

LIQUOR (AMENDMENT) ACT 1989 No. 91

NEW SOUTH WALES



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LIQUOR (AMENDMENT) ACT 1989 No. 91

NEW SOUTH WALES



Act No. 91, 1989

An Act to amend the Liquor Act 1982 with respect to trading hours, neighbourhood disturbance and offences relating to minors; to increase penalties; and for other purposes. [Assented to 13 June 1989]

See also Registered Clubs (Liquor) Amendment Act 1989.

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

1. This Act may be cited as the Liquor (Amendment) Act 1989.

Commencement

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

Amendment of Liquor Act 1982 No. 147

3. The Liquor Act 1982 is amended as set out in Schedules 1–5.

Saving

4. If, but for this section, an amendment made by this Act would result in the revocation of a condition of a licence in force under the Liquor Act 1982 immediately before the amendment, the condition continues in force until varied or revoked under that Act, as amended by this Act.

SCHEDULE 1—AMENDMENTS RELATING TO TRADING HOURS

(Sec. 3)

(1) Section 21 (Hotelier's licence—miscellaneous conditions)—**(a) Section 21 (1)—**

Omit "licensee—", insert instead "licensee except at a time at which liquor may be sold or supplied to other persons in that or any other restricted area on the licensed premises."

(b) Section 21 (1) (a), (b)—

Omit the paragraphs.

(2) Section 24 (Hotelier's licence—trading hours)—**(a) Section 24 (1)—**

After "subsection (2)", insert "or (3) or by a variation of trading hours under section 25".

(b) Section 24 (2)—

Omit "Subject to section 25", insert instead "Except as provided by subsection (3)".

(c) Section 24 (2) (a)—

Omit "10 a.m. to 11 p.m.", insert instead "5 a.m. to midnight".

(d) Section 24 (2) (b)—

Omit "noon", insert instead "10 a.m."

(e) Section 24 (3)—

After section 24 (2), insert:

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 SCHEDULE 1—AMENDMENTS RELATING TO TRADING HOURS—*continued*

(3) Despite subsection (2), but subject to section 25, if there was in force immediately before the amendment of this section by the Liquor (Amendment) Act 1989 a revocation or refusal of a variation of the trading hours for the licensed premises—

- (a) liquor shall not be sold, supplied or consumed on the licensed premises; and
- (b) the licensed premises shall not be kept open for the sale, supply or consumption of liquor,

except at a time applicable to the premises immediately before that amendment.

(3) Section 25—

Omit the section, insert instead:

Hotelier's licence—variations of trading hours

25. (1) The court may, as provided by this section, vary the trading hours for particular premises to which a hotelier's licence relates.

(2) If application is made for a variation of trading hours by extending them to permit the sale or supply of liquor for consumption on the licensed premises from midnight on a day other than Sunday or a restricted trading day to a time not later than 5 a.m. on the next succeeding day, the court may grant the variation unless it is satisfied that to do so would result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

(3) If application is made for a variation of trading hours by extending them to permit the sale or supply of liquor for consumption on the licensed premises on a Sunday that is not a restricted trading day from a time earlier than 10 a.m. but not earlier than 5 a.m. or from 10 p.m. to a time not later than midnight, the court may grant the variation only—

- (a) to meet the needs of tourists and tourism or other special needs; and
- (b) if satisfied that the variation would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

(4) The court may, on application, vary the trading hours to permit the sale or supply of liquor for consumption on the licensed premises on a special occasion on a stated date and, if there is no objection to the variation, the jurisdiction of the court under this subsection may be exercised by the registrar.

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SCHEDULE 1—AMENDMENTS RELATING TO TRADING
HOURS—*continued*

(5) A variation of trading hours granted under this section has effect only in the part or parts of the premises specified by the court or registrar when granting the variation.

(6) At the commencement of the 1989 amendment, the court shall be taken—

(a) to have granted under this section a variation of trading hours; and

(b) to have specified a part or parts of the licensed premises, that, but for this subsection, it would have been required to grant and specify in order to permit the sale or supply of liquor for consumption in that part, or those parts, of the licensed premises at times at which it could have been so sold or supplied immediately before that commencement.

(7) The court may, at any time on the application of the licensee or a licensing inspector—

(a) revoke a variation of trading hours granted under this section; or

(b) grant a different variation of trading hours in accordance with this section.

(8) In this section—

“1989 amendment” means the insertion of this section by the Liquor (Amendment) Act 1989.

(4) Section 26 (**Off-licence—trading hours**)—

(a) Section 26 (1)—

Omit “Subject to section 27, where”, insert instead “If”.

(b) Section 26 (1)—

After “subsection (2)”, insert “or by a variation of trading hours under section 27”.

(c) Section 26 (2) (a), (b)—

Omit the paragraphs, insert instead:

(a) on a day that is not a Sunday or a restricted trading day—
from 5 a.m. to midnight; and

(b) on a Sunday that is not a restricted trading day—from 10
a.m. to 10 p.m.

(d) Section 26 (2) (c)—

Omit the paragraph.

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HOURS—*continued*

(5) Section 27—

Omit the section, insert instead:

Off-licence (retail)—variation of trading hours

27. (1) The court may, as provided by subsection (2), grant an application for a variation of the trading hours for particular premises to which an off-licence to sell liquor by retail relates by extending them to permit the sale or supply of liquor on the licensed premises on a Sunday that is not a restricted trading day from a time earlier than 10 a.m. but not earlier than 5 a.m. or from 10 p.m. to a time not later than midnight.

(2) The court may grant an application under subsection (1) only—

- (a) to meet the needs of tourists and tourism or other special needs; and
- (b) if satisfied that the variation would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.

(3) The court may, at any time, on the application of the licensee or a licensing inspector—

- (a) revoke a variation of trading hours granted under this section; or
- (b) grant a different variation of trading hours in accordance with this section.

(6) Section 32 (**On-licence (restaurant)—variation of trading hours**)—

Section 32 (3), (3A)—

Omit the subsections, insert instead:

(3) The court may grant an application to vary the trading hours for the premises to which an on-licence for a restaurant relates to permit the sale or supply of liquor in the dining room, restaurant or reception area on the licensed premises otherwise than with or as ancillary to a meal from 11 p.m. on a day to which the variation relates that is not a Sunday or a restricted trading day until a time not later than 3 a.m. on the next succeeding day if the liquor is sold or supplied—

- (a) with or as ancillary to entertainment; and
- (b) while a meal is available on the licensed premises, with or without charge, for consumption by persons to whom the liquor is sold or supplied.

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SCHEDULE 1—AMENDMENTS RELATING TO TRADING
HOURS—*continued*

- (3A) A variation of trading hours granted under subsection (3) is not applicable—
- (a) after 11 p.m. on a day on which; or
 - (b) before 3 a.m. on the day that next succeeds a day on which,
- the restaurant is not continuously open between 6 p.m. and 11 p.m. for the sale or supply of liquor with or as ancillary to a meal.
- (7) Section 40 (**Application for conditional grant**)—
Omit section 40 (1) (c), (d).
- (8) Section 118 (**Closing of restricted areas and certain other areas**)—
Omit section 118 (1) (b), insert instead:
- (b) at any time when the sale or supply of liquor is permitted only for consumption on a specified part of the licensed premises,
- (9) Section 119 (**Sale etc. of liquor outside trading hours**)—
Section 119 (3) (b)—
Omit the paragraph, insert instead:
- (b) carry liquor away from premises to which a hotelier's licence relates during trading hours for the premises that are earlier than 5 a.m.

**SCHEDULE 2—AMENDMENTS RELATING TO
NEIGHBOURHOOD DISTURBANCES**

(Sec. 3)

- (1) Section 20 (**Conditions of licences**)—
Section 20 (2) (c)—
Omit “104”, insert instead “by a member of the Board on hearing a complaint under section 104”.
- (2) Section 104—
Omit the section, insert instead:
- Quiet and good order of neighbourhood**
104. (1) If a written complaint is made to the Board of undue disturbance of the quiet and good order of the neighbourhood of licensed premises caused by—
- (a) the manner in which the business of the licensed premises is conducted; or

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**SCHEDULE 2—AMENDMENTS RELATING TO NEIGHBOURHOOD
DISTURBANCES—*continued***

- (b) the behaviour of persons after they have left the licensed premises; or
- (c) the manner in which the business of the licensed premises is conducted and the behaviour of persons after they have left the licensed premises,

the Board may convene a conference to hear submissions relating to the complaint.

(2) Notice of the time and place for the conference shall be given to all complainants and the licensee as directed by the Board.

(3) The conference shall be presided over by a member of the Board who may, after giving each complainant present and the licensee (if present) a reasonable opportunity to be heard in relation to the complaint—

- (a) impose, vary or revoke conditions of the licence; or
- (b) adjourn the conference subject to implementation and continuation of undertakings given by the licensee; or
- (c) issue a warning to the licensee; or
- (d) take no action.

(4) The conditions that may be imposed on the licence include, but are not limited to, conditions relating to—

- (a) noise abatement; or
- (b) prohibition of the sale or supply of liquor before 10 a.m. and after 11 p.m.; or
- (c) noise abatement and such a prohibition.

(5) Procedure at the conference (including any decision to adjourn the conference) shall be determined by the presiding member of the Board.

(6) The functions exercised by the member of the Board presiding at the conference shall be taken to be functions of the Board delegated to the presiding member under section 75.

(7) For the purposes of Part 9 (Appeals) a decision of the member of the Board presiding at the conference shall be taken to be an adjudication made by a licensing magistrate sitting alone.

SCHEDULE 3—AMENDMENTS RELATING TO MINORS

(Sec. 3)

- (1) Section 114 (Sale or supply of liquor to a minor)—
Section 114 (5)—

SCHEDULE 3—AMENDMENTS RELATING TO MINORS—*continued*

Omit “was, on reasonable grounds, believed by the defendant to be”, insert instead “that, before the liquor was sold, supplied or obtained, there was produced to the defendant documentary evidence that might reasonably be accepted as applying to the person and as proving that the person was”.

(2) Section 117 (**Minors on licensed premises**)—

(a) Section 117 (6)—

Omit the subsection, insert instead:

(6) It is a defence to a prosecution for an offence under subsection (4) or (5) if it is proved that the person under the age of 18 years was above the age of 14 years and that—

(a) before the person entered the restricted area on, or the authorised part of, the licensed premises; or

(b) while the person was in that area or part,

there was produced to the licensee, or an employee or agent of the licensee, documentary evidence that might reasonably be accepted as applying to the person and as proving that the person was of or above the age of 18 years.

(b) Section 117 (10)—

Omit “in a restricted area”.

(c) Section 117 (10)—

After “years”, insert “and has committed an offence against this Act”.

(3) Sections 117A, 117B—

After section 117, insert:

Minor required to provide information

117A. (1) An authorised person may require a minor reasonably suspected of committing an offence against this Act—

(a) to state his or her full name and residential address; and

(b) to produce then, or at a police station within a reasonable time, documentary evidence that might reasonably be accepted as applying to the person and as proof of his or her age.

(2) A person the subject of a requirement under subsection (1) shall not—

(a) refuse or fail to state his or her full name and residential address; or

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(b) without reasonable cause, refuse or fail to produce evidence of age as referred to in subsection (1) (b).

Maximum penalty: 2 penalty units.

(3) In this section—

“authorised person” means a licensee, an employee or agent of a licensee, or a member of the police force;

“minor” means—

(a) a person under the age of 18 years; or

(b) a person reasonably suspected of being under the age of 18 years.

Entry on licensed premises by minor

117B. If—

(a) a holder of a hotelier’s licence, or an employee of the licensee, is aware that a person who may reasonably be suspected of being under the age of 18 years is attempting to enter the premises to which the licence relates, or a part of the premises; and

(b) the presence of the person on the premises or part of the premises would, if the person were under the age of 18 years, be an offence against this Act,

the licensee or employee shall refuse the person entry to the premises or part unless there is produced to the licensee or employee documentary evidence that may reasonably be accepted as applying to the person and as proving that the person is of or above the age of 18 years.

Maximum penalty: 10 penalty units.

(4) Section 125A (Offence by licensee relating to use of approved amusement device by minor)—

Omit section 125A (2), insert instead:

(2) It is a defence to a prosecution for an offence under subsection (1) if it is proved that the person under the age of 18 years was above the age of 14 years and that—

(a) before the person used or operated the approved amusement device; or

(b) while the person was using or operating the approved amusement device,

there was produced to the licensee, or an employee or agent of the licensee, documentary evidence that might reasonably be accepted as applying to the person and as proving that the person was of or above the age of 18 years.

SCHEDULE 4—AMENDMENTS INCREASING PENALTIES

(Sec. 3)

- (1) **Section 103 (Exclusion of persons from licensed premises)—**
Section 103 (3)—
Omit “Penalty: \$500”, insert instead “Maximum penalty: 10 penalty units”.
- (2) **Section 114 (Sale or supply of liquor to a minor)—**
 - (a) Section 114 (1), (3), (4)—
Omit “Penalty: \$1,000” wherever occurring, insert instead “Maximum penalty: 20 penalty units”.
 - (b) Section 114 (2)—
Omit “\$500”, insert instead “10 penalty units”.
- (3) **Section 115 (Consumption etc. of liquor by a minor)—**
Section 115 (3)—
Omit “Penalty applying to this subsection: \$500”, insert instead “Maximum penalty (subsection (3)): 10 penalty units”.
- (4) **Section 116 (Sale or supply of liquor by a minor)—**
Omit “Penalty: \$500”, insert instead “Maximum penalty: 10 penalty units”.
- (5) **Section 117 (Minors on licensed premises)—**
 - (a) Section 117 (4)—
Omit “\$1,000”, insert instead “20 penalty units”.
 - (b) Section 117 (5), (8)—
Omit “Penalty: \$1,000” wherever occurring, insert instead “Maximum penalty: 20 penalty units”.
 - (c) Section 117 (7)—
Omit “Penalty: \$500”, insert instead “Maximum penalty: 10 penalty units”.
 - (d) Section 117 (11)—
Omit “Penalty: \$200”, insert instead “Maximum penalty: 10 penalty units”.
- (6) **Section 118 (Closing of restricted areas and certain other areas)—**
Section 118 (2)—
Omit “Penalty: \$1,000”, insert instead “Maximum penalty: 20 penalty units”.
- (7) **Section 119 (Sale etc. of liquor outside trading hours)—**
 - (a) Section 119 (1)—

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SCHEDULE 4—AMENDMENTS INCREASING PENALTIES—
continued

- Omit “Penalty: \$500”, insert instead “Maximum penalty: 20 penalty units”.
- (b) Section 119 (3)—
Omit “Penalty: \$200”, insert instead “Maximum penalty: 5 penalty units”.
- (8) Section 120 (**Person on licensed premises outside trading hours**)—
(a) Section 120 (1)—
Omit “Penalty: \$200”, insert instead “Maximum penalty: 5 penalty units”.
- (b) Section 120 (5)—
Omit “\$500”, insert instead “20 penalty units”.
- (9) Section 125 (**Conduct on licensed premises**)—
Omit “Penalty: \$500” wherever occurring, insert instead “Maximum penalty: 10 penalty units”.
- (10) Section 125A (**Offence by licensee relating to use of approved amusement device by minor**)—
Section 125A (1)—
Omit “\$1,000”, insert instead “20 penalty units”.
- (11) Section 134 (**Persons within unregistered club**)—
Omit “Penalty: \$200”, insert instead “Maximum penalty: 10 penalty units”.
- (12) Section 135 (**Carrying of liquor for sale**)—
Section 135 (1)—
Omit “Penalty: \$500”, insert instead “Maximum penalty: 10 penalty units”.

SCHEDULE 5—OTHER AMENDMENTS

(Sec. 3)

- (1) Section 40 (**Application for conditional grant**)—
After section 40 (3), insert:
(4) Subsection (3) applies to a conditional grant that—
(a) was made under the Liquor Act 1912 before its repeal; and
(b) still had effect immediately before the commencement of this subsection,
in the same way as it applies to a conditional grant made under this Act.

SCHEDULE 5—OTHER AMENDMENTS—*continued*

- (2) Section 69 (**Disciplinary powers of court**)—
Section 69 (1) (b), (1A) (b)—
Omit “\$2,000” wherever occurring, insert instead “50 penalty units”.
- (3) Section 148 (**Appeal to Licensing Court**)—
Omit section 148 (3), insert instead:
(3) The lodging of an appeal under this section does not operate to stay the decision appealed against unless the court as constituted by section 10, on application or of its own motion, otherwise directs.
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[*Minister's second reading speech made in—
Legislative Assembly on 3 May 1989
Legislative Council on 24 May 1989*]