

NORTHERN TERRITORY OF AUSTRALIA

LIQUOR AMENDMENT ACT 1992

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No. 1 of 1992

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# NORTHERN TERRITORY OF AUSTRALIA

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## AN ACT

to amend the *Liquor Act*

[Assented to 13 March 1992]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. **SHORT TITLE**

This Act may be cited as the *Liquor Amendment Act 1992*.

2. **COMMENCEMENT**

This Act shall come into operation on a date to be 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. **NEW SECTION**

The Principal Act is amended by inserting, after section 26, the following:

"26A. **APPLICATION AFTER LICENCE CANCELLED**

"(1) Subsection (2) applies to a licensee the licence of which (other than a licence cancelled after its voluntary surrender) has been cancelled and, where the licensee was a body corporate, also applies to a person or body corporate who had shares or other financial interests in the body corporate or was an officer (within the meaning of the Corporations Law) of it.

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"(2) Except with the prior written consent of the Commission, no person to whom this subsection applies shall make an application under section 26(1) before the expiry of a period of 3 years commencing with the date on which the licence referred to in subsection (1) was cancelled.

"(3) Except with the prior written consent of the Commission, no person shall make an application under section 26(1) in respect of premises for which a licence has been cancelled, or in respect of other premises in close proximity to those premises, before the expiry of a period of 3 years commencing with the date on which the licence was cancelled."

### 5. CONDITIONS OF LICENCE

Section 31 of the Principal Act is amended by adding at the end the following:

"(4) It is a condition of all licences that a licensee -

- (a) shall not take any action that, in the opinion of the Commission, would induce the irresponsible or excessive consumption of liquor on licensed premises;
- (b) shall not publish or cause to be published, in any media, an advertisement which, in the opinion of the Commission, could be construed as inducing the irresponsible or excessive consumption of liquor on licensed premises; and
- (c) where a code of conduct or code of ethics or rules (by whatever name it is called) relating to the advertising of liquor is approved by the Commission and is accepted and promulgated by the Minister by notice in the *Gazette*, a licensee shall abide by that code or rules.

"(5) Notwithstanding subsection (4), a licence shall not be subject to a condition under paragraph (a) or (b) of subsection (4) until 14 days after the publication by the Commission of guidelines under section 67 relating to the expression of its opinion under those paragraphs .".

### 6. FEES FOR LICENCES

(1) Section 35 of the Principal Act is amended by inserting, after subsection (4B), the following:

"(4C) Notwithstanding anything to the contrary in Treasury Regulations, the Regulations may provide that licence fees, or part of any licence fees or licence fees

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calculated in a prescribed manner shall, where a trust account has been opened in the Trust Fund in accordance with the *Financial Administration and Audit Act* for the purpose of receiving those fees, be paid to that trust account."

(2) The decrease in the amount of certain licence fees payable effected by regulation 2 of Regulations 1992, No. 4 (*Gazette* S12 of 28 February 1992) shall, in respect of the licence period commencing 1 April 1992, be calculated on the cost into store of liquor containing 3% or less of ethyl alcohol by volume brought into store during March 1992.

### 7. DECISION ON CONSIDERATION OF OBJECTION OR COMPLAINT

Section 49(4)(a) of the Principal Act is amended by inserting, after "licence", the words "or vary the type of licence".

### 8. COMMISSION'S POWER TO SUSPEND LICENCE

Section 66 of the Principal Act is amended by adding at the end the following:

"(6) The Commission shall, by notice in writing, suspend the licence of a licensee where it is required to do so under section 124(2A).

"(7) The suspension of a licence under subsection (6) shall have effect from the date on which the licensee receives the notice referred to in that subsection."

### 9. CANCELLATION OF LICENCE

Section 72 of the Principal Act is amended -

(a) by omitting from subsection (5) all words after "where it is" and substituting the following:

"satisfied that -

- (a) licensed premises in respect of which the licence was granted have not been used for the sale or supply of liquor for a period of 90 days;
- (b) subject to the payment of compensation, the presence of the licensed premises in respect of which the licence was granted no longer meets the needs or wishes of the community; or
- (c) a licensee is not a fit and proper person to hold a licence."; and

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(b) by adding at the end the following:

"(8) The Commission shall, by order, cancel the licence of a licensee where it has thought fit to do so under section 124(2A).

"(9) The cancellation of a licence under subsection (8) shall have effect on the day specified in the order."

10. LICENSEE OR EMPLOYEE NOT TO PERMIT MINORS TO ENTER, &C., LICENSED PREMISES

Section 106B of the Principal Act is amended -

(a) by omitting "he reasonably believes that" (twice occurring); and

(b) by omitting subsection (2).

11. NEW SECTION

The Principal Act is amended by inserting, after section 106B, the following:

"106BA. MISREPRESENTATION OF AGE BY MINOR

"A person who has not attained the age of 18 years and who, for the purpose of entering or remaining on licensed premises in respect of which that person would not otherwise be entitled to enter or remain, misrepresents the age of the person -

(a) by spoken statements made by the person or another person;

(b) by presenting a form of written identification which purports to relate to the person presenting it but which in fact is fictitious or relates to some other person; or

(c) by presenting a form of written identification which is false in a material particular,

is guilty of an offence."

12. REPEAL AND SUBSTITUTION

Section 122 of the Principal Act is repealed and the following substituted:

"122. PROHIBITION ORDERS

"(1) This section applies to -

(a) a person who, by the habitual or excessive use of liquor, wastes his means, injures or is likely to injure his health, causes or is likely

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to cause physical injury to himself or to others or endangers or interrupts the peace, welfare or happiness of his or another's family; or

- (b) a person who, on more than 3 occasions during the preceeding 6 months, has been taken into custody in accordance with Division 4 of Part VII of the *Police (Administration) Act*.

"(2) An order (a 'prohibition order') may be made in respect of a person to whom this section applies -

- (a) by a magistrate or Judge in relation to a matter before either of them; or
- (b) by a magistrate on application by the Registrar under this section.

"(3) A prohibition order -

- (a) shall remain in force for a period of 12 months commencing on the date of the order or such other period (shorter or longer) as may be specified in the order; and
- (b) forbids all persons to sell or supply liquor to the person named in the order, or to permit that person to be on or at premises in respect of which a licence is in force which permits consumption of liquor on or at those premises.

"(4) The magistrate or, as the case may be, Judge may also order that the person named in a prohibition order -

- (a) be referred to an appropriate body for physical and mental assessment and for a report back to the court; and
- (b) the person undertake (at the person's own expense if so ordered) a specified program of treatment and rehabilitation.

"(5) A person (including the person against whom a prohibition order is sought) may apply, on a form provided for the purpose, to the Registrar for a prohibition order in respect of a person to whom this section applies.

"(6) Where an application is made under subsection (5), the Registrar shall, as soon as is reasonably practicable -

- (a) where it is possible, inform the person against whom an order under this section is sought of the fact that the application has been made and

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give that person an opportunity to comment, in writing, on the substance of any allegations contained in the application;

- (b) conduct such investigations of the application as is thought appropriate; and
- (c) forward any comments received pursuant to paragraph (a), together with the results of any investigations pursuant to paragraph (b), to a magistrate.

"(7) Where the magistrate is of the opinion that further investigations are desirable, the magistrate may direct the Registrar to conduct such further investigations as the magistrate specifies and report back the results of the investigations.

"(8) The magistrate shall consider the application, the report or reports of the Registrar and any comments forwarded pursuant to subsection (6) and shall -

- (a) where the magistrate is of the opinion that the application is of a frivolous, irrelevant or malicious nature - reject the application; or
- (b) conduct a hearing in relation to the application.

"(9) A hearing under subsection (8)(b) shall be in private, but shall otherwise be conducted in such a manner as the magistrate thinks appropriate in a particular case.

"(10) After a hearing, the magistrate shall -

- (a) refuse the application; or
- (b) make a prohibition order.

"(11) The Registrar shall, in accordance with the directions of and manner specified by the Commission, advise licensees within an area specified by the Commission of the making of the prohibition order and of the person against whom it is made.

"(12) A person shall not sell or supply liquor to a person against whom an order under this section is in force or, without reasonable excuse, permit such a person to be on or at premises in respect of which a licence is in force which permits consumption of liquor on or at those premises.

"(13) A person against whom an order under this section is in force shall not obtain or attempt to obtain liquor or, without reasonable excuse, enter or remain on or at licensed premises of a description referred to in subsection (12)."



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13. OFFENCES, PENALTIES, &c.

Section 124 of the Principal Act is amended by inserting, after subsection (2), the following:

"(2A) The Commission shall, in relation to the conviction of a licensee for an offence against section 102, 105, 106B or 121 -

- (a) for the first offence, suspend the licence for 24 hours;
- (b) for a second offence of a similar nature to the first, suspend the licence for 7 days; and
- (c) for a third or subsequent offence of a similar nature to the first, suspend the licence for 28 days or, if it thinks fit, cancel it."

14. REGULATORY OFFENCES

Section 124AA of the Principal Act is amended -

- (a) by inserting in their appropriate numerical order "105" and "121(1)"; and
- (b) by adding at the end the following:

"(2) It is a defence to a prosecution for an offence referred to in subsection (1) if the defendant proves on the balance of probabilities that -

- (a) any contravention or failure to comply constituting the offence occurred in an emergency and was necessary to preserve life or prevent injury or to protect property;
- (b) any contravention or failure to comply constituting the offence was authorised by being in obedience to the order of a competent authority whom the defendant is bound by law to obey unless the order is manifestly unlawful (the determination of which is a matter of law); or
- (c) where the offence relates to section 106B, the defendant was shown an identification for the purposes of representing that the person who has not attained the age of 18 years had attained the age of 18 years, or that the person purporting to be a parent, guardian or spouse had attained the age of 18 years, and the defendant had no reasonable grounds for doubting the validity of the identification."

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15. REGULATIONS

Section 128(2) of the Principal Act is amended by omitting from paragraph (b) "public drunkenness." and substituting the following:

"public drunkenness;

- (c) prohibiting or regulating the quantities or kinds of liquor that may be sold at licensed premises, whether at all licensed premises or at specified licensed premises or at specified types of licensed premises;
- (d) providing for the Commission, in exercising its powers and performing its functions, to take into account any prescribed general policy directions relating to that exercise or performance; and
- (e) prohibiting or regulating the giving of credit for the purchase of liquor from licensed premises."

16. NEW SECTION

The Principal Act is amended by inserting, after section 128, the following:

"128A. ACQUISITIONS TO BE ON JUST TERMS

"Where the application of a provision of this Act or a regulation made under it would, but for this section, result in an acquisition of property otherwise than on just terms, the person from whom the property is acquired shall be entitled to receive just compensation for the acquisition, and a court of competent jurisdiction may determine the amount of the compensation or make such order as, in its opinion, is necessary to ensure that the acquisition is on just terms."

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