

NORTHERN TERRITORY OF AUSTRALIA

LIQUOR AMENDMENT ACT 2004

Act No. 14 of 2004

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 14 of 2004

AN ACT

to amend the *Liquor Act*

[Assented to 15 March 2004]

[Second reading 26 November 2003]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Liquor Amendment Act 2004*.

2. Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Liquor Act* is in this Act referred to as the Principal Act.

4. Long title

The long title of the Principal Act is amended by omitting all the words after "regulation" and substituting "of the sale, provision, promotion and consumption of liquor, and for related purposes".

5. Repeal and substitution

Section 3 of the Principal Act is repealed and the following substituted:

"3. Objects

"(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor –

- (a) so as to minimise the harm associated with the consumption of liquor; and
- (b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

"(2) The further objects of this Act are –

- (a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;
- (b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and
- (c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.

"(3) When the Commission exercises a power or performs a function under this Act, the Commission must have regard to the objects of this Act and must exercise the power and perform the function in a way that is consistent with those objects."

6. Interpretation

Section 4 of the Principal Act is amended –

- (a) by omitting from subsection (1) the definition of "licence fee"; and
- (b) by inserting after the definition of "liquor" in subsection (1) the following:

" 'material alteration' means an alteration to licensed premises which –

- (a) increases or decreases the area used for the sale of liquor or the sale and consumption of liquor;
- (b) involves structural alteration;
- (c) alters access to or egress from the premises; or
- (d) alters the external appearance or facilities;"

7. New section

The Principal Act is amended by inserting after section 5 in Part I the following:

"6. Public interest criteria in respect of licence or licensed premises

- "(1) When the Commission has regard to the objects of this Act in –
- (a) considering or determining an application under this Act in respect of a licence or licensed premises; or
 - (b) determining the conditions of a licence,

the Commission must, when taking into account the public interest in the sale, provision, promotion and consumption of liquor, consider any of the criteria specified in subsection (2) that are relevant to the application or conditions.

- "(2) For subsection (1), the criteria are the following:
- (a) harm or ill-health caused to people, or a group of people, by the consumption of liquor is to be minimised;
 - (b) liquor is to be sold, or sold and consumed, on licensed premises in a responsible manner;
 - (c) public order and safety must not to be jeopardised, particularly where circumstances or events are expected to attract large numbers of persons to licensed premises or an area adjacent to those premises;
 - (d) the safety, health and welfare of persons who use licensed premises must not be put at risk;
 - (e) noise emanations from licensed premises must not be excessive;
 - (f) business conducted at licensed premises must not cause undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the neighbourhood of the premises or who are making their way to or from, or using the services of, a place of public worship, hospital or school;
 - (g) a licensee must comply with provisions of this Act and any other law in force in the Territory which regulate in any manner the sale or consumption of liquor or the location, construction or facilities of licensed premises, including –
 - (i) by-laws made under the *Local Government Act*; and

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- (ii) provisions of or under the *Planning Act*;
 - (h) each person involved in the business conducted at licensed premises must receive suitable training relevant to the person's role in the conduct of the business;
 - (i) the use of credit in the sale of liquor must be controlled;
 - (j) practices which encourage irresponsible drinking must be prohibited;
 - (k) it may be necessary or desirable to limit any of the following:
 - (i) the kinds of liquor that may be sold;
 - (ii) the manner in which liquor may be sold;
 - (iii) the containers, or number or types of containers, in which liquor may be sold;
 - (iv) the days on which and the times at which liquor may be sold;
 - (l) it may be necessary or desirable to prohibit persons or limit the number of persons who may be on licensed premises, on any particular part of licensed premises or in an adjacent area subject to the control of the licensee;
 - (m) it may be necessary or desirable to prohibit or limit the entertainment, or the kind of entertainment, which may be provided on licensed premises or in an adjacent area under the control of the licensee;
 - (n) it may be necessary or desirable to prohibit or limit promotional activities in which drinks are offered free or at reduced prices.
- "(3) Also, the Commission must consider –
- (a) any other matter the Commission believes is relevant to the public interest in the sale, provision, promotion and consumption of liquor in respect of the application or conditions under consideration; and
 - (b) any information or matter contained in an application, or otherwise provided or raised by the applicant, which is relevant to the public interest in the sale, provision, promotion and consumption of liquor."

8. New section

The Principal Act is amended by inserting before section 24 in Part III, Division 1 the following:

"23A. Meaning of 'associate'

"(1) For this Division, the following persons are associates of a person ('the person'):

- (a) the person's spouse or de facto partner;
- (b) a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person;
- (c) a partner of the person;
- (d) a body corporate of which the person is an executive officer;
- (e) if the person is a body corporate – an executive officer of the body corporate;
- (f) a person who, in the previous year, has provided to the person advice for fee or reward in relation to the sale of liquor;
- (g) an employee or employer of the person;
- (h) an officer or employee of a body corporate of which the person is an officer or employee;
- (i) an employee of a natural person of whom the person is an employee;
- (j) a body corporate whose executive officers are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a body corporate, of the executive officers of that body corporate;
- (k) a body corporate in accordance with the directions, instructions or wishes of which, or of the executive officers of which, the person is accustomed or under an obligation, whether formal or informal, to act;
- (l) a body corporate in which the person holds a controlling interest;
- (m) if the person is a body corporate – a person who holds a controlling interest in the body corporate;

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- (n) a person who is named in an affidavit made by the person under section 26A;
- (o) a person who, because of this subsection, is an associate of any other person who is an associate of the person.

"(2) For subsection (1)(l) and (m), a person is taken to hold a controlling interest in a body corporate if that person, alone or together with one or more associates of that person, is in a position to control at least 15% of the voting power in the body corporate or holds interests in at least 15% of the issued shares in the body corporate."

9. Application for licence

Section 26 of the Principal Act is amended –

- (a) by omitting from subsection (1) "prescribed" and substituting "affidavit made under section 26A and the prescribed"; and
- (b) by adding at the end the following:

"(3) The applicant for a licence must demonstrate in the application that the grant of the licence will be in the public interest –

- (a) by providing information about any relevant criteria referred to in section 6(2); and
- (b) by specifying any other matter relevant to the public interest in the sale, provision, promotion and consumption of liquor."

10. Repeal and substitution

Section 26A of the Principal Act is repealed and the following substituted:

"26A. Disclosure of influential persons or potential beneficiaries

"(1) An applicant for a licence must make an affidavit disclosing whether certain persons may be able to influence the applicant, or expect a benefit from the applicant, if the licence is granted.

"(2) If the applicant is a body corporate, the affidavit must be made by –

- (a) the principal executive officer of the body corporate; or
- (b) if that officer does not have knowledge of the relevant facts – another person who has knowledge of the relevant facts and is authorised by the body corporate to make the affidavit.

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"(3) The affidavit must be in a form approved by the Commission and, subject to subsection (6), must disclose the following matters:

- (a) subject to subsection (4), whether or not there is any person who will by any lease, agreement or arrangement be able to influence any decision made by the applicant in relation to the sale of liquor or the sale and consumption of liquor;
- (b) subject to subsection (5), whether or not there is any person other than the applicant who by any lease, agreement or arrangement may expect any benefit from the applicant in relation to the sale of liquor or the sale and consumption of liquor;
- (c) if a person disclosed under paragraph (a) or (b) is a natural person – the person's full name, address and date of birth;
- (d) if a person disclosed under paragraph (a) or (b) is a body corporate other than a club – the name of the body corporate and the full name, address and date of birth of the secretary and each executive officer of the body corporate;
- (e) if a person disclosed under paragraph (a) or (b) is a club or other voluntary association of persons –
 - (i) the name of the club or voluntary association of persons;
 - (ii) the full name, address and date of birth of the secretary and each executive officer of the club or voluntary association of persons; and
 - (iii) details of the objectives (if any) of the club or voluntary association of persons and whether or not the club is a non-proprietary club or the voluntary association of persons conducts its business in the same way as a non-proprietary club;
- (f) full and correct particulars of any lease, agreement or arrangement disclosed under paragraph (a) or (b);
- (g) if the applicant is a body corporate other than a club – the names of all persons who have a substantial holding (within the meaning of section 9 of the Corporations Act 2001) in the body corporate.

"(4) If the applicant is a body corporate, subsection (3)(a) does not require disclosure of a person who is the secretary, an executive officer, a member or a shareholder of the body corporate carrying out the duties or exercising the normal rights of the person in that capacity.

"(5) Subsection (3)(b) does not require disclosure of a contract, agreement or other arrangement entered into for the purposes of this Act or the Regulations and approved by the Commission.

"(6) The affidavit need not disclose anything specified by the Regulations as not requiring disclosure."

11. Repeal and substitution

Section 28 of the Principal Act is repealed and the following substituted:

"28. Assessment of applications

"(1) The Commission must conduct or cause to be conducted the investigations it considers necessary to enable it to make a proper assessment of an application for a licence.

"(2) The Commission must consider an application for a licence, the accompanying affidavit made under section 26A and the results of investigations conducted in relation to the application and make an assessment of the following matters:

- (a) the suitability of the premises in respect of which the application is made, having regard to any law of the Territory which regulates in any manner the sale or consumption of liquor or the location, construction or facilities of premises which are used for that purpose;
- (b) if the applicant is a natural person – the financial stability, general reputation and character of the applicant;
- (c) if the applicant is a body corporate – the business reputation and financial stability of the body corporate and the general reputation and character of the secretary and executive officers of the body corporate;
- (d) if the applicant is a federation of clubs – the business reputation and financial stability of each constituent club and the general reputation and character of the secretary and executive officers of each constituent club;
- (e) whether the applicant is a fit and proper person to hold a licence;
- (f) if a person is referred to in the affidavit under section 26A – whether that person is a fit and proper person to be an associate of a licensee;

- (g) if the Commission considers it appropriate – whether any other associate of the applicant is a fit and proper person to be an associate of a licensee;
- (h) if the applicant has nominated a person under section 25(2) to be its manager – whether that person is a fit and proper person to be the manager.

"(3) In assessing whether an applicant is a fit and proper person to hold a licence, the Commission must have regard to any matters prescribed by the Regulations relevant to that assessment.

"(4) The Commission may require an applicant, a nominee manager of the applicant or an associate of the applicant to provide the Commission with the additional information or material that the Commission considers necessary to make a proper assessment of the application."

12. Repeal and substitution

Section 32 of the Principal Act is repealed and the following substituted:

"32. Objects etc. to be considered in determining conditions

"In determining the conditions of a licence, the Commission –

- (a) must have regard to the objects of this Act; and
- (b) may conduct or cause to be conducted any further investigations it considers necessary to enable it to make a proper determination.

"32A. Variation of conditions on application by licensee

"(1) A licensee may apply to the Commission in a form approved by the Commission for a variation of the conditions of the licence held by the licensee and may request that the Commission conduct a hearing in relation to the application.

"(2) If the Commission considers it to be in the public interest, the Commission may conduct a hearing in relation to the application whether or not the applicant has requested a hearing.

"(3) If the Commission decides to conduct a hearing, the Commission must require the applicant to cause notice of the application to be published –

- (a) in a newspaper or newspapers nominated by the Commission; and
- (b) within the period specified by the Commission.

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- "(4) The notice must –
- (a) include a description in sufficient detail to identify the location of the premises in respect of which the application is made;
 - (b) include a description of the nature of any business associated with the licence that is conducted on those premises;
 - (c) include details of the proposed variation of conditions;
 - (d) contain any other particulars determined by the Commission; and
 - (e) be not less than a size determined by the Commission.

- "(5) Where –
- (a) the application is with respect to premises which are located in a community government area; and
 - (b) the community government council for that community government area has the power to make by-laws with respect to liquor,

the Director must, as soon as reasonably practicable, inform the clerk of the community government council that the application has been made.

- "(6) Where –
- (a) the Commission does not require the applicant to give notice of the application; or
 - (a) the applicant has given notice as required and no objection to the application is lodged with the Director pursuant to section 47F or such an objection has been dismissed under Part IV,

the Commission must, as soon as reasonably practicable, consider the application.

"(7) After considering an application under subsection (6), the Commission must, having regard to the objects of this Act –

- (a) by notice to the applicant, vary the conditions of the licence; or
- (b) refuse to vary the conditions of the licence and direct the Director to forward to the applicant notice of the refusal together with a statement of the reasons for refusal.

"(8) Where a hearing is conducted in relation to an application, the Commission may, having regard to the objects of this Act –

- (a) vary or refuse to vary the conditions of the licence; and

(b) make any other order it thinks fit.

"(9) A variation of the conditions of a licence takes effect on the date specified by the Commission in a notice under subsection (7)(a) or an order under subsection (8).".

13. Repeal

Part III, Division 3 of the Principal Act is repealed.

14. Repeal and substitution

Section 46A of the Principal Act is repealed and the following substituted:

"46A. Substitution of premises

"(1) A licensee may apply to the Commission in a form approved by the Commission for the substitution of other premises ('new premises') for the premises specified in a licence held by the licensee.

"(2) The applicant must, within 28 days of lodging the application, cause notice of the application to be published in a newspaper or newspapers nominated by the Commission.

"(3) The notice must –

- (a) include a description in sufficient detail to identify the location of the proposed new premises;
- (b) include a description of the nature of any business associated with the licence that it is proposed to conduct on the proposed new premises;
- (c) contain any other particulars determined by the Commission; and
- (d) be not less than a size determined by the Commission.

"(4) Where –

- (a) the application is with respect to proposed new premises located in a community government area; and
- (b) the community government council for that community government area has the power to make by-laws with respect to liquor,

the Director must, as soon as reasonably practicable, inform the clerk of the community government council that the application has been made.

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"(5) Where –

- (a) no objection to the application is lodged with the Director pursuant to section 47F; or
- (b) such an objection has been dismissed under Part IV,

the Commission must, as soon as reasonably practicable, consider the application.

"(6) After considering the application, the Commission must, having regard to the objects of this Act –

- (a) approve the application and substitute the new premises in the licence held by the applicant;
- (b) refuse the application and direct the Director to forward notice of the refusal together with a statement of the reasons for refusal to the applicant; or
- (c) conduct a hearing in relation to the application.

"(7) After the Commission has conducted a hearing under Part IV or subsection (6)(c), the Commission must take action of a kind described in subsection (6)(a) or (b) in addition to any action it may take under Part IV."

15. Person may object to certain applications

Section 47F of the Principal Act is amended –

- (a) by omitting from subsection (1) all the words after "objection" and substituting the following:

"to the following applications:

- (a) an application for the grant of a licence, as notified under section 27;
- (b) an application for a variation of the conditions of a licence, as notified under section 32A;
- (c) an application for the substitution of other premises for the premises specified in a licence, as notified under section 46A;
- (d) an application for approval to make a material alteration to licensed premises, as notified under section 119.";

- (b) by omitting subsection (2) and substituting the following:

"(2) The objection may only be made on the ground that the grant of the licence, variation of conditions, substitution of other premises or material alteration may or will adversely affect –

- (a) the amenity of the neighbourhood where the premises the subject of the application are or will be located; or
- (b) health, education, public safety or social conditions in the community.";

- (c) by omitting subsection (3)(c), (d) and (e) and substituting the following:

- "(c) a member or employee of the Police Force acting in that capacity;
 - (d) a member or employee of the Fire and Rescue Service within the meaning of the *Fire and Emergency Act* acting in that capacity;
 - (e) an Agency or public authority that performs functions relating to public amenities, including health, education and public safety;"
- and

- (d) by omitting from subsection (4)(d) "27" and substituting "27, 32A, 46A or 119 (as applicable)".

16. Decision on whether objection to proceed to hearing

Section 47I of the Principal Act is amended by omitting subsection (3)(c)(i) and substituting the following:

- "(i) dismiss the objection if satisfied that the objection –
 - (A) is of a frivolous, irrelevant or malicious nature; or
 - (B) does not describe circumstances that may or will adversely affect the amenity of the neighbourhood or health, education, public safety or social conditions in the community; or"

17. Commission to conduct hearing in certain circumstances

Section 50 of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "his" and substituting "his or her";
- (b) by omitting from subsection (1)(b) "hearing; or" and substituting "hearing;"
- (c) by omitting from subsection (1)(c) "his" and substituting "his or her";

- (d) by adding at the end the following:
- "(d) a licensee requests a hearing after an application for a variation of the conditions of his or her licence has been refused without a hearing; or
 - "(e) a licensee requests a hearing after approval of a material alteration has been refused without a hearing."; and
- (e) by omitting from subsection (2) "may –" and substituting "may, having regard to the objects of this Act –".

18. Repeal and substitution

Section 96 of the Principal Act is repealed and the following substituted:

"96. Forfeiture

"(1) A thing seized under this Part and not released under section 100A is forfeited to the Territory if a person is found guilty of an offence in connection with which it was seized.

"(2) A thing seized under this Part and not released under section 100A is forfeited to the Territory if –

- (a) the owner of the thing is charged with an offence in connection with which it was seized;
- (b) the owner fails to appear before the court at the trial in relation to that charge, a warrant to apprehend the owner is issued and the trial adjourned; and
- (c) the owner is not brought before the court within 30 days of the issue of the warrant to apprehend.

"(3) A thing seized under this Part and not released under section 100A is forfeited to the Territory if –

- (a) a person other than the owner of the thing is charged with an offence in connection with which it was seized;
- (a) the person fails to appear before the court at the trial in relation to that charge; and
- (b) a warrant to apprehend the person is issued.

"(4) A forfeiture under this section is in addition to and not part of a penalty imposed under this Part."

19. Licensee to keep record of liquor purchases

Section 111 of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(4) In this section –

'gross price' includes all duties, taxes, imposts and other charges, not being the cost of freight or packaging for freight, paid or payable for or in connection with liquor regardless of whether the duties, taxes, imposts or other charges are paid or payable together with or separately from the price paid or payable for liquor."

20. Approval of material alteration of licensed premises

Section 119 of the Principal Act is amended –

- (a) by omitting from subsection (1) "his" and substituting "his or her"; and
- (b) by omitting subsections (3), (4), (5) and (6) and substituting the following:

"(3) The Commission may require the applicant to cause a notice of the application to be published –

- (a) in a newspaper or newspapers nominated by the Commission; and
- (b) within the period specified by the Commission.

"(4) The notice must –

- (a) include a description in sufficient detail to identify the location of the premises in respect of which the application is made;
- (b) include a description of the nature of any business associated with the licence that is conducted on those premises;
- (c) include details of the material alteration;
- (d) contain any other particulars determined by the Commission; and
- (e) be not less than a size determined by the Commission.

"(5) Where –

- (a) the application is with respect to premises which are located in a community government area; and
- (b) the community government council for that community government area has the power to make by-laws with respect to liquor,

the Director must, as soon as reasonably practicable, inform the clerk of the community government council that the application has been made.

"(6) Where –

- (a) the Commission does not require the applicant to give notice of the application; or
- (b) the applicant has given notice as required and no objection to the application is lodged with the Director pursuant to section 47F or such an objection has been dismissed under Part IV,

the Commission must, as soon as reasonably practicable, consider the application.

"(7) After considering the application, the Commission must, having regard to the objects of this Act –

- (a) approve the material alteration;
- (b) refuse to approve the material alteration and direct the Director to forward notice of the refusal together with a statement of the reasons for refusal to the applicant; or
- (c) conduct a hearing in relation to the application.

"(8) After the Commission has conducted a hearing under Part IV or subsection (7)(c), the Commission must take action of a kind described in subsection (7)(a) or (b) in addition to any action it may take under Part IV.

"(9) The Commission may conduct or cause to be conducted the investigations it considers necessary in relation to the application.

"(10) Where the Commission grants approval of a material alteration, the licensee must not, while the alteration is being made, conduct business on the licensed premises except in accordance with arrangements approved by the Commission."

21. Regulations

Section 128 of the Principal Act is amended –

- (a) by omitting from subsection (2)(a) "premises; and" and substituting "premises;";
- (b) by omitting from subsection (2)(d) "performance; and" and substituting "performance;"; and

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(c) by adding at the end the following:

"(f) categories of licences and the conditions to which those licenses may be subject; and

"(g) fees to be charged in relation to applications or permits referred to in or under this Act."

22. Repeal

The Schedule to the Principal Act is repealed.

23. Further amendments

The Principal Act is amended as set out in Schedule 1.

24. Transitional provisions

The transitional provisions set out in Schedule 2 have effect.

SCHEDULE 1

Section 23

Provision	Amendment	
	omit	substitute
Section 29(2)	shall –	must, having regard to the objects of this Act –
Section 31(1)	The	Subject to the Regulations, the
Section 31(2)	may determine	may, subject to the Regulations, determine
Section 31(2)(c)	subject to the Regulations,	
Section 41(2)	25	25, 26A
Section 43	consideration –	consideration, having regard to the objects of this Act –
Section 44	72.	72 or on the ground that the cancellation is in the public interest.
Section 47E(3)	the whole subsection	
Section 81(1)	shall –	must, having regard to the objects of this Act –
Section 122(1)(b)	preceeding	preceding
Section 124AA(1)	119(1) or (6)	119(1) or (10)

SCHEDULE 2
TRANSITIONAL PROVISIONS

Section 24

1. Definitions

In this Schedule –

"amended Principal Act" means the Principal Act as in force on the commencement date;

"commencement date" means the date on which this Act comes into operation;

"former Principal Act" means the Principal Act as in force immediately before the commencement date.

2. Application for licence

If a person has applied under section 26 of the former Principal Act for a licence and the relevant procedures specified in section 29 of that Act are not completed before the commencement date, the former Principal Act continues to apply in relation to the application as if this Act had not come into operation.

3. Application for transfer

If a person has applied under section 41 of the former Principal Act for the transfer of a licence and the relevant procedures specified in sections 43 and 44 of that Act are not completed before the commencement date, the former Principal Act continues to apply in relation to the application as if this Act had not come into operation.

4. Application for approval of substitution of premises

If a person has applied under section 46A of the former Principal Act for the substitution of other premises for the premises specified in a licence and the Commission has not, before the commencement date, approved or refused to approve the application, section 46A of the former Principal Act continues to apply in relation to the application as if this Act had not come into operation.

5. Application for declaration of restricted area

If a person has applied under section 76 of the former Principal Act for a specified area of land to be declared a restricted area and the Commission has not, before the commencement date, taken an action under section 81 of that Act in

relation to the application, section 81 of the amended Principal Act applies in relation to the determination of the application.

6. Application for approval of material alteration

If a person has applied under section 119 of the former Principal Act for approval of a material alteration to licensed premises and the relevant procedures specified in that section are not completed before the commencement date, the former Principal Act continues to apply in relation to the application as if this Act had not come into operation.

7. Forfeiture

On and after the commencement date, section 96 of the amended Principal Act applies in relation to the forfeiture of a thing even if the seizure of the thing, or the charging of a person with an offence in connection with which it was seized, occurred before the commencement date.
