



New South Wales

# Liquor Amendment (Temporary Licence Freeze) Act 2009 No 66

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New South Wales

# **Liquor Amendment (Temporary Licence Freeze) Act 2009 No 66**

Act No 66, 2009

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An Act to amend the *Liquor Act 2007* to restrict the granting of liquor licences and other liquor-related authorisations in certain precincts; and for other purposes.  
[Assented to 1 October 2009]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Liquor Amendment (Temporary Licence Freeze) Act 2009*.

**2 Commencement**

This Act commences on the date of assent to this Act.

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## Schedule 1      Amendment of Liquor Act 2007 No 90

### [1] Part 4, Division 1A

Insert after Division 1:

### **Division 1A      Temporary freeze on licences and other authorisations**

#### **47A      Definitions**

(1) In this Division:

*freeze period* means the period:

- (a) starting on the commencement of this section, and
- (b) ending on 24 June 2010 (or such later date as may be prescribed by the regulations before the end of the freeze period).

*freeze precinct* means a precinct described in Schedule 5.

*subject premises* means any premises situated wholly or partly in a freeze precinct.

(2) For the purposes of this Division and Schedule 5:

- (a) a precinct that is described by reference to specified streets is taken to include all the premises on those streets, and
- (b) premises are taken to be on a street if:
  - (i) the street address of the premises includes the name of the street, or
  - (ii) the premises front or back onto, or abut, the street, or
  - (iii) the premises can be entered from the street, or
  - (iv) the regulations provide that the premises are situated in the immediate vicinity of the street.

(3) A reference in this Division:

- (a) to a public entertainment venue does not (except where otherwise expressly provided) include a reference to a cinema or theatre, and
- (b) to a producer/wholesaler licence is a reference to such a licence only to the extent that the licence authorises, or would authorise, the sale of liquor by retail (other than the retail sale of liquor at a wine show or a producers' market or fair in accordance with section 33 (1) (d) or (e)).

**47B Restrictions on granting new licences**

- (1) During the freeze period, the following types of licences must not be granted for subject premises:
  - (a) hotel licence,
  - (b) club licence,
  - (c) on-premises licence that relates to a public entertainment venue,
  - (d) packaged liquor licence,
  - (e) producer/wholesaler licence.
- (2) During the freeze period, the Authority must not grant an on-premises licence (other than an on-premises licence referred to in subsection (1) (c)) for subject premises if the Authority is satisfied that the granting of the licence is likely to result in an increase in the number of persons who enter the freeze precinct in which the premises are situated principally to consume alcohol.

**47C Restrictions on granting extended trading authorisations**

During the freeze period:

- (a) an extended trading authorisation (other than an extended trading authorisation referred to in paragraph (c)) must not be granted in relation to subject premises, and
- (b) an extended trading authorisation applying to subject premises must not be varied so as to increase the trading hours of the premises, and
- (c) the Authority must not grant an extended trading authorisation in relation to subject premises so as to authorise the sale or supply of liquor on the premises for a special occasion that takes place on a specified date, and not on a regular basis, if the Authority is satisfied that the granting of the authorisation is likely to result in:
  - (i) an increase in the number of persons who enter the freeze precinct in which the premises are situated principally to consume alcohol, or
  - (ii) an increase in the patron capacity of the premises.

**47D Restrictions on varying or revoking licence conditions**

- (1) During the freeze period, the conditions to which a licence is subject, being a licence to which this section applies that is held in respect of subject premises, must not be varied or revoked if any such variation or revocation would result in an increase in the

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trading hours of the subject premises. This subsection does not, however, prevent the granting of an extended trading authorisation as referred to in section 47C (c).

- (2) Without limiting the operation of subsection (1), the Authority must not, during the freeze period, take action under any other provision of this Act to vary or revoke the conditions to which a licence is subject, being a licence to which this section applies that is held in respect of subject premises, if the Authority is satisfied that the variation or revocation of the condition is likely to result in:
  - (a) an increase in the number of persons who enter the freeze precinct in which the premises are situated principally to consume alcohol, or
  - (b) an increase in the patron capacity of the premises.
- (3) This section applies to the following types of licences:
  - (a) hotel licence,
  - (b) club licence,
  - (c) on-premises licence that relates to a public entertainment venue (including a cinema or a theatre),
  - (d) on-premises licence that relates to a restaurant,
  - (e) packaged liquor licence,
  - (f) producer/wholesaler licence.

**47E Restrictions on granting authorisations under section 24 (3)**

- (1) During the freeze period, an authorisation under section 24 (3) must not be granted in relation to subject premises for which any of the following types of licences is held:
  - (a) on-premises licence that relates to a public entertainment venue,
  - (b) on-premises licence that relates to a restaurant.
- (2) During the freeze period, the Authority must not grant an authorisation under section 24 (3) in relation to subject premises for which an on-premises licence is held (other than an on-premises licence referred to in subsection (1)) if the Authority is satisfied that the granting of the authorisation is likely to result in:
  - (a) an increase in the number of persons who enter the freeze precinct in which the premises are situated principally to consume alcohol, or
  - (b) an increase in the patron capacity of the premises.

**47F Restrictions on approving licence removals**

**(1) Removal of licence from premises situated outside of freeze precinct**

During the freeze period, the removal of any of the following types of licences must not be approved if the licence would be removed to subject premises from premises that are not situated in the freeze precinct in which the subject premises are situated:

- (a) hotel licence,
- (b) club licence,
- (c) on-premises licence that relates to a public entertainment venue,
- (d) packaged liquor licence,
- (e) producer/wholesaler licence.

**(2) During the freeze period, the Authority must not approve the removal of an on-premises licence (other than an on-premises licence that relates to a public entertainment venue) to subject premises from premises that are not situated in the freeze precinct in which the subject premises are situated if the Authority is satisfied that:**

- (a) the removal of the licence to the subject premises is likely to result in an increase in the number of persons who enter the freeze precinct in which the subject premises are situated principally to consume alcohol, or
- (b) the patron capacity of the subject premises will be more than the patron capacity of the premises from which the licence would be removed.

**(3) Removal of licence between premises in same freeze precinct**

During the freeze period, the Authority must not approve the removal of a licence, being a licence to which this subsection applies, to subject premises from other premises situated in the same freeze precinct in which the subject premises are situated if the Authority is satisfied that:

- (a) the removal of the licence to the subject premises is likely to result in an increase in the number of people who enter the freeze precinct in which the subject premises are situated principally to consume alcohol, or
- (b) the patron capacity of the subject premises will be more than the patron capacity of the premises from which the licence would be removed.

- (4) Subsection (3) applies to the following types of licences:
- (a) hotel licence,
  - (b) club licence,
  - (c) on-premises licence,
  - (d) packaged liquor licence,
  - (e) producer/wholesaler licence.

**47G Restrictions on changing boundaries of premises**

- (1) During the freeze period, the Authority must not change the specified boundaries (as referred to in section 94) of subject premises to which this subsection applies if the Authority is satisfied that the change in the boundaries of the premises is likely to result in:
- (a) an increase in the number of people who enter the freeze precinct in which the subject premises are situated principally to consume alcohol, or
  - (b) an increase in the patron capacity of the subject premises.
- (2) Subsection (1) applies to subject premises in respect of which any of the following types of licences is held:
- (a) hotel licence,
  - (b) club licence,
  - (c) on-premises licence,
  - (d) packaged liquor licence,
  - (e) producer/wholesaler licence.
- (3) Without limiting subsection (1), the specified boundaries of any licensed premises to which a producer/wholesaler licence relates (being a producer/wholesaler licence to which section 35 applies) must not, during the freeze period, be changed if the change would result in the licensed premises being situated in a freeze precinct.

**47H Restrictions on licence conditions imposed by Director-General**

- (1) During the freeze period, the Director-General of Communities NSW must not, except in such cases as the Director-General considers appropriate, impose a condition on a licence, or vary or revoke any condition of a licence, being a licence to which this section applies that is held in respect of subject premises, if the Director-General is satisfied that the condition, or the variation or revocation of the condition, is likely to result in:

- (a) an increase in the number of people who enter the freeze precinct in which the subject premises are situated principally to consume alcohol, or
  - (b) an increase in the patron capacity of the premises.
- (2) This section applies to the following types of licences:
- (a) hotel licence,
  - (b) club licence,
  - (c) on-premises licence that relates to a public entertainment venue (including a cinema or a theatre),
  - (d) on-premises licence that relates to a restaurant,
  - (e) packaged liquor licence,
  - (f) producer/wholesaler licence.
- (3) Subsection (1) does not limit the operation of section 47D (1).

**47I Restrictions on granting development consent in relation to subject premises**

- (1) During the freeze period, development consent to carry out development on subject premises must not be granted by a consent authority if the development requires a licence, approval, authorisation or other action under this Act that cannot be granted or taken because of the operation of the other provisions of this Division.
- (2) For the purposes of subsection (1), any matter under those other provisions of which the Authority is required to be satisfied is to be a matter of which the consent authority is required to be satisfied.
- (3) This section does not apply to or in respect of an application for development consent:
  - (a) to carry out development on subject premises for the purposes of a restaurant, or
  - (b) to carry out development on subject premises that are in a freeze precinct described in Part 2 of Schedule 5, or
  - (c) that was made on or before the relevant introduction date.
- (4) This section does not prevent:
  - (a) an application for development consent from being amended under the EP&A Act by the applicant for the purposes of removing or modifying that part of the application that would otherwise prevent it from being granted because of subsection (1), or

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- (b) the consent authority from determining any such amended application in accordance with that Act.
- (5) A reference in this section:
- (a) to an application for development consent includes a reference to an application to modify an existing development consent, and
- (b) to the granting of development consent includes a reference to the modification of a development consent.
- (6) A reference in this section to a consent authority includes, in the case of any development that is complying development, a reference to a certifying authority.
- (7) The provisions of the EP&A Act that provide for an appeal to the Land and Environment Court on the basis that the period for determining an application for development consent has expired before the application is determined do not, for the duration of the freeze period, apply in relation to an application for development consent that cannot be granted by the consent authority because of this section. In the case of any such application for development consent, the period under the relevant provision of the EP&A Act for determining the application is taken to commence immediately on the expiration of the freeze period.
- (8) Words and expressions used in this section or in section 47J that are defined in the EP&A Act have the same meaning as in that Act.
- (9) In this section:
- EP&A Act** means the *Environmental Planning and Assessment Act 1979*.
- relevant introduction date** means the date on which the Bill for the *Liquor Amendment (Temporary Licence Freeze) Act 2009* was introduced into the Legislative Assembly.

#### 47J Regulations

The regulations may:

- (a) impose restrictions on the granting or determination, during the freeze period, of any type of licence or other matter in relation to subject premises (being a type of licence or matter that could be granted under this Act and is not otherwise dealt with under this Division), and
- (b) impose restrictions on the granting, during the freeze period, of development consent to carry out development on subject premises (being development consent that is not

otherwise restricted by the operation of section 47I and that relates to the carrying out of development to which the other provisions of this Division apply), and

- (c) provide exceptions to all or any part of this Division, and
- (d) amend Part 1 or 2 of Schedule 5 (including, without limitation, by adding or removing, or varying the description of, a precinct).

**[2] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Liquor Amendment (Temporary Licence Freeze) Act 2009*

**[3] Schedule 1, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of Liquor Amendment (Temporary Licence Freeze) Act 2009**

**28 Definition**

In this Part:

*amending Act* means the *Liquor Amendment (Temporary Licence Freeze) Act 2009*.

**29 Pending liquor-related applications**

- (1) Division 1A of Part 4 (as inserted by the amending Act) extends to an application under this Act for any licence or other matter referred to in that Division that was made on or after 25 June 2009 but not granted or otherwise determined as at the commencement of the amending Act.
- (2) However, Division 1A of Part 4 does not apply in relation to any application under this Act for a licence or other matter that was made before 25 June 2009.

**30 Crown not liable for any compensation**

- (1) Damages or compensation are not payable by or on behalf of the Crown:
  - (a) because of the enactment of the amending Act or the operation of the amendments made by the amending Act (including the provisions of this Part), or

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- (b) for the consequences of that enactment or operation, or
  - (c) because of a representation or conduct of any kind about the sale or supply of liquor on any premises or kind of premises.

- (2) In this clause, *the Crown* means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes any employee or agent of the Crown.

**[4] Schedule 5**

Insert after Schedule 4:

## **Schedule 5      Freeze precincts**

(Division 1A of Part 4)

**Note.** Maps illustrating the precincts described in this Schedule are available for inspection on the website of the NSW Office of Liquor, Gaming and Racing, Communities NSW.

### **Part 1      Precincts affected by liquor licensing and development consent freeze provisions**

**Note.** All of the provisions of Division 1A of Part 4 of this Act (including the restrictions under section 471 in relation to the granting of development consent under the *Environmental Planning and Assessment Act 1979*) apply to or in respect of the precincts described in this Part.

#### **CBD South precinct**

George Street from its intersection with Park Street on its eastern side and Druitt Street on its western side south to its intersection with Hay Street

Liverpool Street from its intersection with George Street east to its intersection with Castlereagh Street

Goulburn Street from its intersection with George Street east to its intersection with Castlereagh Street

#### **Kings Cross precinct**

Darlinghurst Road from its intersection with Kings Cross Road on its eastern side and William Street on its western side northeast to the point that it becomes Macleay Street

Bayswater Road from its intersection with Darlinghurst Road east to its intersection with Ward Avenue

**Oxford Street, Darlinghurst precinct**

Oxford Street from its intersection with College Street on its northern side and Wentworth Avenue on its southern side southeast to its intersection with Bourke Street on its northern side and Flinders Street on its southern side

Flinders Street from its intersection with Oxford Street south to its intersection with Short Street on its western side and to property number 58A on its eastern side

The precinct also comprises the whole of the area bounded by the following streets:

Oxford Street from its intersection with Crown Street southeast to its intersection with Bourke Street on its northern side and Flinders Street on its southern side

Flinders Street from its intersection with Oxford Street south to its intersection with Patterson Lane on its western side

Patterson Lane from its intersection with Flinders Street west to its intersection with Bourke Street

Bourke Street from its intersection with Patterson Lane north to its intersection with Campbell Street

Campbell Street from its intersection with Bourke Street west to its intersection with Crown Street

Crown Street from its intersection with Campbell Street north to its intersection with Oxford Street

The precinct also comprises premises at Nos. 10–20 Oxford Square, Darlinghurst.

**Part 2 Precincts affected by liquor licensing freeze provisions only**

**Note.** Section 471 (which provides for restrictions on the granting of development consent under the *Environmental Planning and Assessment Act 1979*) does not apply to or in respect of any precincts specified in this Part.

On the commencement of this Part (as inserted by the *Liquor Amendment (Temporary Licence Freeze) Act 2009*) this Part was blank.

[Agreement in principle speech made in Legislative Assembly on 3 September 2009

Second reading speech made in Legislative Council on 22 September 2009]

BY AUTHORITY