

NORTHERN TERRITORY OF AUSTRALIA

ALCOHOL REFORM (LIQUOR LEGISLATION AMENDMENT) ACT 2011

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Act No. 17 of 2011

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Table of provisions

<b>Part 1</b>	<b>Preliminary matters</b>	
1	Short title .....	1
2	Commencement .....	1
<b>Part 2</b>	<b>Amendment of Liquor Act</b>	
3	Act amended .....	1
4	Section 4 amended.....	1
5	Sections 7 and 8 inserted .....	2
	7      Meaning of <i>drunk</i>	
	8      Application of Criminal Code	
6	Section 31 amended.....	3
7	Section 31A amended .....	3
8	Section 33D amended .....	5
9	Section 33E amended .....	5
10	Section 33I amended.....	5
11	Section 41 amended.....	6
12	Section 44 repealed.....	6
13	Section 47 amended.....	6
14	Section 47D amended .....	7
15	Section 48 repealed.....	9
16	Section 48A amended .....	9
17	Section 49 repealed.....	9
18	Section 51 amended.....	9
19	Section 52 amended.....	9
20	Section 53 replaced.....	10
	53      Failure to attend or produce document	
21	Section 54 amended.....	10
22	Section 55 amended.....	11
23	Section 56 amended.....	11
24	Section 60 amended.....	12
25	Part VII replaced.....	13
	Part VII              Enforcement provisions for licences and special licences	
	Division 1            Preliminary matters	

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65	Object of Part	
66	Application	
67	Meaning of <i>complaint, disciplinary action</i> and <i>ground</i> for complaint or disciplinary action	
Division 2	Director's powers in relation to complaints	
68	Complaints	
Division 3	Commission's power to take disciplinary action	
69	Disciplinary action	
70	Monetary penalty	
71	Variation or imposition of licence conditions, or suspension or cancellation of licence	
72	Appeal against Commission's decision	
Division 4	Director's power to enter into enforceable undertakings	
72A	Enforceable undertakings	
72B	Register of enforceable undertakings	
26	Section 75 amended.....	21
27	Section 89A amended .....	21
28	Section 93 replaced.....	22
	93 Revocation of permit	
29	Section 95 amended.....	22
30	Section 101AE amended.....	23
31	Section 101AK amended.....	23
32	Section 101AL amended .....	23
33	Section 101AN amended.....	24
34	Section 101F amended .....	24
35	Section 101L amended.....	24
36	Sections 102 and 103 replaced .....	24
	102 Prohibition of sale or supply of liquor to person who is drunk	
	103 Sale of adulterated liquor	
37	Section 104 amended.....	25
38	Section 105 amended.....	25
39	Section 106 amended.....	26
40	Section 106A amended .....	27
41	Sections 106B to 106BC replaced.....	28
	106B Licensee or employee not to permit child to enter or remain in prohibited area of licensed premises	
	106BA Offences about misrepresentation of age by child	
	106BB Offences about misrepresentation of identity by purchaser of liquor	
42	Section 106BD amended.....	32
43	Section 106C replaced .....	33
	106C Offence relating to irresponsible sale or supply of liquor to children	
	106CA Sale or supply of liquor to, or consumption or possession of, liquor by children on licensed premises	
44	Section 107 amended.....	35
45	Section 108 amended.....	36

46	Section 109 amended.....	37
47	Section 110 replaced.....	37
	110 Licensee must not contravene licence conditions	
48	Section 111 amended.....	38
49	Sections 112 to 114 replaced .....	38
	112 Licensee to produce records and other documents	
	113 Licensees to lodge return	
	113A Wholesaler of liquor	
	114 Registered wholesalers to lodge return	
50	Part IX, Division 2 heading amended .....	40
51	Sections 115 to 118 replaced .....	40
	115 Sale of liquor not authorised by licence	
	116 Purchase of liquor not authorised by licence	
	117 Children not to supply liquor	
	118 Child not to purchase or collect liquor	
52	Section 119 amended.....	42
53	Section 120L amended.....	42
54	Section 120N amended .....	43
55	Section 120P amended .....	43
56	Section 120T amended .....	43
57	Section 120U amended .....	44
58	Section 120Y amended .....	44
59	Section 121 amended.....	44
60	Section 121A amended .....	46
61	Sections 122A and 123 replaced.....	46
	122A Duplicate licences, special licences and permits	
	123 Return of licence, special licence or permit to Director	
62	Sections 124 to 124AA replaced .....	47
	124 Limitation of power to take disciplinary action or action relating to an offence	
63	Section 124B amended .....	48
64	Section 125A inserted .....	48
	125A Guidelines	
65	Part XVII inserted .....	48
	Part XVII Transitional matters for Alcohol Reform (Liquor Legislation Amendment) Bill 2011	
	143 Definition	
	144 Application of new Part VII	
	145 Savings – guidelines	

### **Part 3 Amendment of Liquor Regulations**

66	Regulations amended.....	49
67	Regulation 3 amended .....	49
68	Regulation 5A replaced .....	49
	5A Prescribed licences for section 31A of Act	



# NORTHERN TERRITORY OF AUSTRALIA

Act No. 17 of 2011

An Act to amend the *Liquor Act* and *Liquor Regulations*

[Assented to 20 May 2011]  
[Second reading 30 March 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Alcohol Reform (Liquor Legislation Amendment) Act 2011*.

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## Part 2 Amendment of Liquor Act

### 3 Act amended

This Part amends the *Liquor Act*.

### 4 Section 4 amended

Section 4(1)

*insert (in alphabetical order)*

*child* means a person less than 18 years of age.

*complaint*, see section 67(1).

*disciplinary action*, see section 67(2).

*drunk*, see section 7.

*employee*, of a licensee, means a person engaged by the licensee (whether or not under a contract of employment) to perform work in relation to the conduct of the licensee's business.

*enforceable undertaking*, see section 72A(1).

*ground*, for a complaint or disciplinary action against a licensee, see section 67(3).

*quarter* means the period of 3 months ending at the end of March, June, September or December in any year.

## 5 Sections 7 and 8 inserted

After section 6, in Part I

*insert*

### 7 Meaning of *drunk*

A person is *drunk* if:

- (a) the person's speech, balance, coordination or behaviour appears to be noticeably impaired; and
- (b) it is reasonable in the circumstances to believe the impairment results from the person's consumption of liquor.

### 8 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act (other than an offence against section 75(1) or 101AE(1)).

*Note for section 8*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

---

**6 Section 31 amended**

- (1) Section 31(4)(a) to (c)

*omit*

shall

*insert*

must

- (2) Section 31(4)(c), after "advertising of liquor"

*insert*

, or another matter relating to the operation of a licence,

- (3) Section 31(5)

*omit*

shall not be

*insert*

is not

- (4) Section 31(5)

*omit*

67

*insert*

125A

**7 Section 31A amended**

- (1) Section 31A(1)

*omit, insert*

- (1) This section applies to a sale of liquor:

(a) in a way prescribed by regulation; or

(b) under a licence prescribed by regulation.

- (2) After section 31A(2)(a)  
*insert*  
(ab) a BAT notice or GAP order, or a BADT order relating to alcohol, under the *Alcohol Reform (Prevention of Alcohol-related Crime and Substance Misuse) Act*,
- (3) Section 31A(3)  
*omit, insert*
- (3) For subsection (2), a scanner must be given to the licensee for the licence:
- (a) to enable the licensee or an employee of the licensee (an ***authorised seller***) to scan an identification of the individual; and
- (b) to indicate to an authorised seller whether the individual is prohibited from purchasing liquor or liquor of a particular kind or quantity.
- (4) Section 31A(5)(a) to (d)  
*omit*  
the authorised seller  
*insert*  
an authorised seller
- (5) Section 31A(6), penalty provision  
*omit, insert*  
Maximum penalty: 100 penalty units.
- (6) Section 31A(7) and example  
*omit, insert*
- (7) An offence against subsection (6) is an offence of strict liability.

- 
- (7A) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

*Example for subsection (7A)*

*A reasonable excuse for a contravention of the requirement in subsection (5)(a) or (b) may be based on a failure of the system to operate properly for a reason other than the defendant's conduct.*

## **8 Section 33D amended**

Section 33D(1), at the end

*insert*

Maximum penalty: 100 penalty units.

## **9 Section 33E amended**

- (1) Section 33E(1), at the end

*insert*

Maximum penalty: 100 penalty units.

- (2) Section 33E(2)

*omit*

section 110 for a contravention of

## **10 Section 33I amended**

- (1) Section 33I

*omit*

comply with the conditions

*insert*

not engage in conduct that results in the contravention of a condition

- (2) Section 33I, at the end

*insert*

Maximum penalty: 100 penalty units.

---

**11 Section 41 amended**

Section 41(1)

*omit, insert*

- (1) The person to whom a licence is proposed to be transferred must:
  - (a) lodge with the Director an application in the form approved by the Commission for the transfer; and
  - (b) pay an application fee of:
    - (i) \$2; or
    - (ii) if another amount is prescribed by regulation – that amount.

**12 Section 44 repealed**

Section 44

*repeal*

**13 Section 47 amended**

- (1) Section 47(1) to (3)

*omit, insert*

- (1) If a licensee is, or is expected to be, unable for any reason to conduct the business of the licensee during any period of time, the licensee must:
  - (a) appoint a person to act as the licensee to conduct the licensee's business during that period; and
  - (b) give written notice to the Commission of the full name, address and occupation of the person within 3 days after the date of the appointment.

Maximum penalty: 20 penalty units.

- (2) If the licensee has not appointed anyone under subsection (1), the Commission may appoint a person to act as the licensee to conduct the licensee's business during that period.

- (2) Section 47(4)  
*omit*  
or (3) shall not act in place of a licensee  
*insert*  
or (2) must not act as a licensee
- (3) Section 47(4), at the end  
*insert*  
Maximum penalty: 20 penalty units.
- (4) Section 47(5)  
*omit*  
shall cancel  
*insert*  
must cancel
- (5) Section 47(6)  
*omit*  
in place of a licensee  
*insert*  
as a licensee

#### **14 Section 47D amended**

- (1) Section 47D, heading  
*omit*  
**, &c.**  
*insert*  
**etc.**

- (2) Section 47D(1) and (2)

*omit*

his property, interest or remuneration for the benefit of his creditors

*insert*

the licensee's property, interest or remuneration for the benefit of licensee's creditors

- (3) Section 47D(1)(a)

*omit*

he shall

*insert*

the licensee must

- (4) After section 47D(1)

*insert*

- (1A) The licensee commits an offence if subsection (1)(a) is contravened.

Maximum penalty: 20 penalty units.

- (5) Section 47D(2)

*omit*

shall

*insert*

must

- (6) After section 47D(2)

*insert*

- (3) The licensee commits an offence if subsection (2) is contravened in relation to the notification mentioned in subsection (1)(a).

Maximum penalty: 20 penalty units.

- 
- (4) The person mentioned in subsection (1)(b) commits an offence if subsection (2) is contravened in relation to the application mentioned in subsection (1)(b).

Maximum penalty: 20 penalty units.

**15 Section 48 repealed**

Section 48

*repeal*

**16 Section 48A amended**

Section 48A(1)

*omit*

the investigation of a complaint under section 48

*insert*

the investigation of a complaint or consideration of an application for taking disciplinary action

**17 Section 49 repealed**

Section 49

*repeal*

**18 Section 51 amended**

Section 51(2A)

*omit*

Notwithstanding anything to the contrary in section 13(2), at

*insert*

At

**19 Section 52 amended**

- (1) Section 52(1)

*omit, insert*

- (1) The Chairperson may, by written notice, summon a person to:

- (a) attend a hearing at a specified time and place; and

- 
- (b) at the hearing, give evidence and produce specified documents controlled by the person.

(2) Section 52(2)

*omit*

summons

*insert*

notice

**20 Section 53 replaced**

Section 53

*repeal, insert*

**53 Failure to attend or produce document**

- (1) A person served with a notice under section 52(1) to attend a hearing must:

- (a) attend the hearing; and
- (b) produce at the hearing the documents controlled by the person that the person is required to produce by the notice.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes:

- (a) a reasonable excuse; or
- (b) for a requirement to produce a document – the document was not relevant to the hearing.

**21 Section 54 amended**

Section 54(1)

*omit, insert*

- (1) A person appearing as a witness at a hearing must not refuse to:

- (a) take an oath; or

- (b) answer a question relevant to the hearing that is put to the person by a member.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

## **22 Section 55 amended**

- (1) Section 55, heading

*omit*

**books, &c.**

*insert*

**documents**

- (2) Section 55(1) and (2)

*omit*

books or other

- (3) Section 55(1)

*omit*

shall

*insert*

must

## **23 Section 56 amended**

- (1) Section 56

*omit*

Subject to

*insert*

- (1) Subject to subsection (2) and

- (2) Section 56(1)(a)

*omit*

shall

*insert*

is

- (3) Section 56(1)(b)

*omit*

shall not be

*insert*

cannot be

- (4) After section 56(1)

*insert*

- (2) If the Commission conducts a hearing for deciding an application for disciplinary action against a licensee, the decision has effect subject to the following:

- (a) a review of the decision under Part 4 of the *Northern Territory Licensing Commission Act*,
- (b) an appeal against the decision to the Supreme Court under section 72.

## **24 Section 60 amended**

- (1) Section 60(1)

*omit, insert*

- (1) Subject to section 61, if an application for a special licence has been made in accordance with section 58, the Director must issue a special licence to the applicant on payment of a fee of:

- (a) \$20; or
- (b) if another amount is prescribed by regulation – that amount.

- (2) Section 60(2)

*omit*

shall

*insert*

must

**25 Part VII replaced**

Part VII

*repeal, insert*

**Part VII Enforcement provisions for licences and special licences**

**Division 1 Preliminary matters**

**65 Object of Part**

- (1) The object of this Part is to create mechanisms for the enforcement of the requirements of this Act that are imposed on a licensee.
- (2) The object is to be achieved by empowering:
  - (a) the Director to:
    - (i) deal with a complaint against a licensee; and
    - (ii) enter into an enforceable undertaking with a licensee; and
  - (b) the Commission to take disciplinary action against a licensee.

**66 Application**

- (1) This Part applies in relation to a special licence in the same way as it applies to a licence.
- (2) This Part also applies in relation to a licence or special licence that has ceased to be in force if:
  - (a) a complaint, or an application for disciplinary action, is made in relation to the licence or special licence within 6 months after the occurrence of a matter that forms a ground for the complaint or disciplinary action; and
  - (b) the matter occurred while the licence or special licence was in force.
- (3) For subsection (2), a reference to a licensee in this Part includes a reference to the person holding a licence or special licence when the matter mentioned in that subsection occurred.

**67**      **Meaning of *complaint*, *disciplinary action* and *ground* for complaint or disciplinary action**

- (1) A ***complaint*** is a complaint made against a licensee under section 68.
- (2) ***Disciplinary action*** means any of the following actions against a licensee:
- (a) giving a formal warning to the licensee;
  - (b) varying the conditions of the licensee's licence or imposing additional conditions for the licence;
  - (c) suspending the licence;
  - (d) cancelling the licence;
  - (e) imposing a monetary penalty on the licensee;
  - (f) directing the licensee to take, or refrain from, a specified action;
  - (g) disqualifying the licensee from holding a licence for a specified period.
- (3) Any of the following is a ***ground*** for a complaint or disciplinary action against a licensee:
- (a) the licensee has contravened a provision of this Act (whether or not the provision creates an offence);
  - (b) the licensee has contravened another law in force in the Territory that regulates:
    - (i) the sale, supply or consumption of liquor; or
    - (ii) the location, construction or facilities of licensed premises;
  - (c) the licensee has contravened a licence condition;
  - (d) the licensee, or if the licensee is a body corporate, a director of the body corporate, has been found guilty by a court of an offence against a law in force in the Territory that is punishable by imprisonment for 5 years or more;
  - (e) the licensee has contravened a provision of an enforceable undertaking;

- (f) the licensee has contravened a direction by the Commission given to the licensee as disciplinary action;
- (g) the licensee's licensed premises are no longer being used:
  - (i) for the sale or supply of liquor; or
  - (ii) consistently with the business of the licence;
- (h) the licensee is not a fit and proper person to hold the licence;
- (i) the manager of the licensed premises is not a fit and proper person to be the manager and the licensee should reasonably have known that to be the case;
- (j) an employee of the licensee is not a fit and proper person to be an employee of the licensee and the licensee should reasonably have known that to be the case;
- (k) the licensee obtained the licence by fraud or misrepresentation;
- (l) the licensee holds the licence for the benefit (wholly or partly) of a person to whom the Commission would not have granted the licence;
- (m) the way in which the licensed premises has been used:
  - (i) has caused annoyance or disturbance to persons residing, working or conducting a business in the neighbourhood of the premises; or
  - (ii) has caused disorderly conduct on the premises or in the neighbourhood of the premises;
- (n) the licensee is otherwise no longer eligible to hold the licence.

## **Division 2      Director's powers in relation to complaints**

### **68      Complaints**

- (1) A person may make a complaint against a licensee.
- (2) The complaint must:
  - (a) specify the ground for the complaint in the form approved by the Director; and
  - (b) be signed by the complainant; and

- (c) be lodged with the Director.
- (3) The Director must, as soon as practicable after receiving the complaint, by notice to the complainant:
- (a) accept the complaint; or
  - (b) refuse to deal with the complaint if the Director is satisfied it is frivolous or vexatious.
- (4) If the Director accepts the complaint, the Director must:
- (a) inform the licensee about the substance of the complaint; and
  - (b) give the licensee a reasonable opportunity to comment on the complaint; and
  - (c) conduct an investigation of the complaint as the Director considers appropriate.
- (5) On completing the investigation, the Director must take one of the following actions:
- (a) dismiss the complaint if the Director is satisfied:
    - (i) no ground exists for making the complaint (including, because there is insufficient evidence for a ground for the complaint); or
    - (ii) although a ground exists for making the complaint, it does not warrant any action to be taken under this section;
  - (b) otherwise – any of the following as provided by this Act in relation to a ground for the complaint:
    - (i) issue an infringement notice under the regulations in relation to that ground;
    - (ii) enter into an enforceable undertaking with the licensee under section 72A in relation to that ground;
    - (iii) apply to the Commission under section 69 for disciplinary action to be taken against the licensee in relation to that ground.
- (6) If the Director takes an action mentioned in subsection (5)(a) or (b)(i) or (ii), the Director must give a report to the Commission about taking that action.

- (7) An application mentioned in subsection (5)(b)(iii) must include any comment given by the licensee under subsection (4)(b) and the result of the investigation conducted by the Director.
- (8) The Director must, as soon as practicable after taking an action under subsection (5), notify the complainant of the action taken.
- (9) Regulations may provide for a matter arising under this section (including, for example, provisions relating to a particular ground for a complaint).

### **Division 3      Commission's power to take disciplinary action**

#### **69      Disciplinary action**

- (1) The Director or a person prescribed by regulation may apply to the Commission for disciplinary action to be taken against a licensee.
- (2) The application must:
  - (a) be in the form approved by the Commission; and
  - (b) specify details about:
    - (i) the disciplinary action that is sought; and
    - (ii) the ground for the disciplinary action.
- (3) The applicant must give the licensee details about the application when making the application.
- (4) The Commission must, after considering the application, by written notice to the applicant and licensee:
  - (a) accept the application if the Commission considers a hearing should be conducted for deciding the application; or
  - (b) otherwise – refuse to accept the application.
- (5) The Commission must conduct a hearing for deciding the application if the Commission accepts the application.

*Note for subsection (5)*

*For a hearing by the Commission, see Part V.*

- (6) On completing the hearing, the Commission must, by written notice to the applicant and licensee:
  - (a) dismiss the application; or

- (b) approve the application by taking specified disciplinary action against the licensee (whether or not it is the disciplinary action specified in the application).
- (7) The Commission may take disciplinary action against the licensee only if the Commission is satisfied:
- (a) on the balance of probabilities, a ground for taking the disciplinary action exists; and
  - (b) the disciplinary action is appropriate in relation to that ground.
- (8) The operation of this section and section 71 do not affect the operation of section 48A or 49A.
- (9) However, this section has effect subject to section 124.
- (10) Regulations may provide for a matter arising under this section (including, for example, provisions about taking a particular disciplinary action for a particular ground for disciplinary action).

## **70 Monetary penalty**

- (1) The Commission may take disciplinary action against a licensee by imposing a monetary penalty on the licensee only if the Commission is satisfied the licensee has contravened a provision that creates an offence against this Act.
- (2) The amount of the monetary penalty:
- (a) must not exceed the lesser of the following:
    - (i) the maximum amount of the fine specified for the offence;
    - (ii) 100 penalty units; and
  - (b) is a debt due to the Territory; and
  - (c) is due and payable by a licensee within 28 days, or a longer period allowed by the Commission, after notice for the penalty is given by the Commission to the licensee.
- (3) To avoid doubt, the monetary penalty is a civil penalty for the purposes of the *Penalty Units Act*.

**71 Variation or imposition of licence conditions, or suspension or cancellation of licence**

- (1) If the Commission intends to take disciplinary action against a licensee by varying the conditions of, or imposing additional conditions for, the licensee's licence, or suspending or cancelling the licence, the Commission must:
  - (a) notify the licensee of:
    - (i) the Commission's intention to do so; and
    - (ii) the ground for the disciplinary action; and
    - (iii) the factual basis constituting that ground; and
  - (b) for the cancellation of the licence – give the licensee a reasonable opportunity to explain to the Commission why the Commission should not do so.
- (2) The Commission may take disciplinary action by cancelling the licence only after taking into account any explanation given by the licensee under subsection (1)(b).

**72 Appeal against Commission's decision**

- (1) If the Commission decides to take disciplinary action against a licensee, the licensee may appeal to the Supreme Court against the decision.
- (2) The appeal may be made in relation to a question of law only.
- (3) The Supreme Court may:
  - (a) dismiss the appeal; or
  - (b) declare the disciplinary action to be invalid.
- (4) If subsection (3)(b) applies:
  - (a) the Supreme Court may request the Commission to reconsider its decision to take the disciplinary action; and
  - (b) the Commission must reconsider the decision on the request.
- (5) This section does not affect any other provision about a review of the decision of the Commission.

## **Division 4      Director's power to enter into enforceable undertakings**

### **72A      Enforceable undertakings**

- (1) The Director may accept a written undertaking (***enforceable undertaking***) given by a licensee for either or both of the following:
  - (a) a contravention of this Act that has occurred;
  - (b) the prevention of a contravention of this Act.
- (2) The Director must give a copy of the enforceable undertaking to the licensee and Commission.
- (3) The licensee may, with the Director's consent, withdraw or vary the enforceable undertaking.
- (4) Regulations may prescribe matters arising under this section (including, for example, provisions about the consequence of a breach of an enforceable undertaking).

### **72B      Register of enforceable undertakings**

- (1) The Commission must:
  - (a) maintain a register of enforceable undertakings; and
  - (b) record each enforceable undertaking in the register.
- (2) The register must contain the following information:
  - (a) the name and address of the licensee giving the undertaking;
  - (b) the date of the undertaking;
  - (c) a copy of the undertaking;
  - (d) if the undertaking has expired, or has been withdrawn or varied:
    - (i) the date of the expiry, withdrawal or variation; or
    - (ii) for a variation – the variation.
- (3) The register may be inspected by any person at any reasonable time free of charge.
- (4) Regulations may provide for a matter arising under this section.

---

**26 Section 75 amended****(1) Section 75(1)**

*omit, insert*

- (1) A person commits an offence if the person:
- (a) brings liquor into a general restricted area; or
  - (b) has liquor in his or her possession, or under his or her control, in a general restricted area; or
  - (c) consumes, sells, supplies or otherwise disposes of liquor in a general restricted area.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(1AA) An offence against subsection (1) is a regulatory offence.

(1AAA) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves, on the balance of probabilities, that the contravention constituting the offence:

- (a) occurred in an emergency; and
- (b) was necessary to preserve life or prevent injury or to protect property.

**(2) Section 75(1B)**

*omit, insert*

(1B) A person commits an offence if the person consumes liquor within a public restricted area.

Maximum penalty: 20 penalty units.

(1BA) An offence against subsection (1B) is an offence of strict liability.

**27 Section 89A amended**

After section 89A(7)

*insert*

- (8) The following person commits an offence if the person engages in conduct that results in a contravention of a condition of a permit granted under subsection (1):

- (a) if the permit is granted to an individual – the individual;
- (b) if the permit is granted to a body corporate – the body corporate;
- (c) if the permit is granted to an unincorporated body – a person constituting the body.

Maximum penalty: 20 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.

## **28 Section 93 replaced**

Section 93

*repeal, insert*

### **93 Revocation of permit**

- (1) A permit is revoked if the holder of the permit contravenes a condition of the permit.
- (2) The holder of the revoked permit must return the permit to an inspector or police officer when requested to do so by the inspector or police officer.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

## **29 Section 95 amended**

- (1) Section 95(3)

*omit*

is guilty of

*insert*

commits

- (2) Section 95(3), penalty provision

*omit, insert*

Maximum penalty: 50 penalty units or imprisonment for 6 months.

---

**30 Section 101AE amended**

Section 101AE(1)

*omit, insert*

- (1) A person commits an offence if the person:
- (a) brings liquor into a special restricted area; or
  - (b) has liquor in his or her possession, or under his or her control, in a special restricted area; or
  - (c) consumes, sells, supplies or otherwise disposes of liquor in a special restricted area.

Maximum penalty: 100 penalty units or imprisonment for 6 months

- (1A) An offence against subsection (1) is a regulatory offence.
- (1B) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves, on the balance of probabilities, that the contravention constituting the offence:
- (a) occurred in an emergency; and
  - (b) was necessary to preserve life or prevent injury or to protect property.

**31 Section 101AK amended**

Section 101AK(2)

*omit, insert*

- (2) A person must not engage in conduct that results in a contravention of any of the conditions.

Maximum penalty: 100 penalty units.

**32 Section 101AL amended**

Section 101AL(4)

*omit, insert*

- (4) A person must not engage in conduct that results in a contravention of any of the conditions.

Maximum penalty: 100 penalty units.

---

**33 Section 101AN amended**

- (1) Section 101AN(3)

*omit*

is guilty of

*insert*

commits

- (2) Section 101AN(3), penalty provision

*omit, insert*

Maximum penalty: 50 penalty units or imprisonment for 6 months.

**34 Section 101F amended**

Section 101F(3), penalty provision

*omit, insert*

Maximum penalty: 20 penalty units.

**35 Section 101L amended**

- (1) Section 101L(1), penalty provision

*omit, insert*

Maximum penalty: 100 penalty units.

- (2) After section 101L(1)

(1A) An offence against subsection (1) is an offence of strict liability.

**36 Sections 102 and 103 replaced**

Sections 102 and 103

*repeal, insert***102 Prohibition of sale or supply of liquor to person who is drunk**

A licensee or an employee of a licensee must not sell or otherwise supply liquor to a person who is drunk.

Maximum penalty: 100 penalty units.

**103 Sale of adulterated liquor**

A licensee or employee of a licensee must not sell adulterated liquor.

Maximum penalty: 100 penalty units.

**37 Section 104 amended****(1) Section 104(1)**

*omit, insert*

- (1) A person must not enter, or remain on, premises that are licensed for the consumption of liquor on the premises unless they are open for the sale of liquor in accordance with the conditions of the licence.

Maximum penalty: 50 penalty units.

- (1A) An offence against subsection (1) is an offence of strict liability.

**(2) Section 104(2) and (3)(c) and (d)**

*omit*

or at

**38 Section 105 amended****(1) Section 105**

*omit*

A licensee shall

*insert*

- (1) A licensee or an employee of a licensee must

**(2) Section 105(1)**

*omit*

his

*insert*

the licensee's

- (3) After section 105(1)

*insert*

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

### **39 Section 106 amended**

- (1) Section 106, heading

*omit*

**minors**

*insert*

**children**

- (2) Section 106(1)

*omit*

person who has not attained the age of 18 years

*insert*

child

- (3) Section 106(1)(a) and (b)

*omit, insert*

(a) must not enter or remain; or

(b) must not enter or remain unless the child is in the company of an adult who is the child's parent, guardian or spouse.

- (4) Section 106(2) and (3)

*omit*

shall

*insert*

must

- (5) After section 106(3)

*insert*

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

#### **40 Section 106A amended**

- (1) Section 106A, heading

*omit*

**Minors**

*insert*

**Children**

- (2) Section 106A(1) and (2)

*omit*

person who has not attained the age of 18 years shall

*insert*

child must

- (3) Section 106A(1) and (2), at the end

*insert*

Maximum penalty: 20 penalty units.

- (4) Section 106A(2)

*omit*

the person is in the company of his parent, guardian or spouse  
(who has attained the age of 18 years)

*insert*

the child is in the company of an adult who is the child's parent,  
guardian or spouse

(5) After section 106A(2)

*insert*

(2A) An offence against subsection (1) or (2) is an offence of strict liability.

(2B) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.

(6) Section 106A(3)

*omit*

his age

*insert*

the person's age

(7) Section 106A(3)

*omit*

had not attained the age of 18 years

*insert*

was a child

(8) Section 106A(4)

*omit (all references)*

he

*insert*

he or she

**41 Sections 106B to 106BC replaced**

Sections 106B to 106BC

*repeal, insert*

**106B Licensee or employee not to permit child to enter or remain in prohibited area of licensed premises**

(1) A licensee or employee of a licensee must not permit a child to

enter or remain on the licensee's licensed premises contrary to a declaration under section 106.

Maximum penalty: 85 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that:
  - (a) the person to whom the liquor was supplied was at least 16 years of age; and
  - (b) before the liquor was supplied to the person, the defendant was provided with a form of identification that may reasonably be accepted as:
    - (i) a form of identification of the person; and
    - (ii) indicating that the person was an adult.

#### **106BA Offences about misrepresentation of age by child**

- (1) A child must not, for the purposes of entering or remaining on licensed premises contrary to a declaration under section 106, misrepresent his or her age by:
  - (a) oral statements made by the child or someone else; or
  - (b) presenting a form of written identification that purports to relate to the child but is in fact fictitious or relates to someone else; or
  - (c) presenting a form of written identification that is false in a material particular.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if:
  - (a) the person makes a document that could reasonably be taken to be a form of identification of a person; and
  - (b) the form of identification is fictitious or is false in a material particular; and
  - (c) the person is reckless as to whether the form of identification:
    - (i) is fictitious or is false in a material particular; and

- (ii) would be used to misrepresent the age of a person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units.

- (3) A child must not represent to an Agency or statutory body that he or she has attained the age of 18 years in order to obtain a form of identification if the child intends:

- (a) to use the form of identification for himself or herself for a purpose contrary to this Act; or

- (b) to give it to another person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units.

- (4) A person must not give a genuine form of identification of the person to someone else if the person is reckless about any of the following circumstances:

- (a) the form of identification may be used to misrepresent the age of a person for a purpose contrary to this Act;

- (b) the form of identification may be used to obtain another genuine form of identification with the intention of using the other form of identification to misrepresent the age of a person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units.

- (5) A person commits an offence if the person:

- (a) defaces or interferes with a genuine form of identification of the person or someone else; and

- (b) intends to use the form of identification, as defaced or interfered with, to misrepresent the age of a person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (6) In this section:

***make***, in relation to a document, includes modify an existing document.

***purpose contrary to this Act*** includes:

- (a) a child entering or remaining on licensed premises contrary to a declaration under section 106; and

- (b) a child attempting to purchase liquor from a place (whether or not the child would otherwise be entitled to enter or remain at the place).

**106BB Offences about misrepresentation of identity by purchaser of liquor**

- (1) A person commits an offence if the person:
  - (a) purchases liquor from licensed premises for consumption away from the premises; and
  - (b) misrepresents his or her identity by:
    - (i) oral statements made by the person or someone else; or
    - (ii) presenting a form of written identification that purports to relate to the person but is in fact fictitious or relates to someone else; or
    - (iii) presenting a form of written identification that is false in a material particular.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person:
  - (a) makes a document that could reasonably be taken to be a form of identification of a person; and
  - (b) the form of identification is fictitious or is false in a material particular; and
  - (c) is reckless as to whether the form of identification:
    - (i) is fictitious or is false in a material particular; and
    - (ii) would be used to misrepresent the identity of a person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units.

- (3) A person must not make representations to an Agency or statutory body in order to obtain a form of identification if the person intends:
  - (a) to use the form of identification for himself or herself for a purpose contrary to this Act; or
  - (b) to give it to another person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units.

- (4) A person must not give a genuine form of identification of the person to someone else if the person is reckless about any of the following circumstances:
- (a) the form of identification may be used to misrepresent the identity of a person for a purpose contrary to this Act;
  - (b) the form of identification may be used to obtain another genuine form of identification with the intention of using the other form of identification to misrepresent the identity of a person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units.

- (5) A person commits an offence if the person:
- (a) defaces or interferes with a genuine form of identification of the person or someone else; and
  - (b) intends to use the form of identification, as defaced or interfered with, to misrepresent the identity of a person for a purpose contrary to this Act.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (6) In this section:

***make***, in relation to a document, includes modify an existing document.

***purpose contrary to this Act*** includes a person purchasing liquor from licensed premises to be consumed away from the premises in circumstances in which the person is not entitled to do so.

## **42 Section 106BD amended**

- (1) Section 106BD(1)(a)

*omit, insert*

- (a) the form of identification is produced to the person for the purpose of someone else (the ***document user***):
  - (i) entering or remaining on licensed premises contrary to a declaration under section 106; or
  - (ii) purchasing liquor from licensed premises in circumstances in which the document user is not entitled to do so.

- 
- (2) Section 106BD(1)(b)(i) and (3)  
*omit*  
entrant  
*insert*  
document user
- (3) Section 106BD(1)(b), (2) and (6)(a)  
*omit*  
, 106BB or 106BC  
*insert*  
or 106BB
- (4) Section 106BD(1), (3) and (4), at the end  
*insert*  
Maximum penalty: 20 penalty units.
- (5) After section 106BD(4)  
*insert*
- (4A) An offence against subsection (3) or (4) is an offence of strict liability.

#### **43 Section 106C replaced**

Section 106C

*repeal, insert*

#### **106C Offence relating to irresponsible sale or supply of liquor to children**

- (1) A person must not sell or otherwise supply liquor to a child unless:
- (a) the person is a responsible adult for the child; and
  - (b) the sale or supply is consistent with the responsible supervision of the child.

Maximum penalty: 100 penalty units.

- (2) The following matters must be taken into account in considering whether the sale or supply is consistent with the responsible supervision of the child:
- (a) whether the adult is drunk;
  - (b) whether the child is drunk;
  - (c) the age of the child;
  - (d) whether the child is consuming the liquor with food;
  - (e) whether the adult is responsibly supervising the child's consumption of the liquor;
  - (f) the quantity of, and the period over which, the liquor was sold or supplied.

- (3) In this section:

***responsible adult***, for a child, means each of the following:

- (a) an adult who is a parent, step-parent or guardian of the child;
- (b) an adult who has parental rights and responsibilities for the child.

**106CA Sale or supply of liquor to, or consumption or possession of, liquor by children on licensed premises**

- (1) Despite any other provisions of this Act, a person must not:
- (a) sell or otherwise supply liquor to a child on licensed premises;  
or
  - (b) permit someone else to sell or otherwise supply liquor to a child on licensed premises; or
  - (c) engages in conduct that results in a child being sold or otherwise supplied with liquor, or consuming liquor, on licensed premises.

Maximum penalty: 85 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that:
- (a) the person to whom the liquor was sold or supplied was at least 16 years of age; and

- (b) before the liquor was sold or supplied to the person, the defendant was provided with a form of identification that may reasonably be accepted as:
  - (i) a form of identification of the person; and
  - (ii) indicating that the person was an adult.
- (3) In addition, it is a defence to a prosecution for an offence against subsection (1) if the defendant is a licensee, or employee of the licensee, who establishes that:
  - (a) in the particular circumstances of the alleged offence:
    - (i) the liquor was sold or supplied to an adult who is the child's parent, guardian or spouse and accompanying the child; and
    - (ii) the defendant reasonably expected that adult would ensure compliance with that subsection in relation to the child; or
  - (b) all of the following:
    - (i) the defendant did not personally sell or supply the liquor to the child;
    - (ii) the business of the licensed premises was not conducted in a way that would entice children to consume liquor;
    - (iii) the defendant exercised proper diligence to prevent the sale, supply or consumption of liquor by children in contravention of that subsection.
- (4) A child must not consume, or be in possession of, liquor on licensed premises.

Maximum penalty: 20 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.

#### **44 Section 107 amended**

- (1) Section 107(1)

*omit*

shall

*insert*

must

- (2) Section 107(1), at the end

*insert*

Maximum penalty: 20 penalty units.

- (3) Section 107(2)

*omit, insert*

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that, at the time of the alleged offence, the licence:
- (a) had been given to the Director; and
  - (b) had not been returned to the defendant.

#### **45 Section 108 amended**

- (1) Section 108

*omit*

A licensee shall produce his

*insert*

- (1) A licensee must produce the licensee's
- (2) After section 108(1)
- insert*
- Maximum penalty: 20 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that, at the time of the alleged offence, the licence:
- (a) had been given to the Director; and
  - (b) had not been returned to the defendant.

---

**46 Section 109 amended**

## (1) Section 109(1)

*omit, insert*

## (1) A licensee commits an offence if:

(a) a person is found guilty of an offence against the *Gaming Control Act*, and

(b) the offence occurred on the licensee's licensed premises.

Maximum penalty: 100 penalty units.

## (2) Section 109(2)

*omit*

a charge under subsection (1) to show

*insert*

a prosecution for an offence against subsection (1) if the defendant establishes

## (3) Section 109(2)(a) and (b)

*omit*

or at

**47 Section 110 replaced**

Section 110

*repeal, insert*

**110 Licensee must not contravene licence conditions**

A licensee commits an offence if:

(a) the licensee engages in conduct that results in a contravention of a condition of the licensee's licence; and

(b) the contravention does not constitute another offence against this Act.

Maximum penalty: 100 penalty units.

---

**48 Section 111 amended**

## (1) Section 111(1)

*omit, insert*

- (1) A licensee must keep a written record for each quarter during which the licensee's licence is in force, of every purchase of liquor for disposal under the licensee's licence.

## (2) Section 111(2)

*omit*

A record kept for the purposes of subsection (1) shall show:

*insert*

The record must be in the form approved by the Director and specify details about:

## (3) Section 111(3)

*omit, insert*

- (3) The licensee must, except with the Commission's permission, retain the record for a quarter for at least 3 years after the date of the last entry in that record.
- (3A) The licensee commits an offence if subsection (1) or (3) is contravened in relation to the licence.
- Maximum penalty: 50 penalty units.
- (3B) An offence against subsection (3A) is an offence of strict liability.

**49 Sections 112 to 114 replaced**

Sections 112 to 114

*repeal, insert*

**112 Licensee to produce records and other documents**

A licensee must, on request by an inspector on the licensee's licensed premises, produce to the inspector:

- (a) a record kept under section 111; or

(b) any other documents relating to the licensee's business.

Maximum penalty: 20 penalty units.

### **113 Licensees to lodge return**

(1) A licensee must, except as otherwise provided by the licensee's licence, within 28 days after the end of each quarter during which the licence is in force, lodge with the Director a return for that quarter that complies with subsection (3).

Maximum penalty: 20 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) The application must:

(a) be in the form approved by the Director; and

(b) specify details about all purchases made during the quarter of liquor for disposal under the licence.

### **113A Wholesaler of liquor**

(1) A person must not sell liquor to a licensee unless the person:

(a) is registered as a wholesaler of liquor for this Act; or

(b) is a licensee.

Maximum penalty: 250 penalty units or imprisonment for 12 months

(2) The Director must keep a register of wholesalers of liquor in a way decided by the Director.

(3) The Director must record a person in the register if the person lodges with the Director:

(a) an application for the registration in the form approved by the Director, together with other documents, samples or things as the Director requires; and

(b) a registration fee of:

(i) \$20; or

(ii) if another amount is prescribed by regulation – that amount.

- (4) The registration of a person has effect for 12 months from the date the record is made in the register.
- (5) A certificate signed by the Director specifying that a specified person was not registered as a wholesaler of liquor at a specified time is evidence of the matter specified in the certificate.

#### **114 Registered wholesalers to lodge return**

- (1) A person registered under section 113A must, within 28 days after the end of each quarter, lodge with the Director a return for that quarter that complies with subsection (3).

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) The return must:
  - (a) be in the form approved by the Director; and
  - (b) specify details about all purchases and sales of liquor made by the person during the quarter.

#### **50 Part IX, Division 2 heading amended**

Part 9, Division 2, heading, after "**General**"

*insert*

**matters**

#### **51 Sections 115 to 118 replaced**

Sections 115 to 118

*repeal, insert*

#### **115 Sale of liquor not authorised by licence**

A person must not sell any liquor unless the sale is authorised by a licence.

Maximum penalty: 250 penalty units or imprisonment for 12 months.

**116 Purchase of liquor not authorised by licence**

A person must not purchase any liquor unless:

- (a) the sale of the liquor to the person is authorised by a licence; or
- (b) the person selling the liquor to the person is licensed, registered or otherwise authorised to sell liquor under a law of a State or another Territory.

Maximum penalty: 100 penalty units.

**117 Children not to supply liquor**

- (1) A licensee must not employ a child to sell or otherwise supply liquor on licensed premises.

Maximum penalty: 85 penalty units.

- (2) Subsection (1) does not apply to a child who is permitted by the Commission to sell or otherwise supply liquor on licensed premises as:
  - (a) an employee of the licensee; or
  - (b) someone undergoing employment training.
- (3) The Commission may give the permission generally or on application by the licensee.

**118 Child not to purchase or collect liquor**

- (1) A person must not send a child to purchase or collect liquor from licensed premises.

Maximum penalty: 50 penalty units.

- (2) A child must not purchase liquor from licensed premises.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

---

**52 Section 119 amended**

## (1) Section 119(1)

*omit, insert*

- (1) A licensee must not make a material alteration to the licensee's licensed premises without the Commission's approval.

Maximum penalty: 100 penalty units.

- (1A) An offence against subsection (1) is an offence of strict liability.

## (2) Section 119(2)

*omit*

An application for approval under this section shall be

*insert*

An application for the approval must be

## (3) After section 119(10)

*insert*

Maximum penalty: 100 penalty units.

- (11) An offence against subsection (10) is an offence of strict liability.

**53 Section 120L amended**

## (1) After section 120L(2)

*insert*

Maximum penalty: 5 penalty units.

- (2A) An offence against subsection (2) is an offence of strict liability.

## (2) Section 120L(6)

*omit, insert*

- (6) The person must comply with the request.

Maximum penalty: 5 penalty units.

- (6A) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

---

**54 Section 120N amended**

(1) Section 120N

*omit*

A banned

*insert*

(1) A banned

(2) Before section 120N(1), note

*insert*

Maximum penalty: 20 penalty units.

(3) After section 120N(1)

*insert*

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

**55 Section 120P amended**

After section 120P(3)

*insert*

Maximum penalty: 20 penalty units.

(3A) An offence against subsection (3) is an offence of strict liability.

**56 Section 120T amended**

(1) Section 120T

*omit*

An excluded

*insert*

(1) An excluded

(2) After section 120T(1)

*insert*

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

(3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

#### **57 Section 120U amended**

After section 120U(3)

*insert*

Maximum penalty: 50 penalty units.

(3A) An offence against subsection (3) is an offence of strict liability.

#### **58 Section 120Y amended**

(1) Section 120Y(1), at the end

*insert*

Maximum penalty: 100 penalty units.

(2) Section 120Y(2), at the end

*insert*

Maximum penalty: 50 penalty units.

#### **59 Section 121 amended**

(1) Section 121(1), (2) and (3)

*omit*

shall

*insert*

must

(2) Section 121(1) and (1A)(a)

*omit*

his

*insert*

his or her

- (3) Section 121(1) and (1A)(a)

*omit*

intoxicated

*insert*

drunk

- (4) After section 121(1)

*insert*

- (1AA) A licensee or an employee of a licensee must not contravene subsection (1) in relation to the licensee's licensed premises.

Maximum penalty: 100 penalty units.

- (1AB) An offence against subsection (1AA) is an offence of strict liability.

- (1AC) It is a defence to a prosecution for an offence against subsection (1AA) if the defendant establishes a reasonable excuse.

- (5) Section 121(1A)(b)(ii)

*omit*

his opinion

*insert*

the opinion of the licensee or employee

- (6) After section 121(2)

*insert*

Maximum penalty: 20 penalty units.

- (2A) An offence against subsection (2) is an offence of strict liability.

---

**60 Section 121A amended**

- (1) Section 121A, heading

*omit*

**after request to leave etc.**

*insert*

**after being excluded or removed from licensed premises**

- (2) Section 121A

*omit*

If

*insert*

- (1) If

- (3) After section 121A(1)

*insert*

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**61 Sections 122A and 123 replaced**

Sections 122A and 123

*repeal, insert*

**122A Duplicate licences, special licences and permits**

- (1) The Commission may issue a duplicate licence, special licence or permit to its holder if the Commission is satisfied the licence, special licence or permit has been destroyed, lost or stolen.
- (2) The Commission may do so only on application of the holder of the licence, special licence or permit that is accompanied by a fee of:
- (a) \$2; or
- (b) if another amount is prescribed by regulation – that amount.

---

**123 Return of licence, special licence or permit to Director**

- (1) If the Commission cancels or suspends a licence, or revokes a special licence or permit, its holder must return it to the Director as directed by the Commission.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) If the suspension of a licence is revoked, the Director must return it to its holder.

**62 Sections 124 to 124AA replaced**

Sections 124 to 124AA

*repeal, insert*

**124 Limitation of power to take disciplinary action or action relating to an offence**

- (1) The Commission cannot take disciplinary action against a licensee for a contravention of this Act if:
- (a) an infringement notice for an offence against this Act in relation to that contravention has been issued to the licensee; or
  - (b) proceedings for an offence against this Act in relation to that contravention have commenced in a court.
- (2) Subsection (1) does not apply if:
- (a) the infringement notice has been withdrawn; or
  - (b) the proceedings have been discontinued.
- (3) If the Commission has taken disciplinary action against a licensee for a contravention of this Act:
- (a) an infringement notice for an offence against this Act constituted by that contravention must not be issued to the licensee; and
  - (b) proceedings for an offence against this Act constituted by that contravention must not commence or continue in a court.

---

**63 Section 124B amended**

Section 124B

*omit*

intoxicated

*insert*

drunk

**64 Section 125A inserted**

After section 125

*insert*

**125A Guidelines**

- (1) The Commission may, with the Minister's approval, make guidelines in relation to the operation and administration of this Act.
- (2) Without limiting subsection (1), the guidelines may relate to any of the following matters:
  - (a) the provision of assistance to licensees, persons who may apply for a licence or special licence and members of the public;
  - (b) complaints and disciplinary actions against licensees;
  - (c) determining whether a person is drunk for this Act.
- (3) The Commission must publish the guidelines in a way decided by the Commission.

**65 Part XVII inserted**

At the end of the Act

*insert*

**Part XVII Transitional matters for Alcohol Reform  
(Liquor Legislation Amendment) Bill 2011****143 Definition**

In this Part:

**amending Act** means the *Alcohol Reform (Liquor Legislation Amendment) Act 2011*.

#### 144 Application of new Part VII

Part VII as inserted by the amending Act does not apply to a matter that forms the ground for a complaint or disciplinary action arising before the commencement of this section.

#### 145 Savings – guidelines

- (1) The guidelines in force under section 67 immediately before the commencement of this section continue as if they were guidelines made and published under section 125A.
- (2) The date on which the guidelines were published under section 67 is taken to be the date of their publication under 125A.

### Part 3 Amendment of Liquor Regulations

#### 66 Regulations amended

This Part amends the *Liquor Regulations*.

#### 67 Regulation 3 amended

Regulation 3, definition *infringement offence*, after "31A(6),"

*insert*

75(1),

#### 68 Regulation 5A replaced

Regulation 5A

*repeal, insert*

#### 5A Prescribed licences for section 31A of Act

Section 31A of the Act applies to the sale of liquor to an individual under a licence that is subject to a condition under section 31 of the Act that allows the licensee to sell liquor for consumption away from the licensee's licensed premises.