

EMALUS CAMPUS



ANALYSIS

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1995-96, No. 16

An Act to amend the Sale of Liquor Act 1991-92

(10 July 1996)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. **Short Title and commencement** - (1) This Act may be cited as the Sale of Liquor Amendment Act 1995-96, and shall be read together with and deemed part of the Sale of Liquor Act 1991-92 (hereinafter referred to as "the principal Act").

(2) This Act shall come into force on the day of assent.

2. **Interpretation** - (1) Section 2 of the principal Act is amended by -

- (a) Inserting the definition of "Authority" before the definition of "Bar" as follows -

"Authority" means the Liquor Licensing Authority established by this Act";
- (b) Deleting the expression "Chief Executive Officer" and its definition;
- (c) Deleting the expression "Division" and its definition;
- (d) Deleting the expression "General Licensing Authority" and its definition;
- (e) Deleting the expression "Secretary" and its definition

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and substituting the following -

“Secretary” means the Secretary of the Liquor Licensing Authority appointed under section 10E of this Act”;

(2) Every reference to “the Division” wherever they occur in the principal Act shall be read as a reference to the Authority as defined and constituted by this Act.

3. **New Part 1 inserted** - The principal Act is further amended by repealing Part 1 and substituting the following new Part 1:

“PART 1

LIQUOR LICENSING AUTHORITY

7. **Liquor Licensing Authority** - (1) There is hereby established an Authority to be called the Liquor Licensing Authority, which shall be the agency of Government responsible for the administration of this Act.

(2) The Authority shall consist of -

- (a) the Commissioner of Police, who shall ex-officio be the Chairman of the Authority; and
- (b) not less than 3 nor more than 5 members to be appointed by the Minister.

(3) The Authority shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

8. **Term of office of members of Authority** - (1) Except as otherwise provided in this Act, and except in the case of the Chairman, every member of the Authority shall be appointed for a term of 2 years, but may from time to time be reappointed.

(2) Notwithstanding anything to the contrary in this Act, every member of the Authority, unless he sooner vacates his office under section 9, shall continue in office until his successor comes into office.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1995-96 by reason only of his being a member of the Authority.

9. **Extraordinary vacancies** - (1) Any member of the Authority may at the time be removed from office by the Minister for disability, bankruptcy, neglect of duty, misconduct or any other compelling reason proved to the satisfaction of the Minister, or may at any time resign his office by writing addressed to the Minister.

(2) If any member of the Authority dies, or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed and extraordinary vacancy.

(3) An extraordinary vacancy shall be filled in the manner in which the appointment to the vacant office was originally made.

(4) Every person appointed to an extraordinary vacancy shall be appointed for the residue of the term for which his predecessor was appointed.

(5) The powers of the Authority shall not be affected by any vacancy in the membership thereof.

10. **Deputies of members** - (1) Where the Minister is satisfied that any member of the Authority is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a deputy to act for that member during his incapacity.

(2) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Authority, and any deputy acting for the Chairman shall have all the powers of the Chairman.

(3) No appointment of a deputy and no act done by him as such, and no act done by the Authority while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion of his appointment had not arisen or had ceased.

10A. **Deputy Chairman** - (1) The Authority shall from time to time appoint one of its members to be Deputy Chairman; and that member shall hold that office for such period as the Authority appoints in that behalf or until he ceases to be a member, whichever is the sooner.

(2) During any vacancy in the office of Chairman, or in the absence of the Chairman from any meeting of the Authority, or in the event of the Chairman being incapacitated by illness or other cause from performing the duties of his office, the Deputy Chairman shall have and may exercise all the powers of the Chairman.

10B. **Meetings of the Authority** - (1) The first meeting of the Authority shall be held on a day to be appointed in that behalf by the Minister.

(2) Subsequent meetings of the Authority shall be held at such times and places as the Authority or the Chairman may from time to time appoint.

(3) The Chairman of the Authority may at any time call a special meeting of the Authority, and the Chairman shall call a special meeting whenever requested to do so in writing by any 3 members of the Authority.

(4) At all meetings of the Authority 3 members shall form a quorum.

(5) The Chairman shall preside at all meetings of the Authority at which he is present. In the absence from any meeting of the Chairman and the Deputy Chairman, the members present shall appoint one of their number to be chairman at that meeting.

(6) At any meeting of the Authority the Chairman shall have deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(7) All questions arising at any meeting of the Authority shall be decided by a majority of the valid votes recorded thereon.

(8) Subject to the provisions of this Act and of any regulations made thereunder, the Authority may regulate its procedure in such manner as it thinks fit.

(9) Notwithstanding any other provision of this Act, where it is necessary for the Authority to hear any matter on any island other than Rarotonga it shall be sufficient for the Authority to be constituted entirely by persons named in subsection (10) provided that the quorum for such meetings shall be 5.

(10) When sitting on an island other than Rarotonga, the Mayor, Government Representative, a representative of the Religious Advisory Council for that island, a representative from the business community and a member of the Aronga Mana of that island, shall be deemed to be members of the Authority and shall have the right to have a deliberative vote.

(11) The Chairman shall nominate one of the members of the Authority if he or the Deputy Chairman is not present to be Chairman, and in the case of an equality of votes that person shall have a casting as well as a deliberative vote.

(12) Any decision made at any hearing under subsection (9) shall be deemed to be a decision of the Authority.

(13) All hearings held on any island other than Rarotonga shall be publicly notified by the Authority 7 days before the hearing.

10C. **Disqualification of members** - (1) A member of the Authority shall not vote or take part in the discussion of any matter before the Authority or before any committee thereof in which he has directly or indirectly a pecuniary interest apart from any interest in common with the public.

(2) Any member who knowingly offends against this section shall be guilty of misconduct and a breach of this Act.

10D. **Remuneration and expenses of members** - There shall be paid to members of the Authority such remuneration and expenses as may from time to time be prescribed by Order in Executive Council.

10E. **Officers, Employees and Inspectors** - (1) The Authority may, with the approval of the Minister, appoint a Secretary of the Authority who shall be the administrative head of the Authority.

(2) The Secretary shall be responsible for -

- (a) keeping records of all proceedings of the Authority;
- (b) keeping records of all licences issued by the Authority;
- (c) exercising those powers vested in him or delegated by this Act or by regulation;
- (d) ensuring that the functions of the Authority are effectively carried out;
- (e) administering the provisions of this Act and its regulations;
- (f) issuing such instructions and rules to officers, employees and inspectors as may be required to give full effect to this Act and its regulations.

(3) The Secretary's responsibilities may with the approval of the Authority be delegated by the Secretary to another officer or employee of the Authority.

(4) The Authority may in addition to the Secretary and with the approval of the Minister appoint such officers, employees and inspectors may be necessary to enable the Authority to efficiently carry out the functions and powers conferred on it by this Act.

(5) Every appointment made pursuant to subsections (1) and (4) shall be on such terms and conditions as shall be approved by the Minister.

(6) The Minister may, if in his opinion it is expedient to do so, require the Authority to utilise the resources of a Government department or agency as the Minister, acting with the approval of the Minister responsible for that department or agency may determine, and if so required, the department or agency so determined shall provide to the Authority such resources and assistance as the Minister may specify.

(7) The Secretary, officers, employees and inspectors of the Authority shall not by virtue of such employment be deemed to be members of the Cook Islands Public Service:

Provided that the provisions of any law for the time being in force relating to the rights of employees of that service to apply for other positions within that Service and the rights of such employees to join superannuation schemes administered by that Service except as otherwise provided for under this Act shall apply to the Secretary, officers, employees and inspectors as if they were employees of that Service.

10F. Authority to have regard to Government policy - (1) In the exercise of its functions and powers, the Authority shall have regard and give effect to any general policy directions conveyed to it in writing by the Minister.

(2) A copy of every policy direction conveyed to the Authority pursuant to subsection (1) shall be included in the Annual Report required to be made by the Authority pursuant to section 93 of this Act.

10G. Delegation of powers of Authority - (1) The Authority may from time to time appoint a committee or committees consisting of two or more persons being members, officers or employees of the Authority and may from time to time delegate to any such committee or to any officer or employee of the Authority any of the functions or powers of the Authority but not the power of delegation conferred by this section.

(2) The Authority may from time to time delegate any of its powers to any committee, officer or employee of the Authority.

(3) Subject to any general or special directions given or conditions imposed by the Authority or committee or person to whom any powers are delegated as aforesaid, the Committee or persons to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) Every committee or person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a specified class.

(6) Any delegation under this section may be revoked at any time.

(7) The delegation of any power by the Authority shall not prevent the exercise of that power by the Authority.

10H. **Functions of the Authority** - The principal functions of the Authority shall be -

- (a) to hold such inquiries and gather such information as will enable it to determine the requirements of the public as to -
 - (i) the provision of liquor licences generally;
 - (ii) the types of liquor licences;
 - (iii) licensing hours and days;and to report to the Minister on such matters;
- (b) to collect information relating to and actively monitor the enforcement of the provision of this Act;
- (c) to hear and determine applications for all types of liquor licences and renewals and variations of such licences under this Act;
- (d) to grant or refuse such applications, or to grant applications subject to conditions;
- (e) to suspend or cancel licences subject to the provisions of this Act;
- (f) to collect any fees which may be fixed by regulations pursuant to this Act;
- (g) to conduct inquiries into any matters consistent with the objectives of this Act as may be directed by the Minister;
- (h) such other functions as may be conferred upon it by this or any other enactment.

10I. **Powers of the Authority** - The Authority shall have all such powers, rights and privileges as may be reasonably necessary or expedient to enable it to carry out its functions.

10J. **Authority deemed to be Commission of Inquiry** - (1) The Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1966 and, subject to the provisions of this Act and any regulations made under this Act, the provisions of that Act shall apply accordingly.

(2) For the purposes of this section, the power to issue summonses requiring the attendance of witnesses before the Authority or the production of documents, or to do any other act preliminary or incidental to the hearing of any matter by the Authority, may be exercised by the Chairman or by the Secretary purporting to act by direction or with the authority of the Chairman."

4. **Transitional** - (1) Upon the date of coming into force of this Act,-

- (a) All assets and liabilities of the Division shall be transferred to and vest in the Authority without further assurance than this section, and the Authority shall have all powers necessary to take possession of, recover, and deal with such assets and discharge such liabilities;
- (b) Every agreement, whether in writing or not and every deed, bond or other instrument to which the Division was a party or which affected the Division and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Authority were a party thereto or affected thereby instead of the Division as if for every reference (however worded and whether express or implied) therein there were substituted in respect of anything to be done on or after such date of coming into operation a reference to the Authority.

(2) Every person who is a member of the Division prior to the coming into force of this Act shall become a member of the Authority until either -

- (a) A person is appointed in his stead by the Minister acting pursuant to section 7 of this Act; or
- (b) He receives written notice from the Minister that his appointment has been determined.

(3) Notwithstanding anything in this Act, where at the passing of this Act any person is the holder of a licence issued by the Division pursuant to the provisions of the principal Act in respect of any premises or part of any premises, such licence shall be deemed to have been lawfully issued by the Authority pursuant to this Act and shall continue in force according to its tenor.

(4) In this section, "the Division" means the Liquor Licensing Division established by section 7 of the principal Act.

This Act is administered by the Liquor Licensing Authority.