

# EXPLANATORY MEMORANDUM

## *Liquor Control Amendment Bill 2010*

### OVERVIEW

The *Liquor Control Amendment Bill 2010* (the Bill) amends the *Liquor Control Act 1988*.

The Bill introduces:

- A new licensing regime for approved managers which will provide greater flexibility for licensees and managers by allowing managers to move between licensed premises throughout Western Australia without application to the licensing authority.
- New provisions to allow owner/occupiers to apply to the Director of Liquor Licensing to have their premises declared as a liquor restricted premises, thereby prohibiting the consumption and possession of liquor.
- A number of 'law and order' initiatives which are intended to regulate patron behaviour in licensed premises and reduce the incidence of anti-social behaviour and alcohol-related harm; and
- A range of technical and operational amendments to clarify certain provisions of the existing legislation and support current operational policies.

The Bill is separated into six parts:

**Part 1** provides that the commencement of the Bill will come into operation the day after it receives Royal Assent and that the remaining parts will come into operation on a day fixed by proclamation in which different days may be fixed for different provisions.

**Part 2** amends the Act to establish the new licensing regime for approved managers and provide flexibility for managers to move between licensed premises without application to the licensing authority. The Bill provides:

- two licence categories will be available; an Unrestricted category for commercial licence types such as hotels, taverns, nightclubs and restaurants and a Restricted category for club and club restricted licences;
- that the duration of licences will be prescribed in regulations (proposed to be 5 years) and licences will be renewable;
- the category of licence to be issued to be commensurate with the level of training obtained by the applicant. A person who has completed the two-day course in liquor licensing will qualify for an unrestricted licence whereas a person who has only completed the nationally accredited course in the responsible service of alcohol will qualify for a restricted licence;
- that applicants will be required to meet existing probity requirements; and
- transitional provisions will provide for existing managers currently approved by the Director of Liquor Licensing to be approved under the amended legislation. Transitional approvals will be issued commensurate to the level training which has been undertaken by the individual.

**Part 3** establishes provisions to allow owner/occupiers (or other prescribed class of persons) to apply to the Director of Liquor Licensing to have their premises declared as a liquor restricted premises. The Bill provides that:

- private premises are considered to be residential premises, including a single unit/apartment within a complex/building; Crown land leased or occupied under a licence or agreement; and privately owned land, including any buildings on the land;
- in determining whether to declare a premises a restricted premises, the Director may consult with the Commissioner of Police, local government authorities and any other person considered relevant;
- it will be an offence for a person to bring into, consume or possess liquor on declared restricted premises;
- a notice must be displayed on a premises to which a declaration applies; and
- declarations may be varied or revoked by the Director of Liquor Licensing.

**Part 4** addresses matters relating to regulating behaviour in licensed premises. In this regard, the most significant initiative is the power conferred on the Commissioner of Police to issue barring notices for up to 12 months prohibiting a person from licensed premises. The intention of the barring notice is to target those people who display anti-social behaviour in a licensed premises and not those who may be associated with serious and organised crime. To achieve this, the Bill provides:

- the Commissioner of Police may issue a barring notice for up to 12 months, prohibiting a person from a specified licensed premises or a specified class of licensed premises;
- a person who has been issued with a barring notice that exceeds one month, or has the accumulative affect of one month within a 12 month period, may apply for a review to the Liquor Commission. The Commission may either affirm, vary or quash the decision of the Commissioner of Police;
- the Commissioner of Police may delegate the issue of barring notices to an Officer with a rank of or above Inspector;
- the Commissioner of Police must publish on a secure webpage, details pertaining to a barred person, such as name; a photograph of the person (if available); town or suburb where the person lives; and the licensed premises or class of premises that the barring relates to; and
- it is an offence for:
  - a barred person to enter and remain on a licensed premises to which the barring relates (unless that person enters the premises solely for the purpose of performing duties relating to the person's work); and
  - a responsible person (that is, the licensee, manager or an agent/employee of the licensee) to permit a barred person to enter or remain on a premises contrary to a barring notice if the person is a barred person.

Other matters relating to regulating behaviour in licensed premises contained in the Bill include:

- Enabling the Commissioner of Police to intervene into any proceeding before the licensing authority in respect of any matter relevant to the public interest (presently limited to applications).
- Establishing a new methodology for calculating annual licence fees, to include such factors such as class of licence; location of the premises; venue capacity; trading hours; convictions; any disciplinary action; and any other prescribed criteria. Presently licence fees within a class of licence cannot be varied.
- Consistent with the barring notice provisions, the Director of Liquor Licensing will be authorised to publish information provided by the Commissioner of Police with an application for a Prohibition Order; that is, the person's name and photographic image.
- making it an offence for a responsible person to permit a person subject to a Prohibition Order to enter or remain on a premises if they know the person is a prohibited person.
- Provision for regulations to be made prohibiting patrons from entering or re-entering licensed premises after a determined time; that is, lockout provisions. Lockouts could apply to all or a specific category of licence and/or geographical location. Presently the licensing authority may only apply such conditions under section 64 of the Act.

**Part 5** makes a number of technical and operational amendments that:

- Amends section 6 so that the Act will not apply where liquor is sold, supplied or *consumed* in accordance with the circumstances prescribed in the regulations. Presently this exemption only applies to the *sale* of liquor in prescribed circumstances.
- Clarifies that the Liquor Commission can determine any matter it considers fit in Chambers and removes the obligation for hearings to be conducted for applications of a new licence, or removal of a licence, where an objection has been lodged and not withdrawn.
- Provides the Director of Liquor Licensing the discretion to determine which applications are referred to the Commissioner of Police.
- Clarifies that the licensing authority's discretion when considering the probity of elected officers of associations incorporated under the Association Incorporation Act 1987 and office holders of other entities such as Local Government Authorities. The licensing authority, without any evidence to the contrary, will be able to assume that office holders of these entities are fit and proper.

- Provides for a tavern licence that only authorises the sale of liquor for consumption on the licensed premises, to be classified as a tavern restricted licence.
- Clarifies that a producer's licence may:
  - only be granted if the licensing authority is satisfied that the applicant is, or will become, a genuine producer of liquor within 12 months and will continue to yield sufficient produce for a wine vintage; and
  - authorise the production of wine, spirits and beer, and is not restricted to the production of one type of liquor.
- Reduces the permitted trading hours for a nightclub licence under section 98A of the Act by one hour on Saturday and Sunday mornings.
- Amends the offence provisions under section 109 so that the minimum penalty imposed for the unlawful sale or supply of liquor is not less than the modified penalty (generally 10 per cent of the specified penalty).
- Clarifies that the licensing authority may receive and process applications for the conduct of another business on a licensed premises.
- Clarifies that conditions may be imposed under section 64 of the Act requiring a licensee to maintain and provide records.
- Enables Police to seize and dispose of unopened containers of liquor where a person is contravening section 119 of the Act (for example, drinking in a park or reserve) and if they believe, on reasonable grounds, that the person has or is likely to cause undue offence, annoyance, disturbance or inconvenience to other persons in the vicinity.
- Provides that a court must only be constituted by a Magistrate if the penalty for the offence is more than \$2,000 or the offence is committed by a licensee, manager or employee or agent of a licensee. In any other case, a Justice of the Peace may preside over proceedings. This will reduce the need for Magistrates to deal with minor offences such as street drinking.
- Increase the penalty for the unlawful sale and supply of liquor to include a two year sentence of imprisonment.
- Establish offence provisions for:
  - a licensee, employee or agent to sell liquor to a person when they should have reasonably suspected that the purchaser intended to illegally resell the liquor; and
  - a person taking liquor into a licensed sports arena and to provide the police with the authority to seize and immediately dispose of any unopened container of liquor.
- Permit juveniles aged 16 or 17 years, who have graduated from a prescribed training course to serve liquor ancillary to a meal whilst employed on licensed premises.
- Make minor amendments relating to:
  - facilitate the electronic lodgement of applications by removing the requirement to affix the date of lodgement to applications;
  - updating penalties to be consistent with the amendments made by the Liquor and Gaming Legislation Amendment Act 2006; and
  - minor grammatical changes and drafting standards adopted by Parliamentary Counsel's Office.

**Part 6** makes consequential amendments to the *Criminal Investigation (Identifying Persons) Act 2002* to affirm the powers conferred in the *Liquor Control Act 1988* to publish details of barring notices and prohibition orders.

# LIQUOR CONTROL AMENDMENT BILL 2010

## CLAUSE NOTES

### Glossary of Abbreviations

Bill	<i>Liquor Control Amendment Bill 2010</i>
Act	<i>Liquor Control Act 1988</i>
PCO	Parliamentary Counsels Office

Part 1 – Preliminary matters	
<b>Clause 1</b>	Cites the <i>Liquor Control Amendment Act 2010</i> as being the short title of this Act.
<b>Clause 2</b>	To provide sufficient flexibility for implementing the approved manager regime and make the necessary regulations to support a number of the provisions in the Bill, the commencement provision specifies that: <ul style="list-style-type: none"> <li>(i) sections 1 and 2 will come into operation on the day that the <i>Liquor Control Amendment Bill 2010</i> receives Royal Assent; and</li> <li>(ii) the rest of the Act will come into operation on a day fixed by proclamation and that different days may be fixed for different provisions.</li> </ul>
<b>Clause 3</b>	Identifies that the <i>Liquor Control Amendment Act 2010</i> (except part 6) amends the <i>Liquor Control Act 1988</i> .
Part 2 – Amendments relating to managers	
<b>Clause 4</b>	<p><u>Subclause (1)</u> deletes the definition of <i>manager</i> from section 3(1) of the Act.</p> <p><u>Subclause (2)</u> inserts a redrafted definition of <i>approved restricted manager</i>, <i>approved unrestricted manager</i>, and <i>manager</i> in section 3(1) of the Act. The new definitions provide that:</p> <p><i>Approved Restricted Manager</i> means a person approved under proposed section 102B (clause 16) who has completed training in the responsible service of alcohol. Such a person will only be permitted to manage a club, club restricted or occasional licensed premises.</p> <p><i>Approved Unrestricted Manager</i> means a person approved under proposed section 102B (clause 16) who has completed training in the management of licensed premises. Such a person will be permitted to manage any type of licensed premises.</p> <p><i>Manager</i> means either an approved unrestricted or approved restricted manager, or a person appointed by a licensee to temporarily manage the premises consistent with the provisions to be inserted in section 100 by way of clause 15.</p> <p><u>Subclause (3)</u> amends the definition of <i>authorised person</i> as a consequence of the amendments made by subclause 2.</p>
<b>Clause 5</b>	Makes consequential amendments to section 30(3) by inserting a reference to <i>approved restricted managers and approved unrestricted managers</i> in the provisions relating to confidential police information. This amendment supports those made by clause 16.
<b>Clause 6</b>	<p><u>Subclause (1)</u> makes consequential amendments to section 33(6) by inserting a reference to <i>approved restricted managers, approved unrestricted managers and a trustee</i> in the provisions relating to probity assessments. This amendment supports those made by clause 16.</p> <p><u>Subclause (2)</u> makes consequential amendments to section 33(6b) by inserting a reference to <i>approved restricted managers and approved unrestricted managers</i> in the provisions relating to training requirements. This amendment supports those made by clause 16.</p>
<b>Clause 7</b>	Makes consequential amendments to section 34 by inserting reference to <i>approved restricted managers and approved unrestricted managers</i> . This amendment supports those made by clause 16.

<b>Clause 8</b>	Repeals section 35B of the Act relating to the approval of a person as a manager as a consequence of amendments made by clause 16. The provisions of section 35B have been redrafted and inserted in section 102B(5).
<b>Clause 9</b>	Repeals section 37(4) of the Act as a consequence of amendments made by clause 16.
<b>Clause 10</b>	<u>Subclauses (1) to (3)</u> amend sections 37B(2), (3) and (6) by reference to “manager” with references to <i>approved restricted managers</i> and <i>approved unrestricted managers</i> . This amendment supports those made by clause 16.
<b>Clause 11</b>	Amends section 48 by inserting new sub section (5A) to provide that the Director may impose a condition on club or club restricted licences requiring that any manager at that licensed premises must be an approved unrestricted manager; that is, that the manager has been trained in the management of licensed premises.
<b>Clause 12</b>	Amends section 59 by inserting new sub section (6A) to provide that the Director may impose a condition on an occasional licence requiring that any manager under that licence must be an approved unrestricted manager; that is that the manager has been trained in the management of licensed premises.
<b>Clause 13</b>	Amends section 60(3) by inserting references to <i>approved restricted managers</i> and <i>approved unrestricted managers</i> in relation to supervision conditions imposed on an extended trading permit. This amendment supports those made by clause 16.
<b>Clause 14</b>	Inserts a new sub heading in Part 4 Division 3 “Subdivision 1 – Licensed premises to be supervised and managed”.
<b>Clause 15</b>	<p><u>Subclause (1)</u> amends section 100(2) to specify that the licensee shall ensure that the conduct of business at the licensed premises is personally supervised and managed by either the licensee if the licensee is a natural person; or by an approved unrestricted manager; an approved restricted manager; or a person appointed by the licensee as a temporary manager.</p> <p><u>Subclause (2)</u> deletes section 100(2a) and inserts in its place redrafted section 100(2a) to stipulate that the licensee must ensure, unless the Director approves otherwise, that there is present at the licensed premises at any time the business is being conducted an approved unrestricted manager; an approved restricted manager; or a person appointed by the licensee as a temporary manager. A penalty of \$10,000 is retained under the new provision.</p> <p><u>Subclause (3)</u> deletes sections 100(3) and (4) and inserts in its place redrafted sections 100(3) and (4) to stipulate that a temporary manager cannot manage a premises for more than 7 consecutive days nor for more than 7 days in any 28 day period; and that the person appointed has not been found to be not fit and proper by the licensing authority in the past. This subclause also provides that the Director may impose a condition on a licence prohibiting the licensee from appointing a temporary manager without the approval of the Director.</p> <p><u>Subclause (4)</u> repeals section 100(6) to support the changes made by subclauses (1) to (3).</p> <p><u>Subclause (5)</u> makes a minor technical amendment to section 100(7) to support the changes made by subclauses (1) to (3).</p>
<b>Clause 16</b>	<p>Inserts new “Subdivision 2 – Approval of managers” in Part 4 Division 3 of the Act and provides under proposed section 102A definitions for:</p> <p><i>“approved manager”</i> – to mean an approved unrestricted or restricted manager; and</p> <p><i>“manager’s approval”</i> – to mean an approval granted under proposed section 102B.</p> <p>This clause also inserts new sections 102B to 102G which provide for the lodgement and subsequent approval of applications for restricted and unrestricted managers. Proposed section 102GB sets out that:</p> <ul style="list-style-type: none"> <li>(i) applications must be made in accordance with the regulations and accompanied by the prescribed fee;</li> <li>(ii) the Director must be satisfied that the applicant is a fit and proper person;</li> <li>(iii) in determining an application, the Director may have regard to any matters prescribed by the regulations;</li> </ul>

	<p>(iv) once an application has been lodged, the applicant will be taken to be an approved manager until the Director has determined the application;</p> <p>(v) the conditions that may be imposed on any approval;</p> <p>Proposed section 102C stipulates that the Director may impose conditions on a manager's approval and may vary or remove those conditions.</p> <p>Proposed section 102D stipulates that the duration of a manager's approval will be as prescribed by the regulations.</p> <p>Proposed section 102E stipulates that a manager's approval is renewable and that an application for renewal must be made in accordance with the regulations and accompanied by the prescribed application fee.</p> <p>Proposed section 102F stipulates that the Director may take disciplinary action if the manager:</p> <ul style="list-style-type: none"> <li>i) has failed to supervise and manage the conduct of the business;</li> <li>ii) is no longer fit and proper;</li> <li>iii) has failed to comply with a condition on his/her approval; or</li> <li>iv) any other grounds exist under the regulations.</li> </ul> <p>As a result of disciplinary action, the Director may revoke, suspend or impose conditions on a manager's approval, but only after the manager has been given an opportunity to be heard.</p> <p>Proposed section 102G stipulates that a manager may seek the cancellation of their approval.</p>
<b>Clause 17</b>	Inserts a new sub heading "Subdivision 3 – General Matters" in Part 4 Division 3.
<b>Clause 18</b>	<p><u>Subclause (1)</u> deletes section 116(4) and inserts in its place redrafted section 116(4) to accommodate the new approval of manager provisions made by clause 16. New provisions stipulate that a licensee is required to display, in a conspicuous position in the licensed premises, a notice showing the name of each person supervising and managing the premises together with a copy of the licence. A penalty of \$2,000 applies for a breach of this provision.</p> <p><u>Subclause (1)</u> also inserts new section 116(5) which stipulates that a licensee may satisfy the requirements of section 116(4) by including the name of each person supervising and managing the premises on the sign required by section 116(5); that is, the sign required at or near the front entrance to the licensed premises.</p> <p><u>Subclause (2)</u> repeals section 116(5)(d) which requires the name of the manager to be included on the sign required at or near the front entrance to the licensed premises. This amendment supports the changes made by subclause (1) and Clause 16.</p>
<b>Clause 19</b>	Repeals section 121(1)(b) and inserts in its place redrafted section 121(1)(b) to clarify that in relation to a manager, an offence for selling or supplying liquor to a juvenile on licensed premises will only apply to the manager who was supervising and managing the licensed premises at the time that offence occurred.
<b>Clause 20</b>	<p><u>Subclause (1)</u> deletes section 164(1)(b) and inserts in its place redrafted section 164(1)(b) which provides that offences for a manager only relate to the manager who was supervising and managing the premises at the time the offence was committed.</p> <p><u>Subclause (2)</u> deletes section 164(1a)(b) and inserts in its place redrafted section 164(1a)(b) which provides that the Commission may impose a penalty on any manager who was supervising and managing the premises at the time the grounds of a complaint under section 95 occurred.</p>
<b>Clause 21</b>	Deletes section 172(1) and inserts in its place redrafted section 172(1) which inserts reference to <i>approved restricted managers</i> and <i>approved unrestricted managers</i> .
<b>Clause 22</b>	Makes consequential and technical amendments to section 175(1) to enable the making of regulations in relation to the approval and conduct of managers.

<b>Clause 23</b>	Inserts a new section 177B which sets out transitional provisions set out in clause 24 relating to the amendments to the Act in respect of <i>approved restricted managers</i> and <i>approved unrestricted managers</i> .
<b>Clause 24</b>	<p>Inserts Schedule 1B – Transitional provisions relating to the <i>Liquor Control Amendment Act 2010</i>.</p> <p>The Schedule provides that on the commencement day:</p> <ul style="list-style-type: none"> <li>(i) current approved managers become either an approved unrestricted or approved restricted manager depending upon the level of training they have undertaken;</li> <li>(ii) the duration of transitioned approvals may be set out in the regulations; and</li> <li>(iii) current applications for approval as a manager that have not been finally dealt will become applications under the new section 102B.</li> </ul>
<b>Clause 25</b>	Makes consequential amendments to the sections of the Act set out in the Table to insert references to <i>managers</i> , <i>approved restricted managers</i> and <i>approved unrestricted managers</i> as a consequence of Part 2 of the Bill.

### **Part 3 – Amendments relating to liquor restricted premises**

<b>Clause 26</b>	<p>Clause 26 inserts Part 5B which introduces provisions enabling the Director to declare any part or all of a premises to be a <i>liquor restricted premises</i>.</p> <p>Proposed section 152N sets out the definitions of terms used in Part 5B.</p> <p>Proposed section 152O(1) outlines the offence provisions for a person who brings liquor onto or consumes liquor on a Liquor Restricted Premises. The penalty is \$2,000.</p> <p>Proposed section 152(O)(2) stipulates that the offence provisions do not apply to a person who is passing through a Liquor Restricted Premises which is open to the public and the liquor is unopened or resealed and is intended for consumption away from the Liquor Restricted Premises.</p> <p>Proposed section 152(O)(3) provides that it is a defence to a charge under section 152O(1) if the person did not know or could not be expected to know that the premises was a Liquor Restricted Premises.</p> <p>Proposed section 152P(1) stipulates that a declaration may be made:</p> <ul style="list-style-type: none"> <li>i) by the Director in respect of a residential premises, a non-residential private premises or Crown land to be a Liquor Restricted Premises;</li> <li>ii) to apply at all times or during specified times;</li> <li>iii) subject to exemptions; and</li> <li>iv) on the application of an owner or occupier or a prescribed person.</li> </ul> <p>Proposed section 152Q provides that the Director:</p> <ul style="list-style-type: none"> <li>i) must be satisfied that the declaration reflects the wishes of the majority of the occupiers of the premises or is otherwise in the public interest and is reasonable in the circumstances;</li> <li>ii) may make a declaration to apply to all or part of a premises;</li> <li>iii) must not, if the applicant is not the sole owner and occupier, make a declaration unless satisfied that each occupier either consents to the declaration or has been informed of the application and has had an opportunity to make submissions;</li> <li>iv) may consult with the owners or occupiers of the premises and of nearby premises, the Commissioner of Police, the relevant Local Government Authority and any other person, body or authority as he or she sees fit; and</li> <li>v) if an application is refused, the Director must notify the applicant and provide reasons for his decision.</li> </ul> <p>Proposed section 152R stipulates how the Director must notify persons of a declaration:</p> <ul style="list-style-type: none"> <li>i) the Director must give a copy of a declaration to the applicant and the Commissioner of Police;</li> <li>ii) the Director must give notice of the declaration to each other person who owns or occupies any part of the Liquor Restricted Premises either in person or by post.</li> <li>iii) failure to give notice of the declaration to each other person who owns or occupies any part of the Liquor Restricted Premises does not invalidate the declaration;</li> </ul>
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Proposed section 152S sets out the manner in which the declaration is to be displayed on the Liquor Restricted Premises:

- i) the applicant must display a notice containing the details of the declaration and must ensure that the notice remains on display. The penalty for non compliance is \$2,000;
- ii) the notice must include a statement that the premises is a Liquor Restricted Premises, a description or diagram of the affected area, a copy of the declaration and a statement regarding the offence provisions;
- iii) the notice must be displayed in a conspicuous position, must be readily legible and must comply with any prescribed requirements;
- iv) if any variation is made to the declaration, the notice must be amended accordingly;
- v) it is an offence for a person to remove, deface or interfere with a notice – a penalty of \$2,000 will apply;

Proposed section 152T stipulates that the declaration:

- i) unless otherwise specified, comes into force when it is made;
- ii) ceases to be in force when the specified period expires or if it is revoked by the Director; and
- iii) if an applicant is no longer eligible as a person who could apply for a declaration, for example, if an owner sells the property or a tenant vacates a property, they are required to advise the Director in writing. This will result in the declaration ceasing to be in force [as set out in section 152T(2)(c)];

Proposed section 152U provides that the Director:

- i) may vary a declaration if satisfied that the declaration reflects the wishes of the majority of the occupiers of the premises or is otherwise in the public interest and is reasonable in the circumstances;
- ii) a declaration may be varied to change the area or the periods that the declaration applies, to add or vary exemptions or conditions or to change the duration of the declaration;
- iii) may vary a declaration at his or her own initiative, or on the application of the applicant, a person who owns or occupies any part of the Liquor Restricted Premises or the Commissioner of Police;
- iv) must not vary a declaration unless satisfied that each occupier either consents to the variation or has been informed of the application and has had an opportunity to make submissions;
- vi) may consult with the owners or occupiers of the premises and of nearby premises, the Commissioner of Police, the relevant Local Government Authority and any other person, body or authority as he or she sees fit; and
- v) if an application for variation is refused, the Director must notify the applicant and provide reasons for his or her decision.

Proposed section 152V provides that the Director:-

- (i) may revoke a declaration if satisfied that the continuation of the declaration does not reflect the wishes of the majority of the occupiers of the premises or is otherwise not in the public interest or is not reasonable in the circumstances;
- (ii) revoke a declaration on his or her own initiative or if sought by the applicant, an owner or occupier or the Commissioner of Police;
- (iii) must not revoke a declaration until each owner or occupier consents to the revocation or has been informed and has had an opportunity to make submissions;

Proposed section 152W specifies the manner in which applications will be dealt with:

- i) applications must be made in a form and manner approved by the Director and accompanied by the prescribed application fee;
- ii) the Director may require an applicant to provide further information or documentation;
- iii) if an applicant does not comply with these requirements, the Director may either accept or decline to deal with the application.

Proposed section 152X stipulates that any decision made by the Director in the respect of a Liquor Restricted Premises is not subject to review by the Liquor Commission.

## Part 4 – Amendments relating to regulating behaviour in licensed premises

<b>Clause 27</b>	<p><u>Subclause (1)</u> inserts a definition in section 3(1) of “<i>responsible person</i>” meaning in relation to licensed premises, the licensee or occupier of the premises; manager; or employee or agent of the licensee/manager. The new definition is a consequential amendment as a result of the offence provisions for barring notices issued by the Commissioner of Police (clause 30) and Prohibition Orders made by the Director of Liquor Licensing (clause 33).</p> <p><u>Subclause (2)</u> deletes section 3(7) and inserts in its place redrafted section 3(7) which defines ‘employee’ for the purposes of the definition of ‘authorised person’ and ‘responsible person’.</p>
<b>Clause 28</b>	<p>Deletes section 61A relating to limitations on extended trading permits. These provisions have been moved to section 175 - see Clause 34.</p>
<b>Clause 29</b>	<p>Amends section 69(6) to expand the powers of the Commissioner of Police to intervene in a proceeding before the licensing authority on any matter relevant to the public interest.</p>
<b>Clause 30</b>	<p>Inserts new sections 115AA to 115AE which provide the Commissioner of Police with the power to bar a person from licensed premises.</p> <p>Proposed section 115AA stipulates:</p> <ul style="list-style-type: none"> <li>(i) the circumstances under which a barring notice may be issued by the Commissioner of Police;</li> <li>(ii) the notice will have effect from the day it is given to the person until the specified expiry date or it is revoked or quashed by the Liquor Commission;</li> <li>(iii) a barring notice may not be issued for more than 12 months;</li> <li>(iv) it will be an offence for a person who has been issued with a barring notice to enter licensed premises (unless that person enters the premises solely for the purpose of performing duties relating to the person’s work); and</li> <li>(v) the Commissioner of Police may revoke a barring notice;</li> </ul> <p>Proposed section 115AB stipulates that a barring notice may be issued by a member of the Police Force with a minimum rank of Inspector under delegation of the Commissioner of Police.</p> <p>Proposed section 115AC sets out the obligations of the Commissioner of Police in respect of the publication of details of barring notices which have been issued.</p> <p>Proposed section 115AD sets out the provisions in relation to the review of a decision in respect of a barring notice which has been issued:</p> <ul style="list-style-type: none"> <li>(i) if a notice has effect for one month or more or has the accumulative affect of one month within a 12 month period;</li> <li>(ii) the barred person will be required apply to the Liquor Commission within one month of receiving the notice and pay the prescribed fee;</li> <li>(iii) in making its determination, the Liquor Commission may consider the information the Commissioner of Police considered and any further information provided by the applicant and may affirm, vary or quash the decision;</li> <li>(iv) the barring notice will remain in effect whilst the Liquor Commission is considering the application for review.</li> </ul> <p>Proposed section 115AE creates an offence for a responsible person (as defined by clause 27) in relation to a licensed premises to knowingly permit a barred person to enter the premises. The penalty is \$10,000.</p>
<b>Clause 31</b>	<p>Deletes section 128(2)(a) and inserts in its place redrafted section 128(2)(a) that provides that regulations may prescribe licence fees by reference to the class of licence; any restrictions or conditions of the licence; the type of premises; the location of the premises; the capacity of the premises; the trading hours; and the compliance history of the licensee/applicant.</p>

<b>Clause 32</b>	Inserts sections 152K(2A) to (2C) which empower the Director to publish information relating to a prohibition order. The amendment identifies the information that the Director is permitted to publish; the exceptions to publication; and that any person can republish that information.
<b>Clause 33</b>	Inserts section 152M which creates an offence for a responsible person in relation to a licensed premises to knowingly permit a person to enter or remain on a licensed premises contrary to a prohibition order. The penalty is \$10,000.
<b>Clause 34</b>	Inserts into section 175(1) the power to make regulations limiting the permitted opening hours that may be authorised under an extended trading permit issued under section 60(4). These provisions were previously contained in section 61A (clause 28 refers).  Inserts into section 175(1) the power to make regulations regulating entry to a licensed premises after a particular time, for example after 12 midnight (that is, a lockout)
<b>Part 5 – Other Amendments</b>	
<b>Clause 35</b>	<u>Subclause (1)</u> inserts in section 3(1) new definitions of: “ <i>prescribed</i> ” – means prescribed in the regulations made under section 175 “ <i>tavern restricted licence</i> ” – means a hotel licence of the kind referred to in section 41(1)(c)  <u>Subclause (2)</u> makes a consequential amendment to the definition of a hotel licence in section 3(1) to reflect the amendment made by clause 41 in relation to a tavern restricted licence.  <u>Subclause (3)</u> makes a technical amendment to the definition of ‘meal’ in section 3(1) by deleting the words “by the regulations”. Subclause (1) amends the definition of ‘prescribed’ and as a result, the words “by the regulations” are redundant.  <u>Subclause (4)</u> makes a technical amendment in section 3(4)(d) in regard to the definition of a person in a position of authority and the words “by the regulations”. Subclause (1) amends the definition of ‘prescribed’ and as a result, the words “by the regulations” are redundant.
<b>Clause 36</b>	Amends section 6(1)(o) to provide that where the sale or supply of liquor is to, or the consumption of liquor is by, a person who is at least 18 years of age, that sale supply or consumption may, in prescribed circumstances, be exempt from the provisions of the Act (currently only the sale of liquor may be exempt).
<b>Clause 37</b>	Amends section 16(2)(b) to provide that the licensing authority, when constituted by the Commission, may exercise in Chambers any jurisdiction of the Commission.
<b>Clause 38</b>	<u>Subclause (1)</u> amends section 33(6) to provide the Director of Liquor Licensing with greater discretion, so that when determining whether an applicant is fit and proper, he <u>may</u> have regard to the matters that are set out in subsection 6.  <u>Subclause (2)</u> inserts new section 33(6D) to clarify that the licensing authority may, for the purpose of probity assessments, rely on any documentation issued by any Australian Police Force provided that the documentation is not older than 30 days from the date of issue.

<b>Clause 39</b>	<p><u>Subclause (1)</u> inserts new section 37(1A) to define a “<i>public body</i>” as:</p> <ul style="list-style-type: none"> <li>(i) a public sector agency;</li> <li>(ii) a body established for a public purpose under a written law to perform a statutory function on behalf of the State;</li> <li>(iii) a local government; or</li> <li>(iv) any other body that is prescribed in regulations.</li> </ul> <p><u>Subclause 2(a)</u> amends section 37(1)(a) to correct an error by deleting the words ‘or a body corporate’.</p> <p><u>Subclause 2(b)</u> amends section 37(1) to include that if an applicant is a public body, each person who occupies a position of authority must be a fit and proper person.</p> <p><u>Subclause (3)</u> inserts new section 37(2A) to stipulate that the licensing authority may determine that a person is fit and proper to occupy the position of authority in an incorporated association or a public body [as defined by section 37(1A)] in the absence of evidence to the contrary.</p>
<b>Clause 40</b>	<p>Makes a minor technical amendment to section 38(3) in respect of the onus placed on an applicant to demonstrate the public interest, by deleting the singular “purpose” with the plural “purposes”.</p>
<b>Clause 41</b>	<p><u>Subclause(1)</u> amends section 41(1)(b) by deleting the words ‘<i>other sales to liquor sold for consumption</i>’ and replacing them with ‘<i>the sale of liquor to be consumed</i>’ to clarify that conditions can be imposed regarding the sale of ‘non-packaged’ liquor.</p> <p>Inserts new section 41(1)(c) which states that where a tavern licence is subject to a condition prohibiting the sale of packaged liquor, it shall be referred to as a tavern restricted licence.</p> <p><u>Subclause (2)</u> makes a consequential amendment as a result of clause 35 which establishes a tavern restricted licence.</p>
<b>Clause 42</b>	<p>Makes a technical amendment to section 55(1) to clarify that producer’s licences are permitted to sell “all or any” in respect of wine, spirits or beer.</p>
<b>Clause 43</b>	<p><u>Subclause (1)</u> inserts into section 57 the definitions of:  “<i>relevant liquor</i>” – meaning liquor sought to be authorised for sale under the licence; and  “<i>relevant period</i>” – meaning the period of 12 months from the date in which a licence will come into force.</p> <p><u>Subclause (2)</u> deletes sections 57(2)(a) and (b) and inserts in its place redrafted sections 57(2)(a) and (b) and new subsection 57(ca) which stipulate that an applicant for the grant of a producer’s licence must satisfy the licensing authority that:-</p> <ul style="list-style-type: none"> <li>(i) they are or <i>within the relevant period</i> will become a genuine producer of liquor;</li> <li>(ii) they do or <i>within the relevant period</i> will carry on a genuine business of the sale of liquor; and</li> <li>(iii) they do or <i>within the relevant period</i> will produce a sufficient quantity of the relevant liquor.</li> </ul> <p><u>Subclause (3)</u> inserts new section 57(3) specifying that unless the Director approves otherwise, the licensee of every producer’s licence must produce a sufficient quantity of liquor.</p>
<b>Clause 44</b>	<p><u>Subclause (1)</u> makes a technical amendment to section 64(3)(ba) by deleting “local authority” and inserting “local government”.</p> <p>This subclause also inserts new paragraph (ka) into section 64(3) to enable the licensing authority to impose record keeping and reporting obligations as a condition on a licence as part of a section 64 proceedings.</p> <p><u>Subclause (2)</u> updates the penalty for a breach of section 64(7) to be consistent with the adjustments made by the <i>Liquor and Gaming Legislation Amendment Act 2006</i>.</p>
<b>Clause 45</b>	<p>Makes a technical amendment to section 67(5) to facilitate the electronic lodgement of applications by removing the requirement to affix the date of lodgement to applications.</p>

<b>Clause 46</b>	<u>Subclauses (1) and (2)</u> makes a technical amendment to sections 69(2) and (4) to facilitate the electronic lodgement of applications by removing the requirement to affix the date of lodgement to applications.
<b>Clause 47</b>	Updates the penalty for a breach of section 96(1)(m) to be consistent with the adjustments made by the <i>Liquor and Gaming Legislation Amendment Act 2006</i> .
<b>Clause 48</b>	Amends section 98A to reduce the permitted trading hours for a nightclub licence by one hour, from 6am to 5am, on Saturday and Sunday mornings.
<b>Clause 49</b>	Updates the penalty for a breach of section 99(7) to be consistent with the adjustments made by the <i>Liquor and Gaming Legislation Amendment Act 2006</i> .
<b>Clause 50</b>	Amends section 103A(1) to clarify that a licensee is required to maintain, <i>on the licensed premises</i> , a register that records the details of the training undertaken by persons engaged or employed at the licensed premises.
<b>Clause 51</b>	Amends sections 106(1) and (3) to comply with the format for the setting out of penalties.
<b>Clause 52</b>	Amends section 109 of the Act in relation to selling liquor without a licence.  <u>Subclause (1)</u> amends section 109(1) to provide that in addition to the existing penalty of \$20,000, a person selling liquor without a licence is also liable to incur a sentence of imprisonment for 2 years.  <u>Subclause (2)</u> amends section 109(3) to specify that a fine of \$10,000, with a minimum penalty of a fine of \$1,000, will apply to a person who: (i) carries liquor about for the purpose of selling it; (ii) offers, exposes or carries liquor to sell it at a place which is not a licensed premises; (iii) employs or engages any person to sell liquor unlawfully.  <u>Subclause (3)</u> inserts new section 109(3A) to introduce an offence of \$20,000 and imprisonment for two years, with the minimum penalty of a fine of \$2,000 for selling liquor to a person where the seller (a licensee, employee or agent) believes, or ought reasonably to believe, the person is purchasing the liquor for the purposes of on-selling that liquor without a licence.
<b>Clause 53</b>	<u>Subclauses (1) to (3)</u> Amends sections 110(1) to (3) to reflect the format adopted by Parliamentary Counsel for the setting out of penalties.  <u>Subclause (4)</u> inserts new sections 110(4A) and (4B) to establish an offence for a person bringing liquor into, possessing or consuming liquor in, a licensed arena that was not purchased in the licensed arena. A penalty of \$2,000 applies.  New section 110(4B) defines: “ <i>public event</i> ” - as any event, including any game or sport, training session, practice, rehearsal, promotional or advertising event, press conference, preview or similar activity that is held for public exhibition; and “ <i>sports arena</i> ” - as a sports arena, ground or stadium of which all or part is licensed premises and that is prescribed for the purposes of being a sports arena.
<b>Clause 54</b>	Amends sections 111(1) to comply with the format for the setting out of penalties.
<b>Clause 55</b>	Amends section 114(1) to comply with the format for the setting out of penalties.
<b>Clause 56</b>	<u>Subclauses (1) and (2)</u> amend sections 115(1) and (2) to reflect the format adopted by Parliamentary Counsel for the setting out of penalties.
<b>Clause 57</b>	Amends section 115A(2) to comply with the format for the setting out of penalties.

<b>Clause 58</b>	<p><u>Subclauses (1) – (3)</u> amends sections 116(1) to (3) to clarify that a penalty of \$2,000 is applicable where a:</p> <ul style="list-style-type: none"> <li>(i) licensee fails to have on the licensed premises, a copy of the relevant licence, permits or plans;</li> <li>(ii) licensee or manager fails to produce to an authorised officer on request the aforementioned documents; and</li> <li>(iii) person carries on the business, for which a licence is required, under a name other than the name approved by the Director.</li> </ul> <p>A penalty of \$2,000 also applies for a breach of section 116(4) which sets out provisions relating to the display of information relating to approved managers (Clause 18 refers).</p>
<b>Clause 59</b>	<p><u>Amends section 116A(1)</u> to clarify that a licensee is required to maintain, <i>on the licensed premises</i>, a register of incidents that take place at the licensed premises.</p>
<b>Clause 60</b>	<p><u>Subclause (1)</u> makes a consequential amendment to section 119(4) in support of clause 36 to stipulate that the offence provisions of section 119(4) do not apply if liquor is being sold, supplied or consumed in circumstances which have been prescribed in the regulations.</p> <p><u>Subclause (2)</u> makes a consequential amendment in relation to subclause (1) to create an offence for a person in charge of a vehicle to allow the consumption of liquor on any road in breach of section 119. The maximum penalty is \$2,000.</p>
<b>Clause 61</b>	<p>Repeals section 119A and inserts in its place redrafted section 119A which stipulates that the licensing authority may approve the conduct of another non-liquor business operating on or from a licensed premises.</p>
<b>Clause 62</b>	<p><u>Subclauses (1) to (3)</u> amend sections 121(1),(2) and (4) to reflect the format adopted by Parliamentary Counsel for the setting out of penalties.</p> <p><u>Subclause (4)</u> deletes section 121(11)(c) and inserts in its place redrafted section 121(11)(c) and new subsection (d) which stipulate that a juvenile who is aged 16 years or older and has been given approval by the Director of Liquor Licensing to be employed on licensed premises, may serve liquor ancillary to a meal, provided they are supervised at all times and are enrolled in or have successfully completed a prescribed training course.</p>
<b>Clause 63</b>	<p>Amends section 122(3) to comply with the format for the setting out of penalties.</p>
<b>Clause 64</b>	<p>Amends section 126D(2) to comply with the format for the setting out of penalties.</p>
<b>Clause 65</b>	<p>Amends section 155(6) and inserts new subsections (6), (7) and (8) to provide the Police with the necessary powers to seize and dispose of opened and unopened containers of liquor where a person is consuming liquor:</p> <ul style="list-style-type: none"> <li>(i) in a public place contrary to section 119;</li> <li>(ii) in an area that has been specified in a Special Event Notice under section 126E; and</li> <li>(iii) contrary to section 152(0)(1) in respect to premises declared a restricted premises.</li> </ul>
<b>Clause 66</b>	<p>Amends section 166(2) to comply with the format for the setting out of penalties.</p>
<b>Clause 67</b>	<p>Amends section 169 by deleting subsection (1) and inserting in its place redrafted section 169(1) to stipulate that a court of summary jurisdiction is to be constituted by a magistrate if the penalty for the offence is more than \$2000 or the person charged with the offence is a licensee, manager or an employee/agent of a licensee.</p>
<b>Clause 68</b>	<p>Amends section 174A(1) to stipulate that any liquor seized under section 155(6), 155 (7) or 155 (8) is not subject to the provisions of the <i>Criminal and Found Property Disposal Act 2006</i> and the Police are required to dispose of it as soon as is practicable (supports the amendments made by clause 63).</p>
<b>Clause 69</b>	<p>Makes technical amendments to the sections listed in the table to comply with the format for the setting out of penalties.</p>

**Part 6 – Criminal Investigation (Identifying People) Act 2002 amended**

<b>Clause 70</b>	Specifies that amendments in this part amend the <i>Criminal Investigation (Identifying Persons) Act 2002</i> .
<b>Clause 71</b>	Amends section 73(1)(n) of the <i>Criminal Investigation (Identifying Persons) Act 2002</i> to affirm the powers conferred in the <i>Liquor Control Act 1988</i> to publish details of barring notices and prohibition orders.