

TASMANIA

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**LIQUOR LICENSING AMENDMENT BILL 2008**

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# **LIQUOR LICENSING AMENDMENT BILL 2008**

*(Brought in by the Premier, the Honourable Paul Anthony Lennon)*

## **A BILL FOR**

**An Act to amend the *Liquor Licensing Act 1990* and the *Annulled Convictions Act 2003***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Liquor Licensing Amendment Act 2008*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

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Part 2 – Liquor Licensing Act 1990 Amended

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**PART 2 – LIQUOR LICENSING ACT 1990 AMENDED**

**3. Principal Act**

In this Part, the *Liquor Licensing Act 1990*\* is referred to as the Principal Act.

**4. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “authorized officer” and substituting the following definition:

**“authorized officer”** – see section 209;

- (b) by inserting the following definition after the definition of “Commissioner”:

**“false document”** includes a document that –

- (a) has been forged; or
- (b) has been fraudulently altered; or
- (c) belongs to a person other than the person in possession of it;

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- (c) by omitting the definition of “contravene”;
- (d) by omitting “Tasmania;” from the definition of “Tasmanian wine” and substituting “Tasmania.”.

**5. Section 8 substituted**

Section 8 of the Principal Act is repealed and the following section is substituted:

**8. On-licence**

An on-licence authorizes –

- (a) the sale of liquor between 5 a.m. and midnight on any day on the premises specified in the licence for consumption on those premises; and
- (b) the sale of liquor at any time to –
  - (i) a resident of the premises specified in the licence for consumption on those premises; or
  - (ii) a resident of any premises of which the premises specified in the licence form a part for consumption on those premises.

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**6. Section 22 amended (Qualifications for liquor licence)**

Section 22 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

- (1) A person is qualified to be granted a liquor licence if –
  - (a) he or she is a natural person who has attained the age of 18 years; and
  - (b) the Commissioner is satisfied that the person is a fit and proper person to be a licensee; and
  - (c) the Commissioner is satisfied that the person will be able to exercise effective control over the service, and any consumption, of liquor on the premises for which the licence is sought; and
  - (d) the person has successfully completed a course or traineeship approved by the Commissioner relating to the service of liquor or has satisfied the Commissioner that the person has the necessary knowledge, experience and competency.
- (1A) However, a person is not qualified to be granted a liquor licence if the Commissioner reasonably suspects or



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believes that any associate of the person who is a natural person and likely to have any influence over the management of the business to be carried on under licence is not a fit and proper person to be an associate of a licensee.

**7. Section 23 amended (Application for liquor licence)**

Section 23 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “and information about any associates” after “premises”;
- (b) by omitting from subsection (5) “, excluding documentation provided under subsection (1)(ab)”.

**8. Section 24 amended (Consideration of application for liquor licence)**

Section 24 of the Principal Act is amended by inserting after subsection (1) the following subsections:

- (1A) The Commissioner may make such inquiries regarding an application for a liquor licence as the Commissioner considers necessary or expedient for a proper consideration of the application.

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(1B) Without limiting the generality of subsections (1) and (1A), the Commissioner may –

(a) forward a copy of an application for a liquor licence to the Commissioner of Police; and

(b) request the Commissioner of Police to provide a report as to whether, in the opinion of the Commissioner of Police –

(i) the applicant is a fit and proper person to be a licensee; and

(ii) any associate of the applicant who is a natural person and likely to have any influence over the management of the business to be carried on under the licence is a fit and proper person to be an associate of a licensee.

**9. Section 33 amended (Consideration of application for liquor permit)**

Section 33 of the Principal Act is amended by inserting after subsection (3) the following subsection:

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- (3A) The Commissioner may make such inquiries regarding an application for a liquor permit as the Commissioner considers necessary or expedient for a proper consideration of the application.

**10. Section 40 amended (Cancellation or variation of out-of-hours permit)**

Section 40 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or vary” after “cancel”;
- (b) by inserting the following subsection after subsection (1):
- (1A) The Commissioner may also cancel or vary an out-of-hours permit if satisfied that the holder of the permit has failed to comply with its conditions.
- (c) by inserting in subsection (2) “or variation” after “The cancellation”;
- (d) by inserting in subsection (2) “or variation” after “the cancellation”;
- (e) by inserting in subsection (3) “or variation” after “of cancellation”;
- (f) by inserting in subsection (3) “or variation” after “the cancellation”.

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**11. Section 41 amended (Powers of Commissioner to suspend licence)**

Section 41 of the Principal Act is amended by omitting subsection (2A) and substituting the following subsection:

(2A) The Commissioner, by written notice served on the licensee, may suspend a liquor licence for such period not exceeding 3 months as the Commissioner considers appropriate if reasonably satisfied that –

- (a) the licensee is not, or is no longer, a fit and proper person to be a licensee; or
- (b) an associate of the licensee who is a natural person with any influence in the management of the business carried on under the licence is not, or is no longer, a fit and proper person to be an associate of a licensee.

**12. Section 42 amended (Cancellation and suspension of licence)**

Section 42(1) of the Principal Act is amended by omitting paragraph (1) and substituting the following paragraphs:

- (1) the licensee is not, or is no longer, a fit and proper person to be a licensee; or

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- (m) an associate of the licensee who is a natural person with any influence in the management of the business carried on under the licence is not, or is no longer, a fit and proper person to be an associate of a licensee.

**13. Sections 44 and 45 inserted**

After section 43 of the Principal Act, the following sections are inserted in Division 4:

**44. Variation of special licences by application**

- (1) The Commissioner may vary the conditions of a special licence on the application of the licensee.
- (2) The application must be –
  - (a) made on a form approved or provided for the purpose by the Commissioner; and
  - (b) accompanied by any prescribed application fee.
- (3) The Commissioner may require the applicant to supply any further information that the Commissioner considers necessary for a proper consideration of the application.
- (4) After considering the application, the Commissioner is to –

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- (a) approve or refuse the variation;  
and
  - (b) inform the applicant accordingly.
- (5) In the case of a refusal, the Commissioner is also to inform the applicant of the applicant's right to appeal to the Board against the Commissioner's decision.

**45. Variation of special licences by Commissioner**

- (1) The Commissioner, by written notice served on the licensee, may vary the conditions of a special licence on the Commissioner's own motion.
- (2) However, the Commissioner –
  - (a) is not to effect the variation without first consulting the licensee and obtaining the written consent of the Board; and
  - (b) is to ensure that the licensee is given at least 14 days' notice of the variation unless satisfied that, because of special circumstances, the variation should be effected more urgently.
- (3) The notice under subsection (1) is to inform the licensee of the licensee's right to appeal to the Board against the Commissioner's decision.

**14. Section 46A substituted**

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

**46A. Licensee to ensure responsible service of liquor**

- (1) A licensee must not allow a person to serve liquor on the licensed premises unless the person –
  - (a) has successfully completed an approved course; or
  - (b) has been an employee of the licensee for, in aggregate, less than 3 months and is –
    - (i) undertaking an approved course; or
    - (ii) formally enrolled in an approved course that is scheduled to start within 3 months from the day on which the person is permitted to serve the liquor.
- (2) To demonstrate compliance with subsection (1), a licensee must –
  - (a) keep such records on the licensed premises as the Commissioner, by written notice served on the

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licensee, may from time to time require; and

- (b) produce all or any those records to the Commissioner or an authorized officer on demand.
- (3) The Commissioner may exempt the holder of a special licence from the requirements of this section if satisfied that it is not against the public interest to do so.
- (4) In this section –

**“approved course”** means a course of instruction or training in the service of liquor, approved by the Commissioner;

**“employee”** includes a person engaged under a contract for services.

**15. Sections 48 and 49 inserted**

After section 47 of the Principal Act, the following sections are inserted in Division 5:

**48. Licensee to notify Commissioner of alteration to designated area**

A licensee must –

- (a) give the Commissioner written notice at least 30 days before



altering the boundaries of an area designated under section 84(1) or (2); and

- (b) give the Commissioner such information about the proposed alteration as the Commissioner may require.

**49. Licensee to comply with licensing conditions**

The holder of a liquor licence must comply with the conditions of that licence.

**16. Sections 51 and 52 repealed**

Sections 51 and 52 of the Principal Act are repealed.

**17. Section 54 substituted**

Section 54 of the Principal Act is repealed and the following section is substituted:

**54. Licence to be displayed**

A licensee must display the licensee's liquor licence in a conspicuous position on the licensed premises.

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**18. Sections 57, 58 and 59 repealed**

Sections 57, 58 and 59 of the Principal Act are repealed.

**19. Section 60 amended (Licensee to display notice prohibiting or restricting entry of young people)**

Section 60 of the Principal Act is amended by omitting “in any part” and substituting “at each entrance to any part”.

**20. Section 63 amended (Liquor not to be consumed on off-licensed premises)**

Section 63 of the Principal Act is amended by omitting “shall not permit” and substituting “must not allow”.

**21. Section 64 amended (Liquor not to be removed from on-licensed premises)**

Section 64 of the Principal Act is amended by omitting “shall not permit” and substituting “must not allow”.

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**22. Section 65 amended (Licensee to restrict people on certain licensed premises outside authorized hours)**

Section 65(1) of the Principal Act is amended by omitting “shall not permit” and substituting “must not allow”.

**23. Section 66 amended (Licensee to notify Commissioner of prolonged absence from licensed premises)**

Section 66(1) of the Principal Act is amended by omitting “7 days” and substituting “14 days”.

**24. Section 69 amended (False applications)**

The penalty under section 69 of the Principal Act is amended by omitting “10” and substituting “50”.

**25. Section 70 amended (Liquor not to be sold to young people)**

Section 70 of the Principal Act is amended as follows:

- (a) by omitting from the penalty under subsection (1) “10” and substituting “50”;
- (b) by omitting from the penalty under subsection (2) “20” and substituting “100”.

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**26. Section 71 amended (Liquor not to be supplied to young people on licensed premises, &c.)**

The penalty under section 71 of the Principal Act is amended by omitting “10” and substituting “50”.

**27. Section 72 amended (Young person not to enter, &c., certain parts of licensed premises, &c.)**

Section 72 of the Principal Act is amended as follows:

- (a) by omitting from the penalty under subsection (1) “10” and substituting “20”;
- (b) by omitting from the penalty under subsection (2) “10” and substituting “20”.

**28. Section 72A inserted**

After section 72 of the Principal Act, the following section is inserted in Division 6:

**72A. Young person not to produce false evidence of identity**

A person under the age of 18 years must not use a false document in order to do, or attempt to do, anything that a person under that age is prohibited from doing by or under this Act.

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Penalty: Fine not exceeding 10 penalty units.

**29. Section 74 amended (Young person not to be sent to obtain liquor)**

The penalty under section 74 of the Principal Act is amended by omitting “10” and substituting “50”.

**30. Section 75 amended (Young person not to be given possession or charge of liquor on licensed premises, &c.)**

The penalty under section 75(1) of the Principal Act is amended by omitting “10” and substituting “50”.

**31. Section 78 substituted**

Section 78 of the Principal Act is repealed and the following section is substituted:

**78. Liquor not to be sold to people appearing to be drunk**

- (1) A person must not sell liquor to a person who appears to be drunk.

Penalty: Fine not exceeding 50 penalty units.

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- (2) A licensee is guilty of an offence if a person authorized by the licensee to sell liquor on the licensed premises sells liquor to a person who appears to be drunk.

Penalty: Fine not exceeding 100 penalty units.

**32. Section 79 amended (Liquor not to be supplied on licensed premises, &c., to people appearing to be drunk)**

The penalty under section 79 of the Principal Act is amended by omitting “10” and substituting “50”.

**33. Section 79A amended (Licensee to prevent offences on licensed premises)**

The penalty under section 79A of the Principal Act is amended by omitting “10” and substituting “100”.

**34. Section 80 amended (Person to leave licensed premises when requested to do so, &c.)**

Section 80 of the Principal Act is amended as follows:

- (a) by omitting from the penalty under subsection (1) “10” and substituting “50”;

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(b) by omitting from the penalty under subsection (2) “10” and substituting “50”.

**35. Section 80A amended (Person to leave special permit premises when required to do so, &c.)**

The penalty under section 80A(1) of the Principal Act is amended by omitting “10” and substituting “50”.

**36. Section 81 amended (Special permits to be displayed)**

The penalty under section 81 of the Principal Act is amended by omitting “10” and substituting “50”.

**37. Section 82 amended (Authorized officer not to be hindered, &c.)**

The penalty under section 82 of the Principal Act is amended by omitting “10” and substituting “100”.

**38. Section 83 amended (Name, address and date of birth to be given to police if lawfully requested)**

The penalty under section 83 of the Principal Act is amended by omitting “10” and substituting “50”.

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**39. Section 86 amended (Powers of authorized officer)**

Section 86(5)(b) of the Principal Act is amended by omitting “performing his or her functions under this Part” and substituting “exercising or performing his or her powers or duties under this Act”.

**40. Section 92A inserted**

After section 92 of the Principal Act, the following section is inserted in Division 7:

**92A. Power to seize false identity documents**

- (1) This section applies if –
  - (a) a person produces a document to a responsible entity in evidence of the person’s age or identity for the purposes of this Act; and
  - (b) the responsible entity reasonably suspects that the document is a false document.
- (2) The responsible entity may seize the document.
- (3) If the responsible entity seizes the document and he or she is not a police officer, he or she must –
  - (a) give the document to a police officer within 72 hours after the time of seizure together with a



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written notice specifying at least the following:

- (i) the time and date of seizure;
  - (ii) the place of seizure;
  - (iii) the nature of the reasonable suspicion that prompted the seizure;
  - (iv) the responsible entity's name and address; and
- (b) give any police officer such information concerning the seizure of the document as the police officer may require.

Penalty: Fine not exceeding 10 penalty units.

- (4) The following provisions apply to the seized document:
- (a) a police officer may dispose of it in such manner as the Commissioner of Police thinks fit if the police officer is satisfied that it is a false document;
  - (b) a police officer may return it to the person from whom it was seized if, after making enquiries, the police officer is satisfied that

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it is in fact the authentic property of that person;

- (c) a police officer may return it to a person other than the person from whom it was seized if, after making enquiries, the police officer is satisfied that it is the authentic property of that other person and that the other person is not responsible for any fraudulent use made, or attempted to be made, of the document.

(5) In this section –

**“responsible entity”** means –

- (a) a licensee; or
- (b) an employee of a licensee whose duties as such employee include the sale or service of liquor; or
- (c) a crowd controller, within the meaning of the *Security and Investigations Agents Act 2002*, performing crowd control duties for or on behalf of a licensee; or
- (d) a police officer.

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**41. Section 206 amended (Licensing Board)**

Section 206 of the Principal Act is amended as follows:

- (a) by omitting subsection (3);
- (b) by omitting subsection (5).

**42. Sections 207, 208 and 209 substituted**

Sections 207, 208 and 209 of the Principal Act are repealed and the following sections are substituted:

**207. Commissioner for Licensing**

- (1) The Minister may appoint a State Service officer or State Service employee to be Commissioner for Licensing and that officer or employee holds that office in conjunction with State Service employment.
- (2) The Commissioner –
  - (a) has such powers and duties as are conferred on the Commissioner by this or any other Act; and
  - (b) may do all things necessary or convenient to be done for or in connection with the exercise and performance of those powers and duties.

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- (3) Without limiting the generality of subsection (2)(b), the Commissioner may carry out enquiries into persons who are associates or prospective associates of licensees.

**208. Delegation by Commissioner**

The Commissioner may delegate to another person any of the Commissioner's powers or duties under this Act other than –

- (a) this power of delegation; and
- (b) the Commissioner's powers under section 209.

**209. Authorized officers**

- (1) The Commissioner may appoint a State Service officer or State Service employee employed in the Department to be an authorized officer for the purposes of this Act and that officer or employee may hold that office in conjunction with State Service employment.
- (2) The Commissioner, with the consent of a Head of a State Service Agency other than the Department, may appoint a State Service officer or State Service employee employed in that Agency to be an authorized officer for the purposes of this Act and that officer or employee may hold that office in conjunction with State Service employment.

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- (3) The Commissioner may authorise a person who is not a State Service officer or State Service employee to exercise the powers or perform the duties of an authorized officer for the purposes of this Act.
- (4) An appointment or authorisation under this section may be –
  - (a) unrestricted; or
  - (b) restricted in such ways, whether as to the range of powers and duties that may be exercised and performed or otherwise, as are specified in the instrument of appointment or authorisation.
- (5) Any power or duty that may be exercised or performed under this Act by an authorized officer may be exercised or performed by the Commissioner.

**43. Section 211 amended (Right to appeal to Board)**

Section 211 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (d) “or variation” after “cancellation”;
- (b) by omitting paragraph (e) and substituting the following paragraph:

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- (e) the suspension or cancellation of a liquor licence, or the variation of a special licence;

**44. Section 223 inserted**

After section 222A of the Principal Act, the following section is inserted in Division 3:

**223. Infringement notices**

- (1) A police officer may issue and serve an adult with an infringement notice if the police officer considers that the adult has committed a prescribed offence.
- (2) An infringement notice is –
  - (a) to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
  - (b) not to relate to more than 3 prescribed offences.
- (3) For the purposes of section 14(a)(ii) of the *Monetary Penalties Enforcement Act 2005*, the prescribed penalty for a prescribed offence is not to exceed –
  - (a) the penalty specified in this Act for that offence; or
  - (b) 25 penalty units –whichever is lower.

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(4) Any payments in respect of an infringement notice are payable into the Consolidated Fund.

(5) In this section –

“**adult**” means a natural person who has attained the age of 18 years;

“**prescribed**” means prescribed by regulations under this Act.

**45. Section 227 repealed**

Section 227 of the Principal Act is repealed.

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Part 3 – Annulled Convictions Act 2003 Amended

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**PART 3 – ANNULLED CONVICTIONS ACT 2003  
AMENDED**

**46. Principal Act**

In this Part, the *Annulled Convictions Act 2003*\* is referred to as the Principal Act.

**47. Schedule 1 amended (Non-exempt applications)**

Schedule 1 to the Principal Act is amended by inserting after item 5 in Part 8 the following item:

6. Liquor licence or liquor permit of any kind under the *Liquor Licensing Act 1990*.

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\*No. 46 of 2003