

LIQUOR (AMENDMENT) ACT 1990 No. 28

NEW SOUTH WALES



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LIQUOR (AMENDMENT) ACT 1990 No. 28

NEW SOUTH WALES



Act No. 28,1990

An Act to amend the Liquor Act 1982 to provide for the appointment and functions of a Director of Liquor and Gaming to confer and impose certain functions on the Commissioner of Police instead of licensing inspectors; to eliminate the duplication of certain functions under that Act and the Local Government Act 1919; and for other purposes. [Assented to 14 June 1990]

See also Registered Clubs (Amendment) Act 1990; Local Government (Liquor) Amendment Act 1990.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Liquor (Amendment) Act 1990.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
(2) Schedule 1, and section 3 in its application to that Schedule, commence on the date of assent.
(3) Section 4 and Schedule 5 commence on the date of assent.

Amendment of Liquor Act 1982 No. 147

3. The Liquor Act 1982 is amended as set out in Schedules 1–4.

Transitional provisions

4. Schedule 5 has effect,

**SCHEDULE 1- AMENDMENTS RELATING TO THE DIRECTOR
AND DELEGATIONS**

(Sec. 3)

- (1) Section 4 (**Definitions**):

After the definition of "dining room", insert:

"Director" means the Director of Liquor and Gaming appointed as provided by section 6A;

- (2) Sections 6A, 6B:

After section 6, insert:

Director of Liquor and Gaming

6A. A Director of Liquor and Gaming may be appointed under Part 2 of the Public Sector Management Act 1988.

SCHEDULE 1 - AMENDMENTS RELATING TO THE
DIRECTOR AND DELEGATIONS - *continued*

Delegations

6B. (1) The Minister may delegate to a person any function conferred or imposed on the Minister by this Act, other than this power of delegation.

(2) The Commissioner of Police may delegate to a person any function conferred or imposed on the Commissioner by this Act, other than this power of delegation.

(3) The person to whom a function has been delegated by the Minister or the Commissioner of Police may delegate the function to another person, subject to any conditions to which the delegation by the Minister or the Commissioner is subject.

(4) The Director may delegate to a person any function conferred or imposed on the Director by this Act, other than this power of delegation.

**SCHEDULE 2 - AMENDMENTS RELATING TO THE FUNCTIONS
OF THE POLICE FORCE AND OTHERS**

(Sec. 3)

(1) Section 4 (**Definitions**):

- (a) From section 4 (1), omit the definition of "licensing inspector".
- (b) From section 4 (2), omit "or the licensing inspector".
- (c) From section 4 (2), omit "or, as the case may be, the licensing inspector".

(2) Sections 20 (1), (5), 21(4), 32 (4), 35A(4), 59 (1) (a), 87 (1), (2), 88 (2), (4), 89 (4):

Omit "the licensing inspector" wherever occurring, insert instead "the Director or the Commissioner of Police".

SCHEDULE 2 - AMENDMENTS RELATING TO THE
FUNCTIONS OF THE POLICE FORCE AND OTHERS - *continued*

- (3) Sections 25 (7), 27 (3), 58 (1) (b), 59 (1), 110B (1), (2):
Omit "a licensing inspector" wherever occurring, insert instead "the Director or the Commissioner of Police".
- (4) Section 37B (**Expenses of investigation of application**):
- (a) Omit "superintendent of licences", insert instead "Commissioner of Police".
- (b) Omit "a licensing inspector", insert instead "the Commissioner",
- (5) Section 44 (**Who may object**):
- (a) Omit section 44 (1) (c), insert instead:
(c) the Director;
- (b) Omit section 44 (1) (d), insert instead:
(d) the Commissioner of Police;
- (c) At the end of section 44 (1) (g), insert "or".
- (d) Omit section 44 (1) (h).
- (6) Section 60 (**Final grant of application**):
- (a) From section 60 (1), omit "licensing inspector" where firstly occurring, insert instead "Commissioner of Police".
- (b) From section 60 (1), omit "or another licensing inspector".
- (c) From section 60 (2), omit "a licensing inspector", insert instead "the Commissioner of Police".
- (d) From section 60 (2), omit "the licensing inspector", insert instead "the Commissioner".
- (7) Section 67 (**Summons to show cause against taking of disciplinary action**):
- (a) Omit section 67 (1) (c), insert instead:
(c) the Commissioner of Police;

SCHEDULE 2 - AMENDMENTS RELATING TO THE
FUNCTIONS OF THE POLICE FORCE AND OTHERS - *continued*

- (b) Omit section 67 (1) (f), insert instead:
 - (f) the Director,
 - (c) After section 67 (1), insert
 - (1A) A complaint in relation to a licensee is an authorised complaint for the purposes of this section if:
 - (a) it is made in writing by a person authorised to do so by the relevant council referred to in subsection (1) (d); and
 - (b) it specifies, as the ground on which it is made, that the licensed premises are being opened for business even though the owner of the licensed premises has failed to comply with a direction or order of the council to carry out specified work on or in relation to the licensed premises.
 - (d) After “magistrate” in section 67 (2), insert “, or the Principal Registrar,”.
- (8) Section 68 (**Grounds for complaint**):
- (a) From section 68 (1), omit “67”, insert instead “67 (1)”.
 - (b) From section 68 (2), omit “licensing inspector or other”.
- (9) Section 69 (**Disciplinary powers of court**):
- (a) From section 69 (1), omit “subject to subsection (2)”, insert instead “unless subsection (1 B) applies”.
 - (b) After section 69 (1 A), insert
 - (1B) If the ground of complaint as to which the court is satisfied under subsection (1) is the ground referred to in section 67 (1 A), the court may suspend the licence until:
 - (a) the work to which the complaint relates has been carried out; or
 - (b) the licence is removed to other premises; or
 - (c) the licence ceases for any reason other than suspension to have effect.

SCHEDULE 2 - AMENDMENTS RELATING TO THE
FUNCTIONS OF THE POLICE FORCE AND OTHERS - *continued*

(10) Section 86 (**Records to be kept**):

- (a) From section 86 (3), omit "A licensing or", insert instead "The Commissioner of Police or a".
- (b) From section 86 (3) and (5), omit "the inspector" wherever occurring, insert instead "the Commissioner or the special inspector".
- (c) From section 86 (5), omit "an inspector", insert instead "the Commissioner of Police or a special inspector".

(11) Sections 106–108:

Omit the sections.

(12) Section 110 (**Powers of entry**):

Omit section 110 (1)–(4), insert instead:

(1) If the Commissioner of Police believes on reasonable grounds:

- (a) that unlawful or disorderly conduct is taking place on licensed premises; or
- (b) that a breach of this Act has been, or is being, committed on licensed premises,

the Commissioner may, at any time of the day or night, enter the licensed premises with or without another member of the police force.

(2) In exercising the power conferred by subsection (1), the Commissioner of Police may, with or without assistance, break into the premises if entry is refused or unreasonably delayed (whether or not by the absence of a person able to permit entry to the premises).

(3) A member of the police force or a special inspector may, at any reasonable time, enter and examine any part of licensed premises and may

SCHEDULE 2 - AMENDMENTS RELATING TO THE
FUNCTIONS OF THE POLICE FORCE AND OTHERS - *continued*

- (a) take an account of all liquor on the premises; or
 - (b) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been, or are being, complied with; or
 - (c) having required the licensee (or any other person having them in his or her custody) to produce any registers, books, records or documents relating to the business carried on with the authority of the licence, make copies of, or take extracts from, entries in the registers, books, records or other documents; or
 - (d) examine any device in the nature of an approved amusement device and take readings from the device.
- (13) Section 110A (**Powers of special inspectors and others - approved amusement devices**):
- (a) From section 110A (9), omit paragraphs (b) and (c) of the definition of "authorised person", insert instead:
 - (b) the Commissioner of Police; or
 - (b) After the definition of "authorised person" in section 110A (9), insert:
 - "**licensed premises**" includes premises (other than a dwelling-house) on which
 - (a) business is carried on under the authority of a licence granted under section 19A or a work permit issued under section 19B; or
 - (b) the holder of such a licence or work permit is employed in connection with such a business;
- (14) Section 111 (**Obstruction**):
- Omit "licensing inspector, special inspector,", insert instead "special inspector, a".

SCHEDULE 2 - AMENDMENTS RELATING TO THE
FUNCTIONS OF THE POLICE FORCE AND OTHERS - *continued*

(15) Section 112 (**Production of licence**):

From section 112 (1) (a), omit "licensing inspector or other".

(16) Section 140 (**Averments**):

(a) After section 140 (1) (e), insert:

(e1) that a specified person is the Director;

(e2) that a specified person is a delegate of the Minister, or of the Commissioner of Police, or of the Director, to whom a specified function has been delegated under section 6B

(b) From section 140 (1) (f), omit "the licensing inspector or".

SCHEDULE 3 - AMENDMENTS RELATING TO PREMISES

(Sec. 3)

(1) Section 40 (**Application for conditional grant**):

(a) From section 40 (1), omit "plans", insert instead "an approved plan".

(b) After "erected" where lastly occurring in section 40(1), insert "in respect of which there is lodged with the application any consent required under another Act for the proposed use, or proposed change of use, of the premises".

(c) Omit section 40 (3) (a), insert instead

(a) to amend a conditional grant; or

(d) In section 40 (4) (a), after "repeal", insert "or under this section before its amendment by the Liquor (Amendment) Act 1990".

(e) From section 40 (4) (b), omit "this subsection", insert instead "that amendment".

(f) After section 40 (4), insert:

(5) Before granting a conditional application, the court may require to be lodged with the court a further approved plan that shows an amendment required by the court to be

SCHEDULE 3 - AMENDMENTS RELATING TO
PREMISES - *continued*

made to the approved plan or plans previously lodged in relation to the application.

(6) In this section:

"approved plan", in relation to proposed licensed premises, or a proposed addition to or alteration of licensed premises, means a plan of the proposed premises, or of the proposed addition or alteration, that is accompanied by

- (a) each approval that, by the Local Government Act 1919 or any other Act, is required for the carrying out of any work represented by the plan; and
- (b) any consent required under the Environmental Planning and Assessment Act 1979 for the carrying out of that work.

(2) Section 48 (**Application of Division**):

From section 48 (1), omit “, 59”.

(3) Section 58:

Omit the section, insert instead

Duration of conditional grant

58. If an application is conditionally granted under section 40, the grant has effect only while an approval or consent required by another Act for the use, erection, addition or alteration to which the grant relates has effect.

(4) Section 59 (**Cancellation of conditional grant of application**):

Omit the section.

(5) Section 60 (**Final grant of application**):

(a) Omit section 60 (1) and (2), insert instead:

(1) The registrar may, on application, make a final grant of an application conditionally granted under section 40.

SCHEDULE 3 - AMENDMENTS RELATING TO
PREMISES - *continued*

- (2) The registrar is not to make a final grant of an application to erect, add to, or alter, premises unless the applicant for the final grant produces evidence by which the registrar is satisfied that the work of erection, addition or alteration has been completed substantially in accordance with the approved plan on the basis of which the conditional application was granted.
- (b) From section 60 (3), omit "granted under subsection (2)", insert instead "finally granted by the registrar under subsection (1)".
- (c) From section 60 (4), omit "A request under subsection (2)", insert instead "An application for a final grant of a conditional application".
- (6) Section 94 (**Voluntary alterations etc. to licensed premises**):
Omit the section.
- (7) Section 95 (**Compulsory alterations etc. to licensed premises**):
Omit the section.
- (8) Section 97 (**Orders under Local Government Act 1919**):
Omit the section.
- (9) Section 98 (**Authority to be on licensed premises**):
Omit "The person against whom an order is made under section 95, or to whom an authority is granted under section 95,"", insert instead "A person required or authorised to carry out work on licensed premises in accordance with an order or direction of a public authority".
- (10) Section 99 (**Apportionment of cost of compulsory alterations**):
From section 99 (1), omit "authority granted under section 95 (2) or an order made under section 95 (2B)", insert instead "order or direction of a public authority entitled to require the work to be done".

SCHEDULE 4 - AMENDMENT RELATING TO CASH CREDIT

Section 20 (Conditions of licences):

After section 20 (4), insert:

(4A) It is a condition of a hotelier's licence that the licensee must not:

- (a) provide a cash advance on the licensed premises;
- (b) permit or suffer a cash advance to be provided on the licensed premises on behalf of the licensee, otherwise than as a prize recorded by an approved amusement device.

(4B) It is a condition of a hotelier's licence that the licensee must not permit or suffer an approved amusement device to be on the licensed premises if the device is capable of being operated to provide cash or credit otherwise than as a prize.

SCHEDULE 5 - TRANSITIONAL PROVISIONS

(Sec 4)

Principal Act

1. A reference in this Schedule to the Principal Act is a reference to the Liquor Act 1982.

Functions commenced may be continued

2. If, immediately before the commencement of Schedule 2, a member of the Police Force:

- (a) holds office under the Principal Act as superintendent of licences, as Metropolitan licensing inspector, or as a licensing inspector; and
- (b) has commenced to exercise a function conferred or imposed by the Principal Act on a holder of the office,

the member of the Police Force may, after that commencement, complete the exercise of the function as if it had been delegated to the member under section 6B of the Principal Act, as amended by this Act.

SCHEDULE 5 - TRANSITIONAL PROVISIONS - *continued*

Functions of Principal Registrar

3. If anything done by the Principal Registrar of the Licensing Court:
- (a) still has effect immediately before the commencement of a provision of this Act; and
 - (b) could be done by the Director of Liquor and Gaming after that Commencement,

it has effect on and after that commencement as if it had been done by the Director of Liquor and Gaming.

Conditions of licence

4. If a condition of a licence in force under the Principal Act immediately before the commencement of Schedule 2 includes a reference to the superintendent of licences, to the Metropolitan licensing inspector or to a licensing inspector, the reference is to be read on and after that commencement as a reference to a member of the Police Force who is a delegate of the Commissioner of Police for the purposes of the reference.

Duration of conditional grant

5. (1) If, immediately before the substitution of section 58 of the Principal Act by this Act, a conditional grant of an application was in force as provided by that section, the conditional grant continues in force for the period prescribed by subclause (2) unless it earlier ceases to have effect by the operation of subclause (3).

- (2) The period prescribed by this subclause is:
- (a) if the decision to grant the conditional application was recorded less than 12 months before the repeal of section 58 of the Principal Act by this Act - the period that expires 12 months after the recording of the decision; or
 - (b) in any other case - the unexpired part of the period last allowed by the Licensing Court before that repeal,

together with any additional periods that the Licensing Court from time to time allows on application made before the expiration of the period sought to be extended.

SCHEDULE 5 - TRANSITIONAL PROVISIONS - *continued*

(3) Section 59 of the Principal Act continues after its repeal by this Act to apply, in relation to an application conditionally granted before the repeal:

- (a) as if it had not been repealed; and
- (b) as if the reference in section 59 (1) to the Commissioner of Police where secondly occurring were a reference to the registrar.

Compulsory alterations etc. to licensed premises

6. (1) If, immediately before the repeal of section 95 of the Principal Act by this Act:

- (a) an application for an authority or order under that section in relation to licensed premises that had been made before that repeal had not been disposed of; or
- (b) an order in force under that section had not been complied with,

that section continues to have effect in relation to the licensed premises as if it had not been repealed.

(2) In relation to the operation of section 95 of the Principal Act as continued by subclause (1), section 99 of the Principal Act is to be taken not to have been amended by this Act.

Delegations

7. Section 6B of the Principal Act, as amended by this Act, applies in relation to a function that may be exercised for the purposes of this Schedule in the same way as it may be exercised in relation to a function conferred or imposed by the Principal Act, as amended by this Act.

*[Minister's second reading speech made in -
Legislative Assembly on 3 April 1990
Legislative Council on 24 May 1990 a.m.]*