

LIQUOR (FURTHER AMENDMENT) ACT 1994 No. 49

NEW WALES SOUTH



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LIQUOR (FURTHER AMENDMENT) ACT 1994 No. 49

NEW SOUTH WALES



Act No. 49, 1994

An Act to amend the Liquor Act 1982 to abolish licence fees on low alcohol liquor, to make provision with respect to breath analysis instruments and to make further provision with respect to the grant of licences, conditions on licences, and administrative matters; and for other purposes. [Assented to 23 September 1994]

See also Registered Clubs (Further Amendment) Act 1994.

Liquor (Further Amendment) Act 1994 No. 49

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Liquor (Further Amendment) Act 1994.

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 (4) (the amendments to section 19 of the Liquor Act 1982) and Schedule 1 (34) (to the extent that it inserts clause 25 of Schedule 1 to the Liquor Act 1982) are taken to have commenced on the date that the Bill for this Act was introduced into the Legislative Assembly.

Amendment of Liquor Act 1982 No. 147

3. The Liquor Act 1982 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

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

Omit the definition of “low alcohol beer” in section 4 (1), insert instead:

“**low alcohol liquor**” means each of the following:

- (a) undiluted and unadulterated liquor (other than wine of the grape) which, at 20° Celsius, contains 3.5 per cent or less ethanol by volume;
- (b) undiluted and unadulterated wine of the grape which, at 20° Celsius, contains 6.5 per cent or less ethanol by volume;

(2) Section 11 (**Sittings of the Court**):

From section 11 (4) (e), omit “in the prescribed manner”, insert instead “in such manner (if any) as may be prescribed”.

SCHEDULE 1—AMENDMENTS—*continued*(3) Section 18 (**Court may grant licences**):

- (a) In section 18 (8), after “section 22”, insert “and subject to section 22 (2A)”.
- (b) Omit section 18 (13) (b).

(4) Section 19 (**Governor may authorise issue of certain licences**):

- (a) In section 19 (3), after “Governor may”, insert “, on the recommendation of the Minister”.
- (b) From section 19 (3) (a), omit “under subsection (1)”, insert instead “in respect of a Governor’s licence whether under subsection (1) or under any other provision of this Act”.
- (c) After section 19 (3), insert:
 - (4) A condition cannot be imposed on a Governor’s licence under any other section of this Act, and any condition to which a Governor’s licence is subject cannot be varied, added to or revoked under any other section of this Act, unless the Governor has, on the recommendation of the Minister, approved of the proposed condition, variation, addition or revocation.

(5) Section 22 (**Off-licence—miscellaneous conditions**):

Omit section 22 (4) (b).

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

From section 32 (1), omit “and on payment of the prescribed fee,”.

(7) Section 66 (**Definitions**):

From section 66 (2), omit “section 67 (3) (c) (ii) excepted,”.

Liquor (Further Amendment) Act 1994 No. 49

SCHEDULE 1—AMENDMENTS—continued

(8) Section 67 (**Summons to show cause against taking of disciplinary action**):

(a) Omit section 67 (3) (c), insert instead:

(c) must be served or the licensee personally or by post, not less than 14 days before the day appointed for the hearing of the complaint.

(b) From section 67 (5), omit “at the address of the person to be served last known to the Board”.

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

From section 68 (1) (g) (i), omit “80 (2) (a) (iii)”, insert instead “80 (2) (a) (ii)”.

(10) Section 74A (**Certificate of suitability for on-licence**):

(a) From section 74A (1), omit “(not being premises referred to in section 18 (4) (a)–(f))”.

(b) Before section 74A (2) (a), insert:

(a1) satisfy itself that no other class of on-licence and no other licence under this Act is suitable for the purpose of conducting the business proposed to be carried on pursuant to a licence relating to the premises; and

(c) At the end of section 74A (2) (a), insert “and”.

(d) In section 74A (2) (b), after “neighbourhood” wherever occurring, insert “of the premises”.

(11) Section 80 (**Periodic licence fee**):

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

(a) in the case of a hotelier’s licence:

(i) 13 per cent of the applicable amount prescribed by subsection (3); and

(ii) (if a condition authorises the licensee to keep and to permit the use and operation of one or more approved amusement devices) as duty, the amount payable under Division 4 (Duty or approval of amusement devices);

SCHEDULE 1—AMENDMENTS—*continued*

- (b) From section 80 (2) (c) and (d), omit “plus 7 per cent of the applicable amount prescribed by subsection (3A)” wherever occurring.
 - (c) In section 80 (3), omit “low alcohol beer”, wherever occurring, insert instead “low alcohol liquor”.
 - (d) From section 80 (3) (b), omit “paragraph (d)”, insert instead “paragraph (c1) or (d)”.
 - (e) Omit section 80 (3A).
 - (f) In section 80 (5A), after “wine”, insert “(other than wine that is low alcohol liquor)”.
 - (g) From section 80 (7), omit “(2) (a) (iii)”, insert instead “(2) (a) (ii)”.
- (12) **Section 81 (Licence fee—authorised deductions):**
- (a) From section 81 (a), omit “(or section 80 (3) (a), (b) or (c) as applied by section 80 (3A))”.
 - (b) At the end of section 81, insert:
 - (2) There is to be no deduction under this section in respect of low alcohol liquor.
- (13) **Section 83A (Refund of licence fee on surrender of licence):**
From section 83A (2), omit “80 (2) (a) (iii)”, insert instead “80 (2) (a) (ii)”.
- (14) **Section 86A (Keeping of records concerning low alcohol liquor):**
- (a) Omit “low alcohol beer” wherever occurring, insert instead “low alcohol liquor”.
 - (b) Omit section 86A (3).
- (15) **Section 86B (Application of Division):**
From section 86B (1), omit “80 (2) (a) (iii)”, insert instead “80 (2) (a) (ii)”.
- (16) **Section 92 (Cleanliness of licensed and related premises):**
Omit the section.

SCHEDULE 1—AMENDMENTS—*continued*

(17) Section 96 (**Additional equipment for licensed premises**):
Omit the section.

(18) Section 97:

After section 96, insert:

Breath analysis equipment

97. (1) Evidence of the results of a test indicating the presence or concentration of alcohol in the blood of a person by means of a breath analysing instrument installed on licensed premises is not admissible:

- (a) in any civil proceedings against the licensee of the licensed premises (subject to subsection (2)); or
- (b) in any criminal proceedings.

(2) This section does not prevent the admission into evidence in civil proceedings of the results of a test if it is established that at the time of the test:

- (a) the breath analysing instrument concerned had not been serviced and maintained in accordance with the relevant Australian Standard (as in force from time to time); or
- (b) the licensee was aware or should have been aware that the instrument was not operating correctly; or
- (c) subsection (4) was being contravened in respect of the breath analysing instrument concerned.

(3) A breath analysing instrument is an instrument that is designed to ascertain by analysis of a person's breath the concentration of alcohol present in the person's blood, being an instrument of a type specified in Australian Standard 3547—1993 (Breath Alcohol Testing Devices for Personal Use), published by the Standards Association of Australia. That standard is the relevant Australian Standard for the purposes of this section.

(4) At all times that a breath analysing instrument installed on licensed premises is available for use by customers on those premises there must be prominently displayed on or in close proximity to the instrument a sign that complies with the following requirements:

SCHEDULE 1—AMENDMENTS—*continued*

- (a) the sign must be clearly legible and in good condition and so positioned that its contents can be easily read by a person using the instrument;
- (b) the sign must display the following matter in print of a type size and character that will be clearly legible to a person using the equipment:

**IMPORTANT INFORMATION ABOUT
BREATH TESTING**

Readings given by this instrument are NOT ACCEPTED by the Police or the Courts.

Your blood alcohol level can rise for 1 hour or more after your last drink.

(5) If subsection (4) is contravened, the licensee of the licensed premises concerned is guilty of an offence.

Maximum penalty: 20 penalty units.

- (19) Section 99 (**Apportionment of cost of compulsory alterations**):
From section 99 (4), omit “and the prescribed documents are filed”, insert instead “and a copy of the order is filed, together with such other documents as may be prescribed.”.
- (20) Section 102 (**Register of guests**):
Omit the section.
- (21) Section 104 (**Quiet and good order of neighbourhood**):
Omit section 104 (1A), insert instead:
(1A) A complaint under this section must be made or verified by statutory declaration.
- (22) Section 109 (**Special inspectors**):
 - (a) From section 109 (1), omit “Chairman of the Board”, insert instead “Minister”.
 - (b) From section 109 (3), omit “Board” where firstly and secondly occurring, insert instead “Minister”.
 - (c) From section 109 (3) (a), omit “Liquor Administration Board”, insert instead “Minister administering this Act”.

SCHEDULE 1—AMENDMENTS—*continued*(23) Section 110 (**Powers of entry**):

From section 110 (5), omit “subsection (1), (3) or (4)”, insert instead “subsection (1) or (3)”.

(24) Section 128 (**Provision of, and charges for, meals etc.**):

Omit the section.

(25) Section 137 (**Removal of bottles etc. from tables**):

Omit the section.

(26) Section 138 (**List of charges in restaurant**):

Omit the section.

(27) Section 145A (**Penalty notices**), as inserted by the Liquor (Amendment) Act 1994:

Omit section 145A (3), insert instead:

(3) A penalty notice may be served personally or by post.

(28) Sections 151A, 151B:

After section 151, insert:

Summons may be served by post

151A. (1) A summons issued under this Act may be served by post.

(2) Service of a summons by post may be proved by the oath of the person who sewed it, or by affidavit or otherwise. The deposition or affidavit of service must state the manner in which the deponent was informed of the address to which it was posted and the time and place of posting.

(3) The provisions of this section operate in addition to and do not derogate from the operation of a provision of any other law relating to the service of summonses.

Service by post

151B. A summons, notice (including a penalty notice) or other instrument required or permitted to be served under this Act by post is taken to have been properly

SCHEDULE 1—AMENDMENTS—*continued*

addressed for the purpose of its service by post if addressed to the person to whom it is directed at any of the following addresses:

- (a) the address of any licensed premises of which the person is licensee;
- (b) the address of the place at which the person resides, as last known to the Board;
- (c) the address of a place at which the person carries on business, as last known to the Board.

(29) Section 152A:

After section 152, insert:

Confiscation of proof of age cards

152A. (1) An authorised person to whom a proof of age card, or thing resembling a proof of age card, is produced by a person representing it to be the person's proof of age card (whether as proof of age or of identity) may, with no authority other than this section, seize the card or thing if he or she reasonably suspects that the card or thing:

- (a) is not the person's proof of age card or contains information that is false or misleading as to that person's name or age; or
- (b) has been forged or fraudulently altered; or
- (c) is being used in contravention of any provision of this Act, the Registered Clubs Act 1976 or the Traffic Act 1909.

(2) A proof of age card is a card issued as a proof of age card by the Roads and Traffic Authority.

(3) A proof of age card or thing seized under this section is to be forwarded to the Commissioner of Police. The Commissioner must cause the card or article to be returned (by delivery or by post) to the person who produced it unless subsection (4) applies.

(4) The Commissioner may retain possession of and deal with a proof of age card or thing forwarded to the Commissioner in such manner as the Commissioner thinks fit if satisfied that the card or thing:

SCHEDULE 1—AMENDMENTS—continued

- (a) is not the proof of age card of the person from whom it was seized or contains information that is false or misleading as to that person's name or age; or
- (b) has been forged or fraudulently altered; or
- (c) is being used in contravention of any provision of this Act, the Registered Clubs Act 1976 or the Traffic Act 1909.

(5) Each of the following is an authorised person for the purposes of this section:

- (a) any police officer;
- (b) any person while acting in the administration of this Act, the Registered Clubs Act 1976 or the Traffic Act 1909;
- (c) the licensee and any employee of the licensee on the licensed premises concerned, but only on those licensed premises or in a place in the immediate vicinity of those licensed premises;
- (d) the secretary and any employee of a registered club under the Registered Clubs Act 1976, but only on the premises of the club or in a place in the immediate vicinity of those premises.

(30) Section 155A (**Secrecy**):

At the end of section 155A (2) (c), insert:

; or

- (d) to the Minister, or to a person who is engaged in the administration of this Act and is authorised in writing by the Minister to receive information under this section.

(31) Section 162 (**Qualifications for keeping approved amusement device**):

From section 162 (2) (b), omit "prescribed terms and conditions", insert instead "such terms and conditions (if any) as may be prescribed".

SCHEDULE 1—AMENDMENTS—*continued*(32) Section 165 (**Conditions relating to prizes**):

Omit section 165 (2) (b), insert instead:

- (b) in the case of liquor, is to be of such kind (if any) as may be prescribed and is to be not less than such minimum quantity (if any) as may be prescribed and not more than such maximum quantity (if any) as may be prescribed; and

(33) Section 179 (**Periodic returns by gaming-related licensees**):

Omit section 179 (1) (b), insert instead:

- (b) is accompanied by such documents as may be prescribed; and

(34) Schedule 1 (**Savings and transitional provisions**):

After Part 3, insert:

Part 4—Liquor (Further Amendment) Act 1994**Abolition of licence fee on low alcohol liquor**

23. (1) The amendments made by Schedule 1 (1), (9), (11) (a)–(c) and (e)–(g) and (12)–(15) apply for the purposes of the determination and payment of any licence fee payable in respect of the 1995 licensing period and subsequent licensing periods, and do not apply to any licence fee payable in respect of a licensing period prior to the 1995 licensing period.

(2) For the purposes of the operation of this Act in relation to the licence fee payable by a licensee in respect of the 1995 licensing period:

- (a) it is to be presumed that none of the amount paid or payable for liquor on which the calculation of that licence fee is based comprised an amount paid or payable for low alcohol liquor, except as provided by paragraph (b); and
- (b) if the licensee satisfies the Secretary of the Board or the Board, in relation to an assessment or reassessment of that licence fee, that a particular amount was paid or payable for low alcohol liquor, the fee to be paid by the licensee is to be

SCHEDULE 1—AMENDMENTS—*continued*

determined having regard to the amount paid or payable for low alcohol liquor.

(3) In this clause:

“**low alcohol liquor**” does not include low alcohol liquor that is beer;

“*1995 licensing period*” means the licensing period commencing on 16 January 1995.

Appointment of inspectors

24. (1) An appointment made by the Chairman of the Board under section 109 (Special inspectors) and having effect immediately before the commencement of the amendments made to that section by the Liquor (Further Amendment) Act 1994 is, on and from that commencement, taken to have been made by the Minister.

(2) Any means of identification issued to a special inspector under section 109 (3) and valid immediately before the commencement of the amendment of that subsection by the Liquor (Further Amendment) Act 1994 is valid and effectual for the purposes of section 109 even though it does not comply with that section as so amended.

Governor’s licences

25. (1) The amendments made to section 19 (3) by the Liquor (Further Amendment) Act 1994 extend to conditions on a Governor’s licence that are in force as at the commencement of those amendments.

(2) Section 19 (4) extends to apply in respect of conditions on a Governor’s licence that are in force as at the commencement of that subsection but that subsection does not affect the imposition, variation, addition or revocation of a condition that occurred before the commencement of that subsection.

Breath analysis equipment

26. Section 97 (Breath analysis equipment) does not apply to a test by means of a breath analysing instrument that was taken before the commencement of that section, or to the results of such a test.

SCHEDULE 1—AMENDMENTS—*continued***Certificates of suitability for on-licences**

27. The amendments made to section 74A by Schedule 1 (10) (a)–(c) of the Liquor (Further Amendment) Act 1994 do not apply to the issue of a certificate under that section pursuant to a submission made as referred to in that section before the commencement of those amendments.

Secrecy

28. The amendment made to section 155A (Secrecy) by the Liquor (Further Amendment) Act 1994 extends to apply to information acquired before the commencement of the amendment.

Summonses

29. (1) The amendments made to section 67 (Summons to show cause against taking of disciplinary action) by the Liquor (Further Amendment) Act 1994 do not apply to a summons issued before the commencement of the amendments.

(2) Sections 151A (Summons may be served by post) and 151B (Service by post) do not apply to a summons issued before the commencement of those sections.

Records for low alcohol liquor

30. Section 86A (Keeping of records concerning low alcohol liquor) does not apply to require the keeping of records of amounts paid or payable in respect of low alcohol liquor (other than beer) before the commencement, of the amendments made to that section by the Liquor (Further Amendment) Act 1994.
