



New South Wales

# Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996 No 84

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New South Wales

# **Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996 No 84**

Act No 84, 1996

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An Act to amend the *Liquor Act 1982* to provide for nightclub licences and to make further provision in relation to the trading hours of hotels in certain areas; and for other purposes. [Assented to 6 November 1996]

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

**1 Name of Act**

This Act is the *Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996*.

**2 Commencement**

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

**3 Amendment of Liquor Act 1982 No 147**

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

## Schedule 1 Amendments

(Section 3)

### [1] Section 4 Definitions

Omit the definition of *lute-trading period* from section 4 (1).

### [2] Section 4 (1)

Insert in alphabetical order:

*nightclub trading period*, in relation to premises the subject of a nightclub licence, means a period, commencing no earlier than 8 pm on a day and ending no later than 6 am on the following day, during which the licensee is authorised under the licence to sell or supply liquor at the premises whether or not with or as ancillary to a meal.

### [3] Section 4 (1)

Insert “, but does not include premises to which a nightclub licence relates” after “premises” where lastly occurring in the definition of *restaurant*.

### [4] Section 4 (8)

Insert after section 4 (7):

- (8) For the purposes of Schedule 4, a reference to a Statistical Subdivision or Statistical Local Area is a reference to a Statistical Subdivision or Statistical Local Area as determined by the Australian Bureau of Statistics.

**[5] Section 18 Court may grant licences**

Insert at the end of section 18 (2) (d):

, or

- (e) a nightclub licence, being a licence that, subject to this Act and the conditions of the licence, authorises the licensee to sell liquor on the licensed premises, but only for consumption on those premises.

**[6] Section 20 Conditions of licences**

Omit “or 23A” from section 20 (3).

Insert instead “, 23A or 23AA”.

**[7] Section 23 On-licence—miscellaneous conditions**

Omit “or 32 (3)” from section 23 (3) (b).

**[8] Section 23 (3A)**

Insert “a nightclub licence,” after “hotelier’s licence,”.

**[9] Section 23AA**

Insert after section 23A:

**23AA Nightclub licence—miscellaneous conditions**

- (1) Liquor must not be sold or supplied on the premises to which a nightclub licence relates between noon and 8 pm on any day that is not a restricted trading day, or between noon and 10 pm on a restricted trading day, except with or as ancillary to a meal consumed at a table on the premises.

- (2) Liquor must not be sold or supplied on the premises to which a nightclub licence relates during a nightclub trading period unless:
- (a) the liquor is sold or supplied with or as ancillary to entertainment and at least a light meal is available, with or without charge, for consumption by persons to whom liquor is sold or supplied, or
  - (b) the liquor is supplied with or as ancillary to a meal consumed at a table on the premises.

**[10] Section 25 Hotelier's licence—variation of trading hours**

Omit “or are situated within the area bounded by those streets or parts of streets” from section 25 (2A) (a).

Insert instead “or Schedule 3 (Oxford Street—Darlinghurst) or are situated within an area bounded by those streets or parts of streets, or are within the Kosciusko National Park”.

**[11] Section 25 (9)**

Insert after section 25 (8):

- (9) For the purposes of subsection (2A), premises situated on any of the corners at the intersection of Oxford, Victoria and South Dowling Streets and Barcom Avenue are taken to front onto a street or part of a street specified in Schedule 3.

**[12] Section 32 On-licence (restaurant)—variation of trading hours**

Omit section 32 (3)–(3C).

**[13] Section 32 (4) (b) and (c)**

Omit the paragraphs. Insert instead:

, or

- (b) vary a variation of trading hours granted under this section.

**[14] Sections 35C–35E**

Insert after section 35B:

**35C Nightclub licence—trading hours**

- (1) Liquor may be sold or supplied on premises to which a nightclub licence relates that are situated within the area constituting the City of Sydney as at 1 December 1994 or front onto any of the streets or parts of streets specified in Schedule 2 (Kings Cross) or Schedule 3 (Oxford Street—Darlinghurst) or are situated within an area bounded by those streets or parts of streets only at the following times:
  - (a) on any day that is not a restricted trading day—  
from noon to 3 am on the following day (whether or not that following day is a restricted trading day),
  - (b) on a restricted trading day—from noon to 10 pm.
- (2) Liquor may be sold or supplied on premises to which a nightclub licence relates that are situated within an area referred to in Schedule 4 (but are not premises to which subsection (1) applies) only at the following times:
  - (a) on any day that is not a Sunday or a restricted trading day—from noon to 3 am on the following day (whether or not that following day is a Sunday or a restricted trading day),
  - (b) on a Sunday that is not a restricted trading day or 31 December—from noon to midnight,
  - (c) on a restricted trading day—from noon to 10 pm,
  - (d) on a day that is 31 December and is not a restricted trading day—from noon to 2 am on the following day (whether or not that following day is a Sunday or a restricted trading day).
- (3) Liquor may be sold or supplied on premises to which a nightclub licence relates that are situated in any other area only at the following times:

- (a) on any day that is not a day referred to in paragraph (b) or (c)—from noon to midnight,
  - (b) on a restricted trading day—from noon to 10 pm,
  - (c) on a day that is 31 December and is not a restricted trading day—from noon to 2 am on the following day (whether or not that following day is a restricted trading day).
- (4) For the purposes of subsection (1), premises situated on any of the corners at the intersection of Oxford, Victoria and South Dowling Streets and Barcom Avenue are taken to front onto a street or part of a street specified in Schedule 3.

**35D Nightclub licences—variation of trading hours**

- (1) This section applies to a nightclub licence referred to in section 35C (3).
- (2) The court may, as provided by this section, vary the trading hours for particular premises to which a nightclub licence relates (not being a nightclub licence relating to premises situated in the Kosciusko National Park) to allow trading until 3 am on a day (other than a restricted trading day or a Sunday).
- (3) The court may, as provided by this section, vary the trading hours for particular premises to which a nightclub licence relates that are situated in the Kosciusko National Park to allow trading until 3 am on a day (other than a restricted trading day).
- (4) The court may grant a variation under this section only if satisfied that to do so would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises.
- (5) An application must not be granted under this section for an extension of trading hours unless the court is satisfied that practices are in place and will remain in place at the licensed premises that ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises.



- (6) The court may, at any time on the application of the licensee, the local consent authority, the Director or the Commissioner of Police:
- (a) revoke a variation of trading hours granted under this section, or
  - (b) grant a different variation of trading hours under subsection (2) or (3) (whichever is appropriate).
- (7) If an application under this section for extended trading hours is refused, or if an extension of trading hours is revoked or reduced:
- (a) on the application of the local consent authority, the Director or the Commissioner of Police, or
  - (b) under section 104 (Quiet and good order of neighbourhood),
- an application for an extension of trading hours for the same premises may not be made during the next 6 months, except with the leave of the court granted on the ground that there has been a material change in the facts or circumstances on which the refusal, revocation or reduction was based.
- (8) An application for an extension of trading hours may be granted for a trial period of up to 6 months ending on a specified date and, on application made at least 1 month before that date, the court may:
- (a) confirm the extension of trading hours, or
  - (b) postpone expiration of the trial period, or
  - (c) refuse the application.
- (9) Nothing in this Act prevents the court from considering an application for a variation of trading hours under this section when considering the application for the grant of the nightclub licence concerned.

### **35E Reduction of trading hours for certain nightclub licences**

- (1) This section applies to a nightclub licence referred to in section 35C (1) or (2).

- (2) The court may, at any time on the application of the licensee, the local consent authority, the Director or the Commissioner of Police, impose a condition on a nightclub licence that reduces the hours after midnight during which the licensee may trade on a day.
- (3) The court may, on such an application, vary or revoke a condition imposed under this section.
- (4) An application for variation or revocation may not be made by or on behalf of the licensee for the same premises during the 6 months after the imposition of the condition, except with the leave of the court granted on the ground that there has been a material change in the facts or circumstances on which the imposition of the condition was based.

**[15] Section 45 Grounds of objection**

Insert “, (2A)” after “subsections (2)” in section 45 (1) (c).

**[16] Section 45 (2A)**

Insert after section 45 (2):

- (2A) An objection to the grant of an application for, or the removal of, a nightclub licence may be taken on the ground that the costs to the public in granting the licence will outweigh the benefit to the public (whether or not an objection is also taken on a ground specified in subsection (1) or (3)).

**[17] Section 45 (4)**

Omit “or in subsection (2)”. Insert instead “, (2) or (2A)”.

**[18] Section 45 (4)**

Insert at the end of section 45 (4) (c):

, or

- (d) in the case of an objection on the ground specified in subsection (2A)—that the benefit to the public in granting the application will outweigh the costs to the public.

**[19] Section 54**

Omit the section. Insert instead:

**54 Grant of on-licence (theatre)**

An application for an on-licence relating to a theatre must not be granted unless the court is satisfied that the premises to which the application relates:

- (a) are a theatre (other than a drive-in theatre or an open-air theatre), and
- (b) are primarily and regularly used for entertainments of the stage or for cinematographic entertainment, or both, and
- (c) have proper facilities to operate as a theatre (for example, appropriate seating having regard to the size and location of the stage or screen), and
- (d) have proper facilities available for the sale, supply and consumption of liquor, and
- (e) meet such other requirements as the court thinks relevant.

**[20] Section 54BA**

Insert after section 54B:

**54BA Grant of nightclub licence**

- (1) An application for a nightclub licence or to remove a nightclub licence must not be granted unless the court is satisfied that:
  - (a) the benefit to the public in granting the application will outweigh the costs to the public, and
  - (b) the granting of the application would not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the premises to which the application relates, and
  - (c) an approval is in force in respect of the premises under Part 1 of Chapter 7 of the *Local Government Act 1993* for the use of the premises as a place of public entertainment, and
  - (d) the premises contain at least such sanitary and other facilities for the use of customers as the court thinks necessary having regard to the neighbourhood in which the premises are situated and such other matters as the court thinks relevant, and
  - (e) practices are or will be in place and will remain in place at the premises that ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises.
- (2) An application for a nightclub licence or to remove a nightclub licence must not be granted unless:
  - (a) the court is satisfied that adequate staff, fittings, furniture, equipment and accommodation are, or will be, available on the premises to which the application relates for the supply of meals at one and the same time for at least 50 persons, or

- (b) if the court is not satisfied as to the matters specified in paragraph (a), a condition is imposed on the licence that liquor must not be sold or supplied on the premises during the period between noon and 8 pm on a day other than a restricted trading day, or between noon and 10 pm on a restricted trading day.
- (3) An application to remove a nightclub licence must not be granted unless the removal is to a place that is within the neighbourhood of the premises from which it is proposed to remove the licence.
- (4) In determining the costs to the public in granting a nightclub licence, or the removal of a nightclub licence, the court may take into account (but is not limited to) any of the following:
  - (a) any social cost, for example, the potential disturbance to the amenity of the neighbourhood in which the licensed premises will be situated,
  - (b) any additional demand for public services, such as police services, health services or services provided by local councils,
  - (c) any adverse impact on existing businesses in the neighbourhood.
- (5) In determining the benefits to the public in granting a nightclub licence, or the removal of a nightclub licence, the court may take into account (but is not limited to) any of the following:
  - (a) whether the members of the public who reside in or frequent the neighbourhood in which the licensed premises will be situated will benefit from an additional entertainment venue,
  - (b) whether the granting of the application will result in an increased choice of entertainment for tourists and the public generally,
  - (c) whether the granting of the application will result in increased competition or government revenue, or both.

**[21] Section 56 Fee for grant of licence**

Insert after section 56 (1) (m1):

- (m2) in the case of a nightclub licence for premises within the area constituting the City of Sydney as at 1 December 1994 or fronting onto any of the streets or parts of streets specified in Schedule 2 (Kings Cross) or Schedule 3 (Oxford Street—Darlinghurst) or situated within an area bounded by those streets or parts of streets—\$60,000, or
- (m3) in the case of a nightclub licence for premises in an area referred to in Schedule 4 (other than premises referred to in paragraph (m2))—\$40,000, or
- (m4) in the case of a nightclub licence for premises in an area not referred to in Schedule 4—\$10,000,

**[22] Section 56 (3A)**

Insert after section 56 (3):

- (3A) If an application for the removal of a nightclub licence is granted, a fee is payable equal to the difference (if any) between the fee that was required to be paid for the granting of the licence and any greater fee that would have been required to be paid for the granting of the licence at the new premises.

**[23] Section 56 (6)–(8)**

Insert after section 56 (5):

- (4) For the purposes of subsection (3), the prescribed fee for a variation of trading hours to extend the trading hours for premises to which a nightclub licence relates is \$10,000.

- (7) However, no fee is payable as referred to in subsection (6) if:
- (a) a variation is revoked or an extension of trading hours is reduced and application is made subsequently for a variation of trading hours to extend the trading hours in respect of the same premises, or
  - (b) an extension of trading hours has been granted for particular premises and application is made subsequently for a further extension of trading hours in respect of the same premises.
- (8) The Board may, on application, refund the fee for a variation of trading hours to extend the trading hours for premises to which a nightclub licence relates if the application for the variation was refused after a trial period.

**[24] Section 116A Offences by minors in hotels and nightclub premises**

Omit “in a licensed restaurant during a late-trading” from section 116A (4).

Insert instead “on premises to which a nightclub licence relates during a nightclub trading”.

**[25] Section 116B Offences by licensees in relation to minors**

Omit “a licensed restaurant during a late-trading” from section 11 6B (1) (c).

Insert instead “premises to which a nightclub licence relates during a nightclub trading”.

**[26] Section 116B (2) (c)**

Omit “in a licensed restaurant during a late-trading”.

Insert instead “on premises to which a nightclub licence relates during a nightclub trading”.

**[27] Section 116B (3) (a)**

Omit “the licensed restaurant”.

Insert instead “the premises to which the nightclub licence relates”.

**[28] Section 116B (3) (b)**

Omit “in the licensed restaurant”.

Insert instead “on the premises to which the nightclub licence relates”.

**[29] Section 116C Notice to be displayed**

Omit section 116C (3). Insert instead:

- (3) A holder of a nightclub licence for premises trading during a nightclub trading period is guilty of an offence against this Act unless there is continuously displayed during the nightclub trading period a notice in the prescribed form that relates to the presence of minors on the premises during the nightclub trading period.

Maximum penalty: 20 penalty units.

**[30] Section 116D Offence by adult accompanying minor**

Omit “licensed restaurant”.

Insert instead “on premises to which a nightclub licence relates, in accordance with section 11 6B”.

**[31] Section 125B Holding more than one licence or holding certain interests**

Insert “or more than one nightclub licence” after “hotelier’s licence” in section 125B (1) (a).

**[32] Section 131 Carrying away of liquor**

Insert “or nightclub licence” after “on-licence” in section 131 (1).



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

Insert after Part 8:

**Part 9 Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996**

**46 Application of Part**

In this Part, a reference to a variation of trading hours granted under section 32 (3) is a reference to a variation of trading hours for which application was made before 1 October 1996.

**47 Restaurant licence late-trading endorsements**

- (1) A variation of trading hours granted under section 32 (3) for licensed premises and in force immediately before the repeal of that subsection continues in force (unless sooner revoked):
  - (a) until the end of the period of 6 months commencing on that repeal, or
  - (b) if application is made during that 6-month period for a nightclub licence in respect of the same premises, until the application is determined or the end of the period of 6 months from the lodging of the application (whichever is the sooner).
- (2) During the period for which a variation of trading hours for licensed premises is continued in force by subclause (1), this Act applies to and in respect of the variation, the licence and the licensed premises as if this Act had not been amended by the *Liquor Amendment (Nightclub Licences and Trading Hours) Act 1996*.
- (3) Sections 45 (3) (d) and (e) and 54BA (1) (a) do not apply to an application for a nightclub licence:
  - (a) in respect of licensed premises that are the subject of a variation of trading hours granted under section 32 (3) and in force, and
  - (b) that is made during the period of 6 months commencing on the repeal of section 32 (3).

- (4) When determining whether conditions should be imposed on a nightclub licence for premises for which an on-licence for a restaurant is in force or was previously in force, the court is to have regard to any conditions that were imposed on the on-licence.
- (5) The application fee for an application for a variation of trading hours under section 32 (3) (as in force immediately before its repeal) that is pending at that repeal is to be refunded.

#### **48 Restaurant licences with motel endorsements**

- (1) This clause applies to premises to which a nightclub licence relates if
  - (a) immediately before the grant of the nightclub licence, the premises were the subject of an on-licence that was defined to include a motel and in respect of which a variation of trading hours granted under section 32 (3) was in force, and
  - (b) the application for the nightclub licence was made during the period of 6 months commencing on the repeal of section 32 (3).
- (2) Liquor may be sold or supplied at any time to a lodger or an inmate, or the guest of a lodger or an inmate:
  - (a) in the bedroom set aside for the accommodation of the lodger or inmate, or
  - (b) in any other part of the licensed premises set aside for the exclusive occupation of lodgers or inmates or their guests.
- (3) Liquor may be sold or supplied at any time to an employee of the licensee.
- (4) Liquor may be sold or supplied in a function room forming part of the motel to persons in attendance at a dinner, reception, convention, seminar or the like held by a body or association of persons:

- (a) from any time on a day that is not Sunday or a restricted trading day to 3 am on the following day, whether or not that following day is a Sunday or a restricted trading day, and
  - (b) on a Sunday or a restricted trading day—from noon to 10 pm, and
  - (c) on a day that is 24 December and not a restricted trading day (whether or not it is a Sunday)—from noon to midnight, and
  - (d) on a day that is 31 December and is not a restricted trading day (whether or not it is a Sunday)—from noon to 2 am on the following day, whether or not that following day is a Sunday or a restricted trading day.
- (5) If the on-licence for the premises allowed liquor to be sold or supplied from any time before noon, liquor may be sold or supplied on the premises from that time or from 6 am, whichever is the later, with or as ancillary to a meal.

**49 Trading hours for existing premises in certain tourist areas**

- (1) This clause applies to premises to which a nightclub licence relates if
- (a) the premises are referred to in section 35C (1), and
  - (b) immediately before the grant of the nightclub licence, the premises were the subject of an on-licence in respect of which a variation of trading hours granted under section 32 (1) was in force to allow trading after 3 am and a variation of trading hours granted under section 32 (3) was in force, and
  - (c) the application for the nightclub licence was made during the period of 6 months commencing on the repeal of section 32 (3).

- (2) The court may, on application, vary the trading hours of premises to which a nightclub licence relates to permit trading from 3 am until:
  - (a) the end of the trading period allowed under the variation of trading hours granted under section 32 (1) in respect of the previous on-licence for the premises, or
  - (b) 6 am,whichever is the earlier.
- (3) The provisions of section 35D (5), (6), (7) and (9) apply to a variation under this clause in the same way as they apply to a variation under that section, except that in so applying those provisions a reference to 3 am is to be read as a reference to the time until which trading may be allowed under subclause (2).
- (4) No fee is payable for the grant of an application under this clause.

**50 Trading hours for existing premises in Kosciusko National Park**

- (1) This clause applies to premises to which a nightclub licence relates if
  - (a) the premises are situated in Kosciusko National Park, and
  - (b) immediately before the grant of the nightclub licence, the premises were the subject of an on-licence in respect of which a variation of trading hours granted under section 32 (1) was in force to allow trading after 3 am and a variation of trading hours granted under section 32 (3) was in force, and
  - (c) the application for the nightclub licence was made during the period of 6 months commencing on the repeal of section 32 (3).
- (2) If an application is made under section 35D for a variation of trading hours for premises to which this clause applies and the application includes a request to further extend the trading hours in accordance with this

clause, the court may vary the trading hours of the premises to permit trading until:

(a) the end of the trading period allowed under the variation of trading hours granted under section 32 (1) in respect of the previous on-licence for the premises, or

(b) 6 am,

whichever is the earlier.

(3) Section 35D applies to a variation under this clause in the same way as it applies to a variation under that section, except that in so applying that section a reference to 3 am is to be read as a reference to the time until which trading may be allowed under subclause (2).

**[34] Schedules 3 and 4**

Insert after Schedule 2:

**Schedule 3 Oxford Street—Darlinghurst**

(Section 25)

Liverpool Street, from its intersection with Oxford Street, east to its intersection with Victoria Street.

Victoria Street, from its intersection with Liverpool Street, south and south-west to its intersection with Oxford Street.

Oxford Street, from its intersection with Victoria Street, east to its intersection with Barcom Avenue and South Dowling Street.

South Dowling Street, from its intersection with Oxford Street and Barcom Avenue, south to its intersection with Flinders Street.

Flinders Street, from its intersection with South Dowling Street, north-north-west to its intersection with Albion Street.

Albion Street, from its intersection with Flinders Street, west to its intersection with Bourke Street.

Bourke Street, from its intersection with Albion Street, north to its intersection with Campbell Street.

Campbell Street, from its intersection with Bourke Street, west to its intersection with Riley Street.

Riley Street, from its intersection with Campbell Street, north to its intersection with Oxford Street.

Oxford Street, from its intersection with Riley Street, north-west to its intersection with Liverpool Street.

#### **Schedule 4 Metropolitan areas**

(Section 35C)

An area comprising the Sydney Statistical Subdivision, excluding the Statistical Local Area of Wollondilly (Statistical Local Area 8400), the Statistical Local Area of Blue Mountains (Statistical Local Area 0900) and the Statistical Local Area of Hawkesbury (Statistical Local Area 3800).

An area comprising the Statistical Local Areas of Newcastle (Statistical Local Areas 5901 and 5902) and the Statistical Local Area of Lake Macquarie (Statistical Local Area 4650).

An area comprising the Statistical Local Area of Wollongong (Statistical Local Area 8450) and the Statistical Local Area of Shellharbour (Statistical Local Area 6900).

[Minister's second reading speech made in—  
Legislative Assembly on 15 October 1996  
Legislative Council on 29 October 1996]