



New South Wales

National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The National Competition Policy (*NCP*) reform program was established on 11 April 1995 under the auspices of the Council of Australian Governments. The NCP is implemented through three agreements:

- (a) the *Conduct Code Agreement*,
- (b) the *Competition Principles Agreement*,
- (c) the *Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement)*.

Under the *Competition Principles Agreement*, all governments agreed to put in place a range of structural reforms, including the review and reform of all legislation that restricts competition. Reform of legislation is required unless the benefits of restrictions to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

In return for complying with the obligations set out in the three NCP agreements, including legislation review and reform, the Commonwealth agreed to provide annual competition payments to the States and Territories. The NCP agreements recognised that while the States and Territories have responsibility for implementing the major competition reforms, much of the financial dividend from the economic growth arising out of NCP reforms accrues to the Commonwealth rather than the States and Territories through higher income tax receipts. Competition payments to the States and Territories represent their share of the financial benefits arising from the NCP reforms. In 2003–2004, New South Wales' maximum competition payment entitlement is \$254.4 million.

The National Competition Council (*NCC*) has assessed New South Wales as having fulfilled all of its obligations under the three NCP agreements, with the exclusion of certain legislation review and reform activity. Among other areas, the Council has expressed dissatisfaction in relation to the degree of reform undertaken in the regulation of liquor.

The Commonwealth has accepted the *NCC*'s recommendation to impose a penalty for New South Wales' 2003–04 competition payments of \$50.8 million. \$12.7 million of this penalty specifically applies to incomplete reform in respect of liquor regulation. The legislative amendments made by this Bill seek to ensure that this penalty is not imposed in future years.

The object of this Bill is to amend the *Liquor Act 1982* as follows:

- (a) to remove the "needs test" that currently applies in relation to hotelier's licences and off-licences (retail) and to replace it with a social impact assessment process in connection with applications for the grant or removal of such licences,
- (b) to provide that an off-licence (retail) that relates to a service station cannot be granted,
- (c) to provide that the existing restrictions on granting an off-licence (retail) that apply in relation to convenience stores will also apply to other general stores such as mixed business shops, corner shops and milk bars,
- (d) to provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations instead of being fixed by the Liquor Administration Board,
- (e) to provide that an annual fee will be payable in respect of a hotelier's licence or an off-licence (retail),
- (f) to make other ancillary and consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2004, unless sooner commenced by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Liquor Act 1982* set out in Schedule 1.

Schedule 1 Amendments

Replacement of “needs test” with social impact assessment process

At present under section 45 (2) of the *Liquor Act 1982* (the *Principal Act*), an objection to the grant by the Licensing Court of an application for, or for the removal of, a hotelier’s licence or an off-licence to sell liquor by retail (eg a bottle shop) may be taken on the ground that the needs of the public in the neighbourhood of the premises to which the application relates can be met by facilities for the supply of liquor existing in, and outside, the neighbourhood. **Schedule 1 [4]** omits section 45 (2) so as to remove the taking of an objection on such a ground. **Schedule 1 [2], [3], [5]–[7] and [16]** are consequential amendments.

In place of the current “needs test” in relation to hoteliers’ licences and off-licences (retail), **Schedule 1 [17]** inserts a new Division 6A into Part 3 of the *Principal Act* that provides for a social impact assessment process in relation to applications for the grant or removal of such a licence. Under the new Division, the Licensing Court cannot grant such an application unless a social impact assessment has been provided to the Liquor Administration Board in connection with the application and the Board has approved the social impact assessment. The regulations may make provision with respect to the requirements of a social impact assessment and the applicant will be required to publicly advertise the matter. In approving a social impact assessment, the Board must be satisfied that the overall social impact of the application being granted will not be detrimental to the local community or the broader community.

Licences relating to general stores and service stations

At present under section 49C (2) of the *Principal Act*, an off-licence (retail) that relates to a convenience store or a service station may not be granted unless the Licensing Court is satisfied that no other take-away liquor service is reasonably available in the neighbourhood and the licence would not encourage drink-driving or other liquor-related harm. **Schedule 1 [8]–[10]** amend section 49C in two respects. Firstly, service stations will be prevented from being granted an

off-licence (retail) in any circumstances, and the definition of *service station* is replaced so that it refers to a building or place used primarily for the fuelling of motor vehicles. Secondly, the term *convenience store* is replaced with *general store* so that the restriction on granting an off-licence (retail) to such a store will extend to other similar stores such as mixed business shops, corner shops and milk bars regardless of their opening hours.

Licence fees

Schedule 1 [11] and [12] provide that the fee for granting a hotelier's licence or an off-licence (retail) will be the fee prescribed by (or determined in accordance with) the regulations. At present, the fee for the granting of such a licence is fixed by the Board. **Schedule 1 [13] and [14]** are consequential amendments.

Schedule 1 [15] provides that an annual fee prescribed by (or determined in accordance with) the regulations will be payable in respect of a hotelier's licence or an off-licence (retail). The fee will be payable within 21 days of 31 July in each year and the licence will be cancelled if the fee is not paid. **Schedule 1 [1]** is a consequential amendment.

Savings and transitional provisions

Schedule 1 [18] provides for the making of savings and transitional regulations as a consequence of the proposed amendments to the Principal Act, and **Schedule 1 [19]** provides that the proposed amendments that replace the "needs test" with the social impact assessment process will not apply to pending applications under the Act. The amendments relating to service stations and general stores will extend to pending applications under the Act.



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National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Bill 2004

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National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Bill 2004

No. , 2004

A Bill for

An Act to amend the *Liquor Act 1982* in connection with Commonwealth financial penalties arising from National Competition Policy reviews.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004</i> .	3 4
2 Commencement	5
This Act commences on 1 July 2004, unless sooner commenced by proclamation.	6 7
3 Amendment of Liquor Act 1982 No 147	8
The <i>Liquor Act 1982</i> is amended as set out in Schedule 1.	9

Schedule 1 Amendments

(Section 3)

[1] Section 19A Duration of licences

Insert “56B, 56C or” after “section” in section 19A (3).

[2] Section 36 Restrictions on liquor licence applications

Omit section 36 (6).

[3] Section 45 Grounds of objection

Omit “(2), (2AA),” from section 45 (1) (c).

[4] Section 45 (2)

Omit the subsection.

[5] Section 45 (4)

Omit “, (2)”.

[6] Section 45 (4) (c)

Omit the paragraph.

[7] Section 47 Grant of application is discretionary in certain cases

Omit “, (2)” from section 47 (1).

[8] Section 49C Grant of off-licence (retail)

Omit “convenience store or service station” from section 49C (2).

Insert instead “general store”.

[9] Section 49C (2A)

Insert after section 49C (2):

(2A) An application for, or to remove, an off-licence to sell liquor by retail that relates to a service station may not be granted in any circumstances.

[10] Section 49C (3)	1
Omit the subsection. Insert instead:	2
(3) In this section:	3
<i>general store</i> means a convenience store, mixed business shop, corner shop or milk bar that has a retail floor area of not more than 240 square metres and that is used for the purpose of selling, exposing or offering for sale by retail principally groceries, smallgoods or associated small items.	4 5 6 7 8
<i>service station</i> means a building or place used primarily for the fuelling of motor vehicles involving the sale by retail of petrol, oil or other petroleum products.	9 10 11
[11] Section 56 Fee for grant of licence	12
Omit “the fee fixed by the Board for the licence” from section 56 (1) (a).	13
Insert instead “the fee prescribed by the regulations or determined in accordance with the regulations”.	14 15
[12] Section 56 (1) (b)	16
Omit “such fee as is fixed by the Board for the licence”.	17
Insert instead “the fee prescribed by the regulations or determined in accordance with the regulations”.	18 19
[13] Section 56 (2)	20
Omit the subsection.	21
[14] Section 56 (4)	22
Omit “(except paragraphs (a) and (b)) or (3) prescribe”.	23
Insert instead “, prescribe”.	24
[15] Section 56C	25
Insert after section 56B:	26
56C Annual fee for hotelier’s licence or off-licence (retail)	27
(1) A fee prescribed by, or determined in accordance with, the regulations is payable in respect of a hotelier’s licence or an off-licence to sell liquor by retail.	28 29 30

(2)	The fee must be paid within the period of 21 days after 31 July in each calendar year for which the licence is in force. The licence is cancelled if the fee is not paid within that 21-day period.	1 2 3 4
(3)	The regulations may provide for exemptions with respect to the payment of fees under this section.	5 6
(4)	An application may be made to the court for the reinstatement of a hotelier's licence, or an off-licence to sell liquor by retail, that has been cancelled by the operation of this section. An application for reinstatement of a licence may only be made within 2 months after the cancellation of the licence.	7 8 9 10 11
(5)	The court may order reinstatement of the licence but only if satisfied that there is a reasonable explanation for the failure to pay the fee that resulted in cancellation of the licence.	12 13 14
(6)	The reinstatement of a licence does not take effect until the unpaid fee is paid.	15 16
[16]	Section 57 Removal of hotelier's licence or off-licence (retail)	17
	Omit section 57 (4).	18
[17]	Part 3, Division 6A	19
	Insert after Division 6:	20
	Division 6A Social impact assessment process	21
62B	Application of Division	22
(1)	This Division applies to an application (referred to in this Division as a <i>relevant application</i>) for the grant or removal of:	23 24 25
(a)	a hotelier's licence, or	26
(b)	an off-licence to sell liquor by retail.	27
(2)	A reference in this Division to the premises to which a relevant application relates is, in the case of the removal of the licence concerned, a reference to the premises to which, if the application were granted, the licence would be removed.	28 29 30 31

62C	Social impact assessment required before relevant application may be granted	1 2
(1)	The court must not grant a relevant application unless:	3
(a)	a social impact assessment has been provided to the Board in connection with the application, and	4 5
(b)	the Board has approved the social impact assessment.	6
(2)	A social impact assessment must comply with this Division and the regulations.	7 8
(3)	A social impact assessment provided to the Board must be accompanied by such fee as may be prescribed by the regulations.	9 10 11
(4)	A social impact assessment may be provided before the relevant application to which it relates is made.	12 13
62D	Requirements in relation to social impact assessments	14
	The regulations may make provision for or with respect to the following:	15 16
(a)	the requirements that must be satisfied in connection with a social impact assessment,	17 18
(b)	the matters to be assessed or addressed by a social impact assessment,	19 20
(c)	the information to be provided by a social impact assessment.	21 22
62E	Advertising of social impact assessment	23
(1)	If a social impact assessment is provided to the Board in connection with a relevant application, the applicant must:	24 25
(a)	place a copy of the social impact assessment on public exhibition at the premises to which the application relates, and	26 27 28
(b)	publish an advertisement in relation to the social impact assessment:	29 30
(i)	in a newspaper circulating throughout the State, and	31 32
(ii)	in a local newspaper circulating in the local government area in which the premises are situated, and	33 34 35

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- (c) provide a copy of the social impact assessment to the Director and the local council for that area at or before the time the advertisement is published. 1
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- (2) If the premises to which the relevant application relates are not yet erected or occupied by the applicant, subsection (1) (a) is complied with if the social impact assessment is dealt with as provided by the regulations. 4
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- (3) The advertisement under subsection (1) (b) must: 8
- (a) be in the form approved by the Board, and 9
- (b) state that a copy of the social impact assessment will be available for public inspection at the place specified in the advertisement, and 10
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- (c) invite written submissions on the matter to be made to the Board within 30 days after the publication of the advertisement. 13
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- (4) The social impact assessment is not to be determined by the Board until after the expiration of that 30-day period. 16
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- (5) In determining the social impact assessment, the Board must take into account any written submission made on the matter within that 30-day period. 18
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- (6) The regulations may exclude any specified class of social impact assessments from the operation of this section. 21
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- 62F Approval of social impact assessment** 23
- (1) The Board may approve a social impact assessment that is provided in connection with a relevant application only if the Board is satisfied that: 24
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- (a) the social impact assessment complies with this Division and the regulations, and 27
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- (b) the overall social impact of the application being granted by the court will not be detrimental to the local community or to the broader community. 29
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- (2) If, in determining a social impact assessment, the Board incurs any costs that are not covered by the fee referred to in section 62C (3), the applicant is liable to meet those costs. The Board may refuse to determine the social impact assessment until any such costs are paid or provision, to the Board's satisfaction, has been made for their payment. 32
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(3)	The Minister may issue written guidelines to the Board in relation to the following matters:	1
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(a)	the factors that are to be taken into account by the Board in determining a social impact assessment,	3
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(b)	the criteria for determining the local community and the broader community for the purposes of subsection (1) (b),	5
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(c)	the manner in which the Board is to exercise its functions in relation to a social impact assessment,	8
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(d)	the appropriate form for a social impact assessment.	10
(4)	In exercising any of its functions in relation to a social impact assessment, the Board is subject to the guidelines issued by the Minister under subsection (3).	11
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[18]	Schedule 1 Savings and transitional provisions	14
	Insert at the end of clause 1 (1):	15
	<i>National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004</i>	16
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[19]	Schedule 1, Part 21	18
	Insert after Part 20:	19
Part 21	National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004	20
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94	Pending applications	23
(1)	The amendments made to this Act by Schedule 1 [2]–[7], [11]–[14], [16] and [17] to the <i>National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004</i> do not apply:	24
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(a)	to an application pending under this Act on the commencement of those amendments, or	28
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(b)	to an application under section 60 for a final grant of an application conditionally granted under section 40 before the commencement of those amendments.	30
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National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Bill 2004

Amendments

Schedule 1

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- (2) Subject to the regulations, the amendments made to this Act by Schedule 1 [8]–[10] to the *National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Act 2004* extend to an application pending under this Act on the commencement of those amendments.

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