



New South Wales

Liquor Amendment (Restaurants and Nightclubs) Act 1998 No 91

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Liquor Amendment (Restaurants and Nightclubs) Act 1998 No 91

Act No 91, 1998

An Act to amend the *Liquor Act 1982* in connection with the consumption of liquor in restaurants and the trading hours of certain nightclubs; and for other purposes. [Assented to 2 October 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Liquor Amendment (Restaurants and Nightclubs) Act 1998*.

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 “, not in sandwich form,” from the definition of *meal* in section 4 (1).

[2] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

dine-or-drink authority means an authority referred to in section 23AD.

restaurant restricted period, in relation to licensed premises to which a dine-or-drink authority relates, means a period, commencing no earlier than 10 pm on a day and ending no later than 6 am on the following day, during which the licensee is authorised to sell or supply liquor at the premises whether or not with or as ancillary to a meal.

seated dining position means a seated dining position within the meaning of section 23AD.

[3] Section 23 On-licence—miscellaneous conditions

Insert after section 23 (2):

(2A) Where the licensed premises to which an on-licence relates are a restaurant, the primary purpose of the premises is, for the purposes of this Act, to be a restaurant, and accordingly the premises must at all times be operated consistently with this primary purpose, whether or not the on-licence is endorsed with a dine-or-drink authority.

[4] Section 23 (3) (b)

Insert “, and subject to section 23AD” after “(4)”.

[5] Section 23AD

Insert as section 23AD:

23AD Restaurant licence—dine-or-drink authority

- (1) The court may grant an application for an on-licence relating to a restaurant to be endorsed with an authority (referred to in this Act as a *dine-or-drink authority*) relating to the sale, supply and consumption of liquor at the restaurant.
- (2) A dine-or-drink authority:
 - (a) authorises liquor to be sold or supplied in the restaurant for consumption, otherwise than with or as ancillary to a meal consumed at a table in the restaurant, at no more than 30 per cent of the seated dining positions available in the restaurant at any time, and
 - (b) does not affect the sale, supply or consumption of liquor in the reception area (if any) of the restaurant as otherwise authorised by or under this Act.
- (3) The authorisation conferred by a dine-or-drink authority is subject to such conditions as are imposed by this Act or as are prescribed by the regulations and to such conditions as are imposed by the court at the time of grant of the application for the authority.
- (4) The court may, on the application of the licensee or the Director or the Commissioner of Police:
 - (a) revoke a dine-or-drink authority, or
 - (b) impose any further condition to which the authority is to be subject, or
 - (c) revoke or vary any condition imposed by the court under this section (and whether or not previously varied under this section).
- (5) A dine-or-drink authority is in force only while all the conditions to which it is subject are being complied with.
- (6) Conditions may (without limitation) do any or all of the following:

- (a) reduce the percentage referred to in subsection (2),
 - (b) specify the maximum number of seated dining positions that are to be available for the consumption of liquor as referred to in that subsection,
 - (c) prohibit advertising of the restaurant that is inconsistent with the primary purpose of the premises, as referred to in section 23 (2A),
 - (d) prohibit entertainment in the restaurant that is inconsistent with that primary purpose (including for example entertainment in the nature of pool tables or amusement devices).
- (7) The Board may, on the application of the licensee or the Director or the Commissioner of Police, revoke or vary any conditions of the kind referred to in subsection (6) (a) or (b), other than conditions imposed by this Act or the regulations.
- (8) It is a condition of a dine-or-drink authority that the maximum number of patrons permitted on licensed premises to which the authority relates is not to exceed the number of available seated dining positions together with the number of persons allowed by or under this Act in the reception area (if any) of the restaurant.
- (9) In this section, a reference to a seated dining position is a reference to a seated position at a table, being a position at which a meal can reasonably and comfortably be consumed.

[6] Section 23AE

Insert as section 23AE:

23AE Restaurant licence—consumption of liquor away from table

- (1) Nothing in this Act is to be construed as preventing a person in a restaurant to which an on-licence relates from consuming liquor away from a table in the restaurant, or from standing while consuming liquor, so long as there is a seat for the person at a table.

- (2) Subsection (1) has effect subject to any conditions to which the on-licence is subject and to any requirements prescribed by the regulations.

[7] Section 36 Restrictions on liquor licence applications

Insert “(other than an on-licence that relates to a restaurant and that is endorsed with a dine-or-drink authority)” after “on-licence” in section 36 (5).

[8] Section 53 Grant of on-licence (restaurant) and associated matters

Insert after section 53 (3):

- (4) An application for the endorsement of an on-licence relating to a restaurant with a dine-or-drink authority or to remove a licence endorsed with such an authority is not to be granted unless the court is satisfied that:
- (a) 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
 - (b) 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, and
 - (c) the premises will at all relevant times be operated consistently with the primary purpose of the premises, as referred to in section 23 (2A), and
 - (d) the premises have the proper facilities for a restaurant, including facilities to support that primary purpose and facilities for the sale, supply and consumption of liquor, and
 - (e) practices are or will be in place and will remain in place at the premises that ensure that no more than 30 per cent of the seated dining positions available in the restaurant will be allocated to persons not dining at the premises.

[9] Section 53 (5)

Insert as section 53 (5):

- (5) An application to remove an on-licence that relates to a restaurant and that is endorsed with a dine-or-drink authority must not be granted unless the court is satisfied that the removal is to a place within the neighbourhood of the premises from which it is proposed to remove the licence.

[10] Section 56 Fee for grant of licence and associated matters

Insert after section 56 (8):

- (9) The following provisions have effect with respect to dine-or-drink authorities:
 - (a) If the court grants a dine-or-drink authority, the authority does not take effect until:
 - (i) the prescribed fee has been paid, and
 - (ii) the authority has been endorsed on the on-licence concerned by the Principal Registrar or another registrar.
 - (b) The prescribed fee in the case of a dine-or-drink authority for premises in an area referred to in Schedule 5 is:
 - (i) where the premises have over 100 seated dining positions—\$15,000, or
 - (ii) where the premises have 100 or fewer seated dining positions—\$10,000.
 - (c) The prescribed fee in the case of a dine-or-drink authority for premises in an area not referred to in Schedule 5 is:
 - (i) where the premises have over 100 seated dining positions—\$10,000. or
 - (ii) where the premises have 100 or fewer seated dining positions—\$5,000.

[11] Section 68 Grounds for complaint

Omit “or” where lastly occurring in section 68 (1) (g1).

[12] Section 68 (1) (i), (j)

Insert at the end of section 68 (1) (h):

- (i) in the case of an on-licence relating to a restaurant—that the premises concerned have been used for a purpose that is not consistent with their primary purpose of being a restaurant, as referred to in section 23 (2A), or
- (j) in the case of an on-licence relating to a restaurant endorsed with a dine-or-drink authority—that the licensee or manager of the premises concerned has failed to comply with a direction of the Director or the Commissioner of Police under section 102.

[13] Section 102

Insert after section 101:

102 Directions concerning premises to which dine-or-drink authority relates

- (1) This section applies to licensed premises that are the subject of an on-licence endorsed with a dine-or-drink authority.
- (2) The Director or the Commissioner of Police may give such directions, orally or in writing, to the licensee or manager of the licensed premises as the Director or Commissioner considers appropriate in the public interest, or (without limitation) for the purpose of minimising harm associated with misuse and abuse of liquor, if the Director or the Commissioner has cause to believe on reasonable grounds that the giving of such a direction is warranted, having regard to:
 - (a) the manner in which the licensed premises are conducted, or
 - (b) the behaviour of patrons of the licensed premises.
- (3) The Director or the Commissioner of Police (as the case requires) may revoke or vary a direction given under this section.

[14] Section 116A Offences by minors in hotels, nightclubs and restaurants

Insert at the end of the section:

- (5) A minor who for any purpose enters or remains on premises to which a dine-or-drink authority relates during a restaurant restricted period is guilty of an offence against this Act unless the minor does so in the company and immediate presence of a responsible adult.

Maximum penalty: 10 penalty units.

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

Insert at the end of section 116B (1) (c):

, or

- (d) enters premises to which a dine-or-drink authority relates during a restaurant restricted period but is not in the company and immediate presence of a responsible adult.

[16] Section 116B (2)

Insert at the end of section 116B (2) (c):

, or

- (d) is on premises to which a dine-or-drink authority relates during a restaurant restricted period but is not in the company and immediate presence of a responsible adult.

[17] Section 116B (3)

Insert "or dine-or-drink authority" after "licence" wherever occurring.

[18] Section 116C Notices to be displayed

Insert after section 116C (3):

- (3A) A holder of an on-licence endorsed with a dine-or-drink authority for premises trading during a restaurant restricted period is guilty of an offence against this Act

unless there is continuously displayed during the restaurant restricted period a notice in the prescribed form that relates to the presence of minors on the premises during the restaurant restricted period.

Maximum penalty: 20 penalty units.

[19] Section 116C (4)

Omit "or (3)". Insert instead “, (3) or (3A)”.

[20] Section 116D Offence by adult accompanying minor

Insert “or dine-or-drink authority” after “licence”.

[21] Section 156 Regulations

Insert “in or” after “notices” where firstly occurring in section 156 (1) (g).

[22] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Liquor Amendment (Restaurants and Nightclubs) Act 1998.

[23] Schedule 1, clause 49 (5)

Insert after clause 49 (4):

- (5) Nothing in this clause authorises the variation of the trading hours of premises to which a nightclub licence relates to permit trading from 3 am on any day if trading is not permitted under this Act for the previous hour.

[24] Schedule 1, clause 50 (4)

Insert after clause 50 (3):

- (4) Nothing in this clause authorises the variation of the trading hours of premises to which a nightclub licence relates to permit trading from 3 am on any day if trading is not permitted under this Act for the previous hour.

[25] Schedule 1

Insert as Part 13:

Part 13 Liquor Amendment (Restaurants and Nightclubs) Act 1998

62 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.

63 Trading hours for certain nightclubs

- (1) This clause applies to premises to which a nightclub relates if:
 - (a) the premises are referred to in section 35C (2) and (3), other than premises referred to in clause 50, 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 later.
- (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.
- (5) Nothing in this clause authorises the variation of the trading hours of premises to which a nightclub licence relates to permit trading from 3 am on any day if trading is not permitted under this Act for the previous hour.

[26] Schedule 5

Insert after Schedule 4:

Schedule 5 Metropolitan areas—dine-or-drink authorities

(Section 56 (9))

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), Statistical Local Area of Hawkesbury (Statistical Local Area 3800), the Statistical Local Area of Gosford (Statistical Local Area 3100) and the Statistical Local Area of Wyong (Statistical Local Area 8550).

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).

[Minister's second reading speech made in—
Legislative Assembly on 23 September 1998
Legislative Council on 24 September 1998]