



New South Wales

Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996 No 42

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New South Wales

Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996 No 42

Act No 42, 1996

An Act to amend the *Liquor Act 1982* and the *Registered Clubs Act 1976* to make further provision with respect to persons associated with liquor licensees and registered clubs, the taking of complaints under those Acts, managers of licensed premises, the closure of licensed premises and other matters relating to enforcement and to increase penalties; and for other purposes. [Assented to 27 June 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Liquor Act 1982 No 147

The *Liquor Act 1982* is amended as set out in Schedule 1.

4 Amendment of Registered Clubs Act 1976 No 31

The *Registered Clubs Act 1976* is amended as set out in Schedule 2.

Schedule 1 Amendment of Liquor Act 1982

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

authorised justice has the same meaning as in the *Search Warrants Act 1985*.

financial institution means:

- (a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth or a bank constituted under a law of a State or Territory, or
- (b) a building society within the meaning of the *Financial Institutions (NSW) Code* or a law of another State, or of a Territory, that corresponds to that Code, or
- (c) a credit union within the meaning of the *Financial Institutions (NSW) Code* or a law of another State, or of a Territory, that corresponds to that Code.

special area means a special area as referred to in section 69EA.

[2] Section 4 (1)

Insert “or 8B” after “Division 8A” in the definition of *manager* or *manager of licensed premises*.

[3] Section 4A Meaning of close associate

Omit the definition of *relevant financial interest* from section 4A (2).

Insert instead:

relevant financial interest, in relation to a business, means:

- (a) any share in the capital of the business, or

- (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or
- (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business is or is to be carried on (such as, for example, an entitlement of the owner of licensed premises to receive rent as lessor of the premises).

[4] Section 4A (3)

Insert after section 4A (2):

- (3) A financial institution is not a close associate within the meaning of this section by reason only of having a relevant financial interest in relation to a business.

[5] Section 12 Procedure before the Licensing Court

Omit “proceedings upon a complaint under section 67 or proceedings under section 145” from section 12 (2).

Insert instead “proceedings under section 145 of this Act or section 65 of the *Registered Clubs Act 1976*”.

[6] Section 17A

Insert after section 17:

17A Nature of disciplinary jurisdiction of court

In any proceedings under this or any other Act in which the court is dealing with a complaint against a person or

body (not being proceedings for an offence), the court has, despite any other law, the following powers and discretions:

- (a) the court may, in imposing a penalty or making any decision in relation to the complaint, take into account the deterrent effect, or punitive effect, or both, of the penalty or decision,
- (b) the court is not required, in imposing a penalty or making any decision in relation to the complaint, to take into account any action taken by any person or body to rectify or mitigate the subject-matter of the complaint.

[7] Section 36 Restrictions on liquor licence applications

Insert “or a theatre” after “restaurant” in section 36 (7).

[8] Section 38 Affidavit as to interested persons

Omit section 38 (3). Insert instead:

- (3) The affidavit specified in this subsection is an affidavit by a person having knowledge of the facts stating:
 - (a) that the person has made all reasonable inquiries to ascertain the information required to complete the affidavit, and
 - (b) whether there are any persons (other than financial institutions) who will be interested in the business, or the profits of the business, carried on under the licence, and
 - (c) if there are any such persons, their names and dates of birth and, in the case of a proprietary company, the names of the directors and shareholders.

- (4) For the purposes of subsection (3), a person is interested in the business, or the profits of the business, carried on under the licence if the person is entitled to receive:
- (a) any income derived from the business, or any other financial benefit or financial advantage from the carrying on of the business (whether the entitlement arises at law or in equity or otherwise), or
 - (b) any rent, profit or other income in connection with the use or occupation of premises on which the business is to be carried on.

[9] Section 39 Production of agreement required

Omit the section.

[10] Section 41 Application for transfer of licence

Omit section 41 (4). Insert instead:

- (4) An application under subsection (1) must be accompanied by the affidavit referred to in section 38 (3) (if applicable).

[11] Section 42 Application on dispossession of licensee

Omit “14 days” wherever occurring in section 42 (2A) (a) and (5).
Insert instead “28 days”.

[12] Section 42D Director may require further information

Insert “, or may require a close associate of any such person,” after “referred to the Director” in section 42D (1).

[13] Section 42D (1) (d)

Omit “or relations”.

[14] Section 45 Grounds of objection

Omit section 45 (1) (a1). Insert instead:

- (a1) that a person who is, was or will be a close associate of the applicant is not a fit and proper person to be a close associate of the holder of a licence,

[15] Section 45 (1) (b)

Omit the paragraph.

[16] Section 45 (4) (a1)

Omit the paragraph. Insert instead:

- (a1) in the case of an objection on the ground specified in subsection (1) (a1)—that the person to whom the objection relates is a fit and proper person to be a close associate of the holder of a licence,

[17] Section 45 (4) (a2)

Insert “or” after “licence,”.

[18] Section 45 (4) (b)

Omit the paragraph.

[19] Section 45 (5) (d)

Insert after section 45 (5) (c):

- (d) that a requirement of the Director made under this Act in relation to the application and specified in the objection has not been complied with.

[20] Section 46 Taking of objection

Omit section 46 (1) (b) (ia). Insert instead:

- (ia) in the case of an objection on the ground specified in section 45 (1)(a1)—that the person to whom the objection relates is not a fit and proper person to be a close associate of the holder of a licence,

[21] Section 46 (1) (b) (ib)

Insert “or” after “licence.”.

[22] Section 46 (1) (b) (ii)

Omit the subparagraph.

[23] Section 46 (4)

Insert after section 46 (3):

- (4) When hearing and determining an objection, the court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the court.

[24] Section 47 Grant of application is discretionary in certain cases

Omit “(2) or (3)” from section 47 (1).

Insert instead “(1) (a1), (2) or (3) (a)–(e)”.

[25] Section 47 (1A)

Insert after section 47 (1):

- (1A) The court may grant an application even though a ground of objection to the grant of the application has been made out under section 45 (3) (f) or (5) (d), but only if the court is satisfied that reasonable cause has been shown for the failure to comply with the requirement concerned.

[26] Section 47 (2)

Omit “ , (a2) or (b)”. Insert instead “or (a2)”.

[27] Section 47 (2) (a1)

Omit the paragraph. Insert instead:

- (a1) that a person who is, was or will be a close associate of the applicant is not a fit and proper person to be a close associate of the holder of a licence, or

[28] Section 47 (2) (b)

Omit the paragraph.

[29] Section 61 Grant of transfer of licence

Omit “ , and the licence reverts to the transferor,” from section 61 (4).

[30] Section 61 (5A)

Insert after section 61 (5):

- (5A) If a provisional grant of an application for the transfer of a licence ceases to have effect because of the operation of subsection (4), the court may make such orders in relation to the licence as it considers appropriate in the circumstances, including any of the following orders:
 - (a) an order that the licence is to revert to the transferor,
 - (b) an order treating a person (with the person’s consent) as licensee until a transfer of the licence is effected,
 - (c) an order that the licence not be exercised until specified conditions are met or the court orders otherwise.

[31] Section 62A

Insert after section 62:

62A Director's report required before application may be granted

- (1) An application for a licence, or for the transfer of a licence, must not be granted by the court unless the court has received and considered a report by the Director as to any investigations and inquiries carried out, or reports received, under Division 4A.
- (2) However, the court may hear and determine such an application if any investigation, inquiry or report under that Division has not been completed or received by the court within 3 months after the application was lodged.
- (3) The 3 month period may be extended by the court on application being made by the Director before the end of the period.

[32] Section 66A Director may investigate licensee and others

Omit "or manager" wherever occurring from section 66A (1) and (2).

Insert instead " , manager or close associate".

[33] Section 66A (3)

Omit "licensee or manager who is the subject of an investigation under this section".

Insert instead "licensee, a manager or a close associate who is the subject of an investigation under this section, or a close associate of such a licensee or manager,".

[34] Section 66A (3) (d)

Omit "or relations".

[35] Section 67 Summons to show cause against taking of disciplinary action

Insert after section 67 (1A):

(1B) A complaint in relation to a person who is a close associate of a licensee is an authorised complaint for the purposes of this section if it is made in writing by the Commissioner of Police or the Director and specifies as its grounds one or more of the grounds specified in section 68 (1A).

(1C) A complaint under subsection (1B) can be made in conjunction with a complaint in relation to the licensee on the ground specified in section 68 (1) (e1) or on any other ground and those complaints can be heard and determined together.

[36] Section 67 (2)

Omit “or manager”. Insert instead “, manager or person”.

[37] Section 67 (3) (b)

Insert “or (1A) (a)” after “or (h)”.

[38] Section 67 (3) (c)

Omit “licensee or manager”.

Insert instead “person the subject of the complaint and, if that person is not the licensee, on the licensee”.

[39] Section 67 (5) (c)

Insert at the end of section 67 (5) (b) (ii):

, and

- (c) if the complaint is against a licensee on the ground that a person named in the complaint is a close associate of the licensee and is not a fit and proper person to be a close associate of a licensee—on that person,

[40] Section 67 (5)

Omit “that lessor and each person so named”.

Insert instead “each person so served”.

[41] Section 68 Grounds for complaint

Omit section 68 (1) (e1). Insert instead:

- (e1) that a person named in the complaint is a close associate of the licensee and is not a fit and proper person to be a close associate of a licensee,

[42] Section 68 (1A)

Insert after section 68 (1):

- (1A) The grounds on which a complaint may be made under section 67 (1B) in relation to a person who is a close associate of a licensee are as follows:
 - (a) that the close associate is not a fit and proper person to be a close associate of a licensee,
 - (b) that a complaint against the licensee under section 67 has been established and that:
 - (i) the close associate knew or ought reasonably to have known that conduct of the kind to which the complaint relates was occurring or was likely to occur on the licensed premises, and
 - (ii) the close associate failed to take all reasonable steps to prevent conduct of that kind occurring on the licensed premises,
 - (c) that a requirement of the Director made under this Act in relation to the investigation of the close associate and specified in the complaint has not been complied with.

[43] Section 68A

Insert after section 68:

68A Complaints against close associates

- (1) For the purposes of section 68(1A), a complaint against a licensee under section 67 is taken to have been established if the court, on the hearing and determination of a complaint in relation to the licensee under that section, found that the matter of the complaint had been made out.
- (2) On the hearing and determination of the matter of a complaint under section 67 (1B) on the ground specified in section 68 (1A) (b), the onus is on the close associate to satisfy the court that the close associate took all reasonable steps to prevent conduct of the kind concerned occurring on the licensed premises.

[44] Section 69 Disciplinary powers of court

Insert “or, if circumstances of aggravation exist in relation to the complaint, not exceeding 1,000 penalty units in the case of a corporation or 400 penalty units in any other case” after “any other case” in section 69 (1) (b).

[45] Section 69 (1) (d)

Insert “or, if circumstances of aggravation exist in relation to the complaint, not exceeding 24 months” after “12 months”.

[46] Section 69 (1) (f)

Omit “, not exceeding 3 years,”.

[47] Section 69 (1) (f1)

Insert “in the case of a manager of licensed premises where a body corporate is the licensee,” before “withdraw”.

[48] Section 69 (1) (f2)

Insert “in the case of a manager of licensed premises where a body corporate is the licensee,” before “disqualify”.

[49] Section 69 (1) (f3)

Insert after section 69 (1) (f2):

- (f3) disqualify a person from being a manager of licensed premises in a special area for such period as the court thinks fit,

[50] Section 69 (1AA)

Insert after section 69 (1):

(1AA) For the purposes of this section, circumstances of aggravation exist in relation to a complaint if (and only if) each of the following paragraphs applies:

- (a) the complaint concerns a contravention or alleged contravention of section 125 (Conduct on licensed premises) or 125E (Sale of stolen goods and possession, use or sale of drugs not to be permitted on licensed premises),
- (b) the complaint alleges that for the reasons specified in the complaint the matter of the complaint is so serious as to warrant the taking of action that is available to the court when circumstances of aggravation exist,
- (c) the court, in finding that the matter of the complaint has been made out, is of the opinion (having regard to any matter such as the number of contraventions of the Act involved, the seriousness of the contravention involved, the number of people involved in the contravention or the seriousness of the outcome of the contravention, or any other relevant consideration) that the matter of the complaint is so serious as to warrant the taking of action that is available to the court when circumstances of aggravation exist.

[51] Section 69 (1A) (a) (i)

Insert “or (c)” after “(b)”.

[52] Section 69 (1A) (b)

Insert “or, if circumstances of aggravation exist in relation to the complaint, not exceeding 1,000 penalty units in the case of a corporation or 400 penalty units in any other case” after “any other case”.

[53] Section 69 (1A) (c)

Omit “not exceeding 3 years”.

[54] Section 69 (1A) (c) (i)

Insert “(within the meaning of section 38 (4))” after “to a licence”.

[55] Section 69 (1C)

Insert after section 69 (1B):

- (1C) On the appearance of a person in response to a summons under section 67 in respect of a complaint under section 67 (1B), or in the person’s absence after being duly summoned, the court is to proceed to hear and determine the matter of the complaint to which the summons relates and, if it is satisfied that the ground on which the complaint was made has been made out, may do any one or more of the following:
- (a) reprimand the person,
 - (b) disqualify the person from being a close associate of a licensee for such period as the court thinks fit,
 - (c) disqualify the person from holding a licence for such period as the court thinks fit,

(d) order the person to pay to the Crown a monetary penalty not exceeding 500 penalty units in the case of a corporation or 200 penalty units in any other case,

or may take no action.

(1D) While a person is disqualified by the court from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act and the *Registered Clubs Act 1976* to be a person who is not a fit and proper person to be a close associate of a licensee under either Act or of a registered club.

(1E) The taking of action under subsection (1C) in respect of a complaint does not prevent or limit the taking of any other action under this section in respect of any other complaint in relation to a licensee or manager (whether or not that other complaint is heard together with the complaint).

[56] Section 69 (2A)

Insert after section 69 (2):

(2A) When hearing and determining the matter of a complaint under subsection (1) or (1C), the court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the court.

[57] Section 69 (3)

Omit “or (1A) (b)”. Insert instead “, (1A) (b) or (1C) (d)”.

[58] Part 3, Division 8A, heading

Omit “Special provisions for”. Insert instead “Appointment of managers by”.

[59] Section 69A Application of Division

Insert at the end of section 69A:

- (2) This Division applies only in respect of licensed premises that have a body corporate as licensee.

[60] Part 3, Division 8B

Insert after section 69E:

Division 8B Appointment of managers for licensed premises in special areas

69EA Application of Division

This Division applies only in respect of licensed premises that are situated in an area prescribed by the regulations as a special area for the purposes of this Division and that do not have a body corporate as licensee.

69EB Restrictions on who may be appointed as manager of licensed premises in special area

The following restrictions apply to the appointment of a manager of licensed premises:

- (a) A person may not be appointed as the manager of licensed premises unless the licensee has notified the court, in accordance with this Division, of the intended appointment.
- (b) Only a natural person may be appointed to manage the licensed premises.
- (c) A person cannot be appointed as manager of licensed premises if at the time of the appointment the person already holds an appointment as manager of other licensed premises.

69EC Notification of appointment of managers

- (1) A notification of the appointment of a manager of licensed premises must give the name, address and date of birth of the person appointed and must be signed by the appointee as evidence of consent to his or her appointment as manager.
- (2) The appointment of a manager is revoked by the licensee notifying the court under this section of the appointment of a new manager or by the licensee or manager notifying the court of the manager's ceasing to act as manager.
- (3) A notification of appointment of or of ceasing to act as manager may specify a day that is later than the day given in the notification as the day the notification is to take effect, and the notification takes effect accordingly.
- (4) A notification under this Division must be in writing in the form approved by the court.
- (5) In any proceedings in which the question of whether notification was given to the court under this Division is at issue, the party alleged to have given the notification bears the onus of establishing on the balance of probabilities that the notification was given.

[61] Division 8C, heading

Insert before section 69F:

Division 8C General provisions relating to managers of licensed premises

[62] Section 69F Responsibilities and liabilities of managers of licensed premises

Omit section 69F (1) and (2). Insert instead:

- (1) The person appointed as manager of licensed premises for which the licensee is a body corporate is responsible at all times for the personal supervision and management of the conduct of the business of the licensed premises under the licence.

- (1A) A person appointed as manager of licensed premises for which the licensee is not a body corporate is responsible for the personal supervision and management of the conduct of the business of the licensed premises under the licence whenever the licensee is not personally present on those premises.
- (2) If an element of an offence under a provision of this Act or the regulations is an act or omission by a licensee, a person who is manager of the licensed premises is, while responsible under subsection (1) or (1A), responsible in respect of the offence as though that person were also a licensee of those premises and is liable for the offence accordingly.

[63] Section 101 Control of licensed premises

Omit section 101 (1) (a). Insert instead:

- (a) in relation to licensed premises within a special area, permit any person (other than a person appointed as manager of the premises) to have the supervision and management of the conduct of the business under the licence for a longer continuous period than 6 weeks, except with the previous written consent of the Board, or
- (a1) in relation to licensed premises situated elsewhere, permit any person to have the supervision and management of the conduct of the business under the licence for a longer continuous period than 6 weeks, except with the previous written consent of the Board, or

[64] Section 101 (1)

Omit “5 penalty units”. Insert instead “50 penalty units”.

[65] Section 101 (2)–(4B)

Omit subsections (2)–(4). Insert instead:

- (2) A person who is, in accordance with subsection (1) (a) or (a1), responsible for the supervision and management of licensed premises is, while so authorised, taken to be the licensee.
- (3) It is a condition of a licence for premises that are not situated in a special area, that the licensee has responsibility for the supervision and management of the conduct of the business under the licence on the licensed premises except in circumstances where the licensee is not contravening subsection (1) (a1).
- (4) It is a condition of a licence for premises that are situated in a special area and that do not have a body corporate as licensee, that the licensee has responsibility for the personal supervision and management of the conduct of the business under the licence on the licensed premises except:
 - (a) during any period for which a manager has that responsibility, or
 - (b) in circumstances where the licensee is not contravening subsection (1) (a).
- (4A) If a person (other than a licensee or a financial institution) becomes interested in the business, or the conduct of the business, of the licensed premises, it is a condition of the licence that the licensee must, within 28 days after the other person's becoming so interested, produce to the registrar an affidavit stating:
 - (a) that the licensee has made all reasonable inquiries to ascertain the information required to complete the affidavit, and
 - (b) the name and date of birth of the person so interested and, in the case of a proprietary company, the names of the directors and shareholders.

(4B) For the purposes of subsection (4A), a person is interested in the business, or the conduct of the business, of the licensed premises concerned if the person is entitled to receive:

- (a) any income derived from the business, or any other financial benefit or financial advantage from the carrying on of the business (whether the entitlement arises at law or in equity or otherwise), or
- (b) any rent, profit or other income in connection with the use or occupation of premises on which the business is to be carried on.

[66] Section 101 (7)

Omit “(1) (a) and (b), (2) and (4) (b)”.
Insert instead “(1) (a), (a1) and (b) and (2)”.

[67] Section 103 Exclusion of persons from licensed premises

Insert at the end of section 103 (1) (d):

, or

- (e) who uses, or has in his or her possession, while on the premises any substance that the licensee or employee suspects of being a prohibited plant or a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

[68] Section 103 (3)

Omit “10 penalty units”. Insert instead “50 penalty units”.

[69] Section 103 (3A)

Insert after section 103 (3):

- (3A) For the purposes of subsection (1) or (2), such reasonable degree of force as may be necessary may be used to turn a person out of licensed premises.

[70] Sections 104A–104D

Insert after section 104:

104A Order by authorised justice for short-term closure of premises

- (1) An authorised justice may, by notice served on a licensee or a person apparently in charge of licensed premises, order the licensee to close the licensed premises from a time specified in the order until a later specified time.
- (2) An authorised justice may only make an order under this section:
 - (a) on the application of the Director or the Commissioner of Police, and
 - (b) if the authorised justice is satisfied that a serious breach of this Act has occurred, or is likely to occur, on the premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.
- (3) Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:
 - (a) a threat to public health or safety, or
 - (b) a risk of substantial damage to property, or
 - (c) a significant threat to the environment, or
 - (d) a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.
- (4) An order must not require the closure of premises for a period longer than 72 hours.
- (5) An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than 72 hours.

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- (6) A licensee must not fail to comply with an order made under this section.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

- (7) Two or more orders closing the same premises may not be made under this section in any period of one week.

104B Urgent application for order under section 104A

- (1) An application under section 104A may be made by telephone.
- (2) An authorised justice must not issue an order under section 104A on an application made by telephone unless satisfied that the order is required urgently and that it is not practicable for the application to be made in person.
- (3) An application under this section must be made by facsimile if the facilities to do so are readily available for that purpose.
- (4) An authorised justice who issues an order under section 104A on an application made by telephone must:
- (a) complete and sign the order, and
 - (b) furnish the order to the applicant or inform the applicant of the terms of the order and of the date and time when it was signed.
- (5) If an order under section 104A is issued on an application made by telephone and the applicant is not furnished with the order, the applicant must:
- (a) complete a form of order in the terms indicated by the authorised justice under subsection (4), and
 - (b) write on the form the name of the authorised justice and the date and time when the order was signed.
- (6) A form of order so completed is taken to be an order issued under section 104A.

- (7) An order under section 104A issued on an application made by telephone is to be furnished by an authorised justice by transmitting it by facsimile, if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original document.
- (8) In this section:
- (a) *telephone* includes radio, facsimile or other communication device, and
 - (b) a reference to facsimile includes a reference to any electronic communication device which transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

104C Order by court for closure of premises

- (1) The court may, on the application of the Director or the Commissioner of Police, order a licensee to close the licensed premises from a time specified in the order until a later specified time.
- (2) The court may only make an order under this section if:
- (a) the licensee or manager of the premises is the subject of an investigation under section 66A or of a police investigation or a complaint has been made in relation to the licensee or manager or a close associate of the licensee, and
 - (b) the licensee has been given notice of the application for closure and has been given an opportunity to appear before the court and be heard in relation to the application, and
 - (c) the court is of the opinion that a serious breach of this Act has occurred, or is likely to occur, on the premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.

- (3) Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:
- (a) a threat to public health or safety, or
 - (b) a risk of substantial damage to property, or
 - (c) a significant threat to the environment, or
 - (d) a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.
- (4) An order ceases to have effect at the time specified or when a complaint concerning the licensee or manager of the premises is determined under this Act, whichever is the earlier.
- (5) An order may not require the closure of premises for a period longer than the period prescribed by the regulations.
- (6) An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than that permitted under subsection (5).
- (7) A licensee must not fail to comply with an order made under this section.

Maximum penalty (subsection (7)): 50 penalty units or imprisonment for 6 months, or both.

104D Further closure orders

- (1) The court may grant 2 or more orders in respect of premises under section 104C.
- (2) An application for another order may be made, and determined, before the end of a current order.

[71] Section 110 Powers of entry, inspection and seizure

Insert after section 110 (1):

- (1A) If a special inspector believes on reasonable grounds that a breach of this Act has been, or is being, committed on licensed premises, the special inspector may, at any time of the day or night, enter the licensed premises with or without a police officer.

[72] Section 110 (3A)

Insert after section 110 (3):

- (3A) In the exercise of a power conferred under this section, the Commissioner of Police, a police officer or a special inspector may:
- (a) if the Commissioner, police officer or special inspector considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, seize any registers, books, records or other documents relating to the business conducted on the licensed premises, and
 - (b) require any person to answer any question relating to any such registers, books, records or other documents or any other relevant matter.

[73] Section 110 (5)

Insert “, (1A)” after “(1)”.

[74] Section 110A

Insert after section 110:

110A Dealing with seized documents

- (1) If the Commissioner of Police, a police officer or a special inspector seizes any document under section 110 on licensed premises, the Commissioner, police officer or inspector must issue the person apparently in charge of the premises with a written receipt for the document.

- (2) The Commissioner of Police, police officer or special inspector may retain any document seized under section 110 until the completion of any proceedings (including proceedings on appeal) in which it may be evidence.
- (3) A document may only be retained under subsection (2) if the person from whom the document was seized is provided, within a reasonable time after the seizure, with a copy of the document certified by the Commissioner of Police, police officer or special inspector as a true copy.
- (4) The copy is, as evidence, of equal validity to the document of which it is certified to be a copy.

[75] Section 111D Complaints relating to minors functions authority (as inserted by the Liquor and Registered Clubs Legislation Amendment (Minors' Entertainment) Act 1996)

Omit section 111D (5).

[76] Section 125 Conduct on licensed premises

Omit "all reasonable steps" from section 125 (4).
Insert instead "the steps set out in subsection (4A) or all other reasonable steps".

[77] Section 125 (4A)

Insert after section 125 (4):

- (4A) For the purposes of subsection (4), the following are the relevant steps:
 - (a) asked the intoxicated person to leave the premises,
 - (b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises,
 - (c) refused to serve the person any alcohol after becoming aware that the person was intoxicated.

[78] Section 125E Sale of stolen goods and possession, use or sale of drugs not to be permitted on licensed premises

Omit “10 penalty units” wherever occurring.
Insert instead “50 penalty units”.

[79] Section 125E (1A)

Insert after subsection (1):

(1A) A licensee must not permit the possession or use on the licensed premises of any substance that the licensee suspects of being a prohibited plant or a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

Maximum penalty: 50 penalty units.

[80] Section 125E (2A)

Insert after subsection (2):

(2A) A servant of a licensee or a person, other than the licensee, in charge of licensed premises must not permit the possession or use on the licensed premises of any substance that the servant or person suspects of being a prohibited plant or a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

Maximum penalty: 50 penalty units.

[81] Section 139 False or misleading statements

Omit “20 penalty units” from the section as substituted by the *Liquor and Registered Clubs Legislation Amendment Act 1996*.
Insert instead “50 penalty units or imprisonment for 12 months, or both”.

[82] Section 140 Averments

Insert after section 140 (1) (d6):

(d7) that specified premises are subject to a closure order under this Act,

[83] Section 143A

Insert after section 143:

143A Additional penalties

In addition to any other penalty it may impose on a licensee or manager for an offence under this Act, the court may, if it thinks it appropriate, do any one or more of the following:

- (a) reprimand the licensee or manager,
- (b) impose a condition to which a licence is to be subject or revoke or vary a condition to which a licence is subject,
- (c) suspend a licence for such period, not exceeding 12 months, as the court thinks fit,
- (d) cancel a licence,
- (e) disqualify the licensee from holding a licence for such period as the court thinks fit,
- (f) withdraw the manager's approval to manage licensed premises,
- (g) disqualify the manager from being the holder of an approval to manage licensed premises,
- (h) give such directions as to the exercise of the licence as the court thinks fit.

[84] Section 145 Proceedings for offence

Insert after section 145 (2):

- (2A) Despite anything to the contrary in this section or in any other Act, proceedings for an offence referred to in the Table to this section may be instituted by information laid within the period of 3 years after the act or omission giving rise to the offence.

[85] Section 145

Insert at the end of the section:

Table (Offences to which 3 year time limit applies)

An offence against section 37, 69B, 69E, 78A, 86, 86A, 86L, 101, 105A, 105B, 121, 122, 123, 124, 125B, 136, 139, 155A, 161, 181, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198 or 199 of this Act.

[86] Section 145A Penalty notices

Omit “A police officer” from section 145A (1).
Insert instead “An authorised officer”.

[87] Section 145A (11)

Insert after section 145A (10):

(11) In this section:

authorised officer means a police officer, the Director or a special inspector.

[88] Section 145B

Insert after section 145A:

145B Attendance notices for offences

- (1) If an information may be laid before the court against any person for an offence that is prescribed by the regulations as an offence to which this section applies, a police officer may issue a notice for the attendance of the person before the court.
- (2) The provisions of the *Justices Act 1902* apply to and in respect of a notice issued under this section in the same way as they apply to and in respect of an attendance notice under that Act.

- (3) For the purposes of the application of the *Justices Act 1902* under this section:
- (a) a notice issued under this section is taken to be an attendance notice issued under section 100AB of that Act, and
 - (b) a reference in that Act to a justice is taken to include a reference to a licensing magistrate, and
 - (c) a reference in that Act to a Local Court is taken to include a reference to the court.

[89] Part 9, heading

Insert “and reviews” after “Appeals”.

[90] Section 148 Appeal to Licensing Court against decision of Court

Insert after section 148 (3):

- (4) Without limiting subsection (1), an order of the court under section 104C is an adjudication for the purposes of that subsection.

[91] Section 149A

Insert after section 149:

149A Review of disqualification of more than 3 years

- (1) A person may apply to the court for removal of a disqualification of more than 3 years imposed under section 69 or 143A.
- (2) The application may be made only after:
 - (a) any minimum period set by the court during which the application may not be made has expired, or
 - (b) if no minimum period has been set, the disqualification has been in force for 3 years.

- (3) On application being made for the removal of a disqualification, the court may:
 - (a) remove the disqualification, or
 - (b) shorten the period of disqualification, or
 - (c) confirm the disqualification and set a minimum period during which a further application under this section may not be made.
- (4) This section does not affect any right of appeal that a person might have under section 148 against the original decision to disqualify the person.

[92] Section 152 Forfeiture of liquor and other things

Insert after section 152 (3):

- (3A) If a licence is cancelled under this Act, there is forfeited to the use of the Crown all liquor found, not earlier than 7 days after the cancellation takes effect, in the former licensee's possession on the former licensed premises, together with the vessels in which the liquor is contained.

[93] Section 152 (5)

Insert after section 152 (4):

- (5) A special inspector may seize and carry away any liquor, together with the vessels in which the liquor is contained, that the special inspector reasonably suspects may be liable to forfeiture under this section.

[94] Section 156 Regulations

Insert after section 156 (1) (k):

- (l) prescribing guidelines for the assistance of licensees and employees of licensees in determining indications of intoxication, and

[95] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Liquor and Registered Clubs Legislation Amendment
(Enforcement) Act 1996*

[96] Schedule 1, Part 8

Insert in appropriate numerical order:

**Part 8 Liquor and Registered Clubs Legislation
Amendment (Enforcement) Act 1996**

39 Procedure before court

The amendment made to section 12 (Procedure before the Licensing Court) by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply in respect of any proceedings on a complaint under section 67 of this Act, or under section 17 of the *Registered Clubs Act 1976*, which commenced to be heard by the court before that amendment commenced.

40 Effect of amendments on pending proceedings

- (1) Section 17A applies to proceedings commenced, but not completed, before the commencement of that section.
- (2) An amendment made to section 69 by Schedule 1 [44], [45], [50] or [52] of the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply in respect of any proceedings relating to the matter of a complaint under section 67 that commenced to be heard by the court before that amendment commenced.
- (3) An amendment made to section 46 or 69 by Schedule 1 [23] or [56] to the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* applies to proceedings before the court whether or not those proceedings were commenced before or after the commencement of the amendment.

- (4) An amendment made to section 125 by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply to proceedings for an offence alleged to have been committed before the commencement of the amendment.
- (5) Section 145B does not apply to proceedings for an offence alleged to have been committed before the commencement of that section.
- (6) An amendment made to a provision of this Act by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* that changes the onus of proof in relation to a matter does not apply to proceedings commenced before that amendment commenced.

41 Complaints relating to close associates

A complaint may not be made in relation to a person who is a close associate of a licensee on a ground specified in section 68 (1A) (b) in respect of conduct that occurred before the commencement of that provision.

42 Managers

- (1) The regulations may provide for the application of the requirements of Division 8B of Part 3, relating to the appointment of managers for licensed premises in special areas, to licensees and licensed premises in existence when the amendments made by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* to that Division commence.
- (2) A consent given by the Board under section 101 (1) (a) and in force immediately before the commencement of Schedule 1 [63] to the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* is taken to have been given under section 101 (1) (a) or (a1), as the case requires.

43 Application of penalty powers

Section 143A does not apply to offences committed before the commencement of that section.

44 Increase in time limit for taking proceedings for certain offences

Section 145 (2A) extends to apply in respect of an act or omission giving rise to proceedings for an offence referred to in the Table to section 145 that occurred within 12 months before section 145 (2A) commenced.

45 Effect of amendments on pending applications

An amendment made by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply to an application pending under this Act at the commencement of the amendment.

Schedule 2 Amendment of Registered Clubs Act 1976

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

authorised justice has the same meaning as in the *Search Warrants Act 1985*.

financial institution means:

- (a) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth or a bank constituted under a law of a State or Territory, or
- (b) a building society within the meaning of the *Financial Institutions (NSW) Code* or a law of another State, or of a Territory, that corresponds to that Code, or
- (c) a credit union within the meaning of the *Financial Institutions (NSW) Code* or a law of another State, or of a Territory, that corresponds to that Code.

[2] Section 4A Meaning of close associate

Omit the definition of *relevant financial interest* from section 4A (3).

Insert instead:

relevant financial interest, in relation to a business, means:

- (a) any share in the capital of the business, or
- (b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or

- (c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business of the club is or is to be carried on (such as, for example, an entitlement of the owner of the premises of a registered club to receive rent as lessor of the premises).

[3] Section 4A (4)

Insert after section 4A (3):

- (4) A financial institution is not a close associate within the meaning of this section by reason only of having a relevant financial interest in relation to a business.

[4] Section 17 Determination of complaints against registered clubs

Insert “, or 5,000 penalty units if circumstances of aggravation exist in relation to the complaint,” after “2,500 penalty units” in section 17 (2) (c).

[5] Section 17 (2A)

Insert after section 17 (2):

- (2A) For the purposes of this section, circumstances of aggravation exist in relation to a complaint if (and only if) each of the following paragraphs applies:
 - (a) the complaint concerns a contravention or alleged contravention of section 44A (Conduct on club premises) or 54A (Sale of stolen goods and possession, use or sale of drugs not to be permitted on premises of registered clubs),

- (b) the complaint alleges that for the reasons specified in the complaint the matter of the complaint is so serious as to warrant the taking of action that is available to the Licensing Court when circumstances of aggravation exist,
- (c) the Licensing Court, in finding that the matter of the complaint has been made out, is of the opinion (having regard to such matters as the number of contraventions of the Act involved, the seriousness of the contravention involved, the number of people involved in the contravention, the seriousness of the outcome of the contravention, or other relevant considerations) that the matter of the complaint is so serious as to warrant the taking of action that is available to the Licensing Court when circumstances of aggravation exist.

[6] Section 17 (3B)

Omit the subsection.

[7] Section 17 (6)

Insert after section 17 (5):

- (6) When hearing and determining the matter of a complaint under this section, the Licensing Court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the Court.

[8] Sections 17AAB–17AAE

Insert after section 17AA:

17AAB Order by authorised justice for short-term closure of premises

- (1) An authorised justice may, by notice served on a registered club, order the club to close its premises from a time specified in the order until a later specified time.
- (2) An authorised justice may only make an order under this section:
 - (a) on the application of the Director or the Commissioner of Police, and
 - (b) if satisfied that a serious breach of this Act has occurred, or is likely to occur, on the premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.
- (3) Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:
 - (a) a threat to public health or safety, or
 - (b) a risk of substantial damage to property, or
 - (c) a significant threat to the environment, or
 - (d) a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.
- (4) An order may not require the closure of premises for a period longer than 72 hours.
- (5) An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than 72 hours.

- (6) If a registered club fails to comply with an order made under this section, the club and the secretary of the club are each guilty of an offence.

Maximum penalty (subsection (6)): 50 penalty units or imprisonment for 6 months, or both.

- (7) Two or more orders closing the same premises may not be made under this section in any period of one week.

17AAC Urgent application for order under section 17AAB

- (1) An application under section 17AAB may be made by telephone.
- (2) An authorised justice must not issue an order under section 17AAB on an application made by telephone unless satisfied that the order is required urgently and that it is not practicable for the application to be made in person.
- (3) An application under this section must be made by facsimile if the facilities to do so are readily available for that purpose.
- (4) An authorised justice who issues an order under section 17AAB on an application made by telephone must:
- (a) complete and sign the order, and
 - (b) furnish the order to the applicant or inform the applicant of the terms of the order and of the date and time when it was signed.
- (5) If an order under section 17AAB is issued on an application made by telephone and the applicant is not furnished with the order, the applicant must:
- (a) complete a form of order in the terms indicated by the authorised justice under subsection (4), and
 - (b) write on the form the name of the authorised justice and the date and time when the order was signed.

- (6) A form of order so completed is taken to be an order issued under section 17AAB.
- (7) An order under section 17AAB issued on an application made by telephone is to be furnished by an authorised justice by transmitting it by facsimile, if the facilities to do so are readily available, and the copy produced by that transmission is taken to be the original document.
- (8) In this section:
 - (a) *telephone* includes radio, facsimile or other communication device, and
 - (b) a reference to facsimile includes a reference to any electronic communication device which transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

17AAD Order by Licensing Court for closure of premises

- (1) The Licensing Court may, on the application of the Director or the Commissioner of Police, order a registered club to close its premises from a time specified in the order until a later specified time.
- (2) The Licensing Court may only make an order under this section if
 - (a) the club or the secretary of the club is the subject of a police investigation or a complaint has been made in relation to the club under section 17, and
 - (b) the club has been given notice of the application for closure and has been given an opportunity to appear before the Licensing Court and be heard in relation to the application, and
 - (c) the Licensing Court is of the opinion that a serious breach of this Act has occurred, or is likely to occur, on the premises and that the closure of the premises is necessary to prevent or reduce a significant threat or risk to the public interest.

- (3) Without limiting the generality of subsection (2), circumstances in which there may be a significant threat or risk to the public interest include circumstances in which there is:
- (a) a threat to public health or safety, or
 - (b) a risk of substantial damage to property, or
 - (c) a significant threat to the environment, or
 - (d) a risk of serious offences (having a maximum penalty of not less than 2 years imprisonment) being committed on the premises.
- (4) An order ceases to have effect at the time specified or when the complaint is determined under this Act, whichever is the earlier.
- (5) An order may not require the closure of premises for a period longer than the period prescribed by the regulations.
- (6) An order may require the closure of premises until specified conditions are met but must not require closure for a period longer than that permitted under subsection (5).
- (7) If a registered club fails to comply with an order made under this section, the club and the secretary of the club are each guilty of an offence.

Maximum penalty (subsection (7)): 50 penalty units or imprisonment for 6 months, or both.

17AAE Further closure orders

- (1) The Licensing Court may grant 2 or more orders in respect of premises under section 17AAD.
- (2) An application for another order may be made, and determined, before the end of a current order.

[9] Section 23B Complaints relating to functions authority

Omit section 23B (5).

[10] Section 26 Taking of objection

Insert after section 26 (5):

- (6) When hearing and determining an objection, the Licensing Court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the Court.

[11] Section 33 Approval of secretary of registered club

Insert after section 33 (4C):

- (4D) If an objection to an application is taken on the ground that the applicant is not a fit and proper person to be the secretary of a registered club, the onus is on the applicant to satisfy the Licensing Court that the applicant is a fit and proper person to be a secretary of a registered club.

[12] Section 33 (5A)

Insert after section 33 (5):

- (5A) When hearing and determining an objection, the Licensing Court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the Court.

[13] Section 33 (6)

Insert “91A and” before “95–95B”.

[14] Section 35 Complaint against secretary or member of governing body

Insert after section 35 (4):

- (4A) When hearing and determining the matter of a complaint under this section, the Licensing Court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the Court.

[15] Section 35 (5A) (a)

Omit “not exceeding 3 years”.

[16] Section 35A Investigations by Director

Omit “or relations” from section 35A (3) (d).

[17] Part 5, heading

Insert “and reviews” after “Appeals”.

[18] Section 42B Appeal to Licensing Court against decision of court

Insert after section 42B (3):

- (4) Without limiting subsection (1), an order of the Licensing Court under section 17AAD is an adjudication for the purposes of that subsection.

- (5) However, the lodging of an appeal against an order referred to in subsection (4) does not operate to stay the order.

[1 9] Section 42C

Insert after section 42B:

42C Review of disqualification or declaration of ineligibility

- (1) A person may apply to the court for a review of a disqualification imposed under section 65A or 109 or a declaration of ineligibility made under section 17, 35, 65A or 109 if the disqualification or declaration has effect for a period of more than 3 years.
- (2) The application may be made only after:
- (a) any minimum period set by the court during which the application may not be made has expired, or
 - (b) if no minimum period has been set, the disqualification or declaration has been in force for 3 years.
- (3) On application being made for the review of a disqualification or declaration of ineligibility, the Licensing Court may:
- (a) remove the disqualification or revoke the declaration, or
 - (b) shorten the period of disqualification or ineligibility, or
 - (c) confirm the disqualification or declaration and set a minimum period during which a further application for review under this section may not be made.
- (4) This section does not affect any right of appeal that a person might have under section 42B against the original decision to disqualify the person or to make the relevant declaration.

[20] Section 44A Conduct on club premises

Omit “all reasonable steps” from section 44A (3).

Insert instead “the steps set out in subsection (4) or all other reasonable steps”.

[21] Section 44A (4)

Insert after section 44A (3):

- (4) For the purposes of subsection (3), the following are the relevant steps:
 - (a) asked the intoxicated person to leave the premises,
 - (b) contacted, or attempted to contact, a police officer for assistance in removing the person from the premises,
 - (c) refused to serve the person any alcohol after becoming aware that the person was intoxicated.

[22] Section 54A Sale of stolen goods and possession, use or sale of drugs not to be permitted on premises of registered clubs

Omit “10 penalty units” from section 54A (1).

Insert instead “50 penalty units”.

[23] Section 54A (1A)

Insert after subsection (1):

- (1A) A person, being the secretary of a registered club, an employee of a registered club or a person in charge of a registered club, must not permit the possession or use on the premises of the club of any substance that the person suspects of being a prohibited plant or a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.

Maximum penalty: 50 penalty units.

[24] Section 55 False or misleading statements

Omit “20 penalty units” from the section as substituted by the *Liquor and Registered Clubs Legislation Amendment Act 1996*.

Insert instead “50 penalty units or imprisonment for 12 months, or both”.

[25] Section 58 Powers of entry, inspection and seizure by police, Director or special inspector

Insert after section 58 (1):

- (1A) If a special inspector believes on reasonable grounds that a breach of this Act has been, or is being, committed on the premises of a registered club, the special inspector may, at any time of the day or night, enter the premises with or without a police officer.

[26] Section 58 (28)

Insert after section 58 (2A):

- (2B) In the exercise of a power conferred under this section, the Commissioner of Police, a police officer or a special inspector may:
- (a) if the Commissioner, police officer or special inspector considers it necessary to do so for the purposes of obtaining evidence of the commission of an offence, seize any registers, books, records or other documents relating to the business conducted on the premises of the registered club, and
 - (b) require any person to answer any question relating to any such registers, books, records or other documents or any other relevant matter.

[27] Section 59

Insert after section 58:

59 Dealing with seized documents

- (1) If the Commissioner of Police or a police officer or special inspector seizes any document under section 58 on the premises of a registered club, the Commissioner, police officer or special inspector must issue the person apparently in charge of the premises with a written receipt for the document.
- (2) The Commissioner of Police, police officer or special inspector may retain any document seized under section 58 until the completion of any proceedings (including proceedings on appeal) in which it may be evidence.
- (3) A document may only be retained under subsection (2) if the person from whom the document was seized is provided, within a reasonable time after the seizure, with a copy of the document certified by the Commissioner of Police, police officer or special inspector as a true copy.
- (4) The copy is, as evidence, of equal validity to the document of which it is certified to be a copy.

[28] Section 63 Evidentiary provisions

Insert after section 63 (1) (d):

- (d1) an allegation that the premises of a registered club are subject to a closure order is taken to be proved unless the contrary is proved,

[29] Section 65 Proceedings for offences arising under this Act

Insert after section 65 (2):

- (3) Despite anything to the contrary in this section or in any other Act, proceedings for an offence referred to in the

Table to this section may be taken within 3 years after the act or omission giving rise to the offence.

Table (Offences to which a 3 year time limit applies)

An offence against section 4AA, 17AAA, 23, 27A, 27B, 32, 34, 35, 36, 37, 39, 40, 43A, 45, 45A, 47, 49, 55, 59A, 59B, 59C, 59D, 70, 72C, 78, 79, 80, 82, 82A, 82B, 82C, 82D, 82E, 82F, 83, 83A, 84, 87H, 94, 101, 106J, 106K, 106L, 106N, 106P, 111A, 116, 116B, 116C, 116D, 117, 121, 122, 122A, 127 or 128 of this Act.

[30] Section 65A

Insert after section 65:

65A Additional penalties

- (1) In addition to any other penalty it may impose for an offence committed by a registered club under this Act, the Licensing Court may, if it thinks it appropriate, do any one or more of the following:
 - (a) cancel the certificate of registration or functions authority of the club,
 - (b) suspend the functions authority of the club,
 - (c) subject the certificate of registration or functions authority of the club to a specified condition,
 - (d) declare (subject to section 17AAA and subsection (3)) that each person specified in the declaration is, for such period as is specified in the declaration, ineligible to stand for election or to be appointed to, or to hold office in, the position of secretary or member of the governing body (or both of those positions) of
 - (i) the club, and

- (ii) if the court so declares—all other registered clubs or such other registered clubs as are specified or as are of a class specified in the declaration.
- (2) In addition to any other penalty it may impose for an offence committed by the holder of a gaming-related licence under this Act, a court may, if it thinks it appropriate, do any one or more of the following:
 - (a) reprimand the licensee,
 - (b) impose a condition to which a licence is to be subject, or revoke or vary a condition to which a licence is subject,
 - (c) suspend a licence for such period, not exceeding 12 months, as the court thinks fit,
 - (d) cancel a licence,
 - (e) disqualify a licensee from holding a gaming-related licence for such period as the court thinks fit.
- (3) Section 17AAA (2) and (5)–(8) apply to a court exercising a power under subsection (1) (d) in the same way as they apply to the Licensing Court exercising its power under section 17 (2) (f).

[31] Section 66 Penalty notices

Omit “A police officer” from section 66 (1).
Insert instead “An authorised officer”.

[32] Section 66 (10)

Insert after section 66 (9):

- (10) In this section:

authorised officer means a police officer, the Director or a special inspector.

[33] Section 66A

Insert after section 66:

66A Attendance notices for offences

- (1) If an information may be laid before the Licensing Court against any person for an offence that is prescribed by the regulations as an offence to which this section applies, a police officer may issue a notice for the attendance of the person before the Licensing Court.
- (2) The provisions of the *Justices Act 1902* apply to and in respect of a notice issued under this section in the same way as they apply to and in respect of an attendance notice under that Act.
- (3) For the purposes of the application of the *Justices Act 1902* under this section:
 - (a) a notice issued under this section is taken to be an attendance notice issued under section 100AB of that Act, and
 - (b) a reference in that Act to a justice is taken to include a reference to a licensing magistrate, and
 - (c) a reference in that Act to a Local Court is taken to include a reference to the Licensing Court.

[34] Section 67A

Omit the section. Insert instead:

67A Removal of persons from premises of registered club

- (1) The secretary or an employee of a registered club may refuse to admit to the registered club and may turn out, or cause to be turned out, of the premises of the club any person:
 - (a) who is then intoxicated, violent, quarrelsome or disorderly, or

- (b) who, for the purposes of prostitution, engages or uses any part of the premises, or
 - (c) whose presence on the premises renders the club or the secretary of the club liable to a penalty under this Act, or
 - (d) who hawks, peddles or sells any goods on the premises, or
 - (e) who uses, or has in his or her possession, while on the premises any substance that the secretary or employee suspects of being a prohibited plant or a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*.
- (2) If, pursuant to subsection (1), a person has been refused admission to, or has been turned out of, the premises of a registered club, the secretary of the club or an employee of the club may, at any subsequent time or from time to time, refuse to admit that person into the premises of the club or may turn the person out, or cause the person to be turned out, of the premises.
- (3) For the purposes of subsection (1) or (2), such reasonable force as may be necessary may be used to turn a person out of the premises of a registered club.
- (4) If a person to whom a secretary or an employee of a registered club is, under subsection (1) or (2), entitled to refuse admission to the premises of the club is on the premises the person must, on being required to do so by the secretary of the club, an employee of the club or a police officer, quit the premises.
- Maximum penalty: 50 penalty units.
- (5) If a police officer is requested by the secretary of a registered club or an employee of the club to turn out, or assist in turning out, of the premises of the club a person

whom the secretary or employee is entitled under subsection (1) or (2) to turn out of the premises, it is the duty of the police officer to comply with the request and the police officer may, for that purpose, enter the premises and use such reasonable degree of force as may be necessary.

[35] Section 67B

Insert before section 68:

67B Forfeiture of liquor and containers

- (1) If a certificate of registration of a club is cancelled under this Act, there is forfeited to the use of the Crown all liquor found, not earlier than 7 days after the cancellation takes effect, in the club's possession on the club's premises, together with the vessels in which the liquor is contained.
- (2) A police officer or a special inspector may seize and carry away any liquor, together with the vessels in which the liquor is contained, that the officer or inspector reasonably suspects may be liable to forfeiture under this section.

[36] Section 73 Regulations

Insert at the end of section 73 (1) (1):

, or

- (m) prescribing guidelines for the assistance of secretaries and employees of registered clubs in determining indications of intoxication.

[37] Section 91A

Insert after section 91:

91A Director's report required before application may be granted

- (1) An application for a gaming-related licence must not be granted by the Licensing Court unless the Licensing Court has received and considered a report by the Director as to any investigations and inquiries carried out, or reports received, under Division 2A.
- (2) However, the Licensing Court may hear and determine such an application if any investigation, inquiry or report under Division 2A has not been completed, or received by the court, within 3 months after the application was lodged.
- (3) The 3 month period may be extended by the Licensing Court on application being made by the Director before the end of the period.

[38] Section 93

Omit the section. Insert instead:

93 Disclosure of interested parties

- (1) An application for a gaming-related licence (other than an application to be licensed as an employee), must be accompanied by an affidavit by a person having knowledge of the facts stating:
 - (a) that the person has made all reasonable inquiries to ascertain the information required to complete the affidavit, and
 - (b) whether there are any persons (other than financial institutions) who will be interested in the business, or the profits of the business, carried on under the licence, and

- (c) if there are any such persons, their names and dates of birth and, in the case of a proprietary company, the names of the directors and shareholders.
- (2) For the purposes of subsection (1), a person is interested in the business, or the profits of the business, carried on under the licence if the person is entitled to receive:
 - (a) any income derived from the business, or any other financial benefit or financial advantage from the carrying on of the business (whether the entitlement arises at law or in equity or otherwise), or
 - (b) any rent, profit or other income in connection with the use or occupation of premises on which the business is to be carried on.

[39] Section 95B Director may require further information

Insert “, or may require a close associate of any such person,” after “referred to the Director” in section 95B (1).

[40] Section 95B (1) (d)

Omit “or relations”.

[41] Section 95B (3)

Omit section 95B (3). Insert instead:

- (3) The Licensing Court may refuse to grant an application if a requirement made under this section in relation to the application is not complied with.

[42] Section 98 Grounds of objection

Omit section 98 (1) (c). Insert instead:

- (c) that a person who is, was or will be a close associate of the applicant is not a fit and proper person to be a close associate of the holder of a gaming-related licence,

[43] Section 99 Taking of objection

Insert after section 99 (3):

- (4) When hearing and determining an objection, the Licensing Court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the Court.

[44] Section 100 Discretionary powers of Licensing Court

Omit “unsuitability or the public interest” from section 100 (3).
Insert instead “the unsuitability of the applicant, the public interest or a failure to comply with a requirement of the Director under Division 2A”.

[45] Section 100 (4)

Insert after section 100 (3):

- (4) The Licensing Court may grant an application even though an objection to the grant of the application has been made out on the ground of a failure to comply with a requirement of the Director under Division 2A, but only if the Court is satisfied that reasonable cause has been shown for the failure to comply with the requirement.

[46] Section 107A Director may investigate holders of gaming-related licences and others

Insert “or a close associate of the holder of a gaming-related licence” after “licence” in section 107A (1).

[47] Section 107A (3)

Omit “who is the subject of an investigation under this section”.

Insert instead “or a close associate who is the subject of an investigation under this section, or may require a close associate of any such licensee,”.

[48] Section 107A (3) (d)

Omit “or relations”.

[49] Section 108 Summons to show cause against taking of disciplinary action

Insert after section 108 (1):

(1A) A complaint in relation to a person who is a close associate of a licensee is an authorised complaint for the purposes of this section if it is made in writing by the Commissioner of Police or the Director and specifies as its grounds one or more of the grounds specified in subsection (2A). A complaint under this subsection can be made in conjunction with a complaint in relation to the licensee on the ground specified in subsection (2) (f) or any other ground and those complaints can be heard and determined together.

[50] Section 108 (2)

Insert “under subsection (1)” after “authorised complaint”.

[51] Section 108 (2) (f)

Omit the paragraph. Insert instead:

- (f) that a person named in the complaint is, was or will be a close associate of the licensee and is not a fit and proper person to be a close associate of a licensee,

[52] Section 108 (2A)

Insert after section 108 (2):

- (2A) The grounds on which an authorised complaint under subsection (1A) may be made in relation to a person who is a close associate of a licensee are as follows:
 - (a) that the close associate is not a fit and proper person to be a close associate of a licensee,
 - (b) that a complaint against the licensee under this section has been established and that:
 - (i) the close associate knew or ought reasonably to have known that the licensee was engaging or was likely to engage in conduct of the kind to which the complaint relates, and
 - (ii) the close associate failed to take all reasonable steps to prevent the licensee from engaging in conduct of that kind,
 - (c) that a requirement of the Director made under this Act in relation to the investigation of the close associate and specified in the complaint has not been complied with.

[53] Section 108 (3)

Insert “or other person” after “licensee”.

[54] Section 108 (4) (c)

Omit “licensee”.

Insert instead “person the subject of the complaint and, if that person is not the licensee, on the licensee”.

[55] Section 108A

Insert after section 108:

108A Complaints against close associates

- (1) For the purposes of section 108 (2A) (b), a complaint against a licensee under that section is taken to have been established if the Licensing Court, on the hearing and determination of a complaint in relation to the licensee under that section, found that the matter of the complaint had been made out.
- (2) On the hearing and determination of a complaint under section 108 (1A) on the ground referred to in section 108 (2A) (b), the onus is on the close associate to satisfy the Licensing Court that the close associate took all reasonable steps to prevent the licensee from engaging in conduct of the kind concerned.

[56] Section 109 Disciplinary powers of Court

Insert “or, if circumstances of aggravation exist in relation to the complaint, not exceeding 1,000 penalty units in the case of a corporation or 400 penalty units in any other case” after “any other case” in section 109 (1) (b).

[57] Section 109 (1) (d)

Insert “or, if circumstances of aggravation exist in relation to the complaint, not exceeding 24 months” after “12 months”.

[58] Section 109 (1) (f)

Omit “ , not exceeding 3 years.”.

[59] Section 109 (1A)–(1D)

Insert after section 109 (1):

- (1A) For the purposes of this section, circumstances of aggravation exist in relation to a complaint if (and only if) each of the following paragraphs applies:
- (a) the complaint concerns a contravention or alleged contravention of section 44A (Conduct on club premises) or 54A (Sale of stolen goods and possession, use or sale of drugs not to be permitted on premises of registered clubs),
 - (b) the complaint alleges that for the reasons specified in the complaint the matter of the complaint is so serious as to warrant the taking of action that is available to the Licensing Court when circumstances of aggravation exist,
 - (c) the Licensing Court, in finding that the matter of the complaint has been made out, is of the opinion (having regard to such matters as the number of contraventions of the Act involved, the seriousness of the contravention involved, the number of people involved in the contravention, the seriousness of the outcome of the contravention, or other relevant considerations) that the matter of the complaint is so serious as to warrant the taking of action that is available to the Licensing Court when circumstances of aggravation exist.
- (1B) On the appearance of a person in response to a summons under section 108 in respect of a complaint under section 108 (1A), or in the person’s absence after being duly summoned, the Licensing Court is to proceed to hear and determine the matter of the complaint to which the

summons relates and, if it is satisfied that the ground on which the complaint was made has been made out, may do any one or more of the following:

- (a) reprimand the person,
- (b) disqualify the person from being a close associate of a licensee for such period as the Licensing Court thinks fit,
- (c) disqualify the person from holding a licence for such period as the Licensing Court thinks fit,
- (d) order the person to pay to the Crown a monetary penalty not exceeding 500 penalty units in the case of a corporation or 200 penalty units in any other case,

or may take no action.

- (1C) While a person is disqualified by the Licensing Court from being a close associate of a licensee, the person is conclusively presumed for the purposes of this Act and the *Liquor Act 1982* to be a person who is not a fit and proper person to be a close associate of a licensee under either Act or of a registered club.
- (1D) The taking of action under subsection (1B) in respect of a complaint does not prevent or limit the taking of any other action under this section in respect of any other complaint in relation to a licensee (whether or not that other complaint is heard together with the complaint).

[60] Section 109 (2A)

Insert after section 109 (2):

- (2A) When hearing and determining the matter of a complaint under subsection (1), the Licensing Court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the

Independent Commission Against Corruption or other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the court.

[61] Section 112

Omit the section. Insert instead:

112 Control of business carried on under gaming-related licence

- (1) If a person (other than a licensee or a financial institution) becomes interested in the business, or the profits of the business, carried on under a gaming-related licence, it is a condition of the licence that the licensee must, within 28 days after the other person's becoming so interested, produce to the Principal Registrar an affidavit stating:
 - (a) that the licensee has made all reasonable inquiries to ascertain the information required to complete the affidavit, and
 - (b) the name and date of birth of the person so interested and, in the case of a proprietary company, the names of the directors and shareholders.
- (2) For the purposes of subsection (1), a person is interested in the business, or the profits of the business, carried on under the licence if the person is entitled to receive:
 - (a) any income derived from the business, or any other financial benefit or financial advantage from the carrying on of the business (whether the entitlement arises at law or in equity or otherwise), or
 - (b) any rent, profit or other income in connection with the use or occupation of premises on which the business is to be carried on.
- (3) This section does not apply to a licence held as an employee.

[62] Schedule 2 Transitional provisions

Insert at the end of clause 1A (1):

*Liquor and Registered Clubs Legislation Amendment
(Enforcement) Act 1996*

[63] Schedule 2, Part 11

Insert in appropriate numerical order:

**Part 11 Liquor and Registered Clubs Legislation
Amendment (Enforcement) Act 1996**

65 Procedure before court

The repeal of section 17 (3B) by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply in respect of any proceedings on a complaint under section 17 which commenced to be heard by the Licensing Court before that repeal.

66 Effect of amendments on pending proceedings

- (1) An amendment made to section 17 by Schedule 2 [4], [5] or [6] of the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply in respect of any proceedings relating to the matter of a complaint under section 17 (1) that commenced to be heard by the Licensing Court before that amendment commenced.
- (2) An amendment made to section 109 by Schedule 2 [56], [57] or [59] of the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply in respect of any proceedings relating to the matter of a complaint under section 108 that commenced to be heard by the Licensing Court before that amendment commenced.

- (3) An amendment made to section 17, 26, 33, 35, 99 or 109 by Schedule 2 [7], [10], [12], [14], [43] or [60] of the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* applies to proceedings before the Licensing Court whether or not those proceedings were commenced before or after the commencement of the amendment.
- (4) An amendment made to section 44A by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply to proceedings for an offence alleged to have been committed before the commencement of the amendment.
- (5) Section 66A does not apply to proceedings for an offence alleged to have been committed before the commencement of that section.
- (6) An amendment made to a provision of this Act by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* that changes the onus of proof in relation to a matter does not apply to proceedings commenced before that amendment commenced.

67 Complaints relating to close associates

A complaint may not be made in relation to a person who is a close associate of a registered club on a ground specified in section 108 (2A) (b) in respect of conduct that occurred before the commencement of that provision.

68 Increase in time limit for taking proceedings for certain offences

The amendment made to section 65 by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* extends to apply in respect of an act or omission giving rise to proceedings for an offence referred to in the Table to that section that occurred within 12 months before that amendment commenced.

69 Application of penalty powers

Section 65A does not apply to offences committed before the commencement of that section.

70 Effect of amendments on pending applications

An amendment made by the *Liquor and Registered Clubs Legislation Amendment (Enforcement) Act 1996* does not apply to an application pending under this Act at the commencement of the amendment.

[Minister's second reading speech made in—
Legislative Assembly on 18 June 1996
Legislative Council on 25 June 1996]