

Act 1993 No. 28

LIQUOR (AMENDMENT) BILL 1993*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note dates to this Bill as introduced into Parliament)

The Registered Clubs (Amendment) Bill 1993 is cognate with this Bill.

Among the amendments proposed by this Bill are those necessary to bring together in a new Part 11 the present provisions of the Liquor Act 1982 that relate to approved amusement devices and at present occur in different parts of the Act.

The object of this Bill is to amend the Liquor Act 1982 in order to:

- (a) enact that new Part 11 which will also include new provisions providing for stricter controls on the manufacture, supply, keeping, use, operation and servicing of approved amusement devices; and
- (b) impose restrictions on the employment by a licensee, or by a close associate of a licensee, of key officials (such as persons who are or were engaged in the administration of the Liquor Act 1982 and persons who are or were members of the Police Service); and
- (c) make further provision with respect to the investigation of an applicant for, or for transfer of, a licence, and with respect to the investigation of licensees; and
- (d) make further provision with respect to objections to an application for an extension of the trading hours of licensed premises and, if an existing extension has been refused or revoked, to preclude for at least 6 months the making of a further application for the same, or a longer, extension; and
- (e) provide for statute law revision and other matters; and
- (f) increase penalties for certain offences and express in terms of penalty units existing penalties expressed in monetary terms.

The expression "penalty unit" has its basis in section 56 of the Interpretation Act 1987. At present, 1 penalty unit is equivalent to \$100.

* Amended in committee—see table at end of volume.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation, with the exceptions indicated below.

- The amendments proposed by Schedule 4 are to commence on the date of assent. These amendments provide for savings and transitional provisions.
- The amendment proposed by Schedule 5 (1) is to commence on the date of assent. This amendment omits a cross-reference in order to simplify other proposed amendments.
- The amendment proposed by Schedule 5 (2) is taken to have commenced on the same date as an amendment that was made by an earlier Act. The proposed amendment is consequential on that earlier amendment.
- The amendment proposed by Schedule 5 (3) is to commence on the date of assent. This amendment omits certain cross-references in order to simplify other proposed amendments.
- The amendment proposed by Schedule 5 (4) is taken to have commenced on the same date as an amendment made by an earlier Act. It is made partly as a consequence of the earlier amendment and partly to simplify the wording of the amended provision.
- The amendments to the Liquor Regulation 1983 proposed by clause 4 and Schedule 7 are to commence as indicated in Schedule 7.

Clause 3 amends the Liquor Act 1982 as set out in Schedules 1–6.

Clause 4 amends the Search Warrants Act 1985 as a consequence of proposed section 169 (Schedule 1 (12)).

Clause 5 amends the Liquor Regulation 1983 as set out in Schedule 7.

SCHEDULE 1—AMENDMENTS TO LIQUOR ACT 1982 RELATING TO APPROVED AMUSEMENT DEVICES

Schedule 1 (1) simplifies the definition of “approved amusement device” and inserts new definitions. These include “gaming-related licence”, which is defined as an amusement device dealer’s licence, an amusement device seller’s licence or an amusement device technician’s licence.

Schedule 1 (2) repeals the provisions relating to approved amusement devices that it is proposed (Schedule 1 (12)) to re-enact in the new Part 11 with amendments.

Schedule 1 (3) makes consequential amendments and prohibits a hotelier from making a cash advance in the hotel otherwise than as a prize or bonus won as a direct or indirect consequence of operating an approved amusement device.

Schedule 1 (4) prohibits certain persons (including persons under the age of 18 years) from applying for a gaming-related licence.

Schedule 1 (5) includes a gaming-related licence among the licences that may not be transferred.

Schedule 1 (6) makes consequential amendments.

Schedule 1 (7) makes a consequential amendment and replaces certain provisions that at present refer to matters that are to be dealt with in proposed Part 11.

Schedule 1 (8) adds to the grounds on which disciplinary proceedings may be brought against the holder of a gaming-related licence.

Schedule 1 (9) and (10) make consequential amendments.

Schedule 1 (11) amends and rearranges the power to make regulations relating to approved amusement devices. (The cognate Registered Clubs (Amendment) Bill 1993 makes the same provision for regulations relating to poker machines.)

Schedule 1 (12) inserts proposed Part 11 comprising sections 157–200 referred to below. The new part brings together and amends the existing provisions being repealed by Schedule 1 (2) and adds new provisions relating to approved amusement devices and gaming-related licences.

PART 11—APPROVED AMUSEMENT DEVICES

Division 1—Keeping of approved amusement devices

Section 157 enables the holder of an amusement device dealer’s licence to apply to the Liquor Administration Board (“the Board”) for, and for the Board to carry out at the expense of the applicant, an investigation into the suitability of a device for declaration as an approved amusement device.

Section 158 enables the Board to declare a device to be an approved amusement device and empowers the Board to revoke the declaration if it considers revocation to be necessary in the public interest.

Section 159 enables the holder of an amusement device dealer’s licence to make representations to the Board in relation to the declaration of a device as an approved amusement device, if the Board is considering termination of an application by the dealer for such a declaration or is considering refusal of such an application or termination of such a declaration.

Section 160 declares the keeping of an approved amusement device, and the giving of prizes won by operating such a device, to be lawful if it is done in accordance with the Act and the regulations.

Section 161 enables a hotelier to apply for, and the Board after investigation to impose or vary, a condition of the hotelier’s licence authorising the licensee to keep not more than 10 approved amusement devices on the licensed premises.

Section 162 sets out the financial and other qualifications required by a hotelier desiring to keep, and allow the use and operation of, approved amusement devices in the hotel.

Section 163 imposes a condition of a hotelier’s licence requiring disclosure by the hotelier of any sharing of the receipts from an approved amusement device.

Section 164 imposes on a hotelier’s licence conditions aimed at controlling the acquisition, keeping and use of approved amusement devices. These include requirements to keep the devices only in certain areas and to allow use of the devices only while liquor may be sold or supplied in the areas.

Section 165 controls the kind of prizes that may be won by operating an approved amusement device.

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Section 166 enables the Board to impose conditions of a hotelier's licence in relation to the keeping, use or operation of an approved amusement device, if the hotelier has first been given an opportunity to make submissions in relation to the proposed conditions.

Section 167 enables a hotelier to conduct, with the consent of the Board, a trial of a device in the nature of an approved amusement device.

Section 168 enables special inspectors and other authorised persons to enter licensed premises at reasonable times in order to exercise functions relating to approved amusement devices. Those functions include a power to remove such a device, and certain records, for further examination.

Section 169 deals with the issue to a police officer of a search warrant under the Search Warrants Act 1985 and its execution. The warrant would authorise the seizure of any device that is in the nature of an approved amusement device, any money in the device and any documents relating to the device.

Section 170 enables a Licensing Magistrate or other Magistrate, the Principal Registrar or an authorised justice to issue a summons calling on the owner or occupier of premises to account for possession of an approved amusement device removed from the premises by an authorised person under section 168 or seized in accordance with a search warrant under section 169. On the return of the summons, the Licensing Court is to inquire into the matter and either order the forfeiture of the device to the use of the Crown or order its return to the person summoned.

Section 171 enables the Licensing Court, in proceedings of any kind before it, to order forfeiture of an approved amusement device found to be the subject of an offence or a breach of a condition of a licence.

Division 2—Gaming-related licences

Section 172 authorises the Licensing Court to grant a gaming-related licence that is an amusement device dealer's licence authorising the licensee to manufacture, sell and service approved amusement devices and exercise other functions in relation to approved amusement devices.

Section 173 enables the Board to require a dealer to alter, at the expense of the dealer, an approved amusement device that is to be, or has been, supplied to a hotelier after the commencement of the section.

Section 174 authorises the Licensing Court to grant a gaming-related licence that is an amusement device seller's licence authorising the licensee to sell approved amusement devices as principal or agent or as an employee of the holder of an amusement device dealer's licence or an amusement device seller's licence.

Section 175 authorises the Licensing Court to grant a gaming-related licence that is an amusement device technician's licence authorising the licensee to service, repair and maintain approved amusement devices.

Section 176 enables the Licensing Court, on the application of the Director or the Commissioner of Police, to order an applicant for a gaming-related licence to contribute to the cost of investigating the application.

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Section 177 enables the Principal Registrar to exercise the jurisdiction of the Licensing Court to grant a gaming-related licence if the application for the licence has been investigated and there has been no objection. It also precludes objections, and payment of expenses, if the applicant already holds another gaming-related licence or a gaming-related licence under the Registered Clubs Act 1976 in relation to poker machines.

Section 178 provides for the granting, to a person who has applied for an amusement device seller's licence or an amusement device technician's licence, of a work permit authorising the holder to exercise the functions of the holder of such a licence pending a decision on the application.

Section 179 requires the holder of a gaming-related licence to submit periodic returns in a form approved by the Director.

Section 180 provides for the payment of a periodic fee for a gaming-related licence or a work permit and authorises the making of regulations relating to payment of the fees and the consequences of a failure to pay them.

Section 181 requires the holder of a gaming-related licence to notify the Director of certain changes in the state of affairs of the licensee.

Section 182 requires the holder of a dealer's licence or a technician's licence to wear a form of identification when exercising in a hotel a function authorised by the licence.

Division 3—Offences relating to approved amusement devices

Section 183 penalises the holder of a gaming-related licence who, without the approval of the Board, provides financial assistance to a hotelier, guarantees the observance of the terms on which any such financial assistance is granted by another person, or indemnifies a person against any loss sustained in relation to any such financial assistance.

Section 184 penalises a person who is in possession of an approved amusement device and is not the holder of a gaming-related licence, a hotelier authorised to keep the approved amusement device or another exempt person referred to in the section.

Section 185 penalises the manufacture, assembly or sale of an approved amusement device otherwise than in accordance with the authority conferred by an amusement device dealer's licence.

Section 186 penalises the holder of an amusement device dealer's licence if an approved amusement device leaves the licensed premises without having attached to it a "compliance plate" showing certain particulars.

Section 187 creates offences relating to the supply, purchase and sale of approved amusement devices.

Section 188 creates offences relating to the keeping, acquisition and disposal of approved amusement devices.

Section 189 penalises a person who services or repairs an approved amusement device without being the holder of an amusement device dealer's licence or an amusement device technician's licence, unless the action is being taken by a trainee under the supervision of the holder of such a licence.

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Section 190 penalises a licensee who fails to withdraw an approved amusement device from use, or fails to take certain other action in relation to an approved amusement device, when required to do so by a special inspector.

Section 191 penalises a hotelier who has available for use in the hotel an approved amusement device that does not function properly. Certain defences are provided such as the taking of reasonable precautions and the use of the device for testing or maintenance purposes.

Section 192 penalises a hotelier who fails to keep safely all keys and other devices relating to the security of approved amusement devices in the hotel. It also penalises a person who, otherwise than as provided by the regulations, possesses or uses a key or other device relating to the security of approved amusement devices.

Section 193 penalises a person who, without being authorised by the section to do so, opens an approved amusement device, checks money inside it or, except in operating the device, places money inside it. It also penalises a hotelier who fails to keep certain records in relation to employees who have functions relating to approved amusement devices.

Section 194 penalises a hotelier who fails to keep in the hotel a register that relates to access to each approved amusement device kept by the hotelier and is in a form approved by the Board.

Section 195 enumerates certain actions relating to sensitive areas of an approved amusement device that, if taken in relation to the device by a person other than a specially authorised person, would be offences. The section also specifies the persons who are specially authorised persons for the purposes of the section.

Section 196 penalises a person who modifies an approved amusement device without being the holder of an amusement device technician's licence.

Section 197 penalises unlawful interference with an approved amusement device and the dishonest insertion in such a device of anything other than cash, a banknote of a denomination approved by the Board, or a card of a type approved by the Board.

Section 198 penalises various dishonest or grossly negligent actions in connection with the design, manufacture, assembly, maintenance or repair of an approved amusement device.

Section 199 penalises the holder of an approved amusement device dealer's licence or an approved amusement device seller's licence who fails to notify the Director of the importation of an approved amusement device, or of the movement by the licensee of an approved amusement device to or from the place at which the licensee carries on the business authorised by the licence.

Section 200 provides for certain circumstances in which the proposed Part 11 does not operate to prohibit the possession, keeping, use or operation of an approved amusement device otherwise than in accordance with the authority conferred by a licence.

**SCHEDULE 2—AMENDMENTS TO LIQUOR ACT 1982 RELATING TO
KEY OFFICIALS**

Schedule 2 (1) inserts a definition of "key official". Key officials are the Secretary, Chief Secretary's Department, the Director of Liquor and Gaming and the

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Commissioner of Police, together with certain officers of the Department and certain members of the Police Service.

Schedule 2 (2) inserts proposed Part 6A comprising sections 105A and 105B.

Section 105A prohibits key officials from holding any kind of licence, imposes restrictions on the employment of key officials by a licensee and imposes restrictions on business and financial associations of key officials with a licensee or a close associate of a licensee.

Section 105B imposes restrictions on the employment of, or a close association with, a person who no longer is, but within the preceding 3 years was, a key official.

[Proposed section 4A, to be inserted by Schedule 3 (2), explains the meaning of the expression “close associate”.]

SCHEDULE 3—MISCELLANEOUS AMENDMENTS TO LIQUOR ACT 1982

Schedule 3 (1) inserts or revises certain definitions. These include a definition of “late-trading period” in relation to certain licensed restaurants. This is the period between 11 p.m. and 3 a.m. during which the licensee is authorised to sell or supply liquor otherwise than with or as ancillary to a meal.

Schedule 3 (2) inserts proposed section 4A which explains the meaning of “close associate” when used in relation to an applicant for a licence or in relation to a licensee.

Schedule 3 (3) enables disciplinary proceedings against a licensee to be taken at first instance before the Full Bench of the Licensing Court (instead of 1 Licensing Magistrate), if the parties and the Chairman of the Licensing Court agree.

Schedule 3 (4):

- (a) provides for consistency of expression in relation to the powers of the Licensing Court with respect to extensions of trading hours; and
- (b) adds the local council to those able to apply for a variation of an existing extension of trading hours for a hotel in its area; and
- (c) precludes any extension of trading hours for a hotel if the extension would be the same as, or longer than, an extension refused during the preceding 6 months; and
- (d) enables an extension of trading hours for a hotel to be granted for a trial period.

Schedule 3 (5), (6) and (7) make similar provision for variations of trading hours in the case of a retail licence, a restaurant licence and a licence to sell or supply liquor on a vessel.

Schedule 3 (8) makes an amendment consequential on that made by Schedule 3 (10).

Schedule 3 (9) modernises a disused expression.

Schedule 3 (10) inserts proposed Division 4A of Part 3 comprising sections 42B–42E referred to below.

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Section 42B requires each registrar of the Licensing Court (other than the Principal Registrar) to refer to the Principal Registrar each application to the Court for a licence or for a transfer of a licence. All applications referred, or made, to the Principal Registrar are to be referred to the Director.

Section 42C requires the Director to make all investigations and inquiries that the Director considers to be necessary for the proper consideration of an application for a licence or for a transfer of a licence. For this purpose, the Director may require the applicant to consent to the taking of a photograph, finger prints and palm prints. At the request of the Director, the Commissioner of Police is to make inquiries about the applicant and report the result to the Director.

Section 42D enables the Director to require further information from an applicant or a person who has a relevant association or connection with an applicant.

Section 42E requires the Director to have finger prints and palm prints destroyed if they are those of an applicant whose application is refused or if they are those of a former licensee whose licence has been surrendered or cancelled.

Schedule 3 (11) enables 1 resident (instead of 3 being required) to lodge an objection to an application for an extension of trading hours for licensed premises in the neighbourhood of the resident.

Schedule 3 (12) makes a consequential amendment and enables objection to be taken to an application for a licence if a requirement of the Director in relation to the application has not been complied with. Provision is also made for an objection on grounds related to the qualifications of the applicant for the kind of licence applied for.

Schedule 3 (13) enables the Board to determine for each kind of licence the qualifications required of an applicant. It also enables the Licensing Court to refuse an application for a licence if not satisfied that the applicant has the qualifications so determined for the kind of licence applied for.

Schedule 3 (14) omits a reference to a repealed provision.

Schedule 3 (15) cancels a licence if the fee for the licence remains unpaid for 3 months.

Schedule 3 (16) enables the Licensing Court to refuse an application for transfer of a licence if not satisfied with the qualifications of the proposed transferee.

Schedule 3 (17) enables the Director to investigate a licensee in order to determine whether disciplinary action against the licensee is warranted. The Director would have the same powers as are conferred by Schedule 3 (10) in relation to an application for a licence, except those enabling a photograph, finger prints and palm prints to be required.

Schedule 3 (18) adds to the grounds on which disciplinary proceedings may be brought against a licensee.

Schedule 3 (19) increases to 500 penalty units in the case of a corporation, and 200 penalty units in any other case, the monetary penalty that may be imposed on a licensee as a disciplinary measure. The increase would achieve uniformity with an amendment made in 1990 to the equivalent provisions of the Registered Clubs Act 1976.

Schedule 3 (20):

- (a) requires a statement of liquor purchases by certain licensees to be in a form approved by the Board instead of in a form prescribed by the regulations; and

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- (b) enables the Board to dispense with information that would otherwise be required when a licence is transferred, but only if the transferor and transferee are each an employee or nominee of the person whose business is carried on under the licence.

Schedule 3 (21) enables certain statements required in relation to liquor purchases to be provided as required by a form approved by the Board instead of in a form prescribed by the regulations.

Schedule 3 (22) requires certain records of a licensee to be kept in a form approved by the Board instead of in a form prescribed by the regulations.

Schedule 3 (23) provides a defence to a prosecution for certain offences relating to display of the name of licensed premises.

Schedule 3 (24) appoints the Director as a special inspector and requires the Board to have an identification card issued to each special inspector. A special inspector is not authorised to exercise functions as a special inspector if he or she does not produce the card for inspection when required to do so.

Schedule 3 (25) increases from 20 penalty units to 50 penalty units the maximum penalty for obstructing any exercise of the authority conferred on a member of the police force or a special inspector to enter licensed premises.

Schedule 3 (26) increases from 20 penalty units to 50 penalty units, in cases where no other penalty is provided, the maximum penalty for obstructing certain persons exercising official functions.

Schedule 3 (27) has the effect of imposing, on a person who sells or supplies liquor to a minor on licensed premises but is not the licensee, the same penalty (instead of the present lower penalty) as is imposed on the licensee.

Schedule 3 (28) replaces the present section 117 (which governs the presence of minors in a hotel) with sections 116A–116D.

Section 116A makes it an offence for a minor to enter certain areas in a hotel or to enter a restaurant during a late-trading period without being accompanied by a responsible adult.

Section 116B provides for offences by a hotelier, or the licensee of a late-trading restaurant, in relation to the presence of a minor on the licensed premises.

Section 116C requires certain notices about the prohibitions on the presence of minors to be displayed by a hotelier, and by the licensee of a late-trading restaurant.

Section 116D makes it an offence for an adult accompanying a minor in a hotel or licensed restaurant to permit the minor to consume liquor on the premises or to leave the minor unaccompanied without first informing the licensee.

Schedule 3 (29) omits section 117 as a consequence of its replacement by sections 116A–116D.

Schedule 3 (30) clarifies section 117A relating to an offence by a minor who fails to produce evidence of age. It also, for consistency with other provisions, increases the penalty for the offence.

Schedule 3 (31) creates offences relating to false evidence of the age of a minor.

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Schedule 3 (32) increases from 10 penalty units to 20 penalty units the maximum penalties relating to disorderly conduct on licensed premises and the sale of liquor to intoxicated persons.

Schedule 3 (33) increases from 10 penalty units to 50 penalty units the maximum penalty for an offence for which no other penalty is provided.

Schedule 3 (34) substitutes “Local Court” for “court of petty sessions” and “Magistrate” for “stipendiary magistrate”.

Schedule 3 (35) makes a consequential amendment.

Schedule (36) inserts proposed section 150A which follows a provision of the Registered Clubs Act 1976 by expressly excluding certain persons from any liability that might otherwise be incurred in the course of administering the Liquor Act 1982.

Schedule 3 (37) inserts proposed section 155A which provides for the confidentiality of information obtained in the course of administering the Principal Act.

Schedule 3 (38) increases from 10 penalty units to 50 penalty units the maximum penalty for a contravention of the regulations and clarifies the power to provide for the use of forms approved by the Board.

SCHEDULE 4—AMENDMENTS TO LIQUOR ACT 1982 RELATING TO SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 4 (1) inserts new section 3 giving effect to the Schedule of savings and transitional provisions to be inserted by Schedule 4 (2).

Schedule 4 (2) inserts a Schedule of savings and transitional provisions.

SCHEDULE 5—OTHER AMENDMENTS TO LIQUOR ACT 1982

Schedule 5 (1) and **(3)** have the effect of omitting the figures used in certain cross-references to the present section 20 (2A) and (2B) but do not change the meaning of the amended provisions. This will simplify the commencement of other proposed amendments.

Schedule 5 (2) makes an amendment consequential on an earlier amendment.

Schedule 5 (4) amends the present wording of section 80 (2) (a) which has been complicated by earlier amendments and which, because of numerical cross-references to other provisions, would present difficulties in commencing other proposed amendments.

SCHEDULE 6—CONVERSIONS TO PENALTY UNITS

The amendments proposed by this Schedule express certain existing penalties in terms of penalty units instead of monetary units. Except in 3 cases where penalties of \$250 have been changed to 3 penalty units, the amendments do not change the present monetary amount of the penalties.

SCHEDULE 7—AMENDMENT OF THE LIQUOR REGULATION 1983

This Schedule amends the Liquor Regulation 1983:

- (a) by making an amendment consequential on an earlier amendment to the regulation; and

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- (b) by omitting a clause as a consequence of an earlier amendment of the Liquor Act 1982; and
 - (c) by changing a cross-reference as a consequence of an earlier amendment of the regulation; and
 - (d) by amending a clause as a consequence of the insertion by Schedule 1 (12) of section 194 of the Liquor Act 1982.
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