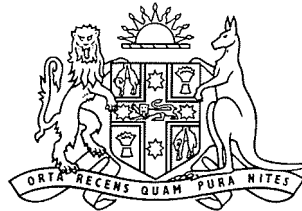


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consultation draft



New South Wales

## Liquor and Gaming Court Bill 2005

### Explanatory note

This Bill is cognate with the *Liquor Bill 2005*.

### Overview of Bill

The object of this Bill is to reconstitute the Licensing Court as the Liquor and Gaming Court. The Licensing Court is presently constituted under Part 2 of the *Liquor Act 1982* (which is to be repealed and replaced by the proposed *Liquor Act 2005*). The new Liquor and Gaming Court's jurisdiction is primarily to determine appeals under the new Liquor Act, the *Clubs Management Act 1976* and the *Gaming Machines Act 2001* against decisions by the Director of Liquor and Gaming and to deal with any disciplinary matter that is referred to it under those Acts.

A number of amendments to other Acts that are consequential on the reconstitution of the Licensing Court as the Liquor and Gaming Court, and on the renaming of Licensing Magistrates as Liquor and Gaming Magistrates, are contained in Schedule 4 to the proposed *Liquor Act 2005*.

### Outline of provisions

#### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

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Liquor and Gaming Court Bill 2005

Explanatory note

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**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

## **Part 2 The Liquor and Gaming Court**

### **Division 1 Constitution and jurisdiction**

**Clause 4** constitutes the Liquor and Gaming Court as a court of record.

**Clause 5** deals with the jurisdiction of the Court, which includes the jurisdiction conferred on the Court under the proposed *Liquor Act 2005*, the *Clubs Management Act 1976* and the *Gaming Machines Act 2001*.

**Clause 6** provides for the appointment by the Governor of at least one Liquor and Gaming Magistrate (who must be a Magistrate).

**Clause 7** describes the manner in which the Court is to be constituted.

**Clause 8** provides for sittings of the Court.

**Clause 9** disqualifies a person from sitting in (or as) the Court in certain circumstances.

**Clause 10** provides for the appointment of registrars of the Court.

### **Division 2 Procedure**

**Clause 11** provides that proceedings before the Court are to be commenced and regulated in the same way as proceedings before a Local Court.

**Clause 12** provides that proceedings before the Court are to be conducted in public unless the Court orders otherwise.

**Clause 13** provides for the giving of procedural directions.

**Clause 14** enables proceedings to be adjourned.

**Clause 15** provides for the amendment of documents that relate to proceedings before the Court.

**Clause 16** enables the Court to order costs in relation to proceedings.

## **Part 3 Miscellaneous**

**Clause 17** makes it an offence to commit contempt in the face of the Court and deals with proceedings for contempt.

**Clause 18** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 19** is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 1.

**Clause 20** provides for the review of the proposed Act in 5 years.

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Liquor and Gaming Court Bill 2005

Explanatory note

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### **Schedule 1      Provisions relating to Liquor and Gaming Magistrates**

**Schedule 1** contains provisions relating the appointment of Liquor and Gaming Magistrates (including the appointment of the Chairperson of the Court).

### **Schedule 2      Savings, transitional and other provisions**

**Schedule 2** contains savings, transitional and other provisions consequent on the enactment of the proposed Act and the proposed *Liquor Act 2005* (including the abolition of the Licensing Court and the continuation of abolished judicial offices).

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Liquor and Gaming Court Bill 2005

Explanatory note

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consultation draft

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New South Wales

## Liquor and Gaming Court Bill 2005

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Liquor and Gaming Court Bill 2005

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New South Wales

## Liquor and Gaming Court Bill 2005

No. , 2005

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### **A Bill for**

An Act to constitute the Liquor and Gaming Court of New South Wales.

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Clause 1          Liquor and Gaming Court Bill 2005

Part 1             Preliminary

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**The Legislature of New South Wales enacts:**

## **Part 1   Preliminary**

### **1   Name of Act**

This Act is the *Liquor and Gaming Court Act 2005*.

### **2   Commencement**

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

### **3   Definitions**

(1) In this Act:

***Chairperson*** means the Chairperson of the Court.

***Court*** or ***Liquor and Gaming Court*** means the Liquor and Gaming Court of New South Wales constituted by this Act.

***Liquor and Gaming Magistrate*** means a Liquor and Gaming Magistrate appointed under this Act.

(2) Notes included in the text of this Act do not form part of this Act.



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Liquor and Gaming Court Bill 2005

Clause 4

The Liquor and Gaming Court

Part 2

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## Part 2 The Liquor and Gaming Court

### Division 1 Constitution and jurisdiction

#### 4 Constitution of the Court

There is constituted by this Act a court of record to be known as the Liquor and Gaming Court of New South Wales.

#### 5 Jurisdiction of the Court

The Liquor and Gaming Court has such jurisdiction as may be conferred or imposed on it by or under this or any other Act.

**Note.** The following Acts confer jurisdiction on the Court:

*Clubs Management Act 1976*

*Gaming Machines Act 2001*

*Liquor Act 2005*

#### 6 Appointment of Liquor and Gaming Magistrate

- (1) At least one person who is a Magistrate is to be appointed by the Governor as a Liquor and Gaming Magistrate.

**Note.** If a person is to be appointed as a Liquor and Gaming Magistrate the person must first be appointed as a Magistrate under the *Local Courts Act 1982*.

- (2) A person holding office as a Liquor and Gaming Magistrate is taken to hold the office on a part-time basis:
- (a) if, immediately before being appointed to the office, the person was a part-time Magistrate within the meaning of the *Local Courts Act 1982*, or
  - (b) if the person's appointment as a Liquor and Gaming Magistrate is expressed, in the instrument by which the person is appointed, to be on a part-time basis, or
  - (c) although not appointed on a part-time basis, the person, by agreement in writing entered into with the Chief Magistrate, exercises the functions of the office of a Liquor and Gaming Magistrate on a part-time basis.
- (3) Schedule 1 has effect with respect to a Liquor and Gaming Magistrate.

#### 7 Composition of the Court

- (1) The Court is to be constituted by:
- (a) a Liquor and Gaming Magistrate sitting alone, or
  - (b) a Magistrate (other than a Liquor and Gaming Magistrate) sitting alone in accordance with a delegation to the Magistrate of any or

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Clause 8           Liquor and Gaming Court Bill 2005

Part 2             The Liquor and Gaming Court

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- all of the jurisdiction of a Liquor and Gaming Magistrate (either generally or in a particular case) by the Chairperson, or
- (c) if the Chairperson so directs (either generally or in a particular case)—2 or more Liquor and Gaming Magistrates.
- (2) If the Court is constituted as provided by subsection (1) (c):
- (a) the Chairperson is to preside if the Chairperson is sitting, or
- (b) if the Chairperson is not sitting, the Liquor and Gaming Magistrate nominated for the purpose by the Chairperson is to preside.
- (3) If the Court is constituted as provided by subsection (1) (c) and there is a difference of opinion among the members of the Court, the opinion of the majority is the opinion of the Court and, if there is an equality of votes, the presiding Liquor and Gaming Magistrate has a casting vote as well as a deliberative vote.
- (4) A signed opinion of a member of the Court sitting as constituted under this section may be delivered by any Liquor and Gaming Magistrate, whether or not the Magistrate who delivers the opinion is the Magistrate, or one of the Magistrates, who signed the opinion.

### **8 Sittings of the Court**

- (1) Sittings of the Court may be held at each place appointed under section 6 (1) of the *Local Courts Act 1982*.
- (2) Subject to this Act, the sittings and constitution of the Court are to be arranged by the Chairperson.

### **9 Persons disqualified from sitting as the Court**

- (1) A person is disqualified from sitting in or as the Court for the hearing and determination of a matter under any Act in which the Court has jurisdiction if:
- (a) the person is beneficially interested in the manufacture or sale of liquor, or
- (b) the person has a beneficial interest in any licensed premises, or
- (c) the person holds a licence, or
- (d) the person is beneficially interested in a trade or calling carried on under a licence, or
- (e) a person to or with whom the person is, in such manner (if any) as may be prescribed by the regulations, related or connected is the holder of a licence in respect of premises in the neighbourhood of the premises in relation to which the matter is to be heard and determined, or

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Liquor and Gaming Court Bill 2005

Clause 10

The Liquor and Gaming Court

Part 2

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- (f) the person is beneficially interested in a trade or calling carried on under a licence relating to premises referred to in paragraph (e).
- (2) In this section:
  - licence** means:
    - (a) a licence under the *Liquor Act 2005*, or
    - (b) a gaming-related licence within the meaning of the *Gaming Machines Act 2001*.
  - licensed premises** means premises to which a licence under the *Liquor Act 2005* relates.

## 10 Registrars of the Court

Such registrars as may be necessary for the purposes of this Act are to be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.

## Division 2 Procedure

### 11 Procedure before Liquor and Gaming Court

- (1) Except as provided by or under this or any other Act, proceedings before the Court are, as nearly as practicable, to be commenced and regulated in the same way as summary proceedings before a Local Court.
- (2) In any proceedings before it, the Court:
  - (a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit, and
  - (b) is to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.
- (3) The Liquor and Gaming Magistrate who constitutes the Court or, if the Court is constituted by more than one Liquor and Gaming Magistrate, the presiding Magistrate, may take, administer or cause to be taken or administered any oath, declaration, affirmation or deposition relating to proceedings before the Court.

### 12 Proceedings to be conducted in public

- (1) Proceedings before the Court are to be conducted in public, except as provided by subsection (2).
- (2) The Court may, on its own motion or on application by a party to proceedings before the Court, order that the proceedings are to be conducted wholly or partly in private if the Court is satisfied that it is

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Clause 13      Liquor and Gaming Court Bill 2005

Part 2          The Liquor and Gaming Court

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desirable to do so because of the confidential nature of any evidence or other matter.

## **13 Procedural directions**

In relation to any proceedings before the Court:

- (a) a Liquor and Gaming Magistrate may, before the hearing of the proceedings, or
- (b) the Court may, of its own motion or on application, give such directions, not inconsistent with this Act or any Act under which it has jurisdiction, as the Magistrate or Court thinks necessary or appropriate for the proper disposal of the proceedings.

## **14 Adjournments**

- (1) The Court may, at any stage of proceedings, adjourn the proceedings to a specified time or place.
- (2) If the Court is not constituted in accordance with this Act because a member of the Court is absent, any member of the Court who is present, or if no member of the Court is present a registrar of the Court, may adjourn the Court or the proceedings.
- (3) An adjournment of proceedings may be in such terms as to costs or otherwise as the Court thinks fit.

## **15 Amendment of documents**

On the hearing of any proceedings, the Court may, of its own motion, or on such terms as to costs or adjournment as it thinks fit, on the application of a party to proceedings:

- (a) permit the lodging or amendment of any notice or of any document or instrument necessary to the proceedings before the Court, and
- (b) disregard any omission, error, defect or insufficiency in respect of the giving, serving, affixing, keeping affixed, advertising or publishing of the document or instrument or any other matter or thing not going to the substance of the matter before the Court.

## **16 Costs**

The costs of any proceedings in the Court, including any costs incidental to proceedings, are to be paid by or apportioned between the parties in such manner as the Court orders.

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Liquor and Gaming Court Bill 2005

Clause 17

Miscellaneous

Part 3

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## **Part 3 Miscellaneous**

### **17 Contempt**

- (1) A person must not commit contempt in the face of the Court.  
Maximum penalty: 10 penalty units or imprisonment for 14 days.
- (2) Proceedings for contempt are to be dealt with summarily before the Liquor and Gaming Court.
- (3) For the purposes of dealing with proceedings for contempt, the Liquor and Gaming Court has, and may exercise, the jurisdiction of a Local Court.

### **18 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the practice and procedure of the Court.

### **19 Savings, transitional and other provisions**

Schedule 1 has effect.

### **20 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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Liquor and Gaming Court Bill 2005

Schedule 1 Provisions relating to Liquor and Gaming Magistrates

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## **Schedule 1 Provisions relating to Liquor and Gaming Magistrates**

(Section 6 (3))

### **1 Appointment of Chairperson**

- (1) The Governor may appoint a Liquor and Gaming Magistrate as the Chairperson of the Liquor and Gaming Court.
- (2) A person appointed as the Chairperson ceases to hold office as such if the person ceases to hold office as a Liquor and Gaming Magistrate.

### **2 Term of office**

A Liquor and Gaming Magistrate holds office for such period, not exceeding 7 years or past the date on which the Magistrate attains the age of 72 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.

### **3 Remuneration**

- (1) A Liquor and Gaming Magistrate, other than a Liquor and Gaming Magistrate referred to in subclause (2), is entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*.
- (2) A Liquor and Gaming Magistrate who is a Magistrate with limited tenure within the meaning of the *Local Courts Act 1982* is entitled to be paid remuneration payable in respect of Magistrates with limited tenure under section 24 (2) of that Act.

### **4 Application of Public Sector Employment and Management Act 2002**

The *Public Sector Employment and Management Act 2002* does not apply to or in respect of:

- (a) the appointment of a Liquor and Gaming Magistrate, or
- (b) a Liquor and Gaming Magistrate during his or her term of office as such.

### **5 Effect of appointment as Liquor and Gaming Magistrate**

- (1) A Liquor and Gaming Magistrate does not, by reason of being appointed as such, cease to be a Magistrate.
- (2) A Liquor and Gaming Magistrate may not engage in any business or employment outside the duties of his or her office except with the approval of the Governor.

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Liquor and Gaming Court Bill 2005

Provisions relating to Liquor and Gaming Magistrates

Schedule 1

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## **6 Vacation of office**

A person is taken to have vacated office as a Liquor and Gaming Magistrate if:

- (a) the person ceases to be a Magistrate, or
- (b) the person resigns office by instrument in writing addressed to the Minister and the Governor accepts the resignation, or
- (c) the person's term of appointment as a Liquor and Gaming Magistrate ends and the person is not reappointed.

**Note.** See also Part 9 of the *Constitution Act 1902* and Part 7 of the *Judicial Officers Act 1986* for provisions relating to the removal and suspension from office of judicial officers (which includes Liquor and Gaming Magistrates) and for other relevant provisions.

## **7 Appointment of Magistrate unaffected by resignation etc**

A person does not cease to be a Magistrate merely because of:

- (a) his or her resignation from office as a Liquor and Gaming Magistrate, or
- (b) the expiration of his or her term of office as a Liquor and Gaming Magistrate.

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Liquor and Gaming Court Bill 2005

Schedule 2 Savings, transitional and other provisions

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## Schedule 2 Savings, transitional and other provisions

(Section 19)

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act  
*Liquor Act 2005*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act and the Liquor Act 2005

#### 2 Definitions

In this Part:

*former Act* means the *Liquor Act 1982*.

*former Court* means the Licensing Court constituted under Part 2 of the former Act.

*relevant repeal date* means the date on which Part 2 of the former Act is repealed by the *Liquor Act 2005*.

#### 3 Abolition of Licensing Court and continuation of judicial office

- (1) The Licensing Court of New South Wales is abolished on the relevant repeal date.



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Liquor and Gaming Court Bill 2005

Savings, transitional and other provisions

Schedule 2

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- (2) A person who, immediately before the relevant repeal date, held office as a Licensing Magistrate under Part 2 of the former Act is:
- (a) unless the person is appointed as a Liquor and Gaming Magistrate for at least the remainder of the term for which the person was appointed as a Licensing Magistrate, or
  - (b) unless the person holds an appointment as a Magistrate for at least the remainder of the term for which the person was appointed as a Licensing Magistrate,
- entitled to hold office as a Magistrate for the remainder of the term for which the person was appointed as a Licensing Magistrate under Part 2 of the former Act.

**Note.** See section 56 (2) of the *Constitution Act 1902* which provides for the consequences of abolishing a judicial office.

#### 4 Superseded references

A reference (however expressed) in any other Act, or in any instrument made under an Act or in any other document to:

- (a) a Licensing Magistrate appointed under the former Act is to be read as a reference to a Liquor and Gaming Magistrate appointed under this Act, and
- (b) the former Court is to be read as a reference to the Liquor and Gaming Court constituted by this Act.

**Note.** See clause 23 of Schedule 1 to the *Liquor Act 2005* for provisions relating to pending proceedings before the former Court.