

[Act 1996 No 42]



New South Wales

# Liquor and Registered Clubs Legislation Amendment (Enforcement) Bill 1996

## Explanatory note

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

### Overview of Bill

This Bill amends the *Liquor Act 1982* and the *Registered Clubs Act 1976* to achieve the following objects:

- (a) to amend the definitions of *close associate* in both Acts to cover a wider class of persons,
  - (b) to change the grounds of objection to the grant of a liquor licence so that objection can be taken on the ground that a person who is, was or will be a close associate of the licensee is not a fit and proper person (and to make parallel amendments for gaming-related licences),
  - (c) to provide for the taking of complaint action under those Acts directly against a close associate of the holder of a liquor licence or gaming-related licence on the ground that the close associate is not a fit and proper person or that a contravention has occurred that the close associate knew or ought reasonably to have known was likely to occur,
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- (d) to change the power of the Licensing Court to disqualify a licensee against whom a complaint is established so that the period of disqualification will not be limited to a maximum of 3 years as at present (and to make parallel amendments for registered clubs and gaming-related licences),
- (e) to provide for the Licensing Court to have power to disqualify persons from being close associates of liquor licensees and gaming-related licensees,
- (f) to provide for a review of disqualifications lasting more than 3 years,
- (g) to amend the provisions that require the lodging of affidavits as to persons who have an interest in the business of licensed premises and gaming-related licences,
- (h) to require the notification of the appointment of a manager for licensed premises in areas to be identified by the regulations,
- (i) to provide police officers with the power to deal with offences under the Acts concerned by means of Court Attendance Notices as provided under the *Justices Act 1902* for summary offences,
- (j) to increase penalties for a range of offences under the Acts concerned with the responsibilities of licensees and others for conduct on licensed premises and in registered clubs,
- (k) to provide for disciplinary action of increased severity to be available where a complaint against a licensee or registered club involves serious breaches of offences concerned with intoxication, violent conduct, drugs or stolen goods,
- (l) to place certain restrictions on applying for a new on-licence for a theatre if a licence for the relevant premises has already been cancelled,
- (m) to make failure to comply with certain requirements given by the Director of Liquor and Gaming (“the Director”) a ground of complaint or objection to the grant of an application in certain circumstances,
- (n) to require the Licensing Court, in proceedings before the Court, to take into account the findings of certain bodies,
- (o) to enable the Licensing Court to make appropriate orders in certain cases where a provisional grant of an application for the transfer of a licence ceases (for example, because an objection has been made to the transferee),

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- (p) to prevent the use or possession of prohibited drugs on licensed premises or the premises of a registered club,
  - (q) to increase the powers of entry, search and seizure of police officers and special inspectors,
  - (r) to provide more detail in relation to the current defence provided to the offence of permitting intoxication on licensed premises,
  - (s) to enable regulations to be made prescribing guidelines for the assistance of licensees and secretaries of registered clubs and employees in determining indications of intoxication,
  - (t) to increase the time limit for the taking of proceedings for certain offences under those Acts,
  - (u) to allow penalty notices for offences to be issued by the Director or a special inspector appointed under the *Liquor Act 1982*,
  - (v) to state the nature of the disciplinary jurisdiction of the Licensing court,
  - (w) to require investigations and reports to be received and considered before the Licensing Court grants licensing applications,
  - (x) to enable orders to be made by an authorised justice or the Licensing Court to temporarily close licensed premises in circumstances where offences are being committed and there is a threat to the public interest,
  - (y) to enable courts to impose additional penalties related to licences or certificates of registration of clubs when imposing penalties for offences committed by licensees or managers of licensed premises or by registered clubs,
  - (z) to provide for the forfeiture to the Crown of liquor found on the premises concerned after 7 days after cancellation of a licence and to enable special inspectors to seize forfeited liquor,
- to make miscellaneous 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 a day or days to be proclaimed.

**Clause 3** gives effect to the amendments to the *Liquor Act 1982* as set out in Schedule 1.

**Clause 4** gives effect to the amendments to the *Registered Clubs Act 1976* as set out in Schedule 2.

## **Amendments (Schedules 1 and 2)**

### **Close associates of licensees and registered clubs**

The definitions of *close associate* in both Acts are amended so as to include (among others) any person receiving any financial benefit or advantage from the carrying on of the business of licensed premises, a registered club or a gaming-related licence or any entitlement to receive any rent, profit or other income in connection with the use of the premises on which the business is carried on if the benefit, advantage or entitlement will enable the person to exercise (in the opinion of the Licensing Court or the Director) a significant influence over the management or operation of the business. Financial interests of banks, building societies and credit unions will not be relevant. (See Schedule 1 [1], [3] and [4] and Schedule 2 [1]-[3])

Applications for certain liquor licences, for gaming-related licences and for transfers of licences must be accompanied by affidavits stating the persons who will have an interest in the application or the business. Both Acts are amended to specify what constitutes an interest in a business for the purposes of those affidavits. Banks, building societies and credit unions will not need to be referred to in such affidavits. (See Schedule 1 [8], [54] and [65] and Schedule 2 [38] and [61])

Both Acts are amended to remove provisions requiring an applicant for licensed premises or a gaming-related licence, or a licensee or holder of a gaming-related licence, to produce to the Licensing Court an agreement with each person named in the affidavit that the applicant or licensee will have the full, free and unfettered control of the business and will not be paid a commission or allowance in relation to the liquor sales or receipts from the business. The amendments do not affect other provisions in the *Registered Clubs Act 1976* that prevent persons holding certain positions in a registered club from receiving payments relating to the quantity of liquor sold or the receipts of the club. (See Schedule 1 [9], [10], [65] and [66] and Schedule 2 [38] and [61])

Amendments are made to both Acts to provide that an objection may be made against an application for a liquor licence or a gaming-related licence on the ground that a close associate is not a fit and proper person or a requirement of the Director has not been complied with. A complaint may be made against a liquor licensee or holder of a gaming-related licence or against a close associate of a liquor licensee or holder of a gaming-related licence on the ground that the close associate is not a fit and proper person or

a requirement of the Director has not been complied with. In addition, a complaint may be made against a close associate on the ground that the close associate knew or ought reasonably to have known that conduct of the kind to which the complaint relates was occurring and the close associate failed to take all reasonable steps to prevent conduct of that kind occurring. (See Schedule 1 [14]–[22], [24], [26]–[28], [35], [39], [41]–[43] and [51] and Schedule 2 [42], [44], [49]–[55])

Schedule 1 [36]–[38] and [40] contain consequential amendments.

### **Disciplinary jurisdiction of Licensing Court**

The *Liquor Act 1982* is amended to include a provision stating that the Licensing Court, when dealing with complaints relating to licensees, other persons and premises under both Acts, may take into account the deterrent or punitive effect (or both) of its decision, despite any other law. The Court will not be required to take into account any mitigation of the subject-matter of a complaint when imposing a penalty for a complaint. (See Schedule 1 [6])

Both Acts currently limit the period for which the Licensing Court may disqualify a licensee or holder of a gaming-related licence from holding a licence or the secretary or a member of the governing body of a registered club from holding office as such. The amendments will remove this limitation. The amendments will also enable the Licensing Court to disqualify a close associate of a licensee or holder of a gaming-related licence from being a close associate or from holding a licence, or to reprimand or fine the close associate, if satisfied that a ground of complaint against the close associate has been made out. (See Schedule 1 [46], [53], [55] and [57] and Schedule 2 [15] and [58])

Both Acts are amended to provide for an application to be made for a review by the Licensing Court of a disqualification, or declaration of ineligibility to hold a certain office, imposed by the Licensing Court for a period of more than 3 years. (See Schedule 1 [89] and [91] and Schedule 2 [17] and [19])

### **Restrictions on applying for licence after cancellation**

The *Liquor Act 1982* is amended to provide that where an on-licence relating to a theatre is cancelled (except for failure to pay the licence fee) application for a new licence relating to the same premises may not be made for a period of 2 years. At present this limitation applies to on-licences for restaurants and caterers' licences. Applications for gaming-related licences are not affected by the amendment. (See Schedule 1 [7])

### **Powers of Director of Liquor and Gaming**

Both Acts enable the Director to investigate certain applications and complaints. The amendments extend those powers of the Director to the investigation of close associates. The amendments also remove provisions relating to the power of the Director to obtain information about relations of a person under investigation.

The Licensing Court may refuse to hear an application if a requirement made by the Director is not complied with. The Licensing Court may grant an application if a requirement of the Director has not been complied with, but only if the Court is satisfied that there was a reasonable cause for the failure. (See Schedule 1 [12], [13], [25] and [32]–[34] and Schedule 2 [16], [39]–[41], [45]–[48])

### **Licensing Court to take into account certain findings**

Both Acts are amended to provide that when hearing and determining a complaint or an application for a licence or a certificate of registration, the Licensing Court must admit into evidence and consider any relevant findings of a court, a tribunal or a Royal Commission, the Independent Commission Against Corruption, any other commission of inquiry or a coroner in any investigation, inquiry or other proceeding if those findings have been publicly released and are brought to the attention of the Court. (See Schedule 1 [23] and [56] and Schedule 2 [7], [10], [12], [14], [43] and [60])

### **Licence not to revert to transferor in certain cases**

The *Liquor Act 1982* provides that if a provisional grant of the transfer of a licence ceases in certain circumstances (for example, if an objection is lodged to the application for transfer) the licence reverts to the transferor. The Act is amended to provide that in those circumstances the licence does not automatically revert to the transferor but, instead, the Licensing Court may make such orders as it considers appropriate, including an order that the licence is to revert to the transferor, an order treating a person (with the person's consent) as licensee until a transfer of the licence is effected or an order that the licence is not to be exercised until certain conditions are met or the Court orders otherwise. (See Schedule 1 [29] and [30])

### **Consideration of reports on applications**

Both Acts are amended to provide that the Licensing Court must not grant an application for a liquor licence, or transfer of a liquor licence, or a gaming-related licence unless it has considered the results of the Director's investigations. If the results are not received by the Court within 3 months after the application is lodged (or such longer time as is allowed by the Court), the Court may proceed to grant or refuse the application. (See Schedule 1 [31] and Schedule 2 [37])

### **Increased penalties in special circumstances**

Both Acts are amended to enable the Licensing Court to impose greater penalties in complaint proceedings where circumstances of aggravation exist. Those circumstances involve serious contraventions of provisions concerning the sale of stolen goods or use or sale of drugs on licensed premises or the premises of a registered club. (See Schedule 1 [44], [45], [50] and [52] and Schedule 2 [4], [5], [56], [57] and [59])

### **Management of licensed premises**

The *Liquor Act 1982* is amended to provide that a licensee of premises in a special area is responsible for the personal supervision and management of the conduct of the business on the premises unless a manager is appointed for the premises or in other specified circumstances. Special areas will be prescribed by the regulations. (See Schedule 1 [60] and [65])

A manager of licensed premises in a special area may not be appointed for the premises unless the licensee has first notified the Licensing Court. (See Schedule 1 [60])

Managers appointed in these circumstances are responsible for the personal supervision and management of the conduct of the business on the premises whenever the licensee is not personally present. (See Schedule 1 [62])

Licensees in other areas will have the supervision of the conduct of the business on the licensed premises but will no longer be required to have the immediate supervision. (See Schedule 1 [65])

Schedule 1 [2], [47]–[49], [58], [59], [63] and [63] contain consequential amendments.

### **Increase in penalties**

Both Acts are amended to increase the maximum penalty for certain offences dealing with the following:

- (a) the management of licensed premises,
- (b) making false or misleading statements in affidavits or statutory declarations executed for the purposes of the Act.

(See Schedule 1 [64] and [81] and Schedule 2 [24])

### **Possession and use of prohibited drugs on licensed premises**

At present it is an offence for a licensee under the *Liquor Act 1982*, or the secretary of a registered club under the *Registered Clubs Act 1976*, an employee of a licensee or registered club, or a person in charge of licensed premises or a registered club to permit the sale on licensed premises or club premises (as the case may be) of any substance suspected to be a prohibited plant or prohibited drug under the *Drug Misuse and Trafficking Act 1985*. The amendments:

- (a) increase the maximum penalty for this offence from \$1,000 to \$5,000, and
- (b) prohibit such a person from permitting the possession or use of prohibited plants or prohibited drugs on licensed premises or club premises, and
- (c) give a licensee, the secretary of a registered club and any employee of a licensee or registered club power to refuse entry to or turn out any person who uses or is in possession of a substance suspected to be a prohibited plant or prohibited drug while on the licensed premises or club premises (as the case may be), and
- (d) increase the maximum penalty for a failure to comply with such a direction to quit the premises from \$1,000 to \$5,000.

(See Schedule 1 [67]–[69] and [78]–[80] and Schedule 2 [22], [23] and [34])

### **Temporary closure of premises**

Both Acts are amended to enable the temporary closure, by order, of licensed premises and registered clubs. There are 2 separate powers of closure. An authorised justice, on the application of the Director or the Commissioner of Police, is empowered to make orders requiring the closure of licensed premises or registered clubs, for a period of up to 72 hours, if of the opinion

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that there is a serious breach of the Act or that one is likely to occur and that the closure is necessary to prevent or reduce a significant threat or risk to the public interest. It will be an offence to fail to comply with an order (maximum penalty \$5,000 or imprisonment for 6 months, or both). Provisions are included allowing urgent applications to be made by telephone, radio, facsimile or other communication device.

The Licensing Court is also empowered, on application by the Director or the Commissioner, to make orders requiring the closure of licensed premises or registered clubs if of the opinion that there is a serious breach of the Act or that one is likely to occur and that the closure is necessary to prevent or reduce a significant threat or risk to the public interest. The order will cease to have effect at a specified time or when a relevant complaint is determined. It will be an offence to fail to comply with an order (maximum penalty \$5,000 or imprisonment for 6 months, or both). Orders by the Court may not be for a period longer than allowed by the regulations but consecutive orders may be granted. An appeal may be made to the Licensing Court against a closure order made by it. (See Schedule 1 [70] and [90] and Schedule 2 [8] and [18])

### **Powers of police and special inspectors**

Both Acts enable the Commissioner of Police or a police officer to enter licensed or registered premises at any time on reasonable suspicion that a breach of the Act has been or is being committed on the premises. The amendments will extend this power to special inspectors. In exercising those powers, the Commissioner of Police, a police officer or a special inspector will be able to seize documents and require a person to answer questions. (See Schedule 1 [71]–[74] and Schedule 2 [25]–[27])

### **Offences of permitting intoxication**

Under both Acts, it is an offence for a licensee of licensed premises or a secretary of a registered club to permit intoxication on the premises or in the club. If an intoxicated person is present on licensed premises or in a registered club, the licensee or secretary is taken to have permitted intoxication on the premises or in the club unless the licensee or secretary proves that reasonable steps were taken to prevent intoxication. The amendments provide a defence if the licensee or secretary proves that all of the following steps were taken or that all other reasonable steps were taken to prevent intoxication on the licensed premises or the club:

- (a) the intoxicated person was asked to leave the premises or club,
- (b) an attempt was made to contact a police officer, or a police officer was contacted, for assistance in removing the person from the premises or club,
- (c) the person was refused any further alcohol.

(See Schedule 1 [76] and [77] and Schedule 2 [20] and [21])

Both Acts are amended to enable regulations to be made prescribing guidelines for the assistance of licensees and secretaries of registered clubs and employees in determining indications of intoxication. (See Schedule 1 [94] and Schedule 2 [36])

### **Additional penalties**

Both Acts are amended to enable the Licensing Court when dealing with certain offences to impose additional penalties affecting the licence or certificate of registration of a club and relevant persons. The additional penalties are of the same kind as may be imposed when a complaint is dealt with. (See Schedule 1 [83] and Schedule 2 [30])

### **Increased time limit for taking proceedings under the Act**

At present proceedings for an offence under either Act must be instituted within 12 months after the act or omission giving rise to the proceedings. The amendments increase this time limit for taking proceedings for particular offences under the Acts to 3 years. The increase in the time limit will extend to offences committed within 12 months before the commencement of the amendment. (See Schedule 1 [84] and [85] and Schedule 2 [29])

### **Issue of penalty notices**

At present penalty notices under the Acts may be issued by a police officer. The amendments allow penalty notices to be issued by the Director and by special inspectors appointed under the *Liquor Act 1982* also. (See Schedule 1 [86] and [87] and Schedule 2 [31] and [32])

### **Attendance notices**

Both Acts are amended to enable a police officer to issue an attendance notice for the attendance of a person before the Licensing Court if an information could be laid before the Court against the person for an offence prescribed by the regulations. (See Schedule 1 [88] and Schedule 2 [33])

### **Forfeiture of liquor to Crown**

Both Acts are amended to forfeit liquor to the Crown when a licence or certificate of registration of a club is cancelled. Liquor found on the premises concerned 7 days after a licence or certificate is cancelled is to be forfeited to the Crown.

Special inspectors are also given power to seize and take forfeited liquor and its containers. Presently only police officers have this power. (See Schedule 1 [92] and [93] and Schedule 2 [35])

### **Miscellaneous and consequential amendments**

The following miscellaneous and consequential amendments are made:

- (a) The *Liquor Act 1982* is amended to increase the time for which certain persons are taken to be licensees in circumstances where the licensee ceases to be entitled to possession of the licensed premises. (See Schedule 1 [11])
- (b) The *Liquor Act 1982* is amended to extend the period within which certain affidavits must be lodged. (See Schedule 1 [65])
- (c) The *Registered Clubs Act 1976* is amended to provide that where a person applies for approval to be a secretary of a registered club the onus is on that person to prove that he or she is a fit and proper person. (See Schedule 2 [11])
- (d) The *Registered Clubs Act 1976* is amended **so** that the powers of the secretary of a registered club or an employee of the club to refuse admission to a person or turn out a person are similar to the powers of a licensee under the *Liquor Act 1982*. (See Schedule 2 [34])
- (e) The *Liquor Act 1982* is amended to the effect that the Licensing Court, in proceedings before it relating to a complaint about a licensee or manager of licensed premises or about a registered club, is not bound by the rules of evidence and may inform itself in such manner as it thinks fit, and is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. (See Schedule 1 [5] and [75] and Schedule 2 [6] and [9])
- (f) Provisions to enable proof of closure orders. (See Schedule 1 [82] and Schedule 2 [28])
- (g) Provision applying the requirement to consider reports to applications for appointment as secretary of a registered club. (See Schedule 2 [13])
- (h) Necessary savings and transitional provisions. (See Schedule 1 [95] and [96] and Schedule 2 [62] and [63])