



**LIQUOR LICENSING (DISCIPLINARY ACTION) AMENDMENT ACT  
1996**

**No. 8 of 1996**

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**ELIZABETHAE II REGINAE**

A.D. 1996

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**No. 8 of 1996**

**An Act to amend the Liquor Licensing Act 1985.**

[Assented to 4 April 1996]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Liquor Licensing (Disciplinary Action) Amendment Act 1996*.

(2) The *Liquor Licensing Act 1985* is referred to in this Act as "the principal Act".

**Commencement**

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

**Amendment of s. 83—Rights of intervention**

3. Section 83 of the principal Act is amended by striking out from subsection (1)(a) "hold a licence" and substituting "be licensed or approved".

**Amendment of s. 106—Prohibition of profit sharing**

4. Section 106 of the principal Act is amended by inserting "as being a fit and proper person" in subsection (4)(c) after "licensing authority".

**Substitution of Part 8**

5. Part 8 of the principal Act is repealed and the following Part is substituted:

**PART 8  
DISCIPLINARY ACTION**

**Persons to whom Part applies**

124. This Part applies to—

- (a) a person who is or has been licensed or approved under this Act;
- (b) a person who has sold liquor without a licence;
- (c) a person who occupies or has occupied a position of authority in a licensed body corporate or a body corporate that has sold liquor without a licence;

- (d) a person who supervises or manages or has supervised or managed a business conducted in pursuance of a licence or a business in the course of which liquor has been sold without a licence;
- (e) a person who, as an unlicensed person, has acted contrary to section 106.

**Cause for disciplinary action**

**125. (1)** There is proper cause for disciplinary action against a person to whom this Part applies—

- (a) if any licensing or approval of the person under this Act has been improperly obtained;
- (b) in relation to a business that is being or has been conducted in pursuance of a licence—
  - (i) if liquor has been sold or supplied contrary to this Act or otherwise than in accordance with the authorisation conferred by the licence;
  - (ii) if there has been a breach of a condition of the licence;
  - (iii) if the licensed premises have been altered without the approval of the licensing authority;
  - (iv) if the licensed premises are or have been in disrepair or in an otherwise unsatisfactory condition;
  - (v) if the safety, health or welfare of persons resorting to the licensed premises is or has been endangered by neglect of the premises or neglect in the conduct, supervision or management of the business;
  - (vi) if a person has been convicted of unlawful gaming in respect of events occurring (wholly or partly) on the licensed premises;
  - (vii) if there has been a breach of an industrial award, enterprise agreement or industrial agreement;
  - (viii) if the business has otherwise not been properly conducted, supervised or managed in accordance with this or any other Act;
- (c) if the person is or has been licensed or approved under this Act but is not a fit and proper person;
- (d) if the person has been guilty of—
  - (i) a breach of this Act (which may be a breach by virtue of which this Part applies to the person);
  - (ii) a breach of an order under this Act.

(2) A complaint may be lodged with the Court setting out matters that are alleged to constitute grounds for disciplinary action under this Part.

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(3) A complaint may be lodged—

- (a) by the Commissioner;
- (b) if founded on subsection (1)(a), (b)(i), (ii), (v), (vi) or (viii), (c) or (d)—by the Commissioner of Police;
- (c) if founded on subsection (1)(b)(ii), (iii), (iv), (v) or (viii)—by the council in whose area the licensed premises are situated;
- (d) if founded on subsection (1)(b)(vii)—by any person aggrieved by the subject matter of the complaint.

(4) A complaint may be lodged and disciplinary action taken against a person in respect of conduct that constitutes an offence despite the fact that the person has not been prosecuted for the offence.

(5) Notice of a complaint and of the time and place appointed for the hearing of the complaint must be served on the person to whom the complaint relates.

**Disciplinary action**

**125A.** (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

- (a) in the case of a person licensed under this Act, add to, or alter, the conditions of the licence;
- (b) in the case of a person licensed or approved under this Act, suspend or revoke the licence or approval;
- (c) in the case of any person—
  - (i) reprimand the person;
  - (ii) impose a fine not exceeding \$15 000 on the person;
  - (iii) disqualify the person from being licensed or approved under this Act.

(2) The Court may—

- (a) stipulate that a disqualification is to apply permanently;
- (b) stipulate that a suspension or disqualification is to apply—
  - (i) for a specified period; or
  - (ii) until the fulfilment of stipulated conditions; or
  - (iii) until further order;

- (c) stipulate that an order relating to a person is to have effect at a specified future time;
- (d) vary an order imposing a suspension or disqualification.

(3) If—

- (a) a person has been found guilty of an offence; and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

(4) Where a licensee is convicted of an offence against section 118 and a complaint is lodged on that ground, the Court must—

- (a) take disciplinary action against the licensee; and
- (b) if the conviction follows a previous conviction for an offence against that section—suspend or revoke the licence unless the licensee shows cause why that action should not be taken.

(5) Despite any other provision of this Act and, without limiting the generality of subsection (1)(a), a condition may be imposed under that subsection—

- (a) limiting the kinds of liquor that may be sold in pursuance of the licence;
- (b) limiting the times at which liquor, or liquor of a particular kind, may be sold in pursuance of the licence;
- (c) otherwise limiting the authority conferred by the licence.

**Substitution of s. 135**

6. Section 135 of the principal Act is repealed and the following section is substituted:

**Vicarious liability for offences or misconduct by bodies corporate**

135. (1) If a body corporate is guilty of an offence against this Act, each person occupying a position of authority in the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

(2) If there is proper cause for disciplinary action against a body corporate under Part 8, there is proper cause for disciplinary action under that Part against each person occupying a position of authority in the body corporate unless it is proved that the person could not, by the exercise of reasonable diligence, have prevented the misconduct constituting the cause for disciplinary action against the body corporate.

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

ROMA MITCHELL Governor