



ANNO VICESIMO QUINTO

**ELIZABETHAE II REGINAE**

A.D. 1976

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**No. 75 of 1976**

An Act to amend the Licensing Act, 1967-1976.

[Assented to 2nd December, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Licensing Act Amendment Act (No. 2), 1976". Short title.

(2) The Licensing Act, 1967-1976, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Licensing Act, 1967-1976".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 4 of the principal Act is amended by inserting after the definition of "unlicensed person" in subsection (1) the following definition:— Amendment of principal Act, s. 4— Interpretation.

"wine" includes mead, cider, perry and any other fermented liquor derived from fruit or vegetables:.

4. Section 5 of the principal Act is amended by striking out subsections (2) to (14) (inclusive) and inserting in lieu thereof the following subsections:— Amendment of principal Act, s. 5— Constitution of Licensing Court.

(2) The court shall be constituted of the following members:—

(a) the Licensing Court Judge;

(b) the special magistrates designated by the Governor as members of the Licensing Court;

and

(c) the Licensing Court Magistrates appointed under this section.

(3) The Governor may appoint a legal practitioner of at least seven years' standing to be the Licensing Court Judge.

(4) The Judge shall be appointed to hold office until he attains the age of sixty-five years and shall not be removed from office except upon an address of both Houses of Parliament.

(5) The Judge shall be paid a salary at the same rate as that of a person (other than the Senior Judge) holding judicial office under the Local and District Criminal Courts Act, 1926-1975.

(6) The Governor may appoint a person holding, or entitled to hold, judicial office under the Local and District Criminal Courts Act, 1926-1975, to be an acting Judge of the Licensing Court, and a person so appointed may, in the absence of the Judge, exercise any power or function conferred on the Judge under this Act.

(7) The Governor may, by instrument in writing, designate any special magistrate as a member of the Licensing Court.

(8) The Governor may, subject to the Public Service Act, 1967-1975, appoint any suitable person to be a Licensing Court Magistrate.

(9) A Licensing Court Magistrate appointed in pursuance of this section shall hold office in accordance with the Public Service Act, 1967-1975.

(10) A member of the Licensing Court shall be entitled to such travelling and other allowances as may be approved by the Minister.

Repeal of  
s. 6 of  
principal Act  
and enactment  
of sections in  
its place—

Constitution  
of Licensing  
Court.

5. Section 6 of the principal Act is repealed and the following sections are enacted and inserted in its place:—

6. (1) Subject to this Act, and the rules of court, the jurisdiction of the Licensing Court is exercisable by—

(a) the full bench of the Court;

or

(b) the Judge or an Acting Judge of the court;

or

(c) any other member of the court.

(2) The full bench of the court is constituted of—

(a) the Judge or an Acting Judge of the court;

and

(b) two other members of the court.

(3) The following matters shall be heard and determined by the full bench of the court:—

(a) any matter referred for the consideration of the full bench by a single member of the court;

or

(b) any appeal from a magistrate sitting alone.

(4) If the members of the full bench of the court are divided in opinion as to the decision to be given on any question before them, the question shall be decided according to the opinion of the majority and the judgment or order shall conform with that opinion.

6a. (1) The clerk may, subject to the rules of court, exercise the jurisdiction of the court for the purposes of granting—

Power of clerk to exercise jurisdiction of the court.

- (a) certificates under section 65 of this Act;
- (b) permits under section 66 of this Act;
- (c) permits under sections 67 and 67a of this Act.

(2) Where in the course of exercising the jurisdiction of the court under this section the clerk forms the opinion that an application should be refused, he shall not proceed further with the matter, but shall refer it for hearing and determination by the Judge or a Licensing Court Magistrate.

(3) The clerk shall not exercise the jurisdiction of the court in relation to any application to which objection has been made.

6b. For the purpose of proceedings under this Act, the court is not bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

Court not bound by strict rules of evidence.

6c. The Judge may make rules of court—

Rules of court.

- (a) regulating the practice and procedure of the court;
- (b) prescribing any form for the purposes of this Act;
- and
- (c) providing for the payment of fees.

6. Section 7 of the principal Act is amended by striking out subsection (2).

Amendment of principal Act, s. 7—  
Disqualification in certain cases.

7. Section 9 of the principal Act is amended—

Amendment of principal Act, s. 9—  
Appeal to Supreme Court.

(a) by striking out subsection (1) and inserting in lieu thereof the following subsections:—

(1) A party to any proceedings before—

- (a) the full bench of the court;
- or

(b) the Judge or an Acting Judge of the Court,

may appeal to the Full Court of the Supreme Court against any direction, determination, order or decision made in those proceedings.

(1a) Unless the Full Court grants leave to appeal on a question of fact, or a question involving elements both of law and of fact, the appeal shall be confined to questions of law;

and

(b) by striking out from paragraph (d) of subsection (8) the passage “the Full Bench of”.

Amendment of  
principal Act,  
s. 10—  
Power to  
state case.

8. Section 10 of the principal Act is amended—

- (a) by striking out from subsection (1) the passage “Full Bench of the”;  
and  
(b) by striking out from subsection (4) the passage “Full Bench of the”.

Amendment of  
principal Act,  
s. 19—  
Publican's  
licence.

9. Section 19 of the principal Act is amended—

- (a) by striking out paragraphs (a) and (ab) of subsection (1) and inserting in lieu thereof the following paragraph:—  
(a) upon any day (not being a Sunday, Christmas Day or Good Friday) between the hours of five o'clock in the morning and twelve o'clock midnight; ;  
(b) by striking out paragraphs (c), (d) and (e) of subsection (1) and inserting in lieu thereof the following paragraph:—  
(c) upon any day at any time for consumption, in such parts of the licensed premises as are fixed by the court, with or ancillary to *bona fide* meals; ;  
(c) by striking out from paragraph (a) of subsection (1a) the passage “(a), (ab) or (b)” and inserting in lieu thereof the passage “(a) or (b)”;  
(d) by inserting the word “or” between paragraph (a) and paragraph (b) of subsection (1a) ;  
(e) by striking out from paragraph (b) of subsection (1a) the passage “(a), (ab) or (b)” and inserting in lieu thereof the passage “(a) or (b)”;  
(f) by striking out paragraph (c) of subsection (1a) and the word “or” immediately preceding that paragraph;  
(g) by striking out subsection (2);  
and  
(h) by striking out subsection (5) and inserting in lieu thereof the following subsection:—  
(5) The holder of a full publican's licence is obliged to keep his licensed premises open to the public for the sale of liquor on every day (except a Sunday, Christmas Day or Good Friday) between the hours of eleven o'clock in the morning and eight o'clock in the evening, and, if he fails to do so, he shall be guilty of an offence.

Repeal of  
s. 20 of  
principal Act  
and enactment  
of section in  
its place.

Limited  
publican's  
licence.

10. Section 20 of the principal Act is repealed and the following section is enacted and inserted in its place:—

20. (1) Every limited publican's licence shall authorize the licensee to sell or supply liquor at any time on any day in the premises specified in the licence—  
(a) to *bona fide* lodgers;  
or  
(b) for consumption with or ancillary to *bona fide* meals in a part, or parts, of the licensed premises fixed by the court.

(2) A limited publican's licence shall be granted only in respect of premises specifically constructed and used, or intended for use, primarily for the accommodation of travellers.

11. Section 23 of the principal Act is amended—

Amendment of  
principal Act,  
s. 23—  
Wine licence.

(a) by striking out subsection (3) and inserting in lieu thereof the following subsections:—

(3) Subject to subsection (3a) of this section, no new wine licence shall be granted.

(3a) Where the court is satisfied that the granting of a new wine licence in accordance with this subsection would promote the sale of wines of good quality produced in this State, it may grant a wine licence in respect of the premises of a genuine museum or art gallery situated in, or close to, an area of the State in which wine is produced.;

and

(b) by striking out subsection (7).

12. Section 25 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 25 of  
principal Act  
and enactment  
of section in  
its place—

25. (1) Subject to this section a distiller's storekeeper's licence shall authorize the licensee to sell or supply liquor at any time on any day (except Good Friday and Christmas Day) in the premises specified in the licence.

Distiller's  
storekeeper's  
licence.

(2) The aggregate quantity of liquor sold or supplied to any one person on any one occasion—

(a) where the liquor consists of wine or brandy, or wine and brandy—must be not less than two litres;

(b) where the liquor consists of spirits (other than brandy)—must be not less than four and one-half litres;

and

(c) in any other case—must be not less than nine litres.

(3) Subject to subsection (4) of this section liquor must not be sold or supplied for consumption on the licensed premises.

(4) The holder of a distiller's storekeeper's licence may, if so authorized by the licence, supply free of charge for consumption on any specified portion of the licensed premises liquor by way of sample.

(5) A distiller's storekeeper's licence shall be granted only to a person holding a distillation licence under the law of the Commonwealth.

(6) A person, while holding a distiller's storekeeper's licence, shall not be competent to hold a wholesale storekeeper's licence, a retail storekeeper's licence, or a wine licence.

Amendment of  
principal Act,  
s. 26—  
Vigneron's  
licence.

**13. Section 26 of the principal Act is amended—**

(a) by striking out subsection (1) and inserting in lieu thereof the following subsection:—

(1) Subject to this section, a vigneron's licence shall authorize the licensee to sell or supply wine or brandy at any time on any day (except Good Friday and Christmas Day).;

and

(b) by striking out subsection (5).

Amendment of  
principal Act,  
s. 27—  
Club licence.

**14. Section 27 of the principal Act is amended—**

(a) by striking out subsections (1), (1a), (1b), (1c), (1d) and (2) and inserting in lieu thereof the following subsections:—

(1) Subject to section 87 of this Act every club licence shall authorize the sale and supply of liquor by or on behalf of the club in the club premises to a member of the club or to a visitor in the presence of a member in accordance with the terms of the licence.

(2) Subject to subsection (2a) of this section, the hours during which the sale or supply of liquor is authorized by a club licence shall be such as the court specifies in the licence upon being satisfied by the club that those hours are appropriate to the needs of the club.

(2a) Where a club licence was in force before the commencement of the Licensing Act Amendment Act (No. 2), 1976, the hours during which the sale or supply of liquor is authorized by the licence shall, unless altered by the court in pursuance of this section, be such as were applicable to the licence immediately before the commencement of that amending Act.

(2b) No offence is committed by any person by reason only of the fact that—

(a) he consumes liquor on the licensed premises—

(i) within the hours fixed for the sale or supply of liquor in pursuance of the licence;

or

(ii) within thirty minutes thereafter;

or

(b) he takes liquor lawfully supplied for consumption outside the licensed premises, from the licensed premises—

(i) within the hours fixed for the sale or supply of liquor in pursuance of the licence;

or

(ii) within thirty minutes thereafter.;

(b) by striking out subsection (3) and inserting in lieu thereof the following subsection:—

(3) Without restricting the power of the court to impose conditions in respect of a club licence, but subject to subsection (4) of this section, the court may impose a condition upon the licensee requiring him to purchase all the liquor that he requires for the purposes of the club from a person holding a full publican's licence or a retail storekeeper's licence;

and

(c) by striking out from subsection (3a) the passage "paragraph (b) of".

15. Section 28 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of  
s. 28 of  
principal Act  
and  
enactment of  
section in  
its place—

28. (1) Every packet licence shall authorize the licensee to sell or supply liquor upon terms specified in the licence to passengers on the vessel in respect of which the licence was granted.

Packet licence.

(2) A certificate in force under section 68 of this Act immediately before the commencement of the Licensing Act Amendment Act (No. 2), 1976, shall be deemed to be a licence granted under this section and, subject to this Act, shall remain in force for the remainder of the term for which it was granted.

(3) The limitations and conditions affecting a packet licence or packet certificate immediately before the commencement of this Act shall continue in force, as if they were conditions of the licence, until varied or removed by the court.

16. Section 31 of the principal Act is amended—

Amendment of  
principal Act,  
s. 31—  
Restaurant  
licence.

(a) by striking out subsections (1) and (2) and inserting in lieu thereof the following subsection:—

(1) Every restaurant licence shall authorize the licensee to sell or supply liquor of any kind in the premises specified in the licence for consumption at any time on any day with or ancillary to *bona fide* meals;

and

(b) by striking out subsections (5), (5a), (5b), (6) and (7).

17. Section 41 of the principal Act is amended by inserting after subsection (4) the following subsection:—

Amendment of  
principal Act,  
s. 41—  
Conditions  
precedent to  
application.

(5) No person shall be entitled to apply for a twenty litre licence unless he has given prior notice of his application by advertisement in accordance with the directions of a member of the court.

Amendment of  
principal Act,  
s. 48—  
Objections to  
licences and  
renewals.

**18. Section 48 of the principal Act is amended—**

(a) by inserting after subparagraph (c) of paragraph (1) the following subparagraph:—

(ca) that—

(i) the quiet of the locality in which the premises are situated will be disturbed;

or

(ii) the owners or occupiers of premises in the locality will be adversely affected to an unreasonable extent,

if the application is granted;

and

(b) by striking out subparagraph (b) of paragraph (2).

Amendment of  
principal Act,  
s. 39—  
Proceedings on  
consideration of  
application.

**19. Section 59 of the principal Act is amended by striking out from subsection (2) the passage “and shall be dealt with by the Full Bench of the court”.**

Amendment of  
principal Act,  
s. 65—  
Booth  
certificate.

**20. Section 65 of the principal Act is amended—**

(a) by striking out from subsection (3) the passage “of a fee of two dollars for the first day and one dollar for every subsequent day for which the certificate is granted”;

and

(b) by inserting after subsection (6) the following subsections:—

(7) An application for a certificate under this section must be lodged, together with the fee prescribed by the rules of court, at least fourteen clear days before the day, or the first day of the period, for which it is sought.

(8) The court may, if it considers that the circumstances of a particular case justify it in so doing, determine an application for a certificate under this section, although the application has not been made in accordance with subsection (7) of this section.

Amendment of  
principal Act,  
s. 66—  
Permits.

**21. Section 66 of the principal Act is amended by striking out from subsection (19) the passage “A fee of three dollars shall be payable upon the issue of a special permit” and inserting in lieu thereof the passage “An application for a permit under this section must be accompanied by the fee prescribed by the rules of court”.**

Repeal of  
s. 68 of  
principal Act.

**22. Section 68 of the principal Act is repealed.**

Amendment of  
principal Act,  
s. 82—  
Power of  
company to  
hold licence.

**23. Section 82 of the principal Act is amended—**

(a) by striking out from subsection (1a) the passage “or in any State or Territory of the Commonwealth”;

(b) by striking out from subsection (1a) the word “subsection” and inserting in lieu thereof the word “section”;

and



(c) by striking out subsection (2), (2a), (3), (3a), (3b), (3c), (4) and (4a) and inserting in lieu thereof the following subsections:—

(2) A society registered under the Industrial and Provident Societies Act, 1923-1974, shall, for the purposes of this Act, be deemed to be, and at all times to have been, a company incorporated under the laws of this State.

(3) A licence shall not be granted to a company, and, subject to subsection (4) of this section, a licence held by a company is liable to forfeiture, unless—

(a) the person who manages, or is to manage, the premises to which the licence relates;

and

(b) every person who has a prescribed interest in the company,

has been approved by the court.

(4) An application for an approval under subsection (3) of this section must be accompanied by the fee prescribed by the rules of court.

(5) A licence is not liable to forfeiture by virtue of the fact that the licensed premises are managed by a person who has not been approved by the court for a period not exceeding fourteen days.

(6) Where a licence is liable to forfeiture under this section the court may, upon the application of the Superintendent of Licensed Premises, or of its own motion, declare the licence to be forfeited and the licence shall thereupon cease to have any force or effect.

(7) For the purposes of this section a person holds a prescribed interest in a company if—

(a) he is a director of the company;

or

(b) in the case of a company (being a proprietary company or an unlisted company) that holds, or is an applicant for, a licence of a prescribed class—he is a shareholder in the company.

(8) A person who is the manager of licensed premises on behalf of the company shall not be the manager of any other licensed premises.

(9) Where a company that holds a licence under this Act commits an offence against this Act—

(a) the manager of the licensed premises;

and

(b) each person who holds a prescribed interest in the company,

is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

(10) In this section—

“licence of a prescribed class” means a licence of any of the following classes:—

- (a) full publican’s licence;
- (b) limited publican’s licence;
- (c) retail storekeeper’s licence;
- (d) wine licence;
- (e) club licence;
- (f) restaurant licence;
- (g) cabaret licence;
- or
- (h) theatre licence:

“unlisted company” means a public company whose shares are not offered for sale on any stock exchange in Australia.

Amendment of  
principal Act,  
s. 118—  
Duty to display  
names, etc.

24. Section 118 of the principal Act is amended by striking out subsection (2).

Amendment of  
principal Act,  
s. 131—  
Entertainment  
permits.

25. Section 131 of the principal Act is amended—

(a) by striking out subsections (4) and (5) and inserting in lieu thereof the following subsection:—

(4) An application for a permit under this section must be accompanied by the fee prescribed by the rules of court;

and

(b) by striking out subsection (8) and inserting in lieu thereof the following subsection:—

(8) This section does not apply to public entertainment of a class declared by regulation to be a class of public entertainment excluded from the application of this section.

Amendment of  
principal Act,  
s. 153—  
Age limit for  
persons to be  
on licensed  
premises.

26. Section 153 of the principal Act is amended—

(a) by striking out from subsection (2a) the passage “against a licensee”;

(b) by inserting in paragraph (a) of subsection (2a) after the passage “sell or supply the liquor” the passage “to a person under the age of eighteen years”;

and

(c) by striking out subsection (3) and inserting in lieu thereof the following subsections:—

(3) Subject to subsection (4) of this section, any person under the age of eighteen years—

(a) who enters any prescribed bar-room in prescribed premises;

(b) who obtains or attempts to obtain any liquor from a person on licensed premises;

or

(c) who consumes liquor on licensed premises,  
shall be guilty of an offence.

(4) Paragraph (a) of subsection (3) of this section does not apply to—

(a) any excepted person;

or

(b) any person of a class exempted by regulation from the provisions of that paragraph.

27. Section 168 of the principal Act is repealed and the following section is enacted and inserted in its place:—

Repeal of s. 168 of principal Act and enactment of section in its place—

168. (1) Subject to this section, the holder of a full publican's licence or a limited publican's licence, if requested to provide lodging for any person, shall comply with that request.

Duty to supply food and lodging.

(2) Subject to this section, the holder of a full publican's licence, a limited publican's licence or a restaurant licence, if requested to supply a meal for any person shall comply with that request.

(3) A licensee is not required to supply a meal or lodging—

(a) to a person of bad reputation, or an intoxicated person;

(b) if he has reasonable cause to believe that the person is unable to pay, or will not pay, for any meal or lodging supplied;

(c) if at the time of the request the licensee has already entered into engagements or arrangements by reason of which his premises are, or will be, so occupied as to render it impracticable to comply with the request;

or

(d) if for any other reasonable cause, he is unable to comply with the request.

(4) The obligation imposed upon licensees to provide meals under this section is subject to the following qualifications:—

(a) a licensee is not obliged to supply any meal except between the hours of 8 a.m. and 9.30 a.m., 12 noon and 2 p.m. and 6 p.m. and 8 p.m.;

(b) the holder of a full publican's licence or a limited publican's licence is obliged to supply a meal between the hours of 8 a.m. and 9.30 a.m. only where requested to do so by a *bona fide* lodger;

(c) the holder of a restaurant licence is not obliged to supply any meal between the hours of 8 a.m. and 9.30 a.m.;

(d) the holder of a limited publican's licence or a restaurant licence is not obliged to supply any meal between the hours of 12 noon and 2 p.m.;

and

(e) the holder of a restaurant licence is not obliged to provide meals on any day to which an exemption granted under this section relates.

(5) Upon the application of the holder of a restaurant licence who satisfies the court that there is proper cause for the granting of an exemption under this subsection, the court may, subject to such conditions as it thinks fit, grant an exemption relieving him from the obligation to provide meals on any days, or over any periods, specified in the exemption.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. NICHOLLS, Governor