

NORTHERN TERRITORY OF AUSTRALIA

LIQUOR AMENDMENT ACT 1989

No. 67 of 1989

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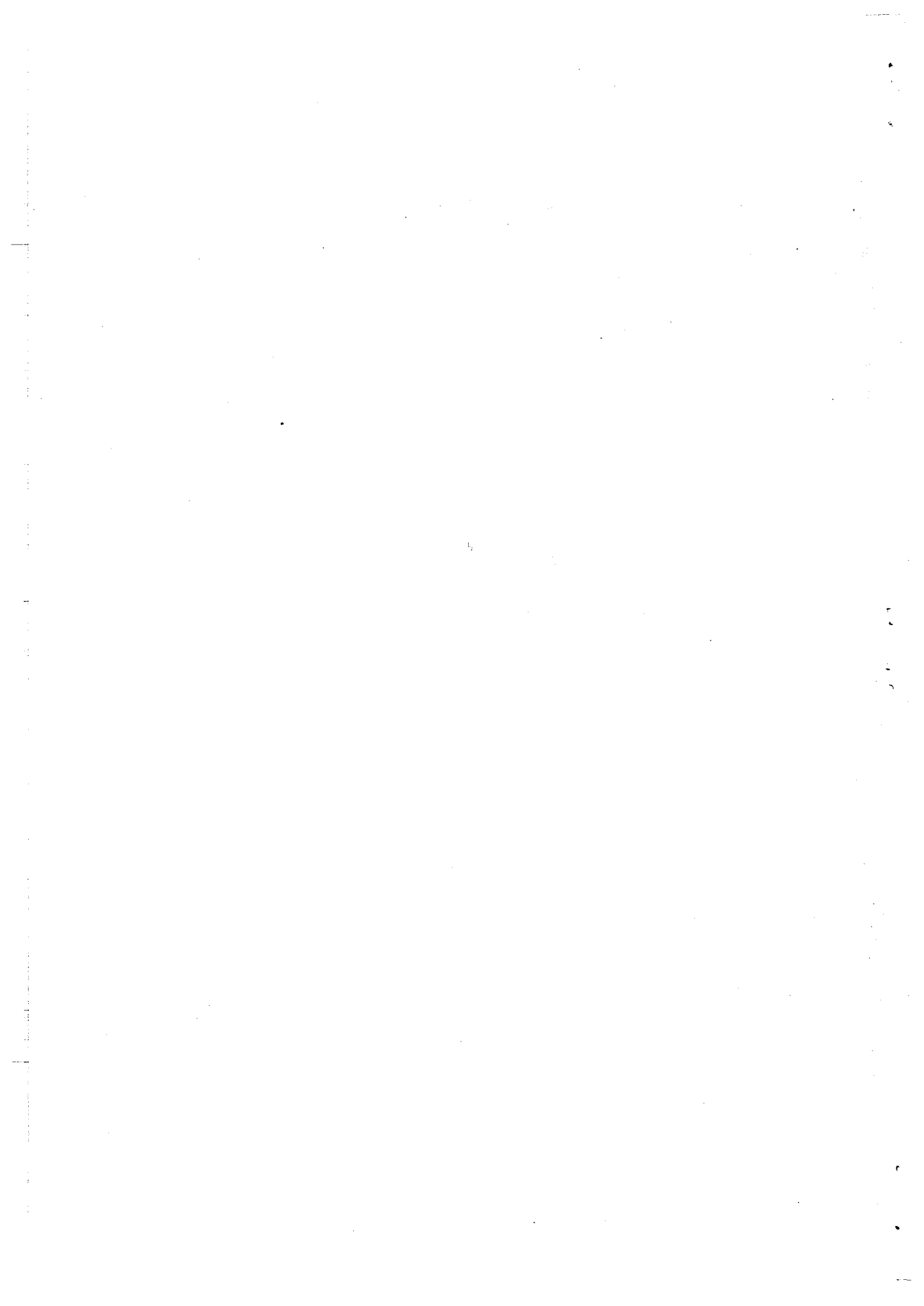
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NORTHERN TERRITORY OF AUSTRALIA

No. 67 of 1989

AN ACT

to amend the *Liquor Act*

[Assented to 16 November 1989]

BE 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 1989*.

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. DEFINITIONS

Section 4 of the Principal Act is amended -

- (a) by inserting after the definition of "licence" the following:

"'licence fee' means a licence fee payable under section 35 in respect of a licence;"; and

- (b) by omitting from the definition of "premises" the words "or vessel" and substituting ", vessel or vehicle".
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5. INSPECTOR'S POWERS

Section 19 of the Principal Act is amended -

- (a) by omitting from subsection (5)(e) "his name and address" and substituting "his name and address and date and place of birth"; and
- (b) by inserting after subsection (8) the following:

"(8A) In any proceedings in a court in respect of an offence against section 106, evidence that the person charged with the offence was required under section 19(5)(e) to provide evidence of his or her age and did not so provide, and has not subsequently provided, that evidence is prima facie evidence that the person, on the date when the requirement was made, had not attained the age of 18 years."

6. BODY CORPORATE AS LICENSEE

Section 25(2) of the Principal Act is amended by omitting "applies for a licence" and substituting "applies for a licence, other than under section 26(2) where the body corporate does not intend to carry on any business under the licence being applied for".

7. APPLICATION FOR LICENCE

Section 26 of the Principal Act is amended -

- (a) by omitting "An application" and substituting "(1) An application";
- (b) by omitting "by the Commission" and substituting "by the Commission and accompanied by the prescribed fee"; and
- (c) by adding at the end the following:

"(2) An application under subsection (1) may be made in respect of premises which are to be constructed or which are under construction and, in respect of such premises or proposed premises, by a person who does not intend to carry on any business under the licence being applied for."

8. NOTICE OF APPLICATION

Section 27(1) of the Principal Act is amended by omitting "in the Gazette and".

9. DECISION AFTER CONSIDERATION OF APPLICATION

Section 29 of the Principal Act is amended -

- (a) by omitting from subsection (2)(a) "upon payment of a fee of \$200,"; and

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(b) by adding at the end the following:

"(4) Where the Commission refuses an application for a licence under subsection (2)(b), the Commission may, if it thinks fit, refund the whole or any part of the prescribed fee paid to the Commission under section 26."

10. REPEAL AND SUBSTITUTION

Section 30 of the Principal Act is repealed and the following substituted:

"30. DURATION OF LICENCE

"A licence shall remain in force until -

- (a) surrendered under section 39;
- (b) suspended under section 66; or
- (c) cancelled under section 47(5) or 72."

11. CONDITIONS OF LICENCE

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

"(3) Without limiting the generality of subsection (1) or (2), the Commission may, in respect of an application for a licence in respect of premises or proposed premises referred in section 26(2), grant the licence subject to the condition that the sale of liquor on the premises is not permitted until the approval in writing to do so is obtained from the Commission or the licence is transferred under section 40."

12. FACTORS TO BE CONSIDERED IN DETERMINING CONDITIONS

Section 32(1) of the Principal Act is amended by omitting from paragraph (e) "the financial" and substituting "except where the Commission is satisfied that an applicant for a licence does not propose to conduct any business under the licence applied for, the financial".

13. REPEAL AND SUBSTITUTION

The heading of Division 3 of Part III of the Principal Act is repealed and the following substituted:

"Division 3 - Licence Fees".

14. REPEAL OF SECTION 34

Section 34 of the Principal Act is repealed.

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15. FEES FOR LICENCES

Section 35 of the Principal Act is amended -

- (a) by omitting from subsection (1) "the fee payable for the renewal of a licence" and substituting "the licence fee for a licence period";
- (b) by omitting from subsection (2) "the fee payable for the renewal of the licence" and substituting "the licence fee";
- (c) by omitting subsection (3) and substituting the following:

"(3) Where -

- (a) a licence is surrendered under section 39;
- (b) a licence is cancelled under section 47(5) or 72; or
- (c) licensed premises are abandoned by the licensee,

the licence fee which would have been payable by the licensee or former licensee if the event referred to in paragraph (a), (b) or (c) had not occurred shall be payable forthwith.";

(d) by omitting from subsection (3A) -

- (i) "to calculate the fee payable under this section" and substituting "to calculate the licence fee"; and
- (ii) "the fee payable under this section and" and substituting "the licence fee which";

(e) by omitting from subsection (4) "subsection 3(a), (b), (c) or (d)" and substituting "that subsection";

(f) by omitting subsection (4A) and substituting the following:

"(4A) A licence fee shall be calculated by reference to the licence period immediately preceding that to which the fee relates and shall be paid not later than 28 days after the commencement of that period.";

(g) by omitting from subsection (5) the definition of "cost into store" and substituting the following:

"'cost into store' means the gross price of all liquor purchased or procured during a licence period for disposal under the licence, not being liquor sold to -

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- (a) any other licensee for the purposes of disposal pursuant to the licence of that other licensee;
 - (b) a person permitted under a law of a State or another Territory of the Commonwealth to sell liquor; or
 - (c) a consular representative or Trade Commissioner in Australia of another country if the consular representative or Commissioner is a citizen of that country and is not otherwise engaged in a business occupation or profession;"; and
- (h) by inserting in subsection (5) after the definition of "gross price" the following:

"'licence period' means each period commencing on the first day of January, April, July and October and ending on the last day of March, June, September and December, respectively, in each year."

16. REPEAL AND SUBSTITUTION

Sections 36, 37 and 38 are repealed and the following substituted:

"36. PENALTY FEE

"(1) A licensee who fails or neglects to pay a licence fee or to lodge a return as and when required by or under this Act is liable to pay a penalty fee of 10% of the amount of the licence fee payable or the sum of \$200, whichever is the greater.

"(2) The Commission may, if it thinks fit, remit the whole or part of a penalty fee payable under subsection (1).

"37. RECOVERY OF FEES AND PENALTIES

"A licence fee and any other fee or penalty payable under this Act which is not paid in accordance with this Act is a debt due and payable to the Commission recoverable in a court of competent jurisdiction."

17. REPEAL OF SECTION 42

Section 42 of the Principal Act is repealed.

18. OBJECTIONS AND COMPLAINTS

Section 48 of the Principal Act is amended -

- (a) by omitting from subsection (1) "or renewal";

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(b) by inserting after subsection (1) the following:

"(1A) An objection to an application for the grant of a licence under subsection (1) shall not be made if the ground or substance of the objection is that the grant of the licence may or will adversely affect the business carried on at any other licensed premises.";

(c) by omitting from subsection (2) "the business of a licensee" and substituting "the business of a licensee, or that a licensee is not a fit and proper person to hold a licence";

(d) by omitting from subsection (3)(b) "was made" and substituting "was made; and";

(e) by omitting from subsection (3)(c) "the Registrar; and" and substituting "the Registrar.";

(f) by omitting subsection (3)(d); and

(g) by omitting from subsection (4) all words after "of the notice" and substituting "or the last of the notices referred to in section 27.".

19. NEW SECTION

The Principal Act is amended by inserting after section 48 the following:

"48A. POWER TO SUSPEND LICENCE OR IMPOSE OR VARY CONDITIONS

"(1) The Commission may, on its own motion in an emergency or pending the investigation of a complaint under section 48, but subject to subsection (2), suspend a licence, or impose or vary a condition of a licence, where in its opinion it is in the public interest to do so.

"(2) Without derogating from the Commission's powers elsewhere given in this Act, action of the Commission taken under subsection (1) has no effect after the expiration of 7 days after the action is taken.".

20. DECISION ON CONSIDERATION OF OBJECTION OR COMPLAINT

Section 49 of the Principal Act is amended -

(a) by omitting from subsection (2)(a) all words after "malicious nature" and substituting ", dismiss the objection or complaint and direct the Registrar to inform the person by whom the objection or complaint was made that the objection or complaint has been dismissed.";

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- (b) by omitting subsection (3);
- (c) by omitting from subsection (4) "conducts a hearing" and substituting "conducts a hearing in relation to a complaint"; and
- (d) by omitting subsection (4)(c) and substituting the following:
 - "(c) defer further consideration of the complaint for such period and subject to such conditions, including that an application for the transfer of the licence be lodged, as the Commission thinks fit."

21. PROCEDURE AT HEARING

Section 51 of the Principal Act is amended by omitting subsection (2A) and substituting the following:

"(2A) Notwithstanding anything to the contrary in the *Racing, Gaming and Liquor Commission Act*, at a hearing under this Act the Commission may be constituted by -

- (a) one member (whether or not the Chairman); or
- (b) 3 members,

selected by the Chairman, and, where the Chairman is not one of the 3 members referred to in paragraph (b), the member nominated by the Chairman shall preside at the hearing."

22. APPLICATION OF CERTAIN PROVISIONS TO SPECIAL LICENCES

Section 64 of the Principal Act is amended by omitting "111" and substituting "106, 111".

23. CANCELLATION OF LICENCE

Section 72 of the Principal Act is amended by adding at the end the following:

"(5) In addition to subsection (1), and notwithstanding anything in this Act which may be construed as qualifying or limiting the power of the Commission to cancel a licence, the Commission, after conducting a hearing, may, by order, cancel a licence where it is satisfied that a licensee is not a fit and proper person to hold a licence.

"(6) For the purposes of subsection (5), and without limiting the generality of that subsection, a licensee is not a fit and proper person to hold a licence where -

- (a) the licensee is convicted of an offence relating to the possession or supply of a drug for which offence, on conviction, a sentence of imprison-

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ment may be imposed (whether or not a sentence of imprisonment is imposed); or

- (b) subject to subsection (7), in a period of 12 months not less than 3 persons are convicted of offences committed on the licensed premises to which the licence relates relating to the possession or supply of a drug and the licensee fails to satisfy the Commission that all reasonable steps were taken by the licensee to prevent those offences from taking place.

"(7) Where, as a result of the assistance of, or the providing of information by, a licensee or an employee of a licensee, a person is convicted of an offence relating to the possession or supply of a drug which offence was committed on the licensed premises to which the licence relates, that conviction shall not be taken into account for the purposes of subsection (6)(b)."

24. LIQUOR NOT TO BE BROUGHT INTO, &c., RESTRICTED AREA

Section 75 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) In any proceeding for an offence against this section, a certificate, purporting to be signed by a person who claims in the certificate to be the Registrar or a Deputy Registrar, stating that a place was or was not, at a specified time, within a restricted area is evidence of the facts stated."

25. REPEAL AND SUBSTITUTION

Section 106 of the Principal Act is repealed and the following substituted:

"106. MINORS ON LICENSED PREMISES

"(1) A person who has not attained the age of 18 years shall not enter or remain on licensed premises or parts of licensed premises declared by the Commission for the purpose of this subsection.

"(2) A person who has not attained the age of 18 years shall not enter or remain on licensed premises or parts of the licensed premises declared by the Commission for the purpose of this subsection unless that person is in the company of his or her parent, guardian or spouse (who has attained the age of 18 years).

"(3) The Commission may by notice in writing declare licensed premises or parts of licensed premises for the purposes of subsection (1) or (2).

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"(4) Where the Commission makes a declaration under subsection (3), it shall serve on the licensee of the licensed premises to which the declaration relates a copy of the declaration.

"(5) A licensee, on being served with a copy of a declaration under subsection (4), shall cause to be posted and to be kept posted at each entrance of the licensed premises or part of the licensed premises, as the case may be, to which the declaration relates, and at such other places on the licensed premises as the Commission may require, a notice in a form approved by the Commission.

"(6) In any proceeding for an offence against subsection (1) or (2), a certificate, purporting to be signed by a person who claims in the certificate to be the Registrar or a Deputy Registrar, stating that licensed premises or a part of licensed premises was or was not, at a specified time, declared for the purposes of subsection (1) or (2) is evidence of the facts stated."

26. SUPPLY OF LIQUOR TO MINORS

Section 106A of the Principal Act is amended by omitting from subsections (2) and (3) "subsection (1)" and substituting "subsection (1) and section 106(2)".

27. REPEAL AND SUBSTITUTION

Section 114 of the Principal Act is repealed and the following substituted:

"114. WHOLESALERS TO LODGE RETURNS

"A person, firm or body corporate registered under section 113A shall, within 28 days after the last day of March, June, September and December of each year, lodge with the Registrar a return, in a form approved by the Commission, showing details of all purchases and sales of liquor made by the person, firm or body corporate in the 3 months preceding the last day of that March, June, September or December, as the case requires."

28. TRANSITIONAL

(1) A licence in force immediately before the commencement of this Act shall, on and from that commencement, continue to be subject to the provisions of Division 3 of Part III of the Principal Act and the Regulations as in force immediately before that commencement as if this Act had not come into operation until such time as the licence would, but for that commencement, have expired.

(2) A fee for the renewal of a licence referred to in subsection (1) which, but for the commencement of this Act in respect of the provisions of the Principal Act referred to in that subsection, would be payable for the

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renewal of the license shall, if not paid before that commencement, remain due and payable by the licensee to the Commission and is recoverable by the Commission in a court of competent jurisdiction.
