

Passed by both Houses



New South Wales

Liquor Amendment (Kings Cross Plan of Management) Bill 2013

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2013



New South Wales

Liquor Amendment (Kings Cross Plan of Management) Bill 2013

Act No , 2013

An Act to amend the *Liquor Act 2007* and the *Liquor Regulation 2008* to implement the second stage of a plan of management in relation to the Kings Cross precinct; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Liquor Amendment (Kings Cross Plan of Management) Act 2013*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Liquor Act 2007 No 90

[1] Section 4 Definitions

Insert “any of the following” after “means” in the definition of *manager* in section 4 (1).

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

Omit “or” from paragraph (a).

[3] Section 4 (1), definition of “manager”

Insert after paragraph (b):

- (c) in the case of a high risk venue within the meaning of section 116AA— a person appointed by the licensee, in accordance with licence conditions imposed by the regulations under section 116A, to be present in the venue in accordance with those conditions.

[4] Section 48 Community impact

Insert after section 48 (3B):

- (3C) An application (other than an application under clause 39 of Schedule 1) for a small bar licence is not, despite subsection (3), required to be accompanied by a community impact statement if:
 - (a) the application relates to the same premises as the premises to which a general bar licence relates, and
 - (b) development consent has been obtained under the *Environmental Planning and Assessment Act 1979* to sell liquor during the times to which the application relates and those times are specified in the development consent.

[5] Section 91 Responsibilities and liabilities in relation to licensed premises

Insert after section 91 (1):

- (1A) An approved manager (as referred to in section 116A (2) (i)) is responsible for the personal supervision and management of the conduct of the business of the licensed premises under the licence at the times the manager is required to be present on the licensed premises.

[6] Section 91 (2)

Insert “or (1A)” after “subsection (1)”.

[7] Sections 116AA–116AF

Insert before section 116A:

116AA Interpretation

- (1) In this Division:

approved system provider means the person or body approved for the time being by the Director-General to operate the Kings Cross precinct ID scanner system.

high risk venue—see subsection (2).

identification details of a person means:

- (a) the person’s name, and
- (b) the person’s date of birth, or the person’s residential address, or both.

Kings Cross precinct ID scanner system—see section 116AB.

long-term banning order means an order under section 116AE.

patron ID scanner means a device that:

- (a) is capable of scanning and recording a person's identification details, and
- (b) is linked to the Kings Cross precinct ID scanner system.

relevant licensed premises means any licensed premises situated in the Kings Cross precinct, but does not include a licensed restaurant that is not authorised to trade after midnight on any day of the week unless it is a high risk venue.

temporary banning order means an order under section 116AD.

- (2) A ***high risk venue*** is a venue situated in the Kings Cross precinct comprising:
 - (a) licensed premises:
 - (i) on which liquor may be sold for consumption on the premises, and
 - (ii) that are authorised to trade after midnight at least once a week on a regular basis, and
 - (iii) that have a patron capacity (as determined by the Director-General) of more than 120 patrons, or
 - (b) licensed premises specified by, or of a class specified by, the regulations, or
 - (c) licensed premises that are designated by the Director-General under subsection (4).
- (3) The regulations may create exceptions to subsection (2) (a).
- (4) The Director-General may, with the concurrence of the Commissioner of Police, designate any specified licensed premises (or licensed premises of a specified class) in the Kings Cross precinct as a high risk venue if the Director-General is satisfied that there is a significant degree of alcohol-related violence or other anti-social behaviour associated with the premises.
- (5) The designation of licensed premises as a high risk venue is to be made by order in writing given to the licensee. Any such order takes effect on the date specified in the order (being a date that is not earlier than 6 weeks from the date the order is given).

Note. The decision of the Director-General to designate licensed premises as a high risk venue is reviewable by the Independent Liquor and Gaming Authority under the *Gaming and Liquor Administration Act 2007*—see section 36A of that Act.

116AB Kings Cross precinct ID scanner system

- (1) The ***Kings Cross precinct ID scanner system*** is an integrated database system that is approved by the Director-General and that consists of the following:
 - (a) the identification details of those persons who are the subject of a temporary or long-term banning order (together with the period for which any such order is in force),
 - (b) any information that has been scanned and recorded by patron ID scanners operating in high risk venues,
 - (c) any associated equipment (including the patron ID scanners linked to the system).
- (2) The Director-General may, with the concurrence of the Commissioner of Police, approve a person or body to operate the Kings Cross precinct ID

scanner system. A person or body may not be approved if the person or body is a close associate of a licensee or has any interest, whether financial or otherwise, in the business carried on under a licence.

- (3) The approval of a person or body to operate the system is subject to such conditions as the Director-General considers appropriate (including conditions relating to the disposal and retention of information held in the system) and may be revoked at any time by the Director-General. The conditions of approval may be varied at any time by the Director-General.
- (4) Without limiting subsection (3), the conditions of any such approval are taken to include the following:
 - (a) any information held in the system must not be transferred to any place outside of Australia except New Zealand,
 - (b) information must not be held in the system for more than 30 days after it is collected except:
 - (i) in the case of information relating to a person who is the subject of a long-term banning order (in which case the information may be held in the system for the period that the order is in force), or
 - (ii) in such other cases as may be authorised by the Director-General at the request of the Commissioner of Police,
 - (c) if the approved system provider is not an organisation within the meaning of the *Privacy Act 1988* of the Commonwealth—the provider must ensure that the provider is treated as an organisation for the purposes of that Act,
 - (d) the approved system provider must comply with the requirements of the *Privacy Act 1988* of the Commonwealth with respect to the protection of any personal information held by the provider,
 - (e) the approved system provider must comply with a request by the Commissioner of Police to dispose of any information held by the provider,
 - (f) if the Kings Cross precinct ID scanner system fails for any reason, the approved system provider must:
 - (i) immediately notify the local police, and
 - (ii) comply with a contingency protocol, as approved by the Director-General, for ID scanner system failure.

116AC High risk venues—licence conditions relating to ID scanning

(1) Patron photo IDs to be scanned

The licence for a high risk venue is subject to the following conditions:

- (a) a person must not be permitted to enter the venue as a patron unless:
 - (i) the person produces to a staff member a form of identification containing a photograph of the person and the person's identification details (*photo ID*), and
 - (ii) the photo ID is scanned by a staff member using a patron ID scanner,
- (b) a person must be refused admission to the venue as a patron if the person:
 - (i) chooses not to produce his or her photo ID to a staff member, or
 - (ii) is subject to a temporary or long-term banning order,

- (c) the use of a patron ID scanner as required by this section (including the procedures for scanning and the time of use) must comply with such requirements as are approved by the Director-General and notified to the licensee,
 - (d) only patron ID scanners of a type approved by the Director-General may be used in the venue for the purposes of this section,
 - (e) a patron ID scanner may only be used to record information of the kind prescribed by the regulations,
 - (f) if any patron ID scanner used in the venue fails for any reason, the licensee must:
 - (i) immediately notify the local police, and
 - (ii) comply with a contingency protocol, as approved by the Director-General, for patron ID scanner failure.
- (2) Subsection (1) (a) (ii) does not require a person to be refused permission to enter a high risk venue if, at that time, each patron ID scanner in the venue is not working because of scanner or system failure.
- (3) **Producing false ID to enter high risk venue**
- A person who produces any document purporting to contain the person's identification details in order to gain entry to a high risk venue is guilty of an offence if the document is false in a material particular in relation to the person.
- Maximum penalty: 50 penalty units.
- (4) **Privacy protection**
- It is a condition of the licence for a high risk venue that the licensee must:
- (a) if the licensee is not an organisation within the meaning of the *Privacy Act 1988* of the Commonwealth—ensure that the licensee is treated as an organisation for the purposes of that Act, and
 - (b) comply with the requirements of that Act with respect to the protection of any personal information recorded by a patron ID scanner operating in the venue.
- (5) It is also a condition of the licence for a high risk venue that the licensee:
- (a) prepares and implements a privacy management plan relating to the use of patron ID scanners in the venue, and
 - (b) prepares and implements a privacy policy containing information for patrons about the use of patron ID scanners in the venue and the procedures for ensuring that the privacy of patrons is protected and for making complaints about breaches of privacy, and
 - (c) ensures that the privacy policy for the venue is made available for inspection by any person who requests to see it, and
 - (d) ensures that an outline of the privacy policy is displayed at or near any public entrance to the venue in a manner that enables patrons to be alerted to its contents immediately before being required to produce a photo ID, and
 - (e) without limiting any requirement under the *Privacy Act 1988* of the Commonwealth, ensures that any written complaint by a patron about a breach of privacy is, within 14 days of the complaint being made to the licensee or a staff member, notified to the Director-General.

- (6) The privacy management plan and privacy policy required to be prepared by a licensee under this section must, without limiting any requirement under the *Privacy Act 1988* of the Commonwealth, adopt or comply with a plan and policy approved by the *Kings Cross Accord* (being the local liquor accord of that name in force under Division 1 of Part 8) in conjunction with the relevant industry association for the licensee.

116AD Temporary banning orders—licensed premises in Kings Cross precinct

- (1) A police officer may, as soon as practicable after a person:
- (a) refuses or fails to comply with a direction under section 198 of the *Law Enforcement (Powers and Responsibilities) Act 2002* to leave relevant licensed premises or a public place in the vicinity of relevant licensed premises, or
 - (b) fails to leave relevant licensed premises after being required to do so under section 77 (4) because the person is intoxicated, violent, quarrelsome or disorderly, or
 - (c) contravenes section 77 (6) or (8) in relation to relevant licensed premises,
- prohibit the person, by order in writing given to the person (a **temporary banning order**), from entering or remaining on any relevant licensed premises for the period (not exceeding 48 hours) specified in the order.
- (2) A police officer must not give a person a temporary banning order unless the officer is satisfied that the conduct of the person which resulted in the person being required to leave (or being refused admission to) the licensed premises or other public place concerned is likely to continue and cause a public nuisance or risk to public safety.
- (3) A temporary banning order:
- (a) does not have effect unless it is given by, or given with the approval of, a police officer of or above the rank of sergeant, and
 - (b) must specify the grounds on which it is given.
- (4) As soon as practicable after a person is given a temporary banning order, a police officer is to provide the approved system provider with the following information:
- (a) the name and address of the person the subject of the order,
 - (b) the period that the order is in force.
- (5) The approved system provider is required to immediately record that information on the Kings Cross precinct ID scanner system.
- (6) A person who is the subject of a temporary banning order must not enter or attempt to enter or remain on any relevant licensed premises during the period specified in the order.
- Maximum penalty: 50 penalty units.

116AE Long-term banning orders—high risk venues

- (1) The Authority may, by order in writing (a **long-term banning order**), prohibit a person from entering or remaining on any high risk venue for such period (not exceeding 12 months) as is specified in the order.
- (2) A long-term banning order may only be made on application by the Commissioner of Police in the manner approved by the Authority.

- (3) The Authority may make a long-term banning order only if the Authority is satisfied that the person the subject of the proposed order:
 - (a) has been charged with, or found guilty of, a serious indictable offence involving alcohol-related violence (whether or not the offence was committed in the Kings Cross precinct), or
 - (b) has been given 3 temporary banning orders during a period of 12 consecutive months.
- (4) The Authority may not make a long-term banning order unless the person the subject of the proposed order has been given notice of the application for the order and has been given a reasonable opportunity to make submissions to the Authority in relation to the application.
- (5) In deciding whether to make a long-term banning order on the ground that a person has been given 3 temporary banning orders, the Authority may take into consideration the circumstances that resulted in the person being given those orders.
- (6) A long-term banning order takes effect on the date specified by the Authority in the order. Notice of the making of the order is to be given to the person who is the subject of the order, but failure to give notice does not affect the operation of the order if a reasonable attempt has been made to notify the person.
- (7) As soon as practicable after the Authority makes a long-term banning order, the Authority is to provide the approved system provider with the following information:
 - (a) the name and address of the person who is the subject of the order,
 - (b) the period that the order is in force.
- (8) The approved system provider is required to immediately record that information in the Kings Cross precinct ID scanner system.
- (9) A person who is the subject of a long-term banning order must not enter or attempt to enter or remain on any high risk venue during the period specified in the order.
Maximum penalty: 50 penalty units.

116AF Review by Administrative Decisions Tribunal of long-term banning orders

- (1) A person who is the subject of a long-term banning order may apply to the Administrative Decisions Tribunal for a review of the Authority's decision to make the order.
- (2) Section 53 of the *Administrative Decisions Tribunal Act 1997* does not apply in relation to the Authority's decision to make a long-term banning order.

[8] Section 116A Regulatory controls for licensed premises in Kings Cross precinct

Insert at the end of section 116A (2) (h):

- , or
- (i) require the appointment of a person, as approved by the Director-General, who is to be present in a high risk venue during such periods, or in such circumstances, as may be specified or determined by the regulations (an *approved manager*), or
 - (j) require records to be kept of the times when an approved manager is present in a high risk venue.

[9] Section 116A (4A)

Insert after section 116A (4):

- (4A) In approving a person to be present in a high risk venue as required by licence conditions imposed by the regulations under subsection (2) (i), the Director-General must conduct a criminal record check in relation to the person and be satisfied that the person has the experience and capacity to have responsibility for the high risk venue during the relevant periods. It is the duty of the Commissioner of Police to assist in any such criminal record check.

[10] Section 144B Definitions

Insert “Division 3 of Part 6,” after “imposed under” in paragraph (b) of the definition of *prescribed offence*.

[11] Section 152 Evidentiary provisions

Insert after section 152 (1) (n):

- (n1) that a specified person is or was, at a specified time or during a specified period, a staff member of licensed premises situated in the Kings Cross precinct,
(n2) that a specified person was, at a specified time or during a specified period, the manager of a high risk venue within the meaning of section 116AA,

[12] Section 159 Regulations

Insert after section 159 (2) (f):

- (f1) any matter relating to the operation of the Kings Cross precinct ID scanner system and the use of patron ID scanners under Division 3 of Part 6,

[13] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Liquor Amendment (Kings Cross Plan of Management) Act 2013

Review of amendments relating to Kings Cross precinct ID scanner system

- (1) The Minister is to review the amendments made by the *Liquor Amendment (Kings Cross Plan of Management) Act 2013* that relate to the operation of the Kings Cross precinct ID scanner system under Division 3 of Part 6 of this Act to determine whether the policy objectives of those amendments remain valid and whether the terms of those amendments remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months following the commencement of those amendments and the Minister is to report to the Premier on the outcome of the review as soon as practicable after the review is completed.

Schedule 2 Amendment of Liquor Regulation 2008

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

approved privacy course means a training course with respect to the protection of the privacy of patrons of licensed premises and that is approved by the Director-General.

[2] Clause 9A Exemption for small bar applications

Insert after clause 9A (3):

- (4) Without limiting subclause (1), this Division does not apply to or in respect of an application for a small bar licence if:
- (a) the application relates to the same premises as the premises to which a general bar licence relates, and
 - (b) development consent has been obtained under the *Environmental Planning and Assessment Act 1979* to sell liquor during the times to which the application relates and those times are specified in the development consent.

[3] Clause 39 Definitions

Insert in alphabetical order in clause 39 (1):

patron ID scanner means a patron ID scanner within the meaning of Division 3 of Part 6 of the Act.

privacy endorsement, in relation to a recognised competency card, means an endorsement on the card indicating that the holder of the card has successfully completed an approved privacy course.

[4] Clause 39 (2)

Insert “or if it is not suspended or revoked” after “expired”.

[5] Clause 39A Issue of recognised competency card

Insert after clause 39A (4):

- (4A) A fee of \$30 is payable to the Director-General for including a privacy endorsement on a recognised competency card (whether at the time the card is issued or at any other time).

[6] Clause 39AA

Insert after clause 39A:

39AA Kings Cross precinct—suspension or revocation of recognised competency cards held by staff members

- (1) This clause applies in relation to a person who is or was a staff member of licensed premises situated in the Kings Cross precinct (referred to in this clause as a *relevant person*).
- (2) The Authority may, on application by the Director-General or the Commissioner of Police, make any of the following orders:
- (a) an order suspending, for the period specified by the Authority, the recognised competency card held by a relevant person,
 - (b) an order revoking the recognised competency card held by a relevant person,

- (c) an order declaring that a relevant person is disqualified from holding a recognised competency card for such period (not exceeding 12 months) as is specified in the order.
- (3) The Authority may only make an order under this clause in respect of a relevant person if the Authority is satisfied that the person has, while a member of staff of licensed premises situated in the Kings Cross precinct, contravened any of the person's obligations under the Act or this Regulation:
 - (a) that, in the opinion of the Authority, relate to the responsible service of alcohol, or
 - (b) that relate to the use of a patron ID scanner (including obligations relating to the protection of any personal information recorded by a patron ID scanner).
- (4) The Authority may not make an order under this clause in respect of a relevant person unless the person has been given notice of the application for the order and has been given a reasonable opportunity to make submissions to the Authority in relation to the application.
- (5) An order under this clause takes effect on the date specified by the Authority in the order. Notice of the making of the order is to be given to the relevant person who is the subject of the order, but failure to give notice does not affect the operation of the order if a reasonable attempt has been made to notify the person.
- (6) If the Authority makes an order under this clause in respect of a relevant person, the person may apply to the Administrative Decisions Tribunal for a review of the Authority's decision.
- (7) Section 53 of the *Administrative Decisions Tribunal Act 1997* does not apply in relation to the Authority's decision to make an order under this clause.
- (8) A person must not work in any capacity as an employee on any licensed premises in New South Wales during any period in which:
 - (a) the person's recognised competency card is suspended by the Authority under this clause, or
 - (b) the person is disqualified under this clause from holding a recognised competency card.Maximum penalty: 50 penalty units.
- (9) If a recognised competency card is suspended or revoked under this clause, the person to whom it was issued must surrender the recognised competency card to the Director-General if required to do so by the Authority.
Maximum penalty: 20 penalty units.
- (10) A person (*the employer*) does not commit an offence under clause 40 (2) or (2A), 40A (2), 42 (1) or (1A) or 42A (1) in relation to a person whose recognised competency card has been suspended or revoked by the Authority under this clause if:
 - (a) the person presents the employer with a recognised competency card that appears to be current, and
 - (b) the employer is satisfied on reasonable grounds that the card is current.

[7] Clause 40A

Insert after clause 40:

40A Obligations of licensee as to use of patron ID scanners in Kings Cross precinct

- (1) The licensee of licensed premises situated in the Kings Cross precinct must not:
 - (a) use a patron ID scanner on the premises, or
 - (b) cause or permit a patron ID scanner to be used on the premises,unless the licensee holds a current recognised competency card with a privacy endorsement or a certificate issued by the Director-General that the licensee has successfully completed an approved privacy course.
Maximum penalty: 50 penalty units.
- (2) The licensee of licensed premises situated in the Kings Cross precinct must not cause or permit a staff member to use a patron ID scanner on the premises unless the staff member holds:
 - (a) a current recognised competency card with a privacy endorsement, or
 - (b) a certificate issued by the Director-General that the staff member has successfully completed an approved privacy course.Maximum penalty: 50 penalty units.
- (3) Subclause (1) does not apply to:
 - (a) a person who is taken to be the licensee pursuant to section 62 of the Act, or
 - (b) a licensee that is a corporation.
- (4) A certificate referred to in this clause that a person has successfully completed an approved privacy course ceases to have effect after 28 days following the completion of the approved privacy course to which the certificate relates.

[8] Clause 41A

Insert after clause 41:

41A Obligations of staff members as to use of patron ID scanners in Kings Cross precinct

- (1) A staff member of licensed premises situated in the Kings Cross precinct must not use a patron ID scanner on the premises unless the staff member holds:
 - (a) a current recognised competency card with a privacy endorsement, or
 - (b) a certificate issued by the Director-General that the staff member has successfully completed an approved privacy course.Maximum penalty: 20 penalty units.
- (2) Any such certificate ceases to have effect after 28 days following the completion of the course to which the certificate relates.

[9] Clause 53A Special licence conditions

Omit “and 53N” from clause 53A (2). Insert instead “, 53N and 53NA”.

[10] Clause 53NA

Insert after clause 53N:

53NA Hours of operation signage to be displayed

- (1) The licensee of subject premises must ensure that a sign containing the following information is prominently displayed at or near every entrance by which patrons may enter the premises and in such a manner and in such a position that a patron entering the premises would reasonably be expected to be alerted to its contents:
 - (a) the times during which liquor is authorised to be sold or supplied on the premises,
 - (b) any other times during which the premises are authorised to be open for business.
- (2) Any such sign must be in the form approved by the Director-General.

[11] Clause 53O Alcohol sales data

Omit “during such period as may be specified by the Director-General by notice in writing served on the licensee” from clause 53O (1).

Insert instead “in respect of each quarterly period commencing 1 July, 1 October, 1 January and 1 April in any year”.

[12] Clause 53O (1)

Insert “, in that period,” after “sold or supplied”.

[13] Clause 53O (2) (b)

Omit “in accordance with the arrangements specified in the notice to the licensee”.

[14] Clause 53O (3)

Insert after clause 53O (2):

- (3) The requirement to make and keep records under this clause does not apply until the beginning of the next quarterly period following the date on which the amendments made by the *Liquor Amendment (Kings Cross Plan of Management) Act 2013* to this clause commence.

[15] Clause 53Q

Insert after clause 53P:

53Q Information recorded by patron ID scanners

For the purposes of section 116AC (1) (e) of the Act, the following information is prescribed:

- (a) the identification details (within the meaning of section 116AA of the Act) of a person,
- (b) the photograph appearing on a person’s photo ID (as referred to in section 116AC of the Act).

[16] Schedule 2 Penalty notice offences

Insert in appropriate order in the matter relating to offences under the *Liquor Act 2007*:

Section 116AC (3)	\$550
Section 116AD (6)	\$550
Section 116AE (9)	\$2,200

[17] Schedule 2

Insert in appropriate order in the matter relating to offences under the *Liquor Regulation 2008*:

Clause 39AA (8)	\$550
Clause 39AA (9)	\$220
Clause 40A	\$1,100
Clause 41A	\$440

Schedule 3 Amendment of Gaming and Liquor Administration Act 2007 No 91

Section 36A Review by Authority of certain decisions by Director-General under gaming and liquor legislation

Insert after subparagraph (viii) of the definition of *reviewable decision* in
section 36A (1) (a):

- (viiiia) a decision of the Director-General under section 116AA (4) to
designate licensed premises as a high risk venue,