



ANALYSIS

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1991-92, No. 39

An Act to reform the law relating to the sale of liquor to the public

(27 April 1992)

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 Act 1991-92.

(2) This Act shall come into force on a date to be appointed by the Queen's Representative by Order in Executive Council.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Bar" in relation to any hotel or motel, includes any part of the hotel or motel that is used principally or exclusively for the sale, supply, or consumption of liquor;

"Chief Executive Officer" means the Chief Executive Officer of the General Licensing Authority appointed under the General Licensing Authority Act 1989;

"Commissioner of Police" means the Commissioner of Police appointed under the Police Act 1981 or any officer authorised by the Commissioner to act on his behalf;

"Club" means any club duly incorporated under the Incorporated Societies Act 1908 that has as its object, or as one of its objects, participating in or promoting any sport or other recreational activity, otherwise than for gain;

"Conveyance" means any ship, ferry, aircraft, hovercraft, train, coach, or other vehicle used for the transport of persons;

"Dining" means the consumption of a meal by any person;

"Secretary of Health" means the Secretary of Health appointed under the Ministry of Health Act 1991 or any officer authorised to act on his behalf;

"Division" means the Liquor Licensing Division constituted by Section 7 of this Act;

"General Licensing Authority" means the Authority established under the General Licensing Authority Act 1989;

"Hotel" means any premises used or intended to be used in the course of business principally for the provision to the public of -

(a) lodging; and

(b) liquor, meals, and refreshments for consumption on the premises.

"Intoxicated" means such a state of drunkenness as appears in the reasonably held opinion of the licensee to be intoxicated;

"Inspector" means an inspector appointed under this Act;

"Licence" means a licence under this Act;

"Licensed premises" means any premises, or any part of any premises, on which liquor may be sold pursuant to a licence; and includes any conveyance, or any part of any conveyance, in which liquor may be sold pursuant to a licence;

"Licensee" means a person who holds a licence for the time being in force under this Act;

"Liquor" means any fermented, distilled, or spirituous liquor (including spirits, wine, ale, beer, porter, honeymead, stout, cider, and perry) that is found on analysis to contain 1.15 percent or more alcohol by volume;

- "Manager" means a manager of licensed premises appointed under and for the purposes of this Act;
- "Minister" means the Prime Minister or such other Minister as the Prime Minister may from time to time charge with the responsibility for this Act pursuant to Article 16 of the Constitution;
- "Minor" means a person under the age of 18 years;
- "Public Holiday" means those days designated by the Public Holidays Ordinance 1949 to be observed as Public Holidays;
- "Objector" means a person who has filed an objection under the Act;
- "Principal entrance", in relation to any licensed premises, means any entrance to the premises so designated by the Licensing Authority;
- "Prohibited persons", in relation to any licence, means -
- (a) persons who are under the age of 18 years; and
 - (b) persons to whom liquor may not be sold; pursuant to the licence; and
 - (c) persons who are intoxicated;
 - (d) persons who are subject to an order made pursuant to Section 81 of this Act.
- "Public notice" means 7 clear days notice published in a newspaper circulating in the locality to which the act, matter or thing, required to be publicly notified relates or refers or in which it arises, or in the case where public notice is required to be given in any island other than Rarotonga, 7 clear days notice on that island as the Chief Administration Officer of that island directs;
- "Restaurant" means any premises in which meals are regularly supplied on sale to the public for consumption on the premises;
- "Secretary" means the Secretary of the Liquor Licensing Division of the General Licensing Authority;
- "Temporary authority" means a temporary authority order granted and in force under this Act;
- "Working day" means any day except a Saturday, a Sunday, and any Public Holiday.

3. Application of Act - (1) Except as expressly provided in this Act or in any other enactment, this Act shall apply to all sales of liquor in the Cook Islands.

(2) Nothing in this Act shall apply -

- (a) to any person who supplies, keeps for sale, or sells any spirituous or distilled perfume bona fide as perfumery;
- (b) to any pharmaceutical chemist who supplies keeps for sale or sells any liquor bona fide for purposes other than human consumption.

(3) Nothing in this Act applies to the sale or supply of liquor by any person in the course of that person's business as a maker, importer or distributor of any liquor to -

- (a) any person who is also in business as a maker, importer or distributor of any liquor; or
- (b) the holder of any licence.

4. Act binds the Crown - This Act binds the Crown.

5. Objects of Act - (1) The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public, with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.

(2) The Division, and any Court hearing any appeal against any decision of the Division shall exercise its jurisdiction, powers, and discretions, under this Act in the manner that is most likely to promote the object of this Act.

6. Dry Areas - (1) If electors who are qualified to vote pursuant to the Electoral Act 1966 and who live in either -

- (a) an Electorate on Rarotonga; or
- (b) a village on Aitutaki; or
- (c) any other Island.

decide by a majority vote to refuse liquor to be sold or supplied in that particular area then subject to the following proceedings the Division shall refuse to grant any licence in that area until a further vote decides that liquor may again be sold or supplied in that area.

(2) The electors shall commence proceedings by issuing a public notice in the prescribed form of their intention to call a poll. The notice shall be published in the locality and in a newspaper regularly published in the locality on 2 occasions each week for 2 weeks.

(3) The poll shall be called by way of a petition in the prescribed form. Each entitled voter may sign the petition indicating whether he approves or disapproves of the proposal in the petition.

(4) No more than one petition shall be presented for consideration by the electors in each calendar year.

PART I LIQUOR LICENSING DIVISION

7. Liquor Licensing Division - (1) There is hereby established a division of the General Licensing Authority to be called the Liquor Licensing Division.

(2) The membership of the Division shall consist of 7 members to be appointed by the Minister. There shall be one member selected from each of the Aronga Mana, the Religious Advisory Council, the Ministry of Health, the Police Department, the Probation Service, the Cook Islands Chamber of Commerce and one member appointed by the Minister as Chairman.

(3) The first appointment of 3 of the members of the Division shall be for a term of one year.

(4) Sections 4, 5, 6, 7, 9, 10, 14 and 15 of the General Licensing Authority Act 1989 shall apply where appropriate to the Division as part of the General Licensing Authority.

(5) Section 8 subsections (1) to (8), (12) and (13) of the General Licensing Authority Act 1989 shall for the purposes of this Act apply where appropriate to the Division as part of the General Licensing Authority and subsections (9) to (11) shall for the purposes of this Act be substituted with the following -

" (9). Notwithstanding any other provision of this Act, where it is necessary for the Division to hear any matter on any Island other than Rarotonga it shall be sufficient for the Division to be constituted entirely by persons

(10). When sitting on an island other than Rarotonga, the Mayor, Chief Administration Officer, 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 Division and shall have the right to have a deliberative vote.

(11). The Chairman shall nominate one of the members of the Division if he or a 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."

(6) Section 11 of the General Licensing Authority Act 1989 shall apply to the Division as part of the General Licensing Authority where appropriate and the following subsection shall be read and deemed part of section 11 for the purposes of this Act:

"(4) (a) For the purposes of this Act the Authority may appoint one or more Inspectors.

(b) Inspectors shall have the powers conferred on them by or under this Act".

(7) Should any uncertainty arise in the interpretation of subsections (4) and (5) of this section then the provisions and objects of this Act are to prevail.

(8) The powers of the Division shall not be affected by any vacancy in its membership.

(9) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1975 by reason of his being a member of the Authority.

8. Functions of the Division - The principal functions of the Division 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 provisions 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 regulation 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.

9. Division deemed to be Commission of Inquiry - (1) The Division 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 Division or the production of documents, or to do any other act preliminary of incidental to the hearing of any matter by the Division, may be exercised by the Chairman or by the Secretary purporting to act by direction or with the authority of the Chairman.

10. Secretary to the Division - (1) The Chief Executive Officer of the General Licensing Authority shall be Secretary to the Division.

(2) The Chief Executive Officer shall be responsible for

(a) keeping records of all proceedings of the Division;

(b) keeping records of all licences issued by the Division;

(c) such other matters as the Division may direct.

(3) The Secretary shall be appointed by the Minister for a term of 2 years.

(4) The Secretary shall be deemed not to be a member 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 as if she were an employee of that Service.

(5) The principal duties of the Secretary shall be to -

(a) exercise those powers vested in him or delegated by this Act or by regulation;

(b) ensure that the functions of the Division are effectively carried out;

(c) administer the provisions of this Act and its regulations;

(d) issue such instructions and rules to officers and employees as may be required to give full effect to this Act and its regulations.

(6) The Secretary's powers may be delegated pursuant to section 15 of the General Licensing Authority Act 1989.

PART II LICENCES

11. Licences - (1) The sale of liquor to the public or any member of the public requires a licence.

(2) There may be granted pursuant to this Act such kinds of licences as may from time to time be prescribed by Regulation made under this Act.

(3) Without limiting the generality of subsection (2), such kinds of licence may include -

(a) hotel and motel premises licences;

(b) bar licences;

- (c) restaurant and restaurant bar licences;
- (d) club premises licences;
- (e) night club licences
- (f) retail premises licences;
- (g) special licences for premises or particular trading hours and guest room bar licences
- (h) manager's certificate.

(4) All licence applications shall be considered on their merits and while the fact of previous licence holding may be relevant to the character of the applicant it shall not in itself be given any weight by the Division when considering a new application or on application for renewal.

(5) The Division shall when making any decision relating to a licence application consider -

- (a) the object of this Act; and
- (b) the welfare of the community in respect of which the licence is sought and the total number of licences of all kinds in that community; and
- (c) the proximity of the proposed licensed premises to schools, places of worship and other community institutions.

(6) All licences granted pursuant to this Act shall define with sufficient particularity the premises or area to be licensed.

(7) A licensee shall not hold a licence for more than one premises.

12. Who may hold a liquor licence - A liquor licence may be held by -

- (a) any person who has attained the age of 21 years; or
- (b) any company within the meaning of the Companies Act 1955, as applied in the Cook Islands or other body corporate or any company incorporated outside the Cook Islands, that is authorised to sell liquor or to hold a licence under this Act or under the provisions of any previous enactment relating to the sale of liquor.

13. Conditions of licences - Subject to the provisions of this Act and of any regulations made hereunder, applications licences and renewal of licences granted pursuant to this Act may be refused or granted subject to such terms and conditions as the Division thinks fit.

14. Non-alcoholic refreshments - It shall be a condition of every liquor licence that the licensee has available on the premises or conveyance a reasonable range of non-alcoholic refreshments.

15. No obligation to serve - A liquor licence shall not oblige the licensee to serve liquor at any time or to any person, provided that such refusal shall not be based on race, religion or other reason not provided for in this Act.

16. Hotel and Motel licences - (1) A hotel or motel licence shall authorise the holder of the licence to sell and supply liquor, on the premises or conveyance described in the licence, for consumption on the premises or conveyance to -

- (a) any person who is for the time being living on the premises or conveyance, whether as a lodger or an employee of the holder, or otherwise; or
- (b) any person who is present on the premises or conveyance bona fide for the purpose of dining provided that the liquor is consumed in conjunction with the meal; or
- (c) any person who is present on the premises or conveyance for the purpose of attending any function or entertainment (whether live or not); or
- (d) any other person who is present on the premises or conveyance.

(2) Licences may be issued for sale or supply of liquor on Mondays to Thursdays inclusive and on Saturdays between the hours of 11 a.m. and midnight and on Fridays from 11 a.m. until 2 a.m. Saturday.

(3) It shall be a condition of every licence granted in respect of a Hotel that no liquor shall be sold or supplied on any Sunday or on Good Friday or Christmas Day to any person other than persons who belong to the class described in paragraph (a) or paragraph (b) of sub-section (1) above.

17. Bars and Night Club Licences - (1) Licences may be issued to Bars and Night Clubs for sale or supply of liquor on Mondays to Thursdays inclusive and on Saturdays between the hours of 11 a.m. and midnight and on Fridays from 11 a.m. until 2 a.m. Saturday.

(2) It shall be a condition of every licence granted under this section that no liquor shall be supplied on any Sunday or on Good Friday or Christmas Day to any person.

18. Restaurant and Restaurant Bar Licences - (1) Licences may be issued to Restaurants and Restaurant Bars for sale or supply of liquor on Mondays to Thursdays inclusive and on Saturdays between the hours of 11 a.m. and midnight and on Fridays from 11 a.m. until 2 a.m. Saturday.

(2) It shall be a condition of every liquor licence granted in respect of any Restaurant or Restaurant Bar that no liquor shall be supplied on any Sunday except to bona fide diners between the hours of 6 p.m. to 10 p.m. and at no time on Good Friday or Christmas Day.

19. Retail licences - (1) A retail licence shall authorise the holder of the licence to sell or deliver liquor on or from the premises described in the licence to any person for consumption off the premises.

(2) The holder of a retail licence may arrange for delivery to be made by the maker, importer, wholesaler, or distributor of any liquor from the premises of the maker, importer, wholesaler or distributor; and, in any such case, the liquor shall be deemed for the purposes of this Act to have been delivered by the holder of the off-licence from the premises described in the licence.

(3) It shall be a condition of every retail licence that no liquor shall be sold or delivered on any Sunday, Good Friday, or Christmas Day at any time or on any Public Holiday after 1 p.m.

(4) In determining the conditions to be imposed under this section, the Division may have regard to the site of the premises in relation to neighbouring land use.

(5) Subject to subsection (2) of this section, on granting an application for an off-licence in respect of any premises in which the principal business is other than the manufacture or sale of liquor, the Division may impose a condition relating to the kind or kinds of liquor that may be sold or delivered pursuant to the licence.

(6) A retail licence shall be granted only -

- (a) to the holder of an liquor licence in respect of a hotel, motel, restaurant, bar, nightclub or club in respect of the premises conducted pursuant to that licence; or
- (b) in respect of premises in which the principal business is the manufacture or sale of liquor; or
- (c) in respect of any general grocery store.

20. Club licences - (1) A club licence shall authorise the holder of the licence to sell and supply liquor, on the premises described in the licence, for consumption on the premises to -

- (a) any member of the club; or
- (b) any person who is a guest of, and is accompanied by a member of the club.

(2) A club licence may be held by any club as defined in this Act.

(3) In considering any application for a club licence, the Division shall have regard to the following matters -

- (a) the days on which the premises are being used in good faith for any of the purposes of the club, or the maintaining, upgrading, managing, and administering of the club's premises and facilities;
- (b) the proportion of the membership of the club who are Prohibited Persons;
- (c) the steps proposed to be taken by the applicant to ensure that the requirements of this act in relation to the sale of liquor to Prohibited Persons are observed;
- (d) the applicant's proposals relating to the sale and supply of non-alcoholic refreshments and food;
- (e) the site of the premises in relation to neighbouring land use.

(4) The following shall be conditions of every club licence -

- (a) that no liquor shall be sold or supplied on any Sunday, Good Friday, or Christmas Day at any time, or on any Public Holiday before 1 p.m.;
- (b) that there shall at all times be a secretary of the club;

- (c) that within 10 working days of the appointment of a new secretary, the club shall inform the Secretary of the Division of the name of the new secretary;
- (d) that all proceeds from the sale of liquor shall belong to the club;
- (e) that the club has available for consumption on the premises a reasonable range of non-alcoholic refreshments.

(5) Every holder of a club licence shall appoint at least one manager in accordance with Part VI of this Act.

21. Special and Guest Room Bar licences - (1) A special or Guest Room Bar licence shall authorise the holder of that licence to sell and supply liquor, on the premises or conveyance described in the licence, for consumption on the premises or conveyance, to any person attending any particular occasion or event or series of occasions or events described in the licence.

(2) A special or guest room bar licence may be granted in accordance with this Part of this Act to the holder of licences of the kind described in section 11(3), (a), (b), (c), (d), (e), and (g) authorising the holder from time to time to sell and supply liquor for consumption on the premises at any time when the premises are required to be closed for the sale of liquor, to persons attending social gatherings of any kind or kinds specified in the licence.

(3) In considering any application for a special or guest room bar licence, the Division shall have regard to the following matters -

- (a) the nature of the particular occasion or event or series of occasions or events in respect of which the licence is sought;
- (b) the suitability of the applicant;
- (c) the days on which and the hours during which the applicant proposes to sell liquor.

(4) It shall be a condition of every special or guest room bar licence that no liquor shall be supplied or sold at any time on any Sunday, Good Friday, or Christmas Day.

(5) On granting an application for a special or guest room bar licence, the Division may impose conditions relating to the following matters -

- (a) the exclusion of the public;
- (b) the filing of returns relating to liquor sold pursuant to the licence.

(6) In determining the conditions to be imposed under this section the Division shall have regard to -

- (a) the days on which and the times at which persons will be participating in the occasion or event or series of occasions or events in respect of which the licence is sought, and the nature of the activities to be conducted on those occasions or during those events; and
- (b) the site of the premises in relation to neighbouring land use.

(7) Subject to subsections 8 and 9 of this section, a special licence shall continue in force as follows-

- (a) in the case of a licence granted for one particular occasion or event, for the day or days on which that occasion or event occurs;

- (b) in the case of a licence granted for a series of occasions or events, for the period during which that series occurs;
- (c) in the case of a special or guest room bar licence granted for any other purpose for such period not exceeding 12 months as the Division may specify on granting the licence.

(8) If, in the case of a licence granted for one particular occasion or event, the occasion or event is postponed to any day not specified in the licence, the licence shall have effect in respect of the day on which the occasion or event is held.

(9) A licence granted in respect of a series of occasions or events shall not continue in force for longer than 12 months.

22. Applications for licences - (1) Every application for a licence shall -

- (a) be made in the name of the person who will hold the licence if the application is granted; and
- (b) be made in a form and manner prescribed by regulation; and
- (c) contain the prescribed particulars; and
- (d) be accompanied by the prescribed fee.

(2) An application in respect of any premises shall be filed with the Division on Rarotonga.

(3) Within 20 working days after filing the application, the applicant shall at his or her expense give public notice in the form prescribed by regulation in a newspaper regularly published in the locality of the premises subject of the licence on 2 occasions each week for 2 weeks. The advertisement shall contain particulars of the days and hours of trading, the premises and the name of the applicant.

(4) The Applicant shall obtain -

- (a) a report from the Commissioner of Police who shall consider the suitability of the applicant and the days on which and the hours during which the applicant proposes to sell liquor; and
- (b) a report from the Director of Public Health who shall consider the suitability of the premises in which the applicant proposes to sell liquor.

23. Objections - (1) Any person who has attained the age of 18 years and who has a greater interest in the application than the public generally may object to the grant of any licence.

(2) Every objection shall be in writing, and shall be filed with the Authority within 10 working days after the first publication of the notice of the making of the application,

24. Renewal of licences - (1) The holder of any licence, or the holder of a temporary authority issued in respect of any licence, may apply in accordance with this section for the renewal of the licence.

- (2) Every application for the renewal of a licence shall-
- (a) be filed with the Division;
 - (b) be made no later than 20 working days before the expiry of the licence, or by such later date (not being later than the date of the expiry of the licence) as the Division may allow; and
 - (c) be made in the prescribed form and manner; and
 - (d) contain the prescribed particulars; and
 - (e) be accompanied by the prescribed fee.

(3) Within 10 working days after filing the application, the applicant shall give public notice of the application in the manner described in Section 23(3).

25. Variation of conditions - (1) The holder of any liquor licence may at any time apply to the Division for the variation or cancellation of any condition of the licence imposed by the Division.

(2) Within 20 working days after filing the application, the applicant shall give public notice of the application in the manner described in Section 23(3).

26. Duration of licences - (1) Every licence issued under this Act shall continue in force -

- (a) until the close of the period of 1 year commencing with the date of its issue; or
 - (b) if an application for the renewal of the licence is duly made, until the application is determined.
- (2) Subsection (1) of this section applies subject to -
- (a) the requirements of this Act relating to the payment of fees; and
 - (b) the provisions of this Act relating to the suspension and cancellation of licences.

27. Application etc. to be forwarded to the Division for determination - (1) In respect of any application for a licence, the Secretary shall forward the complete file to the Division for the determination by it of the application in accordance with this Act.

(2) For the purposes of this section, the "complete file" means -

- (a) the application and any papers filed in support of the application; and
- (b) a copy of the public notice of the application, and a statement of the dates of publication of the notice; and
- (c) any objection, and any papers filed in support of any objection.

28. Criteria for licences - (1) In considering any application for any liquor licence, the Division shall have regard to the following matters -

- (a) the suitability of the applicant;
- (b) the days on which and the hours during which the applicant proposes to sell liquor;

- (c) the steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to Prohibited Persons are observed;
- (d) the applicant's proposals where appropriate relating to the sale and supply of non-alcoholic refreshments and food;
- (e) whether the applicant is engaged, or proposes to engage in -
 - (i) the sale or supply of any other goods besides liquor and food; or
 - (ii) the provision of any services other than those directly related to the sale or supply of liquor and food and, if so, the nature of those services;
- (f) any matters dealt with in any report made under Section 23(4) of this Act.

(2) The Division may further enquire and require information from the Commissioner of Police or the Director of Public Health in regard to any matters raised in their reports.

(3) The Division shall not take into account any prejudicial effect that the grant of the licence may have on business conducted pursuant to any other licence.

29. Temporary authority - (1) The Division may from time to time, on the application of any person who appears to it to have any right, title, estate, or interest in any premises in respect of which any licence is in force, make an order authorising the applicant, or some suitable person nominated by the applicant, to carry on the sale and delivery of liquor for such period, not exceeding 3 months, as the Division may specify in the order.

(2) The Division may hear and determine an application for an order under this section ex-parte, or direct that notice of the application and of the time and place fixed for any hearing shall be served on such persons and in such manner as the Division may specify.

(3) On granting any application for an order under this section, the Division may impose such reasonable conditions as it thinks fit.

(4) The holder of a temporary authority shall for the purposes of this Act have the same duties, obligations, and liabilities as the holder of the licence to which the temporary authority relates.

30. Display of signs and licence - (1) Every holder of any licence, other than a special licence, shall at his or her expense ensure that there is displayed at all times a sign attached to the exterior and the interior of the premises, so as to be easily read by persons immediately outside each principal entrance in the form described in Parts 1, 2 and 3 of Schedule One of this Act.

(2) On granting a special licence, the Division may give such directions relating to the display of the licence, and of the conditions of the licence and the contents of the sign as it thinks necessary or desirable and, where any such directions are given, the holder of the licence shall ensure that they are complied with.

(3) The sign described in subsection (1) shall be constructed in a form prescribed by regulation and at the cost of the licensee.

PART III
PROCEEDINGS

31. Proceedings of Division - (1) If no objection to an application is filed within the prescribed time, the Division may grant the application on the papers.

(2) Any other meeting of the Division may, at the discretion of the Division be held in public or in private.

(3) Where an objection is filed within the prescribed time, the Division shall, unless the application or each such objection is sooner withdrawn, convene a public hearing to consider the application.

(4) The Division shall give at least 10 working days notice of the public hearing to -

(a) the applicant; and

(b) each objector; and

(c) the Commissioner of Police and the Secretary of Health.

(5) Each of the persons referred to in subsection (4) of this section shall be entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses.

(6) Whenever the Division holds a public sitting it may in its discretion hold any part of the sitting in private if, having regards to the interests of persons appearing and being heard and to the public interest, it thinks it proper to do so.

(7) The Division may in any case deliberate in private as to its decision on any matter or as to any question arising in the course of any proceedings.

(8) The Division may make an order prohibiting the publication of any report or description of any part of the proceedings in any matter before it; but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the matter, or of particulars of any premises affected.

(9) In any proceedings before the Division, any counsel or solicitor engaged by the Division pursuant to this Act may appear and be heard as counsel assisting the Division.

(10) Any decision, order, direction, certificate, or other document issued by the Division may be signed on its behalf by the Chairman or the Secretary.

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

(12) Every member shall be entitled to vote at meetings of the Division, and the Chairman shall have a casting as well as a deliverative vote.

32. Hearings may be held by other means - (1) Notwithstanding any other provision of this Act, where in the opinion of the Division it is not possible to hear any application promptly due to transportation difficulties, and the application is from a person on an island within the Northern islands of the Cook Islands, then the Division may make arrangements for such application to be heard by telephone, radio-telephone, telex, facsimile, telegram, or by mail.

(2) Notwithstanding any other provision of this Act, where application is made for a licence which is temporary in nature, and the period for which such licence is sought does not exceed 48 hours, such application may be dealt by the Chairman of the Division or such other person as shall for the time being be acting in his stead and the provisions of sections 32 and 36 shall not apply. Any decision made pursuant to this subsection shall be deemed to be a decision of the Division.

33. Evidence in proceedings before the Division - (1) The Division may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectually with any matter before it, whether or not the statement, document, or matter would be admissible in a Court of law.

(2) Subject to the foregoing provisions of this section, the Evidence Act 1968 shall apply to the Division and to the members thereof, and to all proceedings therein, in the same manner as if the Division or Committee were a Court within the meaning of that Act.

34. Representation of parties - Where under this Act any person is entitled to appear and be heard in relation to any matter in any proceedings before the Division, that person may appear in person or by his counsel, solicitor, or agent, and shall have the right to produce evidence and to cross-examine witnesses.

35. Right of certain persons to appear before Division - In any proceedings before the Division, the following persons may appear and be heard -

- (a) any member of the Police;
- (b) any Medical Officer of Health, or Public Health Inspector;
- (c) any member of the Religious Advisory Council;
- (d) any member of the Island Council or Aronga Mana for the locality in which the act, matter or thing which is the subject matter of the proceedings is situated.
- (e) any member of Parliament in whose electorate the premises subject of the application is situated;
- (f) a representative of the Cook Islands Tourist Authority;
- (g) a representative of the Cook Islands Chamber of Commerce Incorporated;
- (h) any other person who satisfies the Division that he has an interest in the proceedings, apart from any interest in common with the public.

36. Division may waive certain omissions - Where any person has neglected or omitted to do any act or thing in the precise manner or within the precise time prescribed by this Act, the Division or the Chairman, if satisfied that the neglect or omission was not wilful, may, by certificate signed by the Chairman, waive the same on such terms as they think equitable.

37. Division may state case for opinion of High Court - The Division may state a case for the opinion of the High Court on any question of law arising in any proceedings before it.

38. Decisions to be given in writing - Every decision of the Division and the reasons for the decision, shall be recorded in writing, and a copy shall be given to -

- (a) the applicant; and
- (b) any objector who requests a copy; and
- (c) the Commissioner of Police and the Secretary of Health.

39. Issue of licences - (1) Where the Division grants an application for a licence, the Secretary shall issue the licence as soon as he is satisfied that any requirement imposed by the Division as a condition of the grant of the application has been met.

(2) No premises or conveyance shall be deemed for the purposes of this Act to be licensed premises until the licence is issued.

PART IV MANAGEMENT

40. Managers - (1) Every company, partnership, Government department or other instrument of the Crown, or local authority that holds any licence, shall appoint at least 1 manager in accordance with this Part of this Act.

(2) Any other holder of any licence may appoint a manager or managers.

(3) The Division may exempt the holder of any special licence from the requirements of subsection (1) of this section if it is satisfied that the licensee, or some other person nominated by the licensee, will manage the conduct of the sale of liquor pursuant to the licence.

41. Licensee or manager to be on duty at all times - (1) At all times when liquor is being sold or supplied to the public on any licensed premises either the licensee or a manager shall subject to Sections 47 and 48 be on duty and responsible for compliance with this Act and the conditions of the licence.

(2) At all times while any manager is on duty in respect of any licensed premises, the name of the manager shall be prominently displayed inside the premises so as to be easily read by persons using the premises; and the person so named at any time shall be deemed for the purposes of this Act to be the manager at that time.

42. Manager to hold certificate - No person shall be appointed as manager of any licensed premises for the purposes of this Act unless that person is the holder of a manager's certificate granted under this part of this Act.

43. Kinds of manager's certificates - Every manager's certificate shall be of one of the following kinds -

- (a) a general manager's certificate, which shall authorise the holder to manage any licensed premises in respect of which a licence is in force;

- (b) a club manager's certificate, which shall authorise the holder to manage particular premises in respect of which a club licence is in force.

44. Applications and renewals of manager's certificates - (1) Every application or renewal of a manager's certificate shall -

- (a) be made in the name of the person who will hold the certificate if the application is granted;
- (b) be made in the prescribed form and manner;
- (c) contain the prescribed particulars; and
- (d) be accompanied by the prescribed fee.
- (e) every application for a club manager's certificate shall provide evidence satisfactory to the Division of the approval of the managers nomination by the executive of the club concerned.

(2) An application shall be filed with the Division.

45. Criteria for manager's certificates - (1) In considering any application for a manager's certificate, the Division shall have regard to the following matters -

- (a) the character and reputation of the applicant;
- (b) any convictions recorded against the applicant;
- (c) any experience that the applicant has had in managing any premises in respect of which a licence was in force;
- (d) any relevant training that the applicant has undertaken and any relevant qualifications that the applicant holds;
- (e) any matters dealt with in any report made under Section 23(4) of this Act.
- (f) where the applicant intends to be the manager of a club, the extent of the applicant's involvement in the management and activities of the club.

46. Duration of manager's certificates - (1) Every manager's certificate shall continue in force -

- (a) until the close of the period of 1 year commencing with the date of its issue; or
- (b) if an application for the renewal of the certificate is duly made, until the application is determined.

(2) Subsection (1) of this section applies subject to -

- (a) the requirements of this Act relating to the payment of fees; and
- (b) the provisions of this Act relating to the suspension and cancellation of manager's certificates.

47. Temporary manager - (1) In any case where a licensee or manager is ill or is absent for any reason, or is dismissed, or resigns, the licensee may appoint as a temporary manager a suitable person who is not then the holder of a manager's certificate.

(2) The appointee shall if the appointment is for a period of less than 24 hours assume all the obligations under this Act of the person making the appointment and the provisions of section 87 of this Act shall not apply.

(3) If the appointment is for a period of greater than 24 hours the appointee shall within 2 working days after the appointment, apply for a manager's certificate; and, if such an application is made, the temporary manager shall, from the time of the appointment until the application is determined, be deemed for the purposes of this Act to be the holder of a manager's certificate.

48. Acting manager - (1) Notwithstanding any other provision of this Act, a licensee may appoint an acting manager for periods not exceeding in the aggregate 6 weeks in each period of 12 months to enable the licensee or a manager to have a vacation or annual leave.

(2) Every person appointed as an acting manager in accordance with this section shall hold a manager's certificate.

49. Notice of appointment, etc., of manager, temporary manager, or acting manager - (1) Subject to subsection (2) of this section, on the appointment, or the cancellation or termination of the appointment of any manager, or acting manager, the licensee shall give notice of the matter to -

(a) the Division; and

(b) the Commissioner of Police.

(2) It shall not be necessary to comply with subsection (1) of this section in respect of the appointment of a temporary manager or an acting manager for any period not exceeding 48 hours.

(3) The Division may, within 5 working days after receiving a notice of the appointment of any temporary manager or acting manager, notify the licensee that it does not approve the appointment, in which case it shall give a copy of the notice to the Commissioner of Police.

(4) On receiving notice under subsection (3) of this section, the licensee shall terminate the appointment with effect from a date not later than 5 working days after the date of the notice.

PART V

OFFENCES AND ENFORCEMENT

50. Division may refer matters for investigation - (1) The Division may from time to time appoint an Inspector or any other qualified person to investigate and report to the Division on such matters as are referred to that person for the purpose of the proper exercise of its powers or its functions as defined in section 8 of this Act.

(2) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$200 who, having the custody or possession of any matter to be investigated under this section, refuses or fails to allow the person conducting the investigation to have access to the documents, or who obstructs any such person in the making of the investigation.

51. Variation, suspension, or cancellation of licences - (1)

Any member of the Police may at any time apply to the Division in accordance with this section for an order -

- (a) varying or revoking any condition of a licence, imposed by the Division, or imposing any new condition; or
- (b) suspending the licence; or
- (c) cancelling the licence.

(2) Every application for an order under this section shall -

- (a) be made in the prescribed form and manner; and
- (b) contain the prescribed particulars; and
- (c) be made to the Division.

(3) The grounds on which an application for an order under this section may be made are as follows -

- (a) that the licensed premises have been conducted in breach of any of the provisions of this Act or of any conditions of the licence or otherwise in an improper manner;
- (b) that the conduct of the licensee is such as to show that he or she is not a suitable person to hold the licence;
- (c) the licensed premises are being used in a noisy or disorderly manner so as to be annoying or obnoxious to neighbouring residents or to the public.

(4) The Secretary shall -

- (a) send a copy of the application to the licensee; and
- (b) fix the earliest practicable date for a public hearing of the application; and
- (c) give at least 10 working days' notice of the date, time, and place of the hearing to the applicant and the licensee.

(5) The applicant and the licensee shall be entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses.

(6) If the Division is satisfied that any of the grounds specified in subsection (3) of this section is established and that it is desirable to make an order under this section, it may, by order -

- (a) vary or revoke any condition of the licence imposed by it; or
- (b) impose any new condition; or
- (c) suspend the licence for such period not exceeding 6 months as the Division thinks fit; or
- (d) cancel the licence.

(7) Instead of making an order under subsection (6) of this section, the Division may adjourn the application for such period as it thinks fit to give the licensee an opportunity to remedy any matters that the Division may require to be remedied within that period.

(8) In any proceedings under this section, the Division shall have regard to the character and conduct of the licensee, the extent to which the licensee was personally responsible for any act or omission, and all the circumstances of the case.

52. Suspension of licence for non-compliance with public health or fire precaution requirements - (1) Where any officer authorised by the Secretary of Health or any member of the Police authorised by the Commissioner of Police to undertake fire safety inspections has reason to believe that, because of the failure of the holder of any licence or club licence to comply with any requirements relating to public health or to the provision of safeguards against or means of warning or escape in case of fire, the health of persons using the premises is likely to be injured or their safety is likely to be endangered, the Director-General of Health or the Commissioner of Police may apply to the Division for the suspension of the licence.

(2) The Division shall give notice in writing to the licensee calling upon the licensee to appear before it at a time and place to be specified in the notice, being not earlier than 7 working days after the giving of the notice, to show cause why the licence should not be suspended.

(3) If, after hearing the licensee (if he or she appears), the Authority is satisfied that the licensee has failed to comply with any requirement referred to in subsection (1) of this section, it may order the licensee to carry out all such work as may be necessary to meet those requirements within such reasonable time as it may specify, and, in the case of default, may suspend the licence until those requirements have been met.

(4) Notwithstanding anything in subsection (3) of this section, if, in any case to which that subsection applies, the Division is satisfied that, because of the licensee's failure to comply with any requirement referred to in subsection (1) of this section, the health of persons using the premises to which the application relates is likely to be injured or their safety is likely to be endangered, the Division shall suspend the licence until it is satisfied that all work necessary or desirable to remedy the default has been carried out.

(5) Without limiting subsection (3) but notwithstanding subsection (4) of this section, if, in any case to which that latter subsection applies, the Division is satisfied -

- (a) that the risk to the health or the danger to the safety of persons using the premises has arisen from any circumstances beyond the control of the licensee or manager; or
- (b) that the risk or danger can be averted by ordering the closure of part only of the premises -

the authority may, instead of suspending the licence, order the closure of any part of the premises accordingly for the undertaking of the necessary work. If the work is not completed to the satisfaction of the Division within such period as it may allow, the Division shall suspend the licence under subsection (4) of this section.

(6) While any such licence is so suspended the premises shall be deemed not to be licensed premises.

53. Suspension or cancellation of manager's certificates -

(1) Any member of the Police or any Inspector may at any time apply in accordance with this section for an order by the Division

- (a) suspending a manager's certificate; or
- (b) cancelling a manager's certificate.

(2) Every application for an order under this section shall -

- (a) be made in the prescribed form and manner; and
- (b) contain the prescribed particulars; and
- (c) be made to the Division.

(3) The grounds on which an application for an order under this section may be made are as follows -

- (a) that the manager has failed to conduct any licensed premises in a proper manner;
- (b) that the conduct of the manager is such as to show that he or she is not a suitable person to hold the certificate.

(4) The Secretary shall -

- (a) send a copy of the application to the manager and to the licensee of any licensed premises to which any allegations against the manager relate; and
- (b) fix the earliest practicable date for a public hearing of the application; and
- (c) give at least 10 working days notice of the public hearing to the applicant and the manager.

(5) The applicant and the manager shall be entitled to appear and be heard at the hearing, whether personally or by counsel, and to call, examine, and cross-examine witnesses.

(6) If the Division is satisfied that either of the grounds specified in subsection (3) of this section is established and that it is desirable to make an order under this section, it may, by order -

- (a) suspend the certificate for such period not exceeding 6 months as it thinks fit; or
- (b) cancel the certificate.

(7) Instead of making an order under subsection (6) of this section, the Division may adjourn the application for such period as it thinks fit to give the manager an opportunity to remedy any matters that the Division may require to be remedied within that period.

54. Restraining continuing breaches of conditions of licence

(1) Where, on the application of an Inspector, the Division is satisfied that any licensee is committing a continuing breach of any condition of the licence, it may make an order restraining the continuance of the breach.

(2) The continued existence of anything in a state, or the intermittent repetition of any action, contrary to any condition of a licence shall be deemed for the purposes of this section to be a continuing breach of that condition.

(3) A contravention of an order under this section shall be a ground for suspension or cancellation of the licence under section 52 of this Act.

55. Sales by unlicensed person - Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or, community service for a term not exceeding 3 months or, a fine not exceeding \$2,500 and not less than \$250 who, not being the holder of a licence, sells, or exposes or keeps for sale, any liquor.

56. Allowing unlicensed premises to be used for sale of liquor - Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or community service for a term not exceeding 6 months or a fine not exceeding \$5,000 and not less than \$500 who, being the occupier or one of the occupiers of any unlicensed premises, allows any other person to sell, or expose or keep for sale, any liquor on or from the premises.

57. Sale or supply of liquor to Minors - (1) Every person commits an offence and is liable to a fine not exceeding \$5,000 and not less than \$500 who, being the licensee or a manager of any licensed premises, sells or supplies any liquor, or allows any liquor to be sold or supplied, on or from the licensed premises to any Minor.

(2) Every person commits an offence and is liable to a fine not exceeding \$1,000, and not less than \$100 who, not being the licensee or a manager of any licensed premises, sells or supplies any liquor, on or from the licensed premises to any Minor.

(3) Subsection (2) of this section applies irrespective of any liability that may attach to the licensee or any manager in respect of the same offence.

(4) It is a defence to a charge under subsection (1) or subsection (2) of this section if the defendant proves that the person who sold or supplied the liquor believed on reasonable grounds that the person to whom it was sold or supplied had attained the age of 18 years.

(5) No person shall be guilty of an offence against subsection (1) or subsection (2) of this section by selling or supplying liquor to any person who then supplies it to another person who is a Minor, unless it is proved that the defendant knew or had reasonable grounds to believe that the liquor was intended for that other person.

58. Purchasing liquor for Minors - (1) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who purchases or acquires any liquor on or from any licensed premises with the intention of supplying the liquor, or any of it, to any Minor.

(2) Subsection (1) of this section applies irrespective of any liability that may attach to the licensee or any manager, or other person in respect of the sale or supply of the liquor.

(3) No person shall be guilty of an offence against subsection (1) of this section by purchasing or acquiring any liquor for any other person who then supplies it to a third person who is Minor, unless it is proved that the defendant knew or had reasonable grounds to believe that the liquor was intended for that other person.

59. Purchasing of liquor by Minors - Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who, being a Minor purchases any liquor on or from any licensed premises.

60. Employment of Minors - (1) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$200 who, being the licensee of any licensed premises, employs any Minor to take part in the sale or service of liquor on or from the premises.

(2) Subsection (1) of this section does not apply to the employment on licensed premises of any person -

(a) for the purpose of -

- (i) preparing or serving any meal; or
- (ii) cleaning, repairing, maintaining, altering, or restocking the area or any equipment in the area; or
- (iii) removing or replacing any such equipment; or
- (iv) stocktaking; or
- (v) checking or removing cash; or

(b) who has attained the age of 16 years and is employed for the purpose of taking part as a performer in any entertainment.

61. Minors on Licensed Premises - (1) Every person commits an offence and is liable to a fine not exceeding \$500 and not less than \$100 who, being a Minor is found on any licensed premises unless that person is on those premises on a Friday or Saturday night and -

- (a) is accompanied by his or her spouse (being a person of or over the age of 18 years) or his or her parent or guardian; or
- (b) is accompanied by and in the charge of any other adult member of his or her family who is properly responsible for him or her.

(2) Subsection (1) of this section does not apply to any person -

(a) who is an employee or agent of the licensee, or a person acting under any contract with the licensee or a manager, and who is on the licensed premises for the purpose of -

- (i) cleaning, repairing, maintaining, altering, or restocking the area or any equipment in the area; or
- (ii) removing or replacing any such equipment; or
- (iii) stocktaking; or
- (iv) checking or removing cash; or

(b) who is on the licensed premises for the purpose of preparing or serving any meal; or

(c) who has attained the age of 16 years and who is on the licensed premises for the purpose of taking part as a performer in any entertainment and who is accompanied by and in the charge of any other adult member of his or her family or leader of the entertainment group who is properly responsible for him or her.

62. Permitting Minors to be on licensed premises - (1) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$200 who, being the licensee or manager of any licensed premises, allows any Minor to enter or remain on licensed premises on the licensed premises in contravention of section 61 of this Act.

(2) It is a defence to a charge under subsection (1) of this section if the defendant proves that he or she believed on reasonable grounds that the person to whom the charge relates and attained the age of 18 years.

(3) It is a defence to a charge under subsection (1) of this section if the defendant satisfies the Court that, as soon as the defendant or any employee of the licensee became aware of the situation, reasonable steps were taken to remove each person concerned from the licensed premises.

63. Unauthorised sale or supply - Every person commits an offence and is liable to a fine not exceeding \$10,000 and not less than \$1,000 who, being the licensee or a manager of any licensed premises, sells or supplies liquor to any person at any time when the licensee is not authorised by the licence or this Act to sell to that person.

64. Sale or supply of liquor to intoxicated person - (1) Every person commits an offence and is liable to a fine not exceeding \$5,000 and not less than \$500 who, being the licensee or a manager of any licensed premises, sells or supplies liquor to any other person who is already intoxicated.

(2) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who, not being the licensee or a manager of any licensed premises, sells or supplies liquor to any other person who is already intoxicated.

(3) Subsection (2) of this section applies irrespective of any liability that may attach to the licensee or any manager in respect of the same offence.

65. Allowing person to become intoxicated - Every person commits an offence and is liable to a fine not exceeding \$5,000 and not less than \$500 who, being the licensee or a manager of any licensed premises, allows any person to become intoxicated on the licensed premises.

66. Allowing drunkenness or disorderly conduct on licensed premises - (1) Every person commits an offence and is liable to a fine not exceeding \$2,000 and not less than \$200 who, being the licensee or a manager of any licensed premises -

(a) allows any intoxicated person to be or to remain on the licensed premises; or

(b) allows any violent, quarrelsome, insulting, or disorderly conduct to take place on the licensed premises.

(2) It is a defence to a charge under subsection (1) of this section if the defendant satisfies the Court that, as soon as the defendant or any employee of the licensee became aware of the situation, reasonable steps were taken in respect of each person concerned, either to take that person to a place of safety on the licensed premises or to remove that person from the licensed premises.

67. Licensee or Manager may demand keys - A licensee or manager may if he believes on reasonable grounds that any person is or is likely to become so intoxicated that he or she will become a danger to themselves or others by the use of a motor vehicle then that manager or licensee may demand that the person hand over the keys to his or her motor vehicle or the manager or licensee may take the steps described in section 66(2).

68. Being on licensed premises outside licensing hours - Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less \$100 who is found in any part of any licensed premises, that is used principally or exclusively for the sale, supply, or consumption of liquor -

- (a) at any time later than 30 minutes after the premises are required to close for the sale of liquor; or
- (b) at any other time when the premises are required to be closed for the sale of liquor.
- (2) Subsection (1) does not apply to -
 - (a) the licensee or a manager, or the spouse of the licensee or any manager, or any member of the family of the licensee or any manager; or
 - (b) any person who is lodging on the premises or a bona fide guest of any such lodger; or
 - (c) any other employee of the licensee, or any agent of the licensee, or any person acting under any contract with the licensee or manager, who with the authority of the licensee or manager is on the premises for the purpose of -
 - (i) cleaning, repairing, maintaining altering, or restocking the premises or any equipment in the premises; or
 - (ii) removing or replacing any such equipment; or
 - (iii) stocktaking; or
 - (iv) checking or removing cash.

69. Allowing person on licensed premises outside licensing hours - Every person commits an offence and is liable to a fine not exceeding \$5,000 and not less than \$500 who, being the licensee or a manager of any licensed premises, allows any person to be on the licensed premises in contravention of Section 68 of this Act.

70. Licensee may seek proof of age - (1) A licensee or manager of any licensed premises or any employee of the licensee may request any person who is present or who proposes to enter on the licensed premises to provide evidence of their age.

(2) The licensee, manager or employee making the request in subsection (1) may, if evidence of age is not provided to their satisfaction, refuse to serve that person, refuse entry or demand that person immediately leave the licensed premises.

71. Making false representation to licensees, etc. - (1) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who falsely represents in writing to the licensee or a manager of any licensed premises, or to any employee of the licensee, that he or she is a person to whom liquor may be sold or supplied under the licence.

(2) Every person commits an offence and is liable to a fine not exceeding \$500 and not less than \$50 who falsely represents otherwise than in writing to the licensee or a manager of any licensed premises, or to any employee of the licensee, that he or she is a person to whom liquor may be sold or supplied under the licence.

Closure of Premises

72. Closure of licensed premises in case of riot - (1) Where a riot occurs, or there is reasonable ground for believing that a riot may occur, in any place, any High Court Judge or Justice of the Peace may, at the request of the Commissioner of Police or any Member of the Police for the time being acting in that place, order every licensee in or within a specified distance of that place to close his or her licensed premises for the sale of liquor during such time as may be specified in the order.

(2) Any member of the Police may use such force as may be necessary for the purpose of closing any licensed premises to which the order applies.

(3) No order made under this section shall have any effect beyond the expiry of the day on which it is made.

(4) Every person commits an offence and is liable to a fine not exceeding \$5,000 and not less than \$500 who, being he licensee or a manager of any licensed premises to which the order applies, keeps the premises open for the sale of liquor in contravention of the order.

(5) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who sells any liquor on or from any licensed premises to which the order applies at any time while the order remains in force.

73. Closure of premises in case of fighting. etc. - (1) Where fighting or serious disorder breaks out, or there is reasonable ground for believing that fighting or serious disorder is about to break out, on any licensed premises, any member of the Police may order the licensee or a manager to close the premises, or any specified part of them, for the sale of liquor until good order has been restored, and may order any person to leave the premises or that specified part of them.

(2) Any member of the Police may use such force as may be necessary for the purpose of closing the licensed premises or that part of them.

(3) As soon as any order has been given under this section, the licensee or a manager may apply to any High Court Judge or any Justice of the Peace for the revocation of the order.

(4) The Judge or the Justice may revoke the order either unconditionally or subject to such conditions as the Judge or the Justice may think fit to impose, or refuse to revoke the order.

(5) No order made under this section shall have any effect beyond the expiry of the day on which it is made.

(6) Every person commits an offence and is liable to a fine not exceeding \$5,000 and not less than \$500 who, being the licensee or a manager of the licensed premises, keeps the premises or the specified part of them open for the sale of liquor in contravention of the order.

(7) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who sells any liquor on or from the licensed premises or the specified part of them at any time while the order remains in effect.

Further Powers of Police

74. Powers of entry on licensed premises - (1) Any member of the Police or an Inspector may at any reasonable time enter and inspect any licensed premises or any part of any licensed premises, to ascertain whether the licensee is complying with the provisions of this Act and the conditions of the licence.

(2) Any member of the Police or an Inspector may at any time enter and inspect any licensed premises when that member has reasonable ground to believe that any offence against this Act is being committed on those licensed premises.

(3) For the purposes of exercising the power conferred by this section, a member of the Police or an Inspector may -

- (a) require the production of any licence, or any book, notice, record, list, or other document that is required by this Act to be kept, and examine and make copies of it; and
- (b) require the licensee or manager to provide any information or assistance reasonably required by the member of the Police or Inspector relating to any matter within the duties of the licensee or manager.

(4) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who, without reasonable excuse and without unreasonable delay, refuses or fails to admit to any licensed premises any member of the Police or Inspector who demands entry under this section.

(5) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who, being the licensee or a manager of any licensed premises, without reasonable excuse, refuses or fails -

- (a) to produce the licence or any document when required to do so under paragraph (a) of subsection (3) of this section; or
- (b) to provide any assistance or information when required to do so under paragraph (b) of that subsection.

75. Power of Police to demand information - (1) Any member of the Police who has reasonable cause to suspect that any person has committed or is committing or is attempting to commit any offence against this Act may demand particulars of -

- (a) the name and address of that person; and
- (b) the date of birth of that person, where that person's age is or may be material to the suspected offence.

(2) If the member of the Police has reasonable ground to believe that any such particulars are false, he or she may require the person to supply satisfactory evidence of those particulars.

(3) If any person, without reasonable excuse, refuses or fails to supply any particulars or evidence when required to do so by any member of the Police under this section, and persists in that refusal or failure after being cautioned by the member of the Police, that person may be arrested, without warrant, by any member of the Police.

(4) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who, having been required by any member of the Police to supply any particulars or evidence under this section, without reasonable excuse -

- (a) refuses or fails to supply the particulars or evidence; or
- (b) supplies any particulars or evidence knowing that the particulars or evidence are false in a material respect.

76. Identity of Police - (1) Every Police Officer exercising the powers granted by Sections 74 and 75 of this Act shall be in uniform or shall, if not in uniform, produce evidence of identity if requested by any person to whom the exercise of that power relates.

(2) Every Inspector exercising the powers granted by section 74 shall produce evidence of identity if requested by any person to whom the exercise of that power relates.

77. Search warrant - (1) If any High Court Judge or Justice of the Peace, or any Registrar (not being a constable), is satisfied, on application in writing made on oath, that there is reasonable ground for believing that any liquor is being sold, or exposed or kept for sale, the Judge, Justice of the Peace or Registrar may issue a warrant in the prescribed form to search the premises or conveyance.

(2) The applicant for a search warrant shall include in the application details, so far as they are known to the applicant after making reasonable enquiries, of -

- (a) any other application for a warrant under this section to search the premises or conveyance made within the preceding period of 28 days; and
- (b) the result of that other application.

(3) Every search warrant shall be directed either to a member of the Police by name or to every member of the Police, but, in either case, the warrant may be executed by any member of the Police.

(4) The Judge, Justice, or Registrar, on issuing a search warrant, may impose such reasonable conditions on its execution as he or she thinks fit.

(5) Any member of the Police may call any person to assist him or her in the execution of a search warrant.

(6) Every search warrant shall, subject to any conditions imposed under subsection (4) of this section, authorise the member of the Police who is executing it, and any person called by that member to assist -

- (a) to enter the premises on one occasion within 14 days of the date of the issue of the warrant at any time that is reasonable in the circumstances; and
- (b) to use such force, both for making entry (whether by breaking open doors or otherwise) and for breaking open any thing on the premises or conveyance, as is reasonable in the circumstances; and

- (c) to search for and seize any liquor, or any packages or containers containing or believed to contain any liquor, or any vessels used or believed to be used for the consumption of any liquor, or any other thing, found on the premises or conveyance and believed on reasonable grounds to have been involved in the commission of any offence specified in the warrant or any other offence against this Act.
- (7) Any member of the Police who executes a search warrant shall carry the warrant with him or her, and shall produce it for inspection -
 - (a) on first entering the premises or conveyance to the person appearing to be in charge of the premises; and
 - (b) whenever subsequently required to do so on the premises or conveyance by any other person appearing to be in charge of the premises or conveyance or any part of the premises or conveyance.
- (8) Where the occupier of the premises or conveyance is not present at the time the search warrant is executed, the member of the Police shall leave in a prominent place on the premises or conveyance a written statement of the time and date of the search, and of that member's name and the address of the Police station to which enquiries should be made.
- (9) Where any thing is seized in execution of a search warrant, the member of the Police executing the warrant shall leave in a prominent place on the premises or conveyance, or send to the occupier within 10 working days after the date of the search, a written inventory of all things so seized.

78. Power of Police to seize liquor - (1) On suspecting on reasonable grounds that an offence against this Act has been committed at or in any place, any member of the Police may at any time enter onto such place without warrant and to seize any liquor the possession of which is not satisfactorily accounted for by any owners or occupants of such place, such liquor to be held in safe custody pending an order under this Act.

(2) No seizure made pursuant to this section shall be made unless the member of Police believes on reasonable grounds that -

- (i) the circumstances are exceptional and;
- (ii) that if the procedures described in section 77 are complied with that there is a real danger of the liquor being removed and taken to some other place where it may not be found.

(3) A written report of every entry made pursuant to this section shall within seven days be made by the member of the Police who made the entry to the Secretary of the Division.

Matters of Evidence and Sentencing

79. Matters of proof relating to status of premises or conveyance - (1) In any proceedings for an offence against any of the provisions of this Act in relation to anything done or omitted to be done on any licensed premises, it shall not be necessary for the prosecution to prove that the premises or conveyance to which the charge relates are, or were at any material time, licensed premises, unless at least 3 working days before the hearing the defendant puts the question in issue by written notice to that effect served on the prosecution.

(2) In any proceedings for an offence against any of the provisions of this Act in relation to the sale of any liquor, or the keeping or exposing of any liquor for sale, on any unlicensed premises, it shall not be necessary for the prosecution to prove that the premises or conveyance are, or were at any material time, unlicensed, unless at least 3 working days before the hearing the defendant puts the question in issue by written notice to that effect served on the prosecution.

80. Matters of proof relating to content of liquor - In any proceedings for an offence against any of the provisions of this Act in relation to any spirits, wine, ale, beer, porter, honeymead, stout, cider, perry, or other fermented, distilled, or spirituous liquor it shall not be necessary for the prosecution to prove that it contains 1.15 percent or more alcohol by volume unless at least 20 working days before the hearing the defendant puts the question in issue by written notice to the effect served on the prosecution.

81. Evidence of sale or consumption of liquor - (1) In any proceedings for an offence against any of the provisions of this Act in relation to the sale or consumption of liquor on any licensed premises or unlicensed premises or conveyance, it shall not be necessary for the prosecution to prove that any money passed or any liquor was actually consumed, if the Court is satisfied that a transaction in the nature of sale actually took place or that any consumption of liquor was about to take place.

(2) In any proceedings for an offence against any of the provisions of this Act in relation to the sale of liquor on any licensed premises, proof of consumption or intended consumption of liquor on the licensed premises, or of the carrying away of liquor from the licensed premises, by some person other than the occupier of the licensed premises or any person employed on them shall be evidence that the liquor was sold to that person by or on behalf of the licensee.

(3) In any proceedings for an offence against any of the provisions of Sections 57 to 64, 67 and 68 of this Act, the onus of proving that any person was at the time of the alleged offence entitled to have liquor sold or supplied to him or her, or to consume or procure it or have it in his or her possession on the licensed premises, or to be on the licensed premises or any particular part of the licensed premises, shall be on the person alleging the fact.

82. Sentencing - Any High Court Judge or Justice of the Peace when sentencing any person convicted of any offence under this Act shall take into consideration the objects of this Act and the consequences of the offending so far as it relates to injury or damage to persons or property.

83. Prohibition orders - (1) If on the hearing of any criminal offence in the High Court the Justice, Justices or Judge is satisfied that the consumption of alcohol has been a significant factor in any offending the High Court may make as part of any sentence of probation a prohibition order in respect of such person, prohibiting him from purchasing, procuring, processing or drinking any liquor for such period, or for life as the High Court shall determine.

(2) Every person commits an offence and is liable to a fine not exceeding \$5,000 and not less than \$500 who, being the licensee or manager of any licensed premises, sells or supplies any liquor, or allows any liquor to be sold or supplied to any person in respect of whom a prohibition order during the currency of that prohibition order.

(3) Every person commits an offence and is liable to a fine not exceeding \$1,000 and not less than \$100 who, not being the licensee or manager of any licensed premises, knowingly sells, supplies or procures any liquor for any person in respect of whom a prohibition order is in force pursuant to subsection (1), or assists such person to procure or consume liquor.

(4) A prohibition order may at any time, (being a time not less than one year after the date of the making of such order), be rescinded by the High Court upon the Court being satisfied that the person has in all respects complied with the prohibition order during the 12 months period immediately preceding the date such matter is heard by the Court.

(5) In every case where the High Court makes a prohibition order, the Registrar of the High Court shall cause public notice of such order and the terms thereof to be given by publication in a daily newspaper circulated throughout the Cook Islands.

84. Offence to drink liquor on beaches, parks and public places - (1) Every person commits an offence and is liable to a fine not exceeding \$200 for a first offence, or \$500 for a second or subsequent offence who drinks any liquor on any road, street, footpath, alley or any thoroughfare of a public nature, or in any licensed public vehicle or passenger carrying vessel or on any beach up to the mean high water mark, or any public place or premises that is not licensed pursuant to the provisions of this Act.

(2) Any member of the Police may demand that any person who that member has reasonable cause to believe has been responsible for littering or despoiling any of the places described in subsection (1) demand that the person clean up that place.

(3) If that person without reasonable excuse, refuses or fails to clean up that place as directed in subsection (2), and persists in that refusal or failure after being cautioned by the member of the Police, that person may be arrested, without warrant by any member of the Police.

85. Appeals - (1) Where, -

- (a) any licence is suspended, varied or cancelled by the Division; or
 - (b) any application for renewal of a licence is refused; or
 - (c) any licence is refused on the grounds of the suitability of the applicant -
- the holder of that licence, or the applicant for such suspension, variation, cancellation or renewal (as the case may be) may within 21 days appeal to the High Court against such suspension, cancellation or refusal.

(2) Where any party to any proceedings before the Division under this Act is dissatisfied with any determination of the Division in the proceedings as being erroneous in point of law, that party may appeal to the High Court on that question of law.

(3) Notwithstanding anything in this section, a Judge of the High Court on the application of any person having a right of appeal under this section, may grant leave to extended time limit prescribed by this section to such time as the Judge thinks fit, where in the opinion of the Judge there was reasonable cause for the failure or inability of that person to give notice within the time prescribed by this section.

(4) The notice of appeal shall be in writing and shall be filed in the office of the High Court at Avarua, Rarotonga. Immediately after the filing of the notice of appeal, a copy of the notice shall be delivered or sent by the appellant to the Secretary of the Division.

(5) Every notice of appeal shall specify -

- (a) the determination or the part of the determination appealed from; and
- (b) where relevant the error of law alleged by the appellant and the question of law to be resolved;
- (c) the grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the Court and the other parties of the issues involved.

(6) The operation of the decision appealed against shall be suspended until the final determination of the appeal. In the case of the cancellation or suspension of a licence, the licence shall, if the appeal is not finally determined on or before the expiry of the licence by effluxion of time, be deemed to be extended until the final determination of the appeal and, where necessary, the provisions of this Act relating to the renewal of such licence, with the necessary modifications, shall apply with respect to the licence.

(7) On hearing the appeal the High Court may confirm, modify, or reverse the decision appealed against. The decision of the Court shall be final and binding on all parties.

(8) Every appeal under this section shall be dealt with in accordance with rules of Court.

86. Further appeal to Court of Appeal - (1) Any party to an appeal under Section 85 of this Act may appeal to the Court of Appeal pursuant to Article 60 of the Cook Islands Constitution.

(2) On any appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had.

(3) The decision of the Court of Appeal on any appeal under this section shall be final and the same judgement shall be entered in the High Court, and the same execution and other consequences and proceedings shall follow thereon, as if the decision of the Court of Appeal had been given in the High Court.

(4) The decision of the Court of Appeal on any application to that Court for leave to appeal shall be final.

PART VI MISCELLANEOUS PROVISIONS

87. Liability of licensee for offences by manager - The licensee of any licensed premises shall not be responsible for any offence against this Act committed by any manager or acting or temporary manager of those premises except where the licensee is a party to the offence.

88. Notice of prosecution or conviction of managers and licensees - (1) Any person who lays an information for an offence against this Act against a manager of any licensed premises shall send a copy of the information to the licensee.

(2) On the conviction of any manager of any licensed premises of an offence against this Act, the Registrar of the Court shall send a notice of the conviction, together with any recommendation made by the Court in respect of the manager's certificate, to -

(a) the licensee; and

(b) the Secretary of the Division.

(3) On the conviction of any licensee of an offence against this Act, the Registrar of the Court shall send a notice of the conviction, together with any recommendation made by the Court in respect of the licence, to the Secretary.

89. Secretary to set up and maintain register - (1) The Secretary shall set up and maintain a register in which shall be recorded all such particulars relating to licences and managers' certificates, and to applications for or in respect of such licences and certificates, as may be prescribed.

(2) Any member of the public may, on payment of the prescribed fee, obtain from the Secretary of the Division an extract from the register.

90. Certified extracts to be evidence - Any extract of any register or record kept by the Secretary and certified as such by the Secretary shall be evidence of the matters stated in the extract.

91. Licencees and managers to have address for service - (1) Every licensee and every manager shall from time to time notify an address for service to the Secretary.

(2) Any notice or other document required by this Act to be served on any licensee or manager may be sent by registered post to the address for service of the licensee or manager, in which case it shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

92. Licencees to file annual returns - (1) A holder of any licence shall, on or before the 30th day of June in each year, supply or cause to be supplied to the Secretary a return in the prescribed form of the liquor sold pursuant to the licence during the period of 12 months in that year.

(2) The return shall be signed by the licensee or a manager, and shall be accompanied by a statutory declaration by the licensee or manager to the effect that the return is correct to the best of that person's knowledge.

93. Annual report - (1) Within 3 months of the end of every financial year, there shall be prepared by the Division and forwarded to the Minister a report of its proceedings during that year.

(2) A copy of such report shall be laid before Parliament within 14 days of its receipt by the Minister if Parliament is then in Session, and if Parliament is not then in Session, then within 14 days after the commencement of the next ensuing Session.

94. Changes in company shareholding - (1) The secretary of any company incorporated under the Companies Act 1955, as applied in the Cook Islands, that holds a licence shall notify the Secretary of any change in -

(a) the shareholding of the company; and

(b) the directors and secretary of the company.

(2) Any notice required by subsection (1) of this section shall be given within 10 working days after the secretary of the company becomes aware of the change to which it relates.

(3) Any person on whose behalf any shares are held by any other person in any company that holds a licence shall notify the Secretary if the number of shares held amounts to at least 20 percent of the shares, or of any particular class of the shares, issued by the company.

(4) On receiving any notice under this section, the Secretary shall send a copy of it to the Commissioner of Police;

(5) On receipt of a copy of any notice under this section, any Member of the Police may apply to the Division for the cancellation of the licence on the ground that, by virtue of the change to which the notice relates, the company is no longer suitable as the holder of the licence.

(6) The provisions of Section 52 of this Act, with any necessary modification, shall apply in respect of any application under subsection (5) of this section.

95. Duplicate licence or certificate - If the Secretary is satisfied that any licence or manager's certificate issued by the Division has been lost or destroyed, the Secretary may issue a duplicate licence or certificate to the holder.

96. Surrender of licence - (1) A licensee may at any time surrender the licence by sending a written notice to that effect, together with the licence, to the Secretary.

(2) The Secretary shall endorse on the notice the date on which it is received, and the licence shall cease to have effect as from that date.

(3) The licensee shall be entitled to a proportionate refund of any fee paid in respect of the period for which the licence would have had effect if it had not been surrendered.

(4) The surrender of a licence shall not affect the licensee's liability -

- (a) to perform any obligation required to be performed by the licensee by or under this Act before the date on which the licence ceases to have effect; or
- (b) for any act done or default made before that date.

97. Temporary licence during repairs, etc. - If -

- (a) any licensed premises become unfit for the sale of liquor because of any fire, tempest, or other calamity; or
- (b) any licensed premises are or will become unfit for that purpose because of any repairs, alterations, or additions, or their rebuilding; or
- (c) any other circumstances arise in respect of any licensed premises that prevent or will prevent the sale of liquor on the licensed premises, -

the Chairman of the Division may authorise the licensee to sell liquor pursuant to the licence on or from any other premises or conveyance for such period as the Chairman may from time to time determine.

98. Regulations - The Queen's Representative may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the procedure to be followed in respect of applications, objections, and reports to, and proceedings before, the Division;
- (b) prescribing fees in respect of applications, licences, and certificates made or issued under this Act, which fees may differ according to the kind of licences, and according to whether or not the licences are to be endorsed under any of the provisions of this Act; and fixing the amount or proportion of any such fee that is payable to the Division;

- (c) prescribing fees for inspecting, or for extracts from, the records or registers kept under this Act;
- (d) prescribing forms required for the purposes of this Act;
- (e) providing for the keeping of registers and records for the purposes of this Act;
- (f) providing for records to be kept and returns to be made to any Government department, and providing for the proper protection of any confidential information supplied for the purposes of any such record or return;
- (g) prescribing transitional procedures for the conversion of licences, permits, and certificates in force under the Liquor Control Ordinance 1963 and the Liquor Licensing Act 1988 immediately before the commencement of this Act into the appropriate licence or certificate under this Act;
- (h) providing for such other matters as are contemplated by or necessary for giving full effect to this Act and for its proper administration.

99. Existing licences - (1) Notwithstanding anything in this Act, where at the passing of this Act, any person is a holder of a licence issued pursuant to the provisions of the Liquor Control Ordinance 1963 or the Liquor Licensing Act 1988 in respect of any premises or part of any premises, such licence shall be deemed to have been lawfully issued pursuant to this Act in respect of such premises and shall, subject to the provisions of subsection (2), continue in force according to its tenor.

(2) The Authority shall, within 6 months of the date of the coming into force of this Act, re-classify every licence issued pursuant to the Liquor Control Ordinance 1963 or the Liquor Licensing Act 1988 into a class of licence created pursuant to this Act which as near as can be, reflects the conditions of that licence applying before the coming into force of this Act. The Authority shall notify the licensee in writing on such re-classification in the terms then applicable to his licence.

100. Repeals - (1) The enactments specified in Part I Schedule Two are repealed.

(2) The enactments specified in the first column of Part II of Schedule Two are amended in the manner set out in the second column.

This Act is administered by the General Licensing Authority

SCHEDULE ONEPART 1

Sign to be displayed in English and Maori
on exterior and interior of Hotel, Motel
and Restaurant Bar, Bar, Restaurant and
Night Club Licensed Premises

1. Hours of Business:

All patrons must leave these premises 30 minutes after business ceases.

2. No person under the age of 18 years is allowed on these premises unless accompanied by his or her spouse (who must be over 18 years) or his or her parent or guardian, or any other adult member of his or her family who is properly responsible for him or her.

3. No person under the age of 18 years is allowed to be sold or supplied with liquor on these premises. PENALTY \$100 TO \$1000.

4. No intoxicated person is allowed to be sold or supplied with liquor on these premises. No drunkenness or disorderly conduct is allowed on these premises.

5. The Manager or Licensee whose name is displayed with the licence for these premises or any employee has the power to:

- (a) refuse to allow entry to any person;
- (b) refuse to serve any person;
- (c) demand that any person leave these premises if in the opinion of the Manager, Licensee or employee that person is not behaving lawfully or cannot satisfactorily prove their age.

WARNING - DRINKING MAY DAMAGE YOUR HEALTH

SCHEDULE ONEPART 2

Sign to be displayed in English and Maori on
exterior and interior of a retail licensed premises

Hours of Business:

No person under the age of 18 years is allowed to be sold or
supplied with liquor on these premises. PENALTY \$100 to \$1000.

No liquor is to be consumed on these premises.

No intoxicated person is allowed to be sold or supplied with liquor
on these premises. No drunkenness or disorderly conduct is allowed
on these premises.

The Manager or Licensee whose name is displayed with the licence
for these premises or any employee has the power to:

- (a) refuse to allow entry to any person;
- (b) refuse to serve any person;
- (c) demand that any person leave these premises if in the
opinion of the Manager, Licensee or employee that person
is not behaving lawfully or cannot satisfactorily prove
their age.

WARNING - DRINKING MAY DAMAGE YOUR HEALTH

SCHEDULE ONEPART 3

Sign to be displayed in English and Maori
on exterior and interior of Club Premises

1. Hours of Business:

All patrons must leave these premises 30 minutes after business ceases.

2. No person under the age of 18 years is allowed to be sold or supplied with liquor on these premises. PENALTY \$100 TO \$1000.

3. No intoxicated person is allowed to be sold or supplied with liquor on these premises. No drunkenness or disorderly conduct is allowed on these premises.

4. The Manager or Licensee whose name is displayed with the licence for these premises or any employee has the power to:

- (a) refuse to allow entry to any person;
- (b) refuse to serve any person;
- (c) demand that any person leave these premises if in the opinion of the Manager, Licensee or employee that person is not behaving lawfully or cannot satisfactorily prove their age.

WARNING - DRINKING MAY DAMAGE YOUR HEALTH

SCHEDULE TWOPART 1

Liquor Control Ordinance 1963
Cook Islands Amendment Act 1970 No.2
Liquor Licensing Act 1988
Liquor Licencing Amendment Act 1990

PART 2First Column

Cook Islands Amendment Act 1961

Liquor Control Amendment 1981

Second Column

By repealing sections 3, 4, 9, 10, 11, 12, 13, 14 and 15.

By repealing sections 2, 3 4 and 5.
