term licence who is dissatisfied with a decision of the Commissioner in relation to the applicant's application may apply to the Court for a review of the decision; and
- (b) the Commissioner of Police may apply to the Court for a review of the Commissioner's decision to grant an application for, or in relation to, a small venue or short term licence.
- (5) A review on application by the Commissioner of Police under subsection (1) or (4)(b) is limited to whether a particular person is a fit and proper person, or whether the Commissioner's decision is contrary to the public interest.
- (6) An application for review of a decision of the Commissioner must be made within 1 month after the applicant for the review receives notice of the decision or a longer period allowed by the Court.
- (7) A review is in the nature of a rehearing.
- (8) On a review, the Court may exercise any 1 or more of the following powers:
- (a) affirm, vary or quash the decision subject to the review;
- (b) make any decision that should, in the opinion of the Court, have been made in the first instance;
- (c) refer a matter back to the Commissioner for rehearing or reconsideration;
- (d) make any incidental or ancillary order.

### **13—Amendment of section 24—Powers with respect to witnesses and evidence**

Section 24(3)(b)—delete paragraph (b)

### **14—Insertion of sections 24B and 24C**

After section 24A insert:

#### **24B—Injunctive remedies**

- (1) If there are reasonable grounds to believe that a person is about to contravene or to fail to comply with a provision of this Act or a condition of a licence, the Court has jurisdiction to order the person to refrain from the contravention or non-compliance.
- (2) A person who contravenes or fails to comply with an order under subsection (1) commits a contempt of the Court.

#### **24C—Punishment of contempts**

- (1) A contempt of the Court is a summary offence punishable by a maximum fine of \$10 000 or imprisonment for a maximum term of 6 months.

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Part 2—Amendment of *Liquor Licensing Act 1997*

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- (2) The jurisdiction to deal with an offence against subsection (1) is vested in the Court.
- (3) If a contempt is committed in the face of the Court, the matter may be dealt with immediately (without the necessity of laying a charge or other formality) and the Court may proceed to convict and fine the offender as it thinks fit.

**15—Insertion of section 25A**

After section 25 insert:

**25A—Intervention by Commissioner**

The Commissioner may intervene in proceedings before the Court under this Act for the purpose of introducing evidence, or making representations, on any question before the Court.

**16—Substitution of section 26**

Section 26—delete the section and substitute:

**26—Power to award costs**

If the Court is of the opinion that a person acted unreasonably, frivolously or vexatiously in bringing or in relation to the conduct of proceedings, the Court may make an award of costs against the person.

**17—Insertion of Part 2 Division 5A**

After Part 2 Division 5 insert:

**Division 5A—Intervention by Commissioner of Police**

**28AA—Intervention by Commissioner of Police**

- (1) The Commissioner of Police may intervene in proceedings before a licensing authority, by notice lodged in a manner and form approved by the Commissioner, at least 7 days before the day appointed for the determination or hearing of the proceedings, for the purpose of introducing evidence, or making submissions, on any question before the authority.
- (2) However, the Commissioner of Police may only intervene in proceedings in connection with an application under Part 4 on the question of—
- (a) whether a person is a fit and proper person; or
  - (b) whether, if the application were to be granted, public disorder or disturbance would be likely to result; or
  - (c) whether to grant the application would be contrary to the public interest.

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Amendment of *Liquor Licensing Act 1997*—Part 2

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### 18—Amendment of section 28A—Criminal intelligence

- (1) Section 28A(2)(a)—delete "Part 4 Division 10A" and substitute:  
section 71A
- (2) Section 28A(3)—delete "lodges an objection to" and substitute:  
5 makes written submissions opposing
- (3) Section 28A(3)(a)—delete "notice of objection" and substitute:  
written submissions
- (4) Section 28A(3)(b)—after "hearing" insert:  
or determination
- 10 (5) Section 28A(3)(b)—delete "objected to" and substitute:  
made written submissions opposing

### 19—Amendment of section 29—Requirement to hold licence

Section 29—after "to do so" insert:  
(or under a licence that is suspended)

### 15 20—Substitution of Part 3 Division 2

Part 3 Division 2—delete the Division and substitute:

#### **Division 2—Licences**

#### **Subdivision 1—Authorised trading in liquor**

#### **31—Authorised trading in liquor**

- 20 (1) Subject to this Act, a licence authorises the licensee to sell and  
supply liquor in accordance with the terms and conditions of the  
licence (including the trading hours fixed by the licensing authority).
- (2) There will be the following classes of ongoing licences (see  
Subdivision 2):
- 25 (a) general liquor licence;  
(b) on premises licence;  
(c) residential licence;  
(d) restaurant and catering licence;  
(e) club licence;
- 30 (f) packaged liquor sales licence;  
(g) liquor production and sales licence;  
(h) small venue licence.
- (3) There will be a class of temporary licence known as a short term  
licence (see Subdivision 3).

## **Subdivision 2—Ongoing licences**

### **32—General liquor licence**

Subject to this Act and the conditions of the licence, a general liquor licence authorises the licensee—

- 5
- (a) to sell liquor on the licensed premises at any time for consumption on the licensed premises; and
- (b) to sell liquor on the licensed premises on any day between 7 am and 10 pm for consumption off the licensed premises; and
- 10
- (c) to sell liquor at any time on the licensed premises to a resident on licensed premises for consumption on or off the licensed premises; and
- (d) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8 am and 9 pm).
- 15

### **33—On premises licence**

Subject to this Act and the conditions of the licence, an on premises licence authorises the licensee to sell liquor at any time for consumption on the licensed premises.

20

### **34—Residential licence**

- (1) Subject to this Act and the conditions of the licence, a residential licence authorises the licensee to sell liquor on the licensed premises at any time—
- 25
- (a) to a resident on licensed premises for consumption on or off the licensed premises; and
- (b) to a guest of a resident on the licensed premises for consumption on the licensed premises, if the resident is also present on the licensed premises; and
- 30
- (c) to a person dining on the licensed premises for consumption with or ancillary to a meal provided by the licensee; and
- (d) for consumption on the licensed premises to a person—
- (i) attending a reception; or
- (ii) attending a function at which food is provided; or
- 35
- (iii) seated at a table.
- (2) A residential licence is subject to the condition that business must be conducted at the licensed premises such that the provision of accommodation to members of the public is at all times the primary service provided to the public at the premises.

### **35—Restaurant and catering licence**

- (1) Subject to this Act and the conditions of the licence, a restaurant and catering licence—
- 5 (a) authorises the consumption of liquor on the licensed premises at any time with or ancillary to a meal provided by the licensee; and
- (b) authorises the licensee to sell liquor at any time for consumption on the licensed premises—
- 10 (i) with or ancillary to a meal provided by the licensee or in prescribed circumstances; or
- (ii) to a person—
- (A) attending a function at which food is provided; or
- (B) seated at a table; and
- 15 (c) authorises the licensee to sell liquor in accordance with a condition under subsection (3).
- (2) A restaurant and catering licence is subject to the condition that business must be conducted at the licensed premises such that the supply of meals is at all times the primary service provided to the public at the premises, except as otherwise allowed by a condition of the licence.
- 20 (3) For the purposes of subsection (1)(c), the conditions of a restaurant and catering licence may authorise the licensee to sell or supply liquor for consumption at the site of a function off the licensed premises by persons attending the function, provided that—
- 25 (a) food is provided by the licensee at the function; and
- (b) the licensee has been given notice of the function at least 24 hours before the function; and
- (c) the licensee maintains records relating to the function in accordance with any requirements of the licensing authority,
- 30 and the licensed premises are, for the period during which the licensee is so authorised to sell or supply liquor, to be regarded as including the site at which the function is held.

### **36—Club licence**

- 35 (1) Subject to this Act and the conditions of the licence, a club licence authorises the licensee—
- (a) to sell liquor at any time for consumption on the licensed premises;
- 40 (b) to sell liquor on the licensed premises on any day between 7 am and 10 pm for consumption off the licensed premises; and

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Part 2—Amendment of *Liquor Licensing Act 1997*

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- (c) to sell liquor on the licensed premises to a resident on licensed premises for consumption on or off the licensed premises; and
- (d) to sell liquor at any time through direct sales transactions to a member of the club (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8 am and 9 pm).
- 10 (2) A club licence is subject to the condition that the licence does not authorise the sale of packaged liquor from a facility commonly known as a drive-in or drive through bottle shop.
- (3) In addition, a club licence is subject to the following conditions:
- 15 (a) if there is a change to the composition of the committee of management of the club, the club will, within 14 days, give the Commissioner notice of the change in the form and containing the information required by the Commissioner;
- (b) if the licensing authority notifies the club that it considers that any member of the committee of management of the club is not a fit and proper person to be in a position of authority in the club, the club will immediately take action to have that person removed from the committee of management.
- 20 (4) A club licence may only be held by a club that is—
- (a) a non-profit association incorporated under the *Associations Incorporation Act 1985*; or
- 25 (b) a company limited by guarantee under the *Corporations Act 2001* of the Commonwealth.
- (5) However, the licensing authority may grant a club licence to a trustee for an association if satisfied that—
- 30 (a) the association is unable to become incorporated; or
- (b) it is inappropriate to require the incorporation of the association.
- (6) A club is not eligible to hold a club licence unless the licensing authority is satisfied that—
- 35 (a) subject to subsection (7), the club will be entitled to exclusive possession of the licensed premises at times when the sale of liquor is authorised by the licence; and
- (b) the rules of the club also make appropriate provision for—
- 40 (i) management of the affairs of the club by a management committee elected by the general body of members; and
- (ii) regular meetings of the general body of members and the management committee; and
- (iii) admission to membership of the club; and



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- (iv) the payment of subscriptions by the ordinary members of the club; and
- (v) the keeping of proper records of the proceedings of the club and its financial affairs.

- 5 (7) Subsection (6)(a) does not apply to licensed premises in respect of which 2 or more clubs licences are granted if—
- (a) only those licensees are entitled to exclusive possession of the premises at times when the sale of liquor is authorised by the relevant licences; and
  - 10 (b) each licensee maintains a register in accordance with section 48(3)(b).
- 15 (8) The licensing authority may endorse a club licence with an authorisation to sell or supply liquor on a site used for club activities specified in the endorsement during an event specified in the endorsement for consumption on or off the site as specified in the endorsement (a ***club event endorsement***), except if the licensing authority is of the opinion that the trade to be authorised by the endorsement would, in view of the likely scale or nature of the event or for any other reason, be better authorised by a short term licence or licence of some other category.
- 20 (9) A club licence with a club event endorsement authorises the licensee to sell or supply liquor in accordance with the endorsement and the licensed premises are, for the period for which the licensee is so authorised to sell or supply liquor, to be regarded as including any site specified in the endorsement.
- 25 (10) The licensing authority may endorse a club licence held by a club engaged primarily in sporting activities with an authorisation to allow the consumption of liquor by members of the club on a public conveyance specified in the endorsement for the purposes of transporting members to and from sporting events specified in the endorsement engaged in by the club (a ***club transport endorsement***).
- 30 (11) A club licence with a club transport endorsement authorises the licensee to sell or supply liquor in accordance with the endorsement and the licensed premises are, for the period for which the licensee is so authorised to sell or supply liquor, to be regarded as including any public conveyance specified in the endorsement.
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### **37—Small venue licence**

- 40 (1) Subject to this Act and the conditions of the licence, a small venue licence authorises the licensee to sell liquor on the licensed premises for consumption on the licensed premises between 8 am on 1 day and 2 am the following day.
- (2) Without limiting any other provision of this Act, a small venue licence can only be granted in respect of premises located, or to be located, in a prescribed area.

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(3) A small venue licence is subject to a condition limiting the number of patrons that can be on the licensed premises at any 1 time to not more than 120 (or a lesser number determined by the licensing authority).

5 (4) In this section—

*Adelaide central business district* means the area of the City of Adelaide bounded—

(a) on the north by the northern bank of the River Torrens; and

10 (b) on the south by the northern alignment of South Terrace;  
and

(c) on the east by the western alignment of East Terrace and its prolongation north to the northern bank of the River Torrens; and

15 (d) on the west by the eastern alignment of West Terrace and its prolongation north to the northern bank of the River Torrens;

*prescribed area* means—

(a) the Adelaide central business district; and

20 (b) any other area declared by the regulations to be a prescribed area for the purposes of this section;

*prescribed bodies* means—

(a) if a proposed prescribed area falls wholly or partly within the area of a council—the council; and

25 (b) any other body prescribed by the regulations for the purposes of this definition.

(5) The Minister must consult in such manner as the Minister thinks fit with the prescribed bodies in relation to any proposed regulations declaring an area to be a prescribed area.

**38—Packaged liquor sales licence**

30 (1) Subject to this Act and the conditions of the licence, a packaged liquor sales licence authorises the licensee—

(a) to sell liquor on the licensed premises on any day over a continuous period authorised by the licensing authority (which must not exceed 13 hours) between the hours of 8 am and 10 pm for consumption off the licensed premises;  
35 and

(b) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only  
40 between the hours of 8 am and 9 pm); and

(c) to sell or supply liquor by way of sample for consumption on the licensed premises.

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(2) A packaged liquor sales licence is subject to the condition that the licence does not authorise the sale of packaged liquor from a facility commonly known as a drive-in or drive through bottle shop.

5 (3) In addition, it is a condition of a packaged liquor sales licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.

**Note—**

10 Goods may be sold in the same premises if they are of the kind normally associated with, and incidental to, the sale of liquor (eg glasses, decanters, cheeses and pates).

(4) For the purposes of subsection (3), licensed premises will not be regarded as physically separate from premises used for other commercial purposes unless—

15 (a) the licensed premises are separated from the other premises by a permanent barrier that is not transparent and is of a height of at least 2.5 metres; and

(b) subject to subsection (5), the licensed premises cannot be accessed from the other commercial premises.

20 (5) If licensed premises and other commercial premises, being premises at which goods are sold to the public by retail, are located within a shopping centre and the licensed premises can only be accessed from the other commercial premises by use of a common area within the shopping centre (such as a mall or thoroughfare), it will be taken for  
25 the purposes of subsection (4)(b) that the licensed premises cannot be accessed from the other commercial premises.

(6) The licensing authority may grant an exemption from the condition under subsection (3) if, in the opinion of the licensing authority, it is in the public interest to do so.

30 **Note—**

For example, a general store in a regional location might satisfy the licensing authority that it is in the public interest that an exemption from the condition in subsection (3) be granted.

35 (7) A packaged liquor sales licence may only be granted in respect of premises of a prescribed kind if the licensing authority is satisfied that there is a proper reason to do so.

### **39—Liquor production and sales licence**

(1) Subject to this Act and the conditions of the licence, a liquor production and sales licence authorises the licensee—

40 (a) to sell liquor (including the licensee's product) by wholesale on the licensed premises at any time for consumption off the licensed premises; and

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- (b) to sell liquor (other than the licensee's product) by retail in an aggregate quantity of 4.5 litres or more on the licensed premises for consumption off the licensed premises; and
- (c) to sell the licensee's product by retail on the licensed premises at any time for consumption on or off the licensed premises; and
- 10
- (d) to sell liquor (including the licensee's product) at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8 am and 9 pm); and
- 15
- (e) to sell or supply liquor (including the licensee's product or, for the purposes of comparison with the licensee's product, other liquor of the same type as the licensee's product) by way of sample for consumption on the licensed premises; and
- (f) to sell liquor at any time on the licensed premises to a resident on licensed premises for consumption on or off the licensed premises; and
- 20
- (g) to sell liquor at any time for consumption on the licensed premises—
- (i) with or ancillary to a meal provided by the licensee; or
- (ii) to a person—
- 25
- (A) attending a function at which food is provided; or
- (B) seated at a table.

(2) The following rules apply for the purposes of subsection (1):

- 30
- (a) if a licensee has production premises—the licensed premises may be comprised of either a production outlet, retail outlet or wholesale outlet or a combination of such outlets;
- (b) if a licensee does not have production premises—the licensed premises may be comprised of a retail outlet or wholesale outlet (or both);
- 35
- (c) a production outlet must be comprised of—
- (i) the whole or a part of the licensee's production premises; or
- (ii) premises that are adjacent to the licensee's production premises and approved by the licensing authority for the purpose;
- 40
- (d) a retail outlet and a wholesale outlet must be comprised of premises approved by the licensing authority for the purpose.

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(3) The same premises may be shared by 2 or more licensees—

(a) as a retail outlet or wholesale outlet for each of the licensees; or

(b) as a production outlet for 1 licensee and as a retail outlet or wholesale outlet for the other licensees,

but the licensing authority must not grant a licence resulting in the same premises being so shared if of the opinion that the trade to be authorised at the premises would, in view of the number of licensees involved or the nature and extent of the trade or for any other reason, be better authorised by a packaged liquor sales licence or a licence of some other category.

(4) To the extent that licensees share the same premises as referred to in subsection (3)—

(a) the part of the premises that is shared is referred to as a *collective outlet*; and

(b) for the purposes of the application of this Act to the part of the premises that is shared, a single liquor production and sales licence will be taken to be held for that part of the premises jointly by the licensees.

(5) The licensing authority may endorse a liquor production and sales licence with an authorisation to sell or supply liquor on a site specified in the endorsement during an event specified in the endorsement for consumption on or off the site as specified in the endorsement (a *production and sales event endorsement*), except if the licensing authority is of the opinion that the trade to be authorised by the endorsement would, in view of the likely scale or nature of the event or for any other reason, be better authorised by a short term licence or licence of some other category.

(6) A liquor production and sales licence with a production and sales event endorsement authorises the licensee to sell or supply liquor in accordance with the endorsement and the licensed premises are, for the period for which the licensee is so authorised to sell or supply liquor, to be regarded as including any site specified in the endorsement.

(7) For the purposes of this section, liquor is to be regarded as a licensee's product if—

(a) in the case of beer—it was brewed by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product; or

(b) in the case of spirits—it was produced by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product; or

(c) in the case of wine—

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(i) the wine was fermented by or under the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product; or

(ii) the wine was produced by blending wine produced from Australian primary produce and a substantial proportion of the blended wine was fermented by or under the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product; or

(iii) the wine was produced by blending wine produced from Australian primary produce by or at the direction of the licensee (or a related body corporate) in accordance with, and during a period specified in, an approval granted by the licensing authority under subsection (8) and is uniquely the licensee's (or the related body corporate's) own product; or

(d) in the case of other liquor—it was produced by or at the direction of the licensee (or a related body corporate) and is uniquely the licensee's (or the related body corporate's) own product.

(8) The licensing authority may, on application by a licensee, grant an approval for the purposes of subsection (7)(c)(iii) if satisfied that circumstances beyond the control of the licensee warrant the licensee being authorised to produce wine during the period to be specified in the approval other than wine comprised of, or including a substantial proportion of, wine fermented by or under the direction of the licensee (or a related body corporate).

(9) In this section—

*licensee* means the holder of a liquor production and sales licence;

*production of liquor* includes any step in production including the growing of grapes or other primary produce for production of liquor;

*production premises* of a licensee means premises to be occupied and used by the licensee for the production of liquor.

### Subdivision 3—Short term licence

#### 40—Short term licence

(1) Subject to this Act, a short term licence authorises—

(a) the licensee to sell or supply liquor; or

(b) the consumption of liquor,

in accordance with the conditions of the licence, in circumstances in which the sale, supply or consumption of liquor would otherwise be unlawful.

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- (2) A short term licence may only be granted for an event or occasion or series of events or occasions.
  - (3) The Commissioner may, in the Commissioner's absolute discretion, grant or refuse to grant a short term licence subject to such conditions as the Commissioner thinks fit.
  - (4) However, the Commissioner must refuse to grant a short term licence if satisfied that to grant the licence would be contrary to the public interest or would be inconsistent with the objects of the Act.
  - (5) The Commissioner may, by written notice to the licensee, in the Commissioner's absolute discretion—
    - (a) vary or revoke a condition of a short term licence (other than a mandatory condition under section 42) or impose further conditions on the licence; or
    - (b) revoke a short term licence if the Commissioner is satisfied that—
      - (i) it is in the public interest; or
      - (ii) there is some other proper reason,to revoke the licence.
  - (6) No civil liability attaches to the Commissioner or the Crown in respect of the revocation of a short term licence in good faith under this section.
  - (7) The conditions of a short term licence may classify the licence for the purposes of the application of the Commissioner's codes of practice (and that classification may be varied by the Commissioner from time to time).
  - (8) The regulations may make further provision in relation to short term licences, including—
    - (a) providing for the classes of short term licences; and
    - (b) prescribing requirements relating to applications for each class of short term licence; and
    - (c) prescribing fees for each class of short term licence (including fees for the renewal of a short term licence granted for a period of more than 1 year); and
    - (d) providing for the maximum term for which each class of short term licence may be granted, provided that the regulations cannot provide for any short term licence to be of a term of more than 3 years; and
    - (e) providing that a provision of Part 4 does not apply, or applies with prescribed variations, to an application for, or in relation to, a short term licence.

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(9) Without limiting subsection (8), regulations made for the purposes of that subsection may provide for a matter referred to in subsection (8) to be determined according to—

- (a) the trade to be authorised by the licence; or
- (b) the type and duration of any event or events to be held under the licence; or
- (c) the resources related to the administration or enforcement of the Act in connection with the licence; or
- (d) any other matter,

and for a matter to be determined according to the discretion of the Commissioner.

(10) Section 50A does not apply to an application for, or in relation to, a short term licence.

**21—Amendment of section 42—Mandatory conditions**

(1) Section 42—after subsection (1) insert:

(1a) It is a condition of every licence (other than a short term licence) that, if there is a change in the name of the licensed premises, the licensee must, within 14 days, give the Commissioner written notice of the change in the form determined by the Commissioner.

(2) Section 42(2)(b)—delete "direct sales licence" and substitute:

packaged liquor sales licence that authorises the licensee to sell liquor only through direct sales transactions

**22—Substitution of section 43**

Section 43—delete the section and substitute:

**43—Power of licensing authority to impose conditions**

(1) Subject to this section, the licensing authority may—

- (a) impose a condition on a licence (including a condition that varies the trading hours in respect of the licence fixed or required by or under this Act); and
- (b) vary, suspend or revoke a condition of a licence (other than a mandatory condition contemplated by section 42).

(2) The licensing authority may impose, vary, suspend or revoke a condition under subsection (1)—

- (a) on the grant, transfer or removal of a licence; or
- (b) on application by the licensee; or
- (c) on application by the Commissioner of Police; or
- (d) if the licensing authority is the Court—on application by the Commissioner; or



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- (e) in any other proceedings under this Act involving the licensee; or
- (f) if the Commissioner considers the imposition, variation, suspension or revocation of the condition to be in the public interest—on the Commissioner's own initiative.

### 23—Substitution of section 44

Section 44—delete the section and substitute:

#### 44—New Year's Eve trading authorisation

For the purposes of New Year's Eve trading, the licensing authority must fix or vary the trading hours in respect of every licence authorising the sale of liquor for consumption on the licensed premises so that trade under the licence may continue until 2 am on New Year's Day.

#### 44A—Continuous 3 hour period where trading not permitted

- (1) The licensing authority must fix or vary the trading hours in respect of every licence authorising the sale of liquor for consumption on the licensed premises so that trade under the licence cannot be conducted for a continuous period of at least 3 hours each day between the hours of 3 am and 8 am.
- (2) This section does not apply in relation to the licence (under this Act) held by the holder of the casino licence in respect of the casino premises (both within the meaning of the *Casino Act 1997*).

### 24—Amendment of section 45—Compliance with licence conditions

Section 45, expiation fee provision—after "for" insert:

an offence declared to be expiable in a code of practice in accordance with section 11A(2a) or

### 25—Amendment of section 48—Plurality of licences

- (1) Section 48(3)(b)—delete "the trading hours authorised under the licences do not coincide or overlap" and substitute:

each licensee maintain a register in accordance with conditions specified by the licensing authority containing the details required by the licensing authority (including details relating to the times at which liquor is sold by each licensee at the licensed premises)

- (2) Section 48(3)(c)—delete "limited licence" and substitute:

short term licence

- (3) Section 48(3)(d)—delete "producer's licences" and substitute:

liquor production and sales licences

### 26—Repeal of section 49

Section 49—delete the section

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**27—Amendment of section 50A—Annual fees**

- (1) Section 50A(3)—delete "on or before a date specified in the notice" and substitute:  
within 28 days after service of the notice
- (2) Section 50A(5)—delete ", the Commissioner may, by further written notice, suspend the licence" and substitute:  
within 28 days after service of the notice, the licence is suspended
- (3) Section 50A—after subsection (5) insert:
- (5a) The Commissioner must give the licensee written notice of a suspension under subsection (5).
- (5b) If a notice under subsection (4) has not been complied with before the day on which the annual fee is to be paid in respect of the next annual fee period for the licence, the Commissioner has an absolute discretion to revoke the licence.
- (5c) The Commissioner must, before revoking a licence under subsection (5b)—
- (a) give notice to the holder of the licence of the proposed revocation; and
- (b) allow the holder of the licence a period of 21 days (or such longer period as the Commissioner may allow) to show cause why the licence should not be revoked.
- (5d) The Commissioner must give the licensee written notice of a revocation under subsection (5b).
- (4) Section 50A(6)—delete "limited licence" and substitute:  
short term licence

**28—Amendment of Heading to Part 4**

Heading to Part 4—delete ", interventions and objections" and substitute:  
and submissions

**29—Amendment of section 51—Form of applications**

- (1) Section 51(4)—after "application" second occurring insert:  
and any person who made written submissions in relation to the application
- (2) Section 51(4)—after "hearing" insert:  
or determination
- (3) Section 51(5)—delete "documents and other materials" and substitute:  
any document or material, or any other information,

**30—Amendment of section 51A—Applications to be given to Commissioner of Police**

Section 51A(1)(a)—delete "or limited"

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### **31—Amendment of section 52—Certain applications to be advertised**

- (1) Section 52(1)(a)—delete "or limited"
- (2) Section 52(1)(d)—delete paragraph (d)
- (3) Section 52(2)—delete subsection (2) and substitute:

5                                   (2) Notice of an application to which this section applies must be given, in accordance with the regulations, to members of the public by notice placed on the licensed premises or, in the case of proposed licensed premises, on the relevant land, so as to be clearly visible to, and legible by, persons passing the premises or land.

- 10           (4) Section 52—after subsection (2a) insert:

(2b) The Commissioner must ensure that a copy of a notice under subsection (2) is published on a website maintained by the Commissioner.

### **32—Amendment of section 52A—Confidentiality of certain documents and material relevant to application**

15

Section 52A(3)—delete "objecting to" and substitute:  
making written submissions in relation to

### **33—Amendment of section 53—Discretionary powers of licensing authority**

- (1) Section 53—after subsection (1a) insert:

20

(1b) The licensing authority must refuse to grant an application for a licence, or for the removal of a licence, if the licensing authority is satisfied that to grant the application would be inconsistent with the objects of the Act.

- 25           (2) Section 53(2)—delete "(whether or not there are objections to the application)" and substitute:

, taking into account the operation of Division 13

### **34—Insertion of section 53A**

After section 53 insert:

#### **53A—Licensing authority to be satisfied that designated applications in community interest**

30

(1) The licensing authority may only grant a designated application if the licensing authority is satisfied that granting the designated application is in the community interest.

35           (2) Without limiting subsection (1), in determining whether or not a designated application is in the community interest, the licensing authority—

(a) must have regard to—

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(i) the harm that might be caused (whether to the community as a whole or a group within the community) due to the excessive or inappropriate consumption of liquor; and

(ii) the cultural, recreational, employment or tourism impacts; and

(iii) the social impact in, and the impact on the amenity of, the locality of the premises or proposed premises; and

(iv) any other prescribed matter; and

(b) must apply the community impact assessment guidelines.

(3) The applicant in respect of a designated application must comply with any requirements set out in the community impact assessment guidelines, and any other requirements specified by the licensing authority for the purposes of this section.

(4) In this section—

*designated application* means—

(a) an application for the grant or removal of a designated licence; or

(b) any other application under this Part that the licensing authority has determined, in accordance with the community impact assessment guidelines, to be a designated application for the purposes of this section.

**53B—Community impact assessment guidelines**

(1) The Commissioner must, by notice in the Gazette, publish guidelines for the purposes of determining—

(a) whether or not an application under this Part is a designated application for the purposes of section 53A; or

(b) whether or not a designated application is in the community interest,

(the *community impact assessment guidelines*).

(2) The Commissioner may, by subsequent notice in the Gazette, vary or revoke a notice under this section.

(3) Without limiting section 53A(1) or (2)(a), the community impact assessment guidelines may provide for—

(a) matters relevant to an assessment of the likely impacts of a designated application on the community; and

(b) any other matter determined appropriate by the Commissioner.

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(4) The community impact assessment guidelines may set out requirements that apply to a designated application for the purposes section 53A, including requirements that the applicant—

- (a) provide documents, material or other information; and
- (b) take certain steps or carry out consultation in accordance with the guidelines.

(5) The provisions of the community impact assessment guidelines may be of general, limited or varied application according to—

- (a) the class of designated application or licence; or
- (b) the circumstances; or
- (c) any other specified factor,

to which the provision is expressed to apply.

### **35—Amendment of section 55—Provisions governing whether person is fit and proper**

(1) Section 55—before subsection (1) insert:

(a1) A person is not a fit and proper person to hold a licence if—

- (a) the person has been found guilty or convicted of an offence as prescribed by the regulations; or
- (b) in the case of a body corporate—

- (i) the body corporate is a body corporate, or is a body corporate of a class, prescribed by the regulations; or

- (ii) the body corporate is a prescribed organisation; or

- (c) in the case of a natural person, the person—

- (i) is—

- (A) a member of a prescribed organisation; or

- (B) a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or

- (ii) is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.

(a2) A person is not a fit and proper person to occupy a position of authority in a trust or corporate entity that holds a licence if—

- (a) the person has been found guilty or convicted of an offence as prescribed by the regulations; or
- (b) the person is—

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- (i) a member of a prescribed organisation; or
- (ii) a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or

5

- (c) the person is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.

(2) Section 55(1)—after paragraph (b) insert:

10

and

(c) if the person is a body corporate—

- (i) whether the body corporate is being wound up or is under official management or in receivership; or

15

- (iii) whether any director of the body corporate has, during the period of 5 years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors—

- (A) when the body corporate was being so wound up; or

20

- (B) within the period of 6 months preceding the commencement of the winding up; and

(d) if the person is a natural person—whether the person has, during the period of 5 years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors—

25

- (i) when the body corporate was being so wound up; or
- (ii) within the period of 6 months preceding the commencement of the winding up; and

(e) any other factor relevant to the particular purpose to which the decision relates, including any relevant offence of which the person has been convicted or found guilty.

30

(3) Section 55—after subsection (3) insert:

(4) In this section—

**close associate**—see subsection (5);

**prescribed organisation**—the following are prescribed organisations:

35

(a) a declared organisation within the meaning of the *Serious and Organised Crime (Control) Act 2008*;

(b) a criminal organisation within the meaning of Division 1 or Division 2 of Part 3B of the *Criminal Law Consolidation Act 1935*;

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(c) any other organisation prescribed by the regulations for the purposes of this definition.

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- (5) For the purposes of this section, 2 persons are *close associates* if—
- (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
  - (b) they are members of the same household; or
  - (c) they are in partnership; or
  - (d) they are related bodies corporate; or
  - (e) 1 has a right to participate (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
  - (f) 1 is in a position to exercise control or significant influence over the conduct of the other.
- (6) For the purposes of this section, a reference to a parent, brother, sister or child of a person will be taken to include a reference to a step-parent, step-brother, step-sister or step-child (as the case requires) of the person.

### **36—Amendment of section 56—Applicant to be fit and proper person**

(1) Section 56—after subsection (1) insert:

- (1a) Subsection (1) does not apply to an applicant for a club licence if the applicant informs the licensing authority of each member of the committee of management of the club and provides the information required by the licensing authority (in a form approved by the licensing authority) about each member.
- (1b) If the licensing authority considers that a member of the committee of management of a club to which subsection (1a) applies is not a fit and proper person to be in a position of authority in the club, the licensing authority—
  - (a) must notify the applicant as soon as is reasonably practicable that the person must be removed from the committee of management; and
  - (b) may grant the licence on the condition that the club will immediately take action to have the person removed from the committee of management.

(2) Section 56(2)—after "subsection (1)" insert:

or a member of the committee of management of a club to which subsection (1a) applies

### **37—Amendment of section 57—Requirements for premises**

(1) Section 57(1a)—delete "section 105" and substitute:

section 105(2)

(2) Section 57(3)—delete "direct sales licence or limited licence" and substitute:

short term licence or packaged liquor sales licence that authorises the licensee to sell liquor only through direct sales transactions

**38—Repeal of section 58**

Section 58—delete the section

**39—Amendment of section 59A—Licence fee payable on grant of licence**

(1) Section 59A(2)—delete subsection (2)

5 (2) Section 59A(3)—delete "In the case of a licence other than a limited licence" and substitute:

In relation to the licence fee in respect of a licence

**40—Amendment of section 60—Premises to which licence is to be removed**

Section 60(3)—delete "direct sales licence" and substitute:

10 packaged liquor sales licence that authorises the licensee to sell liquor only through direct sales transactions

**41—Repeal of section 61**

Section 61—delete the section

**42—Amendment of section 62A—Removal of liquor production and sales licence in respect of outlet**

15

Section 62A—delete the present contents of section 62A and substitute:

An application for removal of a liquor production and sales licence in respect of—

- 20 (i) a production outlet to a different production outlet; or  
(ii) a retail outlet to a different retail outlet; or  
(iii) a wholesale outlet to a different wholesale outlet,

is to be dealt with as an application for the removal of the licence to premises or proposed premises under this Division (even if the licence is not removed in respect of some other outlet).

25 **43—Amendment of heading to Part 4 Division 4A**

Heading to Part 4 Division 4A—delete "producer's" and substitute:

liquor production and sales

**44—Amendment of section 62B—Addition of outlets to liquor production and sales licence**

30 (1) Section 62B(1) to (3) (inclusive)—delete "producer's" wherever occurring and substitute in each case:

liquor production and sales

(2) Section 62B(1) to (3) (inclusive)—delete "production outlet or retail outlet" wherever occurring and substitute in each case:

35 production outlet, retail outlet or wholesale outlet



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- (3) Section 62B(3)—delete "retail liquor merchant's licence" and substitute:  
packaged liquor sales licence

### **45—Amendment of section 62C—Certificate of approval for addition to liquor production and sales licence of proposed premises as outlet**

- 5 (1) Section 62C(1)—delete "producer's" and substitute:  
liquor production and sales
- (2) Section 62C(1)—delete "production outlet or retail outlet" and substitute:  
production outlet, retail outlet or wholesale outlet

### **46—Amendment of section 63—Applicant for transfer must be fit and proper person**

10

- Section 63(3)—delete "limited licence" and substitute:  
short term licence

### **47—Insertion of Part 4 Division 5A**

After Part 4 Division 5 insert:

15

#### **Division 5A—Special provision relating to amalgamation of certain clubs**

##### **65A—Special provision relating to amalgamation of certain clubs**

20

- (1) If—
- (a) 2 or more associations incorporated under the *Associations Incorporation Act 1985* that each hold a club licence (the **amalgamating clubs**) amalgamate under that Act as a single incorporated association; and
- (b) the single incorporated association is to carry on business at the licensed premises in respect of the licence of 1 of the amalgamating clubs,
- the Commissioner may, on application on behalf of the amalgamating clubs—
- (c) revoke the licences of the amalgamating clubs; and
- (d) grant a new club licence in favour of the single incorporated association on the same conditions as those that applied to the licence of the club (prior to the amalgamation) at whose premises the single incorporated association is to carry on business.

25

30

35

- (2) Subject to the regulations, this Part, other than sections 51, 52A, 53, 55, 56 and 59A, does not apply to an application under this section.

**48—Amendment of section 68—Alteration and redefinition of licensed premises**

- (1) Section 68(1)(c)—delete paragraph (c)
- (2) Section 68(1)(d)—delete paragraph (d) and substitute:
- 5 (d) in the case of a liquor production and sales licence—remove a production outlet, retail outlet or wholesale outlet from the licensed premises.

**49—Substitution of Part 4 Division 8A**

Part 4 Division 8A—delete the Division and substitute:

10 **Division 8A—Alteration of endorsements**

**69A—Alteration of endorsements**

- (1) The licensing authority may, on the application of—
- (a) the holder of a liquor production and sales licence with a production and sales event endorsement; or
- 15 (b) the holder of a club licence with a club event endorsement or a club transport endorsement,
- alter the terms of the relevant endorsement.

**50—Amendment of section 71—Approval of management and control**

- (1) Section 71(1)—delete "by a licensee"
- 20 (2) Section 71(1a)—delete subsection (1a)
- (3) Section 71(4)—after subsection (4) insert:
- (5) In addition, a licensing authority may, if the licensing authority thinks fit, approve a natural person as a responsible person on the condition that the applicant satisfies the licensing authority that the
- 25 natural person is a fit and proper person within a period (of 6 months or less) specified by the licensing authority.
- (6) If an approval is granted on a condition under subsection (5)—
- (a) the licensing authority may (during the period of 6 months or less specified by the licensing authority under that subsection), on failure by the responsible person to comply with the condition, revoke the approval; and
- 30 (b) if the approval is not revoked under paragraph (a), the approval will, at the end of the period of 6 months or less specified by the licensing authority under that subsection, be taken to be an approval not subject to the condition under
- 35 subsection (5).

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### 51—Insertion of section 71A

After section 71 insert:

#### **71A—Revocation of approval of responsible person**

- 5 (1) The Commissioner has an absolute discretion to revoke a person's approval as a responsible person under this Division on such ground or for such reason as the Commissioner thinks fit.
- (2) The Commissioner must, before exercising powers under subsection (1) in relation to a person—
- 10 (a) give written notice to the person of the proposed revocation, including, subject to section 28A, a statement of the reasons that the Commissioner considers justify the revocation; and
- (b) allow the person a period of 21 days (or such longer period as the Commissioner may in a particular case allow) to show cause why the approval should not be revoked.
- 15 (3) The Commissioner may suspend an approval pending final determination of the question as to whether the approval should be revoked.
- (4) On revoking an approval, the Commissioner must cause notice of the revocation to be given in accordance with the regulations.

### 20 52—Repeal of Part 4 Division 10A

Part 4 Division 10A—delete Division 10A

### 53—Substitution of Part 4 Division 13

Part 4 Division 13—delete the Division and substitute:

#### **Division 13—Submissions in relation to applications**

##### **76—Commissioner of Police may make written submissions**

25 Without limiting the Commissioner of Police's right under Part 2 to intervene in proceedings before a licensing authority, the Commissioner of Police may, in relation to an application under this Part, by notice lodged in a manner and form approved by the

30 Commissioner, at least 7 days before the day appointed for the determination or hearing of the application (or such lesser period as the licensing authority may allow), make written submissions to the Commissioner in respect of the application.

##### **77—General right to make written submissions**

- 35 (1) If an application has been advertised under this Part, a person may, by notice lodged in a manner and form approved by the Commissioner, at least 7 days before the day appointed for the determination or hearing of the application (or such lesser period as the licensing authority may allow), make written submissions to the
- 40 Commissioner in respect of the application.

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(2) Subject to subsection (3), written submissions under this section may be made on 1 or more of the following grounds:

(a) that the grant of the application would not be consistent with the objects of this Act or would be contrary to this Act in some other way;

(b) in the case of a designated application—that the granting of the designated application is not in the community interest;

(c) in the case of an application by a natural person for the grant or transfer of a licence, or for the conversion of a temporary licence into an ordinary licence—that the applicant is of bad reputation or character or is in other respects not a fit and proper person to be licensed;

(d) in the case of an application by a trust or corporate entity for the grant or transfer of a licence, or for the conversion of a temporary licence into an ordinary licence—that the applicant is not a fit and proper person to be licensed or that a person who occupies a position of authority in the entity is of bad reputation or character or is in other respects not a fit and proper person to hold such a position in an entity that holds a licence;

(e) in the case of an application for the grant or removal of a licence—that the position, nature or quality of the premises renders them unsuitable to be licensed, or to be licensed under a licence of the kind to which the application relates;

(f) that if the application were granted—

(i) undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises or proposed premises to which the application relates would be likely to result; or

(ii) the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises or proposed premises to which the application relates would be likely to be prejudiced; or

(iii) the amenity of the locality in which the premises or proposed premises to which the application relates are situated would be adversely affected in some other way.

(3) In addition, written submissions made by or on behalf of a council relating to an application cannot relate to a matter that is, or should be, dealt with or addressed under the law relating to planning or carrying out building work.

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- 5
- (4) A person who makes written submissions under this section must ensure that the applicant is given a copy of the written submissions at least 7 days before the day appointed for the hearing or determination of the application (or such lesser period as the licensing authority may allow).
- (5) A licensing authority must have regard to any written submissions (including further written submissions under section 78) made in accordance with the requirements of this Division.

### 78—Further written submissions

- 10
- (1) The Commissioner may, in the Commissioner's absolute discretion—
- 15
- (a) call for further written submissions to be made in relation to a particular application; or
- (b) invite a person or body determined by the Commissioner to make written submissions in relation to a particular application.
- (2) Written submissions—
- (a) made under subsection (1)(a) are subject to the application of section 77(2) and (3); and
- (b) made under subsection (1)(b) may be made on any ground.
- 20
- (3) If the Commissioner receives written submissions (or further written submissions) under this section, the Commissioner must ensure that the applicant is given a copy of the written submissions (or further written submissions) a reasonable time before the hearing or determination of the application.

### 79—Conciliation

- 25
- (1) If an application has been advertised under this Part and 1 or more written submissions have been made opposing the application, the Commissioner may, in the Commissioner's absolute discretion, endeavour to resolve the application by conciliation.
- 30
- (2) If an application is resolved by conciliation, the Commissioner may determine the application so as to reflect the agreement reached by conciliation if the Commissioner considers it appropriate to do so in accordance with this Part.

### 80—Commissioner may refer matters to Court

35

The Commissioner may, in the Commissioner's absolute discretion, refer any application under this Part for hearing and determination by the Court, other than an application relating to a small venue licence (and a person who has made written submission in relation to an application referred to the Court will be taken to be a party to the proceedings before the Court in relation to the application).

40

**81—Hearings etc**

- (1) The Commissioner may, in the Commissioner's absolute discretion—
- (a) determine an application under this Part entirely on the basis of the application and any written submissions made without holding a hearing; or
- (b) hold a hearing in relation to an application under this Part.
- (2) If a hearing is held under subsection (1)(b) in respect of an application for, or in relation to, a small venue licence, only the applicant and, if relevant, the Commissioner of Police, may introduce evidence or make representations at the hearing.
- (3) Nothing in this section is to be taken to limit the operation of section 53.

**82—Variation of written submissions**

- (1) A licensing authority may allow a person who has made written submissions in relation to an application to vary the submissions at any time before the application is determined.
- (2) If a licensing authority allows written submissions to be varied, the authority must ensure that the applicant is given a copy of the submissions as varied a reasonable time before the hearing or determination of the application.

**54—Amendment of section 97—Supervision and management of licensee's business**

- (1) Section 97(2)—delete "responsible service and consumption principles" and substitute:

principle of responsible service and consumption of liquor

- (2) Section 97(3)—delete subsection (3)
- (3) Section 97(4)—at the foot of subsection (4) insert:

Maximum penalty: \$20 000.

Expiation fee: \$1 200.

**55—Insertion of section 97A**

After section 97 insert:

**97A—Direction to complete training—responsible persons**

- (1) The Commissioner may direct a designated person to undertake specified accredited training within a period specified in the direction.
- (2) A person who fails to comply with a direction under this section is guilty of an offence.
- Maximum penalty: \$10 000.
- Expiation fee: \$500.

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- (3) If a direction under this section applies to a responsible person or a person who sells, offers for sale or serves liquor on licensed premises, the licensee in respect of the premises must ensure that the person complies with the direction.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (4) In this section—

*designated person* means—

- (a) a licensee; or  
(b) a responsible person; or  
(c) a person who sells, offers for sale or serves liquor on licensed premises.

### **56—Amendment of section 98—Approval of assumption of positions of authority in corporate or trust structures**

Section 98(1)—delete "limited licence or a limited club licence" and substitute:  
short term licence or club licence

### **57—Amendment of section 99—Prohibition of profit sharing**

Section 99(5)(b)—delete "wholesale licences" and substitute:  
licenses authorising the wholesale sale of liquor

### **58—Amendment of heading to Part 6 Division 3**

Heading to Part 6 Division 3—delete "lodgers" and substitute:  
residents on licensed premises

### **59—Amendment of section 100—Supply of liquor to residents on licensed premises**

- (1) Section 100(1)—delete "lodgers" and substitute:  
residents on licensed premises
- (2) Section 100(1)(a)—delete "lodger" and substitute:  
resident on licensed premises
- (3) Section 100(1)(a)(i)—delete "lodger" wherever occurring and substitute in each case:  
resident
- (4) Section 100(1)(a)(i)—delete "lodger's" and substitute:  
resident's
- (5) Section 100(1)(a)(ii)—delete "lodger" and substitute:  
resident
- (6) Section 100(1)(b)—delete "lodger" first occurring and substitute:  
resident on licensed premises

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(7) Section 100(1)(b)—delete "lodger" second occurring and substitute:  
resident

(8) Section 100(2)—delete "lodger" wherever occurring and substitute in each case:  
resident on licensed premises

5 **60—Amendment of section 101—Record of residents on licensed premises**

(1) Section 101(1)—delete "lodgers" first occurring and substitute:  
residents on licensed premises

(2) Section 101(1)—delete "lodgers for whom accommodation is provided" and  
substitute:

10 residents to be provided with accommodation

(3) Section 101(2)(a)—delete "by computer" and substitute:  
electronically

(4) Section 101(2)(b)—delete "lodger" and substitute:  
resident

15 **61—Amendment of section 103—Restriction on consumption of liquor in, and  
taking liquor from, licensed premises**

(1) Section 103(4)—after the penalty provision insert:  
Expiation fee: \$1 200.

(2) Section 103(6)(a)(i)—delete "lodger" and substitute:  
20 resident on licensed premises

(3) Section 103(6)(a)(ii)—delete subparagraph (ii) and substitute:

(ii) by—

(A) a licensee or a member of the licensee's family; or

(B) a responsible person for the licensed premises or a member  
25 of a responsible person's family,

who is residing on the licensed premises; or

(4) Section 103(6)(b)(i)—delete "lodger" and substitute:  
resident on licensed premises

(5) Section 103(6)(b)(ii)—delete subparagraph (ii) and substitute:

30 (ii) by—

(A) a licensee or a member of the licensee's family; or

(B) a responsible person for the licensed premises or a member  
of a responsible person's family,

who is residing on the licensed premises.



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### **62—Substitution of heading to Part 6 Division 5**

Heading to Part 6 Division 5—delete the heading and substitute:

#### **Division 5—Regulation of prescribed entertainment**

### **63—Amendment of section 105—Prescribed entertainment on licensed premises**

- 5
- (1) Section 105(1)—delete subsection (1)
  - (2) Section 105(3)(b)—before "entertainment" insert:  
prescribed

### **64—Insertion of Part 6 Division 7A**

10 After Part 6 Division 7 insert:

#### **Division 7A—Sale of liquor through direct sales transaction**

##### **107A—Sale of liquor through direct sales transaction**

- 15
- (1) A licensee who advertises a sale of liquor by direct sales transaction must cause the identifying number on the licence authorising such sale to be displayed on any advertisement published or distributed by or on behalf of the licensee (whether in printed form or electronically).
  - (2) A licensee who sells liquor through direct sales transaction must, at the time the liquor is ordered, require the prospective purchaser to notify the licensee of the prospective purchaser's date of birth, unless the prospective purchaser has previously notified the licensee of the purchaser's date of birth.
  - (3) A licensee who sells liquor through direct sales transaction must provide instructions to the person responsible for the delivery of the liquor that the liquor must only be delivered—
    - (a) to the adult person who purchased the liquor; or
    - (b) to the adult person nominated by the purchaser; or
    - (c) in accordance with the instructions of the purchaser.
  - (4) A person who delivers liquor purchased through direct sales transaction in accordance with subsection (3)(a) or (b) must—
    - (a) require a person who takes delivery of the liquor to produce evidence as to the person's identity and age, that complies with the requirements of the regulations; and
    - (b) make a record of such evidence in a manner prescribed by the regulations.

30 Maximum penalty: \$5 000.

35 Expiation fee: \$315.

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- (5) A minor who makes a false statement or produces false evidence in response to a requirement under subsection (4)(a) is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (6) If delivery of liquor sold through direct sales transaction is taken by a minor—

(a) in the case of a licensee—the delivery will be taken to constitute a supply to which section 110(1a) applies, and the licensee will be taken to have supplied the liquor contrary to section 110(1a); and

(b) in the case of a person by whom the liquor was delivered on the licensee's behalf—the delivery will be taken to constitute a supply to which section 110A(1) applies, and the person will be taken to have supplied the liquor contrary to section 110A(1).

- (7) Subsection (6)(a) does not apply to a licensee if the licensee proves—

(a) that the licensee complied with the requirements in subsection (2) and (3); and

(b) that at the time of the alleged offence, the licensee did not know, and could not reasonably be expected to have known, that the alleged offence was committed.

- (8) Subsection (6)(b) does not apply to a person if the person proves that—

(a) the person required the minor to produce evidence of age that complies with the requirements of the regulations; and

(b) the minor made a false statement, or produced false evidence, in response to that requirement; and

(c) in consequence the person reasonably assumed that the minor was of or above the age of 18 years.

- (9) A person must not direct or request a minor to take delivery of liquor sold through direct sales transaction.

Maximum penalty: \$5 000.

- (10) A licensee must not employ or engage a minor to deliver liquor sold by the licensee through direct sales transaction.

Maximum penalty: \$10 000.

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### **65—Amendment of section 108—Liquor not to be sold or supplied to intoxicated persons**

(1) Section 108(1)—delete subsection (1) and substitute:

- 5 (1) If liquor is sold or supplied on licensed premises to an intoxicated person, each of the following persons is guilty of an offence:
- (a) the licensee;
  - (b) if the licence in respect of the licensed premises is held by a trust or corporate entity, each person occupying a position of authority in the trust or corporate entity;
  - 10 (c) the responsible person for the licensed premises;
  - (d) the person by whom the liquor is sold or supplied.

Maximum penalty:

- (a) for a first offence—\$20 000;
- (b) for a second or subsequent offence—\$40 000.

15 Expiation fee: \$1 200.

- (1a) In any proceedings for an offence against subsection (1) where it is alleged that a person was sold or supplied liquor on particular licensed premises, the allegation constitutes proof that the sale or supply occurred on the licensed premises in the absence of proof to the contrary.
- 20

(2) Section 108(2)(a) and (b)—delete paragraphs (a) and (b) and substitute:

- (a) if the defendant is the person by whom the liquor was sold or supplied, that the defendant—
  - 25 (i) believed on reasonable grounds that the person to whom it was sold or supplied was not intoxicated; and
  - (ii) took reasonable steps to comply with the provisions of the Commissioner's codes of practice relating to the responsible service of alcohol designated by the Commissioner as mandatory provisions for the purposes of this subparagraph; or
  - 30 or
- (b) if the defendant is—
  - (i) the licensee; or
  - (ii) a person occupying a position of authority in a trust or corporate entity (in the case of a licensee that is a trust or corporate entity); or
  - 35 (iii) the responsible person for the licensed premises,and did not personally sell or supply the liquor—that the defendant—
  - (iv) exercised proper care to prevent the sale or supply of liquor in contravention of subsection (1); and

- (v) has reasonable processes in place for ensuring that persons by whom liquor is sold or supplied on the licensed premises comply with the provisions of the Commissioner's codes of practice relating to the responsible service of alcohol designated by the Commissioner as mandatory provisions for the purposes of paragraph (a)(ii).

**66—Amendment of section 109—Copy of licence etc to be kept on licensed premises**

- (1) Section 109(1)—after "displayed" insert:

, in accordance with any requirements prescribed by the regulations,

- (2) Section 109—after subsection (1) insert:

(1a) A licensee must ensure that an up to date copy of the plan of the licensed premises is kept at the licensed premises and made available on request to a police officer or inspector.

- (3) Section 109(2)—delete "subsection (1)" and substitute:

a requirement under this section

**67—Insertion of section 109C**

Before section 110 insert:

**109C—Interpretation**

In this Part—

*parent* in relation to a minor, includes a step-parent or legal guardian of the minor;

*responsible adult* in relation to a minor, means an adult who is—

- (a) a parent of the minor; or  
(b) standing in the position, and undertaking responsibilities of the parent of the minor; or  
(c) the spouse or domestic partner of the minor.

**68—Amendment of section 110—Sale and supply of liquor to minors on licensed premises**

- (1) Section 110(1)—delete "the licensee, the responsible person for the licensed premises, and the person by whom the liquor is sold or supplied are each guilty of an offence" and substitute:

each of the following persons is guilty of an offence:

- (a) the licensee;  
(b) if the licence in respect of the licensed premises is held by a trust or corporate entity, each person occupying a position of authority in the trust or corporate entity;  
(c) the responsible person for the licensed premises;

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(d) the person by whom the liquor is sold or supplied.

(2) Section 110(1), penalty provision, (a)—delete "the licensee or" and substitute:

the licensee, a person in a position of authority in the trust or corporate entity that holds the licence or the

5 (3) Section 110(1)—after the penalty provision insert:

Expiation fee: \$1 200.

(4) Section 110(1a)—after the penalty provision insert:

Expiation fee: \$1 200.

(5) Section 110(2)—after the penalty provision insert:

10 Expiation fee: \$1 200.

(6) Section 110—after subsection (2) insert:

(2a) In any proceedings for an offence against subsection (1) where it is alleged that a minor was sold or supplied liquor on particular licensed premises, the allegation constitutes proof that the sale or supply occurred on the licensed premises in the absence of proof to the contrary.

15

(2b) In any proceedings for an offence against subsection (2) where it is alleged that a minor consumed liquor on particular licensed premises, the allegation constitutes proof that the consumption occurred on the licensed premises in the absence of proof to the contrary.

20

(7) Section 110(3)—after "or (2)" insert:

for the defendant

(8) Section 110(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$10 000.

25

Expiation fee: \$500.

(9) Section 110—after subsection (4) insert:

(4a) A minor who consumes or has possession of liquor on licensed premises is guilty of an offence.

Maximum penalty: \$ 2 500.

30

Expiation fee: \$210.

### **69—Insertion of section 110A**

After section 110 insert:

#### **110A—Supply of liquor to minors other than on licensed premises**

35

(1) A person who supplies liquor to a minor is guilty of an offence.

Maximum penalty: \$10 000.

Expiation fee: \$500.

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- (2) A minor who consumes or has possession of liquor is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- 5 (3) This section does not apply if section 110 applies in respect of the supply, consumption or possession of the liquor.
- (4) This section does not apply to the gratuitous supply of liquor to, or the consumption or possession of liquor by, a minor in a prescribed place if—

10 (a) the liquor is supplied to the minor by—

(i) a responsible adult; or

(ii) an adult person (an **authorised adult**) who has obtained the consent of a responsible adult to that supply of liquor to the minor; and

15 (b) the supply is consistent with the responsible supervision of the minor.

- (5) For the purposes of subsection (4), the following matters are relevant to whether the supply of liquor is consistent with the responsible supervision of the minor:

20 (a) whether the responsible adult or authorised adult is directly supervising the minor's consumption of the liquor;

(b) whether the responsible adult or authorised adult is intoxicated;

(c) whether the minor is intoxicated;

25 (d) the age of the minor;

(e) the quantity and type of liquor supplied and the period over which it is supplied.

- (6) In this section—

**prescribed place** means—

30 (a) a public place; or

(b) a place occupied as a place of residence; or

(c) a church; or

(d) any other place prescribed by the regulations;

**supply** includes serving liquor to a minor.

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Amendment of *Liquor Licensing Act 1997*—Part 2

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### **70—Amendment of section 111—Areas of licensed premises may be declared out of bounds to minors**

(1) Section 111—delete subsections (1) and (2) and substitute:

(1) The licensing authority or a licensee may declare any area of licensed premises (other than a bedroom) to be out of bounds to minors.

(2) A licensee must not contravene or fail to comply with a requirement under section 113A relating to the erection of notices in connection with areas declared out of bounds to minors.

Maximum penalty: \$10 000.

Expiation fee: \$500.

(2) Section 111(4)—delete subsection (4)

### **71—Amendment of section 112—Minors not to enter or remain in certain licensed premises**

(1) Section 112(1)—delete subsection (1) and substitute:

(1) A minor may not enter, or remain in—

(a) licensed premises subject to a packaged liquor sales licence unless the minor is accompanied by a responsible adult at all times; or

(b) licensed premises of a prescribed kind at prescribed times; or

(c) any other area in licensed premises (other than a bedroom)—

(i) between the hours of midnight and 2 am unless the minor is accompanied by a responsible adult at all times; or

(ii) between the hours of 2 am and 5 am,  
if liquor may be sold in the area at that time.

(2) Section 112(3)—delete "the minor and the licensee are each guilty of an offence." and substitute:

the licensee is guilty of an offence.

Maximum penalty:

(a) for a first offence—\$10 000;

(b) for a second or subsequent offence—\$20 000.

Expiation fee: \$1 200.

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(3) Section 112—after subsection (4) insert:

(4a) If a minor enters licensed premises in contravention of this section, or in contravention of a condition of the licence, the person who permitted the entry of the minor onto the licensed premises is guilty of an offence.

Maximum penalty:

(a) for a first offence—\$10 000;

(b) for a second or subsequent offence—\$20 000.

Expiation fee: \$1 200.

(4b) If a person is charged with an offence against subsection (4a), it is a defence to prove that the person took reasonable care to prevent minors from entering or remaining in the relevant area at the relevant time.

(4c) A minor who enters or remains in licensed premises in contravention of this section or in contravention of a condition of the licence is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(4) Section 112(5) and (6)—delete subsections (5) and (6) and substitute:

(5) A licensee must not contravene or fail to comply with a requirement under section 113A relating to the display of notices for the purposes of this section.

Maximum penalty: \$10 000.

Expiation fee: \$500.

(6) This section does not apply in relation to the following:

(a) minors of a prescribed class;

(b) licensed premises of a prescribed class;

(c) an area of the licensed premises exempted from the ambit of this section by the Commissioner;

(d) any other circumstances prescribed by the regulations.

**72—Amendment of section 113—Notice to be erected**

Section 113(1) and (2)—delete subsections (1) and (2) and substitute:

A licensee must not contravene or fail to comply with a requirement under section 113A relating to the display of notices in relation to access by minors to and in relation to licensed premises.

Maximum penalty: \$10 000.

Expiation fee: \$500.



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### 73—Insertion of section 113A

After section 113 insert:

#### 113A—Requirements relating to notices

- 5
- (1) The Commissioner may specify requirements relating to the erection or display of notices for the purposes of this Part.
- (2) Without limiting subsection (1), requirements specified by the Commissioner may relate to the following:
- 10
- (a) the form and content of a notice;
- (b) locations where notices must be erected or displayed;
- (c) any other matter the Commissioner thinks appropriate.
- (3) A requirement under this section may be of general, limited or varied application according to—
- 15
- (a) the kind of notice; or
- (b) the circumstances; or
- (c) any other specified factor,
- to which the requirement is expressed to apply.

### 74—Repeal of section 114

Section 114—delete the section

### 75—Amendment of section 115—Evidence of age may be required

- 20
- (1) Section 115(1)—delete subsection (1) and substitute:
- (1) A prescribed person may require—
- 25
- (a) a person on, about to enter, or in the vicinity of, regulated premises; or
- (b) a person who is, or has recently been, in possession of liquor,
- to produce evidence as to the person's age that complies with the requirements of the regulations.
- (2) Section 115(2)—at the foot of subsection (2) insert:
- 30
- Maximum penalty: \$2 500.
- Expiation fee: \$210.
- (3) Section 115(3), definition of *prescribed person*, (a) and (b)—delete paragraphs (a) and (b) and substitute:
- 35
- (a) a police officer; or
- (b) in relation to regulated premises or a public place—an inspector; or
- (c) in relation to regulated premises that are licensed premises—
- (i) a licensee; or

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- 5
- (ii) a responsible person for the licensed premises; or
  - (iii) a person who holds a security agent's licence that authorises the person to perform the function of controlling crowds on licensed premises under the *Security and Investigation Industry Act 1995*; or
- (d) in relation to all other regulated premises—the occupier or manager of the premises or an agent or employee of the occupier.

**76—Insertion of section 115A**

After section 115 insert:

10                   **115A—Seizure of evidence of age document**

- 15
- (1) A prescribed person may seize a document that is produced to the person as evidence of a person's age if the prescribed person reasonably believes that—
- (a) the person who produced the document is not the person identified in the document; or
  - (b) the document contains false or misleading information about the name or age of the person who produced the document; or
  - (c) the document has been forged or fraudulently altered; or
  - (d) the document is being used in contravention of this Act.
- 20
- (2) However, a prescribed person may not seize a document under this section that is—
- (a) a passport; or
  - (b) of a kind prescribed by the regulations.
- 25
- (3) A prescribed person who seizes a document under subsection (1) must, as soon as reasonably practicable after seizing the document—
- (a) issue to the person from whom the document was seized a receipt that complies with the prescribed requirements; and
  - (b) comply with any other requirements prescribed by the regulations.
- 30
- (4) If a prescribed person (other than a police officer or an inspector) seizes a document under subsection (1), the relevant licensee must, within 7 days, produce the seized document to a police officer.
- (5) Regulations made under this section may provide for the following:
- (a) procedures relating to the seizure of a document under this section;
  - (b) the manner in which a document seized under this section may be dealt with, including (but not limited to) the circumstances in which a seized document may be returned to a person, or otherwise dealt with by a prescribed person in possession of the document;
- 35
- 40

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(c) the keeping of records in the prescribed manner in relation to the doing of any thing under this section.

(6) A prescribed person (other than a police officer or an inspector) who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(7) In this section—

*prescribed person* means—

(a) a police officer; or

(b) an inspector; or

(c) in relation to licensed premises—

(i) a licensee; or

(ii) a responsible person for the licensed premises; or

(iii) a person who holds a security agent's licence that authorises the person to perform the function of controlling crowds on licensed premises under the *Security and Investigation Industry Act 1995*.

#### 77—Substitution of section 116

Section 116—delete the section and substitute:

#### 116—Power to remove or refuse entry to minors

(1) An authorised person may, if necessary, use reasonable force to remove a person from, or prevent the entry of a person onto, licensed premises if—

(a) either—

(i) the person has failed to comply with a requirement under section 115(1); or

(ii) the authorised person suspects on reasonable grounds that the person is under the age of 18 years; and

(b) the authorised person suspects on reasonable grounds that the person is entering the licensed premises for the purpose of consuming liquor in contravention of this Act.

(2) A person who—

(a) is removed from licensed premises, or refused entry to, or prevented from entering, licensed premises under this section; and

(b) enters or attempts to enter the licensed premises within the following 24 hours,

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is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.

**78—Repeal of section 117**

5           Section 117—delete the section

**79—Amendment of section 118—Application of Part**

(1) Section 118(1)—after paragraph (d) insert:

(da) a person who has sold or supplied liquor on licensed premises;

(2) Section 118(1)—after paragraph (f) insert:

10           (g) a person who has acted contrary to section 110A(1).

**80—Amendment of section 119—Cause for disciplinary action**

(1) Section 119(1)(b)—after "business" insert:

or activity

(2) Section 119(1)(b)(via)—delete "there has been a breach of a provision of" and  
15       substitute:

a person has acted contrary to

(3) Section 119(1)(b)(viii)—delete subparagraph (viii) and substitute:

(viii) if—

20           (A) in the course of conducting, or being employed or otherwise  
engaged in, the business a person has acted contrary to this  
Act or otherwise unlawfully, or negligently; or

(B) the business or activity has otherwise not been properly  
conducted, supervised or managed in accordance with this  
or any other Act; or

25       (4) Section 119(1)—after paragraph (c) insert:

(ca) if the person is licensed under this Act and section 128J applies; or

(5) Section 119(1)(d)—delete "been guilty of" and substitute:

acted contrary to

(6) Section 119(1)(d)(i) to (iv) (inclusive)—delete "a breach of" wherever occurring

30       (7) Section 119(1)(d)(i)—delete "a breach by virtue of" and substitute:

the basis on

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### 81—Insertion of section 119B

After section 119A insert:

#### 119B—Disciplinary action before Commissioner for certain matters

- 5 (1) The Commissioner may hold an inquiry to determine whether there is proper cause for disciplinary action against a prescribed licensee.
- (2) The Commissioner must give the prescribed licensee at least 21 days' written notice of an inquiry under this section and afford the prescribed licensee a reasonable opportunity to call and give  
10 evidence, to examine and cross-examine witnesses, and to make submissions to the Commissioner.
- (3) If a party does not attend at the time and place fixed by the Commissioner for the commencement or resumption of proceedings under this section, the Commissioner may proceed to hear and  
15 determine the matter in the absence of the party.
- (4) On giving notice to a prescribed licensee under this section, the Commissioner may, in the same or a subsequent notice, suspend the licence pending determination of the disciplinary proceedings.
- 20 (5) If, on an inquiry, the Commissioner is satisfied there is proper cause for disciplinary action against a prescribed licensee, the Commissioner may take disciplinary action against the prescribed licensee by doing 1 or more of the following:
- (a) suspend the licence;
  - 25 (b) impose a condition on the licence (including a condition that varies the trading hours in respect of the licence fixed or required by or under this Act);
  - (c) vary, suspend or revoke a condition of the licence (other than a mandatory condition contemplated by section 42).
- 30 (6) A person who is dissatisfied with a decision made by the Commissioner under this section may apply to the Court in accordance with section 22 for a review of the Commissioner's decision.
- (7) No civil liability attaches to the Commissioner or the Crown in respect of the exercise of a power in good faith under this section.
- 35 (8) In this section—
- prescribed licensee* means a licensee—
- (a) who has been convicted of or expiated an offence against this Act of a kind prescribed by the regulations; or
  - (b) who—
    - 40 (i) has been convicted of or expiated an offence against this Act (the *second offence*); and

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- (ii) has been convicted of or expiated at least 1 other offence against this Act within the period of 5 years before the date of commission of the second offence.

5 **82—Substitution of section 124A**

Section 124A—delete the section and substitute:

**124A—Interpretation**

- (1) In this Division—

*family member* of a person means—

- 10 (a) a spouse or former spouse;  
(b) a domestic partner or former domestic partner;  
(c) a parent, brother, sister or child;

15 *licensed premises* or *premises* includes an area adjacent to the licensed premises that is under the control of the licensee for the licensed premises.

- (2) For the purposes of determining whether the welfare of a person, a person residing with a person or a family member of a person, is seriously at risk as a result of the consumption of alcohol by the person, a licensee, responsible person or police officer acting under this Division must take into account the fact that harm caused by the excessive or inappropriate consumption of liquor includes—

- 20 (a) the risk of harm to children, vulnerable people and communities; and  
(b) the adverse effects on a person's health; and  
25 (c) alcohol abuse or misuse; and  
(d) domestic violence or anti-social behaviour, including causing personal injury and property damage.

**83—Amendment of section 125—Licensee barring orders**

- 30 (1) Section 125(1)(aa)—delete "or the welfare of a person residing with the person" and substitute:

a person residing with the person or a family member of the person

- (2) Section 125(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

- 35 (3) Section 125(4), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

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### 84—Amendment of section 125B—Police officer barring orders

- (1) Section 125B(1)(e)—delete "or the welfare of a person residing with the person" and substitute:

a person residing with the person or a family member of the person

- 5 (2) Section 125B(3)(b)—delete "the rank of Inspector" and substitute:

a rank determined under paragraph (b) in the definition of *senior police officer* in subsection (6)

- (3) Section 125B(3)(b)(i) to (iii) (inclusive)—delete "section" wherever occurring and substitute:

10                   Subdivision

- (4) Section 125B(6), definition of *senior police officer*—delete the definition and substitute:

*senior police officer* means—

- 15                   (a) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(e)—

(i) if the order is to be made for a period exceeding 72 hours—a police officer of or above the rank of Inspector; or

(ii) in any other case—a police officer of or above the rank of Sergeant; or

- 20                   (b) in the case of a barring order that is to be made on the grounds referred to in subsection (1)(f) or (g)—

(i) if the order is to be made for a period exceeding 3 months—a police officer of or above the rank of Inspector; or

25                   (ii) if the order is to be made for a period exceeding 72 hours but not exceeding 3 months—a police officer of or above the rank of Sergeant; or

(iii) in any other case—a police officer of or above the rank of Sergeant or in charge for the time being of a police station.

### 30 85—Amendment of section 125C—Offences

Section 125C(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

Expiation fee: \$315.

### 35 86—Amendment of section 128A—Reports on barring orders

Section 128A(1)(b)—delete paragraph (b)

## 87—Insertion of section 128AB

After section 128A insert:

### 128AB—Commissioner of Police to report to Minister for Police on barring orders

5 The Commissioner of Police must include in the Commissioner of Police's report to the Minister responsible for the administration of the *Police Act 1998* the following information in respect of each order made under Subdivision 3 in the financial year to which the report relates because of information classified by the Commissioner of Police as criminal intelligence:

- 10
- (a) the number of orders made;
  - (b) the location of the licensed premises from which the persons were barred;
  - (c) statistical information about—
    - 15 (i) the period for which the orders have effect; and
    - (ii) the age, gender, race and residential postcode of the persons barred.

## 88—Insertion of Part 9 Division 5

After Part 9 Division 4 insert:

### 20 Division 5—Alcohol and drug testing of licensees and responsible persons

#### 228D—Definitions for this Division

In this Division—

25 *alcotest* means a test by means of apparatus approved for the purpose of conducting alcotests under the *Road Traffic Act 1961*;

*analyst* means—

- 30
- (a) a person appointed as an analyst for the purposes of the *Road Traffic Act 1961*; or
  - (b) a person holding an office of a class approved for the purposes of the *Road Traffic Act 1961*;

*approved blood test kit* means a kit of a kind declared by the Governor by regulation to be an approved blood test kit for the purposes of the *Road Traffic Act 1961*;

*authorised officer* means—

- 35
- (a) the Commissioner; or
  - (b) an inspector;

*breath analysing instrument* means apparatus of a kind approved as a breath analysing instrument under the *Road Traffic Act 1961*;



*breath analysis* means an analysis of breath by a breath analysing instrument;

*designated person* means—

- (a) a licensee; or
- (b) a responsible person in respect of licensed premises;

*prescribed concentration of alcohol* means any concentration of alcohol in the blood.

### 128E—Requirement to undertake drug testing

- (1) A police officer or an authorised officer may, by notice in writing given to a designated person while the person is performing the function of supervising and managing the business conducted under a licence, direct a designated person, to attend at a specified time and place for the purpose of undertaking a drug testing procedure to determine the level of any prescribed drug in any form in the blood or urine of the designated person.
- (2) A notice under subsection (1) must specify what sample or samples are to be taken.
- (3) In the case of a drug testing procedure that involves the collection of a sample of urine, a police officer or an authorised officer may agree with the designated person on a different time or place to that specified in the notice under subsection (1).
- (4) A police officer or authorised officer may give directions reasonably required for purposes connected with the administration or enforcement of this section.
- (5) If a sample of blood or urine given by a designated person under this section is found on analysis to be a non-complying sample (within the meaning of the regulations), the Commissioner or the Commissioner of Police may—
  - (a) determine the costs and expenses of carrying out the analysis; and
  - (b) recover the amount so determined from the designated person as a debt in a court of competent jurisdiction.
- (6) Regulations may be made under this section—
  - (a) regulating the manner of taking and dealing with samples of blood and urine and their analysis; and
  - (b) providing for certificate evidence for use in any proceedings as to the taking and analysis of any urine or blood sample and the authority of a person to carry out an analysis; and
  - (c) requiring a designated person to produce the prescribed form of identification at the time a sample of blood or urine is taken, and providing that a failure to do so is taken to be a failure to comply with a direction under this section.

**128F—Requirement to undertake alcohol testing**

- 5
- (1) A police officer may require a designated person, while performing the function of supervising and managing the business conducted under a licence, to submit to an alcotest.
- (2) If an alcotest conducted under subsection (1) indicates that the prescribed concentration of alcohol may be present in the blood of the licensee, a police officer may require the designated person to submit to a breath analysis.
- 10
- (3) Performance of a breath analysis required under subsection (2) must be commenced within 2 hours of the designated person having submitted to the alcotest indicating that the prescribed concentration of alcohol may be present in the blood of the designated person.
- 15
- (4) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than 1 sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the instrument or apparatus will be taken to be the result of the alcotest or breath analysis for the purposes of this and any other Act.

20

**128G—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood**

25

If a designated person submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

**128H—Evidence etc**

- 30
- (1) If the requirements and procedures in relation to breath analysing instruments and breath analysis under this Act, including subsections (4) and (5), have been complied with, it must be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the designated person at the time of the analysis.
- 35
- (2) No evidence can be adduced in rebuttal of the presumption created by subsection (1) except—
- 40
- (a) evidence of the concentration of alcohol in the blood of the designated person as indicated by analysis of a sample of blood taken and dealt with in accordance with the procedures prescribed by regulation; and
- (b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave a false reading of the concentration of alcohol present in the blood of the designated person.

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- 5
- (3) If it is proved in proceedings that a concentration of alcohol was present in the designated person's blood at the time of a breath analysis, it must be conclusively presumed that that concentration of alcohol was present in the designated person's blood throughout the period of 2 hours immediately preceding the analysis.
- (4) As soon as practicable after a designated person has submitted to an analysis of breath by means of a breath analysing instrument, the person operating the instrument must deliver to the designated person a statement in writing specifying—
- 10
- (a) the reading produced by the breath analysing instrument; and
  - (b) the date and time of the analysis.
- (5) If a designated person has submitted to an analysis of breath by means of a breath analysing instrument and the concentration of alcohol indicated as being present in the blood of that designated person by the breath analysing instrument is the prescribed concentration of alcohol, the person operating the instrument must immediately—
- 15
- (a) give the person the prescribed oral advice and deliver to the person the prescribed written notice as to the operation of this Act in relation to the results of the breath analysis and as to the procedures prescribed for the taking and analysis of a sample of the person's blood; and
  - (b) at the request of the person made in accordance with the regulations, deliver an approved blood test kit to the person.
- 20
- (6) A certificate—
- (a) purporting to be signed by the Commissioner of Police and to certify that a person named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments; or
  - (b) purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify that—
- 25
- (i) the apparatus used by the authorised person was a breath analysing instrument within the meaning of this Act; and
  - (ii) the breath analysing instrument was in proper order and was properly operated; and
  - (iii) the provisions of this Act with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,
- 30
- is, in the absence of proof to the contrary, proof of the matters so certified.
- 35
- 40

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5 (7) A certificate purporting to be signed by a police officer and to certify that an apparatus referred to in the certificate is or was of a kind approved under the *Road Traffic Act 1961* for the purpose of performing alcotests is, in the absence of proof to the contrary, proof of the matter so certified.

10 (8) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate submitted to an alcotest on a specified day and at a specified time and that the alcotest indicated that the prescribed concentration of alcohol may then have been present in the blood of that person is, in the absence of proof to the contrary, proof of the matters so certified.

15 (9) A certificate purporting to be signed by an analyst, certifying as to the concentration of alcohol, or any drug, found in a specimen of blood identified in the certificate expressed in grams in 100 millilitres of blood is, in the absence of proof to the contrary, proof of the matters so certified.

20 (10) A certificate purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify that—

25 (a) a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument on a day and at a time specified in the certificate; and

(b) the breath analysing instrument produced a reading specified in the certificate; and

30 (c) a statement in writing required by subsection (4) was delivered in accordance with that subsection,

is, in the absence of proof to the contrary, proof of the matters so certified.

35 (11) A certificate purporting to be signed by a person authorised to operate breath analysing instruments by the Commissioner of Police and to certify—

40 (a) that, on a date and at a time specified in the certificate, a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument; and

(b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subsection (5)(a); and

(c) that—

(i) the person did not make a request for an approved blood test kit in accordance with the regulations; or

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- 5 (ii) at the request of the person, a kit that, from an examination of its markings, appeared to the person signing the certificate to be an approved blood test kit was delivered to the person in accordance with subsection (5)(b),

is, in the absence of proof to the contrary, proof that the requirements of subsection (5) were complied with in relation to the person.

- 10 (12) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate was, at the time of being directed to submit to an alcotest, performing the function of supervising and managing the business conducted under a licence is, in the absence of proof to the contrary, proof of the matter so certified.

- 15 (13) A certificate purporting to be signed by a police officer and to certify that a person named in the certificate was required under this Division to submit to an alcotest or breath analysis and refused or failed to comply with all reasonable directions of a police officer in relation to the requirement is, in the absence of proof to the contrary, proof of the matter so certified.

#### 20 **128I—Commissioner of Police must report results of breath analysis to Commissioner**

The Commissioner of Police must, as soon as reasonably practicable after a police officer has required a designated person to submit to an alcotest or breath analysis, provide a report to the Commissioner setting out—

- 25 (a) whether or not the designated person complied with the requirement; and  
(b) if the designated person complied with the requirement—the result of the alcotest or analysis.

#### 30 **128J—Disciplinary action—licensees**

If—

- 35 (a) a licensee, fails, without reasonable excuse, to comply with—  
(i) a notice or direction under section 128E; or  
(ii) a requirement or direction under section 128F; or  
(b) a sample of the blood or urine of the licensee taken in accordance with section 128E is found on analysis to be a non-complying sample (within the meaning of the regulations); or

- 5 (c) the results of a breath analysis undertaken in accordance with this Division demonstrate that the prescribed concentration of alcohol was present in the licensee's blood at a time when the licensee was performing the function of supervising and managing the business conducted under a licence,

there is proper cause for disciplinary action against the licensee under Part 8.

### 128K—Revocation of approval—responsible persons

- 10 (1) Subject to this section, the Commissioner may revoke a designated person's approval as a responsible person in respect of licensed premises if—
- 15 (a) the person fails, without reasonable excuse, to comply with—
- 20 (i) a notice or direction under section 128E; or
- (ii) a requirement or direction under section 128F; or
- (b) a sample of the blood or urine of the person taken in accordance with section 128E is found on analysis to be a non-complying sample (within the meaning of the regulations); or
- 25 (c) the results of a breath analysis undertaken in accordance with this Division demonstrate that the prescribed concentration of alcohol was present in the person's blood at a time when the person was performing the function of supervising and managing the business conducted under a licence.
- 30 (2) The Commissioner must, before exercising powers under subsection (1) in relation to a designated person—
- (a) give written notice to the designated person of the proposed action, including a statement of the reasons that the Commissioner considers justify the action; and
- (b) allow the designated person a period of 14 days (or such longer period as the Commissioner may in a particular case allow) to show cause why the action should not be taken.
- 35 (3) At the end of the period allowed by the Commissioner under subsection (2), the Commissioner must—
- (a) determine, having regard to any response received from the designated person, whether or not to proceed with the proposed action under subsection (1); and
- 40 (b) advise the designated person by notice in writing of the Commissioner's determination.

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(4) A notice under subsection (3)(b) must, if a person's approval as a designated person is to be revoked, specify the date from which the revocation is to take effect (which must be not less than 14 days from the date of the notice) and the grounds for the Commissioner's determination.

(5) This section does not apply to a designated person who is a licensee.

#### 128L—Review

(1) A person whose approval as a responsible person has been revoked under section 128K may apply to the Court for a review of the decision of the Commissioner to revoke the approval.

(2) An application for review of a decision of the Commissioner must be made within 1 month after the applicant receives notice of the decision or a longer period allowed by the Court.

#### 89—Insertion of Part 9A

After Part 9 insert:

### Part 9A—Liquor accords

#### 128M—Interpretation

In this Part—

*accord area* means an area, as determined under section 128Q(2), to which a local liquor accord applies (as varied from time to time under section 128Q(3));

*alcohol-related violence* includes anti-social behaviour, disorder, harm and violence, including domestic violence, if alcohol is involved in the conduct constituting the behaviour, disorder, harm or violence;

*coordinator*, for a local liquor accord, is the coordinator specified under section 128N(2)(b);

*local liquor accord* means any written code of practice, memorandum of understanding or other arrangement that—

- (a) affects the supply of liquor, the opening and closing of licensed premises or other aspects of the management of, or conduct of business on, licensed premises; and
- (b) is made under this Part for the purpose of preventing or reducing alcohol-related violence.

#### 128N—Preparation of draft local liquor accords

(1) 1 or more licensees and 1 or more of the following persons or bodies may prepare a draft local liquor accord and give it to the Commissioner for approval:

- (a) the Commissioner;
- (b) the Commissioner of Police;

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- (c) a council;
- (d) any other person or body, or person or body of a class, prescribed by the regulations.

(2) A draft local liquor accord must include the following details:

- (a) the name of each party to the draft;
- (b) the name and address of the coordinator for the local liquor accord (being a party to the draft or a representative of a party to the draft);
- (c) the proposed accord area;
- (d) any other details prescribed by the regulations.

**128O—Terms of local liquor accords**

Without limiting the terms that may be included in a local liquor accord, a local liquor accord may make provision for or with respect to authorising or requiring any licensees who are parties to it to do 1 or more of the following:

- (a) to cease or restrict either or both of the following on their licensed premises:
  - (i) the sale of liquor on those premises (including the sale of liquor for consumption off premises);
  - (ii) allowing the consumption of liquor on those premises;
- (b) to restrict the public's access to the licensed premises in the manner and to the extent provided by the local liquor accord;
- (c) to take any other measure prescribed by the regulations as a measure that may be taken to prevent or reduce alcohol-related violence.

**128P—Competition and Consumer Act and Competition Code**

Any conduct on the part of any person engaged in for the purpose of—

- (a) preparing a draft local liquor accord; or
- (b) the approval of a local liquor accord; or
- (c) promoting or giving effect to the terms of a local liquor accord,

is authorised for the purposes of section 51 of the *Competition and Consumer Act 2010* of the Commonwealth and the *Competition Code of South Australia*.

**128Q—Approval of local liquor accords**

- (1) The Commissioner may approve a local liquor accord and the accord takes effect when so approved.



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- 5
- (2) In approving a local liquor accord, the Commissioner must determine the area to which the accord is to apply by taking into account the area proposed in the draft local liquor accord by the parties to the draft and any other relevant matters.
- (3) The Commissioner may, on the Commissioner's own initiative or on application of the parties to a local liquor accord, by written notice to the coordinator of the accord, vary the accord (including the accord area).
- 10
- (4) The power to vary an accord under subsection (3) includes the power—
- (a) to determine that a party is removed as a party to the local liquor accord; or
- (b) to add a person or body under section 128N(1) as a party to the accord.
- 15
- (5) However, the Commissioner may only exercise a power under subsection (4) if the relevant party has given the Commissioner a written request to be removed or added as a party to the local liquor accord.
- 20
- (6) The Commissioner may terminate a local liquor accord on the Commissioner's own initiative or on application of the coordinator.
- (7) The coordinator may only make an application under subsection (6) with the consent of the parties to the local liquor accord.
- 25
- (8) The Commissioner must, as soon as is reasonably practicable after approving, varying or terminating a local liquor accord, give the parties notice of the approval, variation or termination (as the case requires).

### **90—Amendment of section 129—Consumption of liquor on regulated premises**

- (1) Section 129(1)—at the foot of subsection (1) insert:
- Maximum penalty: \$5 000.
- 30 Expiation fee: \$315.
- (2) Section 129(2)—at the foot of subsection (2) insert:
- Maximum penalty: \$5 000.

### **91—Amendment of section 131—Control of consumption etc of liquor in public places**

- 35
- (1) Section 131—after subsection (1a) insert:
- (1ab) Subject to this section, a council may, by notice in the Gazette, prohibit the consumption or possession or both of liquor in the public place or public places within the area of the council specified in the notice during the period (not exceeding 48 hours) specified in the
- 40 notice.

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(1ac) A council must, at least 21 days before publishing a notice under this section, give a copy of the notice to—

- (a) the Commissioner; and
- (b) the Commissioner of Police.

5 (1ad) The Commissioner may, within 14 days after a notice is given to the Commissioner by a council—

- (a) direct the council to make any variations to the notice determined by the Commissioner; or
- (b) determine that the notice is not to be published.

10 (1ae) The Commissioner must ensure that a direction given or determination made under subsection (1ad) is published on a website maintained by the Commissioner as soon as is reasonably practicable after the giving of the direction or making of the determination.

(1af) If—

- 15 (a) the Commissioner gives a direction under subsection (1ad)(a) that variations be made to a notice, the council must ensure that the notice published in the Gazette includes the variations; or
- 20 (b) the Commissioner determines that a notice is not to be published under subsection (1ad)(b), the council must not publish the notice.

(1ag) A notice published in contravention of subsection (1af) will be taken to be of no effect.

25 (1ah) A notice under subsection (1ab) cannot take effect unless the notice is published in the Gazette at least 14 days before the commencement of the period specified in the notice (being the period during which the prohibition under the notice is to apply).

(1ai) A council must, within 7 days after publishing a notice under subsection (1ab), give a copy of the notice to—

- 30 (a) the Commissioner; and
- (b) the Commissioner of Police.

(2) Section 131(1b)—delete "or (1a)" and substitute:

, (1a) or (1ab)

(3) Section 131—after subsection (1b) insert:

35 (1c) A notice under—

- (a) subsection (1) may be varied or revoked by the Minister by further notice in the Gazette; or
- (b) subsection (1a) may be varied or revoked by the Commissioner by further notice in the Gazette; or

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(c) subsection (1ab) may, with the approval of the Commissioner, be varied or revoked by the council by further notice in the Gazette.

(4) Section 131(2)—delete "or (1a)" and substitute:

, (1a) or (1ab)

(5) Section 131(3)—delete "subsection (1)" and substitute:

subsection (1b)

#### **92—Amendment of section 131A—Failing to leave licensed premises on request**

Section 131A(1), penalty provision—delete "\$1 250" and substitute:

\$5 000

#### **93—Insertion of sections 135A and 135B**

After section 135 insert:

##### **135A—Publication of names of certain licensees**

- (1) The Commissioner may cause a notice to be published on a website maintained by the Commissioner identifying a licensee who has been guilty of an offence involving the unlawful sale or supply of liquor to a minor.
- (2) A notice under subsection (1) must contain the information prescribed by the regulations.

##### **135B—Determination of second or subsequent offence in case of previous offence that has been expiated**

In determining whether an offence under Part 6 Division 8 or Part 7 of this Act is a first, second, third or subsequent offence for the purposes of this Act, any previous offence for which the person has been convicted or that the person has expiated will be taken into account.

#### **94—Amendment of section 136—Service**

(1) Section 136(2)(e)—delete paragraph (e) and substitute:

(e) by transmitting it to the person by fax or email to—

- (i) in the case of an order under Part 9 Division 3 Subdivision 3—the fax number or email address last provided to the Commissioner of Police or the police officer issuing the barring order by the person for that purpose; or
- (ii) in any other case—the fax number or email address last provided to the Commissioner by the person for that purpose.

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(2) Section 136—after subsection (2) insert:

- (2a) If a licensee or other person is party to an arrangement with the Commissioner that notices or documents are to be given in a manner not specified in subsection (1) or (2), a notice or document required to be given under this Act may be given in that manner (or may be given in a manner specified in subsection (2)).

**95—Insertion of section 137C**

After section 137B insert:

**137C—Use of force by security agent to remove person from licensed premises**

The holder of a security agents licence that authorises the licensee to perform the function of controlling crowds under the *Security and Investigation Industry Act 1995* must not use force to remove a person from licensed premises except under the direct supervision of the licensee or the responsible person for the premises.

**96—Amendment of section 138—Regulations**

(1) Section 138—after subsection (1) insert:

- (1a) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe fees or charges in respect of any matter under this Act and provide for the payment, recovery, reduction or waiver of fees or charges (including fees payable under another provision of this Act); and
  - (b) grant or provide for the granting of exemptions (conditionally or unconditionally) of persons or operations from this Act or specified provisions of this Act; and
  - (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the Commissioner.

(2) Section 138(2a)—after "nature" insert:

consequent on the amendment of this Act by another Act

(3) Section 138(5)—delete subsection (5) and substitute:

- (5) A provision of a regulation made under subsection (2a) may, if the regulation so provides, take effect from the commencement of the amendment or from a later day.
- (6) To the extent to which a provision takes effect under subsection (5) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

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- (7) Without limiting the operation of any other provision in this section, the regulations may, for transitional purposes—
- (a) provide that this Act or specified provisions of this Act will not apply in relation to a particular person or thing, or a class of person or thing, until a specified day; or
  - (b) modify the application of this Act or provisions of this Act in relation to a particular person or thing, or a class of person or thing, until a specified day.

## Schedule 1—Related amendments

### Part 1—Amendment of *Controlled Substances Act 1984*

#### 1—Amendment of section 32—Trafficking

Section 32(6), definition of *prescribed licensed premises*, (a)(i) to (v)—delete subparagraphs (i) to (v) (inclusive) and substitute:

- (i) a general liquor licence;
- (ii) an on premises licence;
- (iii) a club licence;
- (iv) a restaurant and catering licence;

### Part 2—Amendment of *Criminal Law Consolidation Act 1935*

#### 2—Amendment of section 32C—Spiking of food or beverages

Section 32C(4), definition of *licensed premises*, (a)—after "restaurant" insert:  
and catering

### Part 3—Amendment of *Gaming Machines Act 1992*

#### 3—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *approved crowd controller*—delete the definition
- (2) Section 3(1), definition of *authorised person*, (f)—delete paragraph (f) and substitute:
  - (f) a person who holds a security agents licence that authorises the person to perform the function of controlling crowds in licensed premises under the *Security and Investigation Industry Act 1995*;
- (3) Section 3(1), definition of *hotel licence*—delete the definition and substitute:

*general liquor licence* means a general liquor licence under the *Liquor Licensing Act 1997*;
- (4) Section 3(1), definition of *liquor licence*—delete "hotel licence, club licence or special circumstances" and substitute:

general liquor licence, an on premises licence or a club

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(5) Section 3(1)—after the definition of *officer* insert:

*on premises licence* means an on premises licence under the *Liquor Licensing Act 1997*;

(6) Section 3(1), definition of *special circumstances licence*—delete the definition

**4—Amendment of section 15—Eligibility criteria**

(1) Section 15(1)(a)—delete "hotel" and substitute:

general liquor

(2) Section 15(1)(c)—delete "a special circumstances" and substitute:

an on premises

(3) Section 15(1)(c)—delete subparagraphs (i) and (ii) and substitute:

(i) —

(A) the holder of the licence previously held a special circumstances licence granted on the surrender of a hotel licence or a club licence; and

(B) the nature of the undertaking carried out under the licence is substantially similar to that of a licensed hotel or club; or

(ii) the premises to which the on premises licence relates constitute—

(A) a major sporting venue; or

(B) the headquarters in this State for a particular sporting code,

and the nature of the undertaking carried out under the licence is substantially similar to that of a licensed club.

**5—Amendment of section 27—Conditions**

Section 27(7)(a)—delete paragraph (a)

**6—Amendment of section 28—Certain gaming machine licenses only are transferable**

(1) Section 28(1)—delete "Where a hotel licence or special circumstances" and substitute:

If a general liquor licence or an on premises

(2) Section 28(1)—delete "hotel or special circumstances" and substitute:

general liquor or on premises

(3) Section 28(5)—delete "hotel licence or special circumstances" and substitute:

general liquor licence or an on premises

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### Part 4—Amendment of *South Australian Motor Sport Act 1984*

#### 7—Amendment of section 27B—Removal of certain restrictions relating to sale and consumption of liquor

- 5 (1) Section 27B(1)(a)—delete "hotel licence, club licence (including a limited club licence), retail liquor merchant's licence, special circumstances licence, restaurant licence" and substitute:

general liquor licence, on premises licence, restaurant and catering licence, club licence, packaged liquor sales licence

- (2) Section 27B(1)(b)—delete paragraph (b)

#### 10 8—Amendment of section 27C—Control of noise etc during prescribed period

Section 27C(1)(a)—delete "hotel licence, club licence, retail liquor merchant's licence or special circumstances licence" and substitute:

general liquor licence, on premises licence, club licence or packaged liquor sales licence

### 15 Part 5—Amendment of *Summary Offences Act 1953*

#### 9—Amendment of section 17AB—Trespassers etc at private parties

Section 17AB(12), definition of *private party*, (c)—delete "limited" and substitute:  
short term

#### 10—Amendment of section 72A—Power to conduct metal detector searches etc

20 Section 72A(8), definition of *licensed premises*, (a)—delete paragraph (a) and substitute:

- (a) premises in respect of which 1 of the following classes of licence is in force under the *Liquor Licensing Act 1997*:

- 25 (i) a general liquor licence;  
(ii) an on premises licence;  
(iii) a restaurant and catering licence;  
(iv) a club licence;  
(v) a licence of a class prescribed by regulation,

30 other than premises, or premises of a class, declared by the regulations to be excluded from the application of this paragraph;

## Schedule 2—Transitional provisions

### Part 1—Preliminary

#### 1—Preliminary

In this Schedule—

35 *new Part 3 Division 2* means Part 3 Division 2 of the principal Act (as substituted by this Act);

*old Part 3 Division 2* means Part 3 Division 2 of the principal Act as in force immediately before the relevant day;

*principal Act* means the *Liquor Licensing Act 1997*;

*relevant day* means the day on which new Part 3 Division 2 comes into operation.

## Part 2—General

### 2—Amendments apply to existing licences and approvals

Subject to this Schedule, an amendment to the principal Act effected by a provision of this Act applies in respect of a licence or approval granted under that Act, and in respect of the holder of a licence or approval under that Act, whether the licence or approval was granted before or after the commencement of that provision.

## Part 3—Licences

### 3—Licences to continue

- (1) A licence under old Part 3 Division 2 of a class listed in a row in column 1 of the table will, on the relevant day, be taken to be a licence under new Part 3 Division 2 of a class listed in the same row in column 2 of the table.

Old Part 3 Division 2 licence	New Part 3 Division 2 licence
Hotel licence	General liquor licence
Residential licence	Residential licence
Restaurant licence	Restaurant and catering licence
Entertainment venue licence	On premises licence
Club licence	Club licence
Limited club licence	
Retail liquor merchant's licence	Packaged liquor sales licence
Direct sales licence	
Wholesale liquor merchant's licence	Liquor production and sales licence
Producer's licence	
Small venue licence	Small venue licence

- (2) A special circumstances licence under old Part 3 Division 2 will, on the relevant day, be taken to be—
- (a) in a case where the licensee also holds a gaming machine licence in respect of the premises to which the special circumstances licence relates—a general liquor licence under new Part 3 Division 2; or
  - (b) in the case of a special circumstances licence that authorises the sale of liquor on the licensed premises for consumption off premises—a packaged liquor sales licence under new Part 3 Division 2; or
  - (c) in any other case—an on premises licence under new Part 3 Division 2.



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- (3) Despite subclause (2), the Commissioner may, on the Commissioner's own initiative or on application, issue the holder of a special circumstances licence under old Part 3 Division 2 a class of licence under new Part 3 Division 2 that the Commissioner considers appropriate taking into account the trade authorised under the licence.

#### 4—Trading hours

- (1) Except as notified by the Commissioner under subclause (2), the trading hours authorised under the conditions of a licence under old Part 3 Division 2 will remain in force as the trading hours authorised under the conditions of a licence under new Part 3 Division 2 (and will have effect despite any provision of the principal Act until varied under this clause).

- (2) The Commissioner—

- (a) must, by notice in writing to a licensee, vary the trading hours authorised under the conditions of the licence (to the extent necessary) to give effect to section 44 and 44A of the principal Act (as inserted by this Act); and
- (b) may, by notice in writing to a licensee given within 2 years after the relevant day, vary the trading hours authorised under the conditions of the licence so that a prescribed restriction does not apply to those trading hours; and
- (c) may, on application by a licensee made at any time within the period of 2 years after the relevant day, by notice in writing to the licensee, vary the trading hours authorised under the conditions of the licence so as to reduce those trading hours in accordance with the application.

- (3) In this clause—

***prescribed restriction*** means a restriction on the trading hours in respect of a class of licence fixed by a provision of old Part 3 Division 2 that, as a consequence of the enactment of this Act, is no longer fixed by a provision of new Part 3 Division 2 in respect of the corresponding class of licence.

#### 5—Conditions

- (1) Except as notified by the Commissioner under subclause (2), a condition of a licence imposed under old Part 3 Division 2 will remain in force as a condition of a licence under new Part 3 Division 2 (whether or not that condition could be lawfully imposed under new Part 3 Division 2).

- (2) The Commissioner may, by notice in writing to a licensee given within 2 years after the relevant day—

- (a) add a condition to the licence; or
- (b) substitute, vary or revoke a condition of the licence referred to in subclause (1),

if, in the opinion of the Commissioner, it is necessary or desirable to do so—

- (c) as a consequence of the enactment of this Act; or
- (d) because a matter the subject of a condition is, or should be, dealt with or addressed under the *Development Act 1993* or *Planning, Development and Infrastructure Act 2016*; or
- (e) for such other reason as the Commissioner thinks fit.

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- (3) For the avoidance of doubt, a reference in this clause to a condition of a licence includes a reference to a term of a licence, or an authorisation or any other right or limitation set out in a licence.

**6—Exemptions**

5 An exemption granted by the licensing authority for the purposes of old Part 3 Division 2 will remain in force as if it were an exemption granted by the licensing authority for the purposes of new Part 3 Division 2.

**7—Review of notices**

- 10 (1) A licensee to whom a notice has been given by the Commissioner under clause 5 may, within 1 month after the licensee receives the notice, apply to the Licensing Court for a review of the notice.
- (2) On a review, the Licensing Court may—
- (a) affirm or vary the notice; or
- 15 (b) set aside the notice and send the matter back to the Commissioner for reconsideration in accordance with any directions or recommendations that the Court considers appropriate,
- and, in any case, may make any ancillary or consequential order that the Court considers appropriate.

**8—Licence applications**

- 20 (1) An application for a licence made to the licensing authority under the principal Act and any proceedings related to such an application that have not been finally determined before the relevant day may be continued and completed under the principal Act as if the amendments to that Act effected by this Act had not come into operation.
- 25 (2) However, if the licensing authority determines to grant a licence under an application to which subclause (1) applies, the licensing authority must not grant a licence under old Part 3 Division 2 but must instead grant a licence under new Part 3 Division 2 of the appropriate class.

**9—Limited licences continue**

30 A limited licence in force immediately before the relevant day will remain in force (subject to the terms and conditions to which it is subject on the relevant day) until its expiry as if the amendments to the principal Act effected by this Act had not come into operation.

**10—Procedures**

- 35 To avoid doubt, the following provisions of the principal Act do not apply in respect of the operation of this Part:
- (a) section 22;
- (b) section 43;
- (c) Part 4.

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#### 11—Crown not liable to pay compensation

Despite any other Act or law, no compensation is payable by the Crown in respect of the operation of this Part.

#### Part 4—Other matters

#### 5 12—Entertainment consents

A consent under section 105(1) of the principal Act in force immediately before the commencement of this clause is, by force of this clause, revoked.

#### 13—Disciplinary action

10 An amendment to the principal Act effected by a provision of this Act that provides for the suspension of a licence if the licensee is convicted of or found guilty of an offence applies only if the offence is committed, or alleged to have been committed, after the commencement of that provision.