

LIQUOR (TAXATION) AMENDMENT ACT 1993 No. 55

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Liquor Act 1982 No. 147
4. Amendment of Liquor Regulation 1983

SCHEDULE 1—AMENDMENTS

LIQUOR (TAXATION) AMENDMENT ACT 1993 No. 55

NEW SOUTH WALES



Act No. 55, 1993

An Act to amend the Liquor Act 1982 to make further provision with respect to liquor licence fees, duty in respect of approved amusement devices and cancellation of licences; and for other purposes. [Assented to 24 September 1993]

See also Registered Clubs (Taxation) Amendment Act 1993.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Liquor (Taxation) Amendment Act 1993.

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 Schedule 1.

Amendment of Liquor Regulation 1983

4. (1) The Liquor Regulation 1983 is amended by repealing clauses 37, 37A and 57–57C.

(2) Different days may be appointed for the commencement of subsection (1) for the purpose of repealing on different days the provisions repealed by that subsection.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 68 (**Grounds for complaint**):

Omit section 68 (1) (g), insert instead:

(g) that the licensee has failed to pay:

- (i) duty, or an instalment of duty, payable under section 80 (2) (a) (iii), within the time required by this Act, or a penalty for late payment of that duty or an instalment of that duty; or
- (ii) a penalty for late payment of a licence fee or instalment of a licence fee under section 86D; or

SCHEDULE 1—AMENDMENTS— *continued*

(2) Section 76A:

After section 76, insert:

Date of payment to Board by direct deposit

76A. A payment made to the Board for the purposes of this Act by means of payment to a bank for direct deposit to the credit of the Board is taken to have been paid to the Board on the date of payment to that bank.

(3) Part 5, heading:

Omit the heading, insert instead:

PART 5—LICENCE PERIODS, FEES AND DUTY**Division 1—Licence periods, and fees and duty payable**(4) Section 80 (**Periodic licence fee**):

(a) Omit section 80 (2) (a) (iii), insert instead:

(iii) as duty, the amount payable under Division 4 (Duty on approved amusement devices);

(b) From section 80 (6), omit “, penalties for late payment of those fees or instalments, the suspension or cancellation of a licence after a failure to pay the licence fee, any part of a licence fee or any such penalty”.

(5) Part 5, Divisions 2–5:

After section 86A, insert:

Division 2—Penalties for failure to pay liquor licence fees**Application of Division**

86B. (1) In this Division:

“**licence fee**” does not include any duty payable under section 80 (2) (a) (iii).

(2) For the purposes of this Division, a failure to pay in full by the due date the licence fee in respect of a licensing period is to be treated as a failure to pay by the due date the first instalment of that fee.

SCHEDULE 1—AMENDMENTS—*continued***Division does not apply to AAD licences**

86C. This Division does not apply in respect of an amusement device dealer's licence, an amusement device seller's licence or an amusement device technician's licence.

Penalty for late payment of licence fee

86D. (1) The penalty for a failure to pay an instalment of licence fee by the due date is \$250, plus 0.15% of the amount of the instalment for each day by which the payment is late.

(2) A penalty resulting from a failure to pay an instalment by the due date may be recovered by the Board as a debt due to the Crown.

(3) The Board may, in a particular case or class of cases, remit or waive the whole or part of any penalty payable under this section.

Cancellation for late payment after 2 months

86E. (1) If an instalment of licence fee is not paid within 2 months after the due date, the licence is cancelled.

(2) The former holder of a licence which has been cancelled by the operation of this section must forward the licence to the Principal Registrar without delay.

Maximum penalty: 2 penalty units.

(3) The regulations may specify circumstances in which:

- (a) the period of 2 months specified in subsection (1) is to be a longer period determined as provided by the regulations or specified by the Minister; and
- (b) a penalty payable under this Division is to be waived or reduced or payment of the penalty is to be deferred.

(4) If a licence is cancelled under this section:

- (a) the penalty provided for by section 86D stops accruing on the date of cancellation or on such other day as the Board may determine under subsection (5) but cancellation of the licence does not prevent the Board from recovering the penalty; and

SCHEDULE 1—AMENDMENTS—*continued*

(b) the Board may recover from the former holder of the licence, as a debt due to the Crown, the used portion of the unpaid instalment (calculated as provided by section 86H (2)).

(5) If the Board is satisfied that trading in exercise (or purported exercise) of a licence cancelled under this section ceased on a particular day, the Board may determine that the penalty provided for by section 86D stops accruing on that day rather than on the date of cancellation. The day determined by the Board may be before or after the date of cancellation.

Application for reinstatement of licence

86E (1) Application may be made to the court for the reinstatement of a licence cancelled by the operation of section 86E.

(2) Such an application must be made within 2 months after the cancellation of the licence and can only be made by or on behalf of:

- (a) the former holder of the cancelled licence; or
- (b) a person permitted by the regulations to make an application for reinstatement of the licence.

(3) An application must be accompanied by payment of the unpaid instalment of licence fee concerned.

(4) The regulations may make provision for or with respect to the manner in which an application is to be made and lodged, the documents required to accompany the application and requiring payment of a fee in respect of the application.

Order for reinstatement

86G. (1) On application under this Division, the court may order reinstatement of the licence but only if satisfied that there is a reasonable explanation for the failure to pay the instalment of licence fee concerned. The court is not to order reinstatement if of the opinion that the licence should not be reinstated.

SCHEDULE 1—AMENDMENTS—*continued*

(2) If the court orders reinstatement:

- (a) a penalty is payable for late payment of the instalment of licence fee concerned; and
- (b) any further instalment of licence fee that would have become payable (prior to reinstatement of the licence) had the licence not been cancelled becomes due and payable.

(3) The penalty payable under this section is \$250, plus 0.15% of the amount of each such instalment for each day by which payment of the instalment was late.

(4) The licence is reinstated on and from the day ordered by the court or on and from the day on which any penalty and further instalment of licence fee payable under this section has been paid, whichever is later.

(5) Any penalty and further instalment of licence fee payable under this section must be paid within one month after the court makes the order for reinstatement of the licence, otherwise the court's order lapses and is of no effect.

(6) The court can order in a particular case that a penalty provided for by this section is to be wholly or partly waived.

(7) The penalty provided for by this section is in place of any penalty payable under section 86D in respect of the instalment of licence fee concerned. There is to be credited towards any penalty payable under this section any penalty paid under section 86D in respect of the instalment.

Partial refund of instalment when reinstatement refused

86H. (1) If an application for reinstatement of a licence is made under this Division and is not successful, the Board is to refund the amount of the instalment of licence fee paid with the application, after deducting the following amounts:

- (a) the amount (if any) that is the used portion of the instalment, calculated as provided by subsection (2);
- (b) a penalty of \$250, plus 0.15% of the amount of the instalment for each day by which payment of the instalment was late.

SCHEDULE 1—AMENDMENTS—*continued*

(2) The “**used portion**” of an instalment is calculated in accordance with the following formula:

$$\text{used portion} = \left[\text{full fee} \times \frac{\text{trading days}}{\text{the number of days in the licensing period concerned}} \right] - \text{previous instalments}$$

where:

“**full fee**” is the full amount of licence fee payable under section 80 in respect of the licensing period concerned;

“**trading days**” is the number of days since the start of the licensing period current when the licence was cancelled up to and including the date of cancellation or up to and including such other day as the Board may determine under subsection (3);

“**previous instalments**” is the total of any instalments of licence fee already paid in respect of the licensing period current when the licence was cancelled (not including the instalment paid with the reinstatement application).

(3) If the Board is satisfied that trading in exercise (or purported exercise) of the licence ceased on a particular day, the Board may determine that the number of trading days is to be calculated up to and including that day rather than up to and including the date of cancellation. The day determined by the Board may be before or after the date of cancellation.

(4) If the used portion of an instalment is a negative amount, there is to be no deduction under subsection (1) (a).

(5) If more than one person has paid amounts in respect of an instalment of licence fee, the Board is entitled to apportion a refund payable under this section between those persons in such manner as the Board thinks appropriate.

(6) The court can order in a particular case that a penalty provided for by this section is to be wholly or partly waived.

(7) The penalty provided for by this section is in place of any penalty payable under section 86D in respect of the licence fee instalment concerned. There is to be credited towards any penalty payable under this section any penalty paid under section 86D in respect of the instalment.

SCHEDULE 1—AMENDMENTS—*continued***Division 3—Penalties for failure to pay AAD licence fees****Cancellation for late payment of AAD licence fee**

86I. (1) If a licence fee for an amusement device dealer's licence, an amusement device seller's licence or an amusement device technician's licence has not been paid before the expiration of 2 months after the due date for payment, the licence is cancelled.

(2) The former holder of a licence which has been cancelled by the operation of this section must forward the licence to the Principal Registrar without delay.

Maximum penalty: 2 penalty units.

Application for reinstatement of cancelled AAD licence

86J.(1) The former holder of a licence cancelled by the operation of section 86I may apply to the court for the reinstatement of the licence.

(2) Such an application must be made within 2 months after the cancellation of the licence. The application must be accompanied by payment of the unpaid licence fee concerned.

(3) The regulations may make provision for or with respect to the manner in which such an application is to be made and lodged, the documents required to accompany the application and requiring payment of a fee in respect of the application.

(4) The court may order reinstatement of the licence but only if satisfied that there is a reasonable explanation for the failure to pay the licence fee that resulted in cancellation of the licence. The court is not to order reinstatement if of the opinion that the licence should not be reinstated.

(5) The licence is reinstated on and from the day ordered by the court.

(6) If the application for reinstatement is not successful, the Board is to refund the licence fee paid with the application after deducting the amount (if any) that is the used portion of the licence fee, calculated in accordance with the following formula:

SCHEDULE 1—AMENDMENTS— *continued*

$$\text{used portion} = \text{full fee} \times \frac{\text{trading days}}{\text{the number of days in the licensing period concerned}}$$

where:

“**full fee**” is the full amount of licence fee payable under section 80 in respect of the licensing period concerned;

“**trading days**” is the number of days since the start of the licensing period current when the licence was cancelled up to and including the date of cancellation or up to and including such other day as the Board may determine under subsection (7).

(7) If the Board is satisfied that trading in exercise (or purported exercise) of the licence ceased on a particular day, the Board may determine that the number of trading days is to be calculated up to and including that day rather than up to and including the date of cancellation. The day determined by the Board may be before or after the date of cancellation.

Division 4—Duty on approved amusement devices

Duty payable on approved amusement devices (s. 80 (2) (a) (iii))

86K. (1) Duty is payable by a licensee for the approved amusement devices operated on the licensed premises during a quarter of an amount equal to:

- (a) if the turnover of the devices operated during the quarter does not exceed \$500,000—3% of the turnover; and
- (b) if the turnover of the devices operated during the quarter exceeds \$500,000—\$15,000 plus 4% of the amount by which the turnover exceeds \$500,000.

(2) The duty in respect of each quarter is payable not later than 21 days after the end of the quarter.

(3) If the duty payable by a licensee under this section in respect of licensed premises for a year ending 30 September exceeds the maximum annual duty for that year, the licensee is to be refunded or credited with the difference.

SCHEDULE 1—AMENDMENTS—*continued*

(4) Regulations may, with the consent of the Treasurer, be made for or with respect to the following:

- (a) deferral of the payment of duty;
- (b) refunds of duty;
- (c) exemption from the payment of duty.

(5) In this section:

“maximum annual duty”, in relation to a specified year, means:

- (a) in the case of licensed premises where the turnover of the approved amusement devices operated on those premises for that year does not exceed \$2,000,000—an amount equal to 3% of the turnover; or
- (b) in the case of licensed premises where the turnover of the devices operated on those premises for that year exceeds \$2,000,000—\$60,000 plus 4% of the amount by which the turnover exceeds \$2,000,000;

“quarter” means a quarter commencing on 1 January, 1 April, 1 July or 1 October in any year;

“turnover”, in relation to approved amusement devices on licensed premises, means the value of the total number of credits risked by players operating those devices on the premises during a specified period.

Records and returns

86L. (1) The holder of a hotelier’s licence must keep such records relating to approved amusement devices as may be directed by the Board.

(2) The holder of a hotelier’s licence must lodge with the Board returns in respect of approved amusement devices in a form approved by the Board.

(3) A licensee must not, under subsection (2), lodge with the Board a return that is false or misleading in a material particular.

(4) Proceedings for an offence under subsection (3) may be commenced at any time within the period of 3 years that next succeeds commission of the offence.

SCHEDULE 1—AMENDMENTS—*continued*

(5) A return required under subsection (2) in relation to quarterly approved amusement device performance and duty payable under this Division is to be submitted by a licensee to the Board at the time when each quarterly instalment is payable in accordance with this Division.

(6) A licensee is to retain a copy of each return lodged under subsection (2) for a period of not less than 3 years after the date on which it was lodged.

Maximum penalty: 20 penalty units.

Late returns and instalments

86M. (1) The penalty for not paying a duty instalment in the amount required and within the time allowed under section 86K is \$100 plus a daily penalty, until payment is made, of 0.15% of the duty in arrears on the due date.

(2) The penalty for not submitting a return in accordance with section 86L (5) is an amount of \$100 plus a daily penalty, until the return is submitted, of 0.15% of the duty instalment payable for the quarter concerned.

(3) A licensee who, but for this subsection, would be liable to pay a penalty under both subsections (1) and (2) in respect of the same quarter is by this subsection excused from the liability to pay the lesser of those penalties (or, in a case where the penalties are in equal amounts, one of those penalties).

(4) A penalty under this section is payable by the licensee concerned to the Board and if not paid may be recovered by the Board as a debt due to the Crown.

(5) The Board may, in a particular case or class of cases, remit or waive the whole or part of any penalty payable under this section.

Board may estimate turnover when return not provided

86N. (1) If a licensee does not submit a return in accordance with section 86L (5), the Board may, taking into account any previous known turnover of approved amusement devices operated on the licensed premises and such other evidence as may be available to it, make an

SCHEDULE 1—AMENDMENTS—*continued*

estimate of the turnover of approved amusement devices operated on the licensed premises during the period in respect of which the return was required.

(2) Until the contrary is proven, the Board's estimate under this section is, for the purposes of any proceedings for the recovery of duty or a penalty payable under this Division, taken to be the turnover of approved amusement devices on the licensed premises during the period in question.

Application of amounts credited

86O. (1) The liability of a licensee to pay duty in respect of a quarter is reduced to the extent of any amount standing to the credit of the licensee in the accounts of the Board at the date the payment is due.

(2) Money credited to a licensee in the accounts of the Board may be appropriated by the Board in satisfaction of the whole or part of any duty or penalty payable by the licensee under this Division, but may not be otherwise appropriated by the Board for or toward the discharge of any debts of the licensee.

Division 5—Savings, transitional etc.**Definitions**

86P. In this Division:

“**the amending Act**” means the Liquor (Taxation) Amendment Act 1993;

“**the Regulation**” means the Liquor Regulation 1983.

Purpose of Division

86Q. The purpose of this Division is to ensure a continuity of operation (as provisions of this Act) of those provisions of the Regulation that are repealed by the amending Act and re-enacted as provisions of this Act.

Regulations

86R. (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the amending Act.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the date of assent to that Act or from a later date.

(3) To the extent that a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

Amendments do not affect existing liabilities

86S. (1) The amendments made to this Act and the Regulation by the amending Act do not affect any existing right, entitlement or obligation, in particular:

- (a) any existing liability to pay any licence fee, duty or penalty or any instalment of licence fee or duty; and
- (b) any existing entitlement to a reduction of licence fee or duty or to a refund or credit of licence fee or duty paid; and
- (c) any existing liability to submit a return.

(2) Any licence fee, duty, instalment or penalty so payable or paid under a provision of the Regulation repealed by the amending Act is taken to be payable or to have been paid under the corresponding provision of this Act, as amended by the amending Act.

(3) Anything done or omitted to be done under or for the purposes of a provision of the Regulation repealed by the amending Act is taken to have been done or omitted under or for the purposes of the corresponding provision of this Act, as amended by the amending Act.

Validation of licence cancellations

86T. (1) Clauses 37 and 37A of the Regulation are taken at all times prior to their repeal to have been valid for the purposes of effecting the cancellation of a licence in accordance with the terms of those clauses.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Accordingly, a licence purportedly cancelled by clause 37 or 37A of the Regulation is taken to have been validly cancelled.

(3) However, clauses 37 and 37A of the Regulation are taken never to have operated to cancel a licence for failure to pay a licence fee, or an instalment of licence fee, payable in respect of a licensing period commencing in January or February 1993.

(4) This section does not apply in respect of:

(a) the licence applicable to the Lismore Hotel, Pitt Street, Sydney; or

(b) any licence in respect of which proceedings challenging the validity of a cancellation of the licence under clause 37 or 37A of the Regulation were commenced in the Supreme Court before the Bill for the amending Act was introduced into Parliament.

(5) The repeal of clauses 37 and 37A of the Regulation does not operate to revive a cancelled licence.

(6) Neither the Crown nor the Board incurs any liability (in particular, any liability to pay compensation) by reason of the operation of this section or clauses 37 and 37A of the Regulation.

Grounds for complaint—late payment of fee

86U. The amendment made to section 68 by the amending Act does not apply in respect of the failure to pay an instalment of a licence fee due before the commencement of the amendment.

Continuation of existing regulations

86V. (1) A regulation in force under a provision of this Act that is amended or substituted by the amending Act and which could be made under that provision (as so amended or substituted) continues in force and is taken to have been made under that provision as so amended or substituted.

Liquor (Taxation) Amendment Act 1993 No. 55

SCHEDULE 1—AMENDMENTS—*continued*

(2) This section does not apply to a regulation repealed by section 4 of the mending Act and does not apply to prevent the subsequent amendment or repeal of a regulation continued in force by this section.

*[Minister's second reading speech made in—
Legislative Assembly on 20 May 1993
Legislative Council on 15 September 1993]*