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**LIQUOR AND ACCOMMODATION AMENDMENT  
(MISCELLANEOUS) ACT 1994**

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**No. 73 of 1994**

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(MISCELLANEOUS) ACT 1994**

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**No. 73 of 1994**

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**AN ACT to amend the *Liquor and Accommodation Act 1990***

**[Royal Assent 25 November 1994]**

**B**E 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:—

**Short title**

**1**—This Act may be cited as the *Liquor and Accommodation Amendment (Miscellaneous) Act 1994*.

### Commencement

2—This Act commences on the day on which it receives the Royal Assent.

### Principal Act

3—In this Act, the *Liquor and Accommodation Act 1990\** is referred to as the Principal Act.

### Section 3 amended (Interpretation)

4—Section 3 of the Principal Act is amended as follows:—

(a) by inserting after the definition of “Commissioner” the following definition:—

“**contravene**” includes fail to comply with;

(b) by inserting after the definition of “liquor restriction order” the following definition:—

“**local wine**” means wine produced from fruit of which at least 85% was grown in Tasmania;

(c) by omitting “transport;” from paragraph (c) of the definition of “premises” and substituting “transport; and”;

(d) by inserting after paragraph (c) of the definition of “premises” the following paragraph:—

(d) a part of premises;

(e) by inserting after the definition of “records” the following definition:—

“**sell**” means sell by wholesale or retail and includes—

(a) offer, display or expose for sale; and

(b) keep or have in possession for sale;  
and

(c) barter or exchange; and

(d) deal in or agree to sell; and

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\* No. 44 of 1990. Amended by No. 46 of 1991, No. 81 of 1993 and Nos. 22, 60 and 68 of 1994.

- (e) supply, send, forward or deliver for sale or for or in expectation of receiving any payment or other consideration; and
- (f) authorize, direct, cause, attempt or permit any act referred to in paragraphs (a), (b), (c), (d) or (e);

### Section 30A inserted

5—After section 30 of the Principal Act, the following section is inserted in Division 2 of Part 2:—

#### Interim authority to act as licensee

30A—(1) In this section, “**absent licensee**” means a licensee who—

- (a) is unable or unwilling to continue exercising personal and effective control over the sale and consumption of liquor on the licensed premises for the remainder of the term of the licence; and
- (b) is not exercising such control over the sale and consumption of liquor on those licensed premises.

(2) A person may apply to the Commissioner for an authority to act as licensee of licensed premises if the holder of a general licence, on-licence, off-licence, club licence or special licence in respect of those licensed premises is an absent licensee.

(3) An application is to be—

- (a) in a form approved or provided by the Commissioner; and
- (b) accompanied by any prescribed application fee.

(4) The Commissioner may require an applicant to supply any further information that the Commissioner considers necessary for a proper consideration of the application.

- (5) On receipt of an application, the Commissioner—
- (a) may issue an authority to act as licensee to the applicant; or
  - (b) may refuse to issue such an authority to the applicant.
- (6) The Commissioner must not issue an authority to act as licensee to an applicant unless the Commissioner is satisfied that the applicant—
- (a) is a natural person who has attained the age of 21 years; and
  - (b) will be able to exercise personal and effective control over the sale and consumption of liquor on the premises in respect of which the authority is sought.
- (7) On determining whether or not to issue an authority to act as licensee to an applicant, the Commissioner must notify the applicant, in writing, of that determination.
- (8) The Commissioner may cancel an authority to act as licensee at any time.
- (9) An authority to act as licensee has effect for the period commencing on the day specified in it and ending on the earlier of the following days:—
- (a) the day the liquor licence held by the absent licensee in respect of the premises to which the authority relates is transferred;
  - (b) the day the authority is cancelled.
- (10) Except for the purposes of sections 27, 28, 29 and 30, during the term of an authority to act as licensee in respect of licensed premises—
- (a) the holder of the authority is taken to be the holder of the liquor licence relating to those premises; and
  - (b) any permit in force in respect of the licensed premises immediately before the issue of the authority continues in force and the holder of the authority is taken to be the holder of the permit; and

- (c) the person who, immediately before the issue of the authority, held that licence and any such permit is taken not to be the holder of that licence and any such permit.

(11) The holder of an authority to act as licensee must display the authority in a conspicuous position near the principal public entrance to the licensed premises.

#### **Section 42 amended (Cancellation and suspension of licence)**

6—Section 42 (1) (j) of the Principal Act is amended as follows:—

- (a) by omitting “observed—” from subparagraph (ii) and substituting “observed; or”;
- (b) by inserting after subparagraph (ii) the following subparagraph:—
- (iii) the club is not complying with liquor guidelines published under section 17—

#### **Section 44 amended (Licensee to keep records)**

7—Section 44 of the Principal Act is amended as follows:—

- (a) by inserting “or a prescribed special licence” in subsection (1) (a) after “off-licence”;
- (b) by inserting in subsection (1) (a) after subparagraph (iv) the following subparagraphs:—
- (v) the quantity of liquor made, purchased or otherwise obtained for sale on the premises specified in the licence; and
- (vi) the date on which it was bottled or otherwise placed in a container or purchased or otherwise obtained; and
- (vii) the price at which it was purchased or otherwise obtained; and
- (c) by inserting “or otherwise obtained” in subsection (1) (b) (iii) after “purchased”;

(d) by inserting after subsection (1) the following subsection:—

(1A) In subsection (1), “**prescribed special licence**” means a special licence—

(a) under which, in the opinion of the Commissioner, liquor is sold primarily or exclusively to other licensees for the purposes of reselling it on their licensed premises; or

(b) that authorizes the sale only of local wine on a part of premises where—

(i) fruit used to produce local wine is grown; or

(ii) local wine is produced.

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

8—Section 66 (1) (b) of the Principal Act is amended by omitting “absence.” and substituting “absence, being a person who is 21 years of age or older.”.

**Section 79A inserted**

9—After section 79 of the Principal Act, the following section is inserted:—

**Licensee to prevent offences on licensed premises**

79A—A licensee who knows or has reason to believe that an offence under this or any other Act is being, or is about to be, committed on the licensed premises must take reasonable action to prevent the commission of the offence.

Penalty: Fine not exceeding 10 penalty units.



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

**10**—Section 80 of the Principal Act is amended by inserting after subsection (2) the following subsection:—

(3) A police officer may—

- (a) arrest without warrant a person whom the police officer reasonably believes is committing, or has committed, an offence under subsection (1) or (2); and
- (b) use such reasonable force as may be necessary to remove from licensed premises a person whom the police officer reasonably believes is committing, or has committed, an offence under subsection (1) or (2).

**Section 80A inserted**

**11**—After section 80 of the Principal Act, the following section is inserted:—

**Person to leave special permit premises when required to do so, &c.**

80A—(1) A person who has been required under this Part to leave premises specified in a special permit—

- (a) must leave those premises when required to do so; and
- (b) must not re-enter or attempt to re-enter those premises during the period of 24 hours after the person so left those premises or was removed from those premises under subsection (2).

Penalty: Fine not exceeding 10 penalty units.

(2) A police officer may—

- (a) arrest without warrant a person whom the police officer reasonably believes is committing, or has committed, an offence under subsection (1); and
- (b) use such reasonable force as may be necessary to remove from premises specified in a special permit a person whom the police officer reasonably believes is committing, or has committed, an offence under subsection (1).

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

12—Section 82 of the Principal Act is amended by omitting “shall not” and substituting “must not, without reasonable excuse”.

**Part 2, Division 7: Division heading amended**

13—The heading to Division 7 of Part 2 of the Principal Act is amended by inserting “*and special permit*” after “*licensed*”.

**Sections 86 and 87 substituted and section 88 repealed**

14—Sections 86, 87 and 88 of the Principal Act are repealed and the following sections are substituted:—

**Powers of authorized officer**

86—(1) For the purposes of this Part, an authorized officer may require a person, by written notice served on the person, to provide the officer within the period specified in the notice with a statement containing such particulars relating to dealing with liquor as are specified in the notice.

(2) For the purposes of this Part, an authorized officer may, without warrant and with such assistants as he or she considers appropriate—

- (a) at any time during which liquor may be sold on premises specified in a special permit, enter and remain on those premises; and
- (b) at any reasonable time, enter and remain on licensed premises; and
- (c) at any reasonable time, enter and remain on any premises (other than any premises used as a residence) which the authorized officer has reason to suspect is being, or has been, used for the purpose of—
  - (i) carrying on the business of selling liquor; or
  - (ii) storing liquor or records or other documents in connection with the business of selling liquor.

(3) For the purposes of this Part, an authorized officer may, with the authority of a warrant issued under subsection (5) and with such assistants as he or she considers appropriate—

- (a) use such reasonable force as is necessary to enter and remain in any premises specified in subsection (2) at the relevant time so specified; or
- (b) using such reasonable force as is necessary, at any reasonable time enter and remain in any premises used as a residence.

(4) In any premises lawfully entered, an authorized officer may do any one or more of the following:—

- (a) inspect the premises;
- (b) search for, examine, take possession of, make copies of, take extracts from or secure against interference any records or other documents relating to the purchase, other obtaining, sale or other disposal of liquor;

- (c) search for, examine, take possession of or secure against interference any liquor that—
  - (i) appears to be relevant to the assessment of a fee payable under this Part; or
  - (ii) may be evidence of a contravention of this Part, a liquor licence, a liquor permit, a liquor restriction order or a condition of a liquor licence, liquor permit or liquor restriction order;
- (d) if it is necessary to do so, break open and search anything on the premises in which such records or other documents or liquor may be stored or concealed;
- (e) require any person on the premises to produce any such record or other document;
- (f) require a person on the premises to answer a question relevant to any of the following matters if the officer reasonably suspects that the person has the knowledge necessary to answer it:—
  - (i) the assessment of a licence fee under this Part;
  - (ii) the contravention of a liquor licence, liquor permit, liquor restriction order or condition of such a licence, permit or order;
- (g) seize anything which the authorized officer believes appears to indicate that an offence under this Act has been, or is being, committed;
- (h) require any person on the premises to provide his or her name and address.

(5) On the application of an authorized officer, a magistrate or justice may issue a warrant to the authorized officer named in the warrant authorizing the authorized officer to use such force as is reasonably necessary to enter and remain in any premises specified in subsection (2) or to enter and remain in any premises used as a residence, using such force as is necessary, if the magistrate or justice is satisfied that there are reasonable grounds for believing it necessary for the officer—

(a) to use such force to enter any premises specified in subsection (2); or

(b) to enter any premises used as a residence, using such reasonable force as is necessary, for the purpose of performing his or her functions under this Part.

(6) A warrant is to specify the premises in respect of which it is issued.

(7) If a record or other document is obtained by an authorized officer by the exercise of powers under this section, that record or other document, evidence of that record or other document or evidence of the obtaining of that record or other document is not admissible against any person in any civil or criminal proceedings, other than proceedings for an offence under this Act or in respect of a contravention of conditions to which a liquor licence or liquor permit is subject.

(8) A person is not required to answer a question under subsection (4) (f) if to do so would incriminate the person.

(9) Any information provided by a person in response to a question asked under subsection (4) (f) is not admissible against the person in any civil or criminal proceedings, other than proceedings for an offence under section 82 or in respect of a contravention of conditions to which a liquor licence or liquor permit is subject.

(10) Nothing done under this section in relation to a document or liquor prejudices a lien on that document or liquor.

**Possession of document or other thing by authorized officer**

87—(1) If an authorized officer has possession of any record, other document or other thing for the purposes of this Act, the authorized officer—

- (a) must, as soon as practicable, give a receipt to the apparent owner of that record, other document or other thing or the person who delivered it to the officer or from whose possession it was taken; and
- (b) may retain the record, other document or other thing for so long as is necessary for those purposes.

(2) If any person otherwise entitled to possession of a record or other document retained by an authorized officer so requests the Commissioner in writing, the Commissioner must provide to the person as soon as practicable a copy of the record or other document that the Commissioner has certified to be a true copy.

**Section 93 amended (Power to restrict entry to licensed or special permit premises)**

15—Section 93 of the Principal Act is amended by inserting after subsection (2) the following subsections:—

- (3) The holder of a special permit or a person acting with the authority of that holder may—
  - (a) prohibit the entry of any person onto the premises specified in the special permit; or
  - (b) require a person to leave such premises.

(4) Subsection (3) does not apply to a person authorized by law to be on the premises specified in the special permit without the consent of the holder of the special permit.

**Section 94 amended (Power of police to require people to leave licensed or special permit premises)**

**16—Section 94 of the Principal Act is amended as follows:—**

- (a) by inserting “or on premises specified in a special permit contrary to that permit” after “Part” in subsection (1) (a);
- (b) by inserting the following paragraph in subsection (1) after paragraph (b):—
  - (ba) whose entry onto premises specified in a special permit has been prohibited in accordance with this Part; or
- (c) by omitting “premises—” from subsection (1) (c) and substituting “premises; or”;
- (d) by inserting the following paragraph in subsection (1) after paragraph (c):—
  - (d) who has been required, in accordance with this Part, to leave premises specified in a special permit—
- (e) by inserting “or premises specified in a special permit” in subsection (2) (b) after “premises”.

**Section 98 amended (Licence fees)**

**17—Section 98 of the Principal Act is amended as follows:—**

- (a) by inserting in subsection (2) (b) “or no relevant liquor is sold under the licence” after “minimum fee” (first occurring);
- (b) by omitting “and (3)” from subsection (4) and substituting “, (3), (8) and (10)”;
- (c) by omitting paragraph (a) of subsection (4) and substituting the following paragraph:—
  - (a) in respect of a special licence under which, in the opinion of the Commissioner, liquor is sold primarily or exclusively to other licensees for the purposes of reselling it on their licensed premises or in respect of an off-licence—any liquor sold on the licensed premises specified in that special licence or off-licence during the relevant period, other than liquor sold to other licensees for such purposes; and

- (d) by inserting in paragraph (b) of subsection (4) “, other than liquor purchased or otherwise obtained for sale to other licensees for the purposes of reselling it on their licensed premises” after “licence” (second occurring);
- (e) by inserting after subsection (11) the following subsection:—

(12) A licence fee is not payable under this section in respect of a special licence that authorizes the sale only of local wine on a part of premises where—

- (a) fruit used to produce local wine is grown;  
or  
(b) local wine is produced.

#### **Section 209 amended (Authorized officer)**

18—Section 209 (2) of the Principal Act is amended by inserting “or as specified in the instrument of appointment” after “Act”.

#### **Section 218 amended (Evidentiary provisions)**

19—Section 218 of the Principal Act is amended by inserting after subsection (2) the following subsections:—

(3) In proceedings for an offence in relation to the sale of liquor, proof that liquor was supplied, sent, forwarded or delivered to a person is evidence of the sale of the liquor.

(4) In proceedings for an offence against section 5, proof that bottles, decanters, glasses or other vessels commonly used to contain liquor were found on premises where the offence is alleged to have been committed and had been used recently is evidence of the sale of liquor on those premises.



**Section 218A inserted**

**20**—After section 218 of the Principal Act, the following section is inserted:—

**Time and place at which sale of liquor by mail order,  
&c., occurs**

218A—For the purposes of this Act, if liquor is sold by a licensee on the basis of an order received by mail, telephone, facsimile transmission or other electronic process, the sale is taken to have occurred at the time at which, and at the licensed premises from which, the licensee dispatches the liquor.

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*[Second reading presentation speech made in:—  
House of Assembly on 29 September 1994  
Legislative Council on 11 October 1994]*

