

[Act 1998 No 151]



New South Wales

Liquor and Registered Clubs Legislation Amendment (Gaming) Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Liquor Act 1982*:

- (a) to impose restrictions on the grant of a hotelier's licence, and the continued operation of such a licence, so as to ensure that the primary purpose of the business conducted in a hotel under the authority of such a licence is the sale of liquor by retail and that any use of approved gaming devices in a hotel does not detract unduly from the character of the hotel or from the enjoyment of persons ordinarily using the hotel (otherwise than for gaming), and
 - (b) to ensure that certain parts of hotel premises cannot be leased or subleased to any person other than the person who holds the licence to operate those premises as a hotel and that the right to supply any services in those premises cannot be leased or subleased, and
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- (c) to provide for a court to impose an additional fee on a hotelier's licence, or an off-licence to sell liquor by retail, the conditions of which have been relaxed, and
- (d) to provide that a temporary on-licence (function) is subject to conditions similar to those to which a permanent on-licence (function) is subject, in relation to responsible service of alcohol. and
- (e) to effect statute law revision.

The Bill also makes some minor amendments to transitional provisions in the *Registered Clubs Act 1976*.

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.

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

Clause 4 is a formal provision giving effect to the amendments to the *Registered Clubs Act 1976* set out in Schedule 2.

Schedule 1 Amendment of Liquor Act 1982

Schedule 1 [1] makes a minor amendment to ensure that the definition of *function* in the *Liquor Act 1982* (which is proposed to be substituted by the *Liquor and Registered Clubs Legislation Amendment Act 1997* ("the 1997 Act") includes race meetings.

Schedule 1 [2] makes a minor amendment of a statute law revision nature by omitting redundant words from a provision (which is proposed to be inserted by the 1997 Act).

Schedule 1 [3] makes it a condition of every hotelier's licence that the primary purpose of the business conducted in the hotel under the authority of the licence is to be the sale of liquor by retail. and that any use of approved gaming devices on the premises does not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [4]-[8] provide for the making of objections to the grant of an application for a hotelier's licence. or for the removal of a hotelier's licence. on the grounds that the statutory condition imposed on the licence under

proposed section 21AA would be breached. That is, a person may object on the ground that the primary purpose of the business to be conducted under the authority of the licence to which the application relates is not the sale of liquor by retail, or that the proposed use of approved gaming devices on the premises will detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [9] lists three factors that the court may have regard to for the purposes of determining the primary purpose of the business conducted under the authority of the licence, or the impact of the use of approved gaming devices. Those factors relate to the physical layout of facilities at the premises, the general manner in which gaming is conducted and the advertising of the premises and of the availability of the facilities available at the premises.

Schedule 1 [10] provides that an application for a hotelier's licence cannot be granted unless the court is satisfied that the statutory condition imposed on the licence under proposed section 21AA would be complied with. That is, an application must not be granted unless the court is satisfied that the primary purpose of the business conducted in the hotel under the authority of the licence is to be the sale of liquor by retail, and that any proposed use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [11] makes a minor amendment of a statute law revision nature by correcting a cross-reference (in a provision which is proposed to be inserted by the 1997 Act).

Schedule 1 [12] provides that a temporary on-licence (function) is subject to conditions similar to those to which a permanent on-licence (function) is subject, in relation to responsible service of alcohol.

Schedule 1 [13] makes a minor amendment of a statute law revision nature.

Schedule 1 [14] provides for the imposition of an additional fee for a hotelier's licence, or an off-licence (retail), if the court grants an application for the variation of the conditions of such a licence by omitting any condition or reducing the restrictiveness of a condition. That fee is to be no more than the difference between the fee that would have been payable for the varied licence, if it were granted on the date of the order, and the fee actually paid for the licence.

Schedule 1 [15] provides that an application for the removal of a hotelier's licence must not be granted unless the statutory condition imposed on the licence under proposed section 21AA would be complied with. That is, the court must refuse to grant such an application unless the court is satisfied that the primary purpose of the business conducted in the hotel under the authority of the licence is to be the sale of liquor by retail, and that any use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [18] provides that an application for the definition or redefinition of the boundaries of licensed premises under a licence to sell liquor cannot be granted unless the Board is satisfied that the statutory condition imposed on the licence under proposed section 21AA would be complied with. That is, an application may not be granted unless the Board is satisfied that the primary purpose of the business conducted in the hotel under the authority of the licence will be the sale of liquor by retail, and that any use of approved gaming devices on the premises will not detract unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises (otherwise than for gaming).

Schedule 1 [20] prohibits a person (other than the licensee) from letting or subletting any part of licensed premises on which liquor is ordinarily sold or supplied, or on which an approved gaming device is ordinarily kept, used or operated, to any person other than the licensee for those premises. The amendment also prohibits such a person from letting or subletting any other part of licensed premises, or the right to supply any services in licensed premises, without the prior approval of the Board. **Schedule 1 [19]** makes a consequential amendment.

Schedule 1 [21] provides for the Director of Liquor and Gaming to give directions to a hotelier requiring the hotelier to take specified remedial action. Such a direction may only be given if the Director has reasonable cause to believe that the hotelier has failed to comply with the statutory condition imposed on the hotelier's licence under proposed section 21AA (that is, if the Director has reasonable cause to believe that the primary purpose of the business conducted in the hotel under the authority of the licence is not the sale of liquor by retail or that any use of approved gaming devices on the premises detracts unduly from the character of the premises or from the enjoyment of persons ordinarily resorting to the premises, otherwise than for gaming).

Schedule 1 [17] provides that a failure to comply with such a direction of the Director is a ground on which a complaint can be made under section 67 of the Act, which provides for the summoning of a licensee to show cause why disciplinary action should not be taken. (**Schedule 1 [16]** makes an analogous amendment to a section that is proposed to replace existing section 68.)

Schedule 1 [22] provides for the making of regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [23] makes provisions of a savings and transitional nature consequent on the enactment of the proposed Act. Those provisions make it clear that the amendments made by the proposed Act apply to existing licences and to applications for licences, or for the removal of licences, that have been made but not been determined when the proposed amendments commence.

Schedule 2 Amendment of Registered Clubs Act 1976

Schedule 2 [1] and **[2]** make minor amendments to the *Registered Clubs Act 1976* ("the Act") by way of statute law revision.

The remainder of the Schedule contains amendments to transitional provisions inserted in Schedule 2 to the *Registered Clubs Act 1976* by the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*. They all concern the duty chargeable on the profits derived from gaming machines kept by registered clubs during the duty period that commenced on 1 December 1997 (the "relevant duty year").

Schedule 2 [3] and **[4]** amend clauses 77 and 78 of Schedule 2 to the Act, which prescribe the rates at which the first quarterly instalment of duty for the relevant duty year is chargeable on gaming machine profits from ordinary and multi-terminal gaming machines, respectively. The amendments increase the rates applicable to such profits to the extent that they exceed \$250,000 for the quarter. (The time for payment of the instalment being now past, the effect of the amendments will be to diminish the credit to which clubs are entitled under clause 81 of Schedule 2 to the Act.)

Schedule 2 [5] amends clause 79 of Schedule 2 to the Act, which concerns duty chargeable during the last three-quarters of the relevant duty year. The amendment corrects a typographical error.

Schedule 2 [6] amends clause 80 of Schedule 2 to the Act, which concerns duty concessions available to clubs. The clause currently provides that:

- (a) the concession provided by section 87F of the Act (repealed by the *Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998*), calculated on a club's expenditure on community welfare, is to apply (to an extent prescribed by regulations) in respect of expenditure from profits derived in the months of December 1997 and January 1998, and

- (b) a new concession provided by section 87 (5) (inserted by Schedule 3 [9] to that Act). calculated on a club's expenditure on community development and support, is to apply in respect of expenditure from profits derived in the remainder of the relevant duty year.

The amendment has the effect of extending the latter concession so that it applies in respect of profits derived at any time during the year (and so applies, so far as profits derived in December 1997 or January 1998 are concerned, in addition to the former concession, but at a rate lower than the rate at which it will apply in subsequent duty years).