



New South Wales

Liquor and Registered Clubs Legislation Further Amendment Act 1999 No 27

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Liquor and Registered Clubs Legislation Further Amendment Act 1999 No 27

Act No 27, 1999

An Act to amend the *Liquor Act 1982* and the *Registered Clubs Act 1976* with respect to Governor's licences, entertainment for minors at nightclubs, the presence of minors in registered clubs and other matters. [Assented to 7 July 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Liquor and Registered Clubs Legislation Further Amendment Act 1999*.

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.

4 Amendment of Registered Clubs Act 1976 No 31

The *Registered Clubs Act 1976* is amended as set out in Schedule 2.

Schedule 1 Amendment of Liquor Act 1982

(Section 3)

[1] Section 4 Definitions

Insert “and, in relation to a surf life saving club, includes any gathering of members of the club (and their guests) organised by the club for social purposes” after “entertainment” in the definition of *function* in section 4 (1).

[2] Section 4 (1)

Insert in alphabetical order:

racing club means a body (whether incorporated or unincorporated) registered as a racing club by the *NSW Thoroughbred Racing Board*, *Harness Racing New South Wales* or the *Greyhound Racing Authority (NSW)*.

surf life saving club means a body (whether incorporated or unincorporated) that provides surf life saving services to members of the public in New South Wales.

[3] Section 6 Application of Act

Insert “(or, in circumstances prescribed by the regulations, at other premises)” after “relates” in section 6 (e).

[4] Section 19 Governor may authorise issue of certain licences

Insert after section 19 (2):

(2A) The Minister is not to make a recommendation under subsection (1) unless the Minister is satisfied, on information supplied by the Board or otherwise, that practices will be in place at the licensed premises as soon as the licence is issued that ensure, as far as reasonably practicable, that:

- (a) liquor is sold, supplied and served responsibly on the premises, and
- (b) all reasonable steps are taken to prevent intoxication on the premises,

and that those practices will remain in place while the licence is in force.

[5] Section 19 (5)

Insert after section 19 (4):

- (5) A licence issued under this section ceases to be in force:
- (a) in the case of a licence authorising the sale of liquor at a specified railway station—if the railway station ceases to be regularly serviced by a passenger train (or a motor omnibus or other motor vehicle) operated by or on behalf of the State Rail Authority, or
 - (b) in the case of a licence authorising the sale of liquor on premises referred to in subsection (1) (b)—if the premises cease to be vested in the Crown or a public authority constituted by an Act, or
 - (c) in the case of a licence authorising the sale of liquor at a construction camp or works referred to in subsection (1) (c)—if the construction camp or works have ceased to exist, or
 - (d) in any case—on the expiry of a period of time, if the licence so provides.

[6] Section 19A Duration of licences

Insert after section 19A (3):

- (4) The provisions of this section, in so far as they apply to a licence issued in accordance with section 19, apply in addition to the provisions of section 19 (5).

[7] Section 22 Off-licence—miscellaneous conditions

Omit section 22 (4).

[8] Section 37 Making of application

Insert after section 37 (1):

- (1A) An application for a dine-or-drink authority in respect of premises already licensed as a restaurant need not be advertised in a newspaper or in any other manner, except in so far as the regulations otherwise provide.

[9] Section 51A Functions authorised by permanent on-licence (function)

Insert after section 51A (1) (b):

- , and
- (c) if the licence is held by a racing club or surf life saving club—additional functions at which the sale and supply of liquor is permitted by subsection (3B) or (3C).

[10] Section 51A (3A)–(3E)

Insert after section 51A (3):

- (3A) A reference in subsection (2) (a) to a function does not include a reference to a function permitted by subsection (3B) or (3C).
- (3B) Liquor may be sold or supplied under a licence held by a racing club at functions held on any days on which the club holds race meetings.
- (3C) Liquor may be sold or supplied under a licence held by a surf life saving club at functions, of which notice has been given in accordance with subsection (3D), held on any Saturday, Sunday or public holiday (other than a restricted trading day) in connection with or following an activity associated with the conduct or administration of surf life saving.
- (3D) Notice in writing of a function referred to in subsection (3C) must be given to the Commissioner of Police, the Director and the council in whose area (within the meaning of the *Local Government Act 1993*) the function is to be held, at least 14 days before the day of the function.
- (3E) A licence held by a surf life saving club is subject to the following conditions in respect of each function referred to in subsection (3C):
- (a) the function must be held on club premises (and if the club has several premises, only on its principal premises) and the only participants must be members of the club and their guests, and
- (b) the licensee must ensure that a register is kept on the premises, in which such details as the Director may require concerning any such function are recorded, and

- (c) the function must have been approved by resolution recorded in the records of the governing body of the club, and
- (d) food of a nature and quantity consistent with the responsible sale, supply and service of alcohol must be made available whenever liquor is made available at the function, and
- (e) liquor must not be made available at the function at any time before 12 noon or after 10 pm on the day on which the function is held, and
- (f) liquor must not be made available at the function for a period of more than 4 hours, and
- (g) all persons engaged in the sale, supply or service of liquor at the function must have successfully completed a course of training, approved by the Board, that promotes the responsible sale, supply and service of liquor, and
- (h) the licensee and persons engaged in the sale, supply or service of liquor at the function must take all reasonable steps to ensure that no liquor is available at the function to any person under the age of 18 years, and
- (i) the licensee must ensure that adequate adult supervision is maintained at any time when persons under the age of 18 years are on the premises while the function is being held, and
- (j) police officers and special inspectors are to be permitted full and free access to the premises where the function is held, and to the register referred to in paragraph (b), at all times while the function is being held.

[11] Section 56 Fee for grant of licence

Omit section 56 (9) (a). Insert instead:

- (a) The authority:
 - (i) is not to be issued if one-quarter of the prescribed fee has not been paid within 3 months after the authority is granted, and

- (ii) is not to be issued until one-quarter of the prescribed fee has been paid, and
 - (iii) does not take effect until the authority has been endorsed on the on-licence concerned by the Principal Registrar or another registrar, and
 - (iv) is automatically cancelled on the first anniversary of its grant if any part of the fee for the authority remains unpaid at that date.
- (a1) If the authority is cancelled under paragraph (a) (iv), amounts paid toward the prescribed fee are not refundable to the applicant.

[12] Section 69D

Omit the section. Insert instead:

69D Court approval of manager

- (1) An application for the court's approval of a person's appointment as the manager of licensed premises is to be made in the form approved by the Board.
- (2) The court is not to give its approval unless satisfied that the person concerned is a fit and proper person to manage licensed premises.
- (3) If the court is satisfied on the information before it that there is nothing that might preclude it from giving its approval, but requires more information before making a final decision, the court may give a provisional approval of the person to be such a manager.
- (4) A provisional approval is sufficient to entitle the appointment of the person, in accordance with section 69E, as manager of the licensed premises concerned for a period specified by the court. Any such appointment lapses, however, unless the court confirms its approval within that period (or within such extension of that period as the court may allow).
- (5) An approval or provisional approval may be given so as to apply in relation to particular licensed premises, to all licensed premises of a specified class or to all licensed premises, as the court thinks fit.

[13] Section 86JB Duty on approved gaming devices

Omit “as a debt due to the Crown” from section 86JB (3). Insert instead:

, as a debt due to the Crown, from:

- (a) the hotelier, or
- (b) any person who, at the time the amount became due, was directly interested in the business, or the profits of the business, carried on under the hotelier’s licence.

[14] Section 86L Records and returns

Insert “(other than those connected to an authorised CMS)” after “gaming devices” in section 86L (2).

[15] Section 104E

Insert after section 104D:

104E Trade Practices exemption

- (1) In this section, *local liquor accord* means any code of practice, memorandum of understanding or other arrangement:
 - (a) that affects the supply of liquor, or the opening and closing of licensed premises, or both, and
 - (b) that is entered into in writing between two or more licensees (or between one or several licensees and one or several clubs registered under the *Registered Clubs Act 1976*), with the approval of the Commissioner of Police or a delegate of the Commissioner, for the purpose of eliminating or reducing alcohol-related violence or anti-social behaviour or other alcohol-related harm.
- (2) Entry by any person into a local liquor accord to which this section applies, and any conduct on the part of any person for the purpose of promoting or giving effect to the terms of a local liquor accord, are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.

- (3) Conduct authorised by subsection (2) is authorised only to the extent (if any) to which the conduct, so far as it consists of things done to regulate the supply of liquor or in some other respect, would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

[16] Section 111A Functions for minors on licensed premises

Insert “or a nightclub licence” after “hotelier’s licence” in section 111A (1).

[17] Section 111B Procedure for grant of minors functions authority

Insert “or a nightclub licence” after “hotelier’s licence” in section 111B (1).

[18] Section 111C Conditions of minors functions authority

Insert after section 111C (2):

- (2A) In addition to conditions imposed by or under subsections (1) and (2), a minors functions authority in force in relation to the licensed premises of a nightclub is subject to the following conditions:
- (a) no liquor is to be sold or supplied on the premises while any function is being held pursuant to the authority,
 - (b) a period of one hour (or such longer period as the court may approve) must elapse, following the conclusion of any such function, before the sale or supply of liquor on the premises is resumed.

[19] Section 112 Authority for use of part of premises by minor in company of responsible adult

Omit “or the Commissioner” where secondly occurring in section 112 (1).

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

Omit “subsection (1) or (2)” from section 116A (3).

Insert instead “this section”.

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

Insert after section 116B (4):

- (5) Subsections (1) (c) and (2) (c) do not apply to that part of any licensed premises to which a minors functions authority under section 111A applies and in which, at the material time, a function is being held in pursuance of the authority.

[22] Section 139 False or misleading statements

Insert “, or could reasonably be expected to know” after “knows” in section 139 (1).

[23] Section 140 Averments

Insert “(however expressed)” after “allegation” where firstly occurring in section 140 (1).

[24] Section 140 (1) (d8)–(d13)

Insert after section 140 (1) (d7):

- (d8) that a minors functions authority is in force in respect of a specified part of any premises,
- (d9) that an authorisation under section 112 is in force in respect of a specified part of any premises,
- (d10) that a specified area is a reception area,
- (d11) that a specified condition has been, and remains, imposed on a specified licence,
- (d12) that a specified person has been approved under Division 8A of Part 3 as the manager of specified licensed premises,
- (d13) that a specified gaming device is an approved gaming device,

[25] Section 161 Authority to keep approved gaming devices

Insert after section 161 (12):

- (13) If the hotelier's licence is held by a body corporate or a partnership, an application under this section may be lodged, and supporting information may be furnished and verified, on the hotelier's behalf by the manager approved by the court under Division 8A of Part 3.

[26] Section 200AA Meaning of "connected" to an authorised CMS

Omit "to the CMS licensee" from section 200AA (1).

[27] Section 200AA (2A)

Insert after section 200AA (2):

- (2A) Such arrangements may make provision for or with respect to the time within which, and the person to whom, information is to be furnished.

[28] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Liquor and Registered Clubs Legislation Further Amendment Act 1999

[29] Schedule 1 Savings and transitional provisions

Insert in appropriate order and with appropriate Part and clause numbers:

Part Liquor and Registered Clubs Legislation Further Amendment Act 1999

Definition

In this Part, *amending Act* means the *Liquor and Registered Clubs Legislation Further Amendment Act 1999*.

Authorisation and cancellation of Governor's licences

- (1) Section 19 (2A) applies in respect of an application for a Governor's licence that was made but not determined before the date on which that subsection commenced, as well as in respect of applications made on or after that date.
- (2) A Governor's licence:
 - (a) that is of a kind referred to in paragraph (a), (b) or (c) of section 19 (5), and
 - (b) in respect of which an event of the kind referred to in any of those paragraphs occurred before the commencement of that subsection, and
 - (c) under which liquor is still being sold or supplied at the commencement of that subsection,ceases to be in force 2 years after the commencement of that subsection, unless sooner cancelled or surrendered in accordance with this Act.

Advertising of dine-or-drink authorities

- (1) Section 37 (1A) applies to an application under section 37 that was made but not determined before the date on which that subsection commenced, as well as to applications made on or after that date.
- (2) Section 56, as amended by the amending Act, applies in respect of an application under section 23AD that was made but not determined before the date on which the amendment took effect, as well as in respect of applications made on or after that date.

Function licences held by racing clubs and surf life saving clubs

Section 51A, as amended by the amending Act, applies in respect of a function licence in force on the date on which the amendments took effect, as well as in respect of a licence granted on or after that date.

Approval of managers of licensed premises

The provisions of section 69D, as inserted by the amending Act, apply in respect of an application for approval that was made but not determined before the date on which those provisions commenced, as well as in respect of applications made on or after that date.

Recovery of duty on approved gaming devices

Section 86JB, as amended by the amending Act, applies in respect of any amount of duty that became or becomes due from a hotelier on or after 1 January 1998.

Trade practices exemption

Section 104E applies to a local liquor accord entered into before or after the commencement of that section.

Authority for use of part of premises by minor

The amendment made by the amending Act to section 112 does not affect any condition imposed on an authorisation granted under that section before the amendment took effect.

Schedule 2 Amendment of Registered Clubs Act 1976

(Section 4)

[1] Section 4 Definitions

Omit the definition of *guest* from section 4 (1). Insert instead:

guest:

- (a) of a full member, provisional member or honorary member of a registered club, means a person:
 - (i) whose name and address (unless the person is a minor), countersigned by the member, are entered in a register kept for the purpose by the club, and
 - (ii) who, at all times while on the club premises, remains in the reasonable company of the member, and
 - (iii) who does not remain on the club premises any longer than the member, and
- (b) of a temporary member of a registered club, means a minor:
 - (i) who, at all times while on the club premises, remains in the company and immediate presence of the member, and
 - (ii) who does not remain on the club premises any longer than the member, and
 - (iii) in relation to whom the member is a responsible adult.

[2] Section 4 (1), definition of “responsible adult”

Insert in alphabetical order:

responsible adult means a person of or above the age of 18 years who, in relation to a minor, belongs to one or more of the following classes of persons:

- (a) a parent, step-parent or guardian of the minor,

- (b) the minor's spouse or any person who, although not legally married to the minor, ordinarily lives with the minor as the minor's spouse on a permanent and domestic basis,
- (c) a person who for the time being has parental responsibility for the minor.

[3] Section 30 Rules of registered clubs

Insert "(or a subclass of full members determined by a rule of the kind referred to in subsection (9))" before "are entitled" in section 30 (1) (a).

[4] Section 30 (9) (a)

Omit "annual".

[5] Section 45 Unauthorised persons using defined premises of registered club

Omit "full member, a provisional member or an honorary" from section 45 (1) (a).

[6] Section 45 (2)

Omit "full members, provisional members and honorary" from section 45 (2).

[7] Section 51A Minors passing through poker machine areas

Omit the section.

[8] Section 51B

Insert before section 52:

51B Sale or supply of liquor by minor

- (1) If in a registered club a person under the age of 18 years is permitted to sell, supply or serve liquor on the premises of the club, the registered club and the secretary of the club are each guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) No offence is committed under this section if the person under the age of 18 years:
- (a) was permitted to sell, supply or serve liquor only in the dining rooms or other unrestricted areas of the club, and
 - (b) was permitted to do so with the consent of the Board (proof of which lies on the defendant).

[9] Section 52AA

Insert after section 52:

52AA Minors passing through bars or poker machine areas

- (1) It is a sufficient defence to a prosecution for an offence arising under section 50 (1) (b) or (2A), 50A, 51 (1) (e) or 52 if it is proved that the minor concerned:
- (a) was present in the bar or poker machine area only for so long as was reasonably necessary to pass through it in order conveniently to gain access to another area of the club that the minor may enter without contravening this Act, and
 - (b) was at all times while in the bar or poker machine area in the company and immediate presence of a responsible adult.
- (2) The defences provided by this section are in addition to any other available defences.

[10] Section 55 False or misleading statements

Insert “, or could reasonably be expected to know” after “knows” in section 55 (1).

[11] Section 66 Penalty notices

Insert “or Division 6 of Part 11” after “17AAA” wherever occurring in section 66 (4) and (6).

[12] Section 67 Power to demand certain particulars from certain persons on premises of registered clubs

Insert “, or a minor who is the guest of a member” after “club” wherever occurring in section 67 (2) (b) (i) and (3) (b) (i).

[13] Section 76A

Insert after section 76:

76A Trade Practices exemption

- (1) In this section, *local liquor accord* means any code of practice, memorandum of understanding or other arrangement:
 - (a) that affects the supply of liquor, or the opening and closing of registered clubs, or both, and
 - (b) that is entered into in writing by two or more registered clubs (or between one or several registered clubs and one or several persons licensed under the *Liquor Act 1982*), with the approval of the Commissioner of Police or a delegate of the Commissioner, for the purpose of eliminating or reducing alcohol-related violence or anti-social behaviour or other alcohol-related harm.
- (2) Entry by any person into a local liquor accord to which this section applies, and any conduct on the part of any person for the purpose of promoting or giving effect to the terms of a local liquor accord, are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*.
- (3) Conduct authorised by subsection (2) is authorised only to the extent (if any) to which the conduct, so far as it consists of things done to regulate the supply of liquor or in some other respect, would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

[14] Section 87H Records and returns

Insert “(other than devices connected to an authorised centralised monitoring system)” after “gaming devices” in section 87H (2) (a).

[15] Schedule 2 Transitional provisions

Insert at the end of clause 1A (1):

*Liquor and Registered Clubs Legislation Further Amendment
Act 1999*

[16] Schedule 2 Transitional provisions

Insert in appropriate order and with appropriate Part and clause numbers:

**Part Liquor and Registered Clubs Legislation Further
Amendment Act 1999**

Trade practices exemption

Section 76A applies to a local liquor accord entered into before
or after the commencement of that section.

[Minister's second reading speech made in—
Legislative Assembly on 23 June 1999
Legislative Council on 1 July 1999]