

[Act 1998 No 12]



New South Wales

Liquor and Registered Clubs Legislation Amendment (Community Partnership) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Liquor Act 1982* and the *Registered Clubs Act 1976*:

- (a) to vary the rates at which duty is payable on the profits derived from gaming machines kept by registered clubs, and to vary the concessions available in relation to the liability for payment of such duty, and
- (b) to require a review to be undertaken of the rates of duty applicable to profits derived from the operation of gaming machines in hotels and registered clubs, and
- (c) to remove certain gaming machine restrictions now in force in relation to hotels and registered clubs, and
- (d) to require the development of a problem gambling policy in relation to patrons of registered clubs, and

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

- (e) to create a licence known as an investment licence, the holder of which is authorised to sell or supply gaming machines to hotels and to share in the profits from the operations of such machines, and to confer entitlement on the Totalizator Agency Board or its corporate successor in title to hold such a licence, and
- (f) to permit minors to pass through a poker machine area or poker machine areas of a registered club in certain limited circumstances, and
- (g) to make other amendments of an administrative or minor character.

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 appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Liquor Act 1982* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to the *Registered Clubs Act 1976* set out in Schedule 3.

Schedule 1 Amendment of Liquor Act 1982

Schedule 1 [1] amends section 86K of the Act, which prescribes the rate of duty on profits from approved gaming devices in hotels, to provide that the rates of duty currently prescribed are not to be varied until a review of those rates is carried out by the Treasurer and the Minister for Gaming and Racing in conjunction with the hotel industry. The review is to be concluded by 31 January 2001.

Schedule 1 [2] amends section 86KB of the Act to remove any doubt that the Liquor Administration Board has a duty (rather than a discretion) to investigate whether an adjustment as to duty payable in respect of profits derived from approved gaming devices should be made.

Schedule 1 [3] amends section 155B of the Act to provide that the functions of the Board in relation to specifying technical standards for approved gaming devices, linked gaming systems or equipment used in the connection of approved gaming devices to an authorised centralised monitoring system cannot be delegated under that section.

Schedule 1 [4] amends section 158 of the Act so as to protect from liability a person who furnishes information to the Liquor Administration Board in relation to the performance of an approved amusement device (a machine that features the video draw poker game) that results in the Board's revocation of its status as an approved amusement device.

Schedule 1 [5] makes a minor amendment to section 161 of the Act so as to require a fee currently payable to the Principal Registrar or another registrar to be paid in accordance with the regulations. The fee is payable when authorisation to acquire and keep an approved amusement device is given by a delegate of the Liquor Administration Board. By virtue of section 182A of the Act, the new fee provisions will apply to approved amusement devices in registered clubs also.

Schedule 1 [6] makes an amendment consequential on the amendment contained in Schedule 2 [2].

Schedule 1 [7] amends section 165 of the Act to provide that the nature and terms on which prizes are awarded or offered in relation to the operation of approved amusement devices are to be determined in accordance with the regulations. (Currently such prizes are essentially restricted to money and liquor.)

Schedule 1 [9] repeals and replaces section 182C of the Act, which currently provides that the number of poker machines that may be kept in a hotel must not exceed the number of approved amusement devices that are kept there. The new section dispenses with this restriction and provides instead that, with due authorisation, 15 poker machines may be kept in a hotel, and up to a further 15 may be kept there if they are the subject of permits authorising their keeping.

Schedule 1 [10] amends section 197 of the Act to include provision for further offences in the nature of cheating or fraudulently obtaining prizes from approved amusement devices on hotel premises. By virtue of section 182A of the Act, these offence provisions will apply to approved amusement devices in registered clubs also.

Schedule 1 [11] amends Schedule 1 to the Act (Savings and transitional provisions) to enable the making by regulation of any necessary savings or transitional provisions as a consequence of the amendments made by the proposed Act. **Schedule 1 [8]** makes a consequential amendment.

Schedule 2 Amendment of Liquor Act 1982 in relation to investment licences

The principal amendment is contained in **Schedule 2 [2]**, which inserts a new Part 13 into the Act. The amendment made by **Schedule 2 [1]** is consequential.

The new Part 13 provides for a licence, to be known as an investment licence, which will authorise the sale or supply of approved gaming devices to hotels and authorise profit-sharing arrangements with respect to the proceeds of the operation of the gaming devices (proposed section 218). Provisions of the Act such as section 163 (which would generally prevent sharing of receipts) or section 164 (5) (which would prevent the keeping by a hotelier of a machine owned by someone else), and the provisions of any other Act that would prevent the exercise by the licensee of the functions conferred by an investment licence, do not apply to the licensee (proposed section 218(3)), and regulations may exclude the operation of such provisions to hoteliers to the extent that they would frustrate the objects of the licence (proposed section 218 (4)).

Special provision is made for the issue of a licence to the TAB, granting it exclusive rights to an investment licence for a period of not less than 15 years determined by the Minister (proposed section 219). The TAB may enter into a joint venture with the Australian Hotels Association (NSW) in relation to the conduct of business under the exclusive licence (proposed section 220).

The granting of the exclusive licence to the TAB is expressly excepted from the operation of the *Trade Practices Act 1974* of the Commonwealth (proposed section 221).

Proposed section 222 sets out the requirements relating to lodgment of an application for an investment licence and supporting documentation, but these requirements do not apply to the exclusive licence to which the TAB is entitled (proposed section 219 (5)). Proposed section 223 invests the Minister with a discretion to grant or refuse the licence. The term of an investment licence (other than the TAB licence) is also at the discretion of the Minister (proposed section 224). An investment licence is not transferable and cannot be dealt with as property (proposed section 225).

Proposed sections 226 and 227 provide that a licence is subject to conditions prescribed under the Act or imposed by the Minister and provide for the manner in which such conditions may be varied.

Proposed sections 228–236 deal with disciplinary and enforcement action that may be taken against defaulting licensees.

Schedule 3 Amendment of Registered Clubs Act 1976

Schedule 3 [2] inserts a new section 51A, which provides a defence in relation to a prosecution for allowing a minor to be in a poker machine area if it is proved that the minor was only passing through a poker machine area on his or her way to another area of the club and was at all material times in the company of a responsible adult.

Schedule 3 [3] amends section 73 of the Act to enable regulations to be made concerning recommended minimum levels of fees and other monetary benefits payable to members of the governing body of a registered club.

Schedule 3 [4] amends section 77B of the Act so as to protect from liability a person who furnishes information to the Liquor Administration Board in relation to the performance of a poker machine that results in the Board's revocation of its status as an approved poker machine.

Schedule 3 [5] amends section 78A to provide that a fee is payable, in accordance with the regulations, when an authorisation to acquire and keep an approved poker machine is given or varied by a delegate of the Liquor Administration Board. By virtue of section 88AA of the Act, the new fee provisions will apply to poker machines in hotels also.

Schedule 3 [6] amends section 80 of the Act as a consequence of the amendment contained in Schedule 3 [16].

Schedule 3 [7] amends section 83 of the Act to include provision for further offences in the nature of cheating or fraudulently obtaining prizes from poker machines on club premises. By virtue of section 88AA of the Act, these offence provisions will apply to poker machines in hotels also.

Schedule 3 [8] amends section 85 of the Act, which imposes a duty on profits derived from approved gaming devices kept by clubs, so as to provide that where a club operates on several premises, the profits from machines kept on each of those premises are taxable separately.

Schedule 3 [9], [10] and [11] repeal sections 87, 87AA, 87A, 87B, 87F and 87G of the Act, which deal with duty payable on profits from approved gaming devices, and replace them with new provisions, the effects of which are as follows:

- (a) The new section 87 lowers the rate of duty on profits in excess of \$200,000 from 22.5% to 20% and lowers the duty rate on profits in excess of \$1,000,000 from 30% to 26.25%. The new section also provides that, for a club that makes profits in excess of \$1,000,000, a

reduction in the duty payable on those profits will be allowed, in an amount equal to the club's expenditure on community support, up to a maximum concession of 1.5% of those profits. This concession replaces the existing duty refund provisions with regard to welfare expenditure currently contained in section 87F of the Act.

- (b) The distinction that has been drawn in the Act for duty purposes between ordinary and "multi-terminal" gaming machines is abolished by the repeal of section 87AA. The profits derived from multi-terminal machines will now be brought to duty at the new rates prescribed for other machines, instead of at the current uniform rate of 30%.
- (c) The new rates of duty for gaming machines are not to be varied until the conclusion of a review of duty rates carried out, at the direction of the Treasurer and the Minister for Gaming and Racing, in conjunction with the Registered Clubs Association of New South Wales. That review will not be concluded before 31 January 2001, on condition that a problem gambling policy is implemented by the Association by 31 May 1998 (See new section 87AA).
- (d) The new section 87A varies the current quarterly duty instalment provisions to take account of the new rates of duty payable over a 12-month duty period. The prescribed instalment rates presume that a club whose quarterly profits indicate a likely revenue in excess of \$1,000,000 for the 12-month duty period will apply its profits to community support in such a way as to maximise the available concession under section 87 (that is, the instalment rate payable on profits in the top margin is 1.5 percentage points less than the rate that may ultimately be chargeable).
- (e) The new section 87B makes provision for duty adjustments in a manner similar to the current provisions of the *Liquor Act 1982*. Under those provisions, an adjustment is made only on application made by the taxpayer concerned.

Schedule 3 [1] and **[12]** make consequential amendments.

Schedule 3 [13] repeals section 88AC of the Act, which currently provides for limitation, by way of a condition of the club's registration, of the number of approved amusement devices that may be placed on club premises.

Schedule 3 [14] amends section 133A of the Act to provide that the functions of the Board in relation to specifying technical standards for approved gaming devices, linked gaming systems or equipment used in the connection of approved gaming devices to an authorised central monitoring system cannot be delegated under that section.

Explanatory note

Schedule 3 [15] amends section 134 of the Act to make it clear that provisions of the Act that would otherwise prevent the possession, supply, or financing of the acquisition of, machines or equipment necessary for a linked gaming system by a licensee under Part 12 of the Act do not operate to prevent the licensee from exercising the authority conferred by the licence.

Schedule 3 [16] inserts a new section 142A which provides that the TAB may enter into a joint venture with the Registered Clubs Association of New South Wales in relation to the business authorised by a licence under Part 12 of the Act.

Schedule 3 [17] and **[18]** enact savings and transitional provisions in relation to the new rates of duty on approved gaming devices and provide for any necessary regulations of a savings or transitional nature to be made as a consequence of the amendments made by the proposed Act.