



TASMANIA

---

**POLICE OFFENCES AMENDMENT (LIQUOR) ACT 1995**

---

**No. 45 of 1995**

---

**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Part II: Division IV inserted  
Division IV—Consumption of liquor  
25—Consumption of liquor in streets, &c.
6. Section 58A inserted  
58A—Power to search for liquor
7. Section 67A inserted  
67A—Evidentiary provision
8. Part VII: Division IV inserted  
Division IV—Liquor infringement notices  
61—Service and acceptance of liquor infringement notices  
62—Withdrawal of liquor infringement notices  
63—Effect of undertaking to pay a prescribed penalty



**POLICE OFFENCES AMENDMENT (LIQUOR) ACT 1995**

---

**No. 45 of 1995**

---

**AN ACT to amend the *Police Offences Act 1935*****[Royal Assent 22 September 1995]**

**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 *Police Offences Amendment (Liquor) Act 1995*.

**Commencement**

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

**Principal Act**

3—In this Act, the *Police Offences Act 1935*\* is referred to as the Principal Act.

**Section 3 amended (Interpretation)**

4—Section 3 (1) of the Principal Act is amended as follows:—

(a) by inserting after the definition of “gain access” the following definitions:—

“**liquor**” means a beverage (other than a medicine) that—

(a) is intended for human consumption; and

(b) has an alcoholic content greater than 0.5% by volume when at a temperature of 20° Celsius;

“**liquor infringement notice**” means a liquor infringement notice in force under Division IV of Part VII;

(b) by inserting after the definition of “owner” the following definition:—

“**police officer**” has the same meaning as in the *Police Regulation Act 1898*;

(c) by omitting “vehicle.” from the definition of “vehicle” and substituting “vehicle;”;

(d) by inserting after the definition of “vehicle” the following definition:—

“**withdrawal notice**” means a withdrawal notice in force under section 62.

---

\* 26 Geo. V No. 44. For this Act, as amended to 1 October 1977, see the continuing Reprint of Statutes. Subsequently amended by No. 117 of 1976, Nos. 86 and 87 of 1981, Nos. 51, 63, 74 and 99 of 1982, No. 42 of 1984, Nos. 1, 51 and 100 of 1985, No. 93 of 1986, Nos. 13, 90 and 112 of 1987, Nos. 5, 13 and 44 of 1990, Nos. 34, 43 and 46 of 1991, Nos. 4 and 21 of 1992, Nos. 2 and 68 of 1994 and No. 30 of 1995.

**Part II: Division IV inserted**

5—After section 24B of the Principal Act, the following Division is inserted, in Part II:—

*Division IV—Consumption of liquor*

**Consumption of liquor in streets, &c.**

25—(1) In this section, “motor vehicle” and “public street” have the same meanings as in the *Traffic Act 1925*.

(2) A person must not consume liquor in a public street or in any public place that is prescribed by the regulations for the purposes of this section.

Penalty: Fine not exceeding 2 penalty units or, in the case of a second or subsequent offence, a fine not exceeding 5 penalty units.

(3) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her possession an opened or unsealed container of liquor in a public street or in any public place that is prescribed by the regulations for the purposes of this section.

Penalty: Fine not exceeding 2 penalty units or, in the case of a second or subsequent offence, a fine not exceeding 5 penalty units.

- (4) This section does not apply to a person who is—
- (a) on licensed premises, within the meaning of the *Liquor and Accommodation Act 1990*, or on premises at which food is sold for consumption on those premises; or
  - (b) within 50 metres of any such premises and is using furniture or other facilities lawfully provided by the proprietor or lessee of those premises for that purpose; or
  - (c) in a place where the possession and consumption of liquor is permitted under a permit or licence in force under the *Liquor and Accommodation Act 1990*.

(5) A person who is in a stationary motor vehicle in a public street or in a prescribed public place is taken to be in the public street or in the prescribed public place.

**Section 58A inserted**

6—After section 58 of the Principal Act, the following section is inserted:—

**Power to search for liquor**

58A—(1) Where a police officer has reasonable grounds to suspect that a person is contravening or is about to contravene section 25, the police officer may—

- (a) detain and search that person; and
- (b) seize any liquor found in the possession of that person.

(2) A police officer may at any time dispose of any liquor seized under subsection (1) that is in an opened or unsealed container.

(3) If any liquor seized under subsection (1) is in an unopened or sealed container, the person from whom the liquor was seized is entitled to have the liquor returned to him or her on request made at least 2 days and not more than 7 days after the liquor was seized.

(4) A request under subsection (3) is to be made to a police officer at the police station nearest to the place where the liquor was seized or at such other police station as a police officer may reasonably direct.

(5) Where a request is made under subsection (3), a police officer must make the liquor to which the request relates available for collection by the person who made the request on the next day when the relevant police station is open to the public and during the hours when it is so open or at such other time as may be agreed.

(6) A police officer may dispose of any liquor referred to in subsection (3) that is not the subject of a request under that subsection or that is not collected as mentioned in subsection (5).

**Section 67A inserted**

7—After section 67 of the Principal Act, the following section is inserted:—

**Evidentiary provision**

67A—In proceedings for an offence against section 25, an allegation in the complaint—

- (a) that a substance referred to in the complaint was liquor; or
- (b) that a place specified in the complaint was or was not on a specified date a place specified in a licence or permit in force under the *Liquor and Accommodation Act 1990*—

is evidence of that matter.

**Part VII: Division IV inserted**

8—After section 60 of the Principal Act, the following Division is inserted in Part VII:—

***Division IV—Liquor infringement notices*****Service and acceptance of liquor infringement notices**

61—(1) Where a police officer is satisfied that a person has committed an offence against section 25, he or she may serve on that person a notice in respect of that offence by delivering it to that person or by sending it to that person by post.

- (2) A liquor infringement notice is to clearly indicate—
  - (a) the offence or offences in respect of which it is served; and
  - (b) that payment of the prescribed penalty is to be made to a clerk of petty sessions; and
  - (c) that the person may disregard the notice but that, if he or she does so, he or she may be prosecuted before a court for the offence to which it relates.

(3) Unless it has been withdrawn, a liquor infringement notice may, subject to subsection (4), be accepted by the person on whom it was served either—

- (a) by the payment, within 21 days of the service of the notice, of the prescribed penalty to a clerk of petty sessions; or

- (b) by lodging with the clerk, within 21 days of the service of the notice, a written undertaking by that person to pay the penalty by such instalments or within such time as the clerk may direct.

(4) Where a liquor infringement notice has not been accepted as mentioned in subsection (3) by the person, a clerk of petty sessions may, at the expiration of the relevant period specified in that subsection and by written notification to that person, allow that person an additional period of 14 days commencing on the expiration of that period in which to accept the notice.

(5) Notwithstanding subsections (3) and (4), a clerk of petty sessions may, at any time before a complaint and summons is issued for the relevant offence, accept payment of the prescribed penalty or a written undertaking to pay the penalty either wholly or by instalments within such time as the clerk may direct.

(6) Notification of an extension of time by a clerk of petty sessions is to be served on a person by sending it by post addressed to the person at the place shown as his or her address in the relevant liquor infringement notice.

(7) Where a liquor infringement notice has been served on a person, proceedings may not be brought against that person for the offence to which the notice relates if the notice has been accepted and has not been withdrawn.

(8) Whether or not a liquor infringement notice is accepted, proceedings may not be brought within the period of—

(a) 28 days following the service of the notice, if the person on whom it was served has not been allowed an additional period under subsection (4); or

(b) 42 days following the service of the notice, if the person has been allowed such an additional period—

unless the notice has been withdrawn.



(9) Where a liquor infringement notice in respect of an offence has been accepted by a person and has not been withdrawn—

- (a) acceptance is, for the purpose of proceedings for any other offence, taken as a conviction for the offence to which the notice relates unless the court before which those proceedings are taken is satisfied that it is unjust that it should be so treated; and
- (b) acceptance is not taken as an admission of liability for the purpose of, nor in any way to affect or prejudice, any civil claim, action or proceeding.

### **Withdrawal of liquor infringement notices**

62—(1) A liquor infringement notice that has been served on a person may, whether or not it has been accepted, be withdrawn as provided in subsection (2) at any time within the period of—

- (a) 28 days following the service of the notice, if the person has not been allowed an additional period under section 61 (4); or
- (b) 42 days following the service of the notice, if the person has been allowed such an additional period.

(2) For the purposes of subsection (1), a liquor infringement notice served on a person may be withdrawn by the service on that person of a notice in the prescribed form signed by the Commissioner of Police or a police officer authorised by the Commissioner in that behalf stating that the liquor infringement notice has been withdrawn.

(3) Where a notice has been withdrawn under this section and an amount has been paid to a clerk of petty sessions by way of penalty under that notice, the clerk must repay the amount so paid to the person on whom the notice was served.

(4) Where a liquor infringement notice has been served and has been withdrawn, evidence of the service, acceptance or withdrawal of the notice is not admissible in any proceedings for the offence to which the notice relates.

(5) References in this Act to the withdrawal of a liquor infringement notice are taken to be references to the withdrawal of that notice under this section.

### **Effect of undertaking to pay a prescribed penalty**

63—(1) Where an undertaking as mentioned in section 61 (3) (b) is lodged with a clerk of petty sessions, the clerk must give directions to the person by whom the undertaking is given requiring the person to pay the penalty to which the undertaking relates in such instalments or within such time as may be specified in the directions.

(2) Directions may not be given under subsection (1) if they would have the effect of allowing any part of the penalty to which they relate to be paid after the expiration of 63 days from the date on which the relevant liquor infringement notice was served.

(3) Before giving directions under subsection (1), the clerk must—

- (a) consider any representations made to the clerk by or on behalf of the person to whom the notice relates, whether at the time the undertaking is lodged or otherwise, with respect to the person's financial circumstances; and
- (b) give such directions as, having regard to those representations and all the circumstances of the case, the clerk considers just and reasonable.

(4) Where a person fails to comply with any directions given under subsection (1), proceedings may be brought against the person in respect of so much of the penalty to which the directions relate as remains unpaid as if the penalty were a penalty imposed on the person on his or her summary conviction for the offence to which the relevant liquor infringement notice relates.

---

*[Second reading presentation speech made in:—  
House of Assembly on 10 May 1995  
Legislative Council on 10 August 1995]*

